

Fair Labor Standards Act (FLSA)

Presented by the

U.S. Department of Labor Wage &
Hour Division

Exemptions



The most common FLSA MW and OT exemption -- often called the “541” or “white collar” exemption -- applies to certain:

- Executives
- Administrative (Staff) Employees
- Professionals
- Outside Sales People
- Computer Professionals

Overview of the Part 541 Regulations



Wage and Hour Division
Employment Standards
Administration
U.S. Department of Labor



“White Collar” Exemptions

- Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees who are employed in a bona fide:
 - Executive;
 - Administrative;
 - Professional; or
 - Outside Sales capacity.
- Certain computer employees may be exempt professionals under Section 13(a)(1) or exempt under Section 13(a)(17) of the FLSA.



Scope of the Exemptions

- § 541.3(a): the exemptions do not apply to manual laborers or other “blue collar” workers
- § 541.3(b): the exemptions do not apply to police officers, fire fighters, paramedics, emergency medical technicians and similar public safety employees
- § 541.4: nothing in the final rule relieves employers from their obligations under union contracts



Three Tests for Exemption

- Salary Level Test
 - A minimum amount of earnings
- Salary Basis Test
 - A predetermined salary which is not subject to deductions because of the quality or quantity of work
- Duties Tests
 - Performing managerial or professional job duties as set forth in the regulations



Salary Level Test

- Minimum Salary Level: \$455 per week
- Highly Compensated Level
 - Total annual compensation of at least \$100,000
 - At least \$455 per week paid on a salary or fee basis
 - Perform office or non-manual work
 - Customarily and regularly perform any one or more of the exempt duties identified in the standard tests for the executive, administrative or professional exemptions



Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Must be paid the full salary for any week in which the employee performs *any* work
- Need not be paid for any workweek when no work is performed



Salary Basis Test

- Deductions allowed for unpaid disciplinary suspensions of one or more full days imposed in good faith for violations of written workplace conduct rules
- Isolated or inadvertent improper deductions will not result in the loss of the exemption if the employee is reimbursed
- An actual practice of making improper deductions will result in the loss of the exemption only for:
 - Employees in the same job classifications
 - Working for the same manager who made the improper deductions



Executive Duties

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



Executive

- Definition of the term “particular weight”
- Concurrent performance of exempt and nonexempt work does not automatically disqualify an employee from exemption
- Provides that owners of a bona fide 20% equity interest in an enterprise are exempt if they are “actively engaged in its management”



Administrative Duties

- Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.



Administrative

- Adds new examples for insurance claims adjusters, financial services employees and public sector inspectors
- Adds a new section explaining that the exemption is not lost for employees who use manuals that:
 - Contain or relate to highly technical, scientific, legal, financial or other similarly complex matters; and
 - Can be understood or interpreted only by those with advanced or specialized knowledge or skills



Professional Exemption

- Learned Professional
 - Primary duty of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction
- Creative Professional
 - Primary duty of the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor



Professional

- Defines “work requiring advanced knowledge” as “work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment”
- Clarifies that licensed practical nurses and paralegals are not exempt learned professionals
- Provides that dental hygienists, physician assistants, chefs and athletic trainers are exempt learned professionals



For More Information

- Other resources on the Part 541 exemptions are available at www.dol.gov/fairpay
 - Regulations
 - Preamble
 - Fact Sheets
 - Field Operations Handbook
 - Frequently Asked Questions
- To ask a specific question or register a comment:
 - Email: fairpay@dol.gov
 - Telephone, toll-free: 1-866-4US-WAGE

Hours Worked Under the FLSA



- Covered, non-exempt employees must be paid for all hours worked in a workweek
- “Hours Worked,” generally include all the time an employee is:
 - ➔ Required to be on duty
 - ➔ Required to be on the employer’s premises, or any other prescribed place of work
 - ➔ Allowed (suffered or permitted) to work

Hours Worked Under the FLSA

It is the duty of management to exercise its control to see that work is not performed if it does not want it to be performed



Examples of FLSA Hours Worked



Attendance at meetings, lectures, training programs and similar activities unless all of the following criteria are met:

- ➔ Attendance is outside the employee's regular working hours
- ➔ Attendance is voluntary
- ➔ Activity is not related to the employee's job
- ➔ No productive work is done during the activity

Examples of FLSA Hours Worked



- Work done in the home if the employer knows or has reason to believe the work is being performed
- Work done during lunch periods
- Work done before or after scheduled hours
- Rest periods of 20 minutes or less

Examples of FLSA Hours Worked



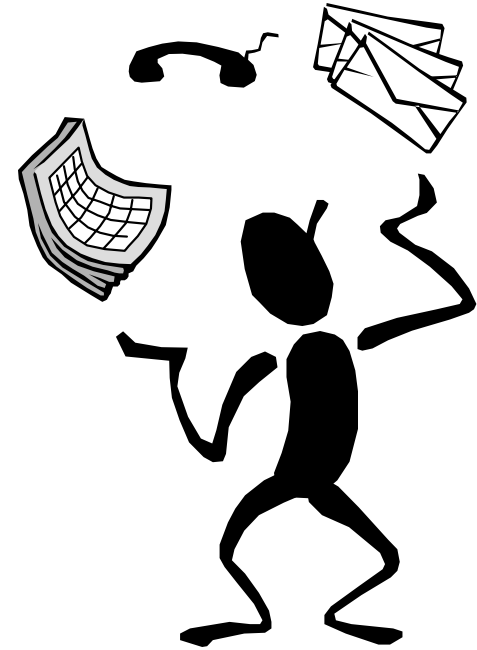
- Get ready work prior to the start of the shift
- Clean up work after the end of a shift
- The entire meal period, if the employee is not completely relieved from all duties and responsibilities
- Transporting or delivering materials or equipment to a job site prior to the start of the workday

Examples of FLSA Hours Worked



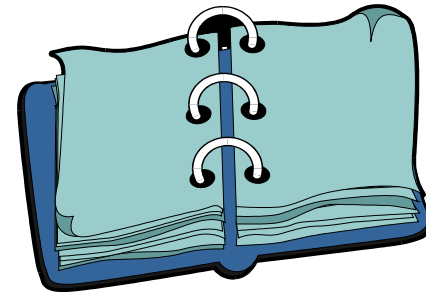
- Returning materials or equipment after the end of the workday
- Transporting employees to worksites, office, or to their homes, either before or after the paid workday, at management's request or directive
- Travel from job site to job site during the workday

Examples of FLSA Hours Worked



- “On call” time by an employee who must remain on the employer’s premises or so close thereto that he/she cannot use the time effectively for his/her own purposes

Common Errors to Avoid



- Assuming that paying a salary automatically makes an employee “exempt”
- Failing to pay for all hours an employee is “suffered or permitted” to work
- Limiting employees to reporting 40 hours (or limited overtime) and directing them to “get the job done” and ignoring the time it takes to accomplish the task

Common Errors to Avoid

- Failure to pay for pre or post shift work activities
- Confusing federal and state law
- Improperly applying an exemption
- Failure to include all types of pay received in calculating an employee's regular rate for OT
- Treating an employee as an independent contractor



Common Errors to Avoid



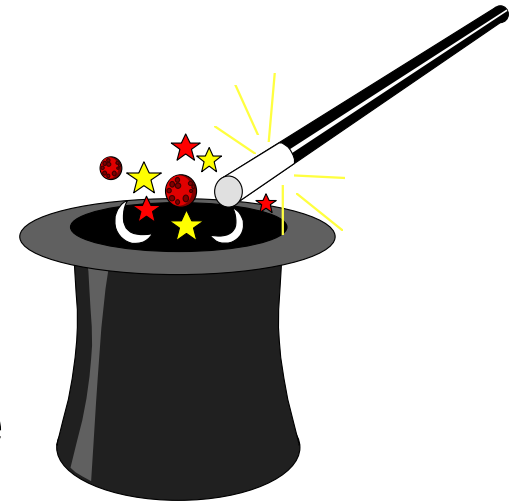
- Not totaling work done in separate employer establishments when calculating OT due
- Making illegal deductions from wages -- shortages, drive-offs, damage, tools, uniforms, etc. -- that cut into the required MW or OT
- Deducting rest breaks from work hours

Common Errors to Avoid



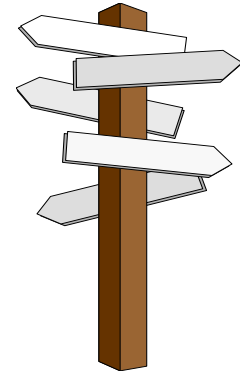
- Employee works during meal break and is not paid
- Employee takes work home and the hours are not recorded or paid
- Not paying for compensable travel time
- Not paying for employee meetings

The FLSA Does Not Require



- Vacation, holiday, severance or sick pay
- Meal or rest periods, holidays off, or vacations
- Premium pay for weekend or holiday work
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- Any limit on the number of hours in a day or days in a week an employee at least 16 years old may be required or scheduled to work
- Pay raises or fringe benefits

ADDITIONAL INFORMATION



- Visit the WHD homepage at:
www.wagehour.dol.gov
- Call the WHD toll-free information and helpline at **1-866--487-9243**
- Use the DOL interactive advisor system - **ELAWS** (**E**mployment **L**aws **A**ssistance for **W**orkers and **S**mall Businesses) at:
www.dol.gov/elaws
- Des Moines District Office:
(515) 284-4625