Fact Sheet #31: Nursing Care Facilities Under the Fair Labor Standards Act

This fact sheet provides general information concerning the application of the minimum wage, overtime pay and child labor requirements of the Fair Labor Standards Act (FLSA) to skilled nursing care facilities, intermediate care facilities, and nursing and personal care facilities. It is designed to provide general information on the requirements of the FLSA and to alert employers to certain employment practices that result in FLSA violations.

Coverage: The FLSA covers all nursing care enterprises, public and private, whether operated for profit or not for profit.

Minimum Wage: FLSA covered employers are required to pay all nonexempt employees the Federal minimum wage of not less than $7.25 an hour effective July 24, 2009, on their regularly scheduled payday.

Overtime: Employers must also pay all non-exempt employees a rate of time-and-one-half the regular rate of pay for each hour of overtime worked. Nursing care facilities may pay employees overtime after 40 hours in a 7 day workweek or alternatively, use the "8 and 80" system. Under the "8 and 80" system, the nursing care facility may pay employees -- with whom they have a prior agreement -- overtime for any hours worked after more than 8 hours in a day and more than 80 hours in a 14-day period.

Recordkeeping: Employers are required to maintain accurate payroll and time records. Time records must be preserved for two years and payroll records must be kept for three years. Employers must also record and maintain the dates of birth for employees under age 19.

Exemptions: Certain employees whose primary duties are managerial, administrative, or professional in nature are exempt from the FLSA's minimum wage and overtime pay requirements.

Youth Employment: The FLSA sets a minimum age of 14 for most youth employed in covered non-agricultural employment. Fourteen- and 15-year-olds can work for limited periods of time each day (outside school hours) in specified occupations which do not interfere with their schooling, health, or well-being. Sixteen- and 17-year-old individuals may work at any time for unlimited hours in all jobs not declared hazardous by the Secretary of Labor.

Common Industry Problems

Non-exempt employees must be compensated for any time during which they perform activities that benefit the employer.

The most common violation in the nursing care industry is the failure of employers to pay for all the hours worked. This uncompensated time most frequently occurs when employers fail to pay for work performed:

- Before and after a worker's scheduled shift;
- During an employee's scheduled meal period; and
- While employees are attending staff meetings and compensable training sessions.
Minimum wage and overtime pay violations also occur when employers make deductions or demand reimbursement for the cost of required uniforms or equipment.

Individuals not otherwise employed by the facility who volunteer – without expectation of pay – to attend to the comfort of nursing home residents in a manner not otherwise provided by the facility are not considered employees under the FLSA. However, individuals (including residents) who perform work of any consequential economic benefit to the facility are employees and entitled to FLSA minimum wage and overtime.

Overtime pay violations often occur when employers:

- Fail to pay overtime after 8 hours of work in a day for workers (both full time and part time) who are under the "8 and 80" system.
- Pay overtime after 80 hours worked during a biweekly period rather than after 40 hours in a workweek to employees not under the "8 and 80" system.
- Fail to combine hours worked in more than one department or at more than one facility when determining the total overtime hours worked.
- Fail to include in calculating overtime hours the time spent or hours worked while performing on-call assignments.
- Fail to include shift differential, bonuses or on-call fees in calculating an employee's regular rate.
- Fail to pay overtime to non-exempt, salaried employees (e.g., clerical staff, cooks, and activities directors).

Other Pertinent Labor Laws

- The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act requires employers to complete and maintain I-9 forms to verify the employment eligibility of all individuals hired after November 6, 1986, and contains certain anti-discrimination provisions.
- The Family and Medical Leave Act entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year for specified family and medical reasons.
- The Employee Polygraph and Protection Act prohibits most employers from using any type of lie detector test either for pre-employment screening of job applicants or, with certain exceptions, during the course of employment.
- The Nursing Relief for Disadvantaged Areas Act of 1999 provides for the enforcement of employment conditions attested to by employers in disadvantaged areas employing H-1C temporary nonimmigrant registered nurses.
- The McNamara-O'Hara Service Contract Act requires the payment of prevailing wages and fringe benefits to service employees on contracts for the provision of services to the Federal government.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243). This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.
Fact Sheet #43: Youth Employment Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations

This Fact Sheet provides general information about the Federal youth employment provisions applicable to nonagricultural occupations. Different standards apply to farm work.

The Department of Labor is committed to helping young workers find those positive and early employment experiences that can be so important to their development, but the work must be safe. The youth employment provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being or educational opportunities. Employers are subject to the youth employment provisions generally under the same coverage criteria as established for the other provisions of the FLSA.

It is an unfortunate fact that children do get injured, even killed, in the workplace. The National Institute for Occupational Safety and Health estimates that 160,000 American children suffer occupational injuries every year—and 54,800 of these injuries are serious enough to warrant emergency room treatment.

Both Federal and State laws govern the employment of young workers and when both are applicable, the law with the stricter standard must be obeyed.

The Federal youth employment provisions do not:

- require minors to obtain "working papers" or "work permits," though many States do;
- restrict the number of hours or times of day that workers 16 years of age and older may be employed, though many States do;
- apply where no FLSA employment relationship exists;
- regulate or require such things as breaks, meal periods, or fringe benefits;
- regulate such issues as discrimination, harassment, verbal or physical abuse, or morality, though other Federal and State laws may.

Minimum Age Standards For Employment

The FLSA and the youth employment regulations issued at 29 CFR, Part 570, establish both hours and occupational standards for youth. Children of any age are generally permitted to work for businesses entirely owned by their parents, except those under age
16 may not be employed in mining or manufacturing and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.

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

16 Basic minimum age for employment. Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor.

14 Young persons 14 and 15 years of age may be employed outside school hours in a variety of non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions.

Under Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA. Permissible employment for such children is limited to work that is 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.
OCCUPATIONS BANNED FOR ALL MINORS UNDER THE AGE OF 18

The Hazardous Occupations Orders (HO)

The FLSA establishes an 18-year minimum age for those nonagricultural occupations that the Secretary of Labor finds and declares to be particularly hazardous for 16- and 17-year-old minors, or detrimental to their health or well-being. In addition, Child Labor Regulation No. 3 also bans 14- and 15-year-olds from performing any work proscribed by the HOs. There are currently 17 HOs which include a partial or total ban on the occupations or industries they cover.

HO 1. Manufacturing or storing explosives—bans minors working where explosives are manufactured or stored, but permits work in retail stores selling ammunition, gun shops, trap and skeet ranges, and police stations.

HO 2. Driving a motor vehicle or work as an outside helper on motor vehicles—bans operating motor vehicles on public roads and working as outside helpers on motor vehicles, except 17-year-olds may drive cars or small trucks during daylight hours for limited times and under strictly limited circumstances (see Fact Sheet #34 in this series for information about on-the-job driving).

HO 3. Coal mining—bans most jobs in coal mining.

HO 4. Occupations in forest fire fighting, forest fire prevention, timber tract, forestry service, and occupations in logging and sawmilling operations—bans most jobs in: forest fire fighting; forest fire prevention that entails extinguishing an actual fire; timber tract management; forestry services; logging; and sawmills.

HO 5. Power-driven woodworking machines—bans the operation of most power-driven woodworking machines, including chain saws, nailing machines, and sanders.*

HO 6. Exposure to radioactive substances and ionizing radiation—bans employment of minors where they are exposed to radioactive materials.

HO 7. Power-driven hoisting apparatus—bans operating, riding on, and assisting in the operation of most power-driven hoisting apparatus such as forklifts, non-automatic elevators, skid-steers, skid-steer loaders, backhoes, manlifts, scissor lifts, cherry pickers, work-assist platforms, boom trucks, and cranes. Does not apply to chair-lifts at ski resorts or electric and pneumatic lifts used to raise cars in garages and gasoline service stations.

HO 8. Power-driven metal-forming, punching and shearing machines—bans the operation of certain power-driven metal-working machines but permits the use of most machine tools.*
HO 9. Mining, other than coal—bans most jobs in mining at metal mines, quarries, aggregate mines, and other mining sites including underground work in mines, work in or about open cut mines, open quarries, and sand and gravel operations.

HO 10. Power-driven meat-processing machines, slaughtering and meat packing plants—bans the operation of power-driven meat processing machines, such as meat slicers, saws and meat choppers, wherever used (including restaurants and delicatessens). Also prohibits minors from cleaning such equipment, including the hand-washing of the disassembled machine parts. This ban also includes the use of this machinery on items other than meat, such as cheese and vegetables. HO 10 also bans most jobs in meat and poultry slaughtering, processing, rendering, and packing establishments.*

HO 11. Power-driven bakery machines—bans the operation of power-driven bakery machines such as vertical dough and batter mixers; dough rollers, rounders, dividers, and sheeters; and cookie or cracker machines. Permits 16- and 17-year-olds to operate certain lightweight, small, portable, counter-top mixers and certain pizza dough rollers under certain conditions.

HO 12. Balers, compactors, and power-driven paper-products machines—bans the operation of all compactors and balers and certain power-driven paper products machines such as platen-type printing presses and envelope die cutting presses. Sixteen- and 17-year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under very specific guidelines (see Fact Sheet #57). *

HO 13. Manufacturing of brick, tile and related products—bans most jobs in the manufacture of brick, tile and similar products.

HO 14. Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs—bans the operation of, and working as a helper on, the named types of power-driven equipment, no matter what kind of items are being cut by the equipment.*

HO 15. Wrecking, demolition, and ship-breaking operations—bans most jobs in wrecking, demolition, and ship-breaking operations, but does not apply to remodeling or repair work which is not extensive.

HO 16. Roofing operations and work performed on or about a roof—bans most jobs in roofing operations, including work performed on the ground and removal of the old roof, and all work on or about a roof* (see Fact Sheet #74)

HO 17. Trenching and excavation operations—bans most jobs in trenching and excavation work, including working in a trench more than four feet deep.*

*The regulations provide a limited exemption from HOs 5, 8, 10, 12, 14, 16 and 17 for apprentices and student-learners who are at least 16 years of age and enrolled in approved programs.
The term "operation" as used in HOs 5, 8, 10, 11, 12 and 14 generally includes the tasks of setting up, adjusting, repairing, oiling or cleaning the equipment.

**HOURS OF WORK AND PERMITTED OCCUPATIONS FOR 14- AND 15-YEAR-OLDS IN NONAGRICULTURAL EMPLOYMENT**

The Federal youth employment provisions limit the times of day, number of hours, and industries and occupations in which 14- and 15-year-olds may be employed.

*Child Labor Regulation No. 3, 29 C.F.R.§ 570.35, limits the hours and the times of day that 14- and 15-year-olds may work to:*

- outside school hours;
- no more than 3 hours on a school day, including Fridays;
- no more than 8 hours on a nonschool day;
- no more than 18 hours during a week when school is in session;
- no more than 40 hours during a week when school is not in session;
- between 7 a.m. and 7 p.m.—except between June 1 and Labor day when the evening hour is extended to 9 p.m.

*Child Labor Regulation No. 3, 29 C.F.R. §§ 570.33 lists some of the jobs that 14- and 15-year-olds may not hold. The following is just a sample of prohibited occupations:*

- They are prohibited from working in any of the Hazardous Orders or in most occupations involving transportation, construction, warehousing, communications and public utilities.
- They may not work in processing, mining, in any workroom or workplace where goods are manufactured or processed, in freezers, or in meat coolers.
- They may not operate or tend any power-driven machinery, except office machines.
- They may not perform any baking operations.
- They may not be employed in youth peddling, sign waving, or door-to-door sales activities.
- They may not work from ladders, scaffolds, or their substitutes.
- They may not be employed to catch or coop poultry.

*Child Labor Regulation No. 3, 29 C.F.R. §§ 570.34 lists those jobs that 14- and 15-year-olds may hold. WHAT IS NOT PERMITTED IS PROHIBITED:*

- They may work in most office jobs and retail and food service establishments.
They may be employed in occupations such as bagging groceries, office work, stocking shelves, and cashiering.

They may work in intellectual or artistically creative occupations such as teacher, musician, artist, and performer.

They may perform limited kitchen work involving the preparation of food and beverages.

They may perform only limited cooking duties (see Fact Sheet #58). They may cook over electric or gas grills that do not involve cooking over an open flame and they may cook with deep fryers that are equipped with and utilize a device that automatically lowers the baskets into the hot oil or grease and automatically raised the baskets from the hot oil or grease.

They may clean cooking equipment and surfaces (not otherwise prohibited), and filter, transport, and dispose of grease as long as the temperature of the surfaces, containers, and grease do not exceed 100°F.

Properly certified 15-year-olds may work as lifeguards and swimming instructors at traditional swimming pools and water amusement parks.

**Special Provisions Permitting the Employment of 15-year-olds, but not 14-year-olds, as Lifeguards at Traditional Swimming Pools and Water Amusement Parks**

Regulations, 29 C.F.R. § 570.34(l) permits the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety. The federal child labor provisions require that a 15-year-old must acquire additional certification if he or she is to be employed as a swim instructor.

A traditional swimming pool means a water-tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith.

A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at most of these water park features, but not as attendants or dispatchers at the top of elevated water slides.

Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches. Lifeguards must be at least 16 years of age to be employed at such natural environment facilities.

For more information about these provisions, please read Fact Sheet # 60: Application of the Federal Youth Employment Provisions of the Fair Labor Standards Act (FLSA) to the Employment of Lifeguards.
Special Provisions Permitting the Employment of Certain Minors in Places of Business that Use Machinery to Process Wood Products

Section 13(c)(7) of the FLSA permits the employment of certain minors between the ages of 14 and 18 inside and outside of places of businesses where machinery is used to process wood products. This exemption applies only to a minor who is:

1. exempt from compulsory school attendance beyond the eighth grade either by statute or judicial order, and,
2. is supervised in the work place by an adult relative or adult member of the same religious sect or division as the minor.

Although a minor meeting these requirements may be employed inside and outside of places of businesses that use machinery to process wood products—activities normally prohibited by Child Labor Regulation No. 3 and HO 4—the minor is still prohibited from operating, or assisting to operate, any power-driven woodworking machines. This prohibition includes the starting and stopping of the machines and the feeding of materials into the machines as well as the off-bearing of materials from the machines. Such minors are also prohibited from cleaning, oiling, setting-up, adjusting and maintaining the machines. In addition, such minors must be protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation. The minor is also required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust (see Fact Sheet No. 55 in this series for more information about this exemption).

Work Experience and Career Exploration Program (WECEP)

This program is designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths who can benefit from a career-oriented educational program designed to meet the participants' needs, interests and abilities. The program is aimed at helping youths to become reoriented and motivated toward education and to prepare them for the world of work.

State Departments of Education are granted approval to operate a WECEP by the Administrator of the Wage and Hour Division for a 2-year period. Certain provisions of CL Reg. 3 are modified for 14- and 15-year-old participants during the school term.

- They may work during school hours.
- They may work up to 3 hours on a school day; and as many as 23 hours in a school week.
- They also may work in some occupations that would otherwise be prohibited under a variance issued by the Administrator, but they may not work in manufacturing, mining or any of the 17 Hazardous Occupations.
Work-Study Programs (WSP)

Some of the provisions of Child Labor Regulation No. 3 are varied for 14- and 15-year-old participants in approved school-administered WSPs. A WSP participant must be 14 or 15 years of age, enrolled in a college preparatory curriculum, and be identified by authoritative personnel from his or her school as being able to benefit from a work-study program.

Employment of participants in WSPs shall be confined to not more than 18 hours in any one week when school is in session, a portion of which may be during school hours in accordance with the following formula that is based upon a continuous four-week cycle:

- In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day.
- During the remaining week of the four-week cycle, the participant is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days.

The employment of WSP participants is still subject to the time of day and number of hours standards contained in 29 C.F.R. §§ 570.35(a)(2), (a)(3), (a)(4), and (a)(6). The superintendent of the public or private school system wishing to supervise and administer a WSP as discussed in this section must first receive permission from the Administrator of the Wage and Hour Division.

Enforcement and Penalties

Investigators of the Wage and Hour Division who are stationed across the U.S. enforce the youth employment provisions of the FLSA. As the Secretary of Labor's authorized representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with all the provisions of the FLSA.

Violators of the youth employment provisions may be subject to a civil money penalty of up to $11,000 for each minor employed in violation. Penalties for violations that cause the death or serious injury of a minor may be increased to as much as $50,000 and those penalties may be doubled (up to $100,000) when the violations are determined to be willful or repeated.

The FLSA prohibits the shipment in interstate commerce of goods that were produced in violation of the Act’s minimum wage, overtime, or youth employment provisions. The FLSA authorizes the Department of Labor to obtain injunctions to prohibit the movement of such "hot goods." The FLSA also authorizes the Department to obtain injunctions against violators of the youth employment provisions to compel their compliance with the law. Further violations could result in sanctions against such persons for contempt of court. Willful youth employment violators may face criminal prosecution and be fined up to $10,000. Under current law, a second conviction may result in imprisonment.
Where to Obtain Additional Information


For additional information on the Fair Labor Standards Act, visit the Wage and Hour Division Web site: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When state youth employment laws differ from the federal provisions, an employer must comply with the higher standard. Links to your state labor department can be found at http://www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor 1-866-4-US-WAGE
Frances Perkins Building TTY: 1-866-487-9243
200 Constitution Avenue, NW Contact Us
Washington, DC 20210
Fact Sheet #52 — The Employment of Youth in the Health Care Industry

The Fair Labor Standards Act (FLSA) requires covered employers to pay employees at least the applicable federal minimum wage for all hours worked and overtime pay for hours worked over 40 in a work week. The FLSA also set standards under which youth under the age of 18 may be employed. The FLSA is administered by the Wage and Hour Division of the U.S. Department of Labor.

Hospitals and other institutions “primarily engaged in the care of the sick, the aged, or the mentally ill” are covered employers under Section 3(s)(1)(B) of the FLSA. Thus, hospitals, residential care establishments, skilled nursing facilities, nursing facilities, assisted living facilities, residential care facilities and intermediate care facilities for mental retardation and developmentally disabled must comply with the minimum wage, overtime and child labor requirements of the FLSA.

Summary

This fact sheet provides guidance regarding common child labor violations found by the Wage and Hour Division during investigations in the health care industry. Most violations of the FLSA’s child labor provisions in the long-term care industry occur in the dietary and housekeeping departments. Minors must be at least 14 years old to be employed in non-agricultural workplaces. There are limitations on the number of hours and times of day that 14- and 15-year-olds may work as well as the types of jobs they may perform. The FLSA does not restrict the hours that minors 16 years of age or older may work. However, minors aged 16 and 17 may not perform tasks that are deemed too hazardous for them to perform.

Hours of Work for 14- and 15-Year-Olds

The federal child labor provisions require that when 14-and 15-year-olds work, they must be employed:

- Outside school hours
- Not more than 40 hours during non-school weeks
- Not more than 18 hours per week when school is in session
- Not more than 8 hours in any one day when school is not in session
- Not more than 3 hours in any one day, including Fridays, when school is in session
- Between 7 a.m. and 7 p.m. except during the summer (June 1 through Labor Day) when the evening hours are extended to 9 p.m.

Example #1:

At an assisted living facility, the chef’s 15-year-old son works in the dietary department from 4 p.m. to 7 p.m. Occasionally he helps clean up with his father’s shift and works until 8 p.m. Is this allowed under Federal regulations? No. Fourteen- and 15-year-olds may not work outside the hours standards.
even if working with a parent or guardian. A young worker would be exempt from the hours standards only if he or she were employed in a business solely owned by the parents.

**Example #2:**

May a 15-year-old begin working at 6 a.m. during the summer or on a weekend?

No, 14- and 15-year-olds may not work before 7 a.m. or after 7 p.m. except from June 1 through Labor Day when the evening hours are extended to 9 p.m.

**Job Restrictions for 14- and 15-Year-Olds**

Youth 14- and 15-years of age may perform a variety of jobs such as office work; sales work; run errands and make deliveries by foot, bicycle and public transportation. They may also perform a variety of food service jobs, including waiting on tables, busing tables, dispensing food from a steam table or chafing dish, washing dishes, and preparing salads and other food. Cooking is prohibited for 14- and 15-year-olds except cooking with gas or electric grills (where the cooking does not involve cooking over an open flame) and except cooking with deep fat fryers that are equipped with and utilize automatic devices which lower and raise baskets into and out of the oil or grease. Fourteen- and 15-year-olds may not perform any baking activities or operate “Neico” broilers, pressurized fryers, high-speed ovens, rapid toasters, or rotisseries.

Fourteen- and 15-year-olds may clean cooking equipment, including the filtering, transporting, and disposal of oil or grease, but only when the temperature of the equipment surfaces and the oil or grease do not exceed 100º F. Fourteen- and 15-year-olds may not operate or tend most power-driven machinery, perform work in freezers or meat coolers, or work in any occupation declared hazardous by the Secretary of Labor.

**Example #3:**

A 14-year-old works as a dishwasher in the kitchen at a residential care facility. Sometimes she is called upon to do take pies out of the oven when the cook is doing inventory. Is this in accordance with the child labor laws?

No. Removing items from an oven is a “baking” activity and no one under 16 years of age may perform such tasks.

**Example #4:**

A 15-year-old helps out at a residential care facility on weekends. She mows the lawn and trims the bushes using a gas-powered lawn mower and electric clippers. Is this permissible?

No. Fourteen- and 15-year-olds may not operate power driven machinery other than office machines and certain food preparation machines.
**Example #5:**

A 15-year-old works in the dietary department at a skilled nursing facility. When there are snowstorms, he helps out with snow blowing and snow shoveling. Is this allowed?

No, the youth is too young to legally operate a power-driven snow blower on the job. Snow shoveling, however, would be allowed.

**Hazardous Occupation Orders**

Seventeen (17) hazardous non-farm jobs are out of bounds for youth under the age of 18. In the health care industry, the most common hazardous occupations violations occur in food service and housekeeping jobs.

Hazardous Order No. 10 prohibits minors under 18 from operating, cleaning, setting up, disassembling and reassembling, repairing and oiling power-driven meat processing machines—including meat slicers—regardless of the material being processed.

Hazardous Order No. 11 prohibits minors under 18 may form setting up, operating, assisting other to operate, cleaning, oiling, adjusting or repairing power driven bakery machines. This includes horizontal and vertical dough mixers; batter mixers; bread dividing, rounding or molding machines; dough breaks; dough sheeters; cookie and cracker machines; and cake cutting band saws.

Hazardous Order No. 7 prohibits minors under 18 from operating or assisting in the operation of power-driven hoists, including those designed to lift and move patients. The Wage and Hour Division has, however, adopted an enforcement position effective July 13, 2011, that allows certain properly trained 16- and 17-year-old nursing aides or nursing assistants, to assist trained adults in the operation of certain power-driven patient/resident hoists/lifts under certain conditions. The enforcement position is explained in the Wage and Hour Division Field Assistance Bulletin 2011-3 available at [http://www.dol.gov/whd/FieldBulletins/fab2011_3.htm](http://www.dol.gov/whd/FieldBulletins/fab2011_3.htm).

Hazardous Order No. 12 prohibits minors under 18 from loading, operating, and unloading balers and compactors used in waste disposal and recycling. There is a limited exemption that allows 16- and 17-year-olds to load, but not operate or unload, certain scrap paper balers and paper box compactors under very strict conditions. Please read Fact Sheet No. 57 of this series for information about that exemption.

**Example #6:**

A food service director at an assisted living facility has 17-year-olds working in the kitchen. The director prohibits them from operating the power driven meat slicing machine. They are, however, allowed to dismantle, clean the parts and reassemble the parts. Does this comply with the FLSA?
No, youth under age 18 may not disassemble or reassemble such machines. They may not hand wash the individual parts of a machine even when someone over 18 years of age has disassembled the machine. Sixteen- and 17-year-olds may, however, run a rack of such disassembled parts through a commercial dishwasher as long as the minors do not touch or handle the parts.

*Example # 7:*

A facility treating individuals with developmental disabilities employs workers to bake breads and rolls. This requires the operation of power driven dough mixers. The 16- and 17-year-olds operate these machines. Does this violate the FLSA?

Yes, this is a violation of the FLSA child labor rules. Under HO 11, workers must be at least 18 years of age to operate power-driven dough mixers.

*Example # 7:*

A large nursing home employs two 16-year-olds to collect trash and waste paper throughout the facility and load it into the large commercial trash compactor located on the loading dock. The firm rents the compactor from a waste management firm. The minors also routinely operate the compactor by turning the key and pressing the “on” button. Does this violate the FLSA?

Yes, this is a violation of the FLSA. HO 12 prohibits youth under the age of 18 from loading, operating, or unloading compactors and balers. Although, under a limited exemption, 16- and 17-year-olds may load (but not operate or unload) certain paper box compactors and scrap paper balers, they may do so only under some very stringent conditions. One such condition is that each machine must be equipped with an on-off switch incorporating a key-lock or other system and the control of the system must be maintained in the custody of employees who are at least 18 years of age. In this example both the loading and operating of the compactor by these minors violated the FLSA.

*Example #8:*

A 17-year-old orderly at a private hospital assists the nurse in moving a patient from her bed to a chair using a power-driven patient hoist/lift. Does this violate the provisions of the FLSA?

Yes; this is a violation of the FLSA child labor rules. HO 7 prohibits workers under 18 years of age from operating or assisting in the operation of most hoists. Prior to July 19, 2010, the child labor provisions included an exemption that permitted 16- and 17-year-olds to operate electric- and air-powered hoists of less than one ton capacity, but this exemption has been repealed.
Where to Obtain Additional Information

For additional general information, visit our Wage and Hour Division Website: [http://www.wagehour.dol.gov](http://www.wagehour.dol.gov) and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

For more information regarding the FLSA child labor provisions, including a complete list of all hazardous order occupations, visit the YouthRules! Web site at [www.youthrules.dol.gov](http://www.youthrules.dol.gov).


When the state laws differ from the federal FLSA an employer must comply with the higher standard. Links to your state labor department can be found at [http://www.dol.gov/whd/contacts/state_of.htm](http://www.dol.gov/whd/contacts/state_of.htm).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.
Fact Sheet #53 – The Health Care Industry and Hours Worked

The Fair Labor Standards Act (FLSA) requires covered employers to pay non exempt employees at least the federal minimum wage of $7.25 per hour effective July 24, 2009, for all hours worked and overtime pay for for hours worked over 40 in a workweek. The FLSA is administered by the Wage and Hour Division of the U.S. Department of Labor.

Hospitals and other institutions “primarily engaged in the care of the sick, the aged, or the mentally ill” are covered employers under Section 3(s)(1)(B) of the FLSA. Thus, hospitals, residential care establishments, skilled nursing facilities, nursing facilities, assisted living facilities, residential care facilities and intermediate care facilities for mental retardation and developmentally disabled must comply with the minimum wage, overtime and youth employment requirements of the FLSA.

Summary

This fact sheet provides guidance regarding common FLSA violations found by the Wage and Hour Division during investigations in the health care industry relating to the failure to pay employees for all hours worked. Nonexempt employees must be paid for all hours worked in a workweek. In general, “hours worked” includes all time an employee must be on duty, on the employer premises, or at any other prescribed place of work. Also included is any additional time the employee is “suffered or permitted” to work. The FLSA requires employers to pay for hours actually worked, but there is no requirement for payment of holidays, vacation, sick or personal time.

The failure to properly count and pay for all hours that an employee works may result in a minimum wage violation if the employee’s hourly rate falls below the required federal minimum wage when his or her total compensation is divided by all hours worked. More likely, the failure to count all hours worked will result in an overtime violation because employers have not fully accounted for hours worked in excess of 40 during the workweek.

Rounding Hours Worked

Some employers track employee hours worked in 15 minute increments, and the FLSA allows an employer to round employee time to the nearest quarter hour. However, an employer may violate the FLSA minimum wage and overtime pay requirements if the employer always rounds down. Employee time from 1 to 7 minutes may be rounded down, and thus not counted as hours worked, but employee time from 8 to 14 minutes must be rounded up and counted as a quarter hour of work time. See Regulations 29 CFR 785.48(b).

Example #1:
An intermediate care facility docks employees by a full quarter hour (15 minutes) when they start work more than seven minutes after the start of their scheduled shift. Does this practice comply with the FLSA requirements? Yes, as long as the employees’ time is rounded up a full quarter hour when the employee starts working from 8 to 14 minutes before their shift or if the employee works from 8 to 14 minutes beyond the scheduled end of their shift.

Example #2:
An employee’s schedule is 7 a.m. to 3:30 p.m. with a thirty minute unpaid lunch break. The employee receives overtime compensation after 40 hours in a workweek. The employee clocks in 10 minutes early every day and clocks out 7 minutes late each day. The employer follows the standard rounding rules. Is the employee entitled to overtime compensation? Yes. If the employer rounds back a quarter hour each morning to 6:45 a.m. and rounds back each evening to 3:30 p.m., the employee will show a total of 41.25 hours worked during that workweek. The employee will be entitled to additional overtime compensation for the 1.25 hours over 40.

Example #3:
An employer only records and pays for time if employees work in full 15 minute increments. An employee paid $10 per hour is scheduled to work 8 hours a day Monday through Friday, for a total of 40 hours a week. The employee always clocks out 12 minutes after the end of her shift. The employee is paid $400 per week. Does this comply with the FLSA? No, the employer has violated the overtime requirements. The employee worked an hour each week (12 minutes times 5) that was not compensated. The employer has not violated the minimum wage requirement because the employee was paid $9.75 per hour ($400 divided by 41 hours). However, the employer owes the employee for one hour of overtime each week.

Travel Time

Time spent by an employee in travel as part of his principal activity, such as travel from jobsite to jobsite during the workday, must be considered as hours worked. An employee who travels from home before the regular workday and returns home at the end of the workday is engaged in ordinary home-to-work travel. This is not considered hours worked. See Regulations 29 CFR 785.33.

Example #4:
A licensed practical nurse (LPN) works at an assisted living facility which has a “sister facility” 20 miles away. There have been times that the LPN has been asked to fill in for someone at the other facility after she completes her shift at her normal work site. It takes her 30 minutes to drive to the other facility. The travel time is not recorded on her time sheet. Is this a violation of the FLSA? Yes. The travel time must be considered part of the hours worked.

Training and Seminars

Attendance at lectures, meetings, training programs and similar activities are viewed as working time unless all of the following criteria are met:

- Attendance is outside of the employee’s regular working hours;
- Attendance is in fact voluntary;
- The course, lecture, or meeting is not directly related to the employee’s job; and
- The employee does not perform any productive work during such attendance.

See Regulations 29 CFR 785.27.

Example #5:
A residential care facility offers specialized training on caring for Alzheimer residents. There are two workshops: one in the evening for the day shift and one during the day for the evening shift. All employees are required to attend. Is this compensable time? Yes, because the training is not voluntary and is related to the employees’ jobs.
**Example #6:**
The administrator of a nursing home says specialized patient care training is voluntary, but the nursing supervisors expect all employees on their units to attend and schedule times for each employee to go. Is the time considered hours worked? Yes, the time would be considered hours worked. When the nursing supervisors expect all unit employees to attend and schedule their times, it is not truly voluntary.

**Example #7:**
The dishwasher decides to go to the Alzheimer’s training session after his shift. Must the administrator pay for the dishwasher’s time spent at the training session? No, because all four criteria above are met. It is not considered hours worked.

**Example #8:**
The administrator provides a Tai Chi course to residents and allows employees to attend during their off-duty hours. Do employees have to be paid for the time they attend this course? No, the employees do not have to be paid because attendance is voluntary and the other three criteria are met.

### Meal Breaks

Bona-fide meal periods (typically 30 minutes or more) are not work time, and an employer does not have to pay for them. However, the employees must be completely relieved from duty. When choosing to automatically deduct 30-minutes per shift, the employer must ensure that the employees are receiving the full meal break. See Regulations 29 CFR 785.19.

**Example #9:**
A skilled nursing facility automatically deducts one-half hour for meal breaks each shift. Upon hiring, the employer notifies employees of the policy and of their responsibility to take a meal break. Does this practice comply with the FLSA? Yes, but the employer is still responsible for ensuring that the employees take the 30-minute meal break without interruption.

**Example #10:**
An hourly paid registered nurse works at a nursing home which allows a 30-minute meal break. Residents frequently interrupt her meal break with requests for assistance. Must she be paid for these frequently interrupted meal breaks? Yes, if employees’ meals are interrupted to the extent that meal period is predominately for the benefit of the employer, the employees should be paid for the full 30-minutes.

### Other Breaks

Rest periods of short duration, generally running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as work time. It is immaterial with respect to compensability of such breaks whether the employee drinks coffee, smokes, goes to the rest room, etc. See Regulations 29 CFR 785.18.

**Example #11:** Many third shift nursing home employees who smoke prefer to take three ten-minute unpaid smoke breaks instead of their 30-minute unpaid meal break. Is it okay for them to substitute the smoke breaks for their meal break? No, the employee must be compensated for the smoke breaks.

### On-Call Time

An employee who is required to remain on call on the employer's premises or so close to the premises that the employee cannot use the time effectively for his or her own purpose is considered working while on-call. An employee who is required to carry a cell phone, or a beeper, or who is allowed to leave a
message where he or she can be reached is not working (in most cases) while on-call. Additional constraints on
the employee's freedom could require this time to be compensated. See Regulations 29 CFR 785.17.

Example #12: An assisted living facility has four LPN wellness coordinators who are paid hourly. They
rotate being on-call each week. They are required to carry a cell phone and be within 45 minutes of the
facility when they are on-call. They are not paid for all time spent carrying the cell phone but are paid
for time spent responding to calls and time when they have returned to work at the assisted living
facility. Does this comply with the FLSA? Yes.

Unauthorized Hours Worked

Employees must be paid for work “suffered or permitted” by the employer even if the employer does not
specifically authorize the work. If the employer knows or has reason to believe that the employee is continuing
to work, the time is considered hours worked. See Regulation 29 CFR 785.11.

Example #13:
A residential care facility pays its nurses an hourly rate. Sometimes the residential care facility is short
staffed and the nurses stay beyond their scheduled shift to work on patients’ charts. This results in the
nurses working overtime. The director of nursing knows additional time is being worked, but believes
no overtime is due because the nurses did not obtain prior authorization to work the additional hours as
required by company policy. Is this correct? No. The nurses must be paid time-and-one-half for all
FLSA overtime hours worked.

Example #14:
An hourly paid office clerk is working on a skilled nursing home’s quarterly budget reports. Rather than stay
late in the office, she takes work home and finishes the work in the evening. She does not record the hours she
works at home. The office manager knows the clerk is working at home, but since she does not ask for pay,
assumes she is doing it “on her own.” Should the clerk’s time working at home be counted? Yes. The clerk was
“suffered and permitted” to work, so her time must be considered hours worked even thought she worked at
home and the time was unscheduled. See Regulations 29 CFR 785.12.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov
and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-
4USWAGE (1-866-487-9243).

The FLSA statute appears at 29 U.S.C. § 201 et seq. The federal regulations regarding hours worked appear in
29 C.F.R. Part 785.

When the state laws differ from the federal FLSA an employer must comply with the higher standard. Links to
your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of
position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us
Fact Sheet #54 – The Health Care Industry and Calculating Overtime Pay

The Fair Labor Standards Act (FLSA) requires covered employers to pay nonexempt employees at least the federal minimum wage of $7.25 per hour effective July 24, 2009, for all hours worked and overtime pay for for hours worked over 40 in a workweek. The FLSA is administered by the Wage and Hour Division of the U.S. Department of Labor.

Hospitals and other institutions “primarily engaged in the care of the sick, the aged, or the mentally ill” are covered employers under Section 3(s)(1)(B) of the FLSA. Thus, hospitals, residential care establishments, skilled nursing facilities, nursing facilities, assisted living facilities, residential care facilities and intermediate care facilities for mental retardation and developmentally disabled must comply with the minimum wage, overtime and youth employment requirements of the FLSA.

Summary

This fact sheet provides guidance regarding common FLSA violations found by the Wage and Hour Division during investigations in the health care industry relating to the calculation of overtime pay. Nonexempt employees must be paid at least time-and-one-half their “regular rate” of pay for all hours worked over 40 in a workweek. The “regular rate” includes an employee’s hourly rate plus the value of some other types of compensation such as bonuses and shift differentials. The only remuneration excluded from the regular rate under the FLSA are certain specified types of payments like discretionary bonuses, gifts, contributions to certain welfare plans, payments made to certain profit-sharing and savings plans, and pay for foregoing holidays and vacations. A common error in calculating overtime pay by health care employers involve the failure to include bonuses, shift differentials and other types of compensation in the regular rate of pay. Errors are also common in the health care industry in calculating the regular rate when an employee works two or more different jobs in a single workweek.

There is no limitation in the FLSA on the number of hours employees over the age of 15 may work in any workweek. The FLSA does not require overtime pay for hours in excess of eight hours worked in a day, except as discussed below, or for hours worked on Saturdays, Sundays, or holidays.

The Eight and Eighty (8 and 80) Overtime System

Under section 7(j) of the FLSA, hospitals and residential care establishments may utilize a fixed work period of fourteen consecutive days in lieu of the 40 hour workweek for the purpose of computing overtime. To use this exception, an employer must have a prior agreement or understanding with affected employees before the work is performed. This eight and eighty (8 and 80) exception allows employers to pay time and one-half the regular rate for all hours worked over eight in any workday and eighty hours in the fourteen-day period. See Regulations 29 CFR 778.601.

An employer can use both the standard 40 hour overtime system and the 8 and 80 overtime system for different employees in the same workplace, but they cannot use both for a single individual employee.

An employer’s work period under the 8 and 80 overtime system must be a fixed and regularly recurring 14-day period. It may be changed if the change is designated to be permanent and not to evade the overtime
requirements. If an employer changes the pay period permanently, it must calculate wages on both the old pay period and the new pay period and pay the amount that is more advantageous to each employee in the pay period when the change was made.

Premium pay for daily overtime under the 8 and 80 system may be credited towards the overtime compensation due for hours worked in excess of 80 for that period.

**Bonuses**

For purposes of calculating overtime pay, section 7(e) of the FLSA provides that non-discretionary bonuses must be included in the regular rate of pay. Non-discretionary bonuses include those that are announced to employees to encourage them to work more steadily, rapidly or efficiently, and bonuses designed to encourage employees to remain with a facility. Few bonuses are discretionary under the FLSA, allowing exclusion from the regular rate. See Regulations 29 CFR 778.200 and 778.208.

Referral bonuses paid for recruitment of new employees are not included in the regular rate of pay *if all of the following conditions are met*: (1) participation is strictly voluntary; (2) recruitment efforts do not involve significant time; and (3) the activity is limited to after-hours solicitation done only among friends, relatives, neighbors and acquaintances as part of the employees’ social affairs.

**Example: Attendance Bonus**

An intermediate care facility for the disabled pays its employees on a bi-weekly basis. If employees work all the hours that they are scheduled to work in a pay period, they are given a $100 bonus. If an employee works overtime, must this bonus be included in their regular rate of pay for overtime purposes?

Yes. In computing an employee’s regular rate under the 40 hour overtime system, the employer must add half of the bi-weekly bonus ($50) to the employee’s earnings (hourly rate times the total hours worked) for that week. The resulting total compensation would be divided by the total hours the employee worked during that week to determine the regular rate.

**Overtime Computation under the 40 Hours System**

An employee paid biweekly at a rate of $12 per hour plus a $100 attendance bonus, working a schedule of 56 hours per week as shown in the chart below, would be due overtime pay as follows:

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$100 \text{ (bi-weekly attendance bonus)} \div 2 = 50 \text{ (weekly bonus equivalent)}$

56 hours worked x $12/\text{hour} + 50 \text{ (weekly bonus equivalent)} = 722 \text{ (total ST compensation)}
$722 (total ST compensation) ÷ 56 hours worked = $12.89 (regular rate)
$12.89 (regular rate) x ½ = $6.45 (half-time premium)
$12.89 (regular rate) + $6.45 (half-time premium) = $19.34 (overtime rate)

40 (straight time hours) x $12.89 (regular rate) = $515.60 (straight time earnings)
16 (overtime hours) x $19.34 (overtime rate) = $309.44 (overtime earnings)
Total earnings for week one = $825.04
Total earnings for week two = $825.04
Total earnings for bi-weekly period = $1,650.08

Overtime Computation under the 8 and 80 System

If the same employee, paid at $12 an hour with a $100 attendance bonus, worked the same scheduled time for the bi-weekly period, under the 8 and 80 system, the employee would have worked 8 hours of overtime on Wednesday and 8 hours of overtime on Friday during the first week and 8 hours of overtime on Wednesday and 8 hours of overtime on Saturday during the second week, and would be due overtime pay as follows:

(bi-weekly attendance bonus) = $100
112 hours worked x $12/hour + $100 (attendance bonus) = $1,444 (total ST compensation)
$1,444 (total ST compensation) ÷ 112 hours = $12.89 (regular rate)
$12.89 (regular rate) x ½ = $ 6.45 (half-time premium)
$12.89 (regular rate) + $6.45 (half-time premium) = $19.34 (overtime rate)

$12.89 (regular rate) x 80 (straight time hours) = $1,031.20 (straight time earnings)
$19.34 (overtime rate) x 32 (overtime hours worked) = $ 618.88 (overtime earnings)
Total earnings for the bi-weekly period = $1,650.08

Example: Retention Bonus

In an effort to attract more nursing personnel, a skilled nursing facility’s nursing department gives hourly paid LPNs and RNs a $2,000 bonus after being employed six months. Does this bonus have to be included in the regular rate? If so, how does it need to be calculated?

Yes. The retention bonus must be included in the regular rate calculation in overtime weeks covered by the bonus period. The retention bonus described above was earned over six months or 26 weeks. The weekly equivalent is $76.92 ($2,000 ÷ 26 weeks). If an employee works overtime during the 26 week period, the increase in the regular rate is calculated by dividing $76.92 by the total hours worked during the overtime week.

Overtime Computation under the 40 Hours System

In the following calculation, the $2,000 retention bonus was earned over six months or 26 weeks, for a weekly equivalent of $76.92 ($2000 ÷ 26 weeks). If the employee worked ten hours of overtime in their 9th week of employment, the employee would be due an additional $7.70 in overtime earning as follows:

$76.92 ÷ 50 hours = $1.54 (increase in the regular rate)
$1.54 x ½ = $. 77 (increase in the additional half-time)
$.77 x 10 hours of overtime worked = $7.70 (increase in overtime earnings due to the bonus)
Overtime Computation under the 8 and 80 System

If an employee paid under the 8 and 80 system of overtime receives the same $2,000 retention bonus after six months, the employee would be due an additional $13.77 in overtime earnings after working 95 hours, 17 of which are overtime hours, in a 14-day period as follows:

$76.92 x 2 weeks = $153.84 (additional straight-time)
$153.84 ÷ 95 hours worked = $1.62 (increase in regular rate)
$1.62 x ½ = $ .81 (increase in the additional half-time)
$.81 x 17 hours of overtime worked = $13.77 (increase in overtime earnings due to the bonus)

Example: Supplementary Shift Bonus

At a residential care facility, if employees fill in for another employee who calls in sick, they are paid a supplementary shift bonus of $75. Does this bonus have to be included in the regular rate for overtime purposes?

Yes, it must be included in the regular rate. If an employee works 85 hours in a 14-day pay period (including five overtime hours), a $75 bonus would increase the regular rate by $.88 an hour as follows:

$75 ÷ 85 hours worked = $.88 (increase in regular rate)
$.88 x ½ = $.44 (increase in the additional half-time)
$.44 x 5 hours of overtime worked = $2.20 (increase in overtime earnings due to the bonus)

Shift Differentials

Employers also must include shift differential pay when determining an employee’s regular rate of pay. See Regulations 29 CFR 778.207(b). The following examples provide guidance on how to calculate overtime for employees who receive shift differential pay.

Example: Single Shift Differential

A personal care assistant at an assisted living facility is paid $8 an hour and overtime on the basis of the 40 hour workweek system. She works three eight-hour day shifts at $8 an hour and three eight-hour evening shifts. The assistant is paid $1 shift differential for each hour worked on the evening shift. How much should she be paid for her eight hours of overtime?

The additional half-time must be computed based on the regular rate of pay. The regular rate is defined as the total remuneration divided by the total hours worked. The assistant earned a total of $408 for the 48 hours that she worked ($8 an hour times 24 hours plus $9 an hour times 24 hours). Her regular rate equaled $8.50 and her half-time premium is $4.25. Her total earnings for the 8 hours of overtime are $102.

Straight-time computation

3 days x 8 hours/day x $8/hour = $192
3 evenings x 8 hours/evening x $8/hour = $192
3 evenings x 8 hours/evening x $1/hour (shift differential) = $ 24
Total ST earnings = $408
Regular rate and half-time premium computation

$408 (total ST compensation) ÷ 48 (total hours worked) = $ 8.50 (regular rate)
$ 8.50 (regular rate) x ½ = $ 4.25 (half-time premium)
$ 8.50 (regular rate) + $ 4.25 (half-time premium) = $12.75 (overtime rate)

Total compensation calculation

40 hours x $ 8.50 (regular rate) = $340 (straight time earnings)
8 overtime hours x $12.75 (overtime rate) = $102 (overtime earnings)
Total earnings $442

Example: Two Different Shift Differentials

Registered nurses (RNs) at a skilled nursing facility are paid a basic hourly rate of $22 an hour. When they work the evening shift, they are paid a shift differential of $1 an hour. When they work the night shift they are paid a shift differential of $2 an hour. When working overtime, RNs are paid time-and-one-half of their basic hourly rate of $22. Is this in compliance with the FLSA overtime standard?

No. Under the FLSA, the additional half-time compensation must be paid on the regular rate which is defined as the total remuneration divided by the total hours worked. Overtime compensation must be calculated on the regular rate, which will exceed the hourly rate when shift differentials are paid.

Computation of total compensation for 40 hour system

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16 day hours x $22 = $352
16 evening hours x $ 22 = $352
16 evening hours x $1 shift differential = $16
16 night hours x $22 = $352
16 night hours x $2 shift differential = $32
$352 + $352 + $16 + $352 + $32 = $1,104 total ST compensation
16 day hours + 16 evening hours + 16 night hours = 48 total hours worked
$1,104 (total ST compensation) ÷ 48 (hours worked) = $23 (regular rate)
$23 ÷ ½ = $11.50 (half-time premium)
$23 + $11.50 = $34.50 (overtime rate)

$23 x 40 hours = $920 (straight time earnings)
$34.50 (overtime rate) x 8 overtime hours = $276 (overtime earnings)
Total weekly earnings $1,196
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16 day hours x $22 = $352
16 evening hours x $22 = $352
16 evening hours x $1 shift differential = $16
8 night hours x $22 = $176
8 night hours x $2 shift differential = $16
$352 + $352 + $16 + $176 + $16 = $912 (total ST compensation)

Total weekly earnings $912

Total earnings for week one $1,196
Total earnings for week two $912
Total earnings for the bi-weekly period $2,108

Computation of total compensation for 8 and 80 overtime system

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4 days x 8 hours/day x $22/hour = $704
4 evenings x 8 hours/evening x $22/hour = $704
4 evenings x 8 hours/evening x $1 shift differential = $32
3 nights x 8 hours/night x $22/hour = $528
3 nights x 8 hours/night x $2 shift differential = $48
$704 + $704 + $32 + $528 + $48 = $2,016 (total ST compensation)
32 day hours + 32 evening hours + 24 night hours = 88 total hours worked
$2,016 (total ST compensation) ÷ 88 (total hours worked) = $22.91 (regular rate)
$22.91 x ½ = $11.46 (half-time premium)
$22.91 + $11.46 = $34.37 (overtime rate)

64 hours non-overtime hours x $22.91 (regular rate) = $1,466.24 (straight time earnings)
24 overtime hours x $34.37 (overtime rate) = $824.88 (overtime earnings)
Total earnings for the bi-weekly period $2,291.12
The RNs working the above schedule worked eight hours of overtime on three days: Wednesday and Friday of the first week and Wednesday of the second week. On these three days, the RNs worked 16 hours each day. Under the 8 and 80 overtime system, they are entitled to overtime for each hour worked over 8 in a day.

Two Different Jobs

If an employee works at two or more different jobs in a single workweek, for which different non-overtime rates of pay have been established, his or her employer may use a weighted average to compute the employee’s regular rate. However, an employee who performs two or more different kinds of work, for which different straight time hourly rates are established, may agree with his or her employer in advance of the performance of the work that he or she will be paid during overtime hours at a rate not less than one and one-half time the hourly rate established for the type of work he or she is performing during the overtime hours. See Regulations 29 CFR 778.419.

Example: Two Different Jobs

An employee works as a nurses’ aide on a full time basis at $11 per hour. On weekends, the employee fills in as a receptionist and is paid $8 per hour. She is paid on a 40-hour workweek overtime basis. How is her overtime computed?

Overtime may be computed on the regular rate of pay, determined by the weighted average of the two rates. For example, if the employee worked 40 hours at $11 and 16 hours at $8, the following is the regular rate calculation:

\[
40 \text{ hours } \times \$11/\text{hour} + 16 \text{ hours } \times \$8/\text{hour} = \$568 \text{ (total ST compensation)} \\
\$568 \text{ (total straight time compensation)} \div 56 \text{ hours worked} = \$10.14 \text{ (regular rate)} \\
\$10.14 \text{ (regular rate)} \times \frac{1}{2} = \$5.07 \text{ (additional half time premium)} \\
\$10.14 \text{ (regular rate)} + \$5.07 = \$15.21 \text{ (overtime rate)} \\
\$10.14 \text{ (regular rate)} \times 40 \text{ hours} = \$405.60 \text{ (total straight time earnings)} \\
\$15.21 \text{ (overtime rate)} \times 16 \text{ (overtime hours)} = \$243.36 \text{ (total overtime earnings)} \\
\text{Total compensation} = \$648.96
\]

Terminology

**Total Straight Time (ST) Compensation:**
All remuneration for employment (including shift differentials and bonuses) except those payments specifically excluded by statute. The most common statutory exclusions in the long term care industry are vacation, holiday, and sick pay.

**Total Hours Worked:**
All hours actually worked by an employee, excluding hours paid for vacation, holiday or sick leave.

**Regular Rate (RR):**
Total remuneration for employment ÷ by total hours worked. See Regulations 29 CFR 778.109.

**Half-Time Premium:**
Regular rate x \(\frac{1}{2}\).
**Overtime (OT) Rate:**
Regular rate + the half-time premium. See Regulations 29 CFR 778.107.

**Overtime (OT) Hours:**
Under the 40-hour workweek overtime plan: All hours worked over 40 in a workweek. Under the 8 and 80 overtime system: All hours worked over eight in a day and 80 in a 14-day work period. See Regulations 29 CFR 778.101 and 778.601.

**Total Overtime (OT) Premium Pay:**
OT rate x OT hours. See Regulations 29 CFR 778.107.

**Straight Time (ST) earnings:**
ST hours x regular rate.

**Overtime (OT) Earnings:**
OT hours x OT rate.

**Total Earnings:**
ST earnings + OT earnings.


**Where to Obtain Additional Information**

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).


When the state laws differ from the federal FLSA an employer must comply with the higher standard. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.
Fact Sheet #73: Break Time for Nursing Mothers under the FLSA

This fact sheet provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act (“PPACA”), which took effect when the PPACA was signed into law on March 23, 2010 (P.L. 111-148). This law amended Section 7 of the Fair Labor Standards Act (FLSA).

General Requirements

Employers are required to provide “reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.” Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child’s birth).

Time and Location of Breaks

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother’s use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

Coverage and Compensation

Only employees who are not exempt from section 7, which includes the FLSA’s overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of Section 7, they may be obligated to provide such breaks under State laws.
Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer’s business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA’s general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies. See WHD Fact Sheet #22, Hours Worked under the FLSA.

**FLSA Prohibitions on Retaliation**

Section 15(a)(3) of the FLSA states that it is a violation for any person to “discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.”

Employees are protected regardless of whether the complaint is made orally or in writing. Complaints made to the Wage and Hour Division are protected, and most courts have ruled that internal complaints to an employer are also protected.

Any employee who is “discharged or in any other manner discriminated against” because, for instance, he or she has filed a complaint or cooperated in an investigation, may file a retaliation complaint with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including, but not limited to, employment, reinstatement, lost wages and an additional equal amount as liquidated damages.

For additional information, visit our Wage and Hour Division Website: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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This material will be made available to sensory impaired individuals upon request.

Voice Phone: 1-866-487-9243
(1-866-4US-WAGE)

TDD* Phone: 1-877-889-5627

*Telecommunications Device for the Deaf
Handy Reference Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) 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.
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Basic Wage Standards

Covered, nonexempt workers are entitled to a minimum wage of $7.25 per hour effective July 24, 2009. Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands. Nonexempt workers must be paid overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.

Wages required by the FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by the FLSA or reduce the amount of overtime pay due under the FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While the FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which the FLSA does not regulate.

For example, the FLSA does not require:

(1) vacation, holiday, severance, or sick pay;
(2) meal or rest periods, holidays off, or vacations;
(3) premium pay for weekend or holiday work;
(4) pay raises or fringe benefits; or
(5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.
The FLSA does not provide wage payment or collection procedures for an employee’s usual or promised wages or commissions in excess of those required by the FLSA. However, some States do have laws under which such claims (sometimes including fringe benefits) may be filed.

Also, the FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

The above matters are for agreement between the employer and the employees or their authorized representatives.

**Who is Covered?**

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered by the FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

(1) whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or

(2) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
(3) is an activity of a public agency.

Any enterprise that was covered by the FLSA on March 31, 1990, and that ceased to be covered because of the revised $500,000 test, continues to be subject to the overtime pay, child labor and record-keeping provisions of the FLSA.

Employees of firms which are not covered enterprises under the FLSA still may be subject to its minimum wage, overtime pay, recordkeeping, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters are covered if:

(1) their cash wages from one employer in calendar year 2010 are at least $1,700 (this calendar year threshold is adjusted by the Social Security Administration each year); or

(2) they work a total of more than 8 hours a week for one or more employers.
**Tipped Employees**

Tipped employees are individuals engaged in occupations in which they customarily and regularly receive more than $30 a month in tips. The employer may consider tips as part of wages, but the employer must pay at least $2.13 an hour in direct wages.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the applicable minimum wage (see above) when direct wages and the tip credit allowance are combined. If an employee’s tips combined with the employer’s direct wages of at least $2.13 an hour do not equal the minimum hourly wage, the employer must make up the difference. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

**Employer-Furnished Facilities**

The reasonable cost or fair value of board, lodging, or other facilities customarily furnished by the employer for the employee’s benefit may be considered part of wages.

**Industrial Homework**

The performance of certain types of work in an employee’s home is prohibited under the law unless the employer has obtained prior certification from DOL. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health hazards are not involved). The manufacture of women’s apparel (and jewelry under hazardous conditions) is generally prohibited. If you have questions on whether a certain type of work is restricted, or who is eligible for a homework certificate, or how to obtain a certificate, you may contact the local WHD office.
Subminimum Wage Provisions

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is authorized to prevent curtailment of opportunities for employment. Such employment is permitted only under certificates issued by WHD.

Youth Minimum Wage

A minimum wage of not less than $4.25 an hour is permitted for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. Employers are prohibited from taking any action to displace employees in order to hire employees at the youth minimum wage. Also prohibited are partial displacements such as reducing employees’ hours, wages, or employment benefits.

Exemptions

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions.

Because exemptions are generally narrowly defined under the FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local WHD offices.

Following are examples of exemptions which are illustrative, but not all-inclusive. These examples do not define the conditions for each exemption.
Exemptions from Both Minimum Wage and Overtime Pay

(1) Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in DOL regulations);

(2) Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;

(3) Farmworkers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year;

(4) Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Only

(1) Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft sales-workers; or parts-clerks and mechanics servicing autos, trucks, or farm implements, who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers;

(2) Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
(3) Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations;

(4) Domestic service workers living in the employer’s residence;

(5) Employees of motion picture theaters; and

(6) Farmworkers.

Partial Exemptions from Overtime Pay

(1) Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and to employees of certain bulk petroleum distributors.

(2) Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual 7-day workweek if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.

(3) Employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.

(4) Public agency fire departments and police departments may establish a work period ranging from 7 to 28 days in which overtime need only be paid after a specified number of hours in each work period.
Child Labor Provisions

The FLSA child labor provisions 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 provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and non-farm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. Further information on prohibited occupations is available from http://www.youthrules.dol.gov.

Nonagricultural Jobs (Child Labor)

Regulations governing child labor in non-farm jobs differ somewhat from those pertaining to agricultural employment. In non-farm work, the permissible jobs and hours of work, by age, are as follows:

(1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;

(2) Minors 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and

(3) Minors 14 and 15 years old may work outside school hours in various nonmanufacturing, non-mining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day, or 40 hours in a non-school week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours). In addition, academically oriented youths enrolled in an approved Work-
Study Program (WSP) may be employed during school hours.

Fourteen is the minimum age for most non-farm work. However, at any age, minors may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely-owned non-farm business (except in mining, manufacturing or on hazardous jobs); or gather evergreens and make evergreen wreaths.

Farm Jobs (Child Labor)

In farm work, permissible jobs and hours of work, by age, are as follows:

(1) Minors 16 years and older may perform any job, whether hazardous or not, for unlimited hours;

(2) Minors 14 and 15 years old may perform any nonhazardous farm job outside of school hours;

(3) Minors 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with a parent’s written consent or on the same farm as the parent(s);

(4) Minors under 12 years old may perform jobs on farms owned or operated by parent(s), or with a parent’s written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents in any occupation on a farm owned or operated by their parents.
Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in DOL recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

1. personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
2. hour and day when workweek begins;
3. total hours worked each workday and each workweek;
4. total daily or weekly straight-time earnings;
5. regular hourly pay rate for any week when overtime is worked;
6. total overtime pay for the workweek;
7. deductions from or additions to wages;
8. total wages paid each pay period; and
9. date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers. Special information is required for homeworkers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, and for employees receiving remedial education.
Nursing Mothers

The Patient Protection and Affordable Care Act ("PPACA"), signed into law on March 23, 2010 (P.L. 111-148), amended Section 7 of the FLSA, to provide a break time requirement for nursing mothers.

Employers are required to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child’s birth each time such employee has need to express the milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child’s birth).

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother’s use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.
Only employees who are not exempt from Section 7, which includes the FLSA’s overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from Section 7, (such as bona fide professional, executive and administrative employees), they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer’s business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA’s general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies.
Terms Used in the FLSA

Workweek - A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment, each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked - Covered employees must be paid for all hours worked in a workweek. In general, “hours worked” includes all time an employee must be on duty, or on the employer’s premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee’s regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutory exclusions). The following examples are based on a maximum 40-hour workweek applicable to most covered nonexempt employees.

(1) Hourly rate (regular pay rate for an employee paid by the hour) - If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid $8.00 an hour works 44 hours in a workweek. The employee is entitled to
at least one and one-half times $8.00, or $12.00, for each hour over 40. Pay for the week would be $320 for the first 40 hours, plus $48.00 for the four hours of overtime - a total of $368.00.

(2) **Piece rate** - The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

**Example:** An employee paid on a piecework basis works 45 hours in a week and earns $405. The regular rate of pay for that week is $405 divided by 45, or $9.00 an hour. In addition to the straight-time pay, the employee is also entitled to $4.50 (half the regular rate) for each hour over 40 - an additional $22.50 for the 5 overtime hours - for a total of $427.50.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours. The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

(3) **Salary** - The regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the salary.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an
employee’s hours of work vary each week and the agreement with the employer is that the employee will be paid $480 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is $9.60 ($480 divided by 50 hours). In addition to the salary, half the regular rate, or $4.80, is due for each of the 10 overtime hours, for a total of $528 for the week. If the employee works 60 hours, the regular rate is $8.00 ($480 divided by 60 hours). In that case, an additional $4.00 is due for each of the 20 overtime hours for a total of $560 for the week.

In no case may the regular rate be less than the minimum wage required by the FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.
Enforcement

WHD’s enforcement of the FLSA is carried out by investigators stationed across the U.S., regardless of immigration status. As WHD’s authorized representatives, they conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the FLSA.

Willful violations may be prosecuted criminally and the violator fined up to $10,000. A second conviction may result in imprisonment.

Employers who violate the child labor provisions of the FLSA are subject to a civil money penalty of up to $11,000 for each employee who was the subject of a violation. These penalties may be increased up to $50,000 for each violation that caused the death or serious injury of any employee who is a minor, and may be doubled, up to $100,000, when the violation was determined to be willful or repeated.

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.

The FLSA prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.
Recovery of Back Wages

Listed below are methods which the FLSA provides for recovering unpaid minimum and/or overtime wages.

(1) WHD may supervise payment of back wages.

(2) The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.

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

(4) The Secretary of Labor may obtain an injunction to restrain any person from violating the FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has accepted back wages under the supervision of WHD or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a 3-year statute applies.
Other Labor Laws

In addition to the FLSA, WHD enforces and administers a number of other labor laws. Among these are:

(1) the **Davis-Bacon and Related Acts**, which require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction;

(2) the **Walsh-Healey Public Contracts Act**, which requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal Government;

(3) the **Service Contract Act**, which requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal Government;

(4) the **Contract Work Hours and Safety Standards Act**, which sets overtime standards for service and construction contracts;

(5) the **Migrant and Seasonal Agricultural Worker Protection Act**, which protects farm workers by imposing certain requirements on agricultural employers and associations and requires the registration of crewleaders who must also provide the same worker protections;

(6) the **Wage Garnishment Law**, which limits the amount of an individual’s income that may be legally garnished and prohibits firing an employee whose pay is garnished for payment of a single debt;

(7) the **Employee Polygraph Protection Act**, which prohibits most private employers from using any type of lie detector test either for pre-employment screening of job applicants or for testing current employees during the course of employment;
(8) the Family and Medical Leave Act, which entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year, with maintenance of group health insurance, for the birth and care of a child, for the placement of a child for adoption or foster care, for the care of a child, spouse, or parent with a serious health condition, or for the employee’s serious health condition; and

(9) the Immigration and Nationality Act, as amended, which:

- under the H-2A provisions, provides for the enforcement of contractual obligations of job offers which have been certified to by employers of temporary alien nonimmigrant agricultural workers;

- under the H-2B provisions, provides for the enforcement of employment conditions in the application for alien nonimmigrants in temporary, non-agricultural jobs;

- under the H-1C provisions, provides for the enforcement of employment conditions attested to by employers in disadvantaged areas employing H-1C temporary alien nonimmigrant registered nurses;

- under the D-1 provisions, provides for the enforcement of employment conditions attested to by employers seeking to employ alien crewmembers to perform specified longshore activity at U.S. ports; and

- under the H-1B provisions, provides for the enforcement of labor condition applications filed by employers wishing to employ aliens in specialty occupations and as fashion models of distinguished merit and ability.
More detailed information on the FLSA and other laws administered by WHD is available by calling our toll-free help line 1-866-4US-WAGE (1-866-487-9243). For those who have access to the Internet, further information may also be obtained on WHD’s Internet Home Page which can be located at the following address: www.wagehour.dol.gov.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

In accordance with the provisions of the SBREFA, the Small Business Administration established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small entities about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency’s responsiveness to small entities. Small entities wishing to comment on WHD enforcement activities may call 1-888-REG-FAIR (1-888-734-3247), or write the Office of the National Ombudsman, U.S. Small Business Administration, 409 3rd Street, SW, MC2120, Washington, DC 20416-0005, or visit the Ombudsman’s internet website, www.sba.gov/ombudsman/.

The right to file a comment with the Ombudsman is in addition to any other rights a small entity may have, including the right to contest the assessment of a civil money penalty. Filing a comment with the Ombudsman neither extends the maximum time period for contesting the assessment of a penalty, nor takes the place of filing the response required to secure an administrative hearing on a penalty. WHD does not consider filing of a comment with the Ombudsman as a factor in determining how to resolve issues raised during a compliance action.
Equal Pay Provisions

The equal pay provisions of the FLSA prohibit sex-based wage differentials between men and women employed in the same establishment who perform jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available by calling 1-800-669-4000 or visiting www.eeoc.gov.
FOR MORE INFORMATION

Call the Wage and Hour Division at 1-866-487-9243 (toll free) or visit our website at www.wagehour.dol.gov.