Fair Labor Standards Act (FLSA)

Presented by
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The Fair Labor Standards Act (FLSA) is the federal law that sets standards for child labor, minimum wage and overtime pay, and equal pay (added under the 1963 Equal Pay Act) for men and women performing the same jobs.

By requiring overtime, the FLSA created a monetary penalty for employers who did not spread their existing work among a greater number of employees.

By setting standards for children/minors to work, it ensured that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities.
Major components of FLSA

- Establishes minimum wage.
- Distinguishes between covered (non-exempt) and excluded (exempt) employees.
- Establishes overtime threshold (40 hrs.).
- Specifies record-keeping requirements.
Coverage under the FLSA
The most common FLSA MW and OT exemption -- often called the “541” or “white collar” exemption -- applies to certain:

- Executives
- Administrative (Staff) Employees
- Professionals
- Certain Outside Sales People
- Certain Computer Professionals
The

NON-EXEMPT WORKER
Hours Worked Under the FLSA

It is the duty of management to exercise its control to see that work is not performed if it has not been authorized to be performed.
Covered Non-Exempt Examples

- Police Officers, Security Guards and Maintenance Technicians
- Accounting Clerks and Bookkeepers who normally perform a great deal of routine work
- Cashiers and Service workers who perform predominantly routine mental, manual, mechanical or physical work
- Secretaries, Receptionist, Licensed Practical Nurses, and Administrative and Legal Assistants
Computer Related Occupations

- Trainees or employees in entry level positions who do not work independently typically qualify as covered non-exemption.

- Employees who are engaged in the operation or manufacture, repair, or maintenance of computers do qualify for covered non-exemption.

- Employees whose work is dependent on computers (e.g., engineers, drafters, computer-aided design (CAD) operators), but who are not in computer systems analysis and programming occupations, are included in covered non-exemption.

See also: 29 U.S.C. 213(a)(17); 29 CFR 541.400; and http://www.dol.gov/esa/whd/FieldBulletins/FieldAssistanceBulletin2006_3.htm
Compliance is determined by workweek, and each workweek stands by itself.

Workweek is defined as 7 consecutive 24 hour periods (168 hours).

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.

Is determined by dividing total earnings in the workweek by the total number of hours worked in the workweek.
Hours Worked Under the FLSA

- Covered, non-exempt employees must be paid for all hours worked in a workweek.

- “Hours Worked,” generally include all the time an employee is:
  - Required to be on duty
  - Required to be on the employer’s premises, or any other prescribed place of work
  - Allowed (suffered or permitted) to work
Example: Salaried for Fixed Hours

Salary Earnings: $460.00 (for a 40 hour workweek)

Hours Worked: 48

Regular Rate: $11.50 ($460/40 hours)

Overtime Rate: $17.25 ($11.50/.5 hours+$11.50)

Salary Equals: $460.00

8 hours x $17.25 = $138.00

Total Due: $598.00
**Example: Salaried for Fixed Hours with Overtime and Leave Hours**

<table>
<thead>
<tr>
<th>Description</th>
<th>Calculation</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary Earnings</td>
<td>$460.00 (for a 40 hour workweek)</td>
<td>$460.00</td>
</tr>
<tr>
<td>Hours Worked</td>
<td>48 (4 /12 hour days)</td>
<td>48</td>
</tr>
<tr>
<td>PTO/Leave Time</td>
<td>8 (One day of Leave)</td>
<td>8</td>
</tr>
<tr>
<td>Regular Rate</td>
<td>$11.50 ($460/40 hours)</td>
<td>$11.50</td>
</tr>
<tr>
<td>Overtime Rate</td>
<td>$17.25 ($11.50/.5 hours+$11.50)</td>
<td>$17.25</td>
</tr>
<tr>
<td>Salary Equals</td>
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<td>$460.00</td>
</tr>
<tr>
<td>PTO 8 hours</td>
<td></td>
<td>$ 92.00</td>
</tr>
<tr>
<td>8 hours x $17.25</td>
<td></td>
<td>$138.00</td>
</tr>
<tr>
<td>Total Due</td>
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<td>$690.00</td>
</tr>
</tbody>
</table>
Example: Salaried for Fixed Hours with Leave Hours

Salary Earnings: $460.00 (for a 40 hour workweek)

Hours Worked: 40 (4/10 hour days)

PTO/Leave Time: 8 (One day of Leave)

Regular Rate: $11.50 ($460/40 hours)

Salary Equals: $460.00

PTO 8 hours: $92.00

Total Due: $552.00
Examples of FLSA Hours Worked

Attendance at meetings, lectures, training programs and similar activities are all paid time unless all of the following criteria are met:

- Attendance is outside the employee’s regular working hours
- Attendance is voluntary
- Activity is not related to the employee’s job
- No productive work is done during the activity
Examples of FLSA Hours Worked

- Preparing work prior to the start of the shift or cleanup work at the end of a shift
- Travel from job site to job site during the workday
- Transporting or delivering materials or equipment to a job site prior to the start of the workday
Examples of FLSA Hours Worked “On-Call”

- 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 Cell Phone, iPad, etc.
  - Employee is required to leave word at home or with the employer where he or she can be reached

- Additional constraints on the employee's freedom could require this time to be compensated.
On Duty Travel & Sleep Time

- 23 hour duty or less
  - Employee who is on duty for less than 24 hours is considered to be working. All time is compensable, even if allowed to sleep or engage in personal activities.

- On Duty of 24 hours or more
  - Exclude bona fide mandatory sleep time (at least 5 hours) and meal periods from compensation.
Meal and Rest Periods

- Meal periods (normally 30 minutes or more) are not hours worked when the employee is relieved of duties for the purpose of eating a meal.

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

- The entire meal period, if the employee is not completely relieved from all duties and responsibilities, is compensable time.
Common Errors to Avoid

- Employee works during meal break and is not paid
- Employee takes work home and the hours are not recorded or paid
- Not paying for compensable travel time
- Not paying for employee meetings
The FLSA Does Not Require

- Vacation, holiday, severance or sick pay
- Meal or rest periods
- 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
For More Information

- Other resources on the Part 541 exemptions are available at [www.dol.gov/fairpay](http://www.dol.gov/fairpay)
- Regulations
- Preamble
- Fact Sheets
- Field Operations Handbook
- Frequently Asked Questions

To ask a specific question or register a comment:
- Email: fairpay@dol.gov
- Telephone, toll-free: 1-866-4US-WAGE
ADDITIONAL INFORMATION

- Visit the WHD homepage at: www.wagehour.dol.gov
- Call the WHD toll-free information and helpline at 1-866-487-9243
- Use the DOL interactive advisor system - ELAWS (Employment Laws Assistance for Workers and Small Businesses at: www.dol.gov/elaws
- Des Moines District Office: (515) 284-4625