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

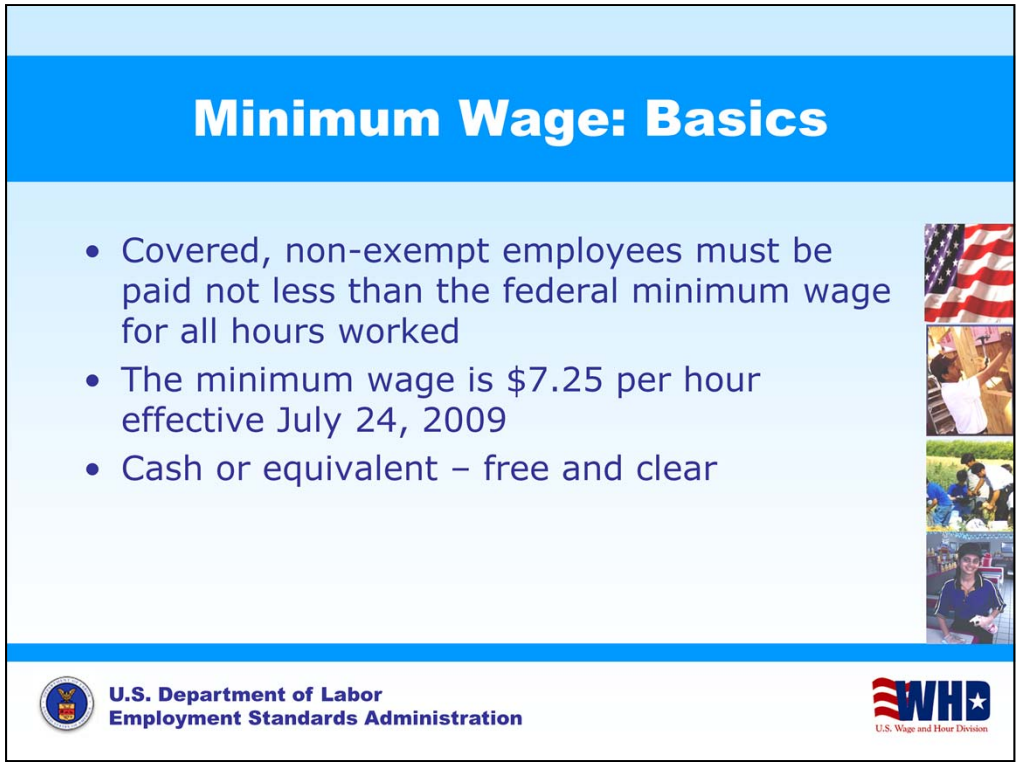
-The Davis-Bacon and Related Acts

-The McNamara-O'Hara Service Contract Act

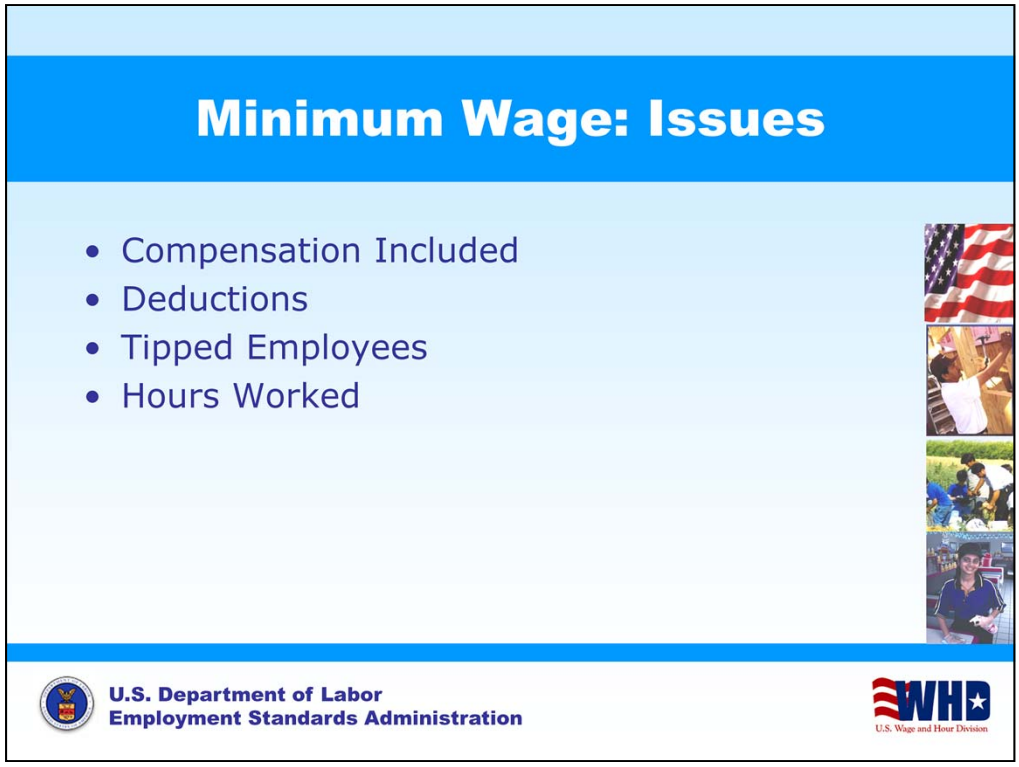
-Temporary Worker Provisions of the Immigration and Nationality Act

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 a www.wagehour.dol.gov.

29 U.S.C. 206, Fair Labor Standards Act, Section 6



The basic rules on minimum wage are simple: covered, non-exempt employees must be paid not less than the minimum wage for all hours worked.



Although the requirement to pay minimum wage seems simple, there are some key minimum wage issues that can lead to violations: what type of compensation is included when determining whether the minimum wage has been paid; what deductions from pay are allowed; how to treat tipped employees; and hours worked issues. The FLSA requires that minimum wage be paid for all hours worked; failure to understand what hours count as work hours often leads to unintended violations of the FLSA minimum wage and overtime requirements.

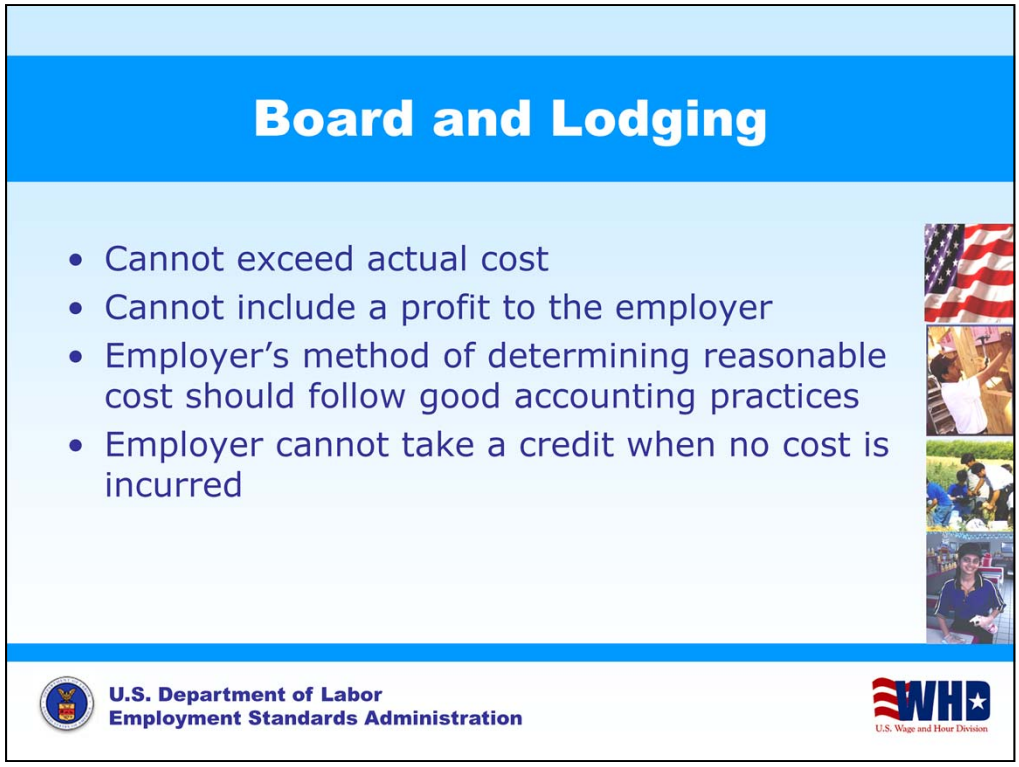
Compensation Included

- Wages (salary, hourly, piece rate)
- Commissions
- Certain bonuses
- Tips received by eligible tipped employees (up to $5.12 per hour July 24, 2009)
- Reasonable cost of room, board and other "facilities" provided by the employer for the employee's benefit

U.S. Department of Labor
Employment Standards Administration

WHD
U.S. Wage and Hour Division

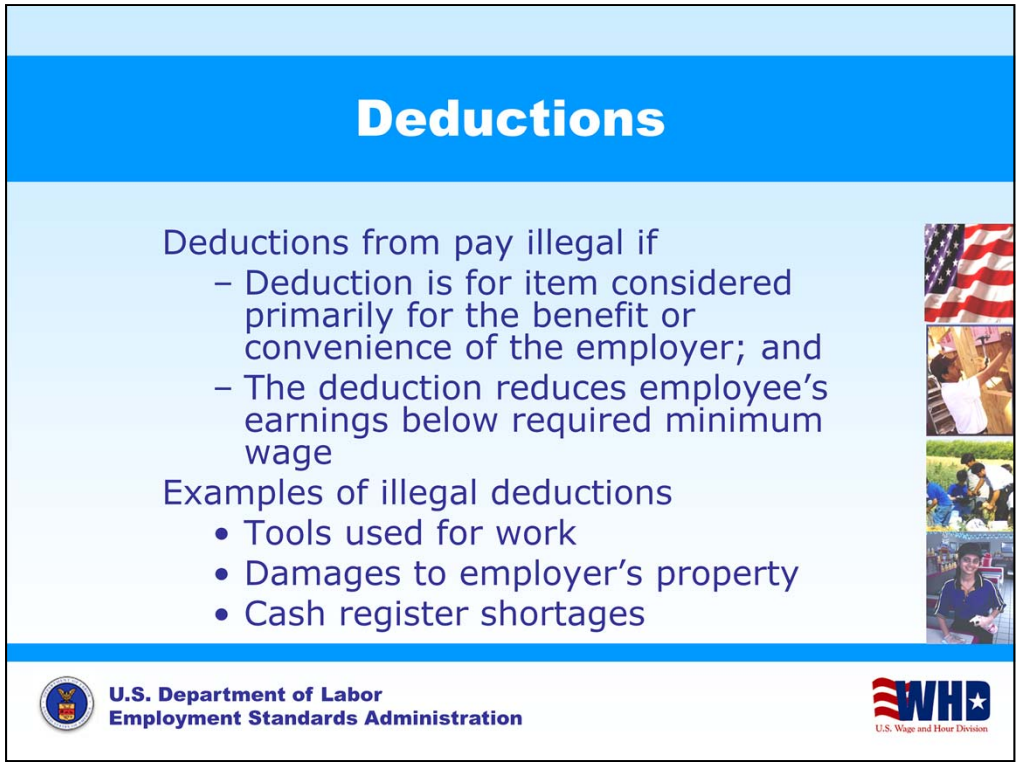
To determine whether an employee has been paid the minimum wage for all hours worked in each week, you need to add up all compensation received and divide that amount by all hours worked for the week. The compensation included in this calculation includes all payments considered to be part of the "regular rate" of pay for overtime purposes. Later slides will discuss the regular rate of pay in more detail. In summary, the payments counted towards the minimum wage include: wages (salary, hourly, piece rate); commissions; some bonuses; tips received by eligible employees; and the reasonable cost of room, board, and other "facilities" provided by the employer for the employee's benefit.



There are some special rules regarding board, lodging and other facilities. An employer cannot take credit for board, lodging or facilities unless they are furnished primarily for the benefit or convenience of the employee.

Examples of facilities commonly viewed as furnished primarily for the benefit of the employee: meals, lodging, merchandise, tuition expenses, child care. The credit taken cannot exceed the actual cost of the facility, as calculated following good accounting practices.

Where the primary benefit of the facilities is to the employer's business interest, no credit is allowed. For example: telephones used for business purposes; uniforms required by law, the employer, or the nature of the business; necessary tools used on the job; and business-related travel expenses.



The FLSA prohibits deductions from wages for the cost of any items which are considered primarily for the benefit or convenience of the employer if the deduction would reduce the employee's earnings below the required minimum wage or overtime compensation. Examples of illegal deductions: tools used in the employee's work; damages to the employer's property by the employee; and financial losses due to clients/customers not paying bills.

One common problem is deductions from pay for uniforms. If the wearing of a uniform is required by law, the nature of a business, or by an employer, the cost and maintenance of the uniform is considered to be a business expense of the employer. Thus, if the employer requires the employee to bear the cost, it may not reduce the employee's wage below the minimum wage or cut into overtime compensation required by the Act.

Many states also have laws limiting deductions from wages. Nothing in the FLSA overrides or nullifies any higher standards or more-stringent provisions of these laws.

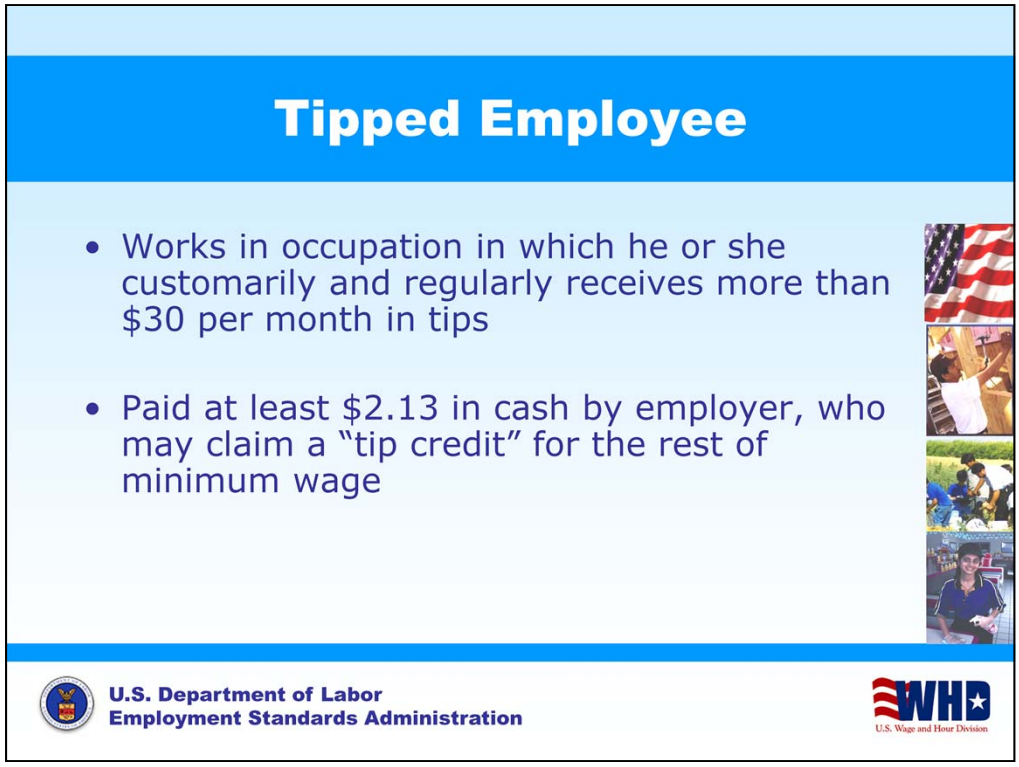
See also: Fact Sheet No. 016 Deductions From Wages For Uniforms And Other Facilities Under The Fair Labor Standards Act (FLSA).

Minimum Wage Example

Employee receives $9 per hour for 40 hours plus $5 in commission and $20 in reasonable cost of board, lodging or other facilities

Total earnings = $360 + $5 + $20 = $385

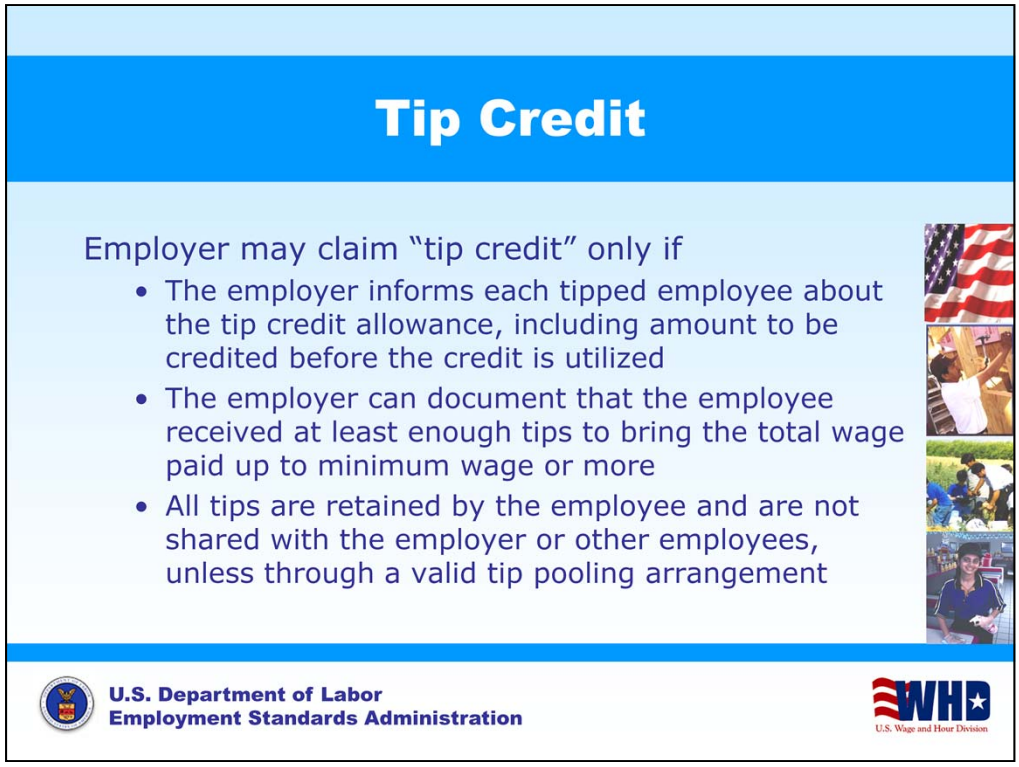
Total earnings/total hours $385/40 = $9.63



For occupations in which employees customarily and regularly receive more than $30 per month in tips, employers can pay tipped employees $2.13 per hour and claim a "tip credit" for the rest of the minimum wage, if tips actually received average at least $3.72 per hour effective July 24, 2007; $4.42 per hour effective July 24, 2008; and $5.12 per hour effective July 24, 2009.

Some states require more per hour in cash for tipped employees, and that higher amount prevails in those situations.

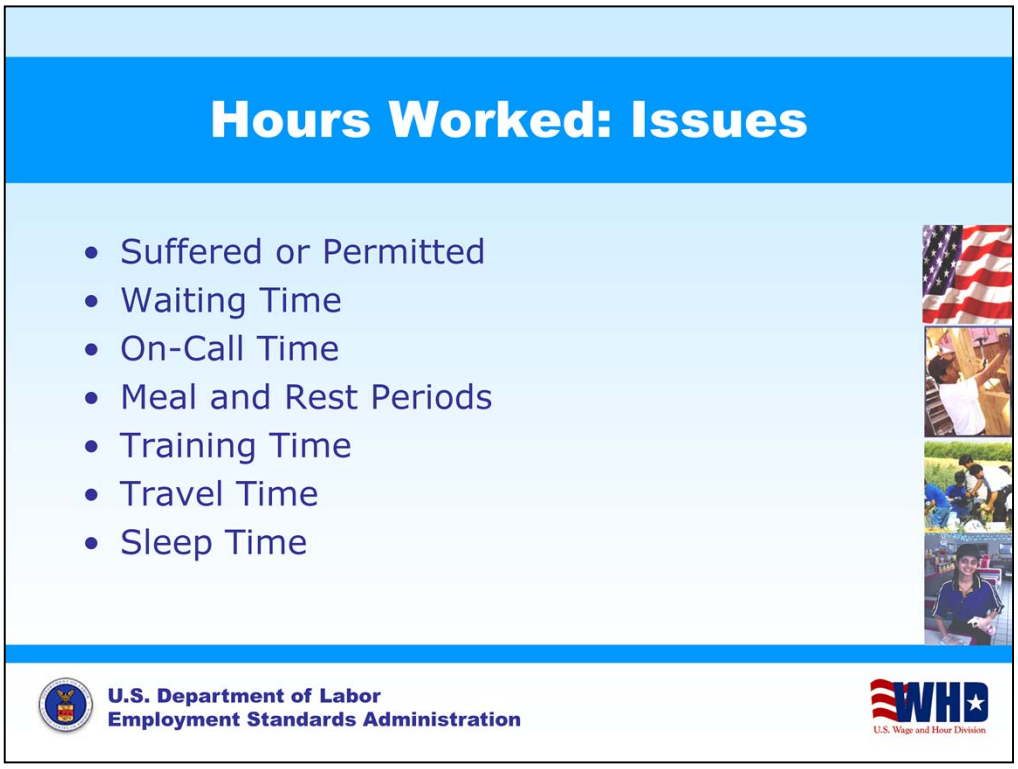
Also, if an employee is employed concurrently in both a tipped and a non-tipped occupation, the tip credit is available only for the hours spent in the tipped occupation or in duties related to the tipped occupation, provided such duties are incidental to the regular duties.



A service charge is a compulsory charge for service, for example, 15 percent of the bill. These amounts that are automatically added to the bill by the employer are not considered to be tips. They are part of the employer's gross receipts. Where service charges are imposed and the employee receives no tips, the employer must pay the entire minimum wage and overtime required by the Act.

Where tips are charged on a credit card and the employer must pay the credit card company a percentage on each sale, then the employer may pay the employee the tip, less that percentage. This charge on the tip may not reduce the employee's wage below the required minimum wage. The amount due the employee must be paid no later than the regular pay day and may not be held while the employer is awaiting reimbursement from the credit card company. The employee must always receive at least the minimum wage (cash wage + tip credit) for all hours worked in each workweek.

See also: Fact Sheet No. 015 Tipped Employees Under the Fair Labor Standards Act (FLSA).



The employer cannot determine the amount of money to pay an employee without knowing the number of hours the employee worked.

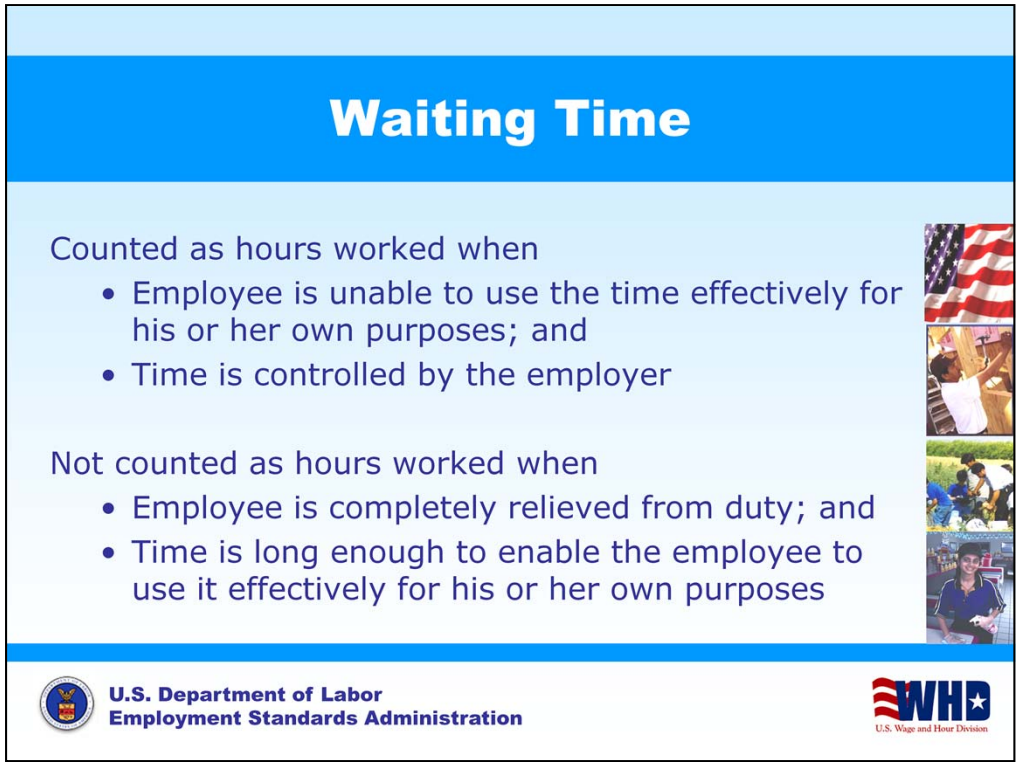
See also: 29 CFR 785 Hours Worked; Fact Sheet No. 022 Hours Worked Under the Fair Labor Standards Act; Fact Sheet No. 039C Hours Worked and the Payment of Special Minimum Wages to Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act (FLSA).

It is the employer's duty to see that work is not performed if the employer doesn't want the work performed. The employer cannot sit back and accept the benefits without compensating employees for those benefits. Simply telling employees that it is against the rules to work this time is not good enough. Management has the power to enforce the rule and must make every effort to do so.

This is true for work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, the employer must count the time as hours worked.

For example, if the employer does not stop an employee from working before or after the shift, the employee must be paid for that time.

See also: *29 CFR 785.12, 785.13 Hours Worked Under the Fair Labor Standards Act.*

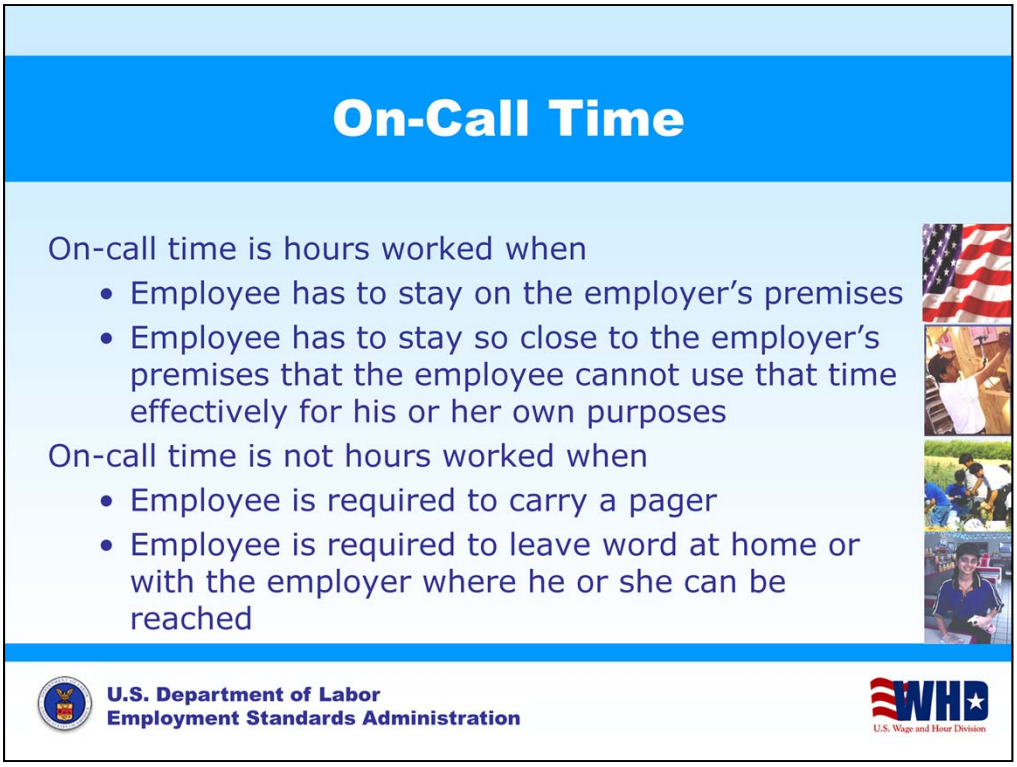


Whether time an employee spends waiting is counted as hours worked and is therefore paid depends upon the particular circumstances. The facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time).

For example, a firefighter who plays checkers while waiting for an alarm is working during these periods of inactivity. The firefighter has been "engaged to wait." The time would be worktime even if the employee is allowed to leave the premises or the job site during periods of inactivity.

On the other hand, periods during which the employee is completely relieved from duty and that are long enough for the employee to use the time effectively for his/her own purposes are not hours worked. This would be true if the employee has been told in advance that he/she may leave the job and will not have to begin working again until a definitely specified time.

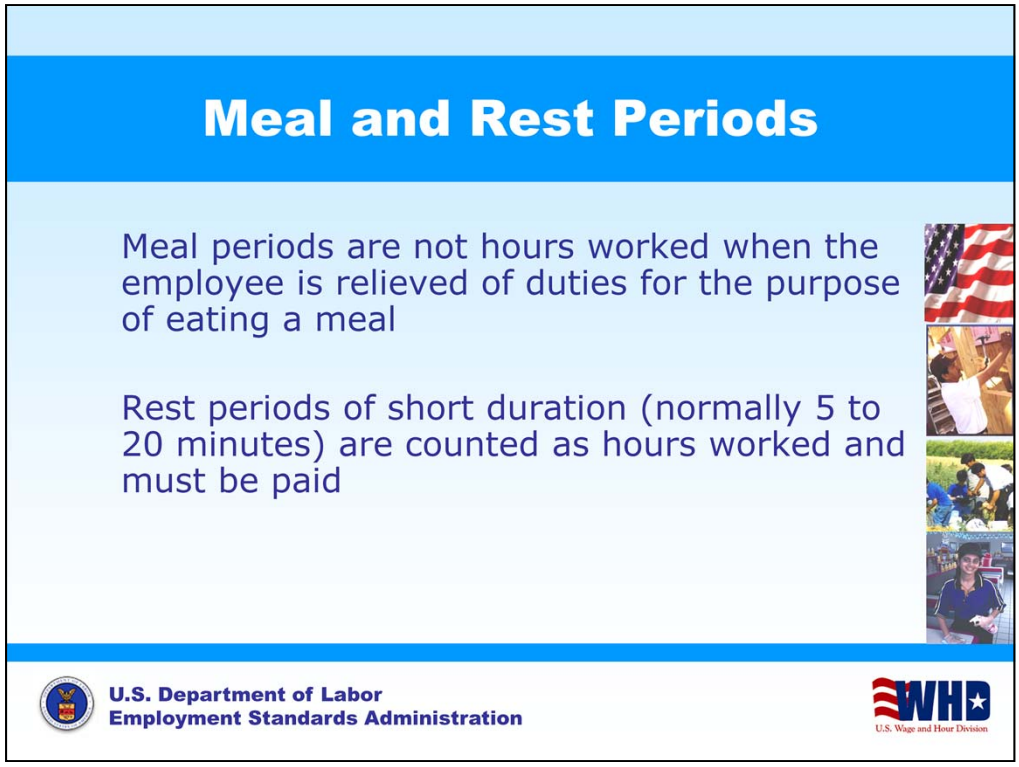
See also: 29 CFR 785.15 and 785.16 Hours Worked; Fact Sheet No. 022 Hours Worked Under the FLSA.



Employers frequently make arrangements with employees to be on-call. If the employee is required to remain on-call on the employer's premises or so close that the employee cannot use the time effectively for his/her own purposes, the employee is working while on-call. In that case, the time the employee is on-call is counted as hours of work that must be paid.

In some cases, on-call employees are required to carry a paging device or leave word with company officials where he or she may be reached. If an employee who is on-call is free to come and go and to engage in personal activities during idle periods, the on-call time is not hours worked and does not need to be paid unless and until the employee actually responds to a call back to duty. However, if such calls are so frequent that the employee is not really free to use the off-duty time effectively for the employee's own benefit, the intervening periods as well as the time spent in responding to calls would be counted as compensable hours of work.

See also: 29 CFR 785.17 Hours Worked.



Bona fide meal periods are not worktime and need not be counted as compensable hours worked. Ordinarily 30 minutes or more is long enough for a bona fide meal period.

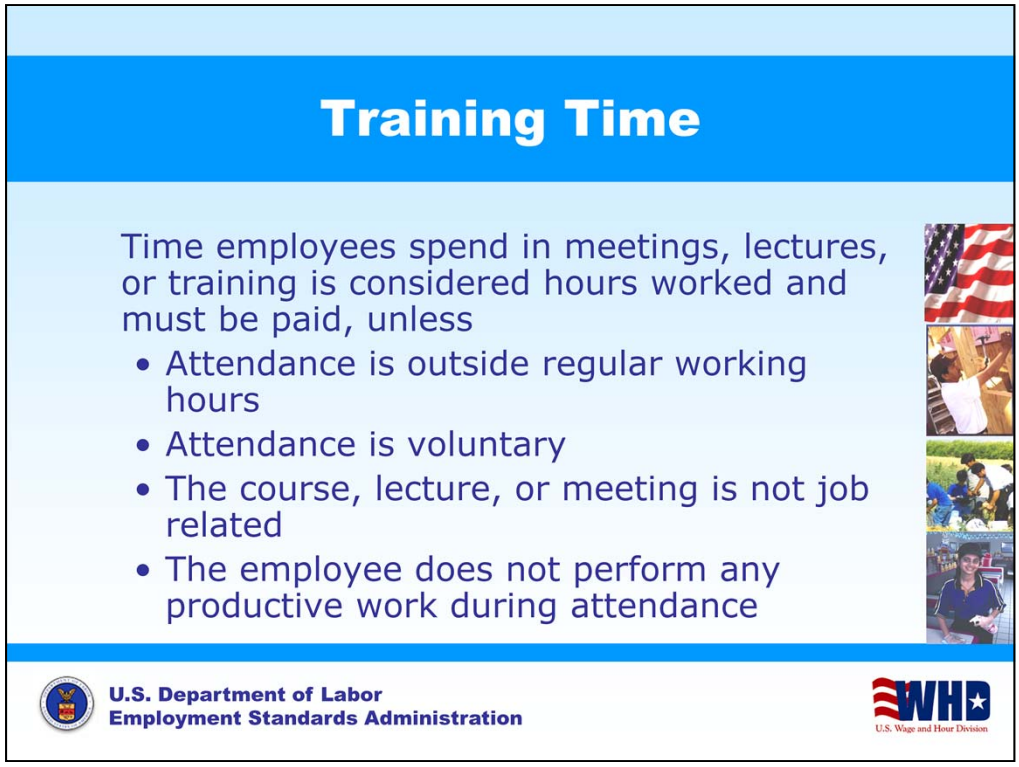
Meal periods of less than 30 minutes during which an employee is relieved for purposes of eating a meal may be bona fide--and thus not hours worked--when certain special conditions are present. Such special conditions include only sporadic and minimal work-related interruptions to the meal period, sufficient time for employees to eat a regular meal at a time of day or shift when meals are normally consumed, an agreement between the employees and employer that a meal period of less than 30 minutes is sufficient to eat a regular meal, and applicable state or local laws do not require lunch periods in excess of the shortened meal period.

The employee is not considered to be relieved if the employee is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at the desk in order to answer the telephone is working while eating.

It is not necessary that an employee be permitted to leave the premises if the employee is otherwise relieved from duties during the meal period.

Coffee breaks or time for snacks are typically periods of short duration (5 to 20 minutes) and must be counted as compensable hours worked. They are common in industry and promote the efficiency of the employee.

See also: 29 CFR 785.18 and 29 CFR 785.19 Hours Worked.



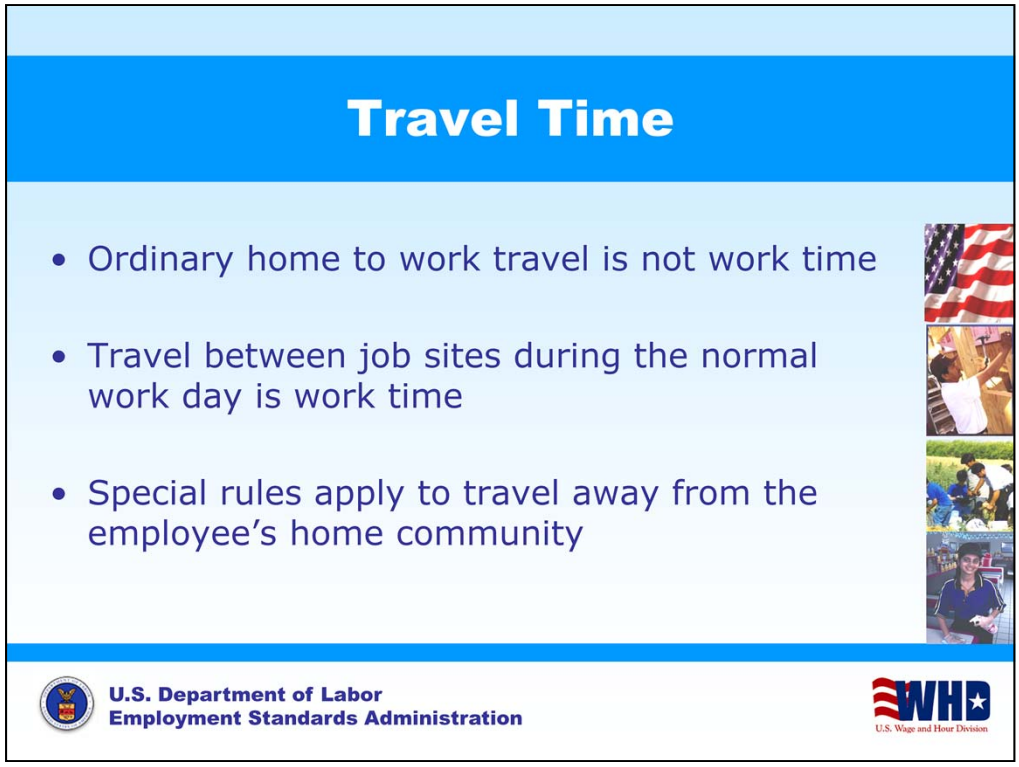
All four of the criteria must be met. The most common questions about counting this time involve voluntary attendance and whether or not a meeting or training is job related.

Attendance is clearly not voluntary if it is required by the employer. It is also not voluntary if the employee is led to believe that the present working conditions or continuance of employment would be adversely affected by nonattendance.

The training is directly related to the employee's job if it is designed to make the employee handle his/her current job more effectively as distinguished from training the employee for another job, or for a new or additional skill. For example, time spent by a computer programmer in a course on programming that is given by the employer is hours worked. However, if the programmer takes a course in accounting, it may not be directly related to the programmer's current job, and thus, the time the programmer spends voluntarily in taking the accounting course, outside of regular working hours, may not be counted as working time.

If employees on their own initiative attend an independent school, college, or independent trade school after hours, the time is not hours worked for their employer even if the courses are related to their jobs.

See also: 29 CFR 785.28, 785.29 and 785.30 Hours Worked.



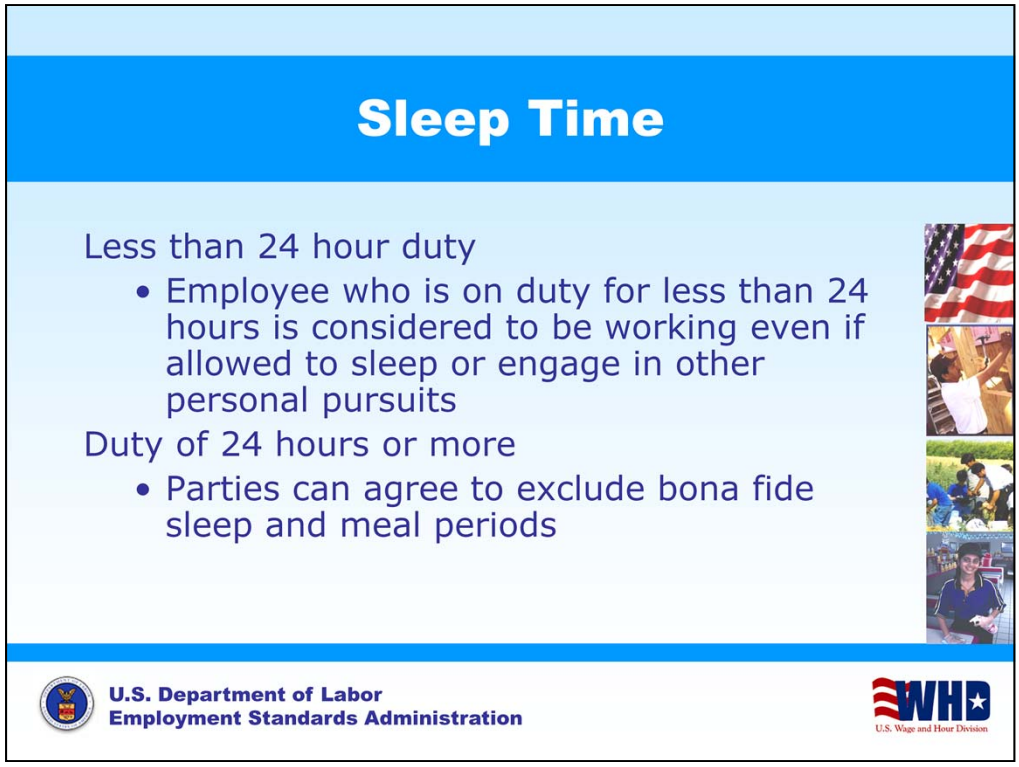
Ordinary home to work travel is travel from the employee's home before the regular workday and return travel to the employee's home at the end of the workday. This travel is normally not counted as hours worked.

Travel between job sites during the day is work time. If the employee is required to report to a meeting place to receive instructions, perform other work there, or to pick up equipment or tools, the travel from the designated meeting place to the work place is part of the day's work, and must be counted as hours worked. The same is true at the end of the day. If the employee is required to return to the employer's office or job site, the travel time back to the office is counted as hours worked. For example, if an employee normally finishes his work at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked.

Special rules apply when employees **travel away from their home community**. Travel for a special one day assignment in another city is not ordinary home-to-work travel. Because it is performed for the employer's benefit and at the employer's request, it is like travel that is all in the day's work. The normal home-to-work travel time may still be deducted.

When an employee **travels away from home and stays overnight**, the travel time is worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. For example, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy the Wage and Hour Division will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

See also: 29 CFR 785.37, 29 CFR 785.38, 29 CFR 785.39 Hours Worked.



The rules for counting sleep time as hours worked are different depending on whether the employee is on duty for **less than 24 hours** or is on duty for **24 hours or more**.

An employee who is required to be on duty for **less than 24 hours** is working the entire time even though permitted to sleep or engage in other personal activities when not busy. Therefore, the entire shift must be counted as hours worked.

When an employee is required to be on duty for **24 hours or more**, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, if the employer provides adequate sleeping facilities and the employee can usually enjoy an uninterrupted night's sleep. If the sleeping period is more than 8 hours, only 8 hours can be excluded from the hours worked. Where no agreement to the contrary is present, the 8 hours of sleeping time and meal periods must be counted as hours worked.

If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted so much that the employee cannot get a reasonable night's sleep, the entire period must be counted as hours worked. For enforcement purposes, the Wage and Hour Division has adopted the rule that if the employee cannot get at least 5 hours' sleep during the scheduled period the entire time is working time. These five hours need not be five continuous uninterrupted hours of sleep.

See also: 29 CFR 785.21 Hours Worked; 29 CFR 785.22 Hours Worked.

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 (E*mployment *L*aws *A*ssistance for *W*orkers and *S*mall Businesses) at: www.dol.gov/elaws
- Call or visit the nearest Wage and Hour Division Office

U.S. Department of Labor
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WHD
U.S. Wage and Hour Division

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