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

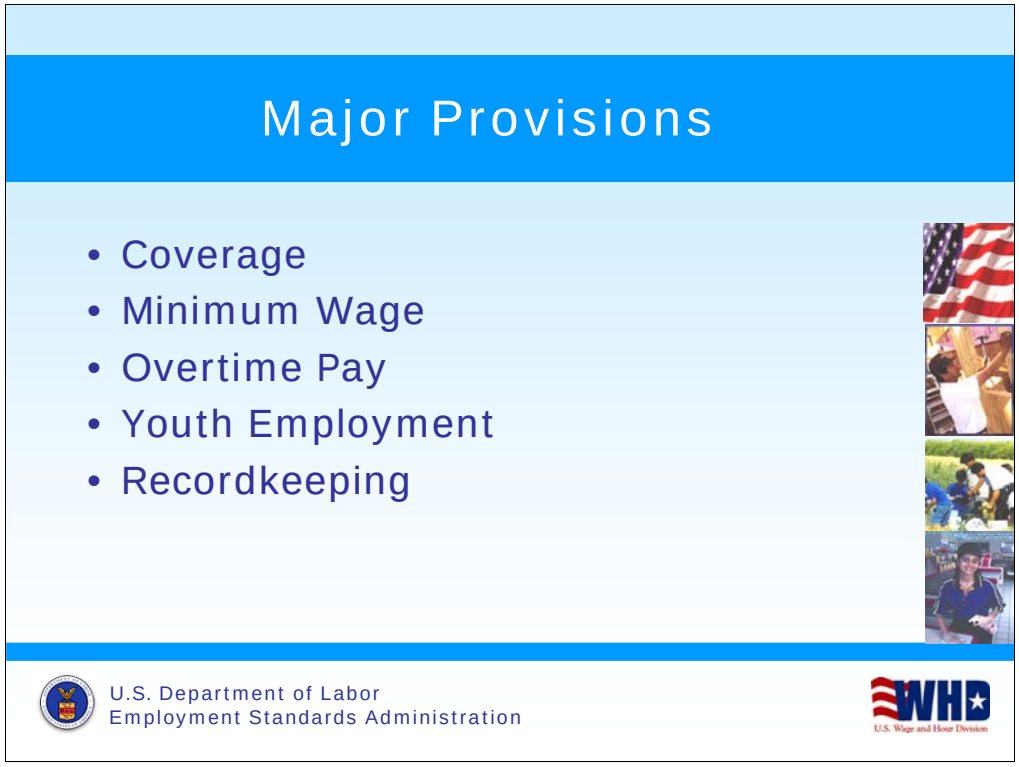
-The Garnishment Provisions of the Consumer Credit Protection Act

-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.



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).

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

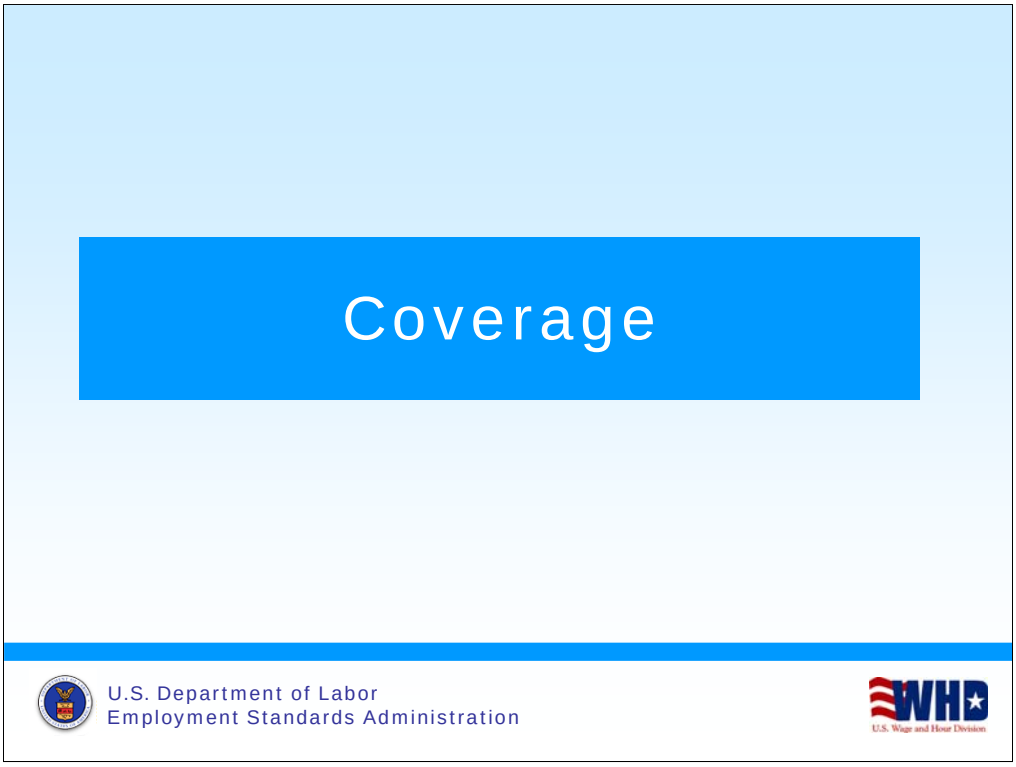
Employment relationship under the FLSA is tested by "economic reality" rather than "technical concepts." There is no single rule to determine whether an individual is an independent contractor or an employee for purposes of the FLSA. Some of the factors considered are:

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.

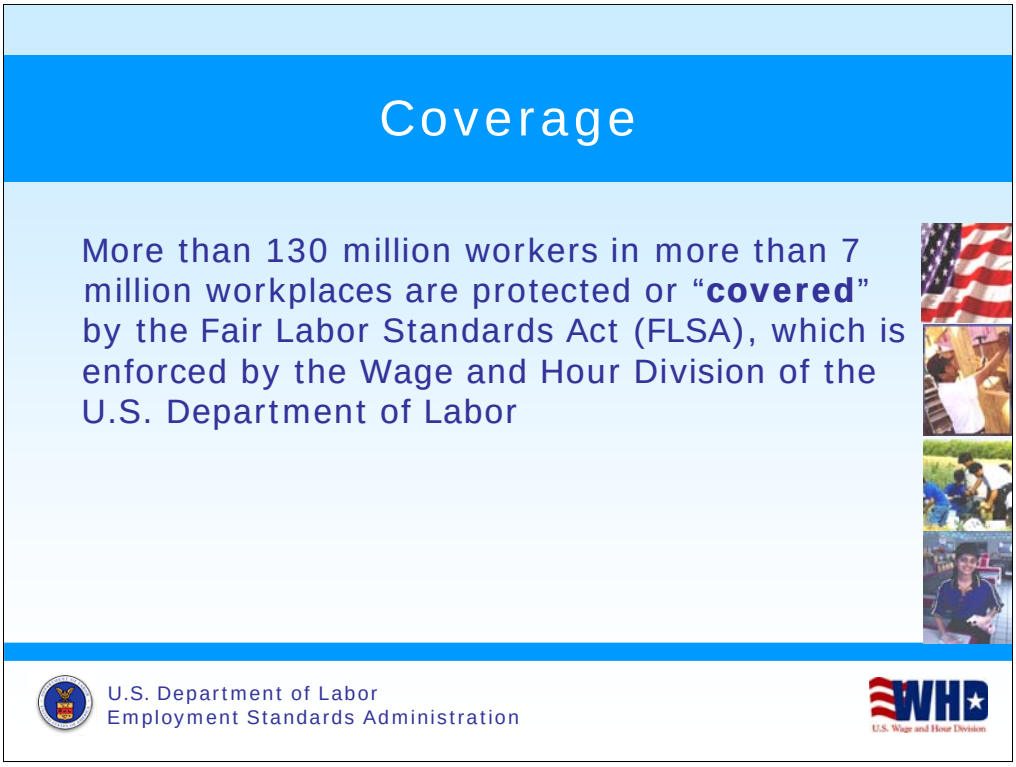
A situation involving a person volunteering his or her services may also result in an employment relationship. For example, a person who is an employee cannot "volunteer" his or her services to the employer to perform the same type service performed as an employee. Of course, individuals may volunteer 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).



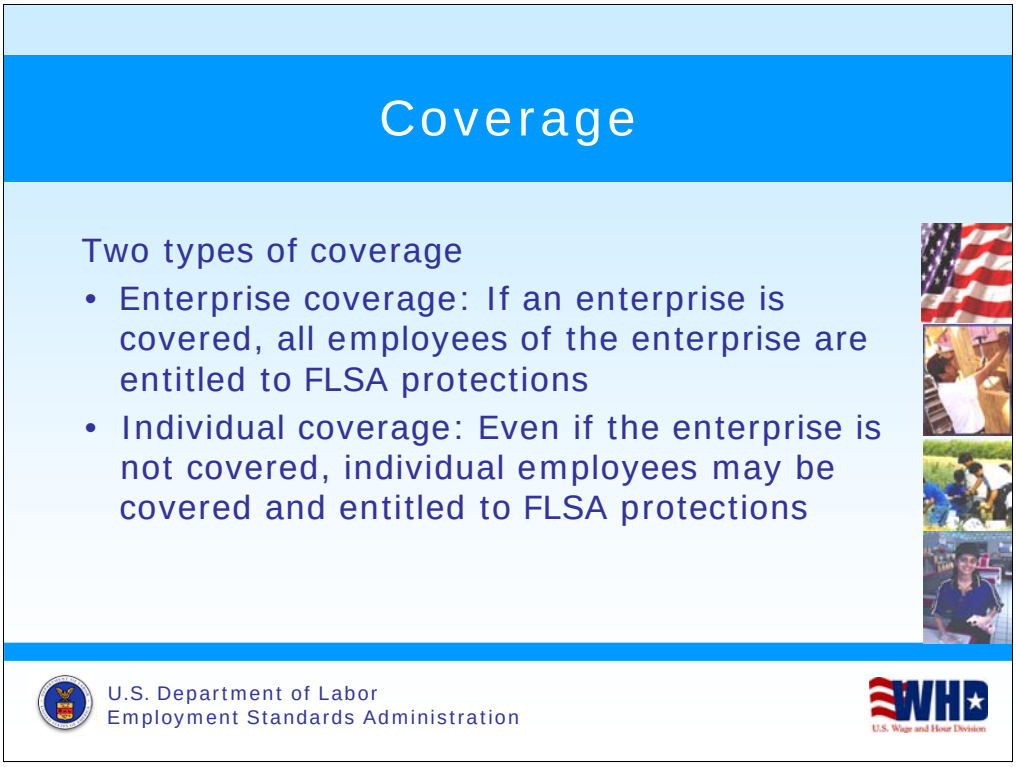
Who is covered by the FLSA?



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.



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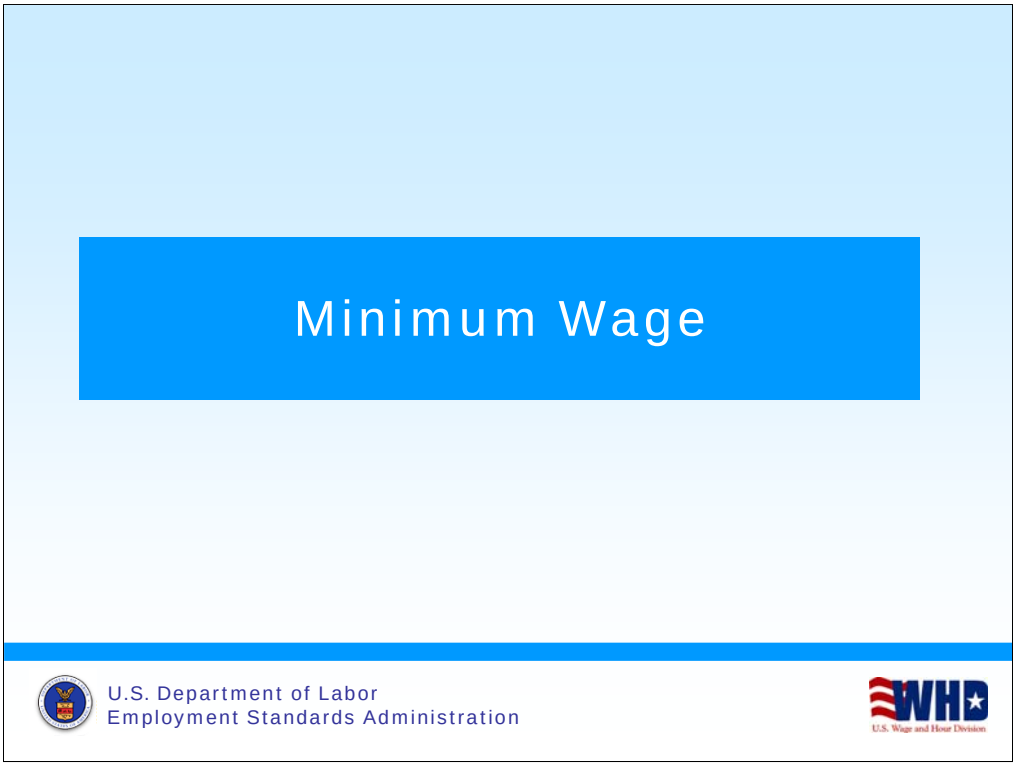
Employees working for businesses that are not covered enterprises are not subject to FLSA requirements unless they personally engage in interstate commerce, the production of goods for interstate commerce, or closely related activities.

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.



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

Minimum Wage: Basics

- Covered, non-exempt employees must be paid not less than the federal minimum wage for all hours worked
- The minimum wage is $5.85 per hour effective July 24, 2007; $6.55 per hour effective July 24, 2008; and $7.25 per hour effective July 24, 2009
- Cash or equivalent – free and clear

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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.

Minimum Wage: Issues

- Compensation Included
- Deductions
- Tipped Employees
- Hours Worked

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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 $3.72 per hour effective July 24, 2007; $4.42 per hour July 24, 2008; and $5.12 per hour July 24, 2009)
- Reasonable cost of room, board and other "facilities" provided by the employer for the employee's benefit

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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.

Board and Lodging

- Cannot exceed actual cost
- Cannot include a profit to the employer
- Employer's method of determining reasonable cost should follow good accounting practices
- Employer cannot take a credit when no cost is incurred

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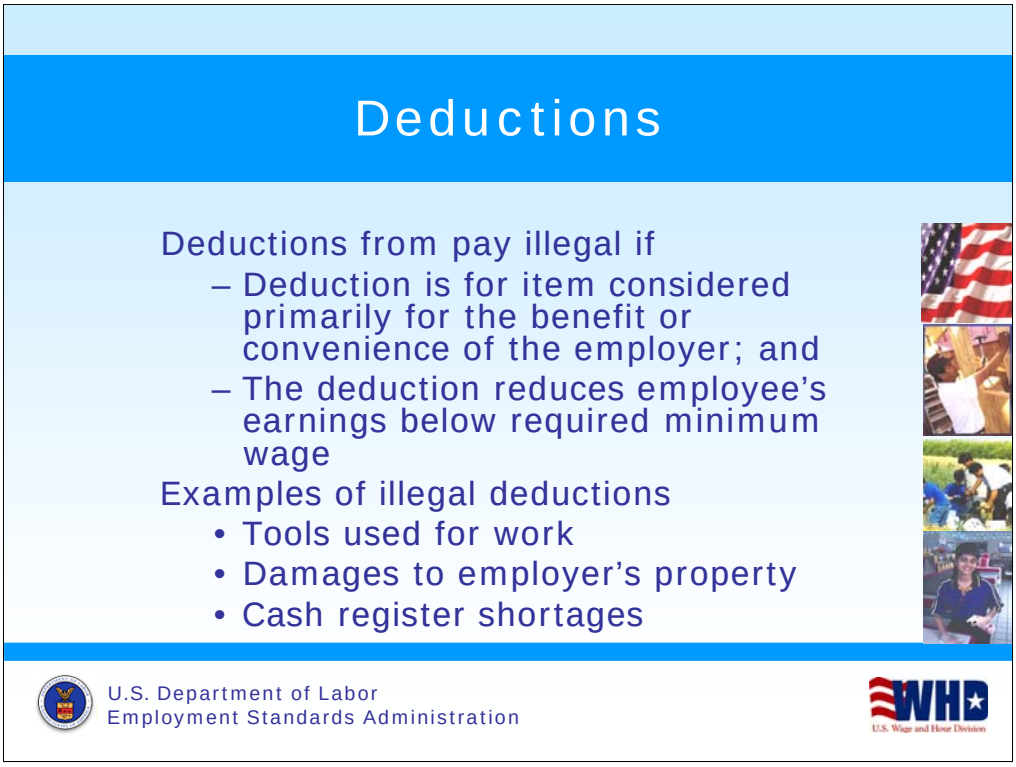
There are some special rules regarding board, lodging and other facilities. An employer cannot take credit for board, lodging or facilities unless they are furnished primarily for the benefit or convenience of the employee.

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

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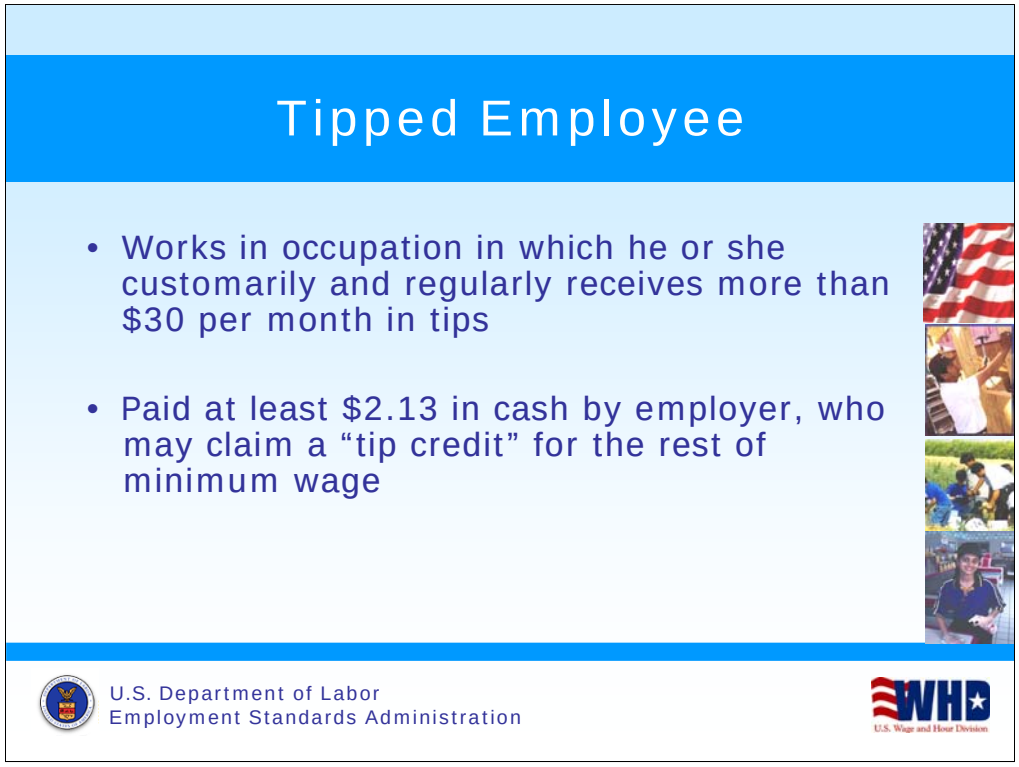
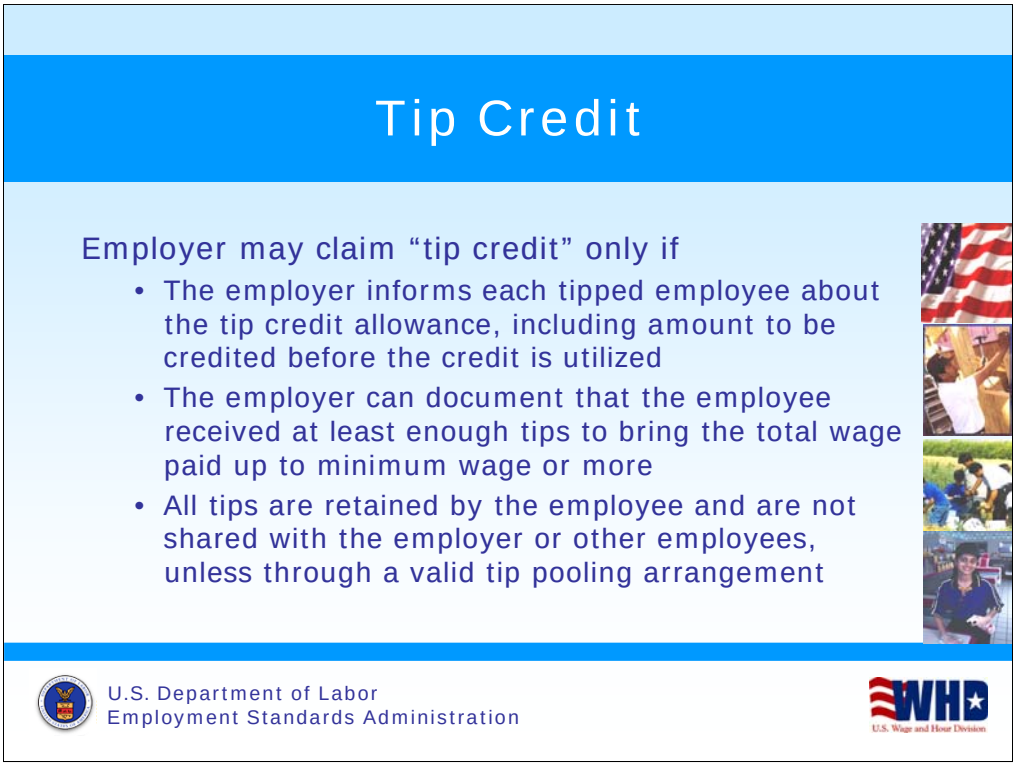


For occupations in which employees customarily and regularly receive more than $30 per month in tips, employers can pay tipped employees $2.13 per hour and claim a “tip credit” for the rest of the minimum wage, if tips actually received average at least $3.72 per hour effective July 24, 2007; $4.42 per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

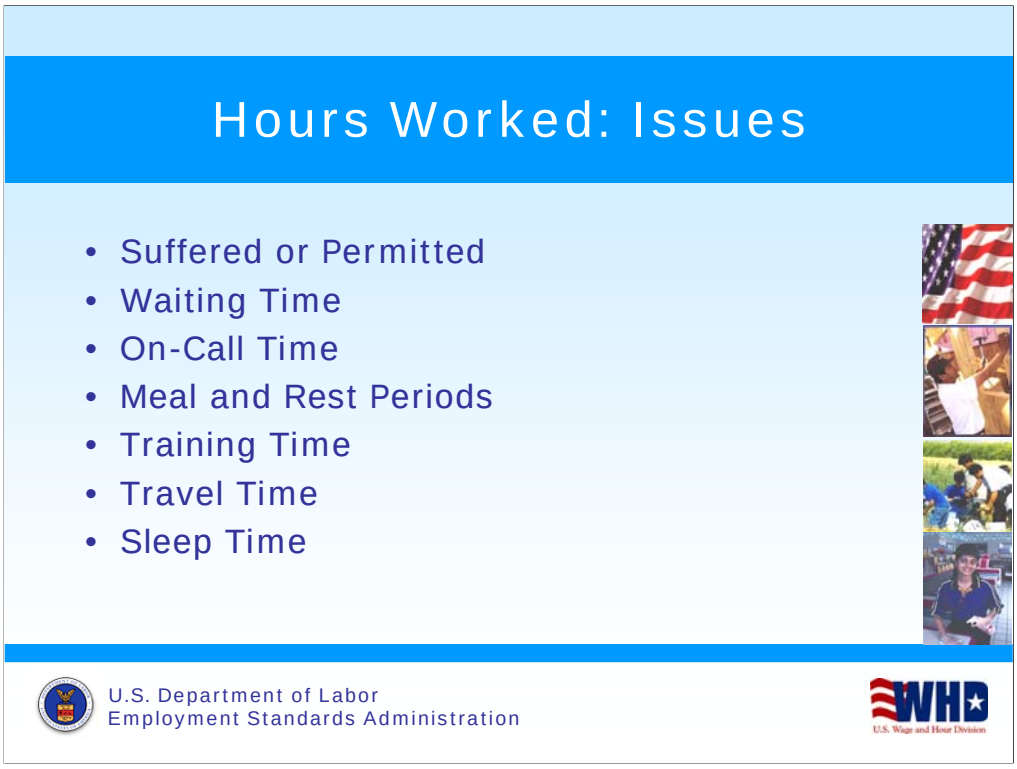
Also, if an employee is employed concurrently in both a tipped and a non-tipped occupation, the tip credit is available only for the hours spent in the tipped occupation or in duties related to the tipped occupation, provided such duties are incidental to the regular duties.



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.

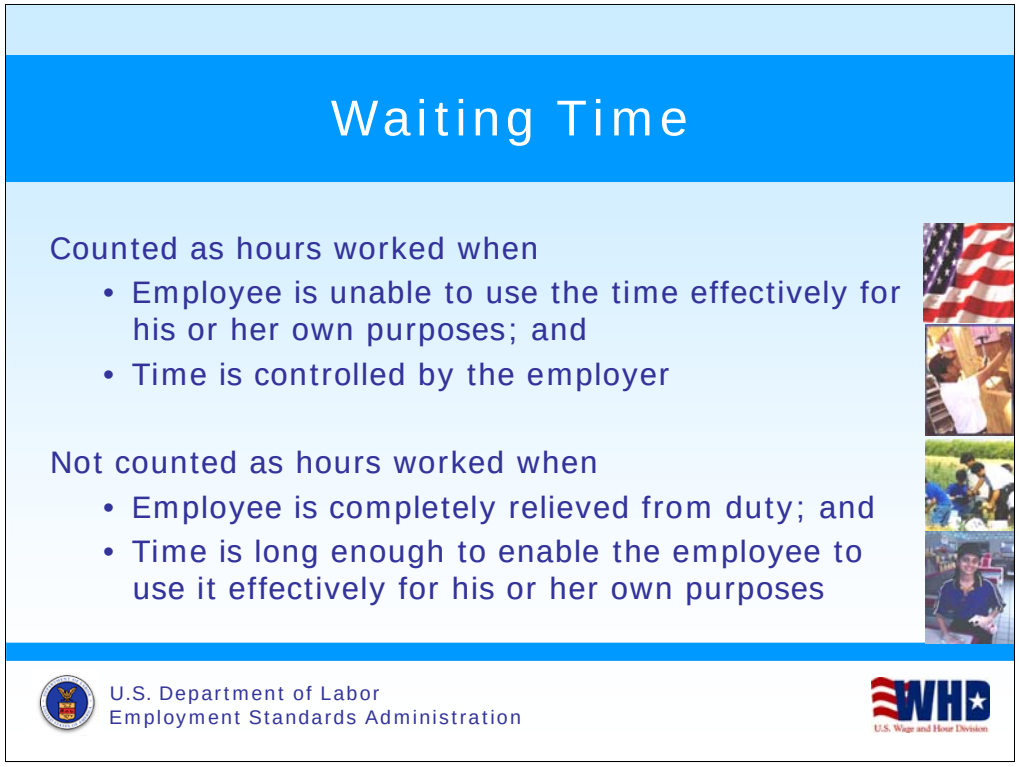
See also: 29 CFR 785 Hours Worked; Fact Sheet No. 022 Hours Worked Under the Fair Labor Standards Act; Fact Sheet No. 039C Hours Worked and the Payment of Special Minimum Wages to Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act (FLSA).

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.*

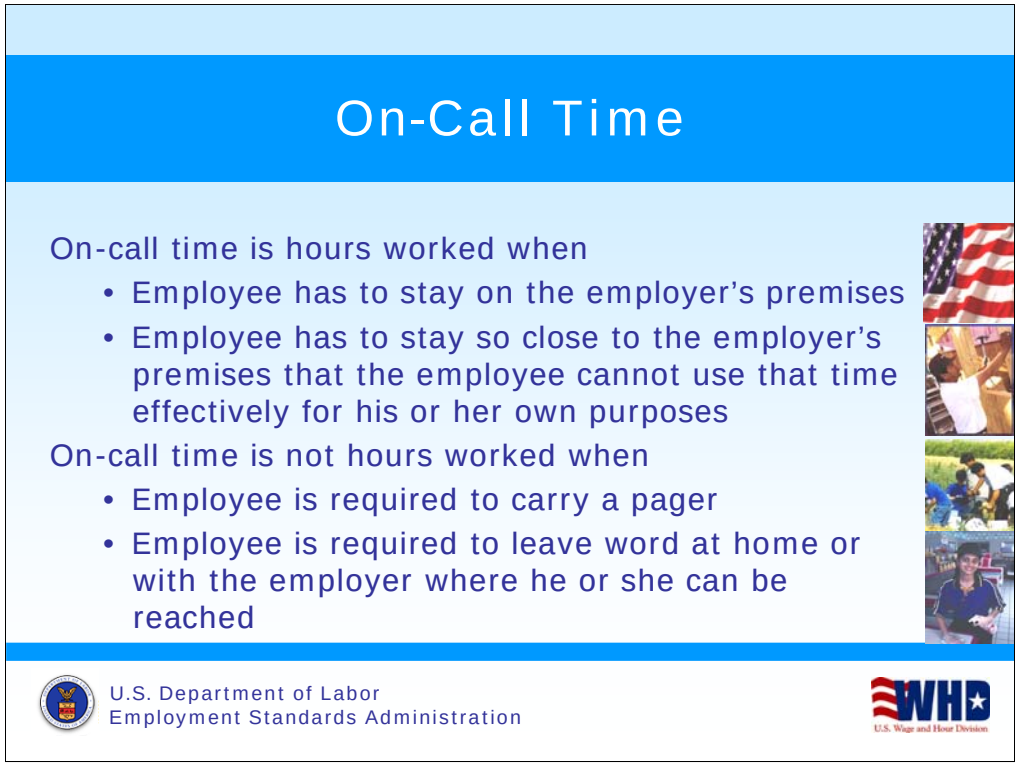


Whether time an employee spends waiting is counted as hours worked and is therefore paid depends upon the particular circumstances. The facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time).

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.

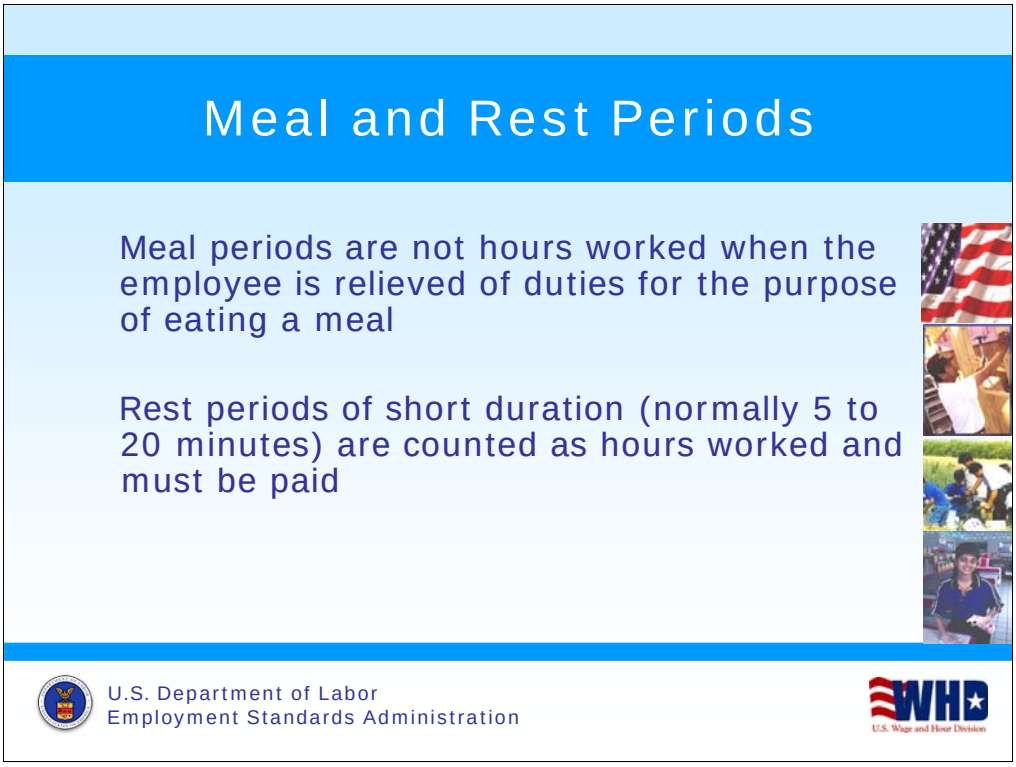
See also: 29 CFR 785.15 and 785.16 Hours Worked; Fact Sheet No. 022 Hours Worked Under the FLSA.



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.

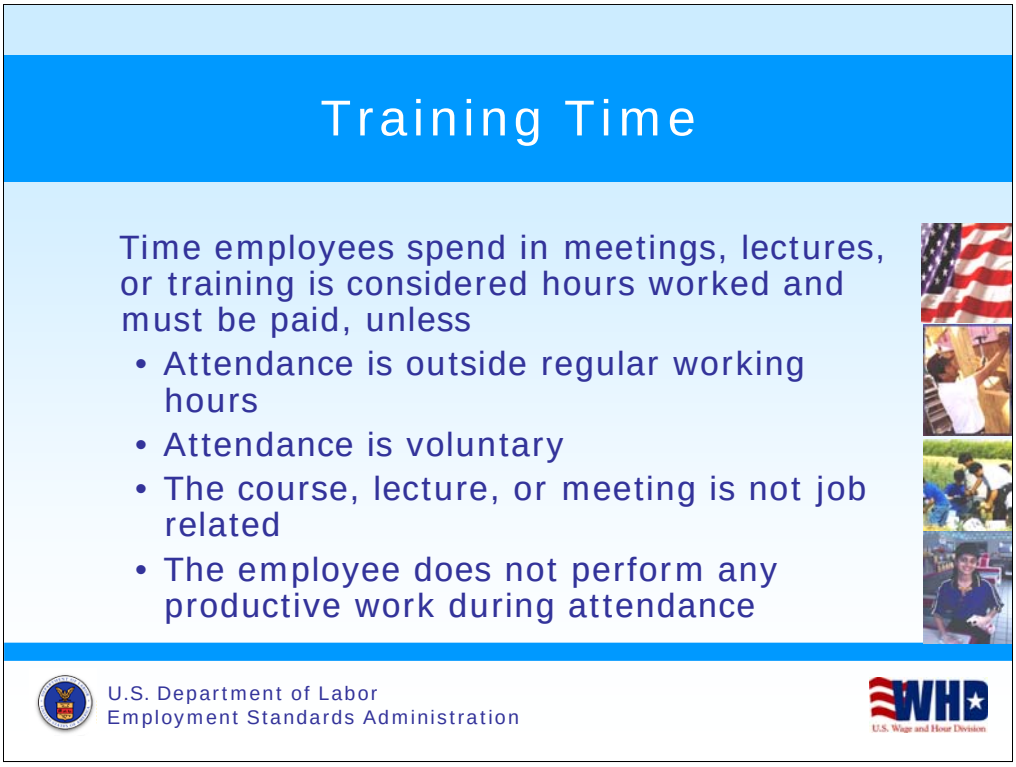
Meal periods of less than 30 minutes during which an employee is relieved for purposes of eating a meal may be bona fide--and thus not hours worked--when certain special conditions are present. Such special conditions include only sporadic and minimal work-related interruptions to the meal period, sufficient 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.



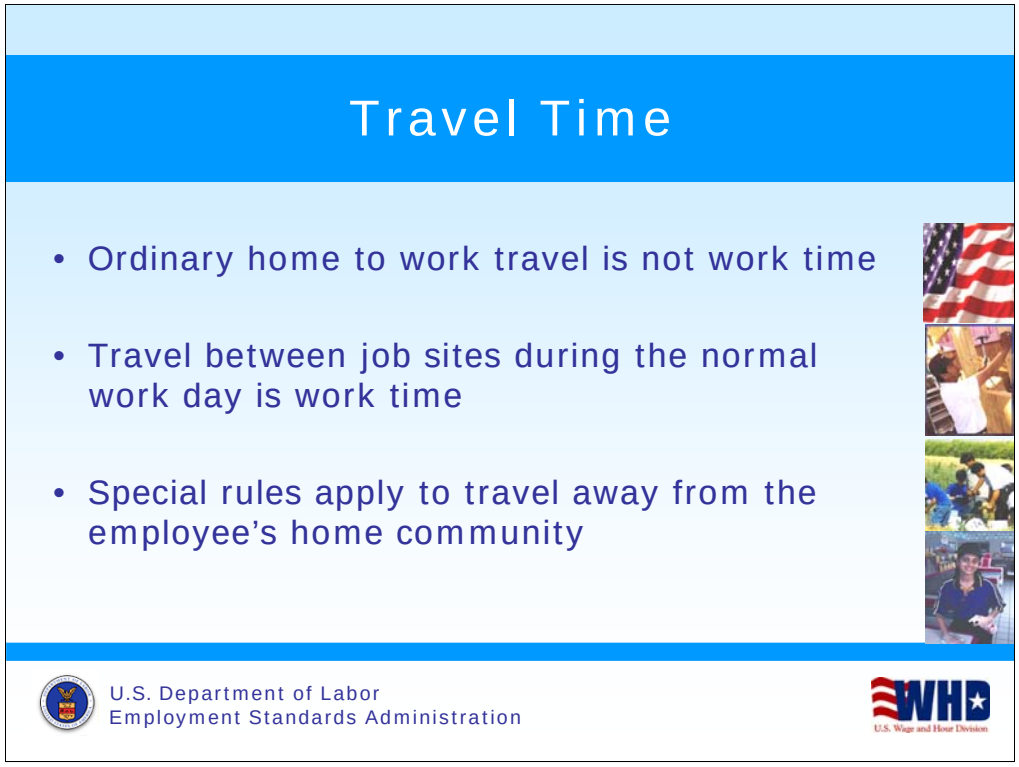
All four of the criteria must be met. The most common questions about counting this time involve voluntary attendance and whether or not a meeting or training is job related.

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.



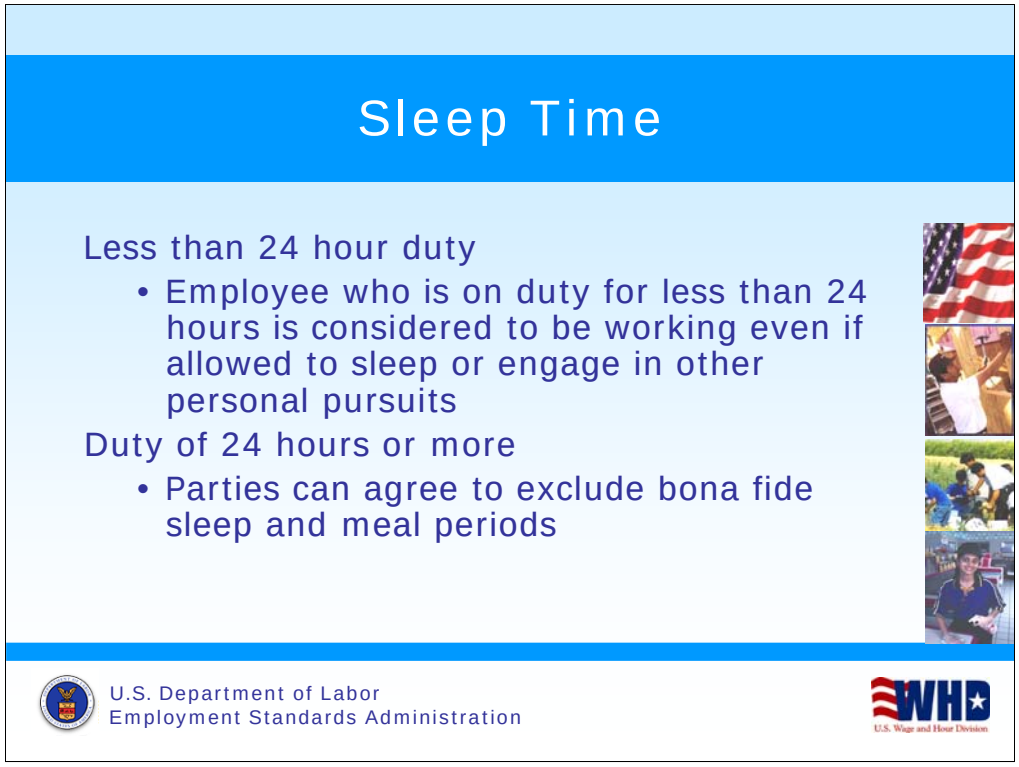
Ordinary home to work travel is travel from the employee's home before the regular workday and return travel to the employee's home at the end of the workday. This travel is normally not counted as hours worked.

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.



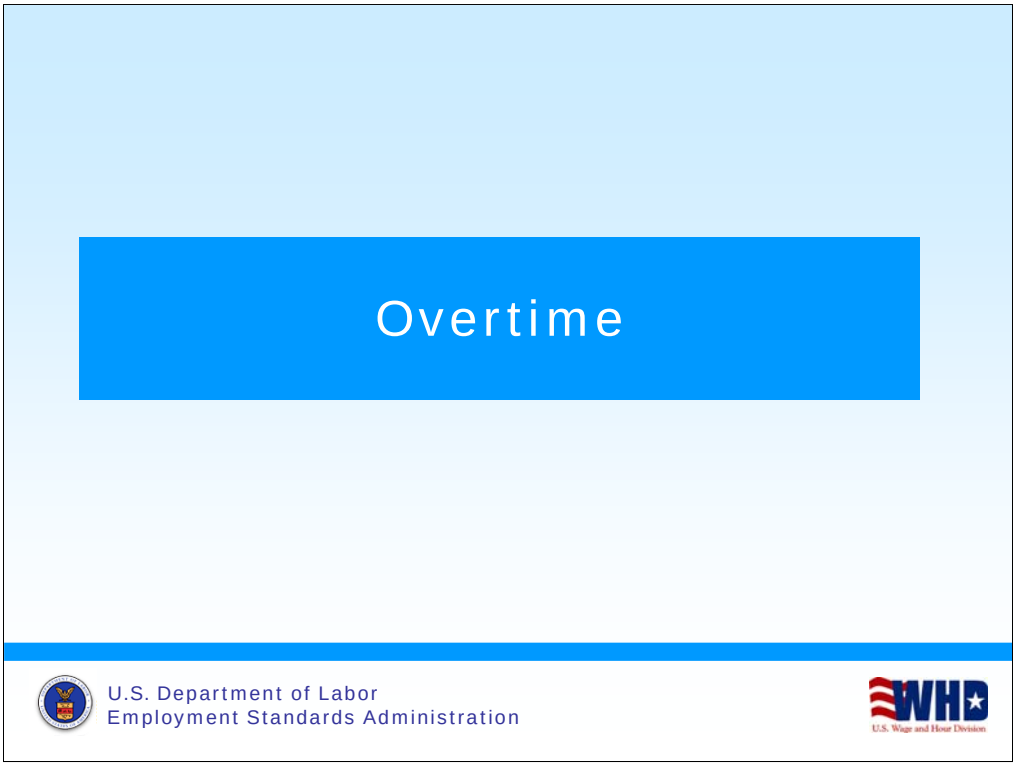
The rules for counting sleep time as hours worked are different depending on whether the employee is on duty for **less than 24 hours** or is on duty for **24 hours or more**.

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.

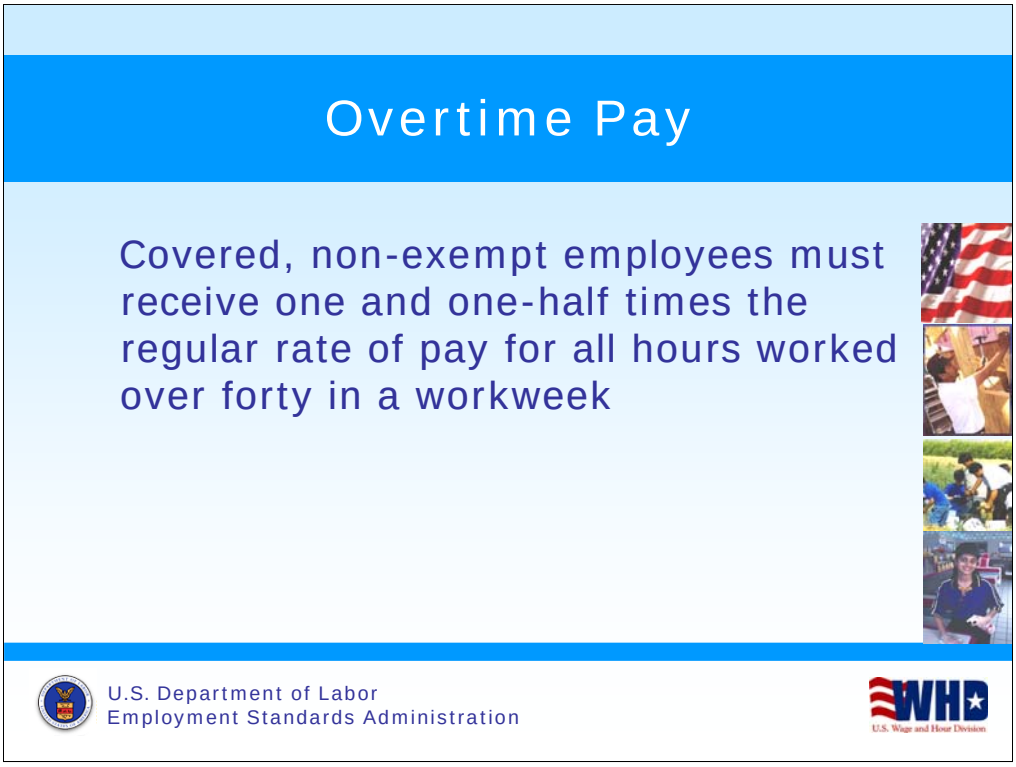
When an employee is required to be on duty for **24 hours or more**, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, if the employer provides adequate sleeping facilities and the 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.



See: 29 U.S.C. 207; 29 CFR 778 Overtime Compensation



There is no limit on the number of hours employees aged 16 and older may work in any workday or workweek. The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest. Also, the FLSA does not require overtime pay over 8 hours in a day, except in certain circumstances for hospital and residential care establishments.

Nothing in the FLSA relieves an employer of any obligation he or she may have by contract or other Federal or State law.

Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned. The employer and employee cannot agree to waive overtime payment that is due under the FLSA.

See also: Fact Sheet No. 023 Overtime Pay Requirements Of the Fair Labor Standards Act (FLSA); WH 1325 Overtime Compensation Under the Fair Labor Standards Act.

Overtime Issues

- Each workweek stands alone
- Regular rate
  - Payments excluded from rate
  - Payments other than hourly rates
  - Tipped Employees
- Deductions

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If an employee who is paid an hourly rate works overtime hours (whether or not the employer recognized them as overtime hours), the employer must pay the employee for all hours worked at the agreed rate plus at least an extra half of that rate for all overtime hours.

Workweek

- Compliance is determined by workweek, and each workweek stands by itself
- Workweek is 7 consecutive 24 hour periods (168 hours)

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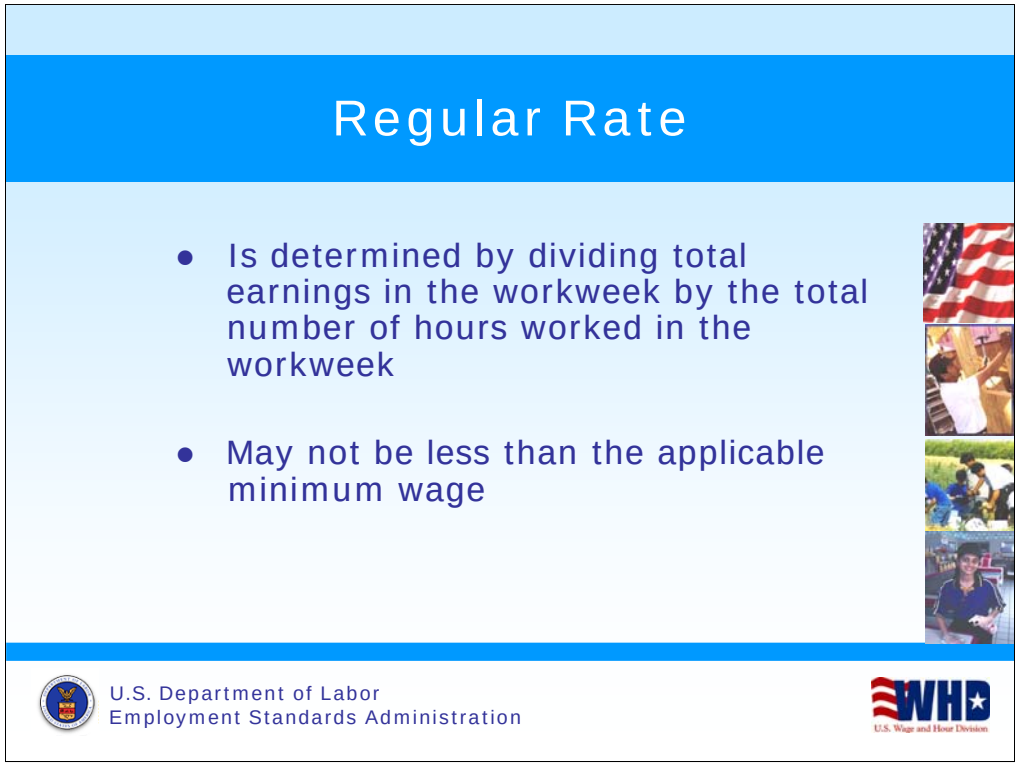
Compliance with wage payment requirements is determined on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It does not need to be a calendar week and may begin on any day and at any hour of the day as set by the employer. Once established, the workweek remains fixed regardless of which hours an employee works. Averaging of hours over two or more weeks is not permitted.



The regular rate includes **all earnings for employment except certain payments excluded by the FLSA. Earnings may be determined on a piece-rate, salary, commission**, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except statutory exclusions) in any workweek by the total number of hours actually worked.

See also: Fact Sheet No. 023 Overtime Pay Requirements of the Fair Labor Standards Act (FLSA).

Regular Rate Exclusions

- Sums paid as gifts
- Payments for time not worked
- Reimbursement for expenses
- Discretionary bonuses
- Profit sharing plans
- Retirement and insurance plans
- Overtime premium payments
- Stock options

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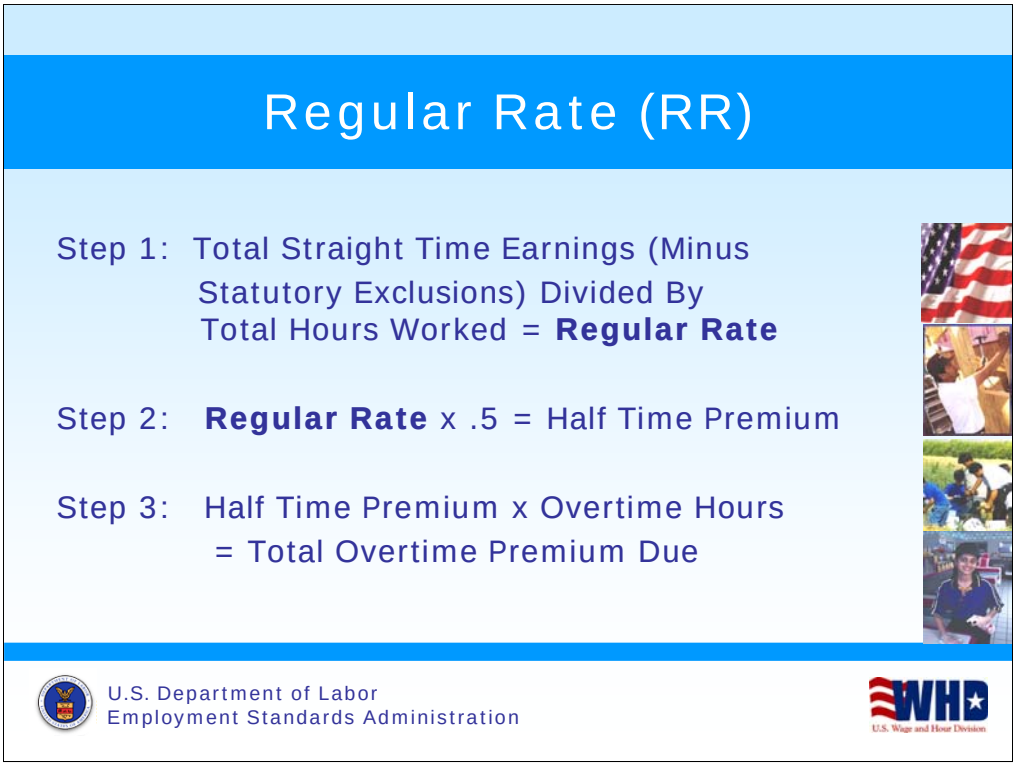
Some payments employees receive are not included when calculating total earnings for regular rate purposes.

See also: 29 U.S.C.207(e); 29 CFR 778; Fact Sheet No. 23 Overtime.



The FLSA does not require employers to pay employees on an hourly rate basis. Their earnings may be determined on a piece-rate, salary, commission, or some other basis, but in each case the overtime pay due must be computed on the basis of the hourly rate derived from these earnings. This is calculated by dividing the total pay for employment (except for the noted statutory exclusions) in any workweek by the total number of hours actually worked.

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the total straight time earnings when computing the overtime due.

See also: WH 1325 Overtime Compensation Under the Fair Labor Standards Act; Fact Sheet No. 023 Overtime Pay Requirements Of the Fair Labor Standards Act (FLSA).

Example: Hourly Rate + Production Bonus

Total Hours = 48
Hourly Rate = $9.00
Bonus = $10

48 hours x $9.00	**=**	**$432.00**
Bonus	**+**	**10.00**
		$442.00

$442.00 / 48 hrs	**=**	**$9.21 (Regular Rate)**
$9.21 x .5	**=**	**$4.61**
$4.61 x 8 hrs	**=**	**$36.88 (Overtime Due)**

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When an employee is paid an hourly rate and a production bonus, the earnings from both the hourly rate and the bonus are added together when determining the total straight time earnings.

This amount is then divided by total hours worked to get the regular rate of pay for overtime purposes.

One-half of the regular rate is the premium amount due for each overtime hour.

See also: 29 CFR 778.209 Overtime Compensation.

Example: Different Hourly Rates

Janitor Rate	$8.50	Janitor Hours	21
Cook Rate	$9.00	Cook Hours	26

21 hours x $8.50 = $178.50
26 hours x $9.00 = $234.00
$412.50

$412.50 / 47 hours = $8.78 (Regular Rate)
$8.78 x 0.5 = $4.39
$4.39 x 7 hours = $30.73 (Overtime Due)

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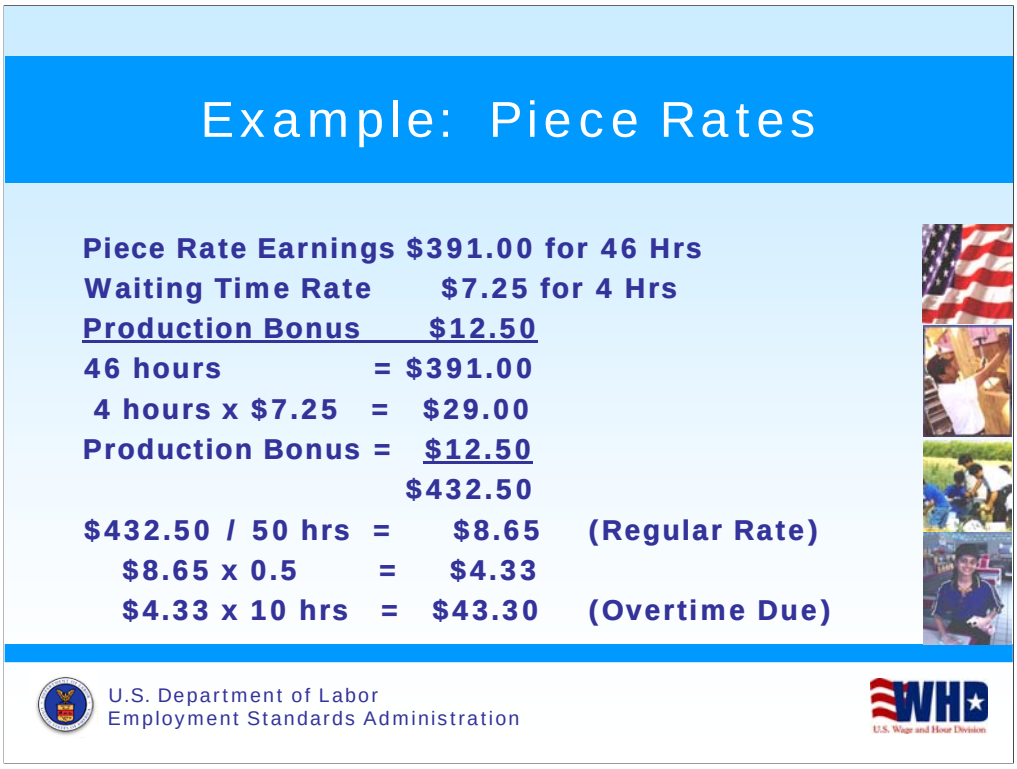
Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs to get the regular rate.

One-half of the regular rate is the premium amount due for each overtime hour.

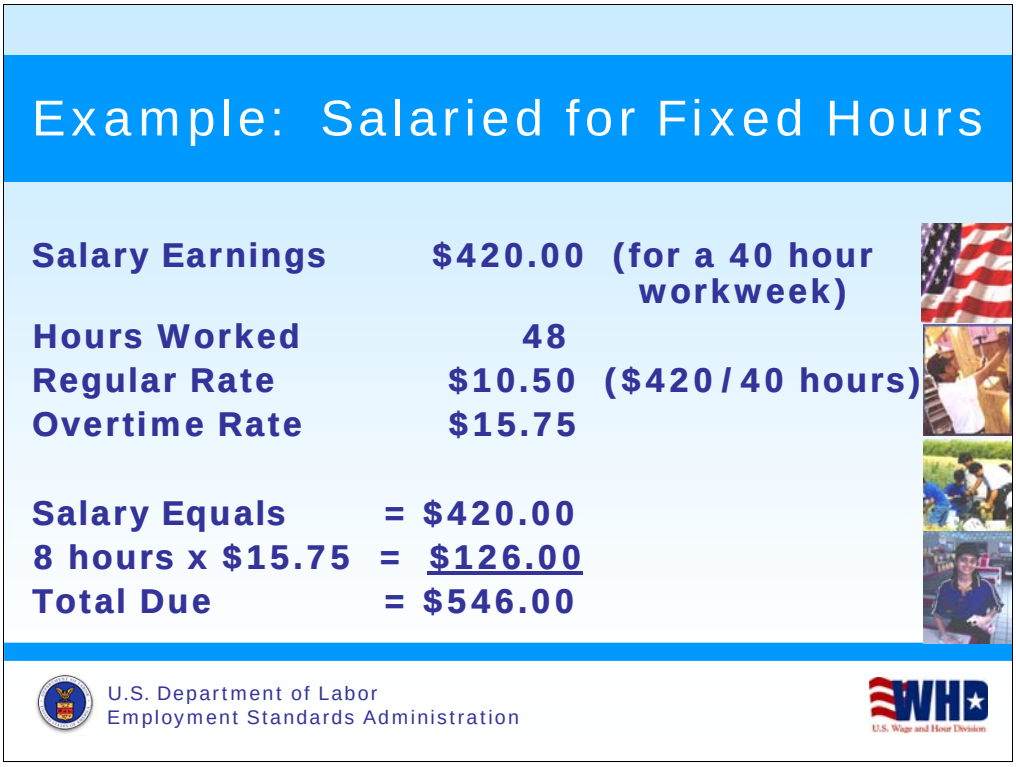
See also: 29 CFR 778.115 Overtime Compensation; *WH 1325 Overtime Compensation Under the Fair Labor Standards Act.*



When an employee is employed on a piece-rate basis, the regular rate of pay is computed by adding together the total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week.

One-half of the regular rate is the premium amount due for each overtime hour.

See also: 29 CFR 778.111 Overtime Compensation.



If the employee is employed solely on a weekly salary basis, the regular rate of pay is computed by dividing the salary by the number of hours which the salary is intended to compensate.

Since the salary only covered 40 hours in this case, the employee is due **one and one-half times** the regular rate for the hours over 40.

See also: 29 CFR 778.113 Overtime Compensation.

Example: Fixed Salary for Fluctuating Hours

Fixed Salary		**$420.00 (for all hours worked)**
Week 1 Hours Worked		**49**
Regular Rate		**$8.57 ($420 / 49 hours)**
Additional Half-Time Rate		**$4.29**
Salary Equals	**=**	**$420.00**
9 hours x $4.29	**=**	**$38.61 (Overtime Due)**
Total Due	**=**	**$458.61**

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The regular rate of an employee whose hours of work fluctuate from week to week and who is paid a stipulated salary with the clear understanding that the salary covers straight time pay for all hours worked (whatever their number and whether few or many) will vary from week to week. The regular rate is determined for each week by dividing the salary by the number of hours worked in the week. It cannot, of course, be less than the applicable minimum wage in any week. Since the salary includes the straight time pay for all hours worked, the employee is due additional half-time for the hours over 40 in the week.

Typically, such salaries are paid to employees who do not customarily work a regular schedule of hours and are in amounts agreed on by the parties as adequate straight-time compensation for long workweeks as well as short ones, under the circumstances of the employment as a whole.

Employees paid a fixed salary for a fluctuating workweek must receive the full salary in weeks in which they work less than 40 hours.

See also: 29 CFR 778.114 Overtime Compensation; WH 1325 Overtime Compensation Under the Fair Labor Standards Act.

Example: Fixed Salary for Fluctuating Hours

Fixed Salary		**$420.00 (for all hours worked)**
Week 2 Hours Worked		**41**
Regular Rate		**$10.24 ($420 / 41 hours)**
Additional Half-Time Rate		**$5.12**
Salary Equals	**=**	**$420.00**
1 hour x $5.12	**=**	**$5.12**
Total Due	**=**	**$425.12**

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The regular rate of pay for an employee paid a fixed salary for fluctuating workweek is higher in weeks in which fewer hours are worked.

See also: 29 CFR 778.114 Overtime Compensation.

Example: Tipped Employee

Rate Employer Pays	$2.13
Tip Credit Claimed	$3.72
Regular Rate	$5.85
Additional Half-Time Rate	$2.93

50 Hours X $5.85	= $292.50
10 hours X $2.93	= $29.30
Total Due	= $321.75 (less tip credit)
Tip Credit 50 x $3.72	= $186.00
Total Cash Wage Due	= $135.75

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The regular rate for a tipped employee is determined by dividing the employee's total earnings (except statutory exclusions) in any workweek by the total number of hours actually worked. The regular rate of pay includes the amount of tip credit taken by the employer; however, any tips received by the employee in excess of the allowable tip credit are not included in the regular rate. An employer may not take a higher tip credit for an overtime hour than for a straight time hour.

If the employer furnishes any facilities to the employee, the reasonable cost or fair value of those facilities are included in the regular rate. Commissions and certain non-discretionary bonuses are also included in the regular rate.

See also: 29 CFR 531.60 Wage Payments Under the Fair Labor Standards Act of 1938.

Deductions in Overtime Workweeks

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Deductions for Board, Lodging and Facilities

- No limit on the amount deducted for the **reasonable cost** of board, lodging, or other facilities
- Items that are primarily for the benefit or convenience of the employer do not qualify as facilities
- Regular rate is calculated before deduction is taken

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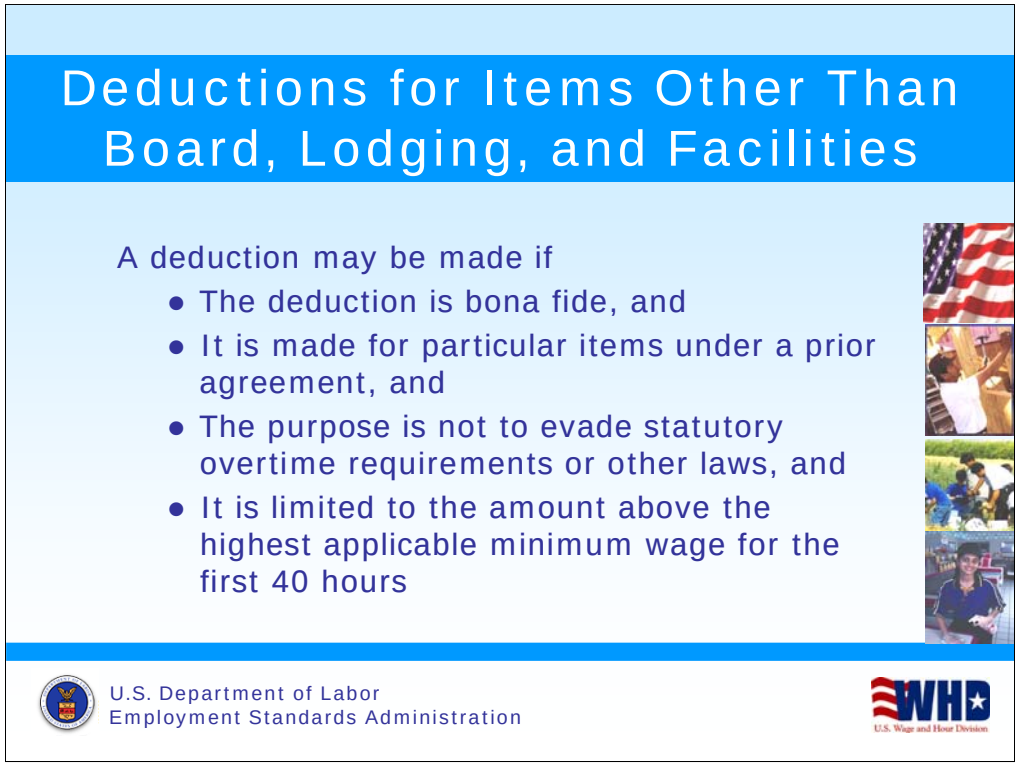
Where the employer charges the employee for board, lodging, and facilities by taking a deduction from the employee's wages, the regular rate is determined before the deductions are made. There is no limit to the amount which may be deducted for these items, provided that the deductions are confined to the reasonable cost of the board, lodging and facilities furnished. Where the deductions are in amounts that exceed the "reasonable cost," the excess amount is handled the same as deductions for items other than "board, lodging or other facilities."

The term "other facilities" means items such as meals furnished at company restaurants; housing furnished; general merchandise bought at company stores; and fuel, electricity, water, and gas furnished for the employee's personal use.

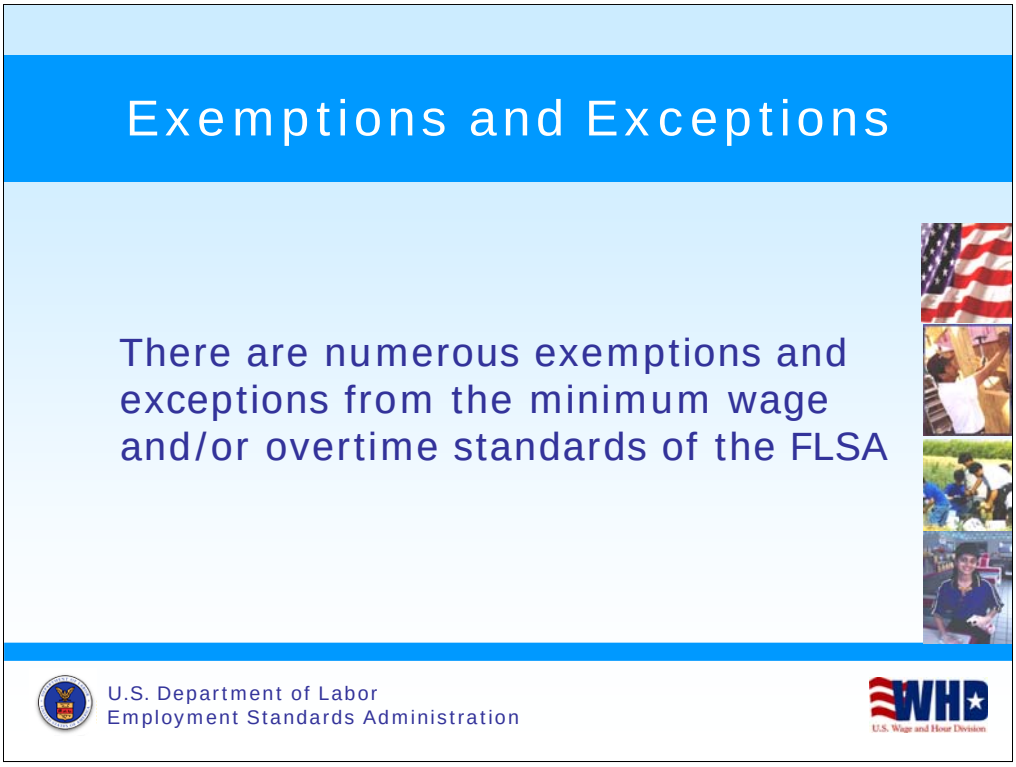


Deductions that are prohibited by other laws (federal, state or local) are not bona fide. Deductions for amounts above the reasonable cost to the employer of furnishing a particular item to an employee are also not bona fide (e.g. furnishing items to employees at a profit or deductions for substandard housing).

In order for the deduction to be valid, the agreement to make the deductions must be reached before the employee performs the work that becomes subject to the deductions. The agreement must be specific concerning the particular items for which the deductions will be made, and the employee must know how the amount of the deductions will be determined. The employee must assent to the employer's deduction policy. The employee's assent to the policy may be written or unwritten; however, the employer bears the burden of proof that an employee has agreed to the deduction policy.

Deductions made only in overtime workweeks, or increases in prices charged during overtime workweeks compared to non-overtime workweeks, are considered to be manipulations to evade statutory overtime requirements and are prohibited.

Deductions are limited to the amount above the highest required minimum wage for the first forty hours. Time and a half the full regular rate (pre-deductions) must be paid for all statutory overtime hours.



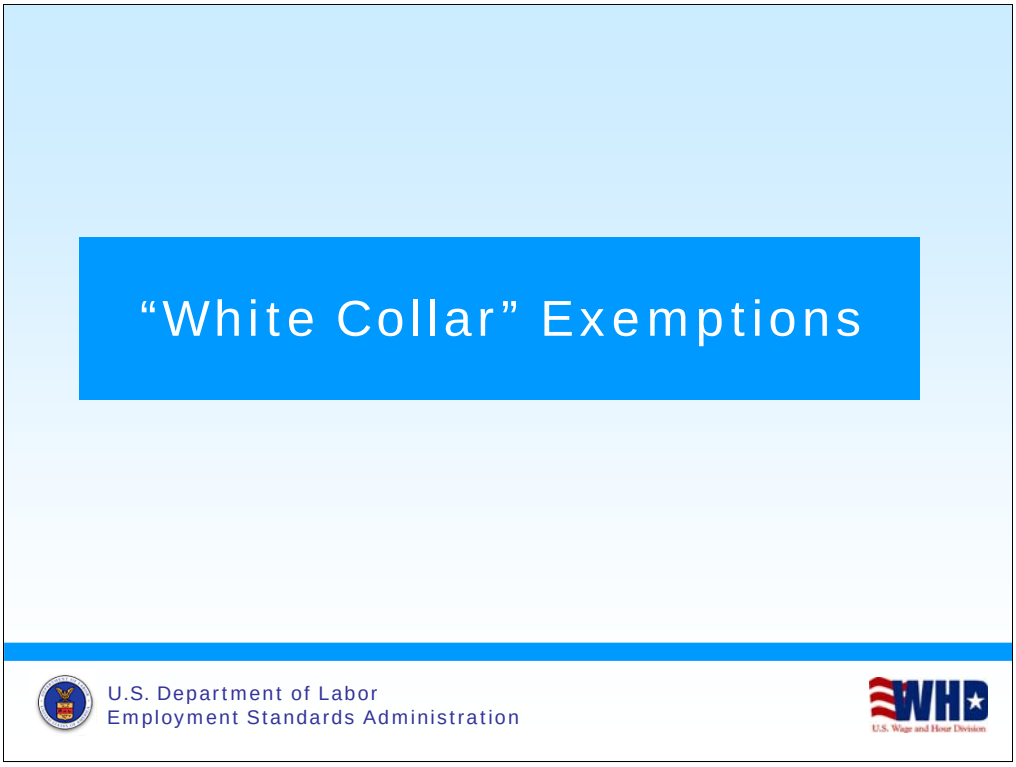
FLSA Sections 7 and 13 contain numerous exceptions (or exemptions) to the minimum wage and/or overtime requirements.

FLSA Section 7 contains overtime exceptions. This presentation includes the exception for certain commissioned sales employees in retail businesses. There are several other exceptions contained in Section 7. Among these are partial exceptions for hospitals and nursing homes and public sector police and fire employees.

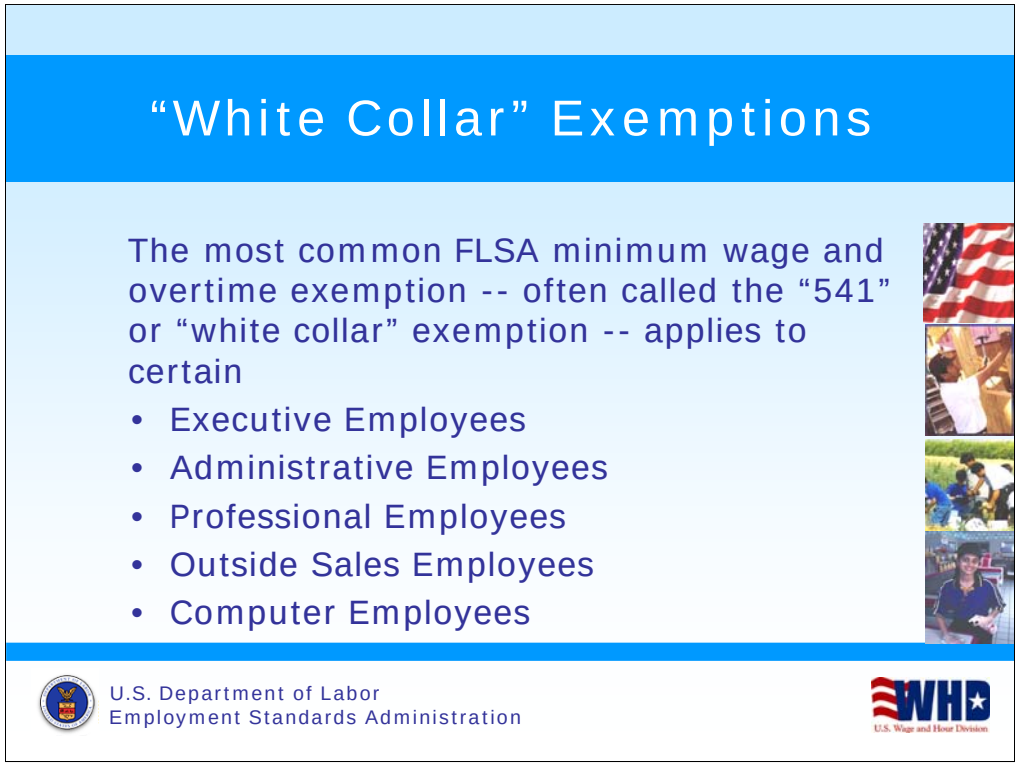
FLSA Section 13(a) contains exceptions to both minimum wage and overtime. This presentation discusses the so-called “white collar” exemption. There are several other exceptions contained in section 13(a) including exceptions for certain amusement or recreational establishments, agricultural operations, and small newspapers.

FLSA Section 13(b) contains exceptions to overtime only. For example, there are exceptions for certain employees who transport property in interstate commerce, for certain employees of automobile dealerships, agricultural employees, taxicab drivers, and movie theater employees. This presentation does not discuss any of the Section 13(b) exceptions.

Additional information about these and other exceptions and exemptions can be obtained by visiting www.wagehour.dol.gov or calling 1-866-4US-WAGE.

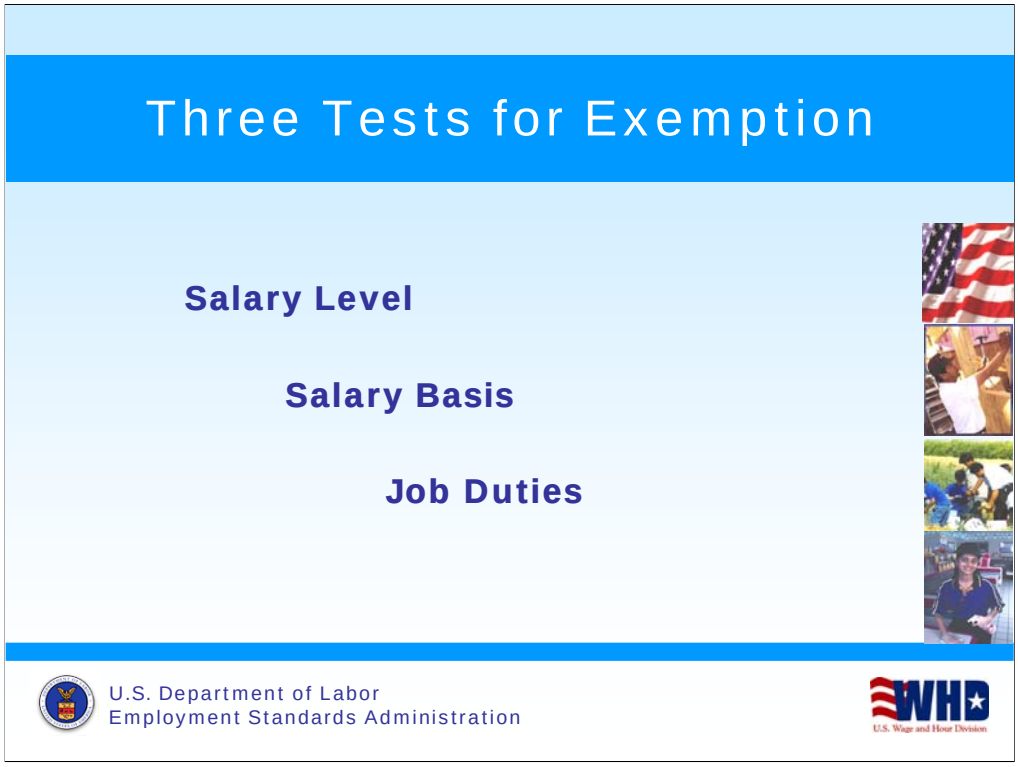


See FLSA Section 13(a)(1) and Section 13(a)(17); 29 CFR 541 Defining the Terms Executive, Administrative, Professional and Outside Salesman; Fact Sheet No. 017A Exemption For Executive, Administrative, Professional, & Outside Sales Employees Under The Fair Labor Standards Act (FLSA).

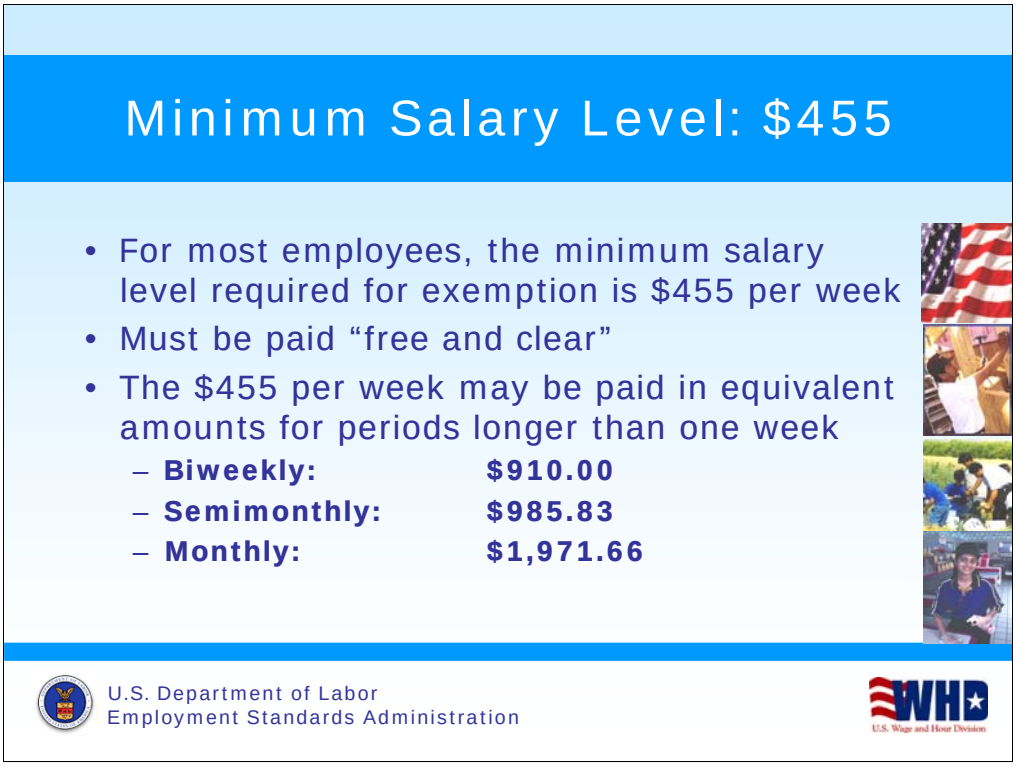


If the requirements of this exemption are met, the employer is not required to (1) pay overtime to the exempt employee or (2) guarantee that the employee receives at least the minimum wage for each hour worked.

See also: 29 U.S.C. 213(a)(1); 29 CFR 541, WH Fact Sheet No. 017A Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA); 29 U.S.C. 213(a)(17).

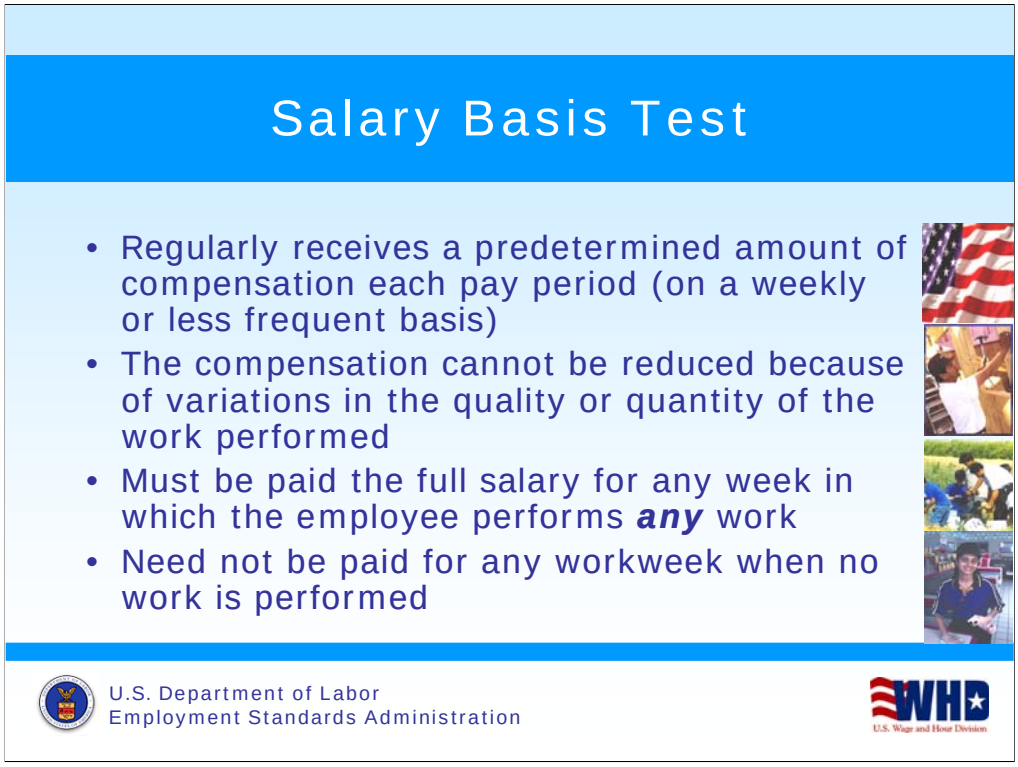


To qualify for exemption, employees must meet three tests for each exemption: An exempt employee must earn a minimum amount. The minimum amount must be paid on a salary basis. In addition, exempt employees must perform certain executive, administrative, professional, outside sales, or computer professional job duties set forth in the regulation.



The minimum salary level required for exemption is $455 per week, which must be paid "free and clear" – that is, the $455 cannot include the value of any non-cash items that an employer may furnish to an employee, like board, lodging, or other facilities (for example, meals furnished to employees of restaurants). For employers that have adopted pay periods longer than one week, the equivalent of the $455 per week salary level is $910 for biweekly pay periods; $985.83 for semimonthly pay periods; and $1,971.66 for monthly pay periods.

See also: 29 CFR 541.600 Amount of Salary Required .



Generally, “salary basis” means that an exempt employee must regularly receive, each pay period and on a weekly or less frequent basis, a “predetermined amount” of compensation that cannot be reduced because of variations in the quality or quantity of work performed. But for a few identified exceptions, the exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. However, exempt employees need not be paid for any workweek when they perform no work.

See also: 29 CFR 541.602 Salary Basis.

Deductions From Salary

- An employee is not paid on a salary basis if deductions from the predetermined salary are made for absences occasioned by the employer or by the operating requirements of the businesses
- If the employee is ready, willing and able to work, deductions may not be made for time when work is not available

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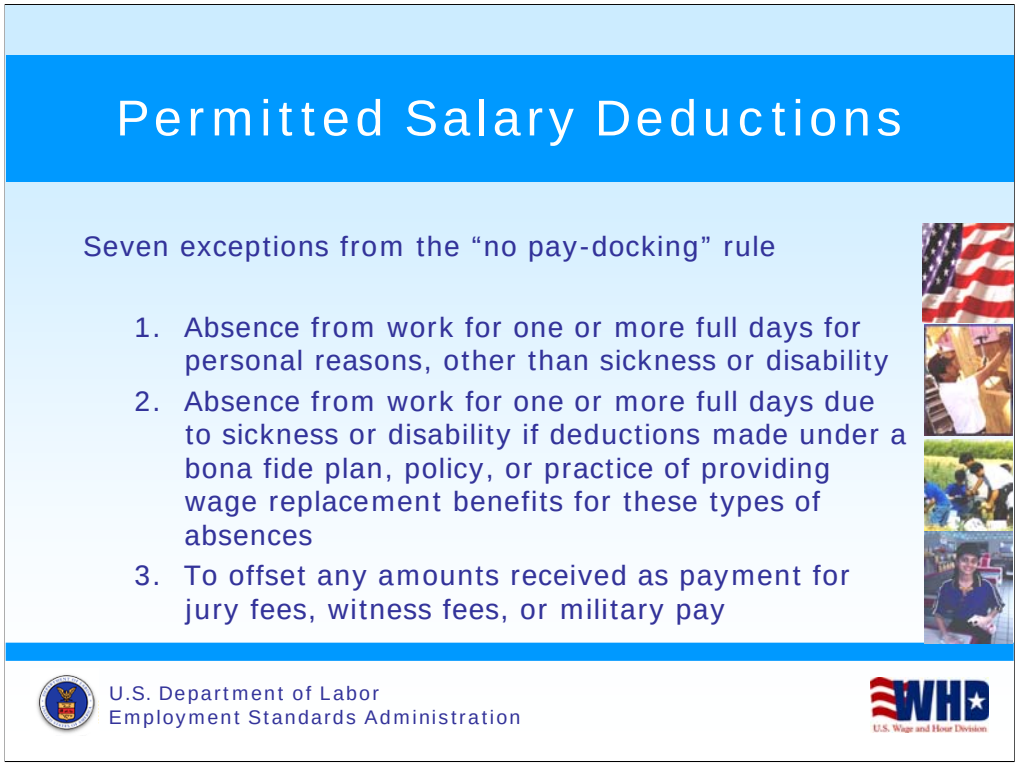
An employee is not paid on a salary basis if the employer makes deductions from the predetermined salary, for example, for absences caused by the employer or because of the operating requirements of the business. If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

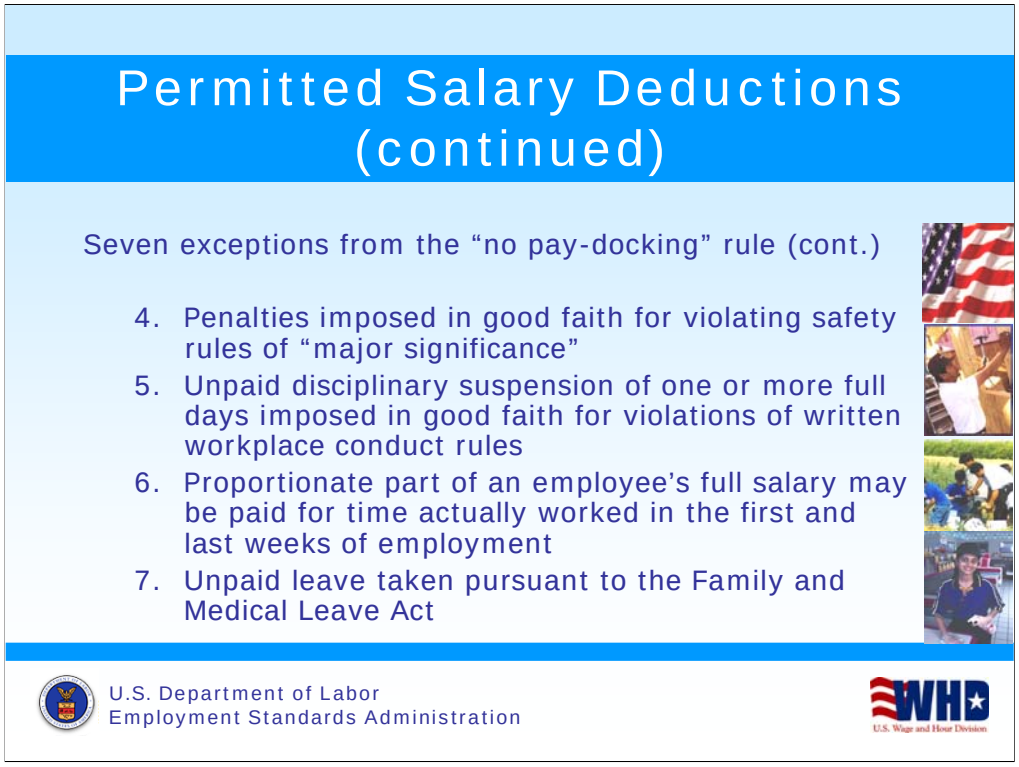


The regulations contain seven exceptions to this salary basis, “no pay-docking” rule. Employers may make deductions from salary of exempt employees in the following situations:

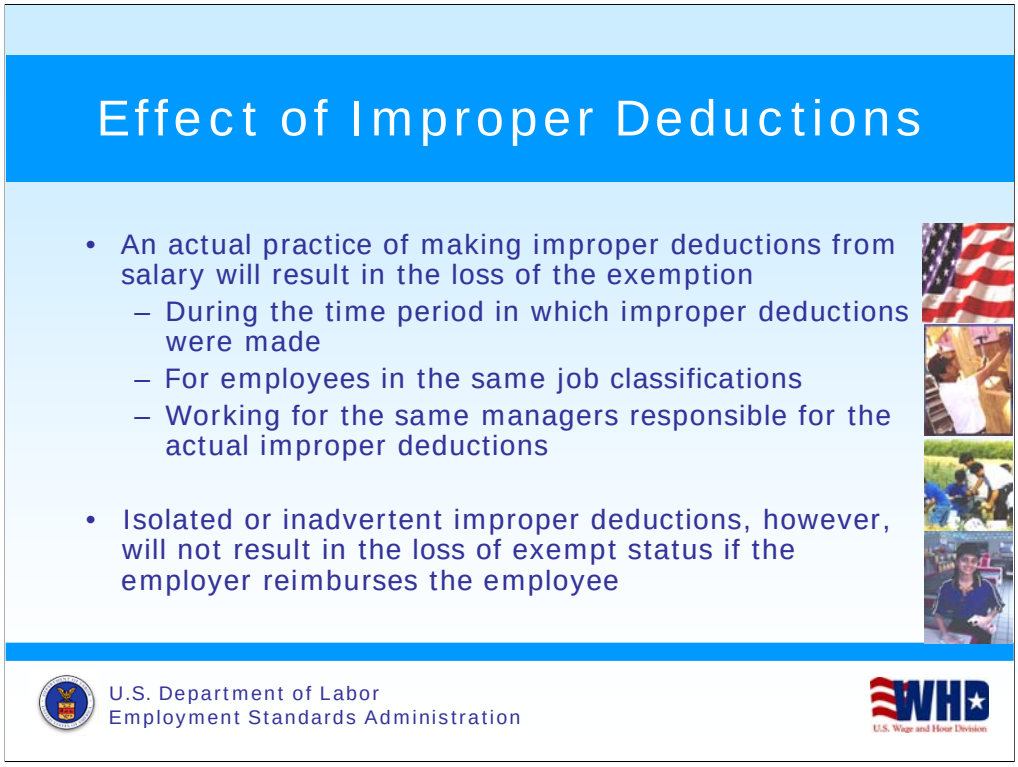
1. An absence from work for one or more full days for personal reasons, other than sickness or disability

2. An absence from work for one or more full days due to sickness or disability if deductions made under a bona fide plan, policy, or practice of providing wage replacement benefits for these types of absences

3. To offset any amounts received as payment for jury fees, witness fees, or military pay



4. Penalties imposed in good faith for violating safety rules of "major significance," such as "no smoking" rules in explosive plants, oil refineries, and coal mines
5. Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of written workplace conduct rules, such as rules prohibiting sexual harassment or workplace violence
6. Proportionate part of an employee's full salary may be paid for time actually worked in the first and last weeks of employment
7. Unpaid leave under the Family and Medical Leave Act



What is the effect on an employee's exemption status if an employer makes improper deductions from the salary? If the facts show that the employer had an actual practice of making improper deductions from salary, the exemption will be lost, and overtime pay due for hours worked over 40 per week during the time period in which improper deductions were made, to employees in the same job classifications and who work for the same managers responsible for the actual improper deductions. Employees in other, different job classifications, or working for other, different managers, would not lose their exempt status. Isolated or inadvertent improper deductions, however, will not result in the loss of exempt status if the employer reimburses the employee for the improper deduction.

See also: 29 CFR 541.603 Effect of Improper Deductions from Salary.

Safe Harbor

- The exemption will not be lost if the employer:
  - Has a **clearly communicated** policy prohibiting improper deductions and including a complaint mechanism
  - Reimburses employees for any improper deductions; and
  - Makes a good faith commitment to comply in the future
- **Unless** the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints

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The regulations provide a safe harbor for employers who have a clearly communicated policy prohibiting improper deductions. If an employer (1) has such a clearly communicated policy which prohibits improper deductions and includes a complaint mechanism, (2) reimburses employees for any improper deductions, and (3) makes a good faith commitment to comply in the future, then the employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.

Executive Duties

- 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

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In addition to the salary requirements, the executive exemption applies only if the following three duties requirements are met: 1) the employee's primary duty must be management; 2) the employee must customarily and regularly direct the work of two or more employees; and 3) the employee must have the authority to hire or fire other employees, or have his/her suggestions and recommendations as to hiring, firing, advancement, promotion or any other change of status given particular weight. This is more protective than the former short test because of the additional "hire or fire" requirement.

20% Owner Executives

- The executive exemption also includes employees who
  - own at least a bona fide 20-percent equity interest in the enterprise
  - are actively engaged in management of the enterprise
- The salary level and salary basis requirements do not apply to exempt 20% equity owners

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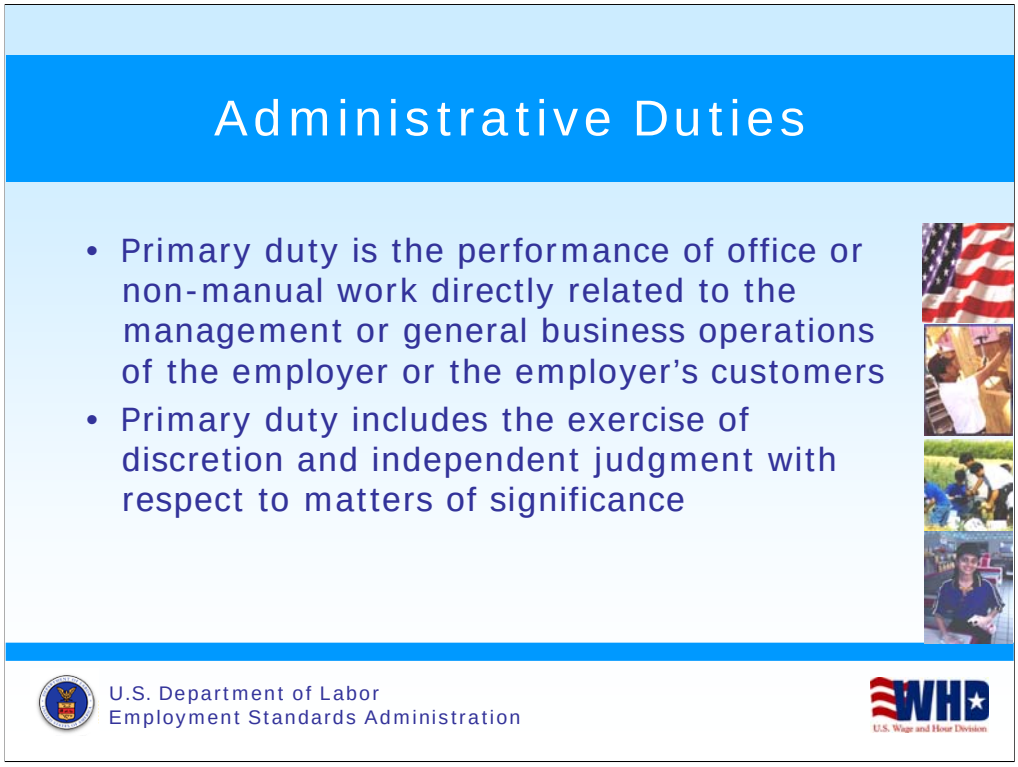
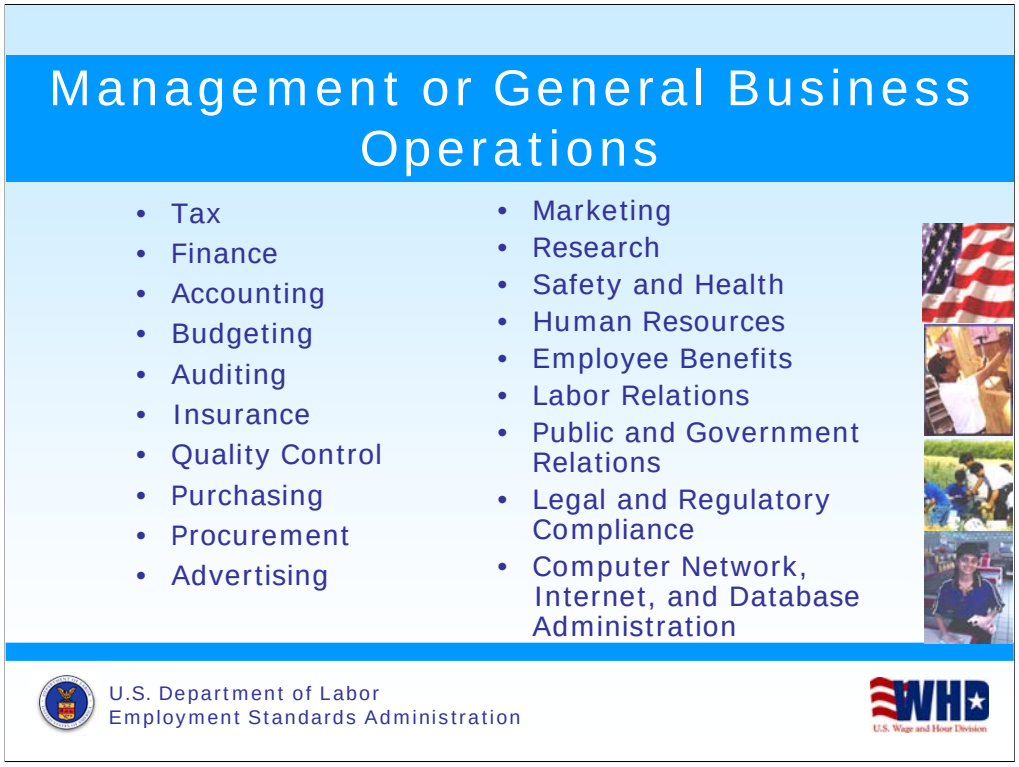
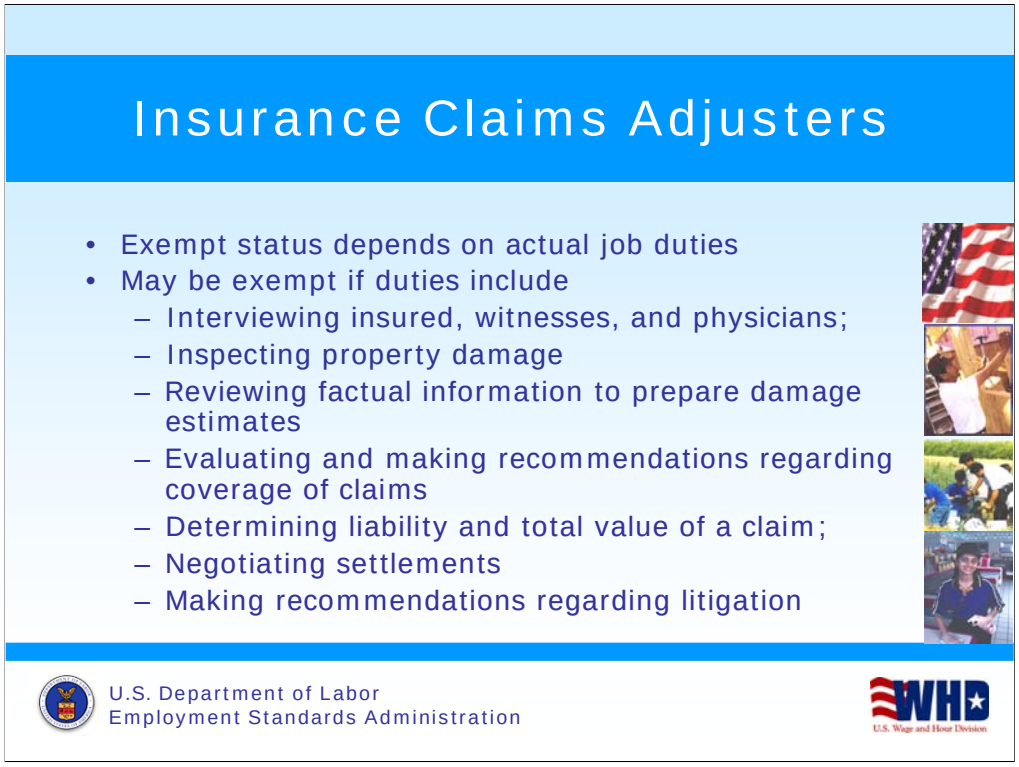
The revised final regulations recognize certain business owners as exempt executives. Employees who own at least 20-percent equity in a business and are actively engaged in the management of the enterprise are exempt executives. There is no duties test for these equity owners.



The duties test for the administrative exemption applies only if: the employee's 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; and the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. This test is substantially the same as the former short test for the administrative exemption.

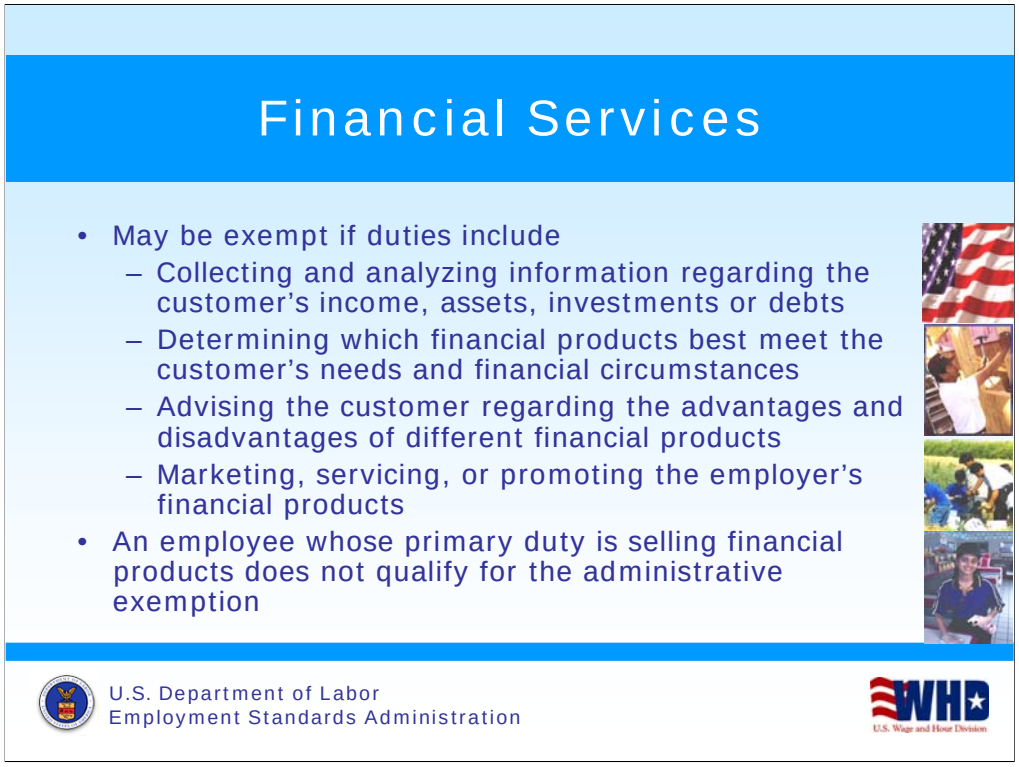


Work “directly related to management or general business operations” includes, but is not limited to, work in such areas as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; advertising; marketing; research; safety and health; human resources; public relations; legal and regulatory compliance; and similar activities.



The regulations contain a number of examples to illustrate when employees may meet the duties requirements for the administrative exemption. For example, although exempt status depends on the actual job duties performed by the employee, insurance claims adjusters generally meet the duties requirements for the administrative exemption if they perform work such as interviewing insureds, witnesses, and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

See also: Fact Sheet No. 017L Insurance Claims Adjusters and the Part 541 Exemptions under the Fair Labor Standards Act.



Financial services employees may meet the duties requirements for the administrative exemption if their duties include collecting and analyzing information regarding the customer's income, assets, investments, or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing, or promoting the employer's financial products. However, a financial services employee whose primary duty is selling financial products does not qualify for the administrative exemption.

See also: Fact Sheet No. 017M Financial Services Industry Employees and the Part 541 Exemptions Under the Fair Labor Standards Act.

Professional Duties

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

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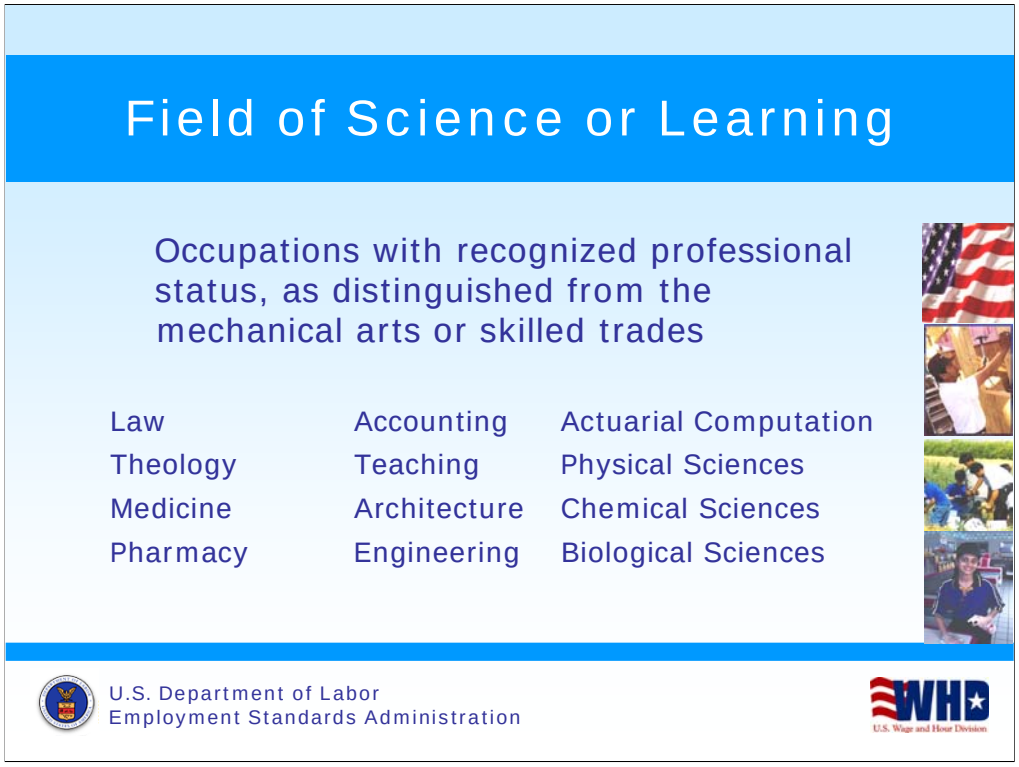
In addition to the salary requirements, the professional exemption applies only if the duty requirements are met. The primary duty must be the performance of work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.



Fields of science or learning are occupations with recognized professional status, as distinguished from the mechanical arts or skilled trades. Fields of science or learning include: law; theology; medicine; pharmacy; accounting; teaching; architecture; engineering; and the physical, chemical, or biological sciences.

Exempt Medical Professions

- Doctors
- Registered Nurses
- Registered or certified medical technologists
  - 3 years of pre-professional study in an accredited college or university, plus 1 year of professional study in an accredited school of medical technology
- Dental hygienists
  - 4 years of pre-professional and professional study in an accredited college or university
- Certified physician assistants
  - 4 years of pre-professional and professional study, including graduation from an accredited physician assistant program

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The learned professional exemption applies to any employee who holds a valid license or certificate permitting the practice of medicine, including osteopathic physicians, podiatrists, dentists and optometrists. The exemption is also available to an employee who holds the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program.

Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. However, many registered nurses receive overtime pay because they are paid by the hour, not on a salary basis as required for exemption. Licensed practical nurses generally *do not* qualify as exempt learned professionals.

Registered or certified medical technologists, dental hygienists, and certified physician assistants also generally meet the duties requirements for the learned professional exemption if they successfully complete four years of study in an accredited college or university.

Other Commonly Exempt Professions

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified athletic trainers
- Licensed funeral directors or embalmers

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Other exempt learned professionals may include: lawyers, teachers, accountants, pharmacists, engineers, actuaries, chefs, certified athletic trainers, and funeral directors or embalmers, where the regulatory tests are satisfied, such as completion of a prolonged course of specialized intellectual instruction.

Additional Nonexempt Professions

- Licensed practical nurses
- Accounting clerks and bookkeepers who normally perform a great deal of routine work
- Cooks who perform predominantly routine mental, manual, mechanical or physical work
- Paralegals and legal assistants
- Engineering technicians

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Employees who do not meet the requirements for the learned professional exemption include: accounting clerks and bookkeepers who normally perform a great deal of routine work; cooks who perform predominantly routine mental, manual, mechanical, or physical work; paralegals and legal assistants; and engineering technicians.

Recognized Field of Artistic or Creative Endeavor

- Music
  - Musicians, composers, conductors, soloists
- Writing
  - Essayists, novelists, short-story writers, play writers
  - Screen play writers who choose their own subjects
  - Responsible writing positions in advertising agencies
- Acting
- Graphic Arts
  - Painters, photographers, cartoonists

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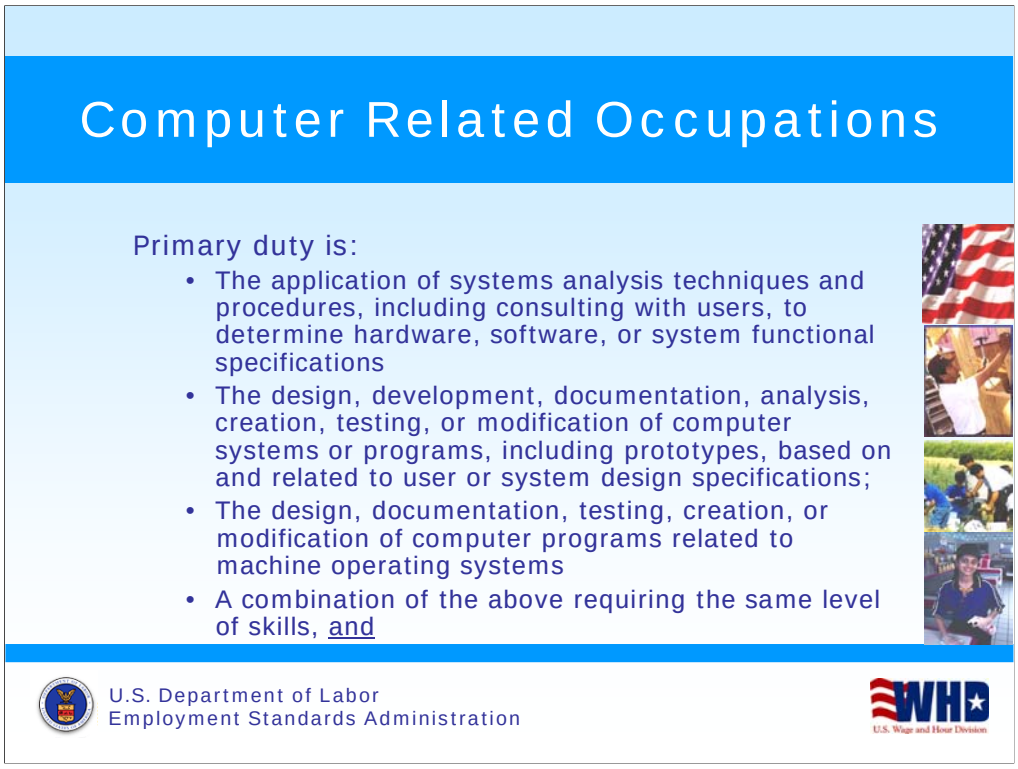
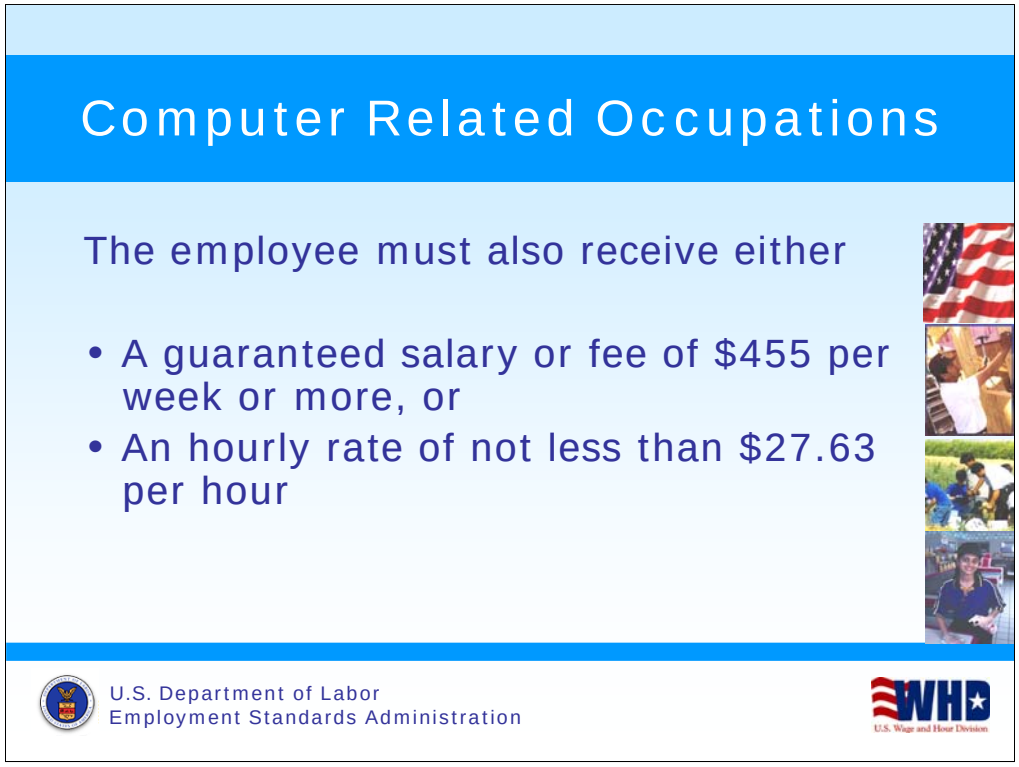
The recognized fields of artistic or creative endeavor include music, writing, acting and the graphic arts. Thus, exempt creative professionals include musicians, composers, conductors, novelists, screen writers, actors, painters, and photographers.



Employees who qualify for this exemption work in computer systems analysis, programming, or related work. Trainees or employees in entry level positions who do not work independently do not typically qualify for exemption. Employees who are engaged in the operation or manufacture, repair, or maintenance of computers do not qualify for this 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 not included in this 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.



Employees engaged in computer-related work must receive either the $455 per week guaranteed salary or fee required for other exemptions or an hourly rate of at least $27.63.

See also: 29 U.S.C. 213(a)(17); 29 CFR 541.3.

Outside Sales

- Primary duty is
  - Making sales or
  - Obtaining orders or contracts for services or facilities for consideration paid by customer and
- Customarily and regularly engaged away from the employer's place(s) of business in performing such primary duty
- No compensation test

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In order to be exempt as an outside sales employee, the employee's primary duty must be making sales or obtaining orders or contracts for services or use of facilities for which a consideration will be paid by the client or customer, and the employee must be customarily and regularly engaged away from the employer's place or places of business in performing these duties. Work performed that is incidental to and in conjunction with, or which furthers, the employee's own outside sales or solicitation efforts is considered exempt outside sales work, even when performed at the employer's establishment.

See also: 29 CFR 541.500 General Rules for Outside Sales Employees.

This exception is contained in Section 7(i) of the FLSA. See also: 29 CFR 779.410-779.419 The Fair Labor Standards Act as Applied to Retailers of Goods and Services; Fact Sheet No. 020 Employees Paid Commissions by Retail Establishments Who are Exempt Under Section 7(i) from Overtime under the Fair Labor Standards Act (FLSA)

Restaurants and hotels frequently charge banquet customers or large parties a percentage of the bill as a mandatory service charge. If part or all of that service charge is paid to service employees, the payment is normally considered a commission rather than a tip.

See also: Fact Sheet No. 020 Employees Paid Commissions by Retail Establishments Who are Exempt Under Section 7(i) from Overtime under the Fair Labor Standards Act (FLSA)

Requirements for Exception

- The employee must be employed by a retail or service establishment
- More than half the employee's total earnings in a representative period must represent commissions on goods or services
- Employee's total compensation divided by number of hours worked or regular rate must exceed one and one-half times the minimum wage

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See 29 U.S.C. 207(i)

Requirements for Exception

Unless all three conditions are met, the exception does not apply, and overtime premium pay must be paid for all hours worked over forty in a workweek at one and one-half times the regular rate of pay

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Accurate records of hours worked and earnings are needed in order for the employer to determine if the exception applies.

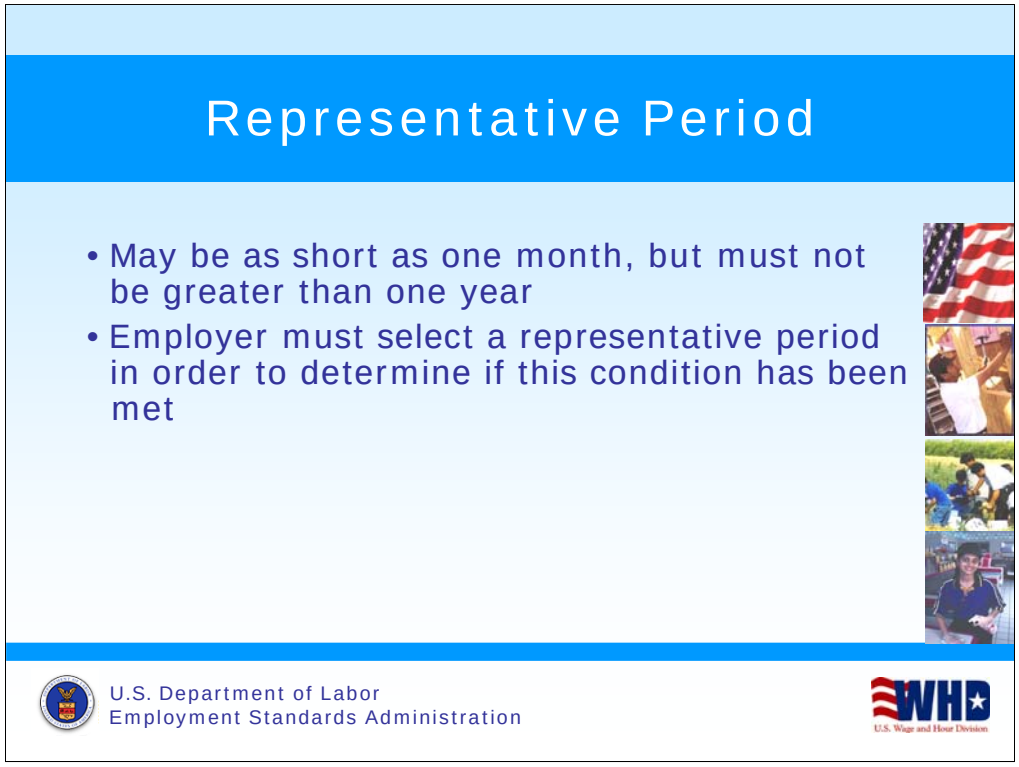
See also: Fact Sheet No. 020 Employees Paid Commissions by Retail Establishments Who are Exempt Under Section 7(i) from Overtime under the Fair Labor Standards Act (FLSA).

Some examples of retail businesses are:

•Public parking lots
•Auto repair shops
•Trailer camps
•Cemeteries
•Automobile Dealership
•Hotels
•Restaurants
•Florists
•Theaters

Some examples of business that are not retail are:

•Accounting firms
•Ambulance services
•Airports
•Dentist/Doctor offices
•Labor Unions
•Laundries/Dry cleaners
•Gambling Establishments
•Lawyer's offices



The employer must select a representative period of at least one month, but not more than one year, to test whether or not the employee is paid principally by commissions.

See also: Fact Sheet 20 Employees Paid Commissions by Retail Establishments Who are Exempt under Section 7(i) from Overtime under the Fair Labor Standards Act.

More than One and One-Half Times the Minimum Wage

To determine if the regular rate exceeds one and one-half times the minimum wage, divide the employee's total earnings for the pay period by the employee's total hours worked during the pay period

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The FLSA youth employment provisions apply to minors under 18 years of age and are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.

The federal youth employment provisions do not:

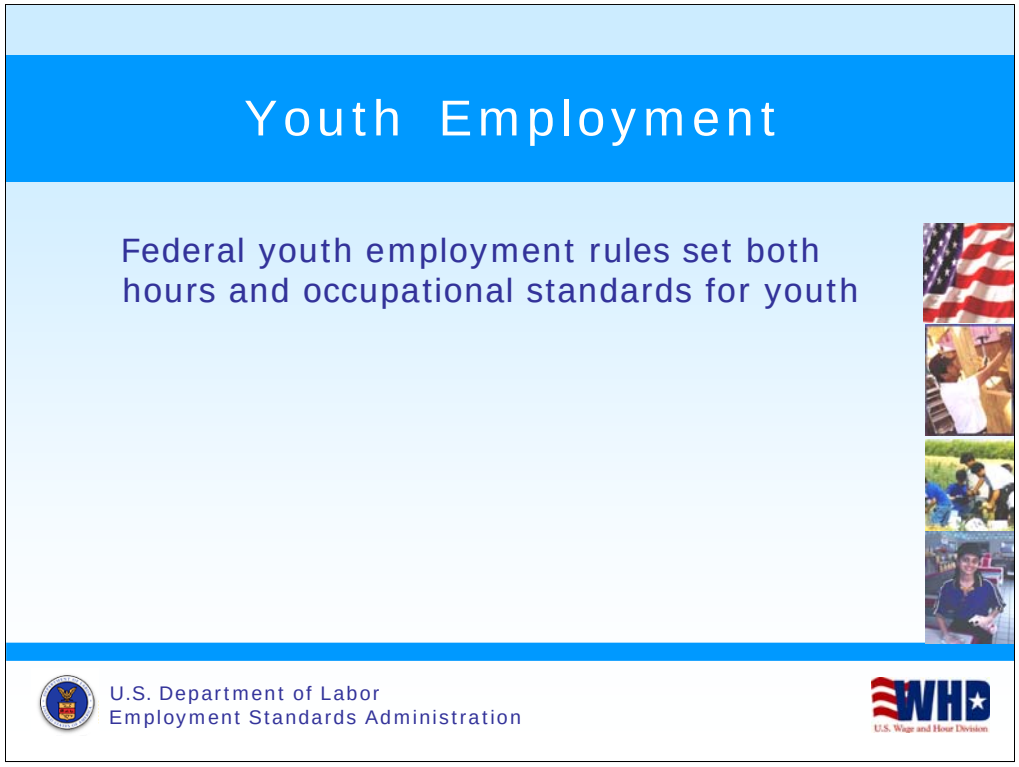
•Require minors to obtain “working papers” or “work permits,” though many states do.

•Limit the number of hours or times of day that workers 16 years of age and older may legally work, though many states do

There are no limitations on the hours or occupations of minors age 18 and older.

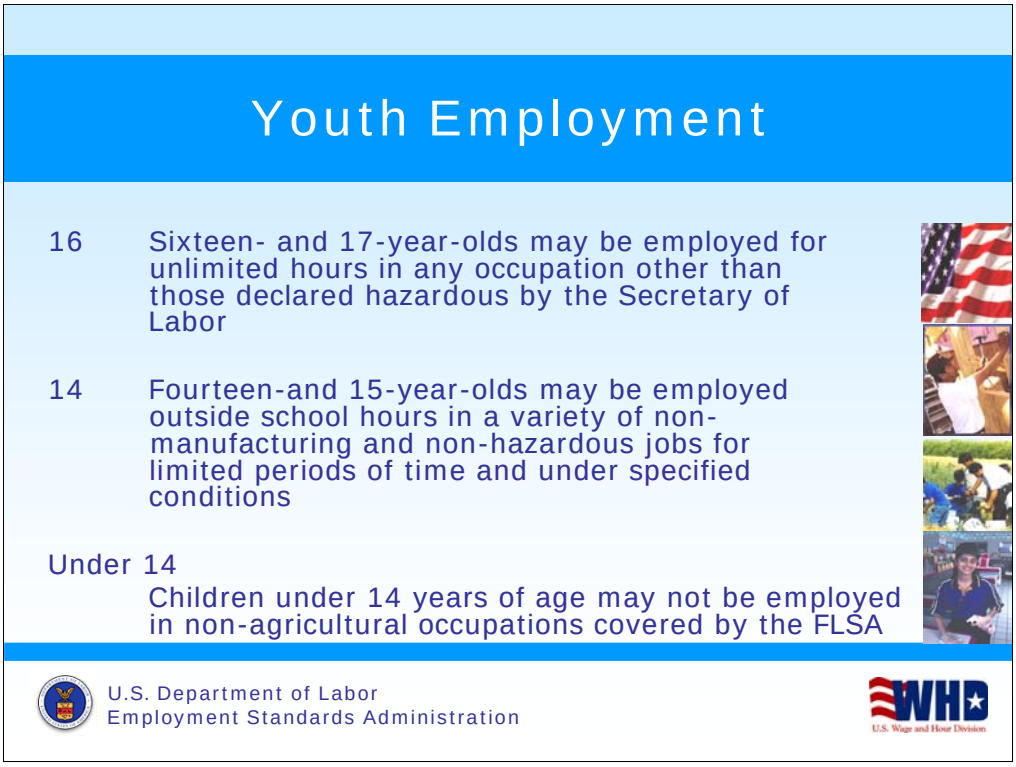
Other Federal and State laws may have higher standards. When these apply, both standards must be observed.

See also: 29 U.S.C. 212; 29 CFR 570 Child Labor Regulations, Orders and Statements of Interpretation; WH 1330 Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act; Fact Sheet No. 043 Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations.



Children of any age are generally permitted to work for businesses entirely owned by their parents, except (1) those under 16 may not be employed in mining or manufacturing and (2) no one under 18 may be employed in any other occupation the Secretary of Labor has declared to be hazardous.

See also: 29 U.S.C. 212; 29 CFR 570 Child Labor Regulations, Orders and Statements of Interpretation; WH 1330 Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act; Fact Sheet No. 043 Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations.



Once a youth reaches 18 years of age, he or she is no longer subject to the federal youth employment provisions.

Minors under 14 are permitted to work in jobs that are exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual baby-sitting.

There are 17 occupations or industries that the Secretary of Labor has declared as hazardous for minors under 18. Additional information on these occupations is available from the U.S. Department of Labor's Wage and Hour Division.

Recordkeeping

An accurate record of the hours worked each day and total hours worked each week is critical to avoiding compliance problems

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See also: FLSA Section 11; 29 CFR 516 Records to Be Kept by Employers; Fact Sheet No. 021 Recordkeeping Requirements Under The Fair Labor Standards Act (FLSA).

Recordkeeping

The FLSA requires that all employers subject to any provision of the Act make, keep, and preserve certain records

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Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

Payroll records, collective bargaining agreements, sales and purchase records must be preserved for at least three years. Records on which wage computations are based should be retained for two years, e.g., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages.

The records may be maintained and preserved in electronic format provided viewing equipment is available. The electronic version must also be clear and identifiable by date or pay period. Such records must be available at one or more of the employer's established central recordkeeping offices where such records are customarily maintained. The records shall be made available within 72 hours of notice from the Wage and Hour Division, which may ask the employer to make computations or transcriptions.

See also:29 CFR 516.1(a) Records To Be Kept By Employers; Fact Sheet No. 021Recordkeeping Requirements Under The Fair Labor Standards Act (FLSA).

The following is a listing of the basic records that an employer must maintain:

1. Employee's full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee's workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee's wages are paid (e.g., "$9 an hour," "$420 a week," "piecework")
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee's wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

There are different or additional recordkeeping requirements for “white collar” exempt employees and for homeworkers, employees who receive board, lodging, and facilities, and those paid under certificates.

See also: 29 CFR 516 Records To Be Kept By Employers; Fact Sheet No. 021 Recordkeeping Requirements Under The Fair Labor Standards Act (FLSA).

29 CFR 516.4 Records To Be Kept by Employers

The official poster outlining the provisions of the Act is available at no cost by calling1-866-4USWage (1-866-487-9243). This poster is also available electronically for downloading and printing at:

www.dol.gov/dol/osbp/public/sbrefa/poster/main.htm

Common Errors to Avoid

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Common Errors to Avoid

- Assuming that all employees paid a salary are not due overtime
- Improperly applying an exemption
- Failing to pay for all hours an employee is "suffered or permitted" to work
- Limiting the number of hours employees are allowed to record

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Nothing in the FLSA prohibits an employer from limiting the number of hours employees work.

Common Errors to Avoid

- Failing to include all pay required to be included in calculating the regular rate for overtime
- Failing to add all hours worked in separate establishments for the same employer when calculating overtime due

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Common Errors to Avoid

- Making improper deductions from wages that cut into the required minimum wage or overtime. Examples: shortages, drive-offs, damage, tools, and uniforms
- Treating an employee as an independent contractor
- Confusing Federal law and State law

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The FLSA Does Not Require

- Vacation, holiday, severance, or sick pay
- Meal or rest periods, holidays off, or vacations
- 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

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

Compliance Assistance Materials - FLSA

- The Law
- The Regulations (29 C.F.R. Part 500-899)
- Interpretive Guidance (opinion letters, field operations handbook, and field bulletins)
- FLSA Poster
- Handy Reference Guide
- Fact Sheets
- Information for New Businesses
- Department of Labor Home Page

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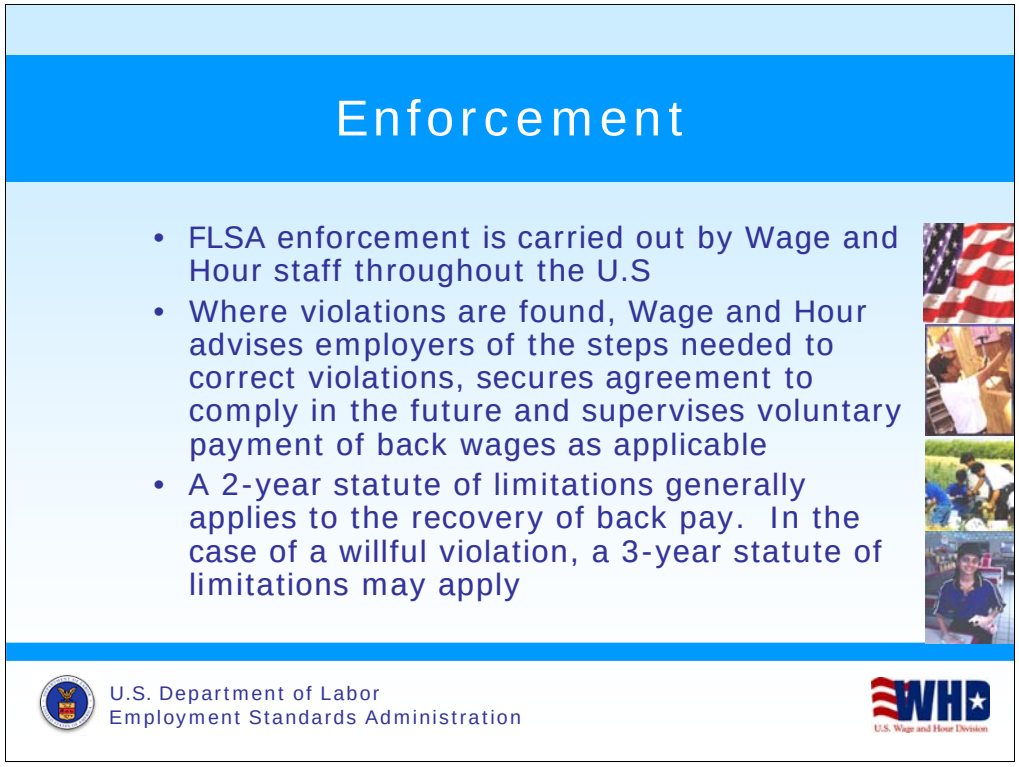

The FLSA authorizes Department of Labor representatives to investigate wages, hours, and other employment practices; enter and inspect an employer's premises and records; and question employees to determine whether any person has violated any provision of the FLSA. The investigator will identify himself/herself and present official credentials. The investigator will explain the investigation process and the types of records required during the review.

An investigation consists of the following steps:

•Examination of records to determine which laws or exemptions apply. These records include, for example, those showing the employer's annual dollar volume of business, involvement in interstate commerce, and work on government contracts. *Information from an employer's records will not be revealed to unauthorized persons.*

•Examination of payroll and time records, and taking notes or making transcriptions or photocopies essential to the investigation.

•Interviews with certain employees in private. The purpose of these interviews is to verify the employer's payroll and time records, to identify workers' particular duties in sufficient detail to decide which exemptions apply, if any, and to confirm that minors are legally employed. Interviews are normally conducted on the employer's premises. In some instances, present and former employees may be interviewed at their homes or by mail or telephone.

•When all the fact-finding steps have been completed, the investigator will ask to meet with the employer and/or a representative of the firm who has authority to reach decisions and commit the employer to corrective actions if violations have occurred. The employer will be told whether violations have occurred and, if so, what they are and how to correct them. If back wages are owed to employees because of minimum wage or overtime violations, the investigator will request payment of back wages and may ask the employer to compute the amounts due.

Employers may be represented by their accountants or attorneys at any point during this process. When the investigator has advised the employer of his/her findings, the employer or representative may present additional facts for consideration if violations were disclosed.

See also: Fact Sheet No. 044 Visits to Employers.

Enforcement

In the event there is not a voluntary agreement to comply and/or pay back wages, the Wage and Hour Division may:

- Bring suit to obtain an injunction to restrain the employer from violating the FLSA, including the withholding of proper minimum wage and overtime
- Bring suit for back wages and an equal amount as liquidated damages

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Employee Private Rights

An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs

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Penalties

- Employers who willfully violate the Act may be prosecuted criminally and fined up to $11,000
- Employers who violate the youth employment provisions are subject to a civil money penalty of up to $11,000 for each employee who was the subject of a violation
- Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to $1,100 for each such violation

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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

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