



Essential **Workers** Essential **Protections**



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
1-866-487-9243

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Wage and Hour Division



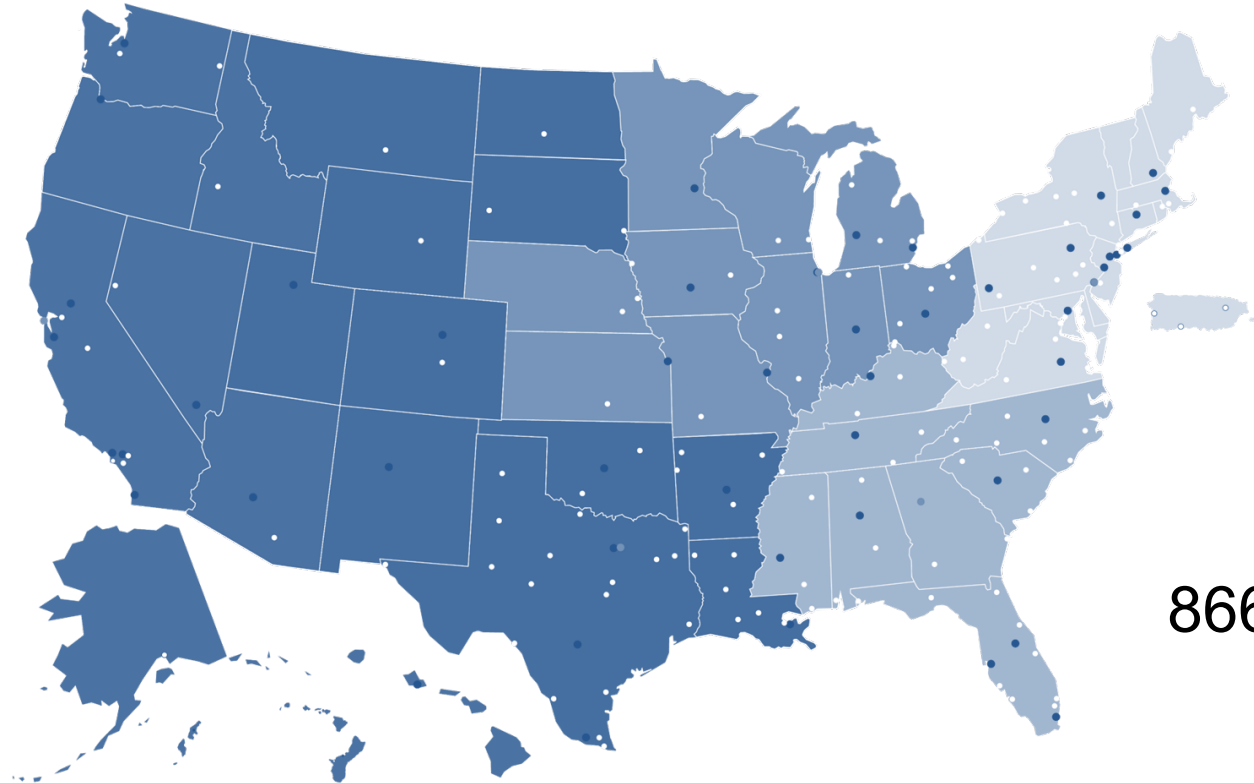
Who we are



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Helping Workers Throughout the Country



866-4US-WAGE



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Enforcing Workplace Protections

- 10 million establishments nationwide and 148 million workers covered.
- More than 200 WHD offices throughout the country.
- More than 200 languages spoken.



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Enforcement Regardless of Immigration Status

- Labor laws cover all workers, regardless of immigration status
- Protections apply regardless of immigration status
- WHD does not ask workers about their immigration status



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Essential Protections



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



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Bipartisan Infrastructure Law

The Bipartisan Infrastructure Law will:

- Create an estimated 800,000 good-paying jobs that will expand the middle class
- Revitalize our nation's transportation, communications and utilities systems
- Build a more resilient, reliable, and environmentally sound future

DBRA Coverage of Bipartisan Infrastructure Law Construction Projects

The Bipartisan Infrastructure Law (BIL) applies Davis-Bacon labor standards to federally funded or assisted construction projects in three different ways

- Adding funding to programs previously authorized by an existing Davis-Bacon Related Act
- Adding new programs under the umbrella of an existing Davis-Bacon Related Act
- Including provisions which expressly provide that Davis-Bacon labor standards apply to all construction projects receiving funding under particular programs created by or funded through BIL



State and Local Governments Under the **FAIR LABOR STANDARDS ACT**



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Fair Labor Standards Act (FLSA)



Essential Protections:

- Minimum wage: \$7.25 per hour
- Overtime at “time and one-half” for hours worked over forty in a workweek
- Recordkeeping requirements
- Prohibited youth employment
- Anti-retaliation provisions



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Break Time & Space for Nursing Mothers

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

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



Coverage

The requirements of the FLSA apply to employees of ***public agencies***

The FLSA does not apply to:

- Holders of public elective office
- Elected official's personal staff
- Policy makers appointed by elected officials
- Legal advisors to elected officials
- Volunteers

Minimum Wage

Hours Worked



An employee must be paid **for all** of the time considered to be “hours worked” under the FLSA.

This may include time spent engaged to wait, on-call, in training, or travelling, as well as sleep time.

Work not requested but **“suffered or permitted”** is work time.



FACT SHEET:
Hours Worked

Minimum Wage

Hours Worked Summary and Common Violations

- ***Suffered or Permitted:*** working “off the clock”
- ***Waiting Time:*** engaged to wait
- ***On-Call Time:*** not free from duty or employer control
- ***Meal and Rest Periods:*** not free from duty
- ***Training Time:*** unpaid training during work time
- ***Travel Time:*** unpaid travel between job sites
- ***Sleep Time:*** deduct for sleep in less than 24-hour shift

Overtime



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

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



FACT
SHEET:
[Overtime](#)

Overtime

Regular Rate

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

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

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

Overtime

Regular Rate and Premium Pay for OT Hours

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

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

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



Overtime

Exercise: Production Bonus

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

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

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

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

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

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

- **Total compensation for week:**

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

Overtime

Exclusions from the *Regular Rate*

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



FACT
SHEET:
[Regular Rate](#)

Overtime

Exclusions from the *Regular Rate*

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



FACT
SHEET:
[Regular Rate](#)

Overtime

Discretionary Bonuses

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



FACT
SHEET:
[Regular Rate](#)

Exemptions

Exemptions

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

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

Exemptions

Three Tests for the “White Collar” Exemptions

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



FACT
SHEET:
[Blue Collar
Workers](#)

Salary Basis Test

- An exempt employee must regularly receive a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- If employer chooses to use nondiscretionary bonuses and incentive payments to meet the standard salary level, the employee must be paid at least 90% of the standard salary level for any week in which the employee performs **any** work

Overtime

Special Exception for State and Local Government Employees

- Hourly deductions required by state or local law may be made from a salaried employee's pay
- The employee is still exempt from overtime so long as her duties meet all other requirements

Exemptions

Salary Level Test

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

Duties Tests

No Changes

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

Executive Duties

No Changes

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight

Administrative Duties

No Changes

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

Professional Duties

No Changes

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

OR

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

Professional Duties

Non-Exempt Professions

Common errors: misapplication of exemptions

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



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

Computer-Related Occupations

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

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

Overtime

Exemptions from Overtime Only

- Substitution
- Occasional or sporadic part time employment

Overtime

Seasonal Amusement or Recreational Establishments

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

Fire Protection and Law Enforcement

– Special Rules Apply for

- **Law enforcement employees:** who are empowered by state or local ordinance to enforce laws
- **Fire protection employees:** including firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers

Fire Protection and Law Enforcement

– Maximum Hours Per Work Period

Days	Law Enforcement	Fire Protection
28	171	212
21	128	159
14	86	106
7	43	53

Fire Protection and Law Enforcement

- **Sleep Time: Duty of 24 Hours or Less**
- If the employer has elected to use the work period overtime exception, sleep time cannot be deducted for a tour of duty of 24 hours or less

Fire Protection and Law Enforcement

- **Outside Employment/Special Duty**

- When off-duty law enforcement or fire protection employees perform special duty, working for an outside employer at their own option, the time is normally not counted as hours worked for the public agency

Compensatory Time

- Employees of State or local government agencies may receive compensatory time off instead of cash overtime pay at a rate of not less than one and one-half hours for each hour of overtime worked

Compensatory Time

– Compensatory Time Limits

- Limited to **480** hours for:
 - Law enforcement
 - Fire protection
 - Emergency response personnel
 - Employees engaged in seasonal activities
- Limited to **240** hours for all other employees

Compensatory Time

Compensatory Time Pay Out

When a State or local government employee terminates employment, she must receive cash for the balance of her compensatory time

Child Labor

In non-agricultural jobs...

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



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Child Labor

Hours Restrictions in **non-agricultural** jobs...

- Apply to 14- and 15-year-olds only
- Not during school hours
- No more than 3 hours on a school day or 8 hours on a non-school day
- No more than 18 hours during school weeks or 40 hours during non-school weeks
- Not before 7 a.m. and not after 7 p.m. except from June 1 to Labor Day when the time is extended until 9 p.m.



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Jobs 14 and 15-year olds can do

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

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



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More allowable jobs...

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



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More allowable jobs...

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

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



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

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



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HAZARDOUS OCCUPATIONS



The FLSA prohibits minors under age 18 from performing occupations that the Secretary of Labor declares to be particularly hazardous or detrimental to their health and well-being

Currently there are **17 Hazardous Occupations Orders (HOs)**



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HO 2.

HO 2. DRIVING OR OUTSIDE HELPER ON MOTOR VEHICLES

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



HO 2.

HO 2. DRIVING OR OUTSIDE HELPER ON MOTOR VEHICLES



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



HO 5.

HO 5. POWER-DRIVEN WOODWORKING MACHINES



Bans the operation of most power-driven woodworking machines, including saws, stapling machines, nailing machines, and sanders

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



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HO 10.

HO 10. POWER-DRIVEN MEAT PROCESSING MACHINES



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

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



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HO 11.

HO 11. POWER-DRIVEN BAKERY MACHINES



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



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HO 12.

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



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



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HO 12.

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

Scrap Paper Balers and Box Compactors:

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



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HO 16.

HO 16. ROOFING OCCUPATIONS AND ALL WORK ON OR ABOUT A ROOF



Bans **all** jobs in roofing operations including work performed on the ground; **AND**

All work performed on or about a roof (in close proximity)

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



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EXCEPTIONS AND EXEMPTIONS

- Casual babysitting, newspaper delivery, modeling, and acting
- Parental exception
- Apprentices
- Student Learners



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Recordkeeping



- All employers subject to any provision of the FLSA must make, keep, and preserve certain records
- Time clocks are not required and records need not be kept in any particular form
- Every covered employer must keep basic records for each worker, with additional requirements for non-exempt workers



FACT SHEET:
Recordkeeping
Requirements

FLSA Enforcement

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

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

FLSA Compliance Assistance

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

Visit the WHD home page: www.dol.gov/agencies/whd

Online Resources



- Worker.gov
- Employer.gov



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Online Resources

Elaws Advisors

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

dol.gov/elaws



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Compliance Assistance

- **Northern New England District Office**
- PHONE: 603-666-7716
- Web: www.dol.gov/agencies/whd