

# UPDATE

## What is the Fair Labor Standards Act in Agriculture and How Does it Apply to Me?

**T**he Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees 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.

Nonexempt workers covered under the Act are entitled to a minimum wage. Overtime pay must be paid at a rate not less than one and one-half times the regular rate of pay after 40 hours of work in a single 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:

- Vacation, holiday, severance, or sick pay;
- Meal or rest periods, holidays off, or vacations;
- Premium pay for weekend or holiday work;
- Pay raises or fringe benefits; or
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The FLSA does not determine 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 have laws under which such claims (sometimes including fringe benefits) may be filed. In addition, the FLSA does not limit the

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number of hours in a day or days in a week that an employee may be required or scheduled to work, including overtime hours, as long as the employee is at least 16 years old. These matters are generally finalized by agreement between the employer and the employees or their authorized representatives.

## WHO IS COVERED UNDER THE FLSA?

All employees of businesses with 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. Virtually all employees engaged in agriculture are covered by the Act in that they produce goods for interstate commerce. Specifically, all businesses are covered under the FLSA that:

- Report annual gross volume of sales that totals not less than \$500,000; or
- 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
- Is an activity of a public agency.

Employees of firms which are not covered 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. This will generally include:

1. Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters are covered their cash wages from one employer in calendar year 2010 are at least \$1,700 (adjusted by the Social Security Administration each year) or they work a total of more than 8 hours a week for one or more employers.
2. Tipped employees or other individuals engaged in occupations in which they customarily and regularly receive more than \$30 a month in tips.
3. Employer-furnished facilities at 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.



The performance of certain types of work in an employee's home is prohibited under the law (29 CFR 530.1(d)) unless the employer has obtained prior certification from DOL.

## EXEMPTIONS

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include:

- Students - Student-learners (vocational education students), as well as full-time students in retail or service establishments, **agriculture**, or institutions of higher education.
- Disability - 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 - 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.

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, employers should carefully check the exact terms and conditions. Detailed information is available from local WHD offices. Exemptions from both minimum wage and overtime pay may be allowed for:

- Executive, administrative, and professional employees, outside sales employees, and employees in certain computer-related occupations (as defined in DOL regulations);
- 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;
- **Farmworkers** employed by anyone who employed no more than 500 "man-days" (any day during which an employee performs agricultural work for at least one hour) of farm labor in any calendar quarter of the preceding calendar year;

- Casual babysitters and persons employed as companions to the elderly or infirm.
- 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;
- 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 non-metropolitan broadcasting stations;
- Domestic service workers living in the employer's residence;
- Employees of motion picture theaters; and
- **Farmworkers.**

Partial overtime pay exemptions apply to employees who:

- Are engaged in certain operations on **agricultural commodities** and to employees of certain bulk petroleum distributors. Hospitals and residential care establishments may adopt 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.
- 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.
- Are employed by public agency fire departments and police departments that 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.

Additional exemptions from the minimum wage and overtime provisions of the Act for **agricultural employees** apply to the following:

- Agricultural employees who are immediate family members of their employer;
- Those principally engaged on the range in the production of livestock;
- Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than thirteen weeks during the preceding calendar year; or
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16.

## COMPLIANCE

Employers of any type fail to comply with the FLSA where they:

- Do not keep or maintain records of the names and permanent addresses of temporary agricultural employees, dates of birth of minors under age 19, or hours worked by employees being paid on a piece rate basis.
- Fail to pay overtime to employees whose jobs are related to agriculture but which do not meet the definition of agriculture contained in the Act.
- Utilize the services of a farm labor contractor that may be joint employers with the contractor in regard to the employees. Joint employment means that both the contractor and the farmer are responsible for complying with the minimum wage, overtime, recordkeeping, and youth employment provisions of the FLSA. If either party fails to comply with the law both parties may be held liable.
- Fail to comply with the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), also administered by the DOL Wage and Hour Division. The MSPA generally protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. The MSPA also requires farm labor contractors to register with the U.S. Department of Labor.



## OTHER CONSIDERATIONS

The FLSA requires employers to keep records on wages, hours, and other relevant information, 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 Patient Protection and Affordable Care Act (PPACA), signed into law March 2010, amended the FLSA to include a break time requirement for nursing mothers. Only employees who are not exempt from the FLSA's overtime pay requirements are entitled to breaks to express milk. 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. Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk.

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*Ag Help Wanted: Guidelines for Managing Agricultural Labor* is an educational guidebook designed to assist every person who currently manages or expects to manage human resources on farms, ranches, nurseries, dairies, and other agricultural operations. The text includes chapters covering:

- Organization Planning | Operating within Legal Bounds > Coverage Varies; Unlawful Discrimination; Health and Safety; and Compliance Information;
- Managing Employee Performance | Pay and Performance; Benefits; and Assessing Employee Performance; and
- Communication and Problem Solving | Standards, Correction, and Discipline

## **RESOURCES:**

*Most of the information presented in this document was drawn from the U.S. Department of Labor – Wage and Hour Division online materials, “Handy Reference Guide to the Fair Labor Standards Act.”*

U.S. DEPARTMENT of LABOR — WAGE AND HOUR DIVISION

elaws - Fair Labor Standards Act Advisor

<https://webapps.dol.gov/elaws/faq/esa/flsa/toc.htm> (accessed April, 2020).

U.S. DEPARTMENT of LABOR — WAGE AND HOUR DIVISION

Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs12.pdf> (accessed April, 2020).

U.S. DEPARTMENT of LABOR — WAGE AND HOUR DIVISION

Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

<https://www.dol.gov/agencies/whd/agriculture/mspa> (accessed April, 2020).

U.S. DEPARTMENT of LABOR — WAGE AND HOUR DIVISION

Wages and the Fair Labor Standards Act

<https://www.dol.gov/agencies/whd/flsa> (accessed April, 2020).



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