

# General Wage and Hour Principles

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## **I. General Wage and Hour Principles**

### **A. Minimum Wage and Overtime**

The federal Fair Labor Standards Act (“FLSA”) was one of the earliest federal efforts to regulate the work environment and became effective on June 25, 1938. The FLSA is administered and enforced by the Wage and Hour Division of the Employment Standards Administration within the United States Department of Labor (“USDOL”). 29 U.S.C. § 204.

Among other things, the FLSA and many parallel state laws require the payment of a minimum wage for all hours worked. 29 U.S.C. § 206. The federal minimum is \$7.25 per hour. Many states have requirements that exceed this level.

Under the FLSA, employers must also generally pay nonexempt employees overtime at a rate of at least one and one half times the regular rate of pay for all hours worked in excess of 40 hours in a work week. 29 U.S.C. § 207. In contrast, the FLSA does not require an employer to provide premium pay for work beyond an employee’s normal daily shift, work on holidays, or work on weekends. 29 C.F.R. § 778.102. For adults, there is no limit on overtime hours that employees may work and overtime may be mandatory. 29 C.F.R. § 778.102. Some states have daily or other overtime requirements and other states place limits on mandatory overtime.

Overtime requirements focus on the work week. The work week can be any fixed and recurring 168-hour period. 29 C.F.R. § 778.105. Because overtime requirements focus on the work week, hours cannot be averaged between work weeks. Thus, if an employee works 38 hours one week and 42 hours the next week, the employer must pay overtime for two hours in the second week even though the average number of hours worked during the two-week period is 40. 29 C.F.R. § 778.104.

Employers found liable for violations of the FLSA may be assessed damages for the unpaid overtime or minimum wages, liquidated damages equal to the amount of unpaid overtime or minimum wages, and reasonable attorneys' fees and costs. 29 U.S.C. § 216(b). Willful violations may carry criminal penalties upon conviction with fines or imprisonment, or both. There are also civil money penalties (payable to the Secretary of Labor) for repeated and willful violations of minimum wage and overtime requirements. 29 U.S.C. § 216(e); 29 C.F.R. Part 578.

Employers must use caution when evaluating whether they comply with minimum wage and overtime requirements. Compliance with the FLSA may not be sufficient. Many states and some local jurisdictions have requirements and those requirements do not always mirror FLSA standards. Thus, employers must be certain that they are complying with FLSA, state, and local requirements in every state where they have employees. A review of state and local laws and requirements is beyond the scope of these materials.

## **B. Exemptions and Exceptions**

The FLSA and state laws provide a multitude of exemptions to and exceptions from their minimum wage and overtime requirements. *E.g.*, 29 U.S.C. § 213. Employers are allowed to make initial determinations as to whether employees fall within one of these exemptions or exceptions or are subject to the general overtime rule. No specific application or certificate is necessary. Employers, however, have the burden of proving that their employees actually fall within any claimed exemption.

Proper classification of employees is important to both employees and employers. Employees who are properly classified as exempt from overtime requirements may receive higher and more predictable compensation, may benefit from greater flexibility in their work schedules, and may have greater status within a business. Likewise, employers may benefit from

employees who take an ownership interest in their jobs, increased flexibility in their workforce, and decreased unanticipated labor costs.

In contrast, improper classification of employees can have severe consequences. If misclassified, employees may lose overtime compensation and other rights to which they may be entitled. These may sometimes be recouped through subsequent litigation. On the other hand, if employers misclassify employees, the employers may face substantial liability for unpaid overtime compensation, liquidated or double damages, prejudgment interest, and attorneys' fees. 29 U.S.C. § 216. In some circumstances, employers incur such liability because they attempt to apply the wrong exemption, even though they could have used a different exemption or exception to avoid overtime liability.

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