



Fair Labor Standards Act

Adams and Reese LLP

The Fair Labor Standards Act (FLSA) was enacted by Congress in 1938 as a means of economic recovery from the Great Depression.

- regular working hours
- minimum hourly wage
- overtime pay for certain employees
- minors in oppressive occupations

Why is compliance with FLSA important?

- Schools can be held liable for violations.
- Supervisors can also be held individually liable.

Hours Worked: Issues

- Suffered or Permitted
- Waiting Time
- On-Call Time
- Meal and Rest Periods
- Training Time
- Travel Time
- Sleep Time

Suffered or Permitted

Work not requested but suffered or permitted is work time.

Waiting Time

Counted as hours worked when

- Employee is unable to use the time effectively for his or her own purposes; and
- Time is controlled by the employer

Not counted as hours worked when

- Employee is completely relieved from duty; and
- Time is long enough to enable the employee to use it effectively for his or her own purposes

On-Call Time

On-call time is hours worked when

- Employee has to stay on the employer's premises
- Employee has to stay so close to the employer's premises that the employee cannot use that time effectively for his or her own purposes

On-call time is not hours worked when

- Employee is required to carry a cellphone
- Employee is required to leave work at home or with the employer where he or she can be reached

Meals, Rest Periods, and Breaks

Meal periods are not hours worked when the employee is relieved of duties for the purpose of eating a meal. Should be 30 minutes or more of unencumbered time to be non-compensable.

Rest periods or breaks of short duration (normally 5 to 20 minutes) are counted as hours worked and must be paid.

Training Time

Time employees spend in meetings, lectures, or training is considered hours worked and must be paid, unless:

- Attendance is outside regular working hours
- Attendance is voluntary
- The course, lecture, or meeting is not job related
- The employee does not perform any productive work during attendance

Travel Time

- Ordinary home to work travel is not work time
- Travel between job sites during the normal work day is work time
- Special rules apply to travel away from the employee's home community



Overtime

Overtime Pay

Covered, non-exempt employees must receive one and one-half times the regular rate of pay for all hours worked over forty in a workweek.

Overtime Issues

- Each workweek stands alone
- Must know employee's regular rate

Workweek

- Compliance is determined by workweek, and each workweek stands by itself.
- Workweek is 7 consecutive 24 hour periods (168 hours).

Regular Rate

- Is determined by dividing total earnings in the workweek by the total number of hours worked in the workweek
- Multiple jobs can be confusing (bus driver/teacher assistant)
- May not be less than the applicable minimum wage

Regular Rate (RR)

Step 1: Total Straight Time Earnings Divided By
Total Hours Worked = **Regular Rate**

Step 2: **Regular Rate** x .5 = Half Time Premium

Step 3: Half Time Premium x Overtime Hours
= Total Overtime Premium Due

Example: Different Hourly Rates

Janitor Rate	\$8.50	Janitor Hours	21
Cook Rate	\$9.00	Cook Hours	26
21 hours x	\$8.50	=	\$178.50
26 hours x	\$9.00	=	<u>\$234.00</u>
			\$412.50
\$412.50 / 47 hours	=	\$8.78 (Regular Rate)	
\$8.78 x 0.5	=	\$4.39	
\$4.39 x 7 hours	=	\$30.73(Overtime Due)	

Example: Salaried for Fixed Hours

Salary Earnings	\$420.00 (for a 40 hour workweek)
Hours Worked	48
Regular Rate	\$10.50 (\$420/40 hours)
Overtime Rate	\$15.75
Salary Equals	= \$420.00
8 hours x \$15.75	= <u>\$126.00</u>
Total Due	= \$546.00

Example: Fixed Salary for Fluctuating Hours

Fixed Salary	\$420.00 (for all hours worked)
Week 1 Hours Worked	49
Regular Rate	\$8.57 (\$420 / 49 hours)
Additional Half-Time Rate	\$4.29

Salary Equals =	\$420.00
9 hours x \$4.29 =	\$38.61 (Overtime Due)
Total Due =	\$458.61

Example: Fixed Salary for Fluctuating Hours

Fixed Salary	\$420.00 (for all hours worked)
Week 2 Hours Worked	41
Regular Rate	\$10.24 (\$420 / 41 hours)

Additional Half-Time Rate	\$5.12
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Salary Equals =	\$420.00
1 hour x \$5.12 =	\$5.12
Total Due =	\$425.12

Exemptions and Exceptions

There are numerous exemptions and exceptions from the minimum wage and/or overtime standards of the FLSA.

Joint Employer Status

- Two employers may be “joint employers” such that both can be liable for unpaid overtime.
 - E.g. A school district hires a transportation company to provide student transportation. If the transportation company does not meet the definition of an independent contractor, the school can be liable for unpaid overtime.



“White Collar” Exemptions

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The most common FLSA minimum wage and overtime exemption -- often called the “541” or “white collar” exemption -- applies to certain

- Executive Employees
- Administrative Employees
- Professional Employees
- Certain Computer Employees

Three Tests for Exemption

Salary Level

Salary Basis

Job Duties

Minimum Salary Level

- The current minimum salary level required for exemption is \$455 per week/\$1971.66 per month/\$23,660 per year
- Must be paid “free and clear”
- **Proposed minimum salary level is \$679 per week/\$35,308 per year**
- **Commitment to periodically review to update salary threshold—would require notice-and-comment rulemaking**

Salary Level Test Does Not Apply

- Doctors
- Lawyers
- Teachers
- School administrators such as Principals, Assistant Principals who perform administrative functions directly related to academic instruction or training

Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Must be paid the full salary for any week in which the employee performs *any* work
- Need not be paid for any workweek when no work is performed

Deductions From Salary

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses.
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

Public Employee Exception

- Public employers may deduct pay or place employees on leave without pay because of the employee’s personal reasons or because of illness or injury of less than one work day
- Deductions of less than one day permitted for public employees whose accrued personal leave and sick leave have been exhausted
- Based on concept that public employers cannot pay for services not rendered

Executive Exemption

Proposed \$679/\$35,308

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight

Impact on School Districts

Proposed \$679/\$35,308

- Cafeteria manager
- Transportation supervisor
- Maintenance supervisor

Administrative Exemption

Proposed \$679/\$35,308

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

Questions to Ask

- Does employee's work affect policy or does the employee carry out policies determined by top management/
- Is the employee's work of substantial importance to the management of the business?
- Are the employee's duties generally regarded as administrative or servicing rather than production tasks?

Questions to Ask

- Does the employee have the authority to make independent choices, free from immediate supervision and direction with respect to matters of significance?
- Does the employee's work require the employee to make comparisons and evaluate possible courses of conduct and to act or make a decision after various possibilities have been considered?

Management or General Business Operations

- | | |
|-------------------|---|
| • Tax | • Marketing |
| • Finance | • Research |
| • Accounting | • Safety and Health |
| • Budgeting | • Human Resources |
| • Auditing | • Employee Benefits |
| • Insurance | • Labor Relations |
| • Quality Control | • Public and Government Relations |
| • Purchasing | • Legal and Regulatory Compliance |
| • Procurement | • Computer Network, Internet, and Database Administration |
| • Advertising | |

In the School Setting

- Business managers
- Human resource and employment benefit managers
- Public relations directors

Professional Exemption Proposed \$679/\$35,308

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction
- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

Field of Science or Learning

Occupations with recognized professional status, as distinguished from the mechanical arts or skilled trades

Law	Accounting	Actuarial Computation
Theology	Teaching	Physical Sciences
Medicine	Architecture	Chemical Sciences
Pharmacy	Engineering	Biological Sciences



U.S. Department of Labor
Wage and Hour Division



Exempt Medical Professions

- Doctors
- Registered Nurses
- Registered or certified medical technologists
 - 3 years of pre-professional study in an accredited college or university, plus 1 year of professional study in an accredited school of medical technology
- Dental hygienists
 - 4 years of pre-professional and professional study in an accredited college or university
- Certified physician assistants
 - 4 years of pre-professional and professional study, including graduation from an accredited physician assistant program

Other Commonly Exempt Professions

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified athletic trainers
- Licensed funeral directors or embalmers

Nonexempt Professions

- Licensed practical nurses
- Accounting clerks and bookkeepers who normally perform a great deal of routine work
- Cooks who perform predominantly routine mental, manual, mechanical or physical work
- Paralegals and legal assistants
- Engineering technicians

Computer Professional Exemption Proposed \$679/\$35,308

Primary duty is:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications
- The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation, or modification of computer programs related to machine operating systems
- A combination of the above requiring the same level of skills, and

Computer Related Occupations

The employee must also receive

- A guaranteed salary or fee of \$679 (proposed) per week or more, or

Compensatory Time



Recordkeeping

The FLSA requires that all employers subject to any provision of the Act make, keep, and preserve certain records.

Recordkeeping

- Records need not be kept in any particular form.
- Time clocks are not required.
- An accurate record of the hours worked each day and total hours worked each week is critical to avoiding compliance problems.

Required Posting

Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place.



Common Errors to Avoid

Common Errors to Avoid

- Assuming that all employees paid a salary are not due overtime
- Improperly categorizing a position as exempt
- Failing to pay for all hours an employee is “suffered or permitted” to work
- Limiting the number of hours employees are allowed to record

Common Errors to Avoid

- Failing to include all pay required to be included in calculating the regular rate for overtime
- Failing to add all hours worked in separate establishments for the same employer when calculating overtime due

Common Errors to Avoid

- Treating an employee as an independent contractor

The FLSA Does Not Require

- Vacation, holiday, severance, or sick pay
- Meal or rest periods, holidays off, or vacations
- Premium pay for weekend or holiday work
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Any limit on the number of hours in a day or days in a week an employee at least 16 years old may be required or scheduled to work
- Pay raises or fringe benefits

Compliance Assistance Materials - FLSA

- The Law
- The Regulations (29 C.F.R. Part 500-899)
- Interpretive Guidance (opinion letters, field operations handbook, and field bulletins)
- FLSA Poster
- Handy Reference Guide
- Fact Sheets
- Information for New Businesses
- Department of Labor Home Page

Enforcement

- FLSA enforcement is carried out by Wage and Hour staff throughout the U.S
- Where violations are found, Wage and Hour advises employers of the steps needed to correct violations, secures agreement to comply in the future and supervises voluntary payment of back wages as applicable
- A 2-year statute of limitations generally applies to the recovery of back pay. In the case of a willful violation, a 3-year statute of limitations may apply

Enforcement

In the event there is not a voluntary agreement to comply and/or pay back wages, the Wage and Hour Division may:

- Bring suit to obtain an injunction to restrain the employer from violating the FLSA, including the withholding of proper minimum wage and overtime
- Bring suit for back wages and an equal amount as liquidated damages

Employee Private Rights

An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.

Penalties

- Employers who willfully violate the Act may be prosecuted criminally and fined up to \$11,000
- Employers who violate the youth employment provisions are subject to a civil money penalty of up to \$11,000 for each employee who was the subject of a violation
- Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,100 for each such violation

Additional Information

- Visit the WHD homepage at: www.wagehour.dol.gov
- Call the WHD toll-free information and helpline at 1-866-4US-WAGE (1-866-487-9243)
- Use the DOL interactive advisor system - *ELAWS* (Employment Laws Assistance for Workers and Small Businesses) at: www.dol.gov/elaws
- Call or visit the nearest Wage and Hour Division Office

Q. 1

- If a custodian travels from school to school and takes a lunch breaks in route, how can the employer make sure the custodian is being compensated accurately for all time worked?

A. 1

- You must have an honor system. The employee's uninterrupted meal time is not compensable (uninterrupted meal times must be at least 30 minutes). Once lunch is over, if the employee resumes driving in order to get to the next school, the time counts as hours worked. You could have the employee call in at the beginning and end of the uninterrupted meal time.

Q. 2

- If a custodian leaves school A at 11:30 a.m. to drive to school B, and then returns to A, is the drive time compensable?

A. 2

- Yes. Both times are compensable.

Q. 3

- If an employee takes work home (even if the employer knew nothing about it), is the time compensable?

A.3

- Possibly. The employer must communicate a clear policy prohibiting work at home and the employer cannot create conditions making work at home necessary for the employee to fulfill his or her mission.

Q. 4

- If an employer allows an employee to come in early, sign in and drink coffee, is the time compensable?

A. 4

- Yes, unless the employer directs the employee to go to a break room, not sign in and drink coffee until the work hours begins. Have the employee sign in only prior to starting the workday hours.

Q. 5

- Time Sheet — What opportunity exists for rounding off?

A. 5

You are allowed to round to the nearest ¼ hour greater than 15 minutes. For example 7:50-8:00, can be rounded to 8:00. Have employees sign time in/out accurately. When the employer performs the time sheet calculations, an allowance is made to round to the nearest ¼ hour. Do rounding at the end of the week.

Q. 6

- If a teacher assistant is also a bus driver, and if hours worked in either job is less than 40 hours per week, is overtime pay due?

A. 6

- If the combined total hours worked exceeds 40 hours, even if the hours were less than 40 in each separate job, overtime must be paid using the average pay between both jobs.

Q. 7

- How long must an employees lunch hour be?

A. 7

A lunchtime is not required.

Bona fide meal periods (typically lasting at least 30 minutes) are not work time and are not compensable.

Caution: If an employee's meal period is repeatedly interrupted by the employer's business, it is probably compensable.

Q. 8

- If the work week is defined as 37.5 hours (7.5 hours per day) and a teacher assistant works 39 hours, is the employee entitled to overtime for the extra hours worked?

A. 8

- No. Overtime does not begin until the employee has worked more than 40 hours in the workweek.
- What if the employee works 14 hours in one day? Is the employee entitled to overtime for the extra 6.5 hours worked that day (14 hours - 7.5 hours)?
- No. Overtime is not calculated on a daily basis.

Q. 9

- How often should employees be trained on FLSA regulations?

A. 9

- Employers should conduct FLSA training annually. The employer should also have employees sign a receipt of FLSA policy, as well as a statement that they have been trained on FLSA guidelines.

Q. 10

- If an employer sends emails to an employee at home, and the employee opens the email, is the employer liable to pay for this?

A. 10

- **Yes, unless very, very little time is used (a few seconds). It is considered compensable (especially if employee begins to do background or preliminary work in response to the email). Employers should not send emails to employees at home because some people could be very slow to read and close the email. The employer will be liable for the entire time it takes to read and close the email.**

Q. 11

- If automated recordkeeping (via the computer) is used for signing in employees, how does the employer avoid keeping hard copies for signature requirements?

A. 11

- There is no signature requirement by FLSA; employers are only required to keep accurate records. Note: It is a criminal offense to sign (falsify) records; therefore, it may be necessary to keep hard copies.

Q. 12

- Training (Travel) — How does an employee account for overnight hours for conferences and/or training?

A. 12

- If travel occurs during the normal work schedule, then the time used is hours worked and is compensable.
- Outside of work schedule: not compensable.^[1]_[SEP]
- Hours at training are considered work hours.^[1]_[SEP]
- Exception: If employee is told to drive outside of regular work time, considered work and is compensable.

Q. 13

- If conference training has activities not work related (reception, etc.), is the time compensable?

A. 13

- If the activity is not part of the job requirements, then it is not compensable.

Q. 14

- Can a teacher assistant volunteer to work in his or her child's classroom, in addition to his or her regular duties?

A. 14

- If duties performed in the volunteer capacity are the exact same duties as regular work hours, the time is considered hours worked.

Q. 15

- Can an employee decide when to use compensatory time?

A. 15

- The employer is in control of the use of comp time. However, the employer cannot allow compensatory time to accumulate and prohibit employees from the opportunity to take time off.
Exempt (salaried) employees cannot accumulate or use comp time.

QUESTIONS