

# Fair Labor Standards Act

Presented by

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As amended from the original developed by the

U.S. Department of Labor

Wage and Hour Division



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U.S. Wage and Hour Division

The Fair Labor Standards Act (FLSA) is the federal law of broadest application governing minimum wage, overtime pay, and youth employment. The Wage and Hour Division of the U.S. Department of Labor enforces the FLSA. In addition, the Wage and Hour Division also enforces:

- The Family and Medical Leave Act
- The Migrant and Seasonal Agricultural Worker Protection Act
- The Employee Polygraph Act
- The Garnishment Provisions of the Consumer Credit Protection Act
- The Davis-Bacon and Related Acts
- The McNamara-O'Hara Service Contract Act
- Temporary Worker Provisions of the Immigration and Nationality Act

For more information regarding these laws, call the Wage and Hour Division's toll-free line at 1-866-4USWAGE (1-866-487-9243). Information is also available on the Internet at [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

# Major Provisions

- Coverage
- Minimum Wage
- Overtime Pay
- Youth Employment
- Recordkeeping



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Employees who are covered by the FLSA are entitled to be paid at least the Federal minimum wage as well as time and one-half their regular rates of pay for all hours worked over 40 in a workweek, unless an exemption applies. There are also youth employment provisions regulating the employment of anyone under the age of 18 in covered work. The FLSA also contains recordkeeping requirements.

This presentation covers the minimum wage and overtime requirements and summarizes the youth employment provisions. More in-depth training on the youth employment laws is also available.

*See also: Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq.; FLSA Regulations, 29 CFR Parts 778 (overtime), 570 (youth employment), 516 (recordkeeping).*

# Employment Relationship

In order for the FLSA to apply, there must be an employment relationship between the "employer" and the "employee"



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Typical issues related to the employment relationship are issues involving independent contractors, trainees, and volunteers.

Employment relationship under the FLSA is tested by "economic reality" rather than "technical concepts." There is no single rule to determine whether an individual is an independent contractor or an employee for purposes of the FLSA. Some of the factors considered are:

- 1) The extent to which the services rendered are an integral part of the principal's business.
- 2) The permanency of the relationship.
- 3) The amount of the alleged contractor's investment in facilities and equipment.
- 4) The nature and degree of control by the principal.
- 5) The alleged contractor's opportunities for profit and loss.
- 6) The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
- 7) The degree of independent business organization and operation.

A situation involving a person volunteering his or her services may also result in an employment relationship. For example, a person who is an employee cannot "volunteer" his or her services to the employer to perform the same type service performed as an employee. Of course, individuals may volunteer or donate their services to religious, public service, and non-profit organizations, without contemplation of pay, and not be considered employees of such organization.

Trainees or students may also be employees, depending on the circumstances of their activities for the employer.

*See also: 29 U.S.C. 203(d), (e), (g); Fact Sheet No. 013 Employment Relationship Under The Fair Labor Standards Act (FLSA).*

# Coverage



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Who is covered by the FLSA?

## Coverage

More than 130 million workers in more than 7 million workplaces are protected or “covered” by the Fair Labor Standards Act (FLSA), which is enforced by the Wage and Hour Division of the U.S. Department of Labor



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The short answer is – almost every employee working in the United States.

The Wage and Hour Division administers and enforces the FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for employees of other Executive Branch agencies, and by the U.S. Congress for covered employees of the Legislative Branch.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off instead of cash overtime pay.

## Coverage

Two types of coverage

- Enterprise coverage: If an enterprise is covered, all employees of the enterprise are entitled to FLSA protections
- Individual coverage: Even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections



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The FLSA provides for two types of coverage: Enterprise Coverage and Individual Coverage. If an enterprise is covered, all employees of the enterprise are entitled to FLSA protections; however, even if the enterprise is not covered, individual employees may be covered and entitled to FLSA protections.

*See also: 29 U.S.C. 203(r) and 203(s); 29 C.F.R. Part 779, Subpart C (enterprise coverage); 29 C.F.R. Part 776, Subpart A (individual coverage); Fact Sheet No. 014: Coverage Under the Fair Labor Standards Act.*

## Enterprise Coverage

- Enterprises with
  - At least two (2) employees
  - At least \$500,000 a year in business
- Hospitals, businesses providing medical or nursing care for residents, schools, preschools and government agencies (federal, state, and local)



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A covered enterprise is an employer with at least two employees and at least \$500,000 a year in business (sales, for example). Hospitals, schools, and government agencies are also covered enterprises. Multiple establishments, businesses, or corporations may be one “enterprise” under the FLSA if they perform related activities, through unified operation or common control, for a common business purpose.

## Individual Coverage

- Workers who are engaged in:
  - Interstate commerce;
  - Production of goods for commerce;
  - Closely-related process or occupation directly essential (CRADE) to such production; or
  - Domestic service
- Engaging in “interstate commerce” which may include:
  - Making telephone calls to other states
  - Typing letters to send to other states
  - Processing credit card transactions
  - Traveling to other states



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Even if the employer is not a covered enterprise, individual employees are covered if they engage in interstate commerce, the production of goods for interstate commerce, or a closely-related process or occupation directly essential (CRADE) to such production. The definition of interstate commerce is very broad: any employee who makes telephone calls, types letters, processes credit card transactions or travels to other states for work may be covered by the FLSA.

The FLSA also covers domestic employees, including day workers, housekeepers, chauffeurs, cooks, or full-time babysitters if (1) their cash wages from one employer in calendar year 2007 are at least \$1,500 (different amounts would be designated in other calendar years, pursuant to an adjustment provision in the Internal Revenue Code), or (2) they work a total of more than 8 hours a week for one or more employers.

*See also: WH 1282 Handy Reference Guide to the Fair Labor Standards Act.*

## The Bottom Line

- Almost every employee in the United States is covered by the FLSA
- Examples of employees who may not be covered
  - Employees working for small construction companies
  - Employees working for small independently owned retail or service businesses



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Employees working for businesses that are not covered enterprises are not subject to FLSA requirements unless they personally engage in interstate commerce, the production of goods for interstate commerce, or closely related activities.

The bottom line: The coverage of the FLSA is very broad, and almost every employee is covered. If you have a question about whether particular employment is covered, you may want to seek assistance from the Wage & Hour Division.

## Additional Information

- Visit the WHD homepage at: [www.wagehour.dol.gov](http://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](http://www.dol.gov/elaws)
- Call or visit the nearest Wage and Hour Division Office



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