

Wage-and-Hour Law 101

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Federal Law

Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201, *et seq.*

- Administered by the U.S. Department of Labor (DOL).
- Establishes minimum wage and overtime pay requirements and related recordkeeping and notice requirements.
 - Most employers are required to display DOL wage & hour poster.
- Prohibits retaliation against employees for filing complaints or instituting or testifying in proceedings under or related to the FLSA.
- Statue of limitations: 2 years, 3 years for willful violations.
- Possible damages include:
 - Lost wages.
 - Emotional distress/mental anguish damages (retaliation claims only).
 - Liquidated damages (unless violation was made in good faith).
 - Attorneys' fees and costs.
 - Civil money penalties.

Federal Law (cont'd)

- Individual liability is possible under the FLSA.
- Authorizes "collective actions" (as opposed to class actions).
- Settling FLSA claims requires certain procedures to be followed.
 - If, as part of the settlement, the employer is offering to pay **less than full relief** in exchange for a release, the release cannot be enforced against the employee until the settlement agreement has been evaluated for fairness and approved by the DOL or a court.
 - Obtaining an enforceable FLSA settlement agreement may require the parties to sacrifice confidentiality, as seeking court approval generally puts the agreement in the public record.
 - If the employer offers **full relief**, some courts have held that there is no compromise of the FLSA claim, which means no approval of the settlement agreement is required.

Florida Law

FL Minimum Wage Act (FMWA), Fla. Stat. § 448.110.

Article X, § 24 of the Florida Constitution.

- Generally applies the same requirements and standards regarding coverage and entitlement and provides for the same remedies as the FLSA.
- Protects employees from retaliation for filing a complaint, informing any person about noncompliance, or engaging in other protected activity under the FMWA or Art. X.

Florida Law (cont'd)

- Notable differences between the FLSA and Florida law:
 - Federal min. wage is \$7.25/hour, while Florida's is \$14/hour (to increase to \$15/hour on 9/30/2026).
 - Florida law imposes no separate overtime requirements.
 - FMWA statute of limitations is 4 years, 5 years for willful violations.
 - Collective actions are not permitted, but class actions are.
 - Plaintiff must fulfill pre-suit notice requirement before bringing FMWA claim in court.

Coverage Under the FLSA

- **Employer:** "includes any person acting directly or indirectly in the interest of an employer in relation to an employee."
- **Employ:** "to suffer or permit to work."
- **Employee:** "any individual employed by an employer."
 - Does not include:
 - Independent contractors.
 - Volunteers.
 - Interns.
 - Trainees.

Coverage Under the FLSA (cont'd)

- **Enterprise coverage:** Applies to all employees of an enterprise that:
 - i. has 2 or more employees who are engaged in commerce or the handling, selling, or otherwise working on goods or materials moved in or produced for commerce;
 - ii. makes at least \$500K in annual sales/business; and
 - iii. engages in commerce or the production of goods for commerce.
- **Individual coverage:** Applies to any employee engaged in interstate commerce or in the handling or production of goods for commerce, even if employer does not have enterprise coverage.

Non-Exempt vs. Exempt Employees

- Unless an employee meets the requirements of a specific exemption under the FLSA, the employee is **non-exempt**.
- Employers must pay non-exempt employees both:
 - At least applicable minimum wage for all hours worked; and
 - Overtime compensation for each hour worked over 40 in a workweek.
- Most non-exempt employees are hourly, but not all. Non-exempt employees may also be paid, e.g., by salary, day rate, piece rate, or another basis.
 - Beware the common misconception that hourly automatically means non-exempt and salaried automatically means exempt.

Non-Exempt Employees: Compensable Time

- Non-exempt employees must be paid for all compensable working time, which includes:
 - With limited exceptions, all activities that occur between the beginning and end of an employee's principal activities on a workday (the “**continuous workday**” principle), which may be different from an employer's normal operating hours or an employee's scheduled shift.
 - Activities before or after the workday that are integral or indispensable to the employee's principal activities or primarily for the employer's benefit (“**preliminary and postliminary activities**”).

Compensable Time (cont'd)

- Depending on the circumstances, compensable time may also include (but is not limited to):
 - Donning and doffing of PPE or other clothing or gear.
 - Travel time.
 - Waiting and on-call time.
 - Short or interrupted break time.
 - Training, meetings, or events.
- Generally, work performed on an employer's behalf must be compensated, even if the work was unauthorized. (Working without authorization can still be subject to discipline.)

Non-Exempt Employees: Overtime

- The general rule for overtime compensation is that non-exempt employees must be paid at least 1.5 times the their “**regular rate**” of pay for each hour worked over 40 in a workweek.
 - Basic “regular rate” computation: employee’s total (non-excludable) remuneration in a workweek ÷ total hours the employee worked that workweek.
 - Other computation methods may be available in certain circumstances.
 - Remuneration that must be **included** in this computation includes wages, salary, commissions, and non-discretionary bonuses.
 - Remuneration that may be **excluded** from this computation includes gifts, discretionary bonuses, paid leave, expense reimbursements, certain benefit payments and/or contributions, certain stock-related income, and talent fees.

Exemptions

- Employees may be exempt from the FLSA's minimum wage requirements, overtime requirements, or both.
- Exemptions are enumerated at 29 U.S.C. § 213. Examples include:
 - Certain rail or air carrier employees.
 - Certain fire protection and law enforcement employees.
 - Certain agricultural employees.
 - Employees working in bona fide executive, administrative, or professional capacities.
 - Certain computer professionals.
 - Certain outside sales employees.

Exemptions (cont'd)

- Most common exemptions are likely the “white-collar exemptions”:
 - Executive employees.
 - Administrative employees.
 - Professional employees.
 - Computer employees.
 - Highly compensated employees.
 - Outside sales employees.
- To be properly classified under one of the white-collar exemptions, an employee must meet requirements as to job duties and compensation.*
 - *Except for outside sales employees; there are no compensation requirements for this exemption.

Exemptions: Salary Basis Test

- Salary basis test relevant to all white-collar exemptions except outside sales.
- Requires an employee to be paid:
 - a predetermined amount that generally cannot be reduced based on the quality or quantity of work
 - that satisfies the minimum threshold (at least \$684 a week)
 - each pay period on a weekly (or less frequent basis).
- Other than standard payroll deductions (e.g., taxes, benefit contributions), deductions from exempt employees' salaries are prohibited unless the deduction falls into one of a few narrow exceptions.
 - NOTE: Fewer limitations on deductions from *non-exempt* employees' pay, but most deductions (e.g., to recoup cost of damaged equipment) that cut into the min. wage are impermissible.

Exemptions: Salary Basis Test (cont'd)

- Permissible deductions are limited to:
 - Full-day absence(s) from work for personal reasons other than sickness or disability;
 - Full-day absence(s) from work due to sickness or disability (if made in accordance with a bona fide sick leave policy);
 - To offset amounts employees receive as jury or witness fees, or for military pay;
 - For penalties imposed in good faith for infractions of safety rules of major significance;
 - For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
 - To pro-rate salary for initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act

Exemptions: Salary Basis Test (cont'd)

- Making impermissible deductions from an exempt employee's pay can compromise or destroy the employee's exempt classification, depending on the number and frequency of improper deductions, the number of employees affected, and other factors.
- FLSA includes a "safe harbor" provision that can preserve the salary basis if the employer:
 - 1) has a clearly communicated policy prohibiting improper deductions which includes a complaint mechanism;
 - 2) reimburses employees for any improper deductions; and
 - 3) makes a good faith commitment to comply in the future

Exemptions: Duties Test

- Generally, the duties tests refer to an employee's “**primary duty**.” An employee's “primary duty” is generally:
 - Their principal, main, major, or most important duty.
 - Not determined by job titles or descriptions.
 - Not determined by the amount of time spent performing certain work.
- Requirements for employee's primary duty differ for each exemption.

Exemptions: Executive Exemption

- The employee must be compensated on a salary basis at a rate not less than \$684/week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Exemptions: Administrative Exemption

- The employee must be compensated on a salary or fee basis at a rate not less than \$684/week;
- The employee's primary duty must be 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
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Exemptions: Professional Exemption

- The employee must be compensated on a salary or fee basis at a rate not less than \$684/week; and
- The employee's primary duty must be:
 - EITHER the performance of work that (i) requires advanced knowledge (ii) in a field of science or learning (iii) that is customarily acquired by a prolonged course of specialized intellectual instruction, and that (iv) is predominantly intellectual in character and (v) includes work requiring the consistent exercise of discretion and judgment;
 - OR the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Exemptions: Professional Exemption (cont'd)

- A field of science or learning generally includes:
 - Law.
 - Medicine.
 - Theology.
 - Accounting (CPAs).
 - Actuarial computation.
 - Engineering.
 - Architecture.
 - Teaching.
 - Various types of physical, chemical, and biological sciences.
 - Pharmacy.
 - Other occupations that have a recognized professional status.

Exemptions: Professional Exemption (cont'd)

Creative professionals generally include:

- Actors.
- Musicians, composers, conductors, and soloists.
- Painters who are given, at most, the subject matter of the painting.
- Cartoonists who are only told the title or underlying concept of a cartoon.
- Essayists, novelists, short story writers, and screenplay writers who chose their own subjects.
- Certain writers within advertising agencies.

Exemptions: Highly Compensated Employees

- The employee earns total annual compensation of at least \$107,432;
- The employee's primary duty includes performing office or non-manual work; and
- The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Exemptions: Computer Employees

- The employee must be compensated either on a salary or fee basis at a rate not less than \$684/week, or at an hourly rate of at least \$27.63/hour.
- The employee is employed as a computer systems analyst, programmer, software engineer, or other similarly skilled worker in the computer field whose primary duty consists of any one of, or a combination of, the duties described below.
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.
 - The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, based on and related to user or system design specifications.
 - The design, documentation, testing, creation, or modification of computer programs related to machine operating systems.

Exemptions: Outside Sales Employees

All of the following must be met:

- The employee's primary duty is either making sales within the meaning of FLSA Section 3(k) or obtaining purchase orders or contracts from customers paying for services or for the use of facilities.
- The employee must be customarily and regularly engaged away from the employer's place of business (which generally includes the employee's home office).
- There is no compensation threshold or basis test for this exemption.

Recordkeeping

- For each employee, exempt or non-exempt, employers must keep records of the employee's:
 - Full name and SSN.
 - Home address, incl. zip code.
 - DOB (for employees under 19).
 - Sex and occupation.
 - Time and day of the week that employee's workweek begins.
 - Total wages paid each pay period.
 - Date of pay and dates of covered pay period.

Recordkeeping (cont'd)

- For each **non-exempt** employee, employers must also keep records of :
 - Hours worked each workday.
 - Total hours worked each workweek.
 - Basis on which employee is paid.
 - Regular hourly rate.
 - Total daily or weekly straight-time and overtime pay.
 - Total additions to or deductions from wages each pay period.
 - All records of original cost, operating/maintenance costs, depreciation, and interest that were used to determine additions or deductions. (For example: records used to calculate reimbursements for delivery drivers' use of their own vehicles.)

Recordkeeping (cont'd)

- For employees classified as exempt under one of the white-collar exemptions, the employer must also keep records of basis of pay in sufficient detail to permit calculation of employee's total remuneration, including benefits and prerequisites, for each pay period.

Questions?