

Fair Labor Standards Act

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The Fair Labor Standards Act of 1938^[1] (abbreviated as **FLSA**; also referred to as the **Wages and Hours Bill**^[2]) is a federal statute of the United States. The FLSA introduced a maximum 44-hour seven-day workweek,^[3] established a national minimum wage,^[4] guaranteed "time-and-a-half" for overtime in certain jobs, and prohibited most employment of minors in "oppressive child labor", a term that is defined in the statute.^{[5][6]} It applies to employees engaged in interstate commerce or employed by an enterprise engaged in commerce or in the production of goods for commerce,^[7] unless the employer can claim an exemption from coverage.

The FLSA was originally drafted in 1932 by Senator Hugo Black, who was later appointed to the Supreme Court in 1937. However, Black's proposal to require employers to adopt a thirty-hour workweek met stiff resistance.^[8] In 1938 a revised version of Black's proposal was passed that adopted an eight-hour day and a forty-hour workweek and allowed workers to earn wage for an extra four hours of overtime as well.^[8] According to the act, workers must be paid minimum wage and overtime pay must be one-and-a-half times regular pay. Children under eighteen cannot do certain dangerous jobs, and children under the age of sixteen cannot work during school hours. There were 700,000 workers affected by the FLSA, and Roosevelt called it the most important piece of New Deal legislation passed since the Social Security Act of 1935.^[9]

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Amendments

In 1946 the United States Supreme Court ruled in *Anderson v. Mt. Clemens Pottery Co.* that preliminary work activities, where controlled by the employer and performed entirely for the employer's benefit, are properly included as working time under the Fair Labor Standards Act. In response, Congress passed an amendment to FLSA narrowing the Supreme Court's decision. The 1947 Portal-to-Portal Act specified exactly what type of time was considered compensable work time. In general, as long as an employee is engaging in activities that benefit the employer, regardless of when they are performed, the employer has an obligation to pay the employee for his or her time. It also specified that travel to and from the workplace was a normal incident of employment and shouldn't be considered paid working time.

The full effect of the FLSA of 1938 was postponed by the wartime inflation of the 1940s, which lowered wage values to below the level specified in the Act. The October 26, 1949 Fair Labor Standards Amendment (ch. 736, Pub.L. 81–393 (<http://www.law.cornell.edu/jureeka/index.php?doc=USPubLaws&cong=81&no=393>), 63 Stat. 910, 29 U.S.C. § 201 (<http://www.law.cornell.edu/uscode/29/201.html>)) included changes to overtime

compensation, defined a "regular rate," redefined the term "produced," raised the minimum wage from 40 cents to 75 cents per hour and extended child labor coverage. It also included a few new exemptions for special worker classes.

In 1955 the FLSA was amended once again to increase minimum wage, this time to one dollar per hour.

The 1961 FLSA Amendment added another method of determining a type of coverage called enterprise coverage. Enterprise

coverage applies only when the business is involved in interstate commerce and its gross annual business volume is a minimum of \$500,000. All employees working for these "enterprises" are then covered by the FLSA so long as the individual firms of the "enterprise have a revenue greater than \$500,000 per year".^[10] Under the original 1938 Act, a worker whose work is in the channels of interstate commerce is covered as an individual. "Interstate commerce" is interpreted so broadly that a majority of work is included, such as ordering, loading, or using supplies from out of state, accepting payments from customers based on credit cards issued by out-of-state banks, and so on.

The 1961 Amendment also specified that coverage is automatic for schools, hospitals, nursing homes, or other residential care facilities. Coverage is also automatic for all governmental entities at whatever level of government, no matter how big or small. Coverage does not apply to certain entities that are not organized for a business purpose, such as churches and charitable institutions. The minimum wage level was again increased—this time to \$1.25 per hour. What could be considered a wage was specifically defined, and entitlement to sue for back wages was granted.

The Contract Work Hours Standards Act, though not a direct amendment or modification to the FLSA, became law in 1962. It replaced the confusing and often ambiguous series of "Eight Hour Laws" (which date back to 1892) with a single, comprehensive law to govern hours of work for laborers.

The Equal Pay Act of 1963 was passed to amend the FLSA and make it illegal to pay workers lower wages strictly on the basis on their sex. It is often summed up with the phrase "equal pay for equal work". This was a major step towards closing the wage gap in women's pay. In the past, it had been generally accepted that women did not deserve to earn as much money as men because they were not heads of households. However, in many homes, women were in fact the sole breadwinner for various reasons, ranging from death or disability of a spouse to divorce or single parenthood. Regardless of roles in the family, the Equal Pay Act established a single standard to apply to both sexes. The Equal Pay Act allows for unequal pay for equal work only when wages are set pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or other factors outside of sex.

The 1966 FLSA Amendment expanded coverage to some farm workers and increased the minimum wage to \$1.60 per hour in stages. This was in large part due to the efforts of labor leaders like Cesar Chavez who brought farm worker rights to national attention during this period. The 1966 FLSA amendment also gave state and local government employees coverage for the first time.

The Age Discrimination in Employment Act (ADEA) of 1967 prohibited employment discrimination against persons forty years of age or older. Some older workers were being denied health benefits based on their age and



denied training opportunities prior to the passage of the ADEA. This act applies only to businesses employing more than twenty workers.

The 1974 FLSA Amendment expanded coverage to include other state and local government employees that were not previously covered. Domestic workers also became covered and the minimum wage was increased to \$2.30 per hour in stages.

The 1977 FLSA Amendment increased the minimum wage in yearly increments through 1981 to \$3.35 an hour. Changes were made involving tipped employees and the tip credit. Partial overtime exemption was repealed in stages for certain hotel, motel, and restaurant employees.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), passed in 1983, was designed to provide migrant and seasonal farm workers with protections concerning pay, working conditions, and work-related conditions, to require farm labor contractors to register with the U.S. Department of Labor, and to assure necessary protections for farm workers, agricultural associations, and agricultural employers.

The amendment to the FLSA enacted in 1985 permitted state and local government employers to compensate their employees' overtime hours with paid time away from work (compensatory time or "comp time") in lieu of overtime pay. It also included modifications to ensure that true volunteer activities were not impeded or discouraged.

The Department of Defense Authorization Act of 1986 repealed the eight-hour daily overtime requirements on all federal contracts.

The 1989 FLSA amendments increased the minimum wage to \$4.25 per hour in stages. The distinction between retail and non-retail was eliminated. Construction and laundry or dry cleaning were no longer named as enterprises. Changes were again made to the tip credit system. A "training wage" was established at 85% of minimum wage for workers less than 20 years of age. This "training wage", also referred to as a "youth minimum wage" or "subminimum wage", could be paid for up to 90 days under certain conditions.^{[11][12]}

The 1996 FLSA amendment increased the minimum wage to \$5.15 an hour. However, the Small Business Job Protection Act of 1996 (PL 104-188), which provided the minimum-wage increase, also detached tipped employees from future minimum-wage increases.^[13] Prior to 1996, tipped employees received 50% of the prevailing minimum wage. The tipped employee minimum wage was frozen, under federal law at least, at \$2.13 per hour (29 U.S.C. § 203 (<http://www.law.cornell.edu/uscode/29/203.html>)). State laws that grant higher hourly wages remain in force.

On August 23, 2004, controversial changes to the FLSA's overtime regulations went into effect, making substantial modifications to the definition of an "exempt" employee. Low-level working supervisors throughout American industries were reclassified as "executives" and lost overtime rights. These changes were sought by business interests and the Bush administration, which claimed that the laws needed clarification and that few workers would be affected. The Bush administration called the new regulations "FairPay". But other organizations, such as the AFL-CIO, claimed the changes would make millions of additional workers ineligible to obtain relief under the FLSA for overtime pay. Attempts in Congress to overturn the new regulations were unsuccessful.

Conversely, some low-level employees (particularly administrative-support staff) that had previously been classified as exempt were now reclassified as non-exempt. Although such employees work in positions bearing titles previously used to determine exempt status (such as "executive assistant"), the 2004 amendment to the FLSA now requires that an exemption must be predicated upon actual job function and not job title. Those employees with job titles that previously allowed exemption but whose job descriptions did not include

managerial functions were now reclassified from exempt to non-exempt.

On May 25, 2007, President Bush signed into law a supplemental appropriation bill (H.R. 2206) which contains the Fair Minimum Wage Act of 2007. This provision amended the FLSA to provide for the increase of the federal minimum wage by an incremental plan, culminating in a minimum wage of \$7.25 per hour by July 24, 2009.

Section 4207 of the Patient Protection and Affordable Care Act (H.R.3590) amends Section 7 to add that employers shall provide break time for nursing mothers to express milk and that "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public" should be available for employees to express milk.

Practical application

The Fair Labor Standards Act applies to "employees who are engaged in interstate commerce or in the production of goods for commerce, or who are employed by an enterprise engaged in commerce or in the production of goods for commerce",^[7] unless the employer can claim an exemption from coverage. Generally, an employer who does at least \$500,000 of business or gross sales in a year satisfies the commerce requirements of the FLSA, and therefore that employer's workers will be subject to the FLSA's protections if none of the other exemptions apply. Several exemptions exist that relieve an employer from having to meet the statutory minimum wage, overtime, and record-keeping requirements. The largest exceptions apply to the so-called "white collar" exemptions that are applicable to professional, administrative and executive employees. Exemptions are narrowly construed; an employer must prove that the employees fit "plainly and unmistakably" within the exemption's terms.

The FLSA applies to "any individual employed by an employer" but not to independent contractors or volunteers because they are not considered "employees" under the FLSA.^[14] Still, an employer cannot simply exempt workers from the FLSA by calling them independent contractors, and many employers have illegally misclassified their workers as independent contractors. Some employers similarly mislabel employees as volunteers. Courts will look at the "economic reality" of the relationship between the putative employer and the worker to determine whether the worker is, in fact, an independent contractor. Courts use a similar test to determine whether a worker was concurrently employed by more than one person or entity; commonly referred to as "joint employers". For example, a farm worker may be considered jointly employed by a labor contractor (who is in charge of recruitment, transportation, payroll, and keeping track of hours) and a grower (who generally monitors the quality of the work performed, determines where to place workers, controls the volume of work available, has quality control requirements, and has the power to fire, discipline, or provide work instructions to workers).

Presuming an employee is not exempt from overtime, there are many instances in which overtime is not paid properly, including when an employee is not paid for travel time between job sites, activities before their shift starts or after it ends, and activities to prepare for work that are central to work activities. If an employee is entitled to overtime they must be paid one and a half times the employee's "regular rate of pay" for all hours worked over 40 in the same work week.

Employees who are employed in a ministerial role by a religiously affiliated employer are not entitled to overtime under the act.^{[15][16]}

Tip credits and tip pools

Under the FLSA, an employer must pay each employee the minimum wage, unless the employee is "engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips". If the employees wage does not equal minimum wage including tips the employer must make up the difference.^[17] However, the employee must be allowed to keep all of their tips, either individually or through a tip pool.^[18] Also, a tip pool may contain only "employees who customarily and regularly receive tips".^[19] "The phrase 'customarily and regularly' signifies a frequency which must be greater than occasional, but which may be less than constant."^[20]

While the nomenclature of a job title is not dispositive, the job of "busboy" is explicitly validated for tip-pool inclusion by an authoritative source.^[18] "A busboy performs an integral part of customer service without much direct interaction, but he does so in a manner visible to customers...Thus, for a service bartender to be validly included in a tip pool, she must meet this minimal threshold in a manner sufficient to incentivize customers to 'customarily and regularly' tip in recognition' of her services (though she need not receive the tips directly).^{[21][22]}

See also

- Timeline of children's rights in the United States
- Frank Murphy
- Labor market
- Positive rights
- Second Bill of Rights
- Employment discrimination law in the United States
- Case law
 - *Tennessee Coal, Iron & Railroad Co. v. Muscoda Local No. 123*
 - *Jewell Ridge Coal Corp. v. United Mine Workers of America*
 - *Anderson v. Mt. Clemens Pottery Co.*
 - *Garcia v. San Antonio Metropolitan Transit Authority*
- Wages
 - Living wage
 - Minimum Wage in the United States
 - List of U.S. minimum wages
 - Maximum wage
 - Wage slave
- Blue law

References

1. [^] Pub.L. 75–718 (<http://www.law.cornell.edu/jureeka/index.php?doc=USPubLaws&cong=75&no=718>), ch. 676, 52 Stat. 1060, June 25, 1938, 29 U.S.C. ch. 8 (<http://www.law.cornell.edu/uscode/text/29/chapter-8>)
2. [^] "Wages and Hours" (<http://www.time.com/time/magazine/article/0,9171,758587,00.html>), *Time magazine*. Dec. 13, 1937. Retrieved 7/5/08.
3. [^] U.S. Department of Labor - History - Fair Labor Standards Act of 1938: (<http://www.dol.gov/oasam/programs/history/flsa1938.htm>). Dol.gov. Retrieved on 2013-08-12.
4. [^] See 29 U.S.C. § 206 (<http://www.law.cornell.edu/uscode/29/206.html>).
5. [^] See 29 U.S.C. § 207 (<http://www.law.cornell.edu/uscode/29/207.html>).
6. [^] See 29 U.S.C. § 203(1) (<http://www.law.cornell.edu/uscode/29/203.html#1>) and 29 U.S.C. § 212 (<http://www.law.cornell.edu/uscode/29/212.html>).

7. ^{a b} Fair Labor Standards Act - FLSA - 29 U.S. Code Chapter 8 | finduslaw (http://finduslaw.com/fair_labor_standards_act_flsa_29_u_s_code_chapter_8#2)
8. ^{a b} Hugo L. Black (<http://www.encyclopediaofalabama.org/face/Article.jsp?id=h-1848>). Encyclopedia of Alabama. Retrieved on 2013-08-12.
9. ^a <http://www.bls.gov/opub/mlr/2000/12/art3full.pdf>
10. ^a "Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)" (<http://www.dol.gov/whd/regs/compliance/whdfs14.htm>). *U.S. Department of Labor Wage and Hour Division*. Accessed September 7, 2010.
11. ^a "Wages: Subminimum Wage" (<http://www.dol.gov/dol/topic/wages/subminimumwage.htm>). *U.S. Department of Labor*. Accessed September 7, 2010.
12. ^a "Fact Sheet #32: Youth Minimum Wage - Fair Labor Standards Act" (<http://www.dol.gov/whd/regs/compliance/whdfs32.htm>). *U.S. Department of Labor Wage and Hour Division*. Accessed September 7, 2010.
13. ^a "Chapter 8 - Fair Labor Standards" (<http://uscode.house.gov/download/pls/29C8.txt>). *U.S. Code*. Accessed September 7, 2010.
14. ^a Fair Labor Standards Act - FLSA - 29 U.S. Code Chapter 8 | finduslaw (http://finduslaw.com/fair_labor_standards_act_flsa_29_u_s_code_chapter_8#3)
15. ^a "Because A Kosher Supervisor Is Employed In A Ministerial Role By A Religiously Affiliated Employer He Falls Within FLSA's "Ministerial Exception"", *HR Comply* (Ceridian), April 8, 2004
16. ^a "Shaliehsabou v. Hebrew Home of Greater Washington, Incorporated" (<http://pacer.ca4.uscourts.gov/opinion.pdf/031314.P.pdf>) (PDF), *United States District Court of Appeals for the Fourth Circuit*, April 2, 2004
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18. ^{a b} § 531.54 Tip pooling. :: PART 531-WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938 :: CHAPTER V-WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR :: Title 29 - Labor :: Code of Federal Regulations :: Regulations :: Law :: Justia (<http://law.justia.com/cfr/title29/29-3.1.1.1.19.3.71.21.html>). Law.justia.com. Retrieved on 2013-08-12.
19. ^a [1] (<http://www.dol.gov/whd/regs/statutes/FairLaborStandAct>)
20. ^a 29 CFR 531.57 - Receiving the minimum amount "customarily and regularly." | Title 29 - Labor | Code of Federal Regulations | LII / Legal Information Institute (<http://www.law.cornell.edu/cfr/text/29/531/57>). Law.cornell.edu. Retrieved on 2013-08-12.
21. ^a <http://docs.justia.com/cases/federal/district-courts/texas/txdce/5:2010cv00665/441185/49/0.pdf?1312066299>
22. ^a Texas Court Holds "Service Bartenders" May Be Eligible To Participate In A Mandatory Tip Pool Under FLSA (<http://www.wageandhourlawupdate.com/2011/08/articles/wage-and-hour/tips/texas-court-holds-service-bartenders-may-be-eligible-to-participate-in-a-mandatory-tip-pool-under-flsa/>). Wage and Hour Law Update (2011-08-22). Retrieved on 2013-08-12.

Further reading

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External links

- U.S. Department of Labor page on the FLSA (<http://www.dol.gov/compliance/laws/comp-flsa.htm>)
- Wage and Hour Law: Meal and Rest Periods (<http://www.scalaw.com/faqs/wageAndHourLaw/restAndMealPeriods.php>)
- Purchasing power of minimum wage from 1958 to 2002 (<http://www.fiscalpolicy.org/MinimumWageGraphs.pdf#search='minimum%20wage%20purchasing%20power'>), via [fiscalpolicy.org](http://www.fiscalpolicy.org)
- AFL-CIO, American Federation of Labor - Congress of Industrial Organizations (<http://www.aflcio.org>)
 - Minimum wage (<http://www.aflcio.org/issues/jobseconomy/livingwages/index.cfm>), via [aflcio.org](http://www.aflcio.org)
 - 2004 changes in overtime regulations (<http://www.aflcio.org/issues/jobseconomy/overtimepay/upload/OvertimeStudyTextfinal.pdf>), via [aflcio.org](http://www.aflcio.org)
- Average U.S. farm and non-farm wages compared to the minimum wage (1981 - 2004) (http://www.usda.gov/nass/graphics/data/fl_allwg.txt), via [usda.gov](http://www.usda.gov)
- Impact of Proposed Minimum-Wage Increase on Low-income Families (http://www.cepr.net/publications/labor_market_2005_12.pdf), via [cepr.net](http://www.cepr.net) (Center for Economic and Policy Research)
- Overtime Law Blog | FLSA Decisions (<http://flsaovertimelaw.com>)
- Association of Community Organizations for Reform Now (<http://www.acorn.org>)
- Center for Policy Alternatives (<http://www.stateaction.org/issues/issue.cfm/issue/MinimumWage.xml>), via [stateaction.org](http://www.stateaction.org)
- The Economic Policy Institute (http://www.epinet.org/content.cfm/issueguides_minwage_minwage) ([epinet.org](http://www.epinet.org))
 - Analysis of 2004 change in overtime regulations (http://www.epinet.org/content.cfm/webfeatures_viewpoints_final_overtime_regulations), via [epinet.org](http://www.epinet.org)
- Floridians for All (<http://www.floridiansforall.org>)
- Raising the National Minimum Wage: Information, Opinion, Research (<http://www.raiseminwage.org>)
- Workplace Fairness (<http://www.workplacefairness.org>)
 - Minimum wage (<http://www.workplacefairness.org/index.php?page=minimumwage>), via [workplacefairness.org](http://www.workplacefairness.org)
 - Overtime compensation (<http://www.workplacefairness.org/index.php?page=overtime>), via [workplacefairness.org](http://www.workplacefairness.org)
- Business & Legal Reports (<http://www.blr.com/index.cfm?source=wkp&effort=5>)
 - Study Finds Many Day Laborers Exploited (<http://hr.blr.com/display.cfm/id/17723/source/wkp/effort/5>)
 - Supreme Court Clarifies Wage and Hour Law (<http://hr.blr.com/display.cfm/id/16984/source/wkp/effort/5>)
- Exempt and Non-Exempt Employees Definition (http://www.toolkit.com/small_business_guide/sbg.aspx?nid=P05_4037)
- Fair Labor Standards Act - FLSA - 29 U.S. Code Chapter 8 (http://www.finduslaw.com/fair_labor_standards_act_flsa_29_us_code_chapter_8)
- WaitressCalc 2012 - Calculate Pay for Tipped and Non-Tipped Employees per State, Including Tip-Credit (<http://www.waitresscalc.com>)
- flsa comp time (<http://overtime.com/blog/overtime/flsa-comp-time-and-flsa-guidelines>)

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