



For Employers and Employees

An Overview of the Fair Labor Standards Act (FLSA)

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WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
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Wage and Hour Division

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Presentation Outline

- Employment Relationship
- Misclassification
- Coverage
- Minimum Wage
- Overtime
- Hours Worked
- Recordkeeping
- Child Labor
- Family and Medical Leave Act
- How to File a Complaint

Employment Relationship



In order for the FLSA's minimum wage and overtime pay provisions to apply, there must be an employment relationship between the “employer” and the “employee.”

Misclassification

Misclassified employees are often denied:

- Minimum wage
- Overtime pay
- Health insurance
- Workers' compensation
- Unemployment insurance



Misclassified workers may really be an employee even if the worker:

- Agrees to be paid by cash or by check, on the books or off the books
- Receives a 1099 tax form
- Signs an independent contractor agreement
- Engages in work away from company property
- Is registered as an independent contractor or other business entity under state law

Independent Contractor Final Rule

How does it differ from the 2021 Contractor Rule?

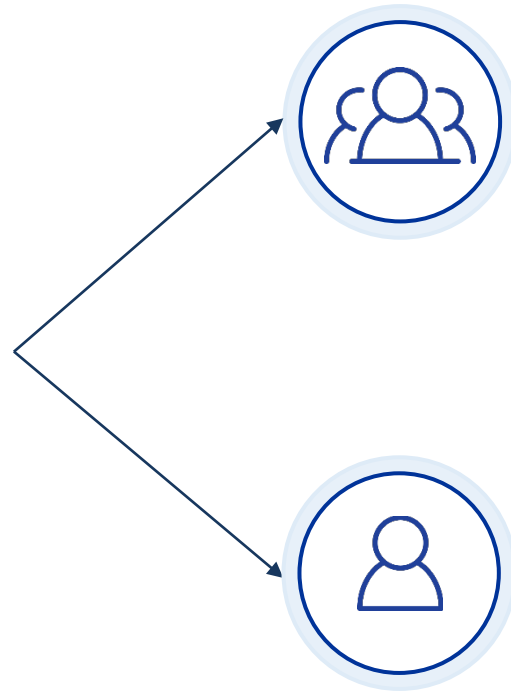
- Returns to a totality-of-the-circumstances economic reality test
- Considers six factors instead of five
- Provides additional analysis of the control factor,
- Returns to the Department's longstanding consideration of whether the work is integral to the employer's business (rather than whether it is exclusively part of an "integrated unit of production");
- Provides additional context to some factors,
- Omits a provision from the 2021 Independent Contractor Rule which minimized the relevance of an employer's reserved but unexercised rights to control a worker.

FAQs: <https://www.dol.gov/agencies/whd/flsa/misclassification/rulemaking/faqs#g1>

Two Types of FLSA 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

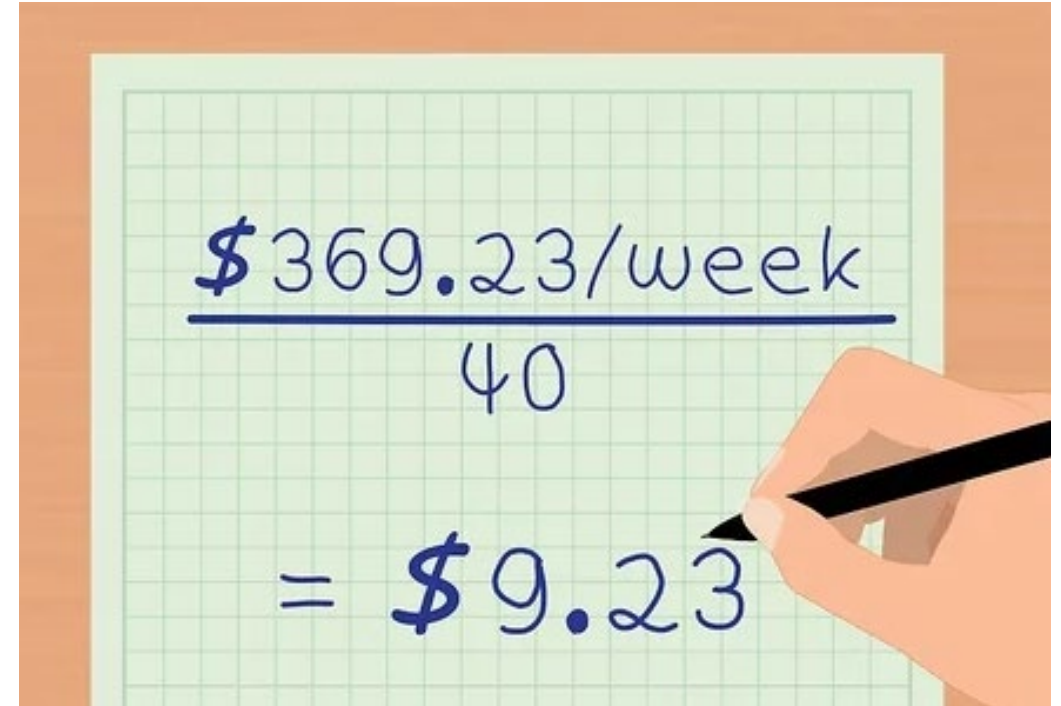
Minimum Wage

FLSA covered employers generally must pay employees at least the **federal minimum wage of \$7.25 per hour**.

The minimum wage is calculated on a weekly basis:

$$\text{Hourly Rate} = \frac{\text{Gross Weekly Straight Time Pay}}{\text{Total Hours Worked Weekly}}$$

Hourly rate must be at least \$7.25 per hour.



Minimum Wage

May include:

- Wages (salary, hourly, and piece rates)
- Bonuses (attendance, production, performance)
- Commissions
- Shift differentials
- Reasonable cost or fair value of room, board, other “facilities” provided by employer for employee’s benefit

Hours Worked



An employee must be paid for all of the time considered to be “hours worked” under the FLSA. This may include time **spent engaged to wait, on-call, in training, sleeping, or traveling**. Work not requested but “suffered or permitted” is work time.

[View Fact Sheet #22: Hours Worked](#)

Waiting Time

Hours Worked

- Employee unable to use “waiting time” effectively for own purposes
- “Waiting time” controlled by employer

NOT Hours Worked

- Employee completely relieved from duty
- Time period long enough for employee to use for own purposes

On-Call Time

Hours Worked

- Employee must stay on employer premises
- Or, must be so close to the employer's premises that the time cannot be used effectively for employee's own purposes

NOT Hours Worked

- Employee must provide contact information
- Can use time effectively for own purposes

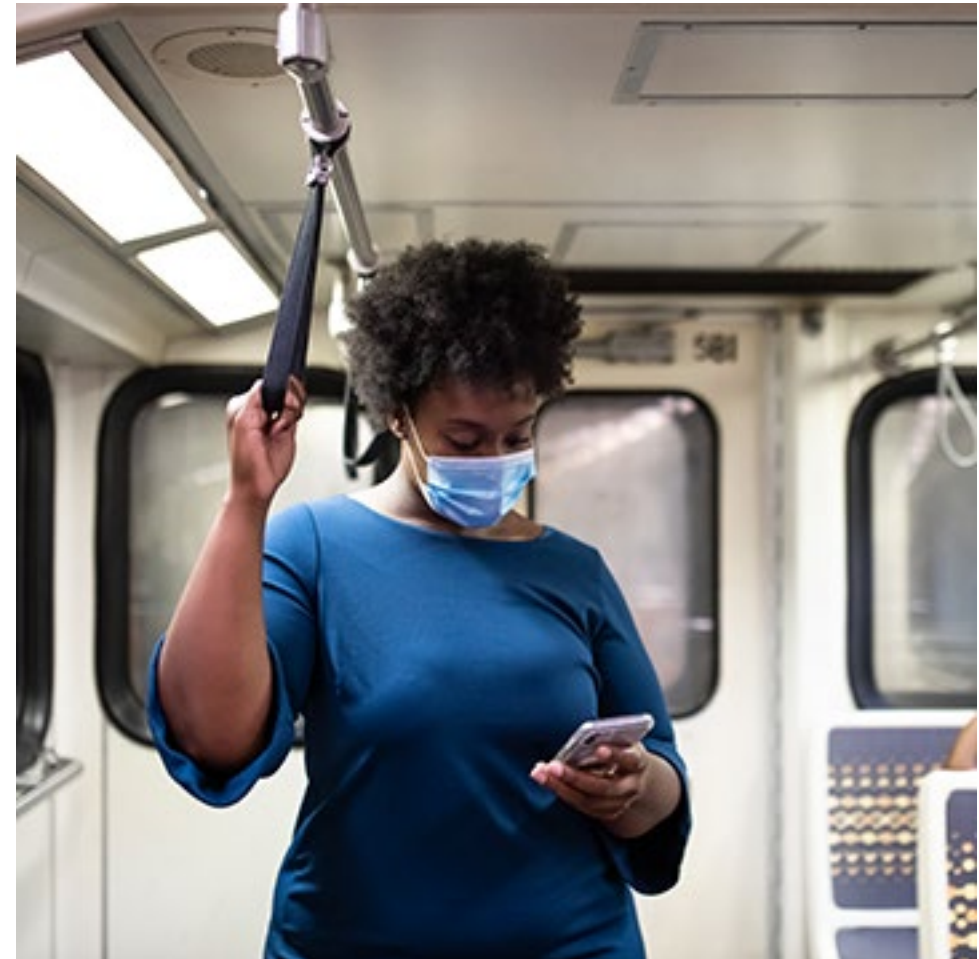
Meetings and Training

- Time spent in mandatory job-related meetings or training is considered *hours worked* and must be paid.
- This is true for trainings before the start of the workday or at the end.



Travel Time

- Commuting from home to work generally is not compensable work time.
- Travel between job sites during normal workday is work time and thus compensable hours worked.



Rest and Meal Periods

- Short rest breaks (20 min or less) are compensable.
- Bona fide meal periods (typically 30 minutes or more) need not be paid as hours worked.
- Worker must be completely relieved of duty for meal period not to be paid time.



Illegal Deductions

Deductions from pay are illegal if:

- Items are primarily for the benefit or convenience of employer, and
- Deduction reduces employee earnings below required minimum wage

Examples of illegal deductions: may include deductions for damages to property; required company uniforms; and fuel or transportation costs during deliveries.

Protections to Pump at Work

The FLSA provides nursing employees, for up to 1 year after the child's birth, with:

- Reasonable break time to express breast milk
- A place, other than a bathroom, that may be used to express milk



Overtime



- Compliance determined by workweek
- Each workweek stands alone
- Workweek is 7 consecutive 24-hour periods (168 hours)

Overtime

Regular Rate

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

$$\text{Gross Weekly Straight Time Pay} \div \text{Total Hours Worked} = \text{RR}$$

- 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

Steps for Computing Total Pay

- 1. Hourly Pay Due =**
Hourly Rate x All Hours Worked
- 2. Total Compensation =**
Hourly Pay + Other compensation (commissions, nondiscretionary bonuses, etc.)
- 3. Regular Rate =**
Total Compensation ÷ Total Hours Worked
- 4. Half-Time Rate =**
Regular Rate x .5
- 5. Overtime Pay Due**
Half-Time Rate x Overtime Hours Worked
- 6. Total Wages:**
Overtime Pay Due + Straight Time Pay Due

Example #1

- Employee is paid \$750 for this workweek
- Employee works 50 hours this workweek
- The employee does not receive any other compensation this week

Example #1 Continued

Hourly Rate: \$15

Hours Worked: 50

Additional Pay: \$0

1. Straight Time Pay Due:

$$\$15 \times 50 \text{ hours} = \$750$$

2. Half-Time Rate:

$$\$15 \times .50 = \$7.50$$

3. Overtime Pay Due:

$$\$7.50 \times 10 \text{ OT hours} = \$75$$

4. Total Wages Due:

$$\$750 + \$75 = \$825.00$$

Bonuses

Promised bonuses that encourage employee production generally are required to be included in the regular rate of pay for overtime purposes.

Example #2

- Employee is paid \$750 in straight time pay.
- Employee works 50 hours in a workweek.
- The employee receives a \$150 bonus for meeting an announced production target.

Example #2 Continued

Hourly Rate: \$15

Hours Worked: 50

Bonus Paid: \$150

Regular Rate: \$18

1. **Straight Time Pay Due:**
 $\$15 \times 50 \text{ hours} = \750
2. **Regular Rate:**
 $(\$750 + \$150) \div 50 \text{ hours} = \18
3. **Half-Time Rate:**
 $\$18 \times .50 = \9
4. **Overtime Pay Due:**
 $\$9 \times 10 \text{ OT hours} = \90
5. **Total Pay:**
 $\$90 + 750 + \$150 = \$990$

Flat Rates

Employers in the construction/landscaping industry sometimes pay employees on day/flat rate for work completed.

However, this practice could cause minimum wage and overtime violations.



Example #4

- An employee was paid \$200 a day on a day-rate basis
- The employee worked five days a week
- The employee worked 45 hours in the work week

Example #4 Continued

1. Day Rate:

$$\$200 \times 5 = \$1000$$

2. Regular Rate:

$$\$1000.00 \div 45 = \$22.22$$

3. Overtime Pay Rate:

$$\$22.22 \div 2 = \$11.11$$

4. Overtime Pay Due:

$$\$11.11 \times 5 = \$55.55$$

5. Total Wages Due:

$$\$1000 + \$55.55 = \$1,055.55$$

Recordkeeping

Employers must keep records of all wages paid to workers and all hours worked, no matter where the work is done.

[View Fact Sheet #21:
Recordkeeping Requirements](#)



Child Labor

- Child labor provisions under FLSA are designed to protect the educational opportunities of youth and prohibit their employment in jobs that are detrimental to their health and safety.
- Child Labor rules restrict the hours that youth under 16 years of age can work and lists hazardous occupations too dangerous for young workers to perform.

[View Fact Sheet #43: Child Labor Provisions for Nonagricultural Occupations](#)

Child Labor

- **16 and 17 year olds**

Unlimited hours; may work in any occupation other than those declared hazardous by Secretary of Labor

- **14 and 15 year olds**

May work outside school hours and for limited periods of time; only specific non-manufacturing, non-hazardous jobs, and specific conditions apply

- **Children under 14**

With limited exceptions, no employment permitted in covered, non-agricultural occupations

Meat Processing

Children cannot:

- Use or clean **power-driven meat-processing machines**, like meat slicers, saws and meat choppers.
- Work most jobs in meat and poultry slaughtering, processing, rendering, and **packing establishments**.



Demolition, Roofing and Excavation

Children cannot:

- Be employed in wrecking and demolition work.
- Be employed in roofing operations including work performed on the ground, removal of the old roof, and all work on or about a roof.
- Work most jobs in trenching and excavation work, including working in a trench more than four feet deep.
- Work most jobs in the manufacture of brick, tile and similar products.



Family and Medical Leave Act

- Up to twelve workweeks of unpaid leave per leave year for qualifying reasons
- Job protection
- Protection of benefits and status while on leave
- Return to the same or an equivalent position

Common Violations found in the Warehouse Industry

- Failure to pay proper overtime
- Failure to include production bonuses in overtime pay
- Improper deductions for meal/rest breaks not taken
- Unpaid hours worked for time spent in meetings or training
- Failure to pay for completing pre- and post-shift work
- Misclassification as independent contractor
- Minors operating forklifts and box compactors

Common Violations found in the Restaurant Industry

- Failure to pay minimum wage
- Failure to pay proper overtime
- Improper keeping of employees tips
- Failure to pay for competing pre- and post-shift work
- Improper deductions: for meal/rest breaks not taken, cash register shortages, and/or required uniforms
- Minors operating motor vehicles, bakery machines, and box compactors

Retaliation

Employers ***cannot*** retaliate or discriminate against someone who files a complaint or participates in an investigation.

How to File a Complaint

- Complaints can be submitted by phone.
- Complaints can come from third parties.
- Complaints are confidential.
- WHD does not ask workers about their immigration status.
- No fee to file a complaint.

Who May File a Complaint

- Employees – Former and Present
- Parent/Guardian
- School Officials
- Other Employers
- Advocacy Groups
- Other Agencies



Complaint Intake Information

Employee's name

- Contact information
- Address and phone number
- Employee's duties/work
- Circumstances or actions that caused potential violation of the law
- Copies of pay stubs or personal hours worked records if available

Employer's name

- Point of contact
- Address and phone number

This information is not required, but helps develop the case.

FLSA Compliance Assistance

- Call WHD toll free and confidential information and helpline: 1-866-4US-WAGE (1-866-487-9243) or visit www.dol.gov/agencies/whd
- Visit the nearest Wage and Hour Division Office (WHD Offices) : www.dol.gov/agencies/whd/contact/local-offices
- Employment Laws Assistance for Workers and Small Businesses (ELAWS): www.dol.gov/agencies/whd/compliance-assistance/elaws-advisors

Contact Us

Visit www.dol.gov/agencies/whd

Call our helpline at:
317-226-6801

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