

# FLSA Rules and Regulations

## Introduction

The Fair Labor Standards Act (FLSA) was passed by Congress in 1938 to establish a minimum wage, overtime compensation standards, record keeping requirements, child labor provisions, and other regulations that affect employers and labor. The law was enacted to meet the economic and social problems of that era. The intent of the law was to make overtime compensation expensive in order to open up more employment opportunities to the working population. In 1985, the U.S. Supreme Court mandated the application of the Act to all state and local governments. Congress delayed the effective date of the Act as it applied to state and local governments to April 15, 1986.

The U.S. Department of Labor (DOL) is authorized to investigate any alleged violations and generally enforce the FLSA. DOL has the power to initiate court action against violators and penalties that can include jail terms, payment of double back pay, fines, and attorney fees.

In general, FLSA **requires** compliance with the following:

- Payment of the federal minimum wage (Colorado's higher minimum wage is applied to the state personnel system);
- Overtime pay for time worked over 40 hours in a workweek for non-exempt employees;
- Restrictions on the employment of children;
- Record keeping.

FLSA does **not** require the following:

- Payment for time not worked, e.g., vacation, holiday, or sick pay (the State has different policies for essential and non-essential employees);
- Payment for meal or rest periods;
- Pay raises or fringe benefits;
- Discharge notices, reason for discharge, or immediate payment of final wages to terminated employees;
- Severance pay.

## Supervisors

The Department of Personnel & Administration, Division of Human Resources is responsible for consulting with departments and higher education institutions (department) on matters pertaining to the law and providing technical advice for compliance. Over the years, employees have become more knowledgeable about the regulations. It is critical that all departments comply with the law in good faith and that state supervisors are well trained in this area in order to prevent unnecessary overtime liability.

Appointing authorities or their delegates shall be responsible for approving overtime work. Departments and supervisors may control overtime by doing the following:

- Send a written announcement to all non-exempt employees that overtime work is not permitted unless authorized in advance.
- Develop a policy to ensure that employees are not interrupted during their lunch breaks (20 minutes or more). The best way to accomplish this is to have employees leave their workstations during their breaks.
- Develop a policy to ensure that employees are not allowed to start work before their regular starting time or to continue work after ending time without specific advance written approval.
- Develop a corrective and disciplinary action policy for employees who violate the rules and associated department policies. An employee may not voluntarily work overtime or waive the right to overtime compensation.
- Employees sometimes choose to ignore overtime policies and continue working extra hours before or after regular work time. Corrective actions may be issued to these employees according to established policies. *However, the department is still liable for the overtime payment, if the unauthorized overtime work is acknowledged, witnessed, and/or proven.*
- Develop performance standards and a policy for supervisory accountability and consequences for failing to follow rule and policy.

Although the FLSA is a “single employer” law and statewide rules exist, each department is responsible for compliance with FLSA regulations and any liability for failure to comply rests with individual departments.

## Wages

The Department of Labor enforces the Fair Labor Standards Act (FLSA), which sets basic minimum wage and overtime pay standards. These standards are enforced by the Department's Wage and Hour Division.

Workers who are covered by the FLSA are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2010. Overtime pay at a rate of not less than one and one-half times their regular rate of pay is required after 40 hours of work in a workweek. Certain exemptions apply to specific types of businesses or specific types of work.

The FLSA does not, however, require severance pay, sick leave, vacations, or holidays.

The FLSA does not address nonproduction cash bonuses, payments that are not production-based. These bonuses are generally a matter of agreement between an employer and an employee (or the employee's representative).

Benefits such as educational assistance, life insurance, or travel accident insurance are generally a matter of agreement between an employer and an employee (or the employee's representative).

**Definition of "Employ":** By statutory definition the term "employ" includes "to suffer or permit to work." The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.

**Application of Principles:** Employees "Suffered or Permitted" to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.

**Waiting Time:** Whether waiting time is hours worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."

**On-Call Time:** An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/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.

**Rest and Meal Periods:** Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

**Sleeping Time and Certain Other Activities:** An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

**Lectures, Meetings and Training Programs:** Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

**Travel Time:** The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.

**Home to Work Travel:** An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

**Home to Work on a Special One Day Assignment in Another City:** An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

**Travel That is All in a Day's Work:** Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

**Travel Away from Home Community:** Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy

the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

## **Overtime Compensation**

**Cash Payment** – For overtime compensation calculation, work hours cannot be averaged across two or more workweeks (there is an exception for health care and law enforcement partial exemption status). Overtime work must be paid at a rate of one and one-half times the regular hourly rate for each hour worked over 40 hours during the employee's designated workweek. If an employee works in two or more non-exempt positions with different rates of pay, the regular rate for the week, for purposes of calculating overtime, is the average of the rates. Employees **cannot** waive their rights under FLSA. For example, non-exempt employees cannot opt to have overtime compensation paid at a rate lower than the required one and one-half rate. The hourly rate for overtime compensation must include applicable premium pay such as shift differential and on-call pay.

**Compensatory Time** – Compensatory time is allowed for public sector employees and must be accumulated at a rate of not less than one and one-half hours of compensatory time for each hour of overtime work. According to Rule 3-28(A), appointing authorities must ensure that compensatory time is scheduled as soon as practical. Compensatory time shall not exceed 240 hours (or 480 hours for law enforcement) and any additional overtime must be paid at the next regular pay period. Departments can place additional limits on the accrual or payment of compensatory time provided a policy is created and clearly communicated to employees in advance. For example, departments may require employees to take accumulated compensatory time within a specified time frame or require that a certain amount of accrued hours above a specified limit be paid in cash. Compensatory time is part of employees' wage earnings. Employees who agree to use compensatory time for overtime payment are entitled to use this time as if using their cash compensation.

**Compensatory Time Agreement** – For employees hired before April 15, 1986, compensatory time agreements are not needed provided that the department had a regular practice of granting compensatory time off in lieu of overtime pay. Departments must reach compensatory time agreements for employees hired on and after April 15, 1986. Federal regulations allow compensatory time to be a condition of employment for new hires. The U.S. Supreme Court's decision in June 2000 gave supervisors the authority to schedule employees' compensatory time off; however, employees must be able to use the compensatory time for their own personal purposes. When an employee requests compensatory time off, it must be approved unless it imposes an unreasonable burden on the work unit's ability to provide acceptable levels and quality of service. Inconvenience to the department is not a sufficient reason for denying a request for compensatory time off.

**Flexible Work Schedule** - Departments have discretion to designate an individualized workweek for each employee to accommodate any flexible work schedule. The designation of a specialized workweek should be done on a permanent basis; employees should be notified of such designation; and such designation should be filed in the employee's official personnel file. Departments cannot

arbitrarily designate employees' workweeks to circumvent any overtime liability. The following examples illustrate how different workweeks may be defined and how work hours must be calculated for purposes of overtime hours.

## **Typical Problems**

Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty.

## **Records To Be Kept**

**What Records Are Required:** Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the basic records that an employer must maintain:

1. Employee's full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee's workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee's wages are paid (e.g., "\$9 per hour", "\$440 a week", "piecework")
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee's wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

**How Long Should Records Be Retained:** Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work

tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by the Division's representatives, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

**What About Timekeeping:** Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

The following is a sample timekeeping format employers may follow but are not required to do so:

DAY	DATE	IN	OUT	TOTAL HOURS
Sunday	6/3/07	-----	-----	-----
Monday	6/4/07	8:00am	12:02pm	8
		1:00pm	5:03pm	
Tuesday	6/5/07	7:57am	11:58am	8
		1:00pm	5:00pm	
Wednesday	6/6/07	8:02am	12:10pm	8
		1:06pm	5:05pm	
Thursday	6/7/07	-----	-----	-----
Friday	6/8/07	-----	-----	-----
Saturday	6/9/07	-----	-----	-----
<b>Total Workweek Hours:</b>				<b>24</b>

**Employees on Fixed Schedules:** Many employees work on a fixed schedule from which they seldom vary. The employer may keep a record showing the exact schedule of daily and weekly hours and merely indicate that the worker did follow the schedule. When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer must record the number of hours the worker actually worked, on an exception basis.

*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).