

HANDY REFERENCE GUIDE

BASIC LABOR STANDARDS UNDER WYOMING LAW

Under Title 27 of the Wyoming Statutes, the Legislature enacted laws providing for a minimum wage, record keeping, final payment of wages, and child labor standards. There is no state law requiring payment of overtime in the private sector except as explained below. Employers should determine whether their enterprises, or individual employees, are covered by the Federal law that requires payment of overtime.

Under Title 16 of the Wyoming Statutes, the Legislature enacted laws providing for overtime payments and predetermined wage rates on public works projects as well as preference for Wyoming contractors and employees.

MINIMUM WAGE

Under Wyoming law, non-exempt employees are entitled to a minimum wage of not less than:

Beginning April 1, 2001 to present, \$5.15 an hour.

Employees specifically exempt from the State minimum wage include:

1. Any individual employed in agriculture;
2. Any individual employed in domestic service;
3. Any individual employed in a bona fide executive, administrative, or professional capacity;
4. Any individual employed by the United States, or by the State or any political subdivision thereof;
5. Any individual engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer/employee relationship does not in fact exist or where the services rendered to such organization are on a voluntary basis;
6. All employees under twenty (20) years of age may be paid \$4.25 per hour for the first 90 consecutive days of employment. Thereafter they must be paid the prescribed minimum of \$5.15 per hour;
7. Any individual employed as an outside salesperson whose compensation is solely commission on sales; and
8. Any individual whose employment is driving an ambulance or other vehicle from time to time as necessity requires but who is on call at any time.

TIPPED EMPLOYEES

Wyoming law defines a tipped employee as one who customarily and regularly receives \$30 a month or more in tips. The employer is allowed to consider tips as part of wages. In no event

can the employer pay less than \$2.13 per hour to tipped employees. If \$2.13 is paid, tips must bring such employees up to an average of \$5.15 per hour. If not, the employer shall pay the difference to the tipped employee.

Any tips that an employee or employees receive are the sole property of the employee or employees and are not payable in whole or in part to the employer or any other person. An employer may obtain voluntary agreements from employees to engage in tip pooling.

PAYMENT OF WAGES

Although many employees are exempt from State minimum wage statutes as listed in previous sections, employers should be aware of the State law which requires payment of wages and benefits agreed upon. The law states that it is unlawful to pay an employee a lower wage, salary or compensation than that provided for or agreed upon by a collective bargaining agreement or a contract between the employer and employee. The contract between the employer and employee may be written or oral. Therefore, an employer exempt from State minimum wage will be required to pay those wages agreed upon, and overtime, if that is part of the agreement.

Employers should also be aware of a State law requiring final payment of wages to an employee who has quit or is discharged. Effective March 4, 2015, an employer in the State of Wyoming has until the next regularly scheduled pay date to pay a separating employee all wages owed. This holds true whether the employee quits or gets terminated.

BREAK LAW

There is no provision for rest breaks or meal breaks under the State Law. However, if the employer agrees to provide breaks for their employees, there may be Federal work hour rules that apply.

CHILD LABOR PROVISIONS

Wyoming laws governing youth employment differ somewhat from those of the Fair Labor Standards Act discussed earlier. Therefore, following the law with the stricter requirements will ensure full compliance. The ages for employment and the hours permitted by State law are listed below:

16 years or older: any job, whether hazardous or not, for unlimited hours.

14 and 15 years old: any job, except the operation of or working on heavy construction; employment requiring contact with or exposure to explosives or dangerous chemicals; or any other occupation declared by the Department of Workforce Services as hazardous for the employment of children under 16 years of age. Employment of 14 and 15 year olds is permitted under these conditions: outside school hours; not more than 8 hours in a 12-hour period, not before 5:00 a.m. or after 10:00 p.m. on days followed by school, or after 12 midnight on days

not followed by school; 14 and 15 year olds not enrolled in school may work 8 hours between 5:00 a.m. and 12 midnight in any one day;

Under the age of 14: it is unlawful to employ, permit or allow any child under the age of 14 years to work at any gainful occupation, except farm, domestic, or lawn and yard service.

The state child labor laws do not prevent a child under 14 years of age to be employed in a nonhazardous occupation outside of school hours by his or her parents, grandparents, or legal guardian, or by a business owned by his or her parents, grandparents or legal guardian.

PROOF OF AGE

In lieu of issuing work permits for minors, the Wyoming Legislature amended the state child labor laws and repealed the requirement of work permits for children under the age of 16. Employers of 14 and 15 year old youths are now required to have proof of age for such employees. The acceptable forms of proof of age are either a properly completed I-9 form showing the age of the child or a copy of a verified birth certificate.

RECORD KEEPING

Wyoming law requires the following records to be kept by the employers for a period of two years for each of their employees:

- EMPLOYEE'S NAME, ADDRESS, AND OCCUPATION * AMOUNT PAID EACH PAY PERIOD * RATE OF PAY * HOURS WORKED EACH DAY AND EACH WORKWEEK

DEDUCTIONS FROM WAGES

Many of the wage complaints investigated by the Labor Standards office involve employers' deductions (or "offsets") from employees' wages. The rules allow some deductions, such as federal taxes, FICA, and cash advances provided the employee has provided written authorization. There are additional stipulations related to employers who wish to deduct for goods or services, loans, cash shortages, tools and equipment or uniforms received by the employee from the employer. Employers may not deduct from wages because of employee negligence or criminal conduct without first obtaining a court judgment which identifies the dollar amount of damages suffered by the employer.

For a detailed description of lawful wage offsets and procedures to follow in deducting from employees' wages, call or write Labor Standards at any of the offices listed on the home page.

ENFORCEMENT

The Labor Standards office of the Wyoming Department of Workforce Services administers and enforces the State law explained above. The division employs eight compliance officers who conduct investigations and gather data on complaints received by the department. Where violations are found, the compliance officer can issue a determination that back wages be paid

or recommend changes in employment practices in order to bring an employer into compliance with the law.

RECOVERY OF BACK WAGES

1. Under Wyoming law and the Department's Rules of Practice and Procedure, an employee may file a complaint alleging a violation of the state labor laws referenced above. The Labor Standards office can then investigate the complaint to determine if a violation exists. A claim for wages can be obtained at any of the Labor Standards offices listed on the home page or at one of the Employment Resource Centers.

If a violation is found, the compliance officer may issue a determination that wages are due. If the employer does not agree, he or she may request a review or an administrative hearing before the Department's hearing examiner. The decision of a hearing examiner may be appealed to District Court. The Labor Standards office issues an Order that wages be paid when the hearing examiner determines wages are due.

Employers who ignore an Order from the Labor Standards office that wages be paid may be subject to criminal prosecution and held liable for fines at a rate of \$200.00 per day for each day of noncompliance with an Order.

2. The employees can file a private civil suit for not being paid properly and in accordance with the time limit set by State law. If an employee has cause to recover unpaid wages in court, the court may assess an additional 18% per annum interest on past due wages, and hold the employer liable for the employee's attorney fees and court costs.
3. Criminal penalties also exist for violations of most Wyoming labor laws. Such penalties vary from \$50.00 to \$750.00, plus imprisonment, depending on the nature of the violation and the law involved.

LABOR STANDARDS

In addition to the above laws enforced by the Labor Standards office, it also monitors and administers the following labor laws:

- The **Prevailing Wage Act of 1967** determines wages to be paid to employees on state contracted construction projects;
- **Equal Pay** provides that no employer shall pay less to any employee of one gender than that paid to an employee of the opposite gender for the same work.

For further information regarding state requirements contact:

Cheyenne Office:

WY Dept. of Workforce Services
1510 E. Pershing Blvd.
West Wing, Room 150
Cheyenne, WY 82002
Phone: (307) 777-7261
Fax: (307) 777-5633

Casper Office:

WY Dept. of Workforce Services
851 Werner Court
Casper, WY 82601
Phone: (307) 235-3679
Fax: (307) 235-3688

THE FAIR LABOR STANDARDS ACT

The Federal Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for employees of other Executive Branch agencies, and by the U.S. Congress for covered employees of the Legislative Branch.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer service, and compensatory time off instead of cash overtime pay.

BASIC WAGE STANDARDS

Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 an hour, effective July 24, 2009. Overtime pay at a rate of not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

Wages required by the FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by the FLSA or reduce that amount of overtime pay due under the FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While the FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which the FLSA does not regulate.

For example, the FLSA does **not** require:

1. Vacation, holiday, severance, or sick pay;
2. Meal or rest periods, holidays off, or vacations;
3. Premium pay for weekend or holiday work;
4. Pay raises or fringe benefits; and
5. A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or commissions in excess of those required by the FLSA. However, some States do have laws under which such claims (sometimes including fringe benefits) may be filed.

Also, the FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

The above matters are for agreement between the employer and the employees or their authorized representatives.

WHO IS COVERED?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by the FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and:

1. Whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated);
2. Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
3. Is an activity of a public agency.

Construction and laundry/dry cleaning enterprises, which had been previously covered regardless of their annual dollar volume of business, became subject to the \$500,000 test on April 1, 1990.

Any enterprise that was covered by the FLSA on March 31, 1990, and that ceased to be covered because of the \$500,000 test, continued to be subject to the overtime pay, child labor and record keeping provisions of the FLSA.

Employees of firms which are not covered enterprises under the FLSA still may be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby-sitters are covered if (1) their cash wages from one employer are at least \$1,000 in a calendar year (or the amount designated pursuant to an adjustment provision in the Internal Revenue Code), or (2) they work a total of more than 8 hours a week for one or more employers.

TIPPED EMPLOYEES

Tipped employees are those who customarily and regularly receive more than \$30 a month in tips. The employer may consider tips as part of wages, but the employer must pay at least \$2.13 an hour in direct wages.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. If an employee's tips combined with the employer's direct wages of at least \$2.13 an hour do not equal the minimum hourly wage, the employer must make up the difference. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

EMPLOYER-FURNISHED FACILITIES

The reasonable cost or fair value of board, lodging, or other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages.

INDUSTRIAL HOMEWORK

The performance of certain types of work in an employee's home is prohibited under the law 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). The manufacture of women's apparel (and jewelry under hazardous conditions) is generally

prohibited. If you have questions on whether a certain type of work is restricted, or who is eligible for a homework certificate, or how to obtain a certificate, you may contact the local Wage-Hour office of the U.S. Department of Labor.

SUBMINIMUM WAGE PROVISIONS

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals, whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is authorized to prevent curtailment of opportunities for employment. Such employment is permitted only under certificates issued by the Wage-Hour Division of the U.S. Department of Labor.

YOUTH MINIMUM WAGE

A minimum wage of not less than \$4.25 an hour is permitted for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. Employers are prohibited from taking any action to displace employees in order to hire employees at the youth minimum wage. Also prohibited are partial displacements such as reducing employees' hours, wages, or employment benefits.

EXEMPTIONS

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions.

Because exemptions are generally narrowly defined under the FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local Wage-Hour offices of the U.S. Department of Labor.

Following are examples of exemptions which are illustrative, but not all-inclusive. These examples do **not** define the conditions for each exemption.

EXEMPTIONS FROM BOTH MINIMUM WAGE AND OVERTIME PAY

1. Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in Department of Labor regulations);
2. Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
3. Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year; AND

4. Casual baby-sitters and persons employed as companions to the elderly or infirm.

EXEMPTIONS FROM OVERTIME PAY ONLY

1. Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft sales workers, or parts clerks and mechanics servicing autos, trucks, or farm implements, who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;
2. Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;
3. Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;
4. Domestic service workers living in the employer's residence;
5. Employees of motion picture theaters; and
6. Farmworkers.

PARTIAL EXEMPTIONS FROM OVERTIME PAY

1. Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and to employees of certain bulk petroleum distributors;
2. Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual 7-day workweek, if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours; and
3. Employees who lack a high school diploma, or who have not attained the education level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.

CHILD LABOR PROVISIONS

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupation orders for both farm and nonfarm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices of the U.S. Department of Labor.

NONAGRICULTURAL JOBS (CHILD LABOR)

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible jobs and hours of work, by age, are as follows:

1. Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
2. Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
3. Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, work may not begin before 7 a.m. nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

Fourteen is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely-owned nonfarm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.

FARM JOBS (CHILD LABOR)

In farm work, permissible jobs and hours of work, by age, are as follows:

1. Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;
2. Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;
3. Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with a parent's written consent or on the same farm as the parent(s); and
4. Youths under 12 years old may perform jobs on farms owned or operated by parent(s), or with a parent's written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

RECORD KEEPING

The FLSA requires employers to keep records on wages, hours, and other items as specified in Department of Labor record keeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other

laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

1. Personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
2. Hour and day when workweek begins;
3. Total hours worked each workday and each workweek;
4. Total daily or weekly straight-time earnings;
5. Regular hourly pay rate for any week when overtime is worked;
6. Total overtime pay for the workweek;
7. Deductions from or additions to wages;
8. Total wages paid each pay period; and
9. Date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers, (a special handbook is required for homeworkers), for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, and for employees receiving remedial education.

Employers must maintain employment records of hours worked and payroll records on each employee, and should also have proof of age for minors under age 18.

TERMS USED IN THE FLSA

- **Workweek** - A workweek is a period of 168 hours during seven (7) consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of two (2) or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.
- **Hours Worked** - Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

COMPUTING OVERTIME PAY

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employees (except for certain statutory exclusions). The following examples are based on a maximum 40-hour workweek.

1. **Hourly rate**-(regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid \$8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times \$8.00, or \$12.00, for each hour over 40. Pay for the week would be \$320 for the first 40 hours, plus \$48.00 for the four hours of overtime--a total of \$368.00.

2. **Piece rate**-The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employee paid on a piecework basis works 45 hours in a week and earns \$315. The regular rate of pay for that week is \$315 divided by 45, or \$7.00 an hour. In addition to the straight-time pay, the employee is also entitled to \$3.50 (half the regular rate) for each hour over 40 - an additional \$17.50 for the 5 overtime hours - for a total of \$332.50.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours.

The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

3. **Salary**-The regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employee is that payment will be paid at the rate of \$420 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is \$8.40 (\$420 divided by 50 hours). In addition to the salary, half the regular rate, or \$4.20, is due for each of the ten (10) overtime hours, for a total of \$462 for the week. If the employee works 60 hours, the regular rate is \$7.00 (\$420 divided by 60 hours). In that case, an additional \$3.50 is due for each of the 20 overtime hours, for a total of \$490 for the week.

In no case may the regular rate be less than the minimum wage required by the FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

ENFORCEMENT

Wage-Hour enforcement of the FLSA is carried out by investigators stationed across the U.S. As Wage-Hour authorized representatives, they conduct investigations and gather data on wages, hours and other employment conditions or practices, in order to determine compliance with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the FLSA.

Willful violations may be prosecuted criminally and the violator fined up to \$10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to \$10,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,000 for each such violation.

The FLSA prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

RECOVERY OF BACK WAGES

Listed below are methods which the FLSA provides for recovering unpaid minimum and/or overtime wages.

1. Wage-Hour may supervise payment of back wages;
2. The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages;
3. An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs; and
4. The Secretary of Labor may obtain an injunction to restrain any person from violating the FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A two-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a three-year statute applies.

OTHER RELATED FEDERAL LABOR LAWS

1. **Davis-Bacon and Related Acts**, require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction;
2. **Walsh-Healey Public Contracts Act**, requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal Government;
3. **Service Contract Act**, requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal Government;
4. **Contract Work Hours and Safety Standards Act**, sets overtime standards for service and construction contracts;
5. **Migrant and Seasonal Agricultural Worker Protection Act**, protects farm workers by imposing certain requirements on agricultural employers and associations and requires the registration of crew leaders who must also provide the same worker protections;
6. **Wage Garnishment Law**, limits the amount of an individual's income that may be legally garnished and prohibits firing an employee whose pay is garnished for payment of a single debt;
7. **Employee Polygraph Protection Act**, prohibits most private employers from using any type of lie detector test either for pre-employment screening of job applicants or for testing current employees during the course of employment;
8. **Family and Medical Leave Act**, entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year, with maintenance of group health insurance, for the birth and care of a child, for the placement of a child for adoption or foster care, for the care of a child, spouse, or parent with a serious health condition, or for the employee's serious health condition; and
9. **Immigration and Nationality Act**, as amended, which:

Under the employment eligibility provisions, requires employers to verify the employment eligibility of all individuals hired and keep Immigration and Naturalization Service forms (I-9) on file for at least three years and for one year after an employee is terminated. Under the H-2A provisions, provides for the enforcement of contractual obligations of job offers which have been certified to by employers of temporary alien nonimmigrant agricultural workers; under the H-1A provisions, provides for the enforcement of employment conditions attested to by employers of H-1A temporary alien nonimmigrant registered nurses; and under the D-1 provisions, provides for the enforcement of employment conditions attested to by employers seeking to employ alien crew members to perform specified long shore activity at U.S. ports; under the H-1B provisions, provides for the enforcement of labor condition applications filed by employers wishing to employ aliens in specialty occupations and as fashion models of distinguished merit and ability; and under the F-1 provisions, provides for the enforcement of attestations by employers seeking to use aliens admitted as students in off-campus work.

More detailed information on the FLSA and other laws administered by Wage-Hour is available from local Wage-Hour offices, which are listed in most telephone directories under U.S. Government, Department of Labor, Wage and Hour Division.

Regional Office:

U.S. Department of Labor
Eagle Gate Plaza and Tower
60 East South Temple Street, Suite 575
Salt Lake City, UT 84111-1016
(801) 257-6560
(801) 257-6561 (Fax)

EQUAL PAY PROVISIONS

The equal pay provisions of the FLSA prohibit sex-based wage differentials between men and women employed in the same establishment who perform jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available from its offices which are listed in most telephone directories under U.S. Government.

To insure full compliance with both State and Federal Labor Laws, the employer should comply with the requirements setting the stricter standard on the areas outlined in this publication.