



# Essential Workers Essential Protections



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

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1-866-487-9283

# Wage and Hour Division

## Who we are



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# Essential Protections



- Payment of minimum wages and overtime
- Youth employment standards
- Job protections for time taken for the birth of a child or caring for sick family members
- Housing and transportation standards for farm workers
- Payment of prevailing wage rates for federally funded construction and service contract work
- Standards for hiring and paying workers temporarily in the U.S under H-2A, H-1B and H-2B visas



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# FAIR LABOR STANDARDS ACT



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# Major Provisions



Coverage



Youth  
Employment



Minimum Wage



Recordkeeping



Overtime



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# Coverage



**Two Types  
of Coverage**



## **Enterprise Coverage**

Enterprise, as a whole,  
is covered and all  
employees are entitled  
to FLSA protections



## **Individual Coverage**

Enterprise, as a whole,  
is NOT covered;  
however individual  
employees are covered  
and entitled to FLSA  
protections



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# Exemptions

- **Seasonal Amusement or Recreational Establishments**
- No minimum wage or overtime is due employees of some seasonal amusement parks or recreational facilities
- The FLSA child labor requirements still apply in these establishments

# Exemptions

## Exemptions

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

One of the most common FLSA minimum wage and overtime exemptions is often called the “**541**,” “**white collar**” or “**EAP**” exemption



# Exemptions

## Three Tests for the “White Collar” Exemptions

1. **Salary Basis**
2. **Salary Level**
3. **Job Duties**



**FACT  
SHEET:**  
[Blue Collar  
Workers](#)

# Salary Basis Test

- An exempt employee must regularly receive 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
- If employer chooses to use nondiscretionary bonuses and incentive payments to meet the standard salary level, the employee must be paid at least 90% of the standard salary level for any week in which the employee performs **any** work

# Exemptions

## Salary Level Test

For most employees the minimum salary level required for exemption is **\$684.00 per week.**

# **Duties Tests**

## **No Changes**

- The Final Rule did not make any changes to the Duties Tests

# **Executive Duties**

## **No Changes**

- 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

# **Administrative Duties**

## **No Changes**

- 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

# Professional Duties

## No Changes

- 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

**OR**

- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

# Computer-Related Occupations

**To qualify for the computer employee exemption, an employee, such as a computer analyst, programmer, or software engineer, must receive either:**

- A guaranteed salary or fee of \$684 per week or more, or
- An hourly rate of not less than \$27.63 per hour and
- Their primary duty must be in design, development, or creation of computer systems, systems analysis etc. (as defined in the regulations).



# Professional Duties

## Non-Exempt Professions

*Common errors: misapplication of exemptions*

- Licensed Practical Nurses
- Paralegals, legal assistants
- Engineering Technicians
- Accounting clerks, bookkeepers typically performing routine work
- Cooks performing predominantly routine mental, manual, mechanical, or physical work



**FACT  
SHEET:**  
[Technologists  
& Technicians](#)

# Overtime



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

- All time that is hours worked must be counted when determining overtime hours worked.



FACT  
SHEET:  
[Overtime](#)

# Overtime

## Regular Rate

- Determined by dividing total earnings in workweek by total number of hours worked in workweek

$$\text{Total Compensation} \div \text{Total Hours Worked} = \text{RR}$$

- *Regular Rate* may not be less than the applicable minimum wage
- *Total earnings include commissions, certain bonuses, and cost of room, board, and other facilities provided primarily for the employee's benefit*

# Overtime

## Regular Rate and Premium Pay for OT Hours

- **STEP 1:** Total compensation paid in a workweek (minus statutory exclusions) divided by total hours worked in the workweek

$$\text{Total Compensation} \div \text{Total Hours} = \text{RR}$$

- **STEP 2:**  $\text{RR} \times .5 = \text{Half-time Premium Pay per OT Hour}$
- **STEP 3:**  $(\text{Half-time}) \text{ Premium Pay Rate} \times \text{Overtime Hours in the Workweek} = \text{Overtime Compensation Due}$



# Overtime

## Exercise: Production Bonus

**Hourly Rate:** \$12.00 **Bonus per**  
**week:** \$100.00 **Hours worked:**  
48

$$48H \times \$12 = \$576$$

$$\$576 + \$100 = \$676$$

$$\$676 \div 48H = \$14.08 \text{ RR}$$

$$\$14.08 \times .5 = \$7.04$$

$$\$7.04 \times 8H = \$56.32 \text{ OT}$$

- **Total compensation for week:**

$$\$676 + \$56.32 = \$732.32$$

# Overtime

## Exclusions from the *Regular Rate*

- **Gifts** – e.g., coffee, snacks, t-shirts, raffle prizes, certain longevity bonuses, certain sign-on bonuses
- ***Discretionary* bonuses** – e.g., severance bonuses, referral bonuses for employees not primarily engaged in recruiting activities, bonuses for overcoming challenging or stressful situations
- **Payments for time not worked** – includes paid leave, paid leave buybacks, “show up” or “reporting pay”, “call-back pay”
- **Reimbursements for business expenses** – includes business supplies, tools, cell phone plans, credentialing exam fees, travel expenses



FACT  
SHEET:  
[Regular Rate](#)

# Overtime

## Exclusions from the *Regular Rate*

- **Overtime premium payments**
- **“Perks” and conveniences for the employee** – e.g., gym memberships, gym access, fitness classes, wellness programs, employee discounts on retail and services, on-the-job medical care, tuition payments, adoption assistance, parking benefits and spaces
- **Profit sharing plans, stock options**
- **Retirement and insurance plan contributions** - also includes plans for accident, unemployment, legal services, or other events that could cause significant future financial hardship or expense



FACT  
SHEET:  
[Regular Rate](#)

# Overtime

## *Discretionary Bonuses*

- Discretionary bonuses may be excluded from the regular rate if **all** the following criteria are met:
  1. The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine whether to pay the bonus;
  2. The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine the amount of the bonus; and
  3. The bonus payment is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly.
- Labels are not determinative.



FACT  
SHEET:  
[Regular Rate](#)



# FLSA Enforcement

## Limits of the FLSA FLSA does ***NOT*** require

- Vacation, holiday, severance, sick pay
- Meal or rest periods, holidays off, vacations
- Premium pay for weekend or holiday work
- Discharge notice, reason for discharge
- Limit on number of hours or days employees  
16 years or older may work
- Pay raises, fringe benefits

# Child Labor

In non-agricultural jobs...

- Minimum age of employment is 14
- Hours and occupations are restricted for 14- and 15-year-olds
- Hazardous occupations are prohibited for every covered worker under 18 years of age
- Some exceptions for minors working for their parents



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# Jobs 14 and 15-year olds can do

If an occupation is not specifically permitted, it is prohibited for youth ages 14 and 15. Jobs that are allowed include:

- Office and clerical work
- Cashiering and selling
- Price marking, assembling orders, packing
- Bagging and carrying out customers' orders



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# More allowable jobs...

- Errands and deliveries by foot, bike, bus or train
- Certain clean-up work and yard work
- Pumping gas and hand cleaning cars
- Kitchen work, preparing and serving food (but very limited cooking)



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# More allowable jobs...

Most cooking is prohibited, but 14- and 15-year-olds may:

- Cook with electric or gas grills that do not entail cooking over an open flame, and
- Cook with deep fryers that are equipped with and utilize automatic devices that raise and lower the baskets in and out of the hot oil or grease.



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# Work 14 and 15-year-olds may not do:

- Work in or about boiler or engine rooms
- Maintenance or repair of a building or equipment
- Work in freezers and meat coolers
- Outside window washing
- Baking



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# Work 14 and 15-year-olds may not do:

- Work involving power-driven food slicers and grinders, choppers or cutters and bakery mixers
- Loading and unloading goods to and from trucks, railcars or conveyors
- Work in areas where meats are prepared for sale
- All occupations declared to be hazardous for 16- and 17-year-olds



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# HAZARDOUS OCCUPATIONS ORDERS 1 THROUGH 5

- **HO 1.** Manufacturing or storing explosives
- **HO 2.** Driving a motor vehicle or work as an outside helper on motor vehicles
- **HO 3.** Coal mining
- **HO 4.** Forest fire fighting, forest fire prevention, timber tract, forestry service, and logging and sawmilling
- **HO 5.** Power-driven woodworking machines



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# HAZARDOUS OCCUPATIONS ORDERS

## 6 THROUGH 9

- **HO 6.** Exposure to radioactive substances and ionizing radiation
- **HO 7.** Power-driven hoisting apparatus
- **HO 8.** Power-driven metal-forming, punching and shearing machines
- **HO 9.** Mining, other than coal



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# HAZARDOUS OCCUPATIONS ORDERS 10 THROUGH 13

- **HO 10.** Power-driven meat-processing machines, slaughtering, rendering and meat packing plants
- **HO 11.** Power-driven bakery machines
- **HO 12.** Power-driven paper-products machines, scrap paper balers, and paper box compactors
- **HO 13.** Manufacturing of brick, tile and related products



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# HAZARDOUS OCCUPATIONS ORDERS 14 THROUGH 17

- **HO 14.** Power-driven circular saws, band saws and guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs.
- **HO 15.** Wrecking, demolition, and shipbreaking operations
- **HO 16.** Roofing occupations and work on or about a roof
- **HO 17.** Trenching and excavation operations



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# “OPERATION” MEANS

The term "**operation**" as used in HO's 5, 8, 10, 11, 12 and 14 generally includes the tasks of setting up, adjusting, repairing, oiling, and cleaning the equipment



# HO 2.

## HO 2. DRIVING OR OUTSIDE HELPER ON MOTOR VEHICLES

- Generally prohibits youth from driving motor vehicles on public roads, but certain 17-year-olds may perform driving that is **occasional and incidental** under certain circumstances
- Bans working as an outside helper on motor vehicles. An outside helper is anyone, other than the driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods



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# HO 2.

## HO 2. DRIVING OR OUTSIDE HELPER ON MOTOR VEHICLES



Minors under age 17 may not drive on public roads as part of their job



# HO 7.

## HO 7. POWER-DRIVEN HOISTING APPARATUS



Bans the operation of most power-driven hoisting apparatus such as elevators, bobcats, cranes, and most high lift trucks, including forklifts



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# HO 10.

## HO 10. POWER-DRIVEN MEAT PROCESSING MACHINES



Bans the operation of power-driven meat processing machines, such as meat slicers, saws and meat choppers, wherever used (including restaurants and delicatessens)

Also bans most occupations in meat slaughtering, processing, rendering, and packing



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# HO 10.

## HO 10. POWER-DRIVEN MEAT PROCESSING MACHINES

Minors under 18 may not clean power-driven meat processing machines. This prohibition includes the cleaning of the individual parts of such machines, including the blades (even if the machine is dismantled and reassembled by an adult) (see 29 CFR 570.61(a)(4))

A **limited** exemption for 16-and 17-year-olds who are bona-fide student learners and apprentices may apply



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# HO 11.

## HO 11. POWER-DRIVEN BAKERY MACHINES



Bans the operation of power-driven bakery machines such as dough mixers, batter mixers (including most countertop models), dough rollers, and dough sheeters



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# HO 12.

## HO 12. POWER-DRIVEN PAPER-PRODUCTS MACHINES, SCRAP PAPER BALERS, AND PAPER BOX COMPACTORS



Bans the operation of power-driven paper-products machines, including scrap paper balers and paper box compactors



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# HO 12.

## HO 12. POWER-DRIVEN PAPER-PRODUCTS MACHINES, SCRAP PAPER BALERS AND PAPER BOX COMPACTORS

### Scrap Paper Balers and Box Compactors:

- 16 and 17 year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under **very specific guidelines**
- a **limited** exemption for 16-and 17-year-olds who are bona-fide student learners and apprentices



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# COMPLIANCE ASSISTANCE

The Department of Labor launched ***YouthRules!*** to help employers, parents, teachers, and working teens understand and comply with federal and state youth employment provisions

Visit the ***YouthRules!*** Website for important information that will help young workers find and maintain positive and safe employment

<https://www.dol.gov/agencies/whd/youthrules>

# COMPLIANCE ASSISTANCE MATERIALS

Fair Labor Standards Act

<https://uscode.house.gov/view.xhtml?path=/prelim@title29/chapter8&edition=prelim>

Regulations, 29 CFR 570

<https://www.ecfr.gov/cgi-bin/text-idx?SID=057bcd816ec44a8dc1d366560857cfa0&mc=true&node=pt29.3.570&rgn=div5>

Compliance Assistance Toolkit

<https://www.dol.gov/agencies/whd/compliance-assistance/toolkits/youth-employment>



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# COMPLIANCE ASSISTANCE MATERIALS

Child Labor Rules Advisor

[https://webapps.dol.gov/elaws/whd/flsa/cl/default.htm?\\_ga=2.168930918.61858325.1614197541-301270231.1606851725](https://webapps.dol.gov/elaws/whd/flsa/cl/default.htm?_ga=2.168930918.61858325.1614197541-301270231.1606851725)

Child Labor Bulletin 101

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor101.pdf>

Fact Sheet #43

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs43.pdf>

FLSA Poster

<https://www.dol.gov/agencies/whd/posters/flsa>



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# FLSA Compliance Assistance

- [Fair Labor Standards Act of 1938](#)
- [Regulations](#)
- [FLSA Poster.pdf](#)
- [Handy Reference Guide.pdf](#)
- [Frequently Asked Questions \(FAQs\)](#)
- [Fact Sheets](#)
- [Opinion Letters](#)

Visit the WHD home page: [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd)



# Online Resources



- Worker.gov
- Employer.gov



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# Online Resources

## Elaws Advisors

- Coverage and employment status advisor
- Overtime calculator
- Overtime security advisor
- Hours worked advisor

[dol.gov/elaws](https://dol.gov/elaws)



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