

Table of Contents

I. FAIR LABOR STANDARDS ACT

CHAPTER 1. LAWS GOVERNING COMPENSATION AND HOURS

- § 1:1 Fair Labor Standards Act of 1938 (FLSA)
- § 1:2 —History of wage and hour laws prior to passage of FLSA
- § 1:3 —Passage of FLSA
- § 1:4 —Constitutionality of FLSA
- § 1:5 —Overview of amendments
- § 1:6 —Overtime-on-Overtime ban and amendments to FLSA in 1949
- § 1:7 —Amendments to FLSA in 1961
- § 1:8 —Equal Pay Act of 1963
- § 1:9 —Amendments to FLSA in 1966
- § 1:10 —Amendments to FLSA in 1974
- § 1:11 —Amendments to FLSA in 1977
- § 1:12 —Amendments to FLSA in 1985
- § 1:13 —Amendments to FLSA in 1989
- § 1:14 Amendments to FLSA in 1990
- § 1:15 Congressional Accountability Act of 1995
- § 1:16 Court Reporter Fair Labor Amendments of 1995
- § 1:17 Amendments to FLSA in 1996
- § 1:18 Presidential and Executive Office Accountability Act
- § 1:19 Drive for Teen Employment Act
- § 1:20 Department of Labor Appropriations Act, 2004
- § 1:21 Amendments Related to 29 U.S.C.A. 213(b)(1)
- § 1:22 Amendments of 2007
- § 1:23 Amendments of 2008
- § 1:24 Patient Protection and Affordable Care Act—
Amendments to the Fair Labor Standards Act
- § 1:25 Delay Increase Pending Government Accountability
Office report
- § 1:26 Border Patrol Agent Pay Reform Act of 2014
- § 1:27 Puerto Rico Oversight, Management, and Economic
Stability Act, 2016
- § 1:28 Consolidated Appropriations Act, 2018
- § 1:29 Portal-to-Portal Act of 1947
- § 1:30 —Preceding Supreme Court decisions
- § 1:31 —Provisions of Portal-to-Portal Act

- § 1:32 Government contract acts
- § 1:33 —Davis-Bacon Act
- § 1:34 —Walsh-Healey Public Contracts Act
- § 1:35 —Contract Work Hours and Safety Standards Act
- § 1:36 —Service Contract Act of 1965
- § 1:37 —Copeland Act
- § 1:38 Regulations, interpretive bulletins, opinions, and other publications of Wage and Hour
- § 1:39 —Regulations
- § 1:40 —Interpretative bulletins
- § 1:41 —Wage and Hour opinions
- § 1:42 —Wage and Hour's Field Operations Handbook (FOH)
- § 1:43 —Other publications
- § 1:44 State's ability to supercede provisions of FLSA

Appendix 1A. Annotated Fair Labor Standards Act of 1938

CHAPTER 2. ADMINISTRATION AND ENFORCEMENT

- § 2:1 Introduction
- § 2:2 Organizational structure
- § 2:3 Enforcement by Wage and Hour
- § 2:4 Role of Solicitor of Labor
- § 2:5 Role of Office of Personnel Management

Appendix 2A. Wage and Hour Key Program Personnel

Appendix 2B. WHD Local Offices

Appendix 2C. State Labor Offices

Appendix 2D. Wage and Hour Fact Sheets

CHAPTER 3. EMPLOYMENT

- § 3:1 Introduction
- § 3:2 Definition of employee
- § 3:3 Employee versus independent contractor distinction—
Economic reality test
- § 3:4 —Control
- § 3:5 —Integral part of operation
- § 3:6 —Opportunity for profit or loss
- § 3:7 —Investment
- § 3:8 —Permanency
- § 3:9 —Skill
- § 3:10 —Other indicia
- § 3:11 Employee versus student
- § 3:12 —Working at business
- § 3:13 Employee versus trainee
- § 3:14 —Sample agreement for trainees

TABLE OF CONTENTS

§ 3:15	Employee versus intern
§ 3:16	Volunteers
§ 3:17	—Volunteer is admitted employee
§ 3:18	—Full time volunteer receiving payments
§ 3:19	—Volunteers working for church-sponsored organization
§ 3:20	Prisoners
§ 3:21	Federal employees
§ 3:22	—Congressional employees
§ 3:23	—Employees of Executive Office of President
§ 3:24	State and local government employees
§ 3:25	—Public elected officials
§ 3:26	—Personal staff, policymakers and advisers to public elective officials
§ 3:27	—Legislative employees
§ 3:28	—Public sector volunteers
§ 3:29	Employer
§ 3:30	—Authority to hire and fire
§ 3:31	—Authority to direct and control
§ 3:32	—Authority to set terms and conditions
§ 3:33	—Responsibility or obligation to pay wages
§ 3:34	Individuals defined as employers
§ 3:35	—Owners and shareholders
§ 3:36	—Officers and managers
§ 3:37	—Labor organization
§ 3:38	Joint employment
§ 3:39	Definition of employ
Appendix 3A. Training and Employment Guidance Letter	
Appendix 3B. Legal Intern Guidance Letter	

CHAPTER 4. COVERAGE

§ 4:1	Individual employee coverage
§ 4:2	General principles of individual coverage
§ 4:3	Engaged in interstate commerce
§ 4:4	—Coverage for operations, maintenance, repair, improvement and construction of instrumentalities of commerce
§ 4:5	—Transportation of goods in commerce
§ 4:6	—Use of channels of commerce
§ 4:7	—Communications across state lines
§ 4:8	—Work essential to commerce
§ 4:9	—Engaged in production of goods for commerce
§ 4:10	—Definition of production
§ 4:11	—Definition of goods
§ 4:12	—Ultimate consumer exception
§ 4:13	—Movement of goods

- § 4:14 Closely related process or occupation directly essential
to production of goods
- § 4:15 —Closely related
- § 4:16 —Directly essential
- § 4:17 Employees of independent contractors
- § 4:18 —De minimis
- § 4:19 Enterprise coverage
- § 4:20 —Basic concept of enterprise
- § 4:21 —Related activities
- § 4:22 Common business purpose
- § 4:23 Unified operation or common control
- § 4:24 —Leased departments
- § 4:25 —Retail or service “franchise” exceptions
- § 4:26 —Hospitals, institutions for care of sick, aged and
mentally ill, and schools
- § 4:27 —Local passenger carriers
- § 4:28 Public agencies
- § 4:29 Commerce tests
- § 4:30 —Employees handling, selling or otherwise working on
goods or materials moved in or produced in commerce
- § 4:31 —Dollar volume test
- § 4:32 Immediate family exclusion—“Mom and pop” exception
- § 4:33 Grandfather coverage
- § 4:34 Indian tribes
- § 4:35 Successorship liability under FLSA

CHAPTER 5. EXEMPTIONS

- § 5:1 Introduction
- § 5:2 General rules of construction
- § 5:3 Scope of 541 regulations
- § 5:4 Executive employees
- § 5:5 —Current regulatory definition
- § 5:6 —Management
- § 5:7 —Primary duty
- § 5:8 —Department or subdivision
- § 5:9 —Two or more employees
- § 5:10 —Authority to hire or fire
- § 5:11 —Emergencies
- § 5:12 —Occasional tasks
- § 5:13 —Concurrent duties
- § 5:14 —Management trainees
- § 5:15 —Amount of salary
- § 5:16 —Salary basis
- § 5:17 —Specific occupations concerning executive
exemptions
- § 5:18 Administrative employees

TABLE OF CONTENTS

§ 5:19	—Executive and administrative assistants
§ 5:20	—Staff employees
§ 5:21	—Major projects
§ 5:22	—Academic administration
§ 5:23	—Office or non-manual work
§ 5:24	—Directly and closely related to management policies and general business operations
§ 5:25	—Primary duty
§ 5:26	—Discretion and independent judgment
§ 5:27	—Amount of salary or fee
§ 5:28	—Salary basis
§ 5:29	—Special proviso for motion picture industry
§ 5:30	—Fee basis
§ 5:31	—Administrative trainees
§ 5:32	—Academic Administrative exemption—Elementary or secondary schools and educational establishments and institutions
§ 5:33	—Specific occupations concerning administrative exemptions
§ 5:34	Professional employees
§ 5:35	—Learned professions
§ 5:36	— —Prolonged course of specialized intellectual instruction and study
§ 5:37	— —General academic education
§ 5:38	— —Specific occupations
§ 5:39	—Creative professionals
§ 5:40	—Artistic professions—Original and creative
§ 5:41	— —Recognized field of artistic endeavor
§ 5:42	— —Primarily invention, imagination or talent
§ 5:43	—Teaching professions
§ 5:44	— —Employed and engaged as teacher
§ 5:45	— —School system or educational institution
§ 5:46	—Primary duty
§ 5:47	—Discretion and judgment
§ 5:48	—Predominantly intellectual
§ 5:49	—Nonexempt work generally
§ 5:50	—Trainees
§ 5:51	—Amount of salary or fees
§ 5:52	—Salary basis
§ 5:53	—Fee basis
§ 5:54	—Exemption for physicians, lawyers and teachers
§ 5:55	Special proviso for motion picture industry
§ 5:56	Special proviso for public agency
§ 5:57	Combination exemption executive, administrative and professional
§ 5:58	Computer programmers and analysts
§ 5:59	Outside salespeople

WAGE AND HOUR LAW: COMPLIANCE & PRACTICE

- § 5:60 —Makes sales or obtains orders
- § 5:61 —Customarily and regularly engaged away from employer's place of business
- § 5:62 —Incidental to and in conjunction with sales work
- § 5:63 —Promotion work
- § 5:64 —Drivers who sell
- § 5:65 —Nonexempt work generally
- § 5:66 Highly compensated employees
- § 5:67 Amusement and recreational establishments
- § 5:68 —Definition of amusement and recreational establishments
- § 5:69 —Definition of seasonal
- § 5:70 —Private establishment versus public establishment
- § 5:71 —Exclusion of establishment in national park, forest and wildlife refuge
- § 5:72 Fishing and offshore seafood processing
- § 5:73 —Employed in fishing and farming of aquatic life
- § 5:74 Aquatic products
- § 5:75 —First processing
- § 5:76 —Going to and returning from work
- § 5:77 —Exempt and nonexempt work
- § 5:78 Agriculture
- § 5:79 —Agricultural activities
- § 5:80 —Man-days exemption
- § 5:81 —Immediate family exemption
- § 5:82 —Hand harvest and piece-rate exemption
- § 5:83 —Range production of livestock
- § 5:84 —Nonprofit agricultural waterways
- § 5:85 Learners, apprentices, messengers, handicapped workers and students
- § 5:86 Local newspapers
- § 5:87 Switchboard operators
- § 5:88 Seamen
- § 5:89 —Employed as seaman
- § 5:90 —American vessel versus non-American vessel
- § 5:91 Domestic service
- § 5:92 Interstate motor carriers
- § 5:93 —Authority of Secretary of Transportation
- § 5:94 —Interstate commerce
- § 5:95 —Operators within purview of Motor Carrier Act
- § 5:96 —Employee's activities directly affect safety of operation of motor vehicles
- § 5:97 —Drivers
- § 5:98 —Driver's helpers
- § 5:99 —Loaders
- § 5:100 —Mechanics
- § 5:101 Railroads

TABLE OF CONTENTS

§ 5:102	Air carriers
§ 5:103	Outside buyer of poultry and dairy products
§ 5:104	Radio and television employees
§ 5:105	Automotive, farm implements, boats and aircraft dealers
§ 5:106	Local transportation and delivery
§ 5:107	Country elevators
§ 5:108	Sugar processing
§ 5:109	Transporting fruits, vegetables and harvesters
§ 5:110	Taxicabs
§ 5:111	Fire protection and law enforcement
§ 5:112	—Fire protection
§ 5:113	—Law enforcement
§ 5:114	—Security personnel and correctional institutions
§ 5:115	—Ambulance employees and paramedics
§ 5:116	—Work periods and tours of duty
§ 5:117	House parent for institutionalized children
§ 5:118	Motion picture theatre
§ 5:119	Forestry and logging operations
§ 5:120	National park concession
§ 5:121	News delivery
§ 5:122	Homeworkers making evergreen wreaths
§ 5:123	Cotton processing
§ 5:124	Wholesale petroleum distributors
§ 5:125	Overseas employment
§ 5:126	Urban transit charter activities
§ 5:127	Miscellaneous exemptions
Appendix 5A.	Administrator's Interpretation No. 2014-1, Domestic Service (Shared Living)
Appendix 5B.	Administrator's Interpretation No. 2014-2, Domestic Service (Third Party Employment)
Appendix 5C.	Historical Information

CHAPTER 6. COMPENSABLE TIME

§ 6:1	Introduction
§ 6:2	Workweek
§ 6:3	Exceptions to workweek standard: Hospitals and nursing homes, green leaf tobacco industry, fire and law enforcement, and seamen
§ 6:4	Hours worked
§ 6:5	Continuous workday doctrine
§ 6:6	De minimis or insubstantial work performed
§ 6:7	Suffer or permit to work
§ 6:8	Preliminary and postliminary time
§ 6:9	—Contract, custom or practice
§ 6:10	—Civic and charitable activities

- § 6:11 —Preparatory and concluding time
- § 6:12 Section 3(o): Clothes changing and washing in unionized plants
- § 6:13 Downtime
- § 6:14 Meals
- § 6:15 Rest periods and breaks
- § 6:16 Employees who work shifts of 24 hours or more
- § 6:17 —Drivers and pilots
- § 6:18 —Ambulance services and group home employees
- § 6:19 Residence on employer's premises
- § 6:20 Sleeping time
- § 6:21 Volunteers
- § 6:22 Labor-management activity in union and nonunion settings
- § 6:23 Training, meetings and lectures
- § 6:24 Remedial education
- § 6:25 Contest programs
- § 6:26 Suggestion system
- § 6:27 Inventions
- § 6:28 Medical examinations
- § 6:29 Preemployment activities
- § 6:30 Waiting time
- § 6:31 —Waiting time at workplace
- § 6:32 —“Show-up” and “call-back”
- § 6:33 —“Engaged to be waiting” and “waiting to be engaged”
- § 6:34 —Standby and downtime
- § 6:35 —On-call
- § 6:36 Homeworkers
- § 6:37 Seamen on American vessels
- § 6:38 Travel time

Appendix 6A. Advisory Memo No. 2006-2 (May 31, 2006)

Appendix 6B. Field Assistance Bulletin 2016-1 Sleep Time

CHAPTER 7. FORMS OF REMUNERATION

- § 7:1 Introduction
- § 7:2 Hourly pay
- § 7:3 Salary
- § 7:4 —Absences requirement
- § 7:5 —Deductions
- § 7:6 Tips—Introduction
- § 7:7 —Tip credit
- § 7:8 —Occupations which customarily and regularly receive tips
- § 7:9 —Tip pools
- § 7:10 —Distinguished from service charge
- § 7:11 Commissions

TABLE OF CONTENTS

- § 7:12 Fee basis
- § 7:13 Piece rate
- § 7:14 Talent fees
- § 7:15 Bonuses
- § 7:16 Task basis

Appendix 7A. Field Assistance Bulletin 2012-2 Tip Credit Regulations

CHAPTER 8. MINIMUM WAGE

- § 8:1 Introduction
- § 8:2 Free and clear
- § 8:3 Klinghoffer rule
- § 8:4 Payment in cash or equivalent
- § 8:5 Prohibition against scrip or equivalent
- § 8:6 Prompt payment of wages
- § 8:7 Meals, lodging and other facilities
- § 8:8 —Customarily furnished
- § 8:9 —Benefit rule
- § 8:10 —Other facilities
- § 8:11 —Reasonable cost
- § 8:12 —Fair value
- § 8:13 —Recordkeeping requirements
- § 8:14 —Collective bargaining agreements
- § 8:15 Deductions
- § 8:16 —Taxes
- § 8:17 —Third-party assignees
- § 8:18 —Losses, shortages and recovery of stolen money
- § 8:19 —Loan payments
- § 8:20 —Court orders and garnishments
- § 8:21 —Tools of trade
- § 8:22 —Transportation costs
- § 8:23 —Uniforms and uniform cleaning
- § 8:24 Kickbacks
- § 8:25 Tips and tip credit
- § 8:26 —Customarily and regularly, related duties and non-related duties
- § 8:27 —Inform employees of tip credit
- § 8:28 Tips defined
- § 8:29 Tip pooling
- § 8:30 —Tips charged on credit card
- § 8:31 —Administrative determination
- § 8:32 Limitations on duties of tipped employees
- § 8:33 Commissions
- § 8:34 —Computing commissions
- § 8:35 Training wages (Historical)

Appendix 8A. State Minimum Wage Laws

Appendix 8B. Enforcement of 2011 Tip Credit Regulations
(FAB 2012-2)

Appendix 8C. Fact Sheet #15: Tipped Employees

Appendix 8D. Field Assistance Bulletin 2016-4 Enforcement
of 30D and 32J18 (Tip Credit Provisions)

CHAPTER 9. REGULAR RATE

- § 9:1 Introduction
- § 9:2 Conversion to regular rate
- § 9:3 Workweek basis
- § 9:4 Regular rate not minimum wage
- § 9:5 Inclusion of noncash benefits
- § 9:6 Deductions
- § 9:7 Regular rate determined by agreement
- § 9:8 Salary
- § 9:9 —Fluctuating hours
- § 9:10 Fixed hours
- § 9:11 Semi-monthly pay
- § 9:12 Monthly pay
- § 9:13 —Belo plans
- § 9:14 Day rate
- § 9:15 Piece work
- § 9:16 Commissions—In general
- § 9:17 Deferred commissions—Earnings identifiable to
particular workweeks
- § 9:18 —Earnings not identifiable to particular workweeks
- § 9:19 Established basic rates, Section 7(g)—Authorized basic
rates
- § 9:20 —Rates authorized on application
- § 9:21 —Methods of computation
- § 9:22 Two or more rates of pay
- § 9:23 Hospitals and nursing homes
- § 9:24 Law enforcement and firefighters

CHAPTER 10. OVERTIME

- § 10:1 Introduction
- § 10:2 Computing overtime
- § 10:3 Workweek
- § 10:4 Averaging not permitted
- § 10:5 Regular rate and use of coefficient table
- § 10:6 Time of payment
- § 10:7 Compensatory time—Private sector
- § 10:8 —Public sector
- § 10:9 —Agreement
- § 10:10 —Accrual and use of compensatory time
- § 10:11 —Limitations on accrual

TABLE OF CONTENTS

§ 10:12	—Termination of employment
§ 10:13	Tipped employee
§ 10:14	Piecework
§ 10:15	Two or more regular rates
§ 10:16	Wholesale petroleum distributors
§ 10:17	Law enforcement and firefighters
§ 10:18	—Tour of duty
§ 10:19	—Sleep and meal time in “tour of duty”
§ 10:20	—Computation of overtime
§ 10:21	—Discrimination
§ 10:22	—Sleep time in tour of duty
§ 10:23	Contractual workweek
§ 10:24	Premium pay
§ 10:25	—Daily premium
§ 10:26	—Clock-time premiums
§ 10:27	Vacation and holidays
§ 10:28	Paid sick leave
§ 10:29	Payments for failure to provide work
§ 10:30	Travel and other expenses
§ 10:31	Payments not for compensation for hours worked
§ 10:32	Saturday and Sunday work
§ 10:33	Regular days of rest
§ 10:34	Sixth and seventh day
§ 10:35	Night premium and shift differential
§ 10:36	Pre-shift and post-shift
§ 10:37	Undesirable work
§ 10:38	Lump sum premiums
§ 10:39	Belo contract
§ 10:40	—Agreement
§ 10:41	—Regular hours
§ 10:42	—Workweeks with less than forty hours
§ 10:43	—Specified rate
§ 10:44	—Guaranteed hours
§ 10:45	—Time and one-half on hours worked beyond guaranteed hours
§ 10:46	Commissions
§ 10:47	—Overtime pay
§ 10:48	—Exceptions from overtime pay
§ 10:49	—Retail or service establishment
§ 10:50	—Time and one-half applicable minimum wage
§ 10:51	—Representative Period to determine whether the Commission exceeds 50 percent of compensation
§ 10:52	Remedial education
§ 10:53	Gifts
§ 10:54	Bonuses
§ 10:55	—Incentive bonuses
§ 10:56	—Nondiscretionary or promised and regular

WAGE AND HOUR LAW: COMPLIANCE & PRACTICE

- § 10:57 —Percentage of wages
 - § 10:58 —Collective bargaining agreement
 - § 10:59 —Discretionary
 - § 10:60 Profit-sharing plans
 - § 10:61 Thrift or savings plans
 - § 10:62 Contributions to health and welfare plans
 - § 10:63 Talent fees
 - § 10:64 Nonproductive time
 - § 10:65 Lower rates
 - § 10:66 Piece rates
 - § 10:67 Alternating workweeks
 - § 10:68 Time-off plans
 - § 10:69 Advanced payments
 - § 10:70 Temporary service employees
 - § 10:71 Special problems and schemes to thwart Wage and Hour
 - § 10:72 —Reduction of hours by one-third
 - § 10:73 —Reduction of hours by one-half and double-time
 - § 10:74 —Payment shown as other than wages
 - § 10:75 Federal employees
- Appendix 10A. Coefficient Table for Computing Extra Half-Time for Overtime

CHAPTER 11. RECORDKEEPING

- § 11:1 Introduction
- § 11:2 Posting requirements
- § 11:3 Recordkeeping requirements
- § 11:4 —Exempted employees under Section 13(a)(1)
- § 11:5 —Employees exempted from minimum wage and overtime
- § 11:6 —Employees exempted from overtime
- § 11:7 —Livestock auction employees
- § 11:8 —Country elevator employees
- § 11:9 —Local delivery employees
- § 11:10 —Exempted commissioned employees
- § 11:11 —Seamen
- § 11:12 —Tobacco, cotton, sugar cane and sugar beet employees
- § 11:13 —Collective bargaining agreements
- § 11:14 —Bulk petroleum employees
- § 11:15 —Charter activities urban transit
- § 11:16 —Hospital and nursing home employees
- § 11:17 —Belo contracts
- § 11:18 —Requirements for Section 7(g)(1) and (g)(2)
- § 11:19 —Requirements for Section 7(g)(3) employees
- § 11:20 —Board, lodging or other facilities

TABLE OF CONTENTS

§ 11:21	—Tipped employees
§ 11:22	—Concession employees in national park system
§ 11:23	—Learners, apprentices, messengers, students and disabled workers
§ 11:24	—Industrial homeworkers
§ 11:25	—Agricultural employees
§ 11:26	—Preservation of records
§ 11:27	—Place for keeping records
§ 11:28	—Availability for inspection
§ 11:29	—Computations and reports
§ 11:30	Penalties for failure to maintain records
Appendix 11A.	Employee Rights Under the Fair Labor Standards Act
Appendix 11B.	Government Employee Rights Under the Fair Labor Standards Act
Appendix 11C.	American Samoa: Employee Rights Under the Fair Labor Standards Act
Appendix 11D.	Agricultural Employee Rights under the Fair Labor Standards Act