



# Fair Labor Standards Act

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# What We Will Be Covering

- History of the FLSA
- Coverage
- Provisions
- Updates
- Enforcement mechanism

# History of the FLSA

- A culmination of years of advocacy
- First draft featured a 30 hour work week
- Revised bill was introduced in 1937
- Signed into law in June of 1938
- FDR considered the FLSA a vital piece of the New Deal



# Who is Covered?

- Most American workers are covered by FLSA
- Enterprise vs Individual coverage
- Who is not covered?
- Some states expand coverage

**COVERED EMPLOYERS**

**\$500,000+**  
IN ANNUAL SALES



----- OR -----

 **INTERSTATE COMMERCE**

- Sending mail from one state to another
- Making phone calls to another state



Image Source: Wage Advocates

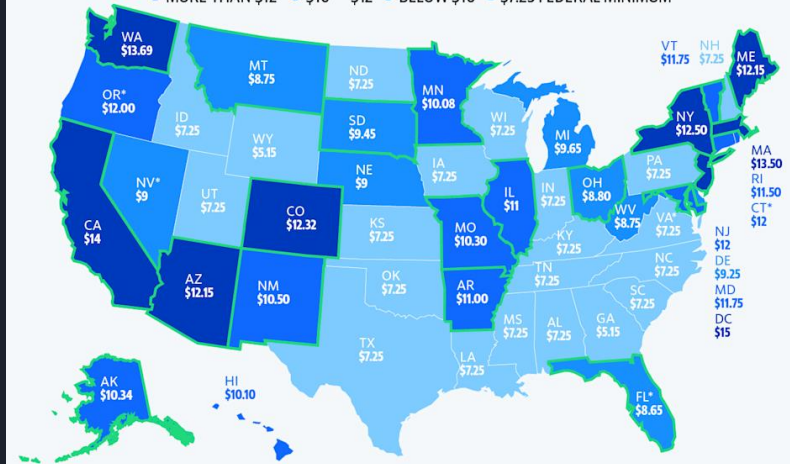
# Minimum Wage

- First law to set a minimum wage for workers in the United States
- Federal minimum wage also applies to agricultural employees
- \$7.25/hour effective July 24, 2009
- Wages: salary, hourly and piece rates, commissions, certain bonuses, tips, and cost of room and board

## \$15 MINIMUM WAGE GAINS STEAM AMONG U.S. STATES

20 STATES RAISED MINIMUM WAGE AS OF JAN. 1, 2021

● MORE THAN \$12 ● \$10 – \$12 ● BELOW \$10 ● \$7.25 FEDERAL MINIMUM



\*CT: FROM \$12 TO \$13 ON AUG 1; FL: FROM \$8.56 TO \$10 ON SEPT. 30;  
NV: FROM \$9 (IF NO BENEFITS) TO \$9.75 AND \$8 (IF BENEFITS) TO \$8.75 ON JUL.  
1; OR: FROM \$13.25 TO \$14 (PORTLAND), \$12 TO \$12.75 (STANDARD), \$11.50 TO \$12  
(RURAL) ON JUL. 1; VA: FROM \$7.25 TO \$9.50 ON MAY 1  
SOURCES: U.S. DEPARTMENT OF LABOR, NEWS REPORTS



# Minimum Wage

- Deductions from pay cannot be for the benefit of the employer nor can they reduce earnings below the minimum wage
- Employees must be paid for all time that the FLSA designates as “hours worked”:
  - Time engaged to wait, on-call, in training, traveling, or sleep time
- Breaks 20 minutes or less should be paid, meal periods lasting 30 minutes or more should not be paid



# Minimum Wage - Agricultural Exemptions

- Employers who utilize less than 500 “man days” of agricultural labor
  - Man day: any day during which an employee performs agricultural work for at least one hour
- Ag employees who are immediate family members of their employer
- Those engaged in the production of livestock
- Local land harvest laborers who commute, are paid on piece rate basis, and were engaged in agriculture less than 13 weeks during the preceding year
- Non-local minors, 16 and under, who are hand harvesters, paid on a piece rate basis, and employed on the same farm as their parent

# Youth Employment

## Hazardous jobs:

- Manufacturing explosives
- Driving or working as a helper on motor vehicles
- Mining
- Forest fire fighting
- Power driven machines
- Exposure to radioactive substances
- Manufacturing of brick or tile
- Wrecking or demolition
- Roofing operations
- Trenching and excavation

## What Hours are Minors Allowed to Work?



### AGES 14-15

- 3 hours per school day to 8 hours per non-school day
- 18 hours per school week to 40 hours per non-school week
- Generally, working hours must be between 7 a.m. to 7 p.m.

### UNDER AGE 14

- Kids under age 14 cannot work non-agricultural jobs unless employed by their parents in non-hazardous industries



### AGES 18 and OVER

- No hours limit



### AGES 16-17

- No hours limit
- Kids under 18 cannot work in a hazardous industry





# Youth Employment (Farm Jobs)

- Minors under 12 may perform jobs on farms owned by parents, or with a parent's written consent, outside of school hours in non hazardous jobs not covered by minimum wage requirements
- Minors 12 and 13 may work outside of school hours in non hazardous jobs, with parental consent
- Minors 14 and 15 may perform any non hazardous farm job outside of school hours
- Minors 16 and older may perform any job for unlimited hours
- Youth minimum wage- no less than \$4.25/hour to employees under 20 during first 90 calendar days after initial employment



# Recordkeeping

- The FLSA requires employers to keep records of:
  - Personal information (name, home address, occupation, sex, and birth date if under 19)
  - Hour and day when work week begins
  - Total hours worked each workday and workweek
  - Total daily or weekly straight time earnings
  - Regular hourly pay rate for any week when overtime is worked
  - Total overtime pay for the workweek
  - Deductions from or additions to wages
  - Total wages paid each period
  - Date of payment and pay period covered

# Recordkeeping

- Keep wage computation records for 2 years and payroll, collective bargaining agreement, and sale/purchase information for 3 years.
- Timekeeping is required, but a time clock is not. Any complete and accurate plan will suffice
- Employers must display an official poster that outlines the provisions of the FLSA, provided by the Wage and Hour Division

**EMPLOYEE RIGHTS**  
**UNDER THE FAIR LABOR STANDARDS ACT**

**FEDERAL MINIMUM WAGE**

**\$7.25** PER HOUR  
BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

**OVERTIME PAY** At least 1.5 times the 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. Youth 14 and 15 years old may work certain school hours in certain non-manufacturing, non-mining, non-hazardous jobs with certain work-hour restrictions. Different rules apply in agricultural employment.


**TIP CREDIT** Employees of " tipped employees " who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against the 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.

**NURSING MOTHERS** The FLSA requires employers to provide reasonable break time for a nursing mother employee who is subject to the FLSA's overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child's birth each time such employee has a need to express breast milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by the employee to express breast milk.


**ENFORCEMENT** The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may dispute and/or recommend criminal prosecution. Employees may file a complaint and receive penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Negligent and reckless penalties may be assessed for each willful or repeated violation that results in the death of a serious injury of any tipped employee, and such assessments may be reduced when the violators are determined to be willful or repeated. The law also prohibits retaliating against or discriminating against workers who file a complaint or participate in any proceeding under the FLSA.

**ADDITIONAL INFORMATION**

- Certain occupations and measurements are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some states have passed greater employee protections; employers must comply with both.
- Some employees correctly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two. Because employees (unless exempt) are entitled to the FLSA minimum wage and overtime pay protections and correctly classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificate issued by the Department of Labor.

 **DOL** WAGE AND HOUR DIVISION UNITED STATES DEPARTMENT OF LABOR

1-866-487-9293  
TTY: 1-877-889-5687  
www.dol.gov/eis/whd




# Overtime Provisions

- Time and a half for work over 40 hours per week
- How is overtime calculated?
- Overtime exemptions


• HOW TO •

## CALCULATE OVERTIME

<b>\$10</b> HOURLY RATE	<b>40</b> REGULAR HOURS WORKED IN A WEEK	<b>10</b> OVERTIME HOURS
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 **NORMAL WAGES**

$\$10 \times 40 = \$400$

 **OVERTIME WAGES**

$\$10 + \left(\frac{10}{2}\right) = \$15$  PER HOUR

$\$15 \times 10 = \$150$

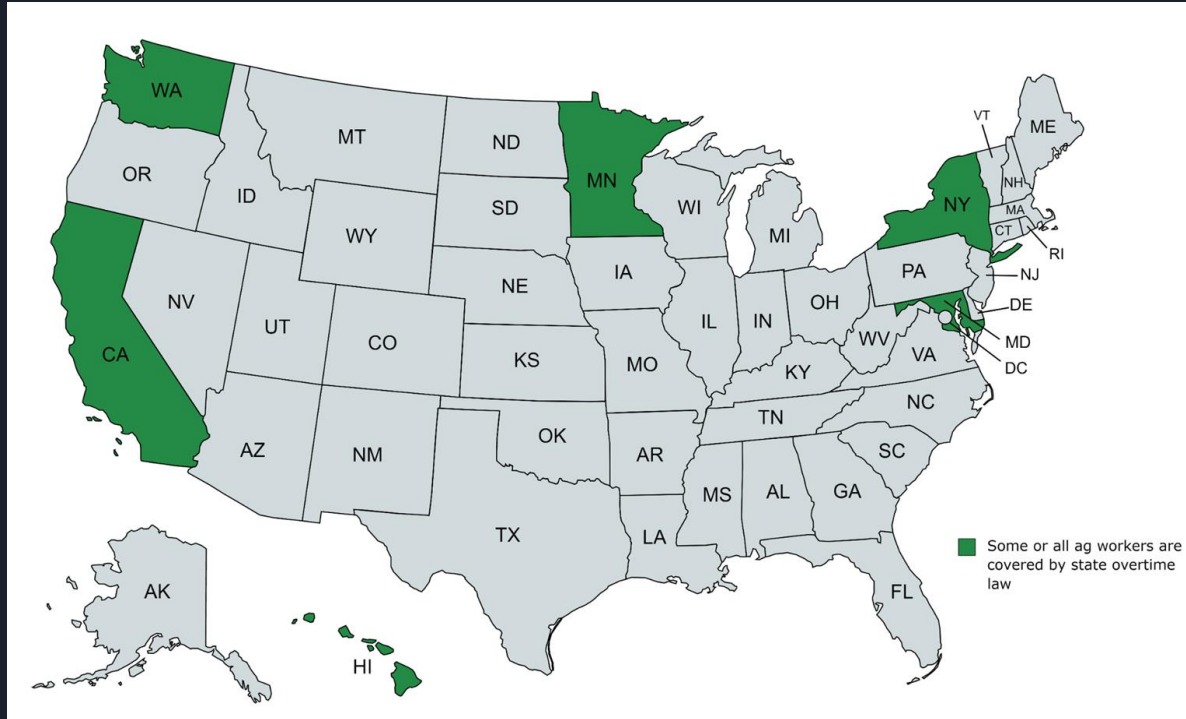
 **TOTAL GROSS WAGES**

$\$400 + \$150 = \$550$

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# State vs Federal Overtime for Agriculture



# Where Employers Go Wrong

- They fail to maintain required records
- They misclassify agricultural workers
- They face joint employer issues



# Relevant Updates - Ash

- Amendments have increased the minimum wage (1955, 1966, 1974, 1977, 1989)
- 2007 Fair Minimum Wage Act increased it to its current value gradually, to \$7.25/hour as of 2009.
- 1961 Amendment added enterprise coverage
- 1963 Equal Pay Act made it illegal to pay employees less based on their sex
- 1967 Age Discrimination in Employment Act prohibited discrimination against people 40 or older
- 1983 MSPA protects farm workers
- 2004 Rule change to overtime and minimum wage exemptions



# FLSA Provisions in Summary

- Establishes the federal minimum wage
- Places restrictions on child labor
- Creates recordkeeping requirements
- Mandates Overtime pay







# Enforcement of the FLSA

- Enforced by the Wage and Hour Division (WHD)
- How are employers selected to be investigated?
  - Some are triggered by complaints
  - WHD will also target types of businesses or industries
- How are investigations conducted?
  - Investigator contacts employer
  - Review of records to determine which provisions apply
  - Review of payroll records
  - Employee interviews
  - Findings reported to employer
  - The employer has an opportunity to present additional information



## Enforcement of the FLSA (cont.)

- Consequences of violations
  - Remedies for minimum wage and overtime violations
  - Penalties for child labor law violations
  - Penalties for willful or repeated violations
- Statute of limitations will apply
- Employers cannot retaliate against workers who file complaints or provide information to DOL

Any Questions?

