



Wage And Hour Laws

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Background

The **FAIR LABOR STANDARDS ACT**, enacted by Congress in 1938 and amended numerous times since then, requires most employers in the United States to comply with [MINIMUM WAGE](#) and hour standards. The law's basic requirements govern the payment of a minimum wage, payment of overtime pay for employees working more than 40 hours per work week, employment limitations for children, and mandated record keeping by employers.

History

At the end of the nineteenth century, the industrial age was spurring the growth of factories known as sweatshops. Sweatshops routinely employed women, children, and recent immigrants who had no choice but to accept inferior wages and harsh working conditions. Social activists pushed for laws at the state level to pay all workers, regardless of social status or gender, wages that would allow them to maintain an adequate standard of living.

Massachusetts, in 1912, became the first state to enact a law mandating a minimum wage. Other states soon followed suit. Widespread poverty during the Great Depression increased public awareness of the need for wage standards, and by 1938, twenty-five states had enacted minimum wage laws. Some states established commissions to determine the minimum wage based on what the commission perceived to be a "living" wage for employees. Some of these commissions also took into account the employer's financial conditions in determining appropriate wages. Other states simply established flat minimum wage rates for all employees in those states.

Eventually, however, the success of state wage statutes was tempered by court decisions, including a U. S. Supreme Court decision that held state minimum wage laws to be unconstitutional. According to the courts, these laws violated the rights of employers and employees to freely negotiate and form contracts over appropriate wages. President Franklin D. Roosevelt responded by attempting to enact federal legislation granting the president the authority to regulate a minimum wage as part of the federal government's right to regulate interstate commerce. The Supreme Court found President Roosevelt's first attempt at such legislation to be unconstitutional, but the Court upheld his second attempt, the 1938 Fair Labor Standards Act (FLSA), as

constitutional.

Fair Labor Standards Act

The FSLA requires that most U. S. workers are entitled to receive a minimum hourly wage. This federally enacted minimum wage changes only when Congress passes a bill and the president signs it into law, which happens periodically in keeping with U. S. economic conditions. When the FSLA was enacted, the minimum wage was 25 cents an hour. In 2002, the minimum wage was \$5.15 an hour.

The FSLA also requires that most U. S. workers are entitled to receive one and one half times their hourly rate of pay, even if that rate is above the minimum wage, for hours worked in excess of 40 hours per work week. This is known as overtime. The FSLA also contains child labor restrictions and mandates certain working conditions for children under the age of 18. Finally, to ensure that employers comply with the federal law, the FSLA requires them to keep detailed employment records. The FSLA does not require employers to provide sick or severance pay to employees. It does not require employers to provide employees with vacation time or holidays, fringe benefits, or increases in pay beyond the minimum wage. Employers, however, do have to comply with state employment laws that deal with issues not covered by the FSLA.

Exempt Employees

Not all employees are protected by the FSLA. Some employees are exempt from minimum wage protections, and some employees are exempt from overtime pay requirements. Employers may try to avoid the FSLA requirements by categorizing their employees as exempt, but courts narrowly construe whether an employee is exempt and place the burden of proof on the employer.

There are numerous examples of employees who are exempt from the protections of the FSLA. Employees who earn more than half of their total earnings from sales commissions are usually exempt from FSLA overtime requirements. Computer professionals who earn at least \$27.63 per hour are not entitled to overtime pay, either. Drivers and mechanics whose jobs affect the safety of vehicles that transport people or property are exempt from the overtime pay requirement. Farm workers on small farms are exempt from both minimum wage and overtime pay requirements. Most employees of car dealerships are exempt from overtime pay requirements. Seasonal and recreational employers do not have to comply with minimum wage or overtime requirements of the FSLA. Finally, white collar workers—employees whose job duties are executive, administrative, professional, or involve outside sales—are exempt from minimum wage and overtime pay requirements. The FSLA lists numerous other exemptions, as well.

Child Labor

The FSLA protects workers under the age of 18 to ensure that they are safe at work and that work does not jeopardize their health or their ability to receive an education. States also have [CHILD LABOR LAWS](#), some of which are more restrictive than the FSLA. Child workers generally receive the same protections and usually greater protections, than adult workers under the FSLA. The FSLA's child labor provisions do not apply to children under the age of 16 who work for their parents, children who work as actors, children who deliver newspapers, or children who work at home making evergreen wreaths.

Workers under the age of 20 are entitled to receive minimum wage under the FSLA, but during the first 90 days of employment, an employer is allowed to pay these workers a lesser wage of \$4.25 per hour. Certain

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students, apprentices, and disabled workers also may receive less than minimum wage under special allowances by the Department of Labor. Restaurant servers and other workers who receive tips may be paid \$2.13 per hour so long as the additional money made in tips adds up to at least minimum wage.

Under the FSLA, workers at least 16 years old may work unlimited hours unless the job is deemed hazardous by the Secretary of Labor. Workers who are 14 or 15 years old may not work during school hours except in career exploration programs through the school. They may not work before 7 a.m. or after 7 p.m. during school months; they may not work after 9 p.m. from June 1 through Labor Day. Workers who are 14 or 15 years old may not work more than three hours per school day, more than eight hours per non-school day, more than eighteen hours per school week, or more than forty hours per non-school week. Children who work as professional sports attendants are exempted from the maximum hours requirements but still may not work during school hours.

Workers who are 14 or 15 years old may not work in certain occupational areas, such as manufacturing, mining, food processing, transportation, warehousing, construction, or any occupation deemed hazardous by the Secretary of Labor. These workers may work in most retail, food service, and gasoline service occupations but may not perform work in an engine or boiler room, maintain or repair machines or equipment, work on ladders or scaffolds or perform outside window washing, cook or bake, operate food slicers or grinders, work in freezers or meat coolers, load or unload goods from trucks or conveyors or railroad cars, or work in warehouses.

Children under the age of 18 are prohibited from driving occupations, but workers who are 17 may drive cars and trucks as part of their work on an occasional and incidental basis. Driving must take place during daylight hours, and the worker must hold a valid state license to drive and have no record of moving violations. The car or truck must have a seat belt, and the worker must use the seat belt when driving. The driving may not include towing cars or other vehicles, route deliveries or sales, transporting more than three people, urgent deliveries, or more than two trips away from the employer per day.

Employers who violate the FSLA's child labor protections are subject to civil penalties of up to \$10,000 per child laborer. The Wage and Hour Division of the Department of Labor's Employment Standards Administration enforces the FSLA and has investigators stationed throughout the country to ensure that employers comply with the law.

Overtime

Some employers attempt to avoid the requirement to pay one and a half of an employee's hourly rate for overtime hours. The FSLA is very strict in defining what constitutes overtime and requires that anytime an employer requires or allows the employee to work, that work counts toward the employee's weekly hours. This means that even if an employer does not require an employee to work, but the employee works anyway, those hours count toward the overtime determination. For example, assume that the manager of a copy center asks her employee to work on a copying project. The employee's shift ends at 7 p.m., so the manager tells him that he can leave work when his shift ends and can then complete the project the following day if necessary. Nevertheless, the employee continues to work on the project after his shift ends and manages to complete it that evening. His efforts, however, take an additional three hours beyond the forty hours he has already worked that week. The employee is entitled to receive three hours of overtime pay, at one and a half times his usual hourly wage, for the additional work he did. If the employer knows or has reason to believe that an employee is continuing to work and if the employer benefits from the work being done, that time counts toward the overtime calculation.

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Also included in the overtime calculation is time spent by an employee correcting mistakes, even when the employee does so voluntarily. Time spent by an employee merely waiting for something to do or doing nothing counts toward hours worked, assuming the employer requires the employee to be present. Work performed by the employee at home or at another location other than the employer's premises also counts toward hours worked.

State Wage and Hour Laws

ALASKA: State minimum wage is \$5.65. Workers employed as school bus drivers receive at least two times the Alaska minimum wage.

ARKANSAS: Employers of workers who receive board, lodging, apparel, or other items as part of the worker's employment may be entitled to an allowance for such board, lodging, apparel or other items, not to exceed 30 cents per hour, credited against the minimum wage.

INDIANA: An employer must pay a base wage of \$2.13 per hour for tipped employees (any employee who receives more than \$30 a month in tips) and the employer must pay the difference between the base wage and federal minimum wage if applicable.

MICHIGAN: Workers under the age of 18 are entitled to a 30 minute meal break after five hours of work. Michigan law does not require a meal break for workers over the age of 18.

NEW HAMPSHIRE: An employer cannot require a worker to work more than five hours without a thirty minute meal break. An employee who reports to work at the employer's request is entitled to be paid a minimum of two hours wages.

NEW JERSEY: Workers under the age of 18 are entitled to a 30 minute meal break after five hours of work. New Jersey law does not require a meal break for workers over the age of 18.

OREGON: State minimum wage is \$6.50 per hour. State law prohibits employers from taking a credit against minimum wage for tips. Employees are entitled to thirty minute meal periods for work shifts six hours or longer, and ten minute work breaks during each four hour work shift.

VERMONT: State minimum wage is \$6.25 per hour. State minimum wage for restaurant servers is \$3.44 per hour with a maximum tip credit allowance of \$2.81 per hour.

WEST VIRGINIA: Minors 14 or 15 years of age must receive work permits before working. The permit is forwarded to the Division of Labor, which has the responsibility of ensuring that minors are not working in hazardous or unsuitable conditions.

WASHINGTON: State minimum wage is \$6.90 per hour. No employer may employ a minor without a work permit from the state along with permission from the minor's parent or [GUARDIAN](#) and school.

Additional Resources

Child Labor Bulletin 101. U. S. Department of Labor, Employment Standards Administration, Wage and Hour Division WH-1330. Revised March 2001.

West's Encyclopedia of American Law. West Group, 1998.

Organizations

[GotTrouble.com](http://www.gottrouble.com)

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