

CPS NEWSLETTER



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COMPLETE PERSONNEL SERVICES, INC.

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Fair Labor Standards Act (FLSA) and Minimum Wage

Although passed in 1938, the Fair Labor Standards Act (FLSA), administered by the Wage and Hour Division (WHD), continues to be relevant today because it establishes standards for minimum wages, overtime pay, record keeping, and child labor.

Who does this Law apply to?

FLSA applies to companies who engage in interstate commerce, produce goods for interstate commerce, or handle, sell, or work on good or materials that have been moved in or produced for interstate commerce. FLSA does not cover enterprises with less than \$500,000 in annual dollar volume of business.

How is minimum wage affected by FLSA?

FLSA requires employers to pay non-exempt (See right column) employees a minimum wage of not less than \$7.25/hr, as of July 24th, 2009, and youths under 20 years of age no less than \$4.25/hr during the first 90 consecutive calendar days of a position. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

When it comes to Employee Recordkeeping, what the FLSA standards?

Every employer not exempt from the FLSA must keep records on wages, hours, weekly earnings, etc., set forth in the Department of Labor's Regulations. Although there is no set required format

for keeping these kinds of records, employers are required to keep at least 3 years of payroll records, collective bargaining agreements, and sales and purchase records. Records such as timecards, piecework tickets, wage rate tables, work and time schedules, and records of addition/deductions from wages must be kept for two years.

What happens if I would fail to comply with FLSA legal regulations?

Documentation must be open for inspection for the Wage and Hours Division. If found to willfully violate FLSA regulations, employers will be prosecuted criminally and fined up to \$10,000 on their first conviction. Convictions thereafter are subject to civil penalties of up to \$1,100 per violation.

The FLSA Act exempts some employees from both overtime pay and minimum wage provisions, or solely from overtime pay requirements dependent on the position they hold.

Exempt from Both:

- * Executive/ Admin/ Professional Employees (e.g. Teachers)
- * Outside Sales Employees
- * Certain IT Professionals (as outlined)
- * Seasonal Amusement/ Recreational Establishment Employees
- * Small Newspaper/ Switchboard Operators of Small Telephone Companies
- * Newspaper Delivery workers
- * Small Farm workers
- * Casual Babysitters

Exempt from Overtime Pay Requirements Only:

- * Certain Commissioned employees of retail or service establishments
- * Auto, Truck, Trailer, Farm Implement, Boat, Aircraft Salespersons
- * Railroad and air carrier employees, taxi drivers, certain motor carriers, seamen on American vessels, local delivery employees on trip routes
- * Some Announcers, News Editors, Chief Engineers
- * Domestic Service Workers who reside in their employers residences
- * Motion Picture Theater employees
- * Farm workers

FLSA Overtime Payment Regulations

The FLSA requires overtime to be paid to employees who are not otherwise exempt. Employees covered by the Act receive overtime pay for any hours worked in excess of 40 in a work week. The rate of overtime payment under FLSA is to be no less than time and one-half their regular rates of pay.

The FLSA does not place a limit on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay

for work on Saturdays, Sundays, holidays, etc.

An employee's workweek is not constricted to any schedule and can begin and end to employers desires, as long as it is fixed and is a regularly recurring period of 168 hours on seven consecutive days in 24-hour periods, meaning an employee's work week is not constrained to a Monday - Sunday regiment. However, averaging of hours over two or more weeks is not permitted under FLSA.

In the case of overtime pay earned in a particular

work week, it must be paid on the regular pay day for the pay period in which the wages were earned, meaning with the paycheck from each pay period.

The overtime requirement may not be waived by agreement between the employer and employees, meaning that an agreement that if any employer states that only 8 hours a day or only 40 hours a week will be counted as working time, they are not in compliance with FLSA regulations.

[Additional Reading](#)

* This Newsletter is intended for informational purposes ONLY, It is NOT intended to be legal advice. Please contact your legal advisor regarding your specific needs.*

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