EMPLOYER ENGAGEMENT QUICK GUIDE | WAGE AND HOUR LAWS

WAGES

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.

Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay. There is no limit on the number of hours employees 16 years or older may work in any workweek. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.

HOURS

Hours worked ordinarily include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace. The amount employees should receive cannot be determined without knowing the number of hours worked.

The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace. Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.

Rest and Meal Periods:

Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Bona fide meal periods (typically 30 minutes or more) generally are not compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

Lectures, Meetings and Training Programs:

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

To learn more about hours worked under the FLSA, see this fact sheet resource:

www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs22.pdf

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EXEMPT VS. NON-EXEMPT EMPLOYEES

Classification for exempt and non-exempt workers depends on the job title, duties and responsibilities, and in some cases, salary and ownership of the company. Exempt employees don't get overtime and non-exempt employees do.

Typically, exempt employees perform non-manual labor; in many instances, non-exempt employees are the ones who perform manual labor. Generally speaking, the work that exempt employees do has an impact on the company's management, and they exercise independent judgment in their duties. Work that non-exempt employees perform doesn't require the routine use of independent judgment.

According to the FLSA, an employee must earn at least $455 a week to be considered a salaried employee. Among salaried employees, some are entitled to overtime and others aren't. Salaried, exempt employees receive a fixed rate of pay according to the job they're hired to perform, regardless of the number of hours it takes to do the work. On the other hand, salaried, non-exempt employees also receive a fixed rate of pay, but they receive 1.5 times their equivalent hourly rate for overtime pay when they work more than 40 hours in a work week.
https://work.chron.com/labor-laws-involving-salary-vs-hourly-employees-10523.html

MINIMUM WAGE

Many states have their own 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 and may not be less than the established federal rate.

Recordkeeping:

Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.
https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs21.pdf

YOUTH/CHILD LABOR LAWS

Both federal and state governments have laws governing the employment of minors. Child labor laws cover a wide range of industries and, depending on the state, a broad range of age groups. If an employer is considering hiring an individual under the age of 18, it is essential they confirm they are in compliance with both state and federal youth labor laws to ensure that they or the minor they seek to employ have the proper authorization to do so and are working only those hours permitted by the child labor laws. When federal and state child labor laws conflict, an employer must apply the stricter law.

In the Fair Labor Standards Act (FLSA), the federal government has set minimum age requirements for youth seeking to perform work and the employment limitations on individuals under the age of 18.

Children or youth under the age of 14 are generally prohibited from working unless one of a handful of exceptions apply, including:

- being employed by parents in non-hazardous occupations,
- working as actors or performers,
- delivering newspapers, or
- working as homeworkers in the making of wreaths made from natural elements
- performing certain agricultural work.

Children ages 14 and 15 may work, but are limited in the hours and occupations that they work. Children ages 16 and 17 may work, but cannot be employed in industries the Department of Labor determines to be too hazardous.

SECTION 14(C)

Section 14(c) of the FLSA authorizes employers, after receiving a certificate from the Wage and Hour Division, to pay subminimum wages - wages less than the Federal minimum wage - to workers who have disabilities for the work being performed (https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs39.pdf). This section of the law was added long ago in order to increase employment opportunities for individuals with the most significant disabilities but is now widely seen as unfairly limiting the earning potential of these individuals and many states are eliminating subminimum wage employment for anyone.

On September 22, 2020, the U.S. Department of Labor (Department) announced a proposed rule addressing how to determine whether a worker is an employee under the Fair Labor Standards Act (FLSA) or an independent contractor. For more information, please visit: https://www.dol.gov/agencies/whd/flsa/2020-independent-contractor-nprm

Source: Wages and the Fair Labor Standards Act

SPECIAL WAGE EXEMPTION FOR WORKERS WITH DISABILITIES WHO ARE ENROLLED IN INDIVIDUAL REHABILITATION PROGRAMS

(often used for Community Based Assessment): https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-64#b64c04

In 1993, the U.S. Department of Labor (DOL) and the National Rehabilitation Facilities Coalition jointly issued guidance regarding the FLSA employment relationship and individuals with disabilities in order to give these individuals the opportunity to try unpaid work in a for-profit business for the purposes of vocational exploration, assessment, or training.

In an effort to promote vocational training for workers with disabilities, the DOL Wage and Hour Division (WHD) will not assert an employment relationship between the worker with a disability, the rehabilitation facility or school, and/or the business where the worker has been placed when all of the seven following criteria are met:

(1) Participants are individuals with physical and/or mental disabilities for whom competitive employment at or above the minimum wage level is not immediately obtainable, and who, because of their disability, will need intensive ongoing support to perform in a work setting.

(2) Participation is for vocational exploration, assessment, or training in a community-based worksite under the general supervision of rehabilitation organization personnel, or in the case of a student with a disability, public school personnel.

(3) Community-based placements must be clearly defined components of individual rehabilitation programs developed and designed for the benefit of each individual.

(4)Each participant in a community-based rehabilitation organization program must have an Individual Plan for Employment (IPE) that includes a statement of needed transition services established for exploration, assessment, or training components.

(5)Documentation will be provided to the WHD upon request that reflects that the individual is enrolled in the community-based placement program, that this enrollment is voluntary, and that there is no expectation of remuneration.

(6)The activities of the individuals with disabilities (i.e., participants) at the community-based placement site do not result in an immediate advantage to the business. Factors that would indicate the business is advantaged by activities of the individual include:

a. Displacement of regular employees

b. Vacant positions have been filled with participants rather than regular employees

c. Regular employees have been relieved of assigned duties

d. Participants are performing services that, although not ordinarily performed by employees, clearly are of benefit to the business

e. Participants are under continued and direct supervision of employees of the business rather than representatives of the rehabilitation facility or school

f. Placements are made to accommodate the labor needs of the business rather than according to the requirements of the individual's IEP or IPE

g. The IEP or IPE does not specifically limit the time spent by the participant at any one site, or in any clearly distinguishable job classification

(7) While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours spent in each activity, as a general rule, an employment relationship is presumed not to exist when each of the three components does not exceed the following limitations:

a. Vocational explorations: 5 hours per job experienced

b. Vocational assessment: 90 hours per job experienced

c. Vocational training: 120 hours per job experienced

(8) Individuals are not entitled to employment at the business at the conclusion of the IEP or IPE. However, if an individual becomes an employee, he or she cannot be considered a trainee at that particular community-based placement unless in a different, clearly distinguishable occupation.

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