EMPLOYEE RIGHTS

UNDER THE FAIR LABOR STANDARDS ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE

$7.25 PER HOUR

BEGINNING JULY 24, 2009

OVERTIME PAY At least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR An employee must be at least **16** years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor.

Youths **14** and **15** years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

No more than

- **3** hours on a school day or **18** hours in a school week;
- **8** hours on a non-school day or **40** hours in a non-school week.

Also, work may not begin before **7 a.m.** or end after **7 p.m.**, except from June 1 through Labor Day, when evening hours are extended to **9 p.m.** Different rules apply in agricultural employment.

TIP CREDIT Employers of "tipped employees" must pay a cash wage of at least $2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least $2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

ENFORCEMENT The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.

Employers may be assessed civil money penalties of up to $1,100 for each willful or repeated violation of the minimum wage or overtime pay provisions of the law and up to $11,000 for each employee who is the subject of a violation of the Act's child labor provisions. In addition, a civil money penalty of up to $50,000 may be assessed for each child labor violation that causes the death or serious injury of any minor employee, and such assessments may be doubled, up to $100,000, when the violations are determined to be willful or repeated. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Act.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands.
- Some state laws provide greater employee protections; employers must comply with both.
- The law requires employers to display this poster where employees can readily see it.
- Employees under 20 years of age may be paid $4.25 per hour during their first 90 consecutive calendar days of employment with an employer.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

WHD U.S. Wage and Hour Division

WWW.WAGEHOUR.DOL.GOV

EMPLOYEE RIGHTS

FOR WORKERS WITH DISABILITIES PAID AT SPECIAL MINIMUM WAGES

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

*This establishment has a certificate authorizing the payment of special minimum wages to workers who are disabled for the work they are performing. Authority to pay special minimum wages to workers with disabilities applies to work covered by the **Fair Labor Standards Act (FLSA), McNamara-O'Hara Service Contract Act (SCA), and/or Walsh-Healey Public Contracts Act (PCA)**. Such special minimum wages are referred to as "**commensurate wage rates**" and are less than the basic hourly rates stated in an SCA wage determination and less than the FLSA minimum wage of **$7.25 per hour beginning July 24, 2009**. A "commensurate wage rate" is based on the worker's individual productivity, no matter how limited, in proportion to the wage and productivity of experienced workers who do not have disabilities that impact their productivity when performing essentially the same type, quality, and quantity of work in the geographic area from which the labor force of the community is drawn.*

WORKERS WITH DISABILITIES

For purposes of payment of commensurate wage rates under a certificate, a worker with a disability is defined as:

- An individual whose earnings or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed.
- Disabilities which may affect productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following do not ordinarily affect productive capacity for purposes of paying commensurate wage rates: educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and correctional parole or probation.

KEY ELEMENTS OF COMMENSURATE WAGE RATES

- **Nondisabled worker standard**—The objective gauge (usually a time study of the production of workers who do not have disabilities that impair their productivity for the job) against which the productivity of a worker with a disability is measured.
- **Prevailing wage rate**—The wage paid to experienced workers who do not have disabilities that impair their productivity for the same or similar work and who are performing such work in the area. Most SCA contracts include a wage determination specifying the prevailing wage rates to be paid for SCA-covered work.
- **Evaluation of the productivity of the worker with a disability**—Documented measurement of the production of the worker with a disability (in terms of quantity and quality).

The wages of all workers paid commensurate wages must be reviewed, and adjusted if appropriate, at periodic intervals. At a minimum, the productivity of hourly-paid workers must be reevaluated at least every six months and a new prevailing wage survey must be conducted at least once every twelve months. In addition, prevailing wages must be reviewed, and adjusted as appropriate, whenever the applicable state or federal minimum wage is increased.

OVERTIME

Generally, if you are performing work subject to the FLSA, SCA, and/or PCA, you must be paid at least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR

Minors younger than **18 years of age** must be employed in accordance with the child labor provisions of FLSA. No persons under 16 may be employed in manufacturing or on a PCA contract.

FRINGE BENEFITS

Neither the FLSA nor the PCA have provisions requiring vacation, holiday, or sick pay nor other fringe benefits such as health insurance or pension plans. SCA wage determinations may require such fringe benefit payments (or a cash equivalent). **Workers paid under a certificate authorizing commensurate wage rates must receive the full fringe benefits listed on the wage determination.**

WORKER NOTIFICATION

Each worker with a disability and, where appropriate, the parent or guardian of such worker, shall be informed orally and in writing by the employer of the terms of the certificate under which such worker is employed.

PETITION PROCESS

Workers with disabilities paid at special minimum wages may petition the Administrator of the Wage and Hour Division of the Department of Labor for a review of their wage rates by an Administrative Law Judge. No particular form of petition is required, except that it must be signed by the worker with a disability or his or her parent or guardian and should contain the name and address of the employer. Petitions should be mailed to: Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Employers shall display this poster where employees and the parents and guardians of workers with disabilities can readily see it.

For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

U.S. Wage and Hour Division

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division

WH 1284
Revised July 2009

(Revised March 2011)

Fact Sheet #7: State and Local Governments Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to State and local government employees.

Characteristics

State and local government employers consist of those entities that are defined as public agencies by the FLSA. "Public Agency" is defined to mean the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States, a State, or a political subdivision of a State; or any interstate governmental agency. The public agency definition does not extend to private companies that are engaged in work activities normally performed by public employees.

Coverage

Section 3(s)(1)(C) of the FLSA covers all public agency employees of a State, a political subdivision of a State, or an interstate government agency.

Requirements

The FLSA requires employers to:

- pay all covered nonexempt employees, for all hours worked, at least the Federal minimum wage of $7.25 per hour effective July 24, 2009;
- pay at least one and one-half times the employees' regular rates of pay for all hours worked over 40 in the workweek;
- comply with the youth employment standards; and
- comply with the recordkeeping requirements

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than $4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

Compensatory Time: Under certain prescribed conditions, employees of State or local government agencies may receive compensatory time off, at a rate of not less than one and one-half hours for each overtime hour worked, instead of cash overtime pay. Law enforcement, fire protection, and emergency response personnel and employees engaged in seasonal activities may accrue up to 480 hours of comp time; all other state and local government employees may accrue up to 240 hours. An employee must be permitted to use compensatory time on the date requested unless doing so would "unduly disrupt" the operations of the agency.

In locations with concurrent State wage laws, some States may not recognize or permit the application of some or all of the following exemptions. Since an employer must comply with the most stringent of the State or

Federal provisions, it is strongly recommended that the State laws be reviewed prior to applying any of the exclusions or exemptions discussed herein.

For certain employees in the following examples, the calculation of overtime pay **may** differ from the general requirements of the FLSA:

- employees who solely at their option occasionally or sporadically work on a part-time basis for the same public agency in a different capacity than the one in which they are normally employed
- employees who at their option with approval of the agency substitute for another during scheduled work hours in the same work capacity
- employees who meet exemption requirements for Executive, Administrative, Professional or Outside Sales occupations
- hospital or residential care establishments may, with agreement or understanding of employees, adopt a fixed work period of 14 consecutive days and pay overtime after 8 hours in a day or 80 in the work period, whichever is greater
- mass transit employees who spend some time engaged in charter activities
- employees working in separate seasonal amusement or recreational establishments such as swimming pools, parks, etc.

Employees Engaged in Fire Protection and Law Enforcement Activities

Fire protection personnel include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers who:

1. are trained in fire suppression;
2. have the legal authority and responsibility to engage in fire suppression;
3. are employed by a fire department of a municipality, county, fire district, or State; and
4. are engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

There is no limit on the amount of nonexempt work that an employee employed in fire protection activities may perform. So long as the employee meets the criteria above, he or she is an employee “employed in fire protection activities” as defined in section 3(y) of the FLSA.

Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.

Employees engaged in law enforcement activities may perform some nonexempt work that is not performed as an incident to or in conjunction with their law enforcement activities. However, a person who spends more than 20 percent of the workweek or applicable work period in nonexempt activities is not considered to be an employee engaged in law enforcement activities under the FLSA.

Fire protection and law enforcement employees may at their own option perform special duty work in fire protection and law enforcement for a separate and independent employer without including the wages and hours in regular rate or overtime determinations for the primary public employer.

- Fire Departments or Police Departments **may** establish a work period ranging from 7 to 28 days in which overtime need be paid only after a specified number of hours in each work period.

- Any employee who in any workweek is employed by an agency employing less than 5 employees in fire protection or law enforcement may be exempt from overtime.

For more information on law enforcement and fire protection employees under the FLSA, see Fact Sheet #8.

Where to Obtain Additional Information

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

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

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

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

EMPLOYEE RIGHTS

UNDER THE FAIR LABOR STANDARDS ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE

$5.85 PER HOUR	$6.55 PER HOUR	$7.25 PER HOUR
BEGINNING JULY 24, 2007	BEGINNING JULY 24, 2008	BEGINNING JULY 24, 2009

STATE AND LOCAL GOVERNMENT EMPLOYEES

OVERTIME PAY

At least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

Law enforcement and fire protection personnel: You may be paid overtime on the basis of a "work period" of between 7 and 28 consecutive days in length, rather than on a 40-hour workweek basis.

COMPENSATORY TIME

Employees may receive compensatory time off instead of cash overtime pay, at a rate of not less than 1½ hours for each overtime hour worked, where provided pursuant to an agreement or understanding that meets the requirements of the Act.

EXEMPTIONS

The Act does not apply to persons who are not subject to the civil service laws of State or local governments and who are: elected public officials, certain immediate advisors to such officials, certain individuals appointed or selected by such officials to serve in various capacities, or employees of legislative branches of State and local governments. Employees of legislative libraries do not come within this exclusion and are thus covered by the Act.

Certain types of workers are exempt from the minimum wage and overtime pay provisions, including bona fide executive, administrative, and professional employees who meet regulatory requirements.

Any law enforcement or fire protection employee who in any workweek is employed by a public agency employing less than 5 employees in law enforcement or fire protection activities is exempt from the overtime pay provisions.

YOUTH EMPLOYMENT

16 years old is the minimum age for most occupations. An **18**-year old minimum applies to hazardous occupations. Minors **14** and **15** years old may work outside school hours under certain conditions. For more information, visit the YouthRules! Web site at **www.youthrules.dol.gov**.

ENFORCEMENT

The Department of Labor may recover back wages either administratively or through court action for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.

Civil money penalties of up to $11,000 per violation may be assessed against employers who violate the youth employment provisions of the law and up to $1,100 per violation against employers who willfully or repeatedly violate the minimum wage or overtime pay provisions. This law prohibits discriminating against or discharging workers who file a complaint or participate in any proceedings under the Act.

ADDITIONAL INFORMATION

- Some state laws provide greater employee protections; employers must comply with both.
- Employees under 20 years of age may be paid a youth minimum wage of not less than $4.25 an hour during their first 90 consecutive calendar days after initial employment by an employer.
- Employers are required to display this poster where employees can readily see it.

For additional information:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

U.S. Wage and Hour Division

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH Publication 1385
(Revised July 2007)

U.S. Wage and Hour Division
(Revised March 2011)

Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to law enforcement and fire protection personnel of State and local governments.

Characteristics

Fire protection personnel include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers who:

1. are trained in fire suppression;
2. have the legal authority and responsibility to engage in fire suppression;
3. are employed by a fire department of a municipality, county, fire district, or State; and
4. are engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

There is no limit on the amount of nonexempt work that an employee employed in fire protection activities may perform. So long as the employee meets the criteria above, he or she is an employee "employed in fire protection activities" as defined in section 3(y) of the FLSA.

Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.

Employees engaged in law enforcement activities may perform some nonexempt work which is not performed as an incident to or in conjunction with their law enforcement activities. However, a person who spends more than 20 percent of the workweek or applicable work period in nonexempt activities is not considered to be an employee engaged in law enforcement activities under the FLSA.

Coverage

Section 3(s)(1)(C) of the FLSA covers all public agency employees of a State, a political subdivision of a State, or an interstate government agency.

Requirements

Hours of work generally include all of the time an employee is on duty at the employer's establishment or at a prescribed work place, as well as all other time during which the employee is suffered or permitted to work for the employer. Under certain specified conditions time spent in sleeping and eating may be excluded from compensable time.

The FLSA requires that all covered nonexempt employees be paid the statutory minimum wage of not less than $7.25 per hour effective July 24, 2009.

The FLSA requires that all covered nonexempt employees be paid overtime pay at no less than time and one-half their regular rates of pay for all hours worked in excess of 40 in a workweek.

Section 13(b)(20) of the FLSA provides an overtime exemption to law enforcement or fire protection employees of a public agency that employs less than five employees during the workweek in law enforcement or fire protection activities.

Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28. For example, fire protection personnel are due overtime under such a plan after 106 hours worked during a 14-day work period, while law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period.

Under certain prescribed conditions, a State or local government agency may give compensatory time, at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.

An employee must be permitted to use compensatory time on the date requested unless doing so would "unduly disrupt" the operations of the agency.

At the time of termination an employee must be paid the higher of (1) his or her final regular rate of pay or (2) the average regular rate during his or her last three years of employment for any compensatory time remaining "on the books" when termination occurs. For more information on state and local governments under the FLSA, see Fact Sheet #7.

No covered employer may employ any minor in violation of the youth employment provisions of the FLSA. The Act establishes specific provisions concerning prohibited occupations and/or hours of employment of minors under age 18.

Covered employers must make, keep and preserve payroll-related records as described by regulations 29 CFR Part 516.

Where to Obtain Additional Information

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

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

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

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

Fact Sheet #17J: First Responders and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hour worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempts certain computer employees. To qualify for exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week.

Police Officers, Fire Fighters and Other First Responders

Police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees ("first responders") who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; and other similar work are not exempt under Section 13(a)(1) or the regulations and thus are protected by the minimum wage and overtime provisions of the FLSA.

First responders generally do not qualify as exempt executives because their primary duty is not management. They are not exempt administrative employees because their primary duty is not 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. Similarly, they are not exempt learned professionals because their primary duty is not the performance of work requiring knowledge of an advanced type in a field or learning customarily acquired by a prolonged course of specialized intellectual instruction. Although some first responders have college degrees, a specialized academic degree is not a standard prerequisite for employment.

Where to Obtain Additional Information

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

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

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

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2009)

Fact Sheet #53 – The Health Care Industry and Hours Worked

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

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

Summary

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

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

Rounding Hours Worked

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

> *Example #1:*
> An intermediate care facility docks employees by a full quarter hour (15 minutes) when they start work more than seven minutes after the start of their scheduled shift. Does this practice comply with the FLSA requirements? Yes, as long as the employees' time is rounded up a full quarter hour when the employee starts working from 8 to 14 minutes before their shift or if the employee works from 8 to 14 minutes beyond the scheduled end of their shift.
>
> *Example #2:*

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

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

Travel Time

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

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

Training and Seminars

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

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

See Regulations 29 CFR 785.27.

Example #5:
A residential care facility offers specialized training on caring for Alzheimer residents. There are two workshops: one in the evening for the day shift and one during the day for the evening shift. All employees are required to attend. Is this compensable time? Yes, because the training is not voluntary and is related to the employees' jobs.

Example #6:
The administrator of a nursing home says specialized patient care training is voluntary, but the nursing supervisors expect all employees on their units to attend and schedule times for each employee to go. Is the time considered hours worked? Yes, the time would be considered hours worked. When the nursing supervisors expect all unit employees to attend and schedule their times, it is not truly voluntary.

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

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

Meal Breaks

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

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

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

Other Breaks

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

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

On-Call Time An employee who is required to remain on call on the employer's premises or so close to the premises that the employee cannot use the time effectively for his or her own purpose is considered working while on-call. An employee who is required to carry a cell phone, or a beeper, or who is allowed to leave a

message where he or she can be reached is not working (in most cases) while on-call. Additional constraints on the employee's freedom could require this time to be compensated. See Regulations 29 CFR 785.17.

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

Unauthorized Hours Worked

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

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

> *Example #14:*

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

Where to Obtain Additional Information

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

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

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

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

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

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

U.S. Wage and Hour Division
(Revised July 2009)

Fact Sheet #54 – The Health Care Industry and Calculating Overtime Pay

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

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

Summary

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

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

The Eight and Eighty (8 and 80) Overtime System

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

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

An employer's work period under the 8 and 80 overtime system must be a fixed and regularly recurring 14-day period. It may be changed if the change is designated to be permanent and not to evade the overtime

requirements. If an employer changes the pay period permanently, it must calculate wages on both the old pay period and the new pay period and pay the amount that is more advantageous to each employee in the pay period when the change was made.

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

Bonuses

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

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

Example: Attendance Bonus

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

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

Overtime Computation under the 40 Hours System

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

WEEK ONE

	Sunday	Monday	Tuesday	Weds.	Thursday	Friday	Saturday
Day		8	8			8(OT)	
Evening	8			8		8(OT)	
Night				8			

WEEK TWO

	Sunday	Monday	Tuesday	Weds.	Thursday	Friday	Saturday
Day		8	8			8(OT)	
Evening	8			8			
Night				8			8(OT)

$100 (bi-weekly attendance bonus) ÷ 2 = $50 (weekly bonus equivalent)
56 hours worked x $12/hour + $50 (weekly bonus equivalent) = $722 (total ST compensation)

$722 (total ST compensation) ÷ 56 hours worked =	$12.89 (regular rate)
$12.89 (regular rate) x ½ =	$6.45 (half-time premium)
$12.89 (regular rate) + $6.45 (half-time premium) =	$19.34 (overtime rate)
40 (straight time hours) x $12.89 (regular rate) =	$515.60 (straight time earnings)
16 (overtime hours) x $19.34 (overtime rate) =	$309.44 (overtime earnings)
Total earnings for week one	**$825.04**
Total earnings for week two	**$825.04**
Total earnings for bi-weekly period	**$1,650.08**

Overtime Computation under the 8 and 80 System

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

(bi-weekly attendance bonus) =	$100
112 hours worked x $12/hour + $100 (attendance bonus) =	$1,444 (total ST compensation)
$1,444 (total ST compensation) ÷ 112 hours =	$12.89 (regular rate)
$12.89 (regular rate) x ½ =	$ 6.45 (half-time premium)
$12.89 (regular rate) + $6.45 (half-time premium) =	$19.34 (overtime rate)
$12.89 (regular rate) x 80 (straight time hours) =	$1,031.20 (straight time earnings)
$19.34 (overtime rate) x 32 (overtime hours worked) =	$ 618.88 (overtime earnings)
Total earnings for the bi-weekly period =	**$1,650.08**

Example: Retention Bonus

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

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

Overtime Computation under the 40 Hours System

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

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

Overtime Computation under the 8 and 80 System

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

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

Example: Supplementary Shift Bonus

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

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

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

Shift Differentials

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

Example: Single Shift Differential

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

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

Straight-time computation

3 days x 8 hours/day x $8/hour	$192
3 evenings x 8 hours/evening x $8/hour	$192
3 evenings x 8 hours/evening x $1/hour (shift differential)	$ 24
Total ST earnings	**$408**

Regular rate and half-time premium computation

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

Total compensation calculation

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

Example: Two Different Shift Differentials

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

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

Computation of total compensation for 40 hour system

WEEK ONE:

	Sunday	Monday	Tuesday	Weds.	Thursday	Friday	Saturday
Day		8 at $22				8 at $22	
Evening				8 at $23		8 at $23	
Night	8 at $24			8 at $24			

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

$23 x 40 hours =	$920 (straight time earnings)
$34.50 (overtime rate) x 8 overtime hours =	$276 (overtime earnings)
Total weekly earnings	**$1,196**

WEEK TWO:

	Sunday	Monday	Tuesday	Weds.	Thursday	Friday	Saturday
Day		8 at $22	8 at $22				
Evening	8 at $23			8 at $23			
Night				8 at $24			

16 day hours x $22 =	$352
16 evening hours x $22	$352
16 evening hours x $1 shift differential =	$16
8 night hours x $22 =	$176
8 night hours x $2 shift differential =	$16
$352 + $352 + $16 + $176 + $16 =	$912 (total ST compensation)
Total weekly earnings	**$ 912**

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

Computation of total compensation for 8 and 80 overtime system

WEEK ONE:

	Sunday	Monday	Tuesday	Weds.	Thursday	Friday	Saturday
Day		8 at $22				8 at $22	
Evening				8 at $23		8 at $23 (OT)	
Night	8 at $24			8 at $24 (OT)			

WEEK TWO:

	Sunday	Monday	Tuesday	Weds.	Thursday	Friday	Saturday
Day		8 at $22	8 at $22				
Evening	8 at $23			8 at $23			
Night				8 at $24 (OT)			

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

64 hours non-overtime hours x $22.91 (regular rate) =	$1,466.24 (straight time earnings)
24 overtime hours x $34.37 (overtime rate) =	$824.88 (overtime earnings)
Total earnings for the bi-weekly period	**$2,291.12**

The RNs working the above schedule worked eight hours of overtime on three days: Wednesday and Friday of the first week and Wednesday of the second week. On these three days, the RNs worked 16 hours each day. Under the 8 and 80 overtime system, they are entitled to overtime for each hour worked over 8 in a day.

Two Different Jobs

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

Example: Two Different Jobs

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

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

40 hours x $11/hour + 16 hours x $8/hour =	$568 (total ST compensation)
$568 (total straight time compensation) ÷ 56 hours worked =	$10.14 (regular rate)
$10.14 (regular rate) x ½ =	$5.07 (additional half time premium)
$10.14 (regular rate) + $5.07=	$15.21 (overtime rate)
$10.14 (regular rate) x 40 hours=	$405.60 (total straight time earnings)
$15.21 (overtime rate) x 16 (overtime hours)	$243.36 (total overtime earnings)
Total compensation	**$648.96**

Terminology

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

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

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

Half-Time Premium:
Regular rate x ½.

Overtime (OT) Rate:
Regular rate + the half-time premium. See Regulations 29 CFR 778.107.

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

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

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

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

Total Earnings:
ST earnings + OT earnings.

See Regulations 29 CFR 778.200 or call 1-866-4US-WAGE and request a copy of Regulation Part 778 Interpretative Bulletin on Overtime Compensation.

Where to Obtain Additional Information

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

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

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

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

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

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

U.S. Department of Labor Wage and Hour Division

TEEN DRIVING ON THE JOB

Employees 16 years of age and under MAY NOT DRIVE motor vehicles on public roads as part of their jobs – even if they possess a valid state drivers license.

Employees 17 years of age may drive cars and small trucks on public roads as part of their jobs ONLY in limited circumstances.

17 year-olds may drive on the job ONLY if all of the following requirements are met:

1. The driving is limited to daylight hours;
2. The 17 year-old holds a state license valid for the type of driving involved in the job performed;
3. The 17 year-old has successfully completed a State approved driver education course and has no record of any moving violation at the time of hire;
4. The automobile or truck is equipped with a seat belt for the driver and any passengers and the employer has instructed the youth that the seat belts must be used when driving the vehicle;
5. The automobile or truck does not exceed 6,000 pounds gross vehicle weight; AND
6. Such driving is only occasional and incidental to the 17 year-old's employment. This means that the youth may spend no more than 1/3 of the work time in any workday and no more than 20% of the work time in any workweek driving.

Driving by 17 year-olds as part of their jobs MAY NOT involve:

- Towing vehicles
- Route deliveries or route sales
- Transportation for hire of property, goods, or passengers
- Urgent, time-sensitive deliveries (such as pizza deliveries)
- Transporting more than 3 passengers including employees of the employer
- Driving beyond a 30 mile radius of the teen's place of employment
- More than 2 trips away from the primary place of employment in any single day to deliver the employer's goods to a customer
- More than 2 trips away from the primary place of employment in any single day to transport passengers other than employees of the employer

Additional information about YouthRules! can be found at www.youthrules.dol.gov. For information about the laws administered by the Wage and Hour Division, log on to the Internet at www.wagehour.dol.gov or call the Department of Labor's toll-free help line at 1-866-4USWAGE.

U.S. Wage and Hour Division
Revised January 2016

Fact Sheet #35: Joint Employment Under the Fair Labor Standards Act (FLSA) and Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

Whether an employee has more than one employer is important in ensuring that the employee receives all of the rights and protections afforded by the FLSA and MSPA, and that the employers are aware of and accountable for compliance with their obligations under these Acts. Accordingly, this fact sheet provides general information concerning the meaning and applicability of joint employment under the FLSA and MSPA.

What is Joint Employment?

Joint employment exists when an employee is employed by two (or more) employers such that the employers are responsible, both individually and jointly, to the employee for compliance with a statute.

The FLSA and MSPA share the same definition of employment. This definition, which includes "to suffer or permit to work," was written to have as broad an application as possible.

Under these laws, it is possible for a worker to be employed by two (or more) joint employers who are both responsible for compliance. Joint employment is included in the laws' definition of employment – therefore, joint employment is also defined broadly.

WHD considers joint employment in hundreds of investigations every year, including in the construction, agricultural, janitorial, warehouse and logistics, staffing, and hospitality industries.

Determining if Joint Employment Exists

The most likely scenarios for joint employment are

1) Where the employee has two (or more) technically separate but related or associated employers, or
2) Where one employer provides labor to another employer and the workers are economically dependent on both employers.

An FLSA regulation, 29 CFR 791.2, provides guidance regarding the first scenario for joint employment, and a MSPA regulation, 29 CFR 500.20(h)(5), provides guidance regarding the second scenario. Because the FLSA and MSPA share the same definition of employment, both types of joint employment can exist under either the FLSA or MSPA.

1) Where the employee has two or more technically separate but related or associated employers.
Joint employment exists where two (or more) employers benefit from the employee's work and they are sufficiently related to or associated with each other. For example:

- The employers have an arrangement to share the employee's services;
- One employer acts in the interest of the other in relation to the employee; or
- The employers share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

The focus of this type of joint employment is the degree of association between the two (or more) employers, and it is sometimes called *horizontal joint employment* by the courts. For example, joint employment may exist where an employee works for two restaurants that are technically separate but have the same managers, jointly coordinate the scheduling of the employee's hours, and both benefit from that employee's work.

In these cases, it is important to consider facts that shed light on the degree of association between the two (or more) employers and how these employers may jointly control the employee. Although not all or even most of these facts need to be present for there to be joint employment, some facts to consider include:

- Who owns or operates the possible joint employers?
- Do the employers have any overlapping officers, directors, executives, or managers?
- Do the employers share control over operations?
- Are the operations of the employers intermingled?
- Does one employer supervise the work of the other?
- Do the employers share supervisory authority over the employee?
- Do the employers treat the employees as a pool of workers available to both of them?
- Do they share clients or customers?
- Are there any agreements between the employers?

2) *Where one employer provides labor to another employer and the workers are economically dependent on both employers.*

Joint employment also exists where a worker is, as a matter of economic reality, economically dependent on two employers: an intermediary employer (such as a staffing agency, farm labor contractor (FLC), or other labor provider) and another employer who engages the intermediary to provide workers. The workers are employees of the intermediary, and the issue is whether they are also employed by the employer who engaged the intermediary to provide the labor. This type of joint employment is common not only in agriculture, but also in other industries that use subcontracting, staffing agencies, or other intermediaries, such as construction, warehouse and logistics, and hotels. This type of joint employment exists in both FLSA and MSPA cases.

For example, in agriculture, a grower may contract with an FLC to provide farm workers. In another example, a higher-tier contractor may contract with a subcontractor to provide construction workers for a project. In these types of relationships, the question is whether the employees (farm workers or construction workers) are jointly employed by the other employer (the grower or higher-tier contractor).

The focus of this type of joint employment is the employee's relationship with the other employer (as opposed to the intermediary employer). This type of joint employment analysis must include an examination of the economic realities of the relationship to determine the degree of the employee's economic dependence on the other employer – the potential joint employer. Some courts have called this *vertical joint employment.*

In these cases, it is important to consider factors that demonstrate whether a worker is economically dependent on, and therefore employed by, the other employer. The MSPA regulation provides the following economic realities factors to consider:

- Does the other employer direct, control, or supervise (even indirectly) the work?
- Does the other employer have the power (even indirectly) to hire or fire the employee, change employment conditions, or determine the rate and method of pay?
- How permanent or lengthy is the relationship between the employee and the other employer?

- Does the employee perform repetitive work or work requiring little skill?
- Is the employee's work integral to the other employer's business?
- Is the work performed on the other employer's premises?
- Does the other employer perform functions for the employee typically performed by employers, such as handling payroll or providing tools, equipment, or workers' compensation insurance, or, in agriculture, providing housing or transportation?

Any other evidence that indicates economic dependence should be considered as well; these seven factors are not exhaustive. Moreover, there are likely other economic realities factors that, consistent with the broad scope of employment under the FLSA and MSPA, may be considered when determining whether vertical joint employment exists. The analysis, however, cannot focus solely on control. The degree of control is only one consideration, and joint employment can exist even when the other employer exercises little control over the workers.

This joint employment analysis is necessary in cases where the FLC, staffing agency, or intermediary employer is an independent contractor, as opposed to an employee, of the other employer (the potential joint employer). This joint employment analysis is not necessary in cases where the FLC, staffing agency, or intermediary employer is not an independent contractor but is him/herself or itself an *employee* of the other employer. In that situation, the intermediary and his/her/its employees are all employed by the other employer.

Responsibilities of Joint Employers

Joint employers (whether vertical or horizontal) are responsible, both individually and jointly, for compliance with the FLSA and MSPA.

Under the FLSA, each of the joint employers must ensure that the employee receives all employment-related rights under the FLSA (including payment of at least the federal minimum wage for all hours worked and overtime pay at not less than one and one-half the regular rate of pay for hours worked over 40 in a workweek, unless an exception or exemption applies). Furthermore, joint employers must combine all of the hours worked by the employee in a workweek to determine if the employee worked more than 40 hours and is due overtime pay.

Under MSPA, each of the joint employers must ensure that the employee receives all employment-related rights granted by MSPA, such as accurate and timely disclosure of the terms and conditions of employment, written payroll records, and payment of wages when due.

However, a joint employer is not necessarily responsible for complying with MSPA housing and/or transportation requirements. An employer is responsible for MSPA-covered housing only if it "owns or controls" the housing occupied by a migrant agricultural worker. An employer is responsible for transportation requirements only if it is "using or causing to be used" any vehicle for providing transportation.

The analysis for determining joint employment under the Family and Medical Leave Act (FMLA) is the same as under the FLSA. For information about how joint employment affects FMLA coverage and eligibility determinations and the FMLA responsibilities of primary and secondary employers, see Fact Sheet 28N.

Where to Obtain Additional Information

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

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

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

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us