

## Minimum Wage & Overtime: Who's Covered

The Fair Labor Standards Act (FLSA) establishes standards for minimum wages, overtime pay, record keeping, and child labor. These standards affect over 100 million workers, both full-time and part-time, in the private and public sectors. The Act applies to enterprises with employees who engage in interstate commerce, produce goods for interstate commerce, or handle, sell, or work on goods or materials that have been moved in or produced for interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business applies (i.e., the Act does not cover enterprises with less than this amount of business). However, the Act does cover the following regardless of their dollar volume of business: hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally, or physically disabled or gifted; preschools, elementary, and secondary schools and institutions of higher education; and federal, state, and local government agencies. Employees of firms that do not meet the \$500,000 annual dollar volume test may be covered in any workweek when they are individually engaged in interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to the production of such goods. The Act covers domestic service workers, such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters, if they receive at least \$1,500 in cash wages from one employer in a calendar year, or if they work a total of more than eight hours a week for one or more employers. The Act exempts some employees from its overtime pay and minimum wage provisions, and it also exempts certain employees from the overtime pay provisions alone. Because the exemptions are narrowly defined, employers should check the exact terms and conditions for each by contacting their local Wage and Hour Division office within the U.S. Department of Labor's Employment Standards Administration (ESA). The following are examples of employees exempt from both the minimum wage and overtime pay requirements: Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and certain skilled computer professionals (as defined in the Department of Labor's regulations); Employees of certain seasonal amusement or recreational establishments; Employees of certain small newspapers and switchboard operators of small telephone companies; Seamen employed on foreign vessels; Employees engaged in fishing operations; Employees engaged in newspaper delivery; Farm workers employed on small farms (i.e., those that used less than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year); and Casual babysitters and persons employed as companions to the elderly or infirm.

The following are examples of employees exempt from the overtime pay requirements only: Certain commissioned employees of retail or service establishments; Auto, truck, trailer, farm implement, boat, or aircraft salespersons employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers; Auto, truck, or farm implement parts-clerks and mechanics employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers; Railroad and air carrier employees, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans; Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations; Domestic service workers who reside in their employers' residences; Employees of motion picture theaters; and Farmworkers. Certain employees may be partially exempt from the overtime pay requirements. These include: Employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors; Employees of hospitals and residential care establishments that have agreements with the employees that they will work 14-day periods in lieu of 7 day workweeks (if the employees are paid overtime premium pay within the requirements of the Act for all hours worked over eight in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours); and Employees who lack a high school diploma, or who have not completed the eighth grade, who spend part of their workweeks in remedial reading or training in other basic skills that are not job-specific. Employers may require such employees to engage in these activities up to 10 hours in a workweek. Employers must pay normal wages for the hours spent in such training but need not pay overtime premium pay for training hours.

**Basic Provisions/Requirements** The Act requires employers of covered employees who are not otherwise exempt to pay these employees a minimum wage of not less than \$5.85 per hour effective July 24, 2007; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009. Youths under 20 years of age may be paid a minimum wage of not less than \$4.25 an hour during the first 90 consecutive calendar days of employment with an employer. Employers may not displace any employee to hire someone at the youth minimum wage. Employers may pay employees on a piece-rate basis, as long as they receive at least the equivalent of the required minimum hourly wage rate. Employers of tipped employees (i.e., those who customarily and regularly receive more than \$30 a month in tips) may consider such tips as part of their wages, but employers must pay a direct wage of at least \$2.13 per hour if they claim a tip credit. They must also meet certain other conditions. The Act also permits the employment of certain individuals at wage rates below the statutory minimum wage under certificates issued by the Department of Labor: Student learners (vocational education students); Full-time students in retail or service establishments, agriculture, or institutions of higher education; and Individuals whose earning or productive capacities for the work to be performed are impaired by physical or mental disabilities, including those related to age or injury. The Act does not limit either the number of hours in a day or the number of days in a week that an employer may require an employee to work, as long as the employee is at least 16 years old. Similarly, the Act does not limit the number of hours of overtime that may be scheduled. However, the Act requires employers to pay covered employees not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek, unless the employees are otherwise exempt. Employers must keep records on wages, hours, and other information as set forth in the Department of Labor's regulations. Most of this data is the type that employers generally maintain in ordinary business practice. The Act prohibits performance of certain types of work in an employee's home unless the employer has obtained prior certification from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health

hazards are not involved). Employers wishing to employ homeworkers in these industries are required to provide written assurances to the Department of Labor that they will comply with the Act's wage and other requirements, among other things. The Act generally prohibits manufacture of women's apparel (and jewelry under hazardous conditions) in the home except under special certificates that may be issued when the employee cannot adjust to factory work because of age or disability (physical or mental), or must care for a disabled individual in the home. Special provisions apply to state and local government employment. It is a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act. The Act also prohibits the shipment of goods in interstate commerce that were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions. Learn more about Employee Rights - [Wizatbiz.com](http://Wizatbiz.com)

### About the Author

AUSTIN CLARK - After completing law school Austin Clark has worked in small business industry. He has served as a consultant for some the most progressive up and coming small business enterprises. He is site manager for [Wizatbiz.com](http://Wizatbiz.com).

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