



OVERVIEW: WAGE AND HOUR DIVISION



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
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WHD MISSION

To promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce.



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LAWS ENFORCED BY WHD



Fair Labor
Standards Act



Service
Contract Act



Family and Medical
Leave Act



Employee Polygraph
Protection Act



Davis Bacon and
Related Acts



Wage Garnishment
provisions of the Consumer
Credit Protection Act



Temporary Worker
Programs



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FAIR LABOR STANDARDS ACT



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Major Provisions



Coverage



Youth
Employment



Minimum Wage



Recordkeeping



Overtime



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Employment Relationship

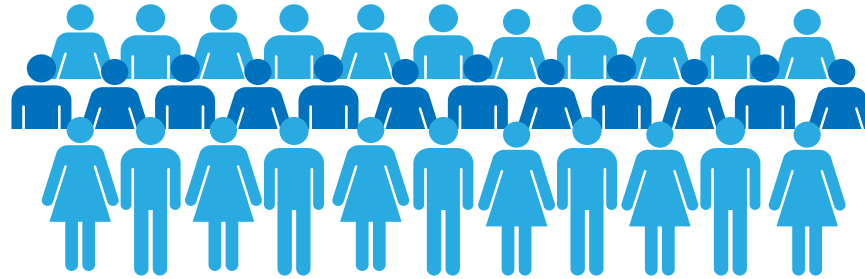
In order for the FLSA to apply, there must be an employment relationship between the “employer” and the “employee”



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Coverage



Over 135 million workers in more than 7 million workplaces protected or covered by the FLSA, enforced by the Wage and Hour Division of the U.S. Department of Labor



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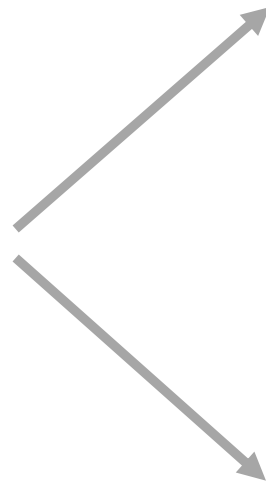


FACT SHEET:
[v/agencies/whd](https://www.dhs.gov/v/agencies/whd)
[FLSA Coverage](#)
1-866-487-9283

Coverage



Two Types
of Coverage



Enterprise Coverage

Enterprise, as a whole, is covered and all employees are entitled to FLSA protections



Individual Coverage

Enterprise, as a whole, is NOT covered; however individual employees are covered and entitled to FLSA protections



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Enterprise Coverage



Enterprise coverage may apply to a business if:

- It engages in commercial activities that result in no less than \$500,000 in annual dollar volume (ADV), sales or total business, and
- It has two or more employees



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Enterprise Coverage

Enterprise Coverage in Non-Profit Organizations

- A non-profit's charitable activities are not ordinary commercial activities and are not covered under the FLSA
- A non-profit's activities performed for a business purpose, however, are covered if the ADV is met
- The "ADV" threshold:
 - Includes only activities performed for a **business purpose**
 - Does not include income—from donations, membership fees, etc.—used for **charitable activities**



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Enterprise Coverage

A business or a non-profit organization may also be covered by the FLSA as a “named enterprise.”

Named enterprises:

- Include hospitals, residential medical or nursing care facilities, schools, preschools, and government agencies
- Are covered regardless of their ADVs
- Must afford minimum wage and overtime protections to all employees, unless exempt



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Individual Coverage



Employees of businesses not covered on an enterprise basis may still be covered individually

- The employee's activities, not the establishment's, determine coverage
- Individual coverage applies on a workweek basis



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Individual Coverage

Includes workers engaged in:

- Interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to such production
- Domestic service, including home care
- Employees of non-profits may also be covered individually



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Individual Coverage

Interstate commerce includes:

- Making out-of-state phone calls, or
- Receiving, sending interstate mail or electronic communications, or
- Ordering, receiving goods from out-of-state suppliers, or
- Handling credit card transactions, performing accounting or bookkeeping for such activities



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Coverage



Employees who *may* not be covered include those employed by:

- Small construction companies
- Small independently owned retail or service businesses



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Minimum Wage



Covered, non-exempt employees must be paid at least the federal minimum wage, in cash or the equivalent, free and clear, for all hours worked

Current federal minimum wage is \$7.25 per hour



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Minimum Wage

Compensation includes:

- Wages (salary, hourly and piece rates)
- Commissions
- Certain bonuses
- Tips received by eligible employees up to \$5.12 per hour (where the employer takes a tip credit)
- Reasonable cost of room, board, other “facilities” provided by employer for employee’s benefit



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Minimum Wage

Deductions from pay are illegal if:

- Items are primarily for the benefit or convenience of employer, and
- Deduction reduces employee earnings below required minimum wage

Examples of illegal deductions: deductions for tools, damages to property, cash register shortages



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FACT SHEET:
[v/agencies/whd](https://www.dhs.gov/v/agencies/whd)
Deductions
1-866-487-9283



Minimum Wage

Exercise

Hourly Rate: \$8.00

Weekly Hours: 30

Employer-required uniform cost: \$30.00

Earnings: $(\$8.00) \times (30 \text{ hours}) =$ \$240.00

Less uniform charges: - \$30.00

Leaves worker with: \$210.00

$(\text{MW } \$7.25/\text{hour}) \times (30 \text{ Hours}) =$ \$217.50

Deduction for uniform takes wages below required MW



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Minimum Wage

Hours Worked



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

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

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



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FACT SHEET:
[w/agencies/whd](https://www.dhs.gov/w/agencies/whd)
Hours Worked
1-866-487-9283

Minimum Wage

Waiting Time

Hours worked

Employee unable to use “waiting time” effectively for own purposes

“Waiting time” controlled by employer

NOT hours worked

Employee completely relieved from duty

Break-time long enough for employee to use for own purposes



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Minimum Wage

On-Call Time

Hours worked

Employee must stay on employer premises

Or, must be so close time cannot be used effectively for own purposes

NOT hours worked

Employee must provide contact information

Can use time effectively for own purposes



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Minimum Wage

Rest and Meal Periods

- Short rest breaks (20 min or less) are compensable
- Bona fide meal periods (typically 30 minutes or more) need not be paid as hours worked
- Worker must be completely relieved of duty for meal period not to be compensable time.



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Minimum Wage

Training Time

Time spent in meetings, lectures or training is considered *hours worked* and must be paid, unless:

- Attendance is outside regular work hours
- Attendance is voluntary
- Course, lecture, meeting that is not job related, **and**
- Employee does not perform any productive work



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Minimum Wage

Travel Time

- Ordinary home to work travel is *not* compensable work time
- Travel between job sites during normal work day *is* work time and thus compensable hours worked
- Special rules apply to travel away from employee's home community



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Minimum Wage

Sleep Time

Duty: Shifts of less than 24 hours:

Employee on duty for less than 24 hours is considered *working* even if allowed to sleep, engage personal pursuits; no sleep time deduction permitted

Duty: Shifts of 24 hours or more:

Parties can agree to exclude bona fide sleep periods, up to 8 hours, and only if certain conditions are met



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Minimum Wage

Shifts of 24 Hours or More

For workers who do not permanently or for extended periods of time reside on the employer's premises, the employer and employee can exclude from hours worked up to 8 hours spent sleeping if:

- The employer furnishes adequate sleeping facilities; and
- The employee can usually enjoy 5 consecutive hours of uninterrupted sleep; and
- The employer and employee have an express or implied agreement to exclude sleep time



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Minimum Wage

Hours Worked Summary and Common Violations

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



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Overtime



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

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



FACT SHEET:
[Overtime](#)

Overtime



- Compliance determined by workweek
- Each workweek stands alone
- Workweek is 7 consecutive 24-hour periods (168 hours)

Overtime

Regular Rate

- Determined by dividing total earnings in workweek (except for statutory exclusions) by total number of hours worked in workweek

Total Compensation (except for statutory exclusions)

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Total Hours Worked = RR

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

Overtime

Exclusions from the *Regular Rate*

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



Overtime

Exclusions from the *Regular Rate*

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



Overtime

Discretionary Bonuses

Discretionary bonuses may be excluded from the regular rate if **all** the following criteria are met:

1. The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine whether to pay the bonus;
2. The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine the amount of the bonus; and
3. The bonus payment is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly.

Labels are not determinative.



Overtime

Regular Rate and Premium Pay for OT Hours

STEP 1: Total compensation paid in a workweek
(except for statutory exclusions) divided by
total hours worked in the workweek

Total Compensation (except for statutory exclusions)

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Total Hours Worked = RR

STEP 2: **RR** x .5 = Half-time Premium Pay per OT Hour

STEP 3: (Half-time) Premium Pay Rate x Overtime Hours in
the Workweek = Overtime Compensation Due



Overtime

Exercise: Production Bonus

Hourly Rate:	\$9.00	$48\text{H} \times \$9.00 =$	\$432.00
Bonus per week:	\$10.00	$\$432 + \$10.00 =$	\$442.00
Hours worked:	48	$\$442.00 \div 48\text{H} =$	\$9.21 RR
		$\$9.21 \times .5 =$	\$4.61
		$\$4.61 \times 8\text{H} =$	\$36.88 OT
Total compensation for week:		$\$442.00 + \$36.88 =$	\$478.88



Overtime

Exercise: Different Hourly Rates

Janitor Rate:	\$8.50	21H x \$8.50 =	\$178.50
Janitor Hours:	21	26H x \$9.00 =	\$234.00
Cook Rate:	\$9.00	\$178.50 + \$234 =	\$412.50
Cook Hours:	26	\$412.50 ÷ 47H =	\$8.78 RR
Total Hours:	47	\$8.78 x .5 =	\$4.39
		\$4.39 x 7H =	\$30.73 OT
Total compensation for week:		\$412.50 + \$30.73 =	\$443.23

Final Rule: Employee or Independent Contractor Classification

- On January 10, 2024, the U.S. Department of Labor published a final rule, effective March 11, 2024, revising the Department's guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA). This final rule rescinds the Independent Contractor Status Under the Fair Labor Standards Act rule (2021 IC Rule), that was published on January 7, 2021.
- <https://www.dol.gov/agencies/whd/flsa/misclassification/rulemaking/faqs#g1>

Analysis Guide (6)

- (1) opportunity for profit or loss depending on managerial skill;
- (2) investments by the worker and the potential employer;
- (3) degree of permanence of the work relationship;
- (4) nature and degree of control;
- (5) extent to which the work performed is an integral part of the potential employer's business; and
- (6) skill and initiative.

Key Takeaways

1. Returns to a totality-of-the-circumstances economic reality test, where no single factor or group of factors is assigned any predetermined weight;
2. Considers six factors (instead of five), including the investments made by the worker and the potential employer;
3. Returns to the Department's longstanding consideration of whether the work is integral to the employer's business (rather than whether it is exclusively part of an "integrated unit of production").

PROPOSAL

Restoring and Extending Overtime Protections



Proposed Rule: Updating the Executive, Administrative and Professional Regulation



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dol.gov/agencies/whd
1-866-4-US-WAGE

What is the new proposed rule?

- On August 30, 2023, the U.S. Department of Labor announced publication of a Notice of Proposed Rulemaking to update the regulations issued under section 13(a)(1) of the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, and professional employees.
- For detailed information and links, go to: www.dol.gov/ot

The proposed rule would:

- Increase the FLSA regulations' standard salary level from \$684 per week (\$35,568 per year) to \$1,059 per week (\$55,068 per year)
- Increase the total annual compensation requirement for highly compensated employees from \$107,432 per year to \$143,988 per year
- Restore overtime protections for U.S. territories, ensuring workers in those territories where the FLSA minimum wage applies have the same overtime protections as other U.S. workers
- Automatically update earnings thresholds every three years so, they keep pace with changes in worker salaries, ensuring that employers could adapt more easily because they would know when salary updates would happen and how they would be calculated

541 Exemptions

Salary Basis

Salary Level

Job Duties

541.100 Exemptions

“White Collar” Exemption: Executive Duties

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



FACT SHEET:
[Executive Duties Exemption](#)

541.101 Exemptions

“White Collar” Exemption: 20% Owner Executives *Executive Exemption* also includes

Any employee who:

- Owns at least a bona fide 20% equity interest in the enterprise at which he or she is employed, and
- Is actively engaged in management of that enterprise

Salary level and salary basis tests do not apply to employees who meet these requirements

541.200 Exemptions

“White Collar” Exemption: Administrative Duties Primary duty

- Office or non-manual work directly related to the *management or general business operations* of the employer or the employer’s customers; and
- Exercise of discretion and independent judgment in matters of significance.
 - Includes activities such as analysis, making determinations, setting prices, assessing risk, committing company resources, negotiating, and similar tasks.



FACT SHEET:
[Administrative
Duties
Exemption](#)

541.200 Exemptions

“White Collar” Exemption: Administrative Duties

Management or General Business Operations Includes:

- Tax, Finance, Budgeting, Accounting
- Auditing, Legal and Regulatory Compliance
- Quality Control, Insurance, Safety and Health
- Purchasing, Procurement
- Advertising, Marketing, Research
- Human Resources, Labor Relations, Benefits
- Computer Network, Internet, Database Administration

541.300 Exemptions

“White Collar” Exemption: Professional Duties Primary duty

- Performance of work requiring advanced knowledge in field of science or learning customarily acquired by a prolonged course of specialized instruction; or
- Performance of work requiring invention, imagination, originality, or talent in recognized artistic or creative field.



**FACT
SHEET:**
[Professional
Exemption](#)

Exemptions

“White Collar” Exemption: Professional Duties *Field of Science or Learning*



Occupations with recognized professional status, as distinguished from mechanical arts or skilled trades

Exemptions

“White Collar” Exemption: Exempt Medical Professions

1. Doctors, Registered Nurses
2. Registered or Certified Medical Technologists
 - 3 years pre-professional study in accredited college or university plus 1 year professional study in accredited school of medical technology
3. Dental Hygienists
 - 4 years pre-professional and professional study in accredited college or university
4. Certified Physician Assistants
 - 4 years pre-professional and professional study, **and** graduation from accredited physician assistant program

Exemptions

“White Collar” Exemption: Professional Duties **Other commonly exempt professions**

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified Athletic Trainers
- Licensed Funeral Directors
- Embalmers

Exemptions

Non-Exempt Professions

Common errors: misapplication of exemptions

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



FACT SHEET:
[Technologists & Technicians](#)

Exemptions

“White Collar” Exemption: Professional Duties *Recognized Field of Artistic or Creative Endeavor*

- **Music**
Musicians, composers, conductors, soloists
- **Graphic Arts**
Painters, photographers, cartoonists
- **Acting**
- **Writing**
Essayists, novelists, short-story writers, playwrights, screenwriters who choose their own subjects, responsible writing positions in advertising agencies

Exemptions

“White Collar” Exemption: Computer-related Occupations

Primary duty

- Application of systems analysis techniques and procedures, including consultation with users about hardware, software, or system function specifications;
- Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs related to user or system design specifications;
- Design, documentation, testing creation, or modification of machine operating systems; or
- Combination of above duties requiring equal skill level.



FACT SHEET:
[Computer-Related Exemption](#)

Exemptions

“White Collar” Exemption: Computer-related Occupations

Additionally, exempt employees must also receive either:

- Guaranteed Salary of at least \$684 weekly
- Hourly rate of at least \$27.63

Overtime

Common Overtime Violations

- **“White Collar” Exemptions:** Misapplication of exemption, or improper assumption that all salaried employees are exempt
- **Deductions:** Improper deductions in OT weeks
- **Misclassification:** Improper treatment of employee as independent contractor
- **Hours worked:** Failure to record, pay for all hours worked
- **State Law:** Confusion between state and federal law



Child Labor

How to Comply with Federal Labor Laws

NOTE: Large increase in penalties for child labor violations - [Field Assistance Bulletin \(FAB\) No. 2023-4, Child Labor Civil Money Penalty Assessments for Nonserious Injury and Noninjury Violations](#)



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Child Labor Protections by Age (Nonagricultural)

- **Under 14** - limited to work that is exempt from the FLSA such as delivering newspapers to the consumer, acting, or casual baby-sitting
- **14 and 15** - may only work outside school hours for a limited number of hours per day and per week; restrictions on type of work; **any work not specifically permitted is prohibited**
- **16 and 17** - may be employed for unlimited hours, but may NOT work in dangerous jobs
- **18** - no longer subject to Federal Child Labor Laws.

Note: Different standards apply to farm work.

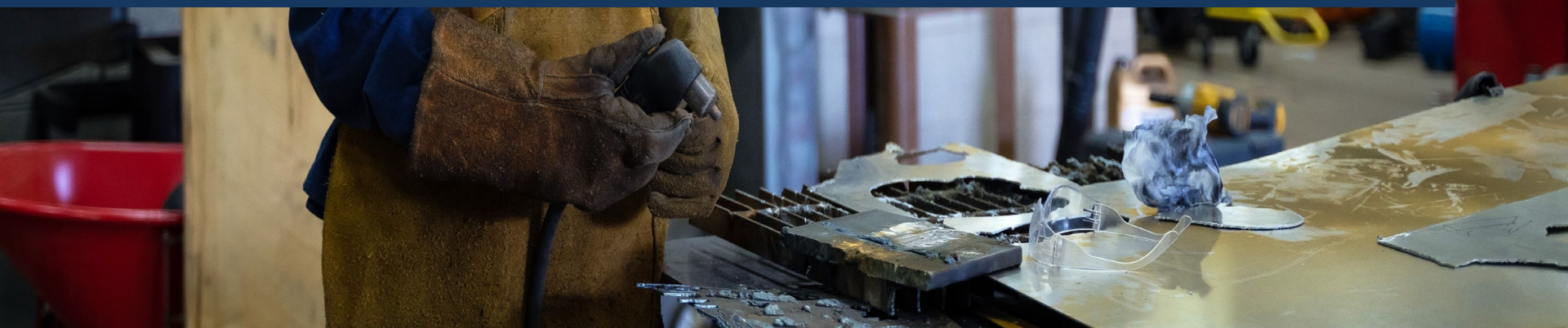
Hours 14- and 15-year-olds Can Work (Nonagricultural)

14- and 15- year-olds **can only work outside of school hours** and may *not* work:

- More than 3 hours on a school day, including Friday
- More than 18 hours per week when school is in session
- More than 8 hours per day when school is not in session
- More than 40 hours per week when school is not in session
- Before 7:00 a.m. or after 7:00 p.m. on any day, except from June 1 through Labor Day, when nighttime work hours are extended to 9:00 p.m.



Dangerous Jobs



Dangerous Jobs - No children under 18

- Explosives
- Exposure to radioactive materials
- Mining (incl. coal)
- Forestry
- Meat processing
- Woodworking machines
- Metal working & shearing
- Bakery machines
- Lifting Equipment (incl. forklift)
- Saws
- Driving
- Balers and compactors
- Demolition
- Roofing
- Excavation
- Bricks and tiles

Recordkeeping



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



FACT SHEET:
[Recordkeeping](#)
[Requirements](#)

Recordkeeping

“Basic records” that a covered employer must keep for each non-exempt worker include:

- Full name, sex , DOB if younger than 19
- Regular rate of pay, total hours worked, total daily or weekly straight-time earnings, total overtime compensation, if any
- Deductions, date of payment and pay period for payment

Recordkeeping

Posting

Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place such as a lunch room or employee lounge area.

Download the poster electronically at :
<https://www.dol.gov/agencies/whd/posters/flsa>

To request by phone call:
1-866-487-9243

FLSA Enforcement

Limits of the FLSA FLSA does *NOT* require

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

FLSA Pump at Work Protections

The FLSA requires employers to provide reasonable break time and a private place other than a bathroom for an employee to pump breast milk for their nursing child for one year after the child's birth each time such employee has need to pump at work.



Eligible Employees

- Nearly all employees covered by the FLSA are eligible to pump at work.
- Employees are eligible to pump at work for one year after their child's birth.
- Narrow exemptions may apply for certain employees of small companies and certain transportation employees.

Space Requirements

Nursing employees must be provided a space that is:

- Shielded from view,
- Free from intrusion from coworkers and the public, and
- May be used to pump breast milk.

The space cannot be a bathroom.





Reasonable Break Time

The FLSA requires employers to provide nursing employees:

- Reasonable break time
- Each time such employee has need to pump at work
- For one year after the child's birth

The frequency of breaks needed to pump at work, as well as the duration of each break, will likely vary.

A photograph showing a person's hands operating a breast pump. In the foreground, there are two white plastic bottles with yellow caps, partially filled with milk. The background is softly blurred, showing the person's torso and arms. The overall scene is brightly lit and clean.

Interaction with State Laws

- The FLSA's pump at work protections do not preempt a State law or municipal ordinance that provides greater protections to employees than those provided by the FLSA.
- Many states have laws related to pumping milk at work.

FLSA Enforcement

- 2-year statute of limitations generally applies to back pay recovery; if willful violation, a 3-year statute of limitations may apply
- If voluntary agreement not obtained, the Wage and Hour Division may bring suit to restrain employer from violating FLSA and/or obtain back wages and liquidated damages
- Employees may file private suit for back pay, liquidated damages, plus attorney and court fees

FLSA Enforcement

Penalties

- Willful violations may be prosecuted with fines amounting to thousands of dollars
- Violators of youth employment are subject to civil money penalties
- Willful, repeat violations of minimum wage or overtime requirements subject to civil money penalties for each violation

FLSA Compliance Assistance

- Call WHD toll free and confidential information and helpline:
1-866-4US-WAGE (1-866-487-9243)
- Call or visit the nearest Wage and Hour Division Office: [WHD Offices](#)
- Employment Laws Assistance for Workers and Small Businesses (ELAWS): [Elaws](#)

FOR MORE INFORMATION

- Visit the WHD homepage at:
<https://www.dol.gov/agencies/whd>
- WHD's Worker Portal:
www.dol.gov/agencies/whd/workers
- WHD's Employer Portal:
www.dol.gov/agencies/whd/emploers



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- Contact your local CORPS:
<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/corpsFlyer.pdf>
- Visit us at:
<https://www.dol.gov/agencies/whd/contact/local-offices>
- Call the WHD toll-free information and helpline at **1-866-4US-WAGE (1-866-487-9243)**
- **Ana Maria Rogers**
 - **Phone: (207)420-0165**
 - **Email: rogers.ana.m@dol.gov**



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