

UNDERSTANDING THE FAIR LABOR STANDARDS ACT (FLSA)



WHAT IS THE FAIR LABOR STANDARDS ACT (FLSA)?

The Fair Labor Standards Act (FLSA), a cornerstone of employment law in the United States, sets crucial standards for minimum wage, overtime pay, recordkeeping and child labor. These regulations apply broadly, impacting full-time and part-time workers in the private sector, as well as federal, state and local government employment. The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) administers and enforces FLSA compliance.

WHO IS AT RISK?

The FLSA applies to companies that achieve sales revenue greater than \$500,000 annually or they are a hospital, institution for the sick, a school, or a public agency. Employees are broken into two separate classifications:

Exempt employees are those who are exempt from certain wage and hour laws, e.g., overtime pay; this usually but, not always, applies to executive, administrative, professional, highly compensated, outside sales and certain computer professional employees.

Nonexempt employees may receive hourly wages or be salaried and are subject to wage and hour laws, e.g., overtime pay; this usually applies to nonprofessional employees. The FLSA requires employers to pay employees at least 1.5 times their hourly pay rate for hours that they work over 40 hours in a given week.

The most common FLSA offenses for small business include:

- ▶ Misclassification of nonexempt “salaried” employees like clerical workers and inside salespersons as exempt
- ▶ Employment of minors in violation of FLSA’s child labor provisions
- ▶ Failure to pay overtime to nonexempt salaried employees
- ▶ Not compensating employees for all hours worked, including tasks done outside of normal work hours
- ▶ Inaccurate recordkeeping for nonexempt employees
- ▶ Unlawful compensatory time off in place of overtime pay
- ▶ Mislabeling employees as independent contractors to circumvent FLSA coverage
- ▶ Illegal deductions or kickbacks that reduce wages below minimum wage or required overtime pay

The rising wave of FLSA litigation

FLSA litigation has seen a dramatic increase in recent years. FLSA collective actions now exceed all other types of employment class actions. Factors contributing to this trend include greater public awareness of FLSA rights, media attention to high-profile cases, and evolving federal standards for class certification.

Statistical insights

The fiscal year 2023 data from the DOL underscores the scale of FLSA violations, with over \$156 million in back wages recovered for more than 135,000 employees. This includes substantial amounts for minimum wage and overtime violations, illustrating the widespread issues under the FLSA.

\$100,000 Defense and Indemnity sublimit not available in California and Florida.

Defense Costs Only sublimit applies in Florida for eligible risks. Contact your underwriter for details.



WHAT DO CLAIMS LOOK LIKE?

A retail store chain paid a \$50,000 settlement and \$15,000 in attorney fees for paying nonexempt workers a lump sum amount for overtime, rather than time and a half for hours worked over 40.

A law firm that did not pay overtime to its paralegals, who won \$250,000 for overtime pay and liquidated damages. An additional \$75,000 was paid to defend the claim.

An artisan contractor was misclassifying its carpenters as exempt as they spent more than half of their time engaged in nonexempt, nonmanagerial activities. The plaintiff was awarded \$75,000 in back overtime pay and \$25,000 in attorney's fees.

A fast-food franchise did not pay overtime to its employees who worked more than 40 hours a week. The plaintiff was awarded \$125,000 in back overtime pay and an additional \$50,000 in defense costs.

These examples and statistics underscore the importance of thorough understanding and compliance with the FLSA to prevent costly litigation and penalties. For businesses of all sizes, especially those with complex employee structures, staying informed and vigilant about FLSA regulations is crucial in today's increasingly litigious work environment.

Sources: Legal Newsline, Department of Labor, Wage and Hour Division