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The Power to Compete

HR How-to:

Determining FLSA Overtime and Minimum Wage Exemptions

Provided by Employco USA, Inc.



HR How-to: Determining FLSA Overtime and Minimum Wage Exemptions

Managers and HR professionals play a crucial role in ensuring compliance with the Fair Labor Standards Act's (FLSA) minimum wage and overtime payment requirements, helping reduce legal risks and ensure workers are paid properly. Understanding FLSA overtime and minimum wage requirements and determining which employees are exempt from these requirements is essential.

This how-to guide aims to provide employers and HR professionals with an understanding of determining overtime and minimum wage exemptions under the FLSA. It provides a general overview of the FLSA, explores the most common exemptions, and outlines the process for determining whether an employee is exempt from minimum wage and overtime requirements. Employers should keep in mind that complying with the FLSA can be complex and may involve additional steps depending on the facts of a specific situation; therefore, employers may need to modify the process for determining FLSA overtime and minimum wage exemptions provided in this guide to meet the unique needs of their organization. Additionally, this guide will not address important FLSA-related requirements and processes beyond determining whether an employee is exempt from minimum wage and overtime requirements, including recordkeeping and youth employment.

This guide can help provide HR professionals and their organizations with the knowledge and tools necessary to confidently navigate the complexities of FLSA minimum wage and overtime requirements. The steps outlined in this guide can help employers establish best practices for determining whether an employee is exempt from federal minimum wage and overtime requirements. This information comes from the U.S. Department of Labor (DOL), and employers can learn more by reviewing the department's [resources](#) on the FLSA. Employers can reference the checklist in the appendix for a step-by-step guide for complying with FLSA overtime and minimum wage exemptions.

In many situations, employees may be entitled to protections under other federal, state and local wage and hour laws. Due to the complexities of complying with wage and hour requirements, employers are encouraged to consult with local legal counsel if they have any specific questions or concerns.

Overview of the FLSA

The FLSA is a federal law that establishes minimum wage, overtime pay, recordkeeping and youth employment standards for covered employers. The DOL's Wage and Hour Division (WHD) administers and enforces the FLSA's minimum wage and overtime provisions and investigates violations. Employers that do not comply with the FLSA can find themselves in difficult and costly legal situations, including being liable for back pay, liquidated damages, attorneys' fees and costs.

The FLSA requires employers to compensate their employees for all hours employees are **“suffered or permitted”** to work. This means that an employer must compensate its employees for every hour the employee actually works and every hour during which employees are required to remain available for their next assignment.

Under the FLSA, covered employers must pay employees at least the federal minimum wage for all hours worked and overtime pay—at a rate of **one-half times their regular rate** for all hours worked **over 40 hours in a workweek**. However, the FLSA provides several exemptions from minimum wage and overtime pay requirements. The most common are “white-collar” exemptions. These exemptions mainly apply to executive, administrative and professional (EAP) employees but also include outside sales personnel and certain computer or highly compensated employees (HCEs).

Covered Employers

The FLSA applies only to **“covered” employers**. An employer may be subject to the FLSA if it meets “enterprise” or “individual” coverage requirements:

An employer is considered a covered employer under **enterprise coverage** if it employs **at least two employees** and:



Has an annual dollar volume of sales or business done of at least \$500,000; or



Is a hospital, a business providing medical or nursing care for residents, a school or preschool, or a government agency.

Individual coverage applies to employees who are involved in interstate commerce, the production of goods for interstate commerce, or any closely related process or occupation directly essential to such production.

Examples of employees under individual coverage include those who:

- Work in communications or transportation;
- Regularly use mail, telephone or telegraph for interstate communication;
- Keep records of interstate transactions;
- Handle, ship or receive goods moving in interstate commerce;
- Regularly cross state lines in the course of employment; and
- Work for independent employers who contract to do clerical, custodial, maintenance or other work for firms engaged in interstate commerce or the production of goods for interstate commerce.

Additionally, domestic service workers, such as day workers, housekeepers, chauffeurs, cooks or full-time babysitters, are covered by the FLSA if:

- Their cash wages for one employer in the calendar year 2024 are at least \$2,700 (this calendar year threshold is adjusted by the Social Security Administration each year); or
- They work a total of more than eight hours a week for one or more employers.

White-collar Exemptions

To qualify for a **white-collar exemption**, an employee must satisfy every applicable test for that exemption. Job titles or salary wages alone do not determine exempt status. The three tests for the white-collar exemptions are:

1. The **salary basis test**—The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed;
2. The **salary level test**—The amount of the salary paid must meet a specified minimum amount; and
3. The **duties test**—The employee’s job duties must primarily involve those associated with EAP, outside sales or computer employees.

The white-collar exemptions do not apply to:

- “Blue-collar” workers who typically perform manual labor, such as mechanics, plumbers, electricians, construction workers and assembly line workers;
- Law enforcement personnel, including police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, and park rangers;
- First responders, including firefighters, paramedics, emergency medical technicians, ambulance personnel and rescue workers; or
- Hazardous materials workers (and similar employees) who, regardless of rank or pay level, perform work such as preventing, controlling or extinguishing fires.

Simply paying an employee a salary does not relieve an employer of minimum wage and overtime obligations to that employee. Unless they meet all the criteria for a specific exemption, employees covered by FLSA protections who are paid a salary are still due overtime pay if they work more than 40 hours in a week.

The Salary Basis Test

The **salary basis test** is used to make sure the employee is paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of the employee's work. Employees must be paid on a salary or fee basis to qualify for a white-collar exemption under the FLSA.

The Salary Level Test

The **salary level test** is used to ensure that the employee meets a minimum specified amount to qualify for the exemption. This salary threshold provides employers with an objective and efficient way to determine whether an employee qualifies for a white-collar exemption.

On April 23, 2024, the DOL [announced](#) a final rule to amend current requirements employees in white-collar occupations must satisfy to qualify for an FLSA overtime exemption. The [final rule](#) will take effect on July 1, 2024.

Starting **July 1, 2024**, the DOL's final rule increases the salary level from:

- **\$684 to 844 per week** (\$35,568 to \$43,888 per year) for EAP employees; and
- **\$107,432 to \$132,964 per year** for HCEs.

On **Jan. 1, 2025**, the salary level will increase from:

- **\$844 to \$1,128 per week** (\$43,888 to \$58,656 per year) for EAP employees; and
- **\$132,964 to \$151,164 per year** for HCEs.

The DOL's final rule also includes mechanisms allowing the agency to automatically update the white-collar salary level thresholds without having to rely on the rulemaking process. Effective **July 1, 2027**, and every three years thereafter, the DOL will increase the standard salary level. The agency will apply up-to-date wage data to determine new salary levels.

The Duties Test

The **duties test** requires that the employee's job duties conform to EAP duties as defined by law. To satisfy the duties test, an employee's actual work responsibilities must match the description the FLSA assigns to each exemption. This analysis requires a more thorough evaluation of whether an employee can be classified as an EAP, outside sales or computer employee, or an HCE.

How to Determine Whether an Employee Is Exempt From FLSA Minimum Wage and Overtime Requirements

The FLSA is designed to facilitate better working conditions by establishing 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. Employers can better support their workforce by ensuring employees are properly compensated. To do this, covered employers must determine whether an employee is exempt from the FLSA's minimum wage and overtime requirements.

The FLSA requires that most U.S. employees be paid at least the federal minimum wage for all hours worked and overtime pay at not less than time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. For covered employers, their obligation to pay employees the federal minimum wage and overtime pay depends on whether an employee is exempt or nonexempt under the FLSA. While an employer may classify an employee as exempt from FLSA minimum wage and overtime requirements based on the individual's job title (e.g., a position with "manager" or supervisor" in the title) or if that individual is paid on a salary basis, this is not enough to satisfy the FLSA's requirements. Employers must determine if an employee is exempt or nonexempt by analyzing the threshold for both the FLSA's salary and duties tests.

The following steps outline best practices for determining whether an employee is exempt from FLSA minimum wage and overtime requirements. For purposes of this guide, employers are presumed to be covered employers under the FLSA.

Step 1:

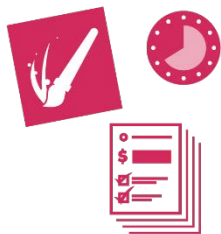
Identify Whether the Employee Meets the Salary Basis

To qualify for a white-collar exemption under the FLSA, an employee must be paid on a **"salary basis."** This means that an employee regularly receives a predetermined amount of compensation each pay period on a weekly or less frequent basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Additionally, an exempt employee must receive their full salary for any week the employee performs any work, regardless of the number of days or hours worked, unless an exception applies. If an employer makes deductions from an employee's predetermined salary, the employee is not paid on a salary basis and may be entitled to overtime compensation.

On Feb. 22, 2023, the U.S. Supreme Court held in *Helix Energy Solutions Group Inc. v. Hewitt* that employees must be compensated on a salary basis to qualify for the HCE overtime exemption under the FLSA. In this case, the employer claimed that an employee who made more than \$200,000 per year but was paid on a daily basis qualified for the HCE overtime exemption. It argued that paying a minimum amount per day could count as a salary. The Court disagreed, ruling that the FLSA plainly requires HCEs to receive a salary. The Court also held that this requirement is not met “when an employer pays an employee by the day,” as Helix paid the employee. With this decision, the Court reasoned that the salary basis test “typically refers to the unit or method for calculating pay, not the frequency of its distribution.”

Administrative, professional and computer employees may be paid on a “**fee basis**” rather than a salary basis. An employee is paid on a “fee basis” if they are paid an agreed sum for a single job, regardless of the time required for its completion. A fee payment is generally paid for a unique job rather than a series of jobs repeated several times and for which identical payments are made repeatedly.

To determine whether the fee payment meets the minimum salary level requirement, an employer must consider the time an employee worked on the job and determine whether the payment is at a rate that would meet the required weekly salary level if the employee worked 40 hours.



For example, on Jan. 1, 2024, an artist is paid \$350 for a painting that took 20 hours to complete. This would meet the minimum salary requirement since the rate would yield \$700 if 40 hours were worked, meeting the required \$684 per week salary level requirement in place at that time.

Permissible Deductions

Deductions from an exempt employee’s pay are permissible in the following circumstances:

- The employee is absent from work for one or more full days for personal reasons other than sickness or disability;
- The employee is absent for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
- The amounts an employee receives as jury or witness fees or for military pay are offset;
- Penalties are imposed in good faith for infractions of safety rules of major significance; or
- Unpaid disciplinary suspensions of one or more full days are imposed in good faith for workplace conduct rule infractions.

An employer is not required to pay the full salary in the initial or terminal week of employment or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

Improper Deductions

An employer can lose the white-collar exemption if it has an “**actual practice**” of making improper deductions from salary. When determining whether an employer has an actual practice of making improper deductions, the following factors are considered:

- The number of improper deductions, particularly as compared to the number of employee infractions warranting deductions;
- The time period during which the employer made improper deductions;
- The number and geographic location of both the employees whose salary was improperly reduced and the managers responsible; and
- Whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

If an actual practice is found, the exemption is lost during the time period of the deductions for employees in the same job classification working for the same managers responsible for the improper deductions. Isolated or inadvertent improper deductions will not result in loss of the exemption if the employer reimburses the employee for the improper deductions.

However, if an employer has a clearly communicated policy prohibiting improper deductions and including a complaint mechanism, reimburses employees for any improper deductions and makes a good-faith commitment to comply in the future, the employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing the improper deductions after receiving employee complaints.

Step 2:

Determine Whether the Employee Meets the Salary Level Test

To satisfy the salary level test, an employer must pay an employee at least **\$684 per week** (or **\$35,568 per year**) for an EAP employee or **\$107,432** per year if the employee is an HCE.

Effective **July 1, 2024**, the salary level will increase to **\$844 per week (\$43,888 per year)** for EAP employees and **\$132,964 per year** for HCEs. The salary level will increase again on **Jan. 1, 2025**, to **\$1,128 per week (\$58,656 per year)** for EAP employees and **\$151,164** per year for HCEs.

Employers can use an employee’s bonus to satisfy **up to 10%** of the employee’s salary level requirements if the bonus, commission or other incentive pay is nondiscretionary and the employee receives this incentive pay at least annually (during any given 52-week period). This cannot consist of credit for board, lodging or other facilities; payments for medical or life insurance; or contributions to retirement plans or other fringe benefits. However, employers may not use nondiscretionary bonuses and incentive payments (including commissions) to satisfy any portion of the weekly standard salary level for HCEs.

Finally, a **catch-up provision** allows employees to remain exempt when their nondiscretionary bonuses aren't enough to meet the salary level required by an FLSA exemption. Under this provision, employers must make a "catch-up payment" **within one pay period** at the end of the 52-week period before losing that employee's exempt status. The DOL has warned that any catch-up payment "will count only toward the prior year's salary amount and not toward the salary amount in the year in which it is paid."

Exceptions to the Salary Level Test

While employees must generally satisfy the salary level test to be exempt from the FLSA's minimum wage and overtime requirements, there are certain exceptions and, in some cases, different requirements.

Outside Sales Exemption

The FLSA's salary requirements do not apply to the outside sales exemption. However, an employee who does not satisfy the requirements of the outside sales exemption may still qualify as an exempt employee under one of the other FLSA exemptions if all the criteria for the exemption are met.

Computer Employee Exemption




An employee may satisfy the salary requirement for the computer employee exemption if their hourly salary is not less than **\$27.63 an hour**. A computer employee may also meet the FLSA's salary requirements if they receive compensation either on a salary or fee basis at a rate not less than \$684 per week (this amount will increase in accordance with the salary level increases).

Step 3:

Evaluate the Employee's Job Duties and Responsibilities

The employee's job duties must primarily involve those associated with EAP, outside sales or computer employees. To satisfy the duties test, an employee's actual work responsibilities must match the description the FLSA assigns to each exemption. This analysis requires a more thorough evaluation of whether an employee can be classified as an EAP, outside sales or computer employee, or an HCE.

A **primary duty** is a duty that constitutes the principal, main, major or most important part of an employee's work. Determination of an employee's primary duty must be based on all the facts in a particular case, with an emphasis on the character of the employee's job as a whole. The following factors are considered when determining the primary duty of an employee:

-  The relative importance of the major or most important duty as compared with other types of duties;
-  The amount of time spent performing the major or most important duty;
-  The employee's relative freedom from direct supervision; and



The relationship between the employee's salary and the wages paid to other employees for performance of similar work.

The amount of time an employee spends performing a specific duty can be a useful guide in determining whether such work is an employee's primary duty. For example, an employee who spends more than 50% of their time performing a specific duty will generally satisfy the primary duty requirement. However, time alone is not the sole test, and nothing requires that exempt employees spend more than 50% of their time performing a specific duty.

The following is an overview of the job descriptions assigned for each white-collar exemption.

Executive Exemption

To qualify for the executive exemption, an employee must:

- Have a primary duty to manage the enterprise or manage a customarily recognized department or subdivision of the enterprise;
- Customarily and regularly direct the work of at least two or more other full-time employees or their equivalents; and
- Have the authority to hire or fire other employees; otherwise, their suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Examples of job roles that typically meet this test include chief executive officer, controller, vice president and director.

Administrative Exemption

To qualify for the executive exemption, an employee must:

- Have a primary duty to perform office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers.
 - This primary duty must include the exercise of discretion and independent judgment with respect to matters of significance.

Examples of job roles that typically meet this test include manager, supervisor and administrator.

Professional Exemption

There are two general types of exempt professional employees: learned and creative. To qualify for the professional exemption, an employee must satisfy all the requirements of either a creative or learned professional.

Creative Professional

To qualify for the creative professional exemption, an employee must have a primary duty to perform work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Examples of recognized fields of artistic or creative endeavors include music, writing, acting and the graphic arts.

Learned Professional

Under the learned professional exemption, the employee's primary duty must be the performance of work requiring advanced knowledge. Advanced knowledge is defined as work that is predominantly intellectual in character and requires the consistent exercise of discretion and judgment. The **advanced knowledge** must be:

- In a field of science or learning; and
- Customarily acquired by a prolonged course of specialized intellectual instruction.

Examples of job roles that typically meet this test include accountant, nurse and engineer.

Computer Employee Exemption

To qualify for this exemption, the employee must:

- Be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- Have a primary duty consisting of:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - A combination of these duties, the performance of which requires the same level of skills.

The computer employee exemption does not include employees engaged in the manufacturing or repairing of computer hardware and related equipment. Additionally, employees whose work is highly dependent upon or facilitated by the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test, are also not exempt under the computer employee exemption.

Examples of job roles that typically meet this test include network or database analyst, developer, programmer and software engineer.

Outside Sales Exemption

To qualify for this exemption, the employee's primary duty must be making sales (as defined in the FLSA) or obtaining orders or contracts for services or the use of facilities for which a consideration will be paid by the client or customer. The employee must also be customarily and regularly engaged away from the employer's place or places of business.

HCE Exemption

To qualify for the HCE exemption, the employee must:

- Perform office or nonmanual work as their primary duty; and
- Customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt EAP employee.

For example, an employee may qualify for an exempt highly compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption.

Step 4:

Consider Additional Exemptions

The FLSA's minimum wage and overtime exemptions are narrowly defined. Employers should be sure to carefully check the exact terms and conditions for each exemption.

Additional Minimum Wage and Overtime Pay Exemptions

Some employees are exempt from both minimum wage and overtime pay requirements if they are employed by the following establishments or in the following areas:

- Seasonal amusement or recreational establishments;
- Small newspapers;
- Seaman working on foreign vessels;
- Fishing operations;
- Newspaper delivery;
- Farmwork in which they are employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the proceeding calendar year; and
- Casual babysitting and employed as companions for the elderly or infirm.

Employees Who Are Exempt From Overtime Pay Only

Some employees are exempt from only the FLSA's overtime requirements, including the following:

- Certain commissioned employees of retail or service establishments;

- Auto, truck, trailer, farm implement, boat or aircraft sales workers;
- Parts clerks and mechanics servicing automobiles, trucks or farm implements who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- 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;
- Announcers, news editors and chief engineers of certain nonmetropolitan broadcasting stations;
- Domestic service workers living in the employer's residence;
- Employees of motion picture theaters; and
- Farmworkers.

Employees Who Are Partially Exempt From Overtime Pay

Some employees are partially exempt from the FLSA's overtime requirements, including the following:

- Employees engaged in certain operations on agricultural commodities and bulk petroleum distributors;
- Hospitals and residential care establishments that adopt, by agreement with their employees, a 14-day work period instead of the usual seven-day workweek if the employees are paid at least time and one-half their regular rates of pay for hours worked over eight in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours;
- Employees who lack a high school diploma or who have not attained the educational level of the eighth grade and are 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; and
- Public agency fire and police departments may establish a work period ranging from seven to 28 days in which overtime need only be paid after a specified number of hours in each work period.

Summary

The FLSA aims to improve working conditions by establishing minimum wage, overtime pay, recordkeeping and child labor standards affecting full-time and part-time workers in the private and public sectors. Complying with this federal law can be challenging and time-consuming, especially as employers navigate complex minimum wage and overtime requirements, and determining whether an employee is exempt from these requirements is often more difficult than it initially appears. As a result, employers may need to take additional steps that are not discussed in this guide, depending on the facts of a specific situation.

By understanding FLSA minimum wage and overtime exemptions, employers and HR professionals can ensure their organizations avoid potential legal pitfalls and promote an equal work environment for all employees. The steps presented in this guide can help employers better implement strategies and solutions to improve their FLSA operations and compliance efforts.

Contact Employco USA, Inc. today for more FLSA resources.



Appendix

CHECKLIST | COMPLYING WITH FLSA OVERTIME AND MINIMUM WAGE EXEMPTIONS

Presented by Employco USA, Inc.

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping and youth employment standards for covered employers. The U.S. Department of Labor’s Wage and Hour Division (WHD) administers and enforces the FLSA with respect to private employment, state and local government, and, in some circumstances, the federal government. Employers who fail to comply with the FLSA may be liable for back pay, liquidated damages, attorneys’ fees and costs.

Under the FLSA, covered employers must pay employees at least the federal minimum wage for all hours worked and overtime pay—at a rate of 1.5 times their regular pay rate—for all hours worked over 40 in a workweek. However, the FLSA provides several exemptions for minimum wage and overtime pay requirements. The most common are “white-collar” exemptions. These exemptions mainly apply to executive, administrative and professional employees but include outside sales personnel and certain computer or highly compensated employees (HCEs).

This checklist outlines key steps for complying with the FLSA’s overtime and minimum wage exemptions. The information in this checklist comes from the WHD and reflects the agency’s most current [guidance](#) for employers. Employers should keep in mind that complying with the FLSA can be complex and may involve additional steps depending on the facts of a specific situation. Therefore, this checklist should be used as a guide, and the steps in this list should be modified to meet the unique needs of each organization. Additionally, many states and localities may have their own wage and overtime requirements that employers must comply with. Therefore, employers are encouraged to seek legal counsel to address specific issues and concerns.

Covered Employers

Is your company subject to the FLSA?	Yes	No
Select “Yes” if your company meets “enterprise” coverage: Enterprise coverage applies to employees who work for certain organizations (or “enterprises”). Your company is considered a covered employer under enterprise coverage if you employ at least two employees and: <ul style="list-style-type: none">• Have an annual dollar volume of sales or business done of at least \$500,000 OR <ul style="list-style-type: none">• Are a hospital, a business providing medical or nursing care for residents, a school and preschool, or a government agency <p><i>If you answered “No,” go to individual coverage.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

Is your company subject to the FLSA?	Yes	No
<p>Select “Yes” if your company meets “individual” coverage:</p> <p>Individual coverage applies to employees who are involved in interstate commerce, the production of goods for interstate commerce, or any closely related process or occupation directly essential to such production.</p> <p>Examples include employees who work in communications or transportation; regularly use mail, telephones or telegraph for interstate communication; keep records of interstate transactions; handle, ship or receive goods moving in interstate commerce; regularly cross state lines in the course of employment; work for independent employers who contract to do clerical, custodial, maintenance or other work for firms engaged in interstate commerce or the production of goods for interstate commerce.</p> <p><i>If you answered “No,” you can stop here. However, be sure to check any state and local wage and hour laws that may apply to your company.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

Important Information

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

- Their cash wages for one employer in the calendar year 2010 are at least \$1,700 (this calendar year threshold is adjusted by the Social Security Administration each year)

OR

- They work a total of more than eight hours per week for one or more employers

FLSA Overtime and Minimum Wage Exemptions

Is the employee exempt from minimum wage and overtime pay requirements? <i>Employers should answer all of the following questions.</i>	Yes	No
<p>Does the employee meet the salary basis test to be exempt from the FLSA’s minimum wage and overtime pay provisions?</p> <p>To satisfy the salary basis test, your company must pay an employee a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Does the employee meet the salary level test to be exempt from the FLSA’s minimum wage and overtime pay provisions?</p>	<input type="checkbox"/>	<input type="checkbox"/>

CHECKLIST | COMPLYING WITH FLSA OVERTIME AND MINIMUM WAGE EXEMPTIONS

<p>To satisfy the salary level test, your company must pay an employee at least \$684 per week (\$35,568 per year) or \$107,432 per year if the employee is an HCE.</p> <p><i>Effective July 1, 2024, the standard salary level increases from:</i></p> <ul style="list-style-type: none"> • <i>\$684 to \$844 per week (\$35,568 to \$43,888 per year); and</i> • <i>\$107,432 to \$132,964 per year for HCEs.</i> <p><i>On Jan. 1, 2025, the standard salary level will then increase from:</i></p> <ul style="list-style-type: none"> • <i>\$844 to \$1,128 per week (\$43,888 to \$58,656 per year); and</i> • <i>\$132,964 to \$151,164 per year for HCEs.</i> <p><i>Additionally, effective July 1, 2027, and every three years thereafter, the DOL will increase the standard salary level. The agency will apply up-to-date wage data to determine new salary levels.</i></p>		
<p>Does the employee meet the executive exemption duties test? An employee is exempt from FLSA minimum wage and overtime requirements if they satisfy the executive exemption duties test. Examples of job roles that typically meet this test include chief executive officer, controller, vice president and director.</p> <p>For an employee to qualify for this exemption, you must answer yes to all of the following:</p> <ul style="list-style-type: none"> • The employee’s primary duty must be managing the enterprise or a customarily recognized department or subdivision of the enterprise. • The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent. • The employee must have authority to hire or fire other employees OR the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight. 	<input type="checkbox"/>	<input type="checkbox"/>
<p>Does the employee meet the administrative exemption duties test? An employee is exempt from FLSA minimum wage and overtime requirements if they satisfy the administrative exemption duties test. Examples of job roles that typically meet this test include manager, supervisor and administrator.</p> <p>For an employee to qualify for this exemption, you must answer yes to all of the following:</p> <ul style="list-style-type: none"> • The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. • The employee’s primary duty must be the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer’s customers. 	<input type="checkbox"/>	<input type="checkbox"/>

This checklist is merely a guideline. It is neither meant to be exhaustive nor meant to be construed as legal advice. It does not address all potential compliance issues with federal, state or local standards. Consult your licensed representative at Employco USA, Inc. or legal counsel to address possible compliance requirements. © 2023, 2024 Zywave, Inc. All rights reserved.

<p>Does the employee meet the professional exemption duties test? An employee is exempt from FLSA minimum wage and overtime requirements if they satisfy the professional exemption duties test. Examples of job roles that typically meet this test include accountant, nurse, engineer, composer, singer and graphic designer. This exemption includes learned and creative professionals.</p> <p>For an employee to qualify for the learned professional exemption, you must answer yes to all of the following:</p> <ul style="list-style-type: none"> • The employee’s primary duty must be the performance of work requiring advanced knowledge, defined as work that is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment. • The advanced knowledge must be in a field of science or learning. • The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. <p>For an employee to qualify for the creative professional exemption, you must answer yes to all of the following:</p> <ul style="list-style-type: none"> • The employee’s primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. 	<input type="checkbox"/>	<input type="checkbox"/>
<p>Does the employee meet the computer exemption duties test? An employee is exempt from FLSA minimum wage and overtime requirements if they satisfy the computer exemption duties test. Examples of job roles that typically meet this test include network or database analyst, developer, programmer and software engineer.</p> <p>For an employee to qualify for this exemption, you must answer yes to all the following:</p> <ul style="list-style-type: none"> • The employee’s primary duties must consist of: <ul style="list-style-type: none"> ○ The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; OR ○ The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; OR ○ The design, documentation, testing, creation or modification of computer programs related to machine operating systems; OR ○ A combination of the aforementioned duties, the performance of which requires the same level of skills. • The employee must be compensated on a salary or fee basis at a rate of not less than \$684 per week. 	<input type="checkbox"/>	<input type="checkbox"/>

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<p>OR</p> <ul style="list-style-type: none"> The employee must be compensated at a rate of no less than \$27.63 per hour if the employee is compensated on an hourly basis. <p><i>Effective July 1, 2024, the employee must be compensated on a salary or fee basis at a rate of not less than \$844 to be exempt. Then, on Jan. 1, 2025, the employee must be compensated on a salary or fee basis at a rate of not less than \$1,128 per week to be exempt.</i></p>		
<p>Does the employee meet the outside sales exemption duties test? An employee is exempt from FLSA minimum wage and overtime requirements if they satisfy the outside sales exemption duties test. Examples of job roles that typically meet this test include salespeople and contract negotiators.</p> <p>For an employee to qualify for this exemption, you must answer yes to all the following:</p> <ul style="list-style-type: none"> The employee’s primary duty must be making sales (as defined by the FLSA) or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer. The employee must be customarily and regularly engaged away from the employer’s place or places of business. <p><i>“Sales” include any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition. It includes the transfer of title to tangible property and, in certain cases, of tangible and valuable evidence of intangible property.</i></p> <p><i>The salary basis and requirements do not apply for this exemption.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Does the employee meet the HCE exemption?</p> <p>For the employee to qualify for this exemption, you must answer yes to all of the following:</p> <ul style="list-style-type: none"> The employee must perform office or nonmanual work. The employee must customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard test for exemption listed above. The employee must be paid a total annual compensation of \$107,432 or more. This must include at least \$684 per week paid on a salary or fee basis. <p><i>Effective July 1, 2024, the standard salary level for HCEs increases from \$107,432 to \$132,964 per year. This must include at least \$844 per week paid</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

on a salary or fee basis. Then, on Jan. 1, 2025, the standard salary level for HCEs will then increase from \$132,964 to \$151,164 per year for HCEs. This must include \$1,128 per week on a salary or fee basis.

Additionally, effective July 1, 2027, and every three years thereafter, the DOL will increase the standard salary level. The agency will apply up-to-date wage data to determine new salary levels.

If you answered “No” to all the questions above, you can stop here. However, be sure to check any state and local wage and hour laws that may apply to your company as well as the additional information provided below.

Important Information

Additional minimum wage and overtime pay exemptions—Some employees are exempt from both minimum wage and overtime pay requirements if they are employed by the following establishments or in the following areas:

- Seasonal amusement or recreational establishments
- Small newspapers
- Seaman working on foreign vessels
- Fishing operations
- Newspaper delivery
- Farmworker employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the proceeding calendar year
- Casual babysitters and persons employed as companions for the elderly or infirm

Employees who are exempt from overtime pay only—Some employees are exempt from only the FLSA’s overtime requirements, including the following:

- Certain commissioned employees of retail or service establishments
- Auto, truck, trailer, farm implement, boat or aircraft sales workers
- Parts clerks and mechanics servicing automobiles, trucks or farm implements who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers
- 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
- Announcers, news editors and chief engineers of certain nonmetropolitan broadcasting stations
- Domestic service workers living in the employer’s residence
- Employees of motion picture theaters
- Farmworkers

Employees who are partially exempt from overtime pay—Some employees are partially exempt from the FLSA’s overtime requirements, including the following:

- Employees engaged in certain operations on agricultural commodities and bulk petroleum distributors
- Hospitals and residential care establishments that adopt, by agreement with their employees, a 14-day work period instead of the usual seven-day workweek if the employees are paid at least time and one-half their regular rates of pay for hours worked over eight in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours
- Employees who lack a high school diploma or who have not attained the educational level of the eighth grade who are required to spend up to 10 hours in a workweek engaged in remedial

CHECKLIST | COMPLYING WITH FLSA OVERTIME AND MINIMUM WAGE EXEMPTIONS

reading or training in other basic skills without receiving time and one-half overtime pay for these hours

- Public agency fire and police departments may establish a work period ranging from seven to 28 days in which overtime need only be paid after a specified number of hours in each work period

Use this checklist as a guide when reviewing your company's compliance with FLSA minimum wage and overtime requirements. For assistance, contact Employco USA, Inc..

HR COMPLIANCE OVERVIEW

Avoiding Common FLSA Overtime Mistakes

The federal Fair Labor Standards Act (FLSA) requires employers to pay nonexempt employees with overtime pay for every hour they work over 40 during a workweek. Overtime pay must be paid at a rate of one and one-half the employee's regular rate of pay.

An employee's regular rate of pay is the average compensation an employee receives for every hour the employee worked during a workweek. To calculate an employee's regular wage rate, the employer must divide the employee's total wages for a workweek by the number of hours the employee actually worked during that workweek.

Employers may not average the hours an employee works during one workweek with the hours the employee works during other weeks. An employee's total wages may be determined on a piece-rate, salary, commission or some other basis.

LINKS AND RESOURCES

- DOL Wage and Hour Division [website](#)
- Fair Labor Standards Act [advisor](#)
- Overtime pay requirements [fact sheet](#)
- The DOL's [final rule](#) on overtime pay for the white-collar exemptions

Overtime Pay

- Overtime pay is one and one-half times the employee's regular wage rate for any time worked over 40 hours during a workweek.
- Overtime payment exemptions are very specific and all requirements must be satisfied.
- Compensable time includes any time an employee is required or permitted to work, as well as any time the employee is on duty or at a prescribed workplace.

Common Mistakes

- ❌ Misclassifying employees
- ❌ Miscalculating total wages
- ❌ Failing to account for all work hours
- ❌ Refusing to pay for unauthorized overtime work

Provided to you by **Employco USA, Inc.**

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.
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HR COMPLIANCE OVERVIEW



On April 23, 2024, the U.S. Department of Labor (DOL) announced a final rule to amend current requirements employees in white-collar occupations must satisfy to qualify for an overtime exemption under the FLSA. The [final rule](#) will take effect on July 1, 2024.

Starting July 1, 2024, the DOL's final rule increases the standard salary level from:

- \$684 to \$844 per week (\$35,568 to \$43,888 per year); and
- \$107,432 to \$132,964 per year for highly compensated employees.

On Jan. 1, 2025, the standard salary level will then increase from:

- \$844 to \$1,128 per week (\$43,888 to \$58,656 per year); and
- \$132,964 to \$151,164 per year for highly compensated employees.

The DOL's final rule also includes mechanisms allowing the agency to automatically update the white-collar salary level thresholds without having to rely on the rulemaking process. Effective July 1, 2027, and every three years thereafter, the DOL will increase the standard salary level. The agency will apply up-to-date wage data to determine new salary levels.

Compensable Time

To comply with FLSA regulations, employers must keep track of the number of compensable hours employees work during a workweek.

Compensable time (or hours worked) ordinarily includes all time during which employees are required to be on the employer's premises, on duty or at a prescribed workplace. "Workday" generally means the period between the time on any particular day when employees commence their "principal activity" and the time on that day when they cease that principal activity or activities. For this reason, an employee's workday may be longer than his or her scheduled shift, hours, tour of duty or production line times.

Employers should consider the following circumstances when calculating an employee's amount of accrued compensable time:

- Waiting Time:** Whether waiting time is "hours worked" under the FLSA depends upon the particular circumstances. Generally, if employees engaged to wait are working during these periods of inactivity, they must be paid for this time. Examples of waiting time that would be considered hours worked would be the time spent by a line worker waiting for a machine to be repaired or a fireman who reads a book while waiting for an alarm.
- On-call Time:** Any time employees are required to remain on call at the employer's premises likely qualifies as working time. However, time employees are required to remain on call at home often will not qualify as working time.
- Rest and Meal Periods:** Short rest periods (usually 20 minutes or less) are common in certain industries and must be counted as hours worked. Unauthorized extensions of authorized work breaks do not need to be counted as compensable time when the employer has communicated to employees that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Meal periods (typically 30 minutes or more) generally are not compensated as work time, but only if employees are completely relieved from their work responsibilities for the purpose of eating a meal. Employees are not relieved of their responsibilities if they are required to perform any duties—whether active or inactive—while eating.

HR COMPLIANCE OVERVIEW



- ☑ **Sleeping Time and Certain Other Activities:** Employees who are required to be on duty for less than 24 hours are working even if they are permitted to sleep or engage in other personal activities when not busy. Employees required to be on duty for 24 hours or more may agree with the employer to exclude regularly scheduled sleeping periods of not more than eight hours from their compensable time. This arrangement is valid only when employers provide adequate sleeping facilities and the employees can usually get an uninterrupted night's sleep of at least five hours.
- ☑ **Lectures, Meetings and Training Programs:** An employee's attendance to lectures, meetings, training programs and similar activities need not be counted as compensable time if the activity is outside normal hours, voluntary, not related to the employee's job and the employee does not perform any concurrent work.
- ☑ **Travel Time:** Daily home to work travel is not work time; however, travel from jobsite to jobsite during the workday must be counted as hours worked. Travel from home to work on a special one-day assignment in another city (less the time the employee would normally spend commuting) or travel away from the employee's home community overnight is considered compensable time and must be included in the employee's accrued number of hours worked.

Common Overtime Mistakes

<i>Classifying non-exempt employees as exempt:</i>	Even when employers understand the law regarding exemptions, they still may misclassify an employee as exempt and wrongfully withhold overtime pay due to that employee.
<i>Making employees work off the clock:</i>	Employers may tell workers to clock out and finish their work, work before their shift begins or attend a pre-shift meeting. Working off the clock, working before the shift ends and attending work meetings may be considered compensable time.
<i>Refusing to pay unauthorized overtime work:</i>	An employer must pay for overtime work if it knows or has reason to know that an employee is working overtime, regardless of whether the employer pre-approved the overtime work.
<i>Paying an employee "straight time" rates for overtime work:</i>	The FLSA requires that overtime be paid at time and one-half, not straight time. Therefore, if an employee makes \$8 per hour, he or she should get paid \$12 per hour for hours worked over 40 in a workweek. Many employers simply continue to pay a straight time rate (\$8 in the example) for any hours over 40 worked by their employees in a workweek.
<i>Automatic deductions for lunch, break and other rest periods:</i>	Some employers automatically deduct break times from their employees' timecards to avoid the hassle of maintaining an accurate record of the beginning and ending time of employee breaks, regardless of whether their employees actually took the break, worked early, stayed late or worked through lunch. This practice is dangerous, and the FLSA clearly places the burden on employers to account for all hours of employee compensable time.
<i>Mistakenly offering compensatory time off:</i>	The FLSA prohibits employers from providing compensatory time off (comp time) at some later point for employees who work more than 40 hours in a workweek. For example, an employee that works 55 hours in a workweek may not receive time off in some other week to offset the extra 15 hours of work. Employers must pay an employee's overtime wages for the week in which the overtime work took place. However, compensatory time off may be allowed for certain government workers and under state or local laws.

HR COMPLIANCE OVERVIEW



Failing to include all types of payments when calculating an employee's total wages:

Employers should not fail to include productivity bonuses, shift premium payments and other employee payments when calculating an employee's total wages. A correct calculation of total wages is indispensable to determine an employee's regular and overtime wage rates. For example, if an employee makes \$8 per hour and gets a \$100 productivity bonus per week, the compensation must include the additional productivity bonus in calculating overtime due. As a result, an employee's overtime rate can be higher than his or her contractual rate of pay.

Allowing employees to "waive" their right to overtime:

Another common mistake, particularly among small businesses, is allowing employees to waive their right to overtime pay. An employer must pay time and one-half for all overtime hours worked, even if employees request extra hours and agree to only receive regular pay for those hours. Regardless of whether this is done with the employer or employee's good intentions, any type of deal that results in the nonpayment of overtime is void and will not be a defense if the employee later sues the employer for unpaid overtime wages.

Misclassifying employees as independent contractors:

The FLSA's overtime and minimum wage requirements apply only to employees, not independent contractors. Therefore, employers may want to avoid paying overtime by classifying their workers as "independent contractors." The determination of whether an individual is an employee or independent contractor depends on the facts and circumstances of the situation, not the label used by the employer, and misclassification exposes employers to expensive fines and litigation.

The U.S. Supreme Court has repeatedly stated that there is no one test for determining whether an individual qualifies as an independent contractor. However, some factors commonly used to make this determination include:

- The extent to which the services rendered are an integral part of the principal's business;
- The permanency of the relationship;
- The amount of the alleged contractor's investment in facilities and equipment;
- The nature and degree of control by the principal;
- The alleged contractor's opportunities for profit and loss;
- The amount of initiative, judgment or foresight in open market competition with others required for the success of the claimed contractor; and
- The degree of independent business organization and operation.

If an individual is determined to be an employee after an employer classifies them as an independent contractor, the employer may be required to pay a significant amount of back wages to the individual.

HR COMPLIANCE OVERVIEW



Compliance Strategies

One easy way to ensure compliance with FLSA requirements is to make sure all personnel, employees and supervisors alike, understand the FLSA's rights and protections. The DOL FLSA poster provides a brief summary of FLSA provisions and can serve as a reminder of employer obligations.

All employers covered by the FLSA must display this official poster. The poster must be displayed in a conspicuous place, in all of the employer's establishments, in a way that makes the poster readily available for reading by all employees.

A downloadable version of the poster is available at <https://www.dol.gov/general/topics/posters>.

Preventing Violations

Establishing adequate recordkeeping systems and implementing sensible time-tracking policies are vital to prevent FLSA violations. To ensure that systems and procedures are functioning as planned, employers can conduct periodic, internal audits. These audits should review:

- Work hour records;
- Job descriptions;
- Payroll records; and
- Personnel training curriculum.

The audits should look specifically at each employee's employment relationship, exemption status, regular rate calculation, overtime hours and whether managers, supervisors and employees are being adequately trained.

Preventing Litigation

If a problem surfaces during an audit (or through any other means), employers may be able to avoid legal actions by fixing legitimate issues promptly. After solving the problem, employers should determine the cause and take any steps needed to ensure, to the best of their ability, that the problem doesn't happen again. Solving the problem may require paying back wages, adjusting a job description or reclassifying employees altogether.

Finally, employers should evaluate how best communicating the problem and its solution to any affected individuals.

More Information

Please contact Employco USA, Inc. for more information on the Fair Labor Standards Act.

FACT SHEET

Overtime Pay under the FLSA

OVERTIME PAY REQUIREMENTS OF THE FLSA

Brought to you by **Employco USA, Inc.**

NOTICE: On August 30, 2023, the Department of Labor (Department) announced issuance of a [Notice of Proposed Rulemaking \(NPRM\), *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*](#). The NPRM proposes to update and revise the regulations issued under section 13(a)(1) of the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, and professional employees. Proposed revisions include increasing the standard salary level and the highly compensated employee total annual compensation threshold, as well as providing an automatic updating mechanism that would allow for the timely and efficient updating of all the thresholds to reflect current earnings data.

This fact sheet provides general information concerning the application of the [overtime pay](#) provisions of the [FLSA](#).

Characteristics

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

Requirements

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require [overtime pay](#) for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

Overtime Pay under the FLSA

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the [minimum wage](#). The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

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

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. In addition, section 7(g)(2) of the FLSA allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. The requirements for computing overtime pay pursuant to section 7(g)(2) are prescribed in [29 CFR 778.415 through 778.421](#).

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

Typical Problems

Fixed Sum for Varying Amounts of Overtime: A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of \$180 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is \$12.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at \$13.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire \$78.00 must be included in determining the employees' regular rate.

Salary for Workweek Exceeding 40 Hours: A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of \$405. In this instance the regular rate is obtained by dividing the \$405 straight-time salary by 45 hours, resulting in a regular rate of \$9.00. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ($\$4.50 \times 5 = \22.50).

Overtime Pay under the FLSA

Overtime Pay May Not Be Waived: The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

WHERE TO OBTAIN ADDITIONAL INFORMATION

For additional information, visit our Wage and Hour Division Website: <http://www.dol.gov/agencies/whd> 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.

Source: [U.S. Department of Labor, Wage and Hours Division](#)