



**Congressional
Research Service**

Informing the legislative debate since 1914

The Fair Labor Standards Act (FLSA): An Overview

Updated March 8, 2023

Congressional Research Service

<https://crsreports.congress.gov>

R42713

Summary

The Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, and child labor protections. The FLSA covers most, but not all, private and public sector employees. In addition, certain employers and employees are exempt from coverage.

The FLSA requires employers to pay covered, nonexempt employees at least the minimum wage. In 2007, the basic minimum wage was raised, in steps, from \$5.15 to \$7.25 an hour. The basic minimum wage was raised to \$7.25 an hour effective July 24, 2009. By the end of 2023, 30 states and the District of Columbia are scheduled to have minimum wage rates that are higher than the federal minimum wage; in such states, minimum wages are \$1.50 to \$9.75 above the federal rate. Tipped employees may be paid less than the basic minimum wage, but their cash wage plus tips must equal at least the basic minimum wage of \$7.25. Employers may pay tipped workers \$2.13 an hour in cash wages, provided the employees receive at least \$5.12 an hour in tips. The latter amount is called a *tip credit*. If certain conditions are met, employers may pay special minimum wages to workers with disabilities, and subminimum wage rates may be paid to new hires under age 20, full-time students, and student learners employed as part of a vocational training program.

The FLSA requires employers to pay at least time-and-a-half to covered, nonexempt employees who work more than 40 hours in a week at a given job. The FLSA allows covered, nonexempt state and local government employees to receive compensatory time off (comp time) for hours worked over 40 in a workweek. Comp time is time off with pay in lieu of overtime pay.

The FLSA prohibits the employment of *oppressive child labor* in the United States and the shipment of goods made in proximity to oppressive child labor. The act establishes a general minimum age of 16 years for employment in non-hazardous occupations, and a minimum age of 18 years for employment in any occupation determined by the Secretary of Labor to be hazardous to the health or well-being of minors. However, children younger than 16 may work if certain conditions are met, and rules for agricultural and nonagricultural employment vary significantly. For example, the general minimum age for employment in non-hazardous agricultural jobs, outside of school hours, is 14 years.

The FLSA exempts certain employers and employees from the minimum wage, overtime pay, or child labor standards of the act. Prominent exemptions from the minimum wage and overtime pay provisions include those for executive, administrative, and professional employees; certain employees in computer-related occupations; and some domestic service employees employed in private homes (who are not employed by a third party). Children who are employed by a parent in an occupation other than manufacturing, mining, or otherwise determined to be hazardous by the Secretary of Labor are exempt from the FLSA child labor provisions and may be employed at any age and for any number of hours. Child performers and children employed to deliver newspapers to consumers are also exempt from the child labor provisions.

The FLSA authorizes the Secretary of Labor to conduct workplace inspections and investigations to determine if FLSA violations have occurred and to enforce the FLSA provisions. Where investigations reveal violations, the Department of Labor may seek resolution through administrative procedures (e.g., a settlement with an employer for back pay), or file a lawsuit in a U.S. District Court.

Contents

Introduction	1
The Fair Labor Standards Act: Historical Background	1
Who Is Covered by the FLSA?	2
Relation of the FLSA to State Laws	3
Minimum Wage Rates	3
The Basic Minimum Wage	4
Tipped Workers	4
Workers with Disabilities	5
New Hires Under the Age of 20	5
Full-Time Students	6
Student Learners.....	6
Minimum Wage Rates in the Territories and Possessions of the United States	6
Overtime.....	7
Comp Time in Lieu of Overtime Pay for State and Local Employees.....	7
Break Time for Nursing Employees.....	7
Exemptions from the Minimum Wage or Overtime Standards of the FLSA	8
Executive, Administrative, and Professional Employees	8
Outside Salespersons.....	10
Employees in Computer-Related Occupations.....	10
Domestic Service Employees.....	11
Domestic Service Employees Who Provide Companionship	11
Domestic Service Workers Who Provide Live-In Domestic Services	12
Child Labor.....	13
Minimum Ages for Employment in Nonagricultural Work.....	13
Minimum Age for Employment in Agriculture.....	13
Exemptions from the Child Labor Provisions.....	14
Hazardous Occupations.....	15
Minimum Wage and Overtime Provisions Apply to Child Workers	15
FLSA Administration	15
Minimum Wage and Overtime Pay Enforcement and Penalties	16
WHD Enforcement Remedies: Minimum Wage and Overtime Pay	16
Private Civil Action Against an Employer: Minimum Wage and Overtime Pay	16
Child Labor Enforcement and Penalties.....	16

Tables

Table A-1. Federal Minimum Wage Laws.....	20
Table A-2. Acronyms Used in This Report.....	21

Appendixes

Appendix. Major Amendments to the FLSA, Federal Minimum Wage Rates, and List of
Acronyms 18

Contacts

Author Information..... 21

Introduction

In 1937, the United States was recovering from the Great Depression. As part of the recovery effort, President Franklin D. Roosevelt endorsed a series of economic programs, known as the New Deal, to help stimulate and rebuild the U.S. economy. The Fair Labor Standards Act of 1938 (FLSA) was among several statutes enacted in support of the New Deal.

The FLSA provides for a federal minimum wage, overtime pay, and child labor protections. Congress endorsed the act because its provisions were meant to both protect workers and stimulate the economy. The FLSA also created the Wage and Hour Division (WHD) within the Department of Labor (DOL) to administer and enforce the act.¹

Taken together, the main FLSA provisions and accompanying DOL regulations constitute what is commonly known as *federal wage and hour laws* and *federal child labor law*. In addition, many states have similar laws governing minimum wage rates, overtime pay, and children’s employment. No state law may weaken the worker protections provided by the FLSA. However, state laws that impose greater worker protections will supersede those provided by the FLSA.

This report is a guide to the main FLSA provisions and their administration. It opens with a brief historical background of the act and its workforce coverage. This is followed by an overview of the main employment standards provided through the act—minimum wage, overtime pay, and child labor provisions—and prominent exemptions to those provisions. The report closes with information on the act’s administration by WHD.

The Fair Labor Standards Act: Historical Background

At the time of the act’s passage, Congress found that a few employers who paid substandard wages caused a decrease in wages within their respective industries, because other employers sought to compete in the marketplace with lower priced goods.² Congress also found that these decreased wages caused one-third of the U.S. population to be “ill-nourished, ill-clad, and ill-housed.”³ To counter these conditions, in 1938 Congress established a minimum wage of \$0.25 an hour, gradually increasing to \$0.40 an hour in 1945.⁴ Congress has since enacted 22 increases in the minimum wage. The current minimum wage rate—\$7.25 an hour—was set in 2009 based on a law enacted in 2007.

The FLSA also mandates a pay rate of one-and-one-half times an employee’s hourly wage for every hour the employee works beyond a standard work week. When enacted, the FLSA required employers to pay overtime for hours worked in excess of 44 hours in a week, with a scheduled decrease to 40 hours by 1940.⁵ The purpose of the overtime provision is to reduce unemployment

¹ **Table A-2** provides a list of acronyms used in this report.

² U.S. Congress, House of Representatives Committee on Labor, *Fair Labor Standards Act, Conference Report to Accompany S. 2475*, 75th Cong., 3rd sess., June 11, 1938, Report No. 2738, p. 28.

³ U.S. Congress, Senate Committee on Education and Labor, *Fair Labor Standards Act, Report to Accompany S. 2475*, 75th Cong., 1st sess., July 6, 1937, Report No. 884, p. 1.

⁴ *Fair Labor Standards Act of 1938*, ch. 676, §§6, 7, and 12, 52 Stat. 1060, at 1062-64, 1067.

⁵ *Ibid.*

by encouraging employers to hire more workers, rather than requiring current employees to work more than 40 hours per week and pay the premium overtime rate.

Finally, under the FLSA Congress set certain conditions under which children could be employed. Not only was oppressive child labor considered immoral, as children often worked at the cost of their own health and education, but Congress also believed that the lower wages generally earned by children drove down the wages of adult workers.⁶

The FLSA extends minimum wage, overtime pay, and child labor protections to individuals “employed by an employer.”⁷ Congress has also “exempted” certain employers and employees from all or parts of the FLSA. For example, exemptions were provided to executive, administrative, or professional (EAP) employees; individuals employed at retail stores that did not have interstate operations; and agricultural employees. Additionally, the child labor provisions did not apply to children employed in the motion picture or theater industries.⁸

Who Is Covered by the FLSA?

The FLSA covers employees and enterprises engaged in interstate commerce. An enterprise is covered if it has annual sales or business done of at least \$500,000.⁹ Regardless of the dollar volume of business, the act applies to 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; federal, state, and local governments; and preschools, elementary and secondary schools, and institutions of higher education.¹⁰

Although enterprises that have *less than* \$500,000 in annual sales or business done are not covered by the FLSA, employees of these enterprises may be covered if they are individually engaged in interstate commerce. These employees may travel to other states for work, make phone calls or send emails to persons in other states, or handle records that are involved in interstate transactions.¹¹

The \$500,000 enterprise threshold has not been raised since it was enacted in 1989. Employers are required to administer dual enterprise and individual tests to determine if individual employees are covered by the act. That is, although an enterprise may not be covered if it has less than \$500,000 in annual sales or business done, employees of the enterprise may be covered if they are individually engaged in interstate commerce.

The FLSA covers most, but not all, private and public sector employees. Persons who are not covered by the FLSA include the following:

⁶ Although Congress articulated both social and economic reasons for regulating child labor, some commentators noted that President Roosevelt believed the addition of child labor provisions in the FLSA would make wage and hour provisions more palatable to Congress, thereby making FLSA enactment easier. *Ibid.*

⁷ *Fair Labor Standards Act of 1938*, ch. 676, §§6, 7, 12, 52 Stat. 1060.

⁸ *Ibid.*, at 1067-1068.

⁹ The size of an enterprise is measured by its “annual sales or business done.” Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least \$500,000. Owners of rental properties are covered if they collect at least \$500,000 annually in rent. 29 C.F.R. §§779.258-779.259.

¹⁰ 29 U.S.C. §203(s)(1).

¹¹ Department of Labor (DOL), *Coverage Under the Fair Labor Standards Act*, available at <https://www.dol.gov/agencies/whd/fact-sheets/14-flsa-coverage>. (Hereinafter cited as DOL, *Coverage Under the Fair Labor Standards Act*.)

- individuals who are elected to state or local government offices and members of their staffs,
- policymaking appointees of elected officeholders of state or local governments,
- employees of legislative bodies of state or local governments,
- immediate family members of an employer engaged in agriculture,
- persons who volunteer their services to a state or local government (if the person is not employed by the government agency to perform the same services), and
- persons who volunteer their services to a private, nonprofit food bank and who receive groceries from the food bank.¹²

The FLSA exempts certain employers and employees from the minimum wage, overtime, or child labor standards of the act. For example, bona fide executive, administrative, and professional employees are exempt from both the minimum wage and overtime requirements of the act if they meet both a salary test and a job duties test. Certain employees in computer-related occupations are also exempt from both the minimum wage and overtime if they meet an hourly wage or weekly salary test and a job duties test. Domestic service workers who provide companionship services in private homes are exempt from both the minimum wage and overtime if they are employed directly by an individual or family.

Relation of the FLSA to State Laws

Under Section 18 of the FLSA, if states enact minimum wage, overtime, or child labor laws that are more protective of employees than what is provided by the FLSA, the state law applies. The FLSA defines a state as “any State of the United States or the District of Columbia or any Territory or possession of the United States.”¹³ Because states may enact laws that are more protective of employees than what is provided by the FLSA, there are multiple minimum wage, overtime, and child labor standards nationwide.

Minimum Wage Rates

Under Section 6 of the FLSA, employers must pay covered, nonexempt employees at least \$7.25 an hour.¹⁴ However, the FLSA includes several subminimum wage rates. Employers may pay

¹² 29 U.S.C. §203(e).

¹³ 29 U.S.C. §203(c).

¹⁴ Other federal laws or regulations establish minimum wage requirements for workers. These rates are generally higher, but cannot be lower, than the applicable federal or state minimum wage. The Davis-Bacon Act requires employers to pay employees at least the locally prevailing wage and fringe benefits on construction contracts of more than \$2,000 to which the federal government is a party. The Service Contract Act requires employers to pay workers at least the locally prevailing wage and fringe benefits on service contracts of more than \$2,500 with the federal government. Unlike minimum wage rates under the FLSA, prevailing wages under the Davis-Bacon Act and Service Contract Act are not legislated by Congress. Rather, prevailing wages under the two acts are based on wage surveys conducted by or for the U.S. Department of Labor.

As required by the Immigration and Nationality Act (INA) or regulations, minimum wage requirements also apply to foreign workers entering the United States under certain permanent employment-based visas and temporary nonimmigrant visas (e.g., the H-1B visa for temporary professional workers, the H-2A visa for temporary agricultural workers, and the H-2B visa for temporary nonagricultural workers). The minimum wage requirements for these workers are generally based on wage surveys, collective bargaining agreements, or prevailing wages under the Davis-Bacon Act or Service Contract Act.

lower minimum wage rates to tipped employees; workers with disabilities; new hires under the age of 20; full-time students who work in retail or service establishments, agriculture, or institutions of higher education; and high school students who are at least 16 years of age and enrolled in a vocational education program.

The Basic Minimum Wage

The basic minimum wage is raised periodically by Congress. The current basic minimum wage of \$7.25 went into effect on July 24, 2009.¹⁵ By the end of 2023, 30 states and the District of Columbia are scheduled to have minimum wage rates that are higher than the federal minimum wage; in such states, minimum wages are \$1.50 to \$9.75 above the federal rate.¹⁶

Most employees are paid more than the basic minimum wage. According to the Bureau of Labor Statistics (BLS), in 2021 98.6% of employees who were paid by the hour were paid an hourly wage that was greater than the federal minimum wage of \$7.25.¹⁷

Tipped Workers

Tipped employees may be paid less than the basic minimum wage, but their cash wage plus tips must equal at least the basic minimum wage.

Under Section 3(m) of the FLSA, a “tipped employee” is a worker who “customarily and regularly” receives more than \$30 a month in tips. Employers must allow tipped employees to keep all tips. However, the FLSA allows tips to be pooled and shared among tipped employees.

Under the FLSA, an employer may pay a tipped worker a minimum cash wage of \$2.13 if the employee receives at least \$5.12 an hour in tips (for a total hourly wage of \$7.25).¹⁸ Employers may claim up to \$5.12 in tips as a tip credit. However, if a tipped employee receives less than \$5.12 an hour in tips, the employer must make up the difference with a higher cash wage. This calculation is based on the average hourly tip amount over the workweek. So, for example, if a tipped worker worked 40 hours in a workweek, they would need to earn at least \$204.80 (40 hours x \$5.12 per hour) in tips for an employer to avoid paying more than the required \$2.13 per hour cash wage.

There is wide variation in state tip credit policies, with some states following the federal model and others setting the tip credit amount higher or lower than \$5.12 per hour. As of January 1, 2023, seven states—Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington—and Guam do not allow employers to claim a tip credit (i.e., employers must pay all tipped employees a cash wage that is at least the higher of the federal or state minimum wage).¹⁹

¹⁵ See **Table A-1** for a history of federal laws that increased the basic minimum wage.

¹⁶ See CRS Report R43792, *State Minimum Wages: An Overview*, by David H. Bradley and Abigail R. Overbay.

¹⁷ The Bureau of Labor Statistics (BLS) reports that in 2021, workers age 16 and older in the United States who were paid at hourly rates comprised 55.8% of all wage and salary workers. DOL, BLS, *Characteristics of Minimum Wage Workers: 2021*, April 2022, <https://www.bls.gov/opub/reports/minimum-wage/2021/home.htm>, Table 1. BLS does not report the share of salaried workers who earn an hourly rate above the federal minimum wage.

¹⁸ 29 U.S.C. §203(m). In 1966, when the tip credit was added to the FLSA, an employer could claim up to 50% of the minimum wage as a tip credit. In 1996, the minimum cash wage for tipped employees was set at \$2.13 an hour, which was 50% of the, then, minimum wage of \$4.25 an hour.

¹⁹ DOL-WHD, *Minimum Wages for Tipped Employees*, <https://www.dol.gov/agencies/whd/state/minimum-wage/tipped>.

Workers with Disabilities

Under Section 14(c) of the FLSA, employers may pay special minimum wages (SMWs) to workers with disabilities that impair the workers' earnings or productive capacities for the work being performed. The purpose of the SMWs is to encourage employers to hire and retain persons with disabilities, thereby expanding opportunities for such individuals to work. A disability may be physical or mental, and may be related to age or an injury. DOL regulations provide that disabilities that may affect productive capacity include blindness, mental illness, developmental disabilities, cerebral palsy, alcoholism, and drug addiction.²⁰

Employers must receive certificates from WHD that authorize the employers to pay SMWs.²¹ WHD issues certificates to four types of employers: work centers, hospital or residential care facilities, businesses, and School Work Exploration Programs (SWEP).²² In order to pay a disabled worker less than the basic minimum wage, the employee's disabilities must impair his or her productive capacity in the job being performed, and the wages paid must be "commensurate" to the worker's productivity. The worker's wage must be based on the worker's productivity relative to the wages and productivity of experienced workers who are not disabled and who perform the same type and quality of work in the same geographic area. For disabled workers paid an hourly wage, employers must review the workers' productivity, and adjust their wages accordingly, at least every six months. More generally, employers must adjust the wages of all workers paid a SMW at least once each year to take into account changes in wages paid to experienced, nondisabled workers employed in the same locality for essentially the same type of work.²³

An employee paid a SMW, or the employee's parent or guardian, may ask WHD to review the wage paid to the employee.

New Hires Under the Age of 20

Under what is known as the *youth opportunity wage*, employers may pay a minimum wage of \$4.25 an hour to employees under the age of 20 for their first 90 consecutive calendar days of employment.²⁴ The purpose of the youth subminimum wage is to provide employment opportunities to young persons, especially disadvantaged youth. Hiring youth at a subminimum wage cannot displace other workers. After 90 consecutive days of employment or when the worker reaches age 20, whichever comes first, the employee must be paid at least the basic minimum wage.

²⁰ 29 C.F.R. § 525.3(d). DOL regulations further provide that the following, taken by themselves, are not considered disabilities for purposes of paying subminimum wages: vocational, social, cultural, or educational disabilities; chronic unemployment; receipt of welfare benefits; nonattendance at school; juvenile delinquency; and correctional parole or probation.

²¹ The certificates also allow the payment of wages that are less than the prevailing wages on contracts subject to the Service Contract Act (SCA).

²² Work centers (also called *community rehabilitation programs* and *sheltered workshops*) provide employment, training, and rehabilitation services. Hospital or residential care facilities employ *patient workers*, who are employed persons that also receive treatment or care. Under SWEP, schools place students with disabilities at work sites in the community.

²³ 29 C.F.R. §§525.9 and §525.12(f).

²⁴ 29 U.S.C. §206(g).

Full-Time Students

Under Section 14(b) of the FLSA, employers may pay certain full-time students 85% of the basic minimum wage. The subminimum wage for full-time students applies to students employed by retail or service stores, in agriculture, or by institutions of higher education. An employer seeking to pay a full-time student a subminimum wage must first obtain a certificate from DOL. The certificate also limits the hours the student may work to 8 hours in a day and no more than 20 hours a week when school is in session and 40 hours when school is out. Once students graduate or leave school, they must be paid at least the basic federal minimum wage. The FLSA does not impose an age limit on the subminimum wage for full-time students.

Student Learners

Under Section 14(a) of the FLSA, employers may pay “student learners” 75% of the basic minimum wage. Student learners are high school students who are (1) at least 16 years old (or 18 if employed in an occupation that the Secretary of Labor has declared to be particularly hazardous for the employment of youth), (2) are receiving instruction in an accredited school, college, or university, and (3) are employed part-time by an employer as part of a vocational training program. The employer may pay student learners a subminimum wage for as long as the students are enrolled in the vocational education program. Employers must obtain certificates from DOL authorizing them to pay less than the basic minimum wage.²⁵

Minimum Wage Rates in the Territories and Possessions of the United States

When the FLSA was enacted in 1938, the minimum wage in Guam, Puerto Rico, and the U.S. Virgin Islands was set at the same rate as in the United States (\$0.25 an hour).²⁶ Since then, the federal minimum wage has applied to Guam. However, in 1940 Congress enacted legislation that allowed Special Industry Committees (SICs) to set minimum wage rates by industry in Puerto Rico and the Virgin Islands. In 1989, Congress enacted legislation that eliminated the SIC structure in both territories. The federal minimum wage has applied in the Virgin Islands since 1989. In Puerto Rico, minimum wages by industry were raised, in steps, until they reached the federal minimum wage level on April 1, 1996.

American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI) were not covered by the FLSA of 1938. In 1956, Congress enacted legislation that required the Secretary of Labor to establish minimum wages in American Samoa based on recommendations from SICs. The Fair Minimum Wage Act of 2007 (P.L. 110-28),²⁷ as amended, provided for regular increases in the minimum wages of American Samoa and the CNMI until they reached the federal minimum wage. The act also provided that minimum wage rates in American Samoa would be industry specific.²⁸ The minimum wage for CNMI reached the federal minimum wage rate on

²⁵ 29 C.F.R. §§520.201(c), 520.501(a), and 520.506(a).

²⁶ For more information on the history of minimum wages in the territories, see CRS Report RL30235, *Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*, by William G. Whittaker (available to congressional clients upon request).

²⁷ The full name of P.L. 110-28 is the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

²⁸ Provision of industry-specific minimum wages in American Samoa was added by P.L. 114-61, which also modified the rate at which the minimum wages would increase.

September 30, 2018. The next minimum wage increases in American Samoa are scheduled for September 30, 2024.²⁹

Overtime

Under Section 7, employers must pay covered workers at least one-and-a-half times their regular hourly wage for hours worked over 40 hours a week at a given job. Employers may choose to pay more than time-and-a-half for overtime or to pay overtime to employees who are exempt from overtime under the FLSA.

Under the FLSA, overtime pay applies to hours worked in excess of 40 in a workweek. However, the act does not provide requirements for how work hours are scheduled. For example, an employer could schedule four 10-hour workdays in a workweek without asking employees to work overtime. Similarly, an employee who works a five-day workweek could work four hours one day and nine hours the other four days and not work overtime.³⁰ The act also does not place a maximum on the number of hours an employee may be required to work in a given week.

Comp Time in Lieu of Overtime Pay for State and Local Employees

The FLSA, under Section 7(o), allows (but does not require) covered, nonexempt state and local government employees to receive compensatory time off (comp time) for hours worked over 40 in a workweek. Comp time is time off with pay in lieu of overtime pay. An employer and employees must agree that the employer will provide comp time. The agreement may be through a collective bargaining agreement or, if there is no such agreement, between the employer and individual employees. Comp time is calculated at a rate that is at least one-and-a-half times the number of overtime hours worked. In general, state and local government employees may accrue up to 240 hours of comp time. Law enforcement, fire protection, emergency response personnel, and employees engaged in seasonal activities may accrue up to 480 hours of comp time.³¹ Instead of providing comp time, an employer may pay an employee for any unused comp time. An employee must be allowed to use comp time on the date requested, unless doing so would “unduly disrupt” the operations of the agency.³² Section 7(o) does not apply to state and local government employees who are exempt from overtime pay provisions.³³

Break Time for Nursing Employees

FLSA Section 18D requires that employers provide reasonable break time for a covered, nonexempt employee to express breast milk for the employee’s nursing child for up to one year

²⁹ DOL-WHD, *Wage Rates in American Samoa*, <https://www.dol.gov/agencies/whd/state/minimum-wage/american-samoa>.

³⁰ Some states have overtime laws that are more protective of employees than the FLSA; for example, overtime pay may be required if an employee works more than 8 or 12 hours in a day. See DOL-WHD, *Minimum Wage Laws in the States, January 1, 2012*, <http://www.dol.gov/whd/minwage/america.htm>.

³¹ Covered, nonexempt state and local government employees who have accrued 240 hours of comp time (480 hours in the case of public safety, emergency response, and seasonal activities employees) must receive overtime pay for any additional overtime hours worked.

³² 29 C.F.R. §§553.20-553.28.

³³ Comp time for federal employees was first provided by the Federal Employees Pay Act of 1956 (P.L. 106) and is codified at Title 5 U.S.C. §5543.

after the child's birth each time such employee has need to express the milk.³⁴ Employers must provide space, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.

Employers with fewer than 50 employees are not subject to the requirement if compliance would impose an undue hardship on the employer. Employers are not required to compensate employees for breaks taken for the purpose of expressing milk, as long as the employee is completely relieved from work duties for the entirety of the break.

Certain employees of airlines, railroads, and motorcoach carriers are exempt from nursing employee protections under the FLSA.

Exemptions from the Minimum Wage or Overtime Standards of the FLSA

Most wage and salary workers are covered by the FLSA. However, under Section 13 of the act certain employers and employees are exempt from coverage. They may be exempt from either the minimum wage or overtime standards of the act, or both. This section presents information on prominent exemptions, but is not comprehensive of all minimum wage or overtime exemptions.

Executive, Administrative, and Professional Employees

When the Fair Labor Standards Act (P.L. 75-718) was enacted in 1938, Section 13(a)(1) provided an exemption, from both the minimum wage and overtime requirements of the act, for bona fide executive, administrative, and professional employees (the EAP exemption).³⁵ The act did not define the terms executive, administrative, or professional employee. Instead, the law stated that the terms would be defined in regulations issued by the Secretary of Labor.³⁶

Under current regulations, to qualify for the EAP exemption, employees must meet certain duties tests and be paid on a salary basis of at least \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the federal government, or \$380 per week if employed in American Samoa by employers other than the federal government).³⁷

³⁴ This provision was originally added as Section 7(r) of the FLSA by Section 4207, "Reasonable Break Time for Nursing Mothers," of the Patient Protection and Affordable Care Act (PPACA, P.L. 111-148). While part of Section 7 of the FLSA, which provides for overtime pay, it did not apply to employers or employees who are exempt from the FLSA overtime provisions. The provision was subsequently removed from Section 7, amended, and included as Section 18D (Breastfeeding Accommodations in the Workplace) by Division KK (Pump For Nursing Mothers Act) of the Consolidated Appropriations Act of 2023 (P.L. 117-328).

³⁵ For more information on the exemption for executive, administrative, and professional employees, see CRS Report R45722, *Overtime Exemptions in the Fair Labor Standards Act for White-Collar Employees: Frequently Asked Questions*, by David H. Bradley.

³⁶ Originally, the FLSA stated that regulations implementing the EAP exemption would be issued by the administrator of the newly created Wage and Hour Division (WHD) of DOL. The Fair Labor Standards Amendments of 1961 (P.L. 87-30) changed the authority to issue regulations from the administrator of the WHD to the Secretary of Labor.

³⁷ An employee whose total annual compensation is at least \$107,432 is exempt if he or she "customarily and regularly" meets all of the requirements for at least one of the job duties tests for executive, administrative, or professional employees. For example, such an employee may qualify if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive. 29 C.F.R. §541.601.

In general, employees are considered to be paid *on a salary basis* if

- they regularly receive a predetermined amount of compensation each pay period on a weekly or less frequent basis;
- their compensation is not subject to reduction because of variations in the quality or quantity of the work performed; and
- their compensation is not subject to reduction because of absences occasioned by the employer or by the operating requirements of the business.³⁸

Job titles do not determine whether an employee is exempt.

To qualify for the exemption for executive employees, all of the following job duties tests must be met:

- the employee’s primary duty “is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof”;
- the employee “customarily and regularly directs the work of two or more other employees”; and
- the employee “has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.”³⁹

To qualify for the exemption for administrative employees, both of the following job duties tests must be met:

- the employee’s primary duty “is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer’s customers”; and
- the employee’s primary duty “includes the exercise of discretion and independent judgment with respect to matters of significance.”⁴⁰

To qualify for the exemption for professional employees, the following job duties test must be met:

- the employee’s primary duty is the performance of work: “Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction”; or “Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.”⁴¹

Periodically, DOL has modified the regulations that implement the EAP exemption. The regulations were last changed in 2019. The current minimum weekly salary of \$684 is an issue in implementing the exemption. Between changes in the threshold, weekly salaries may rise because of inflation or increases in labor productivity. Thus, unless the threshold is raised (either legislatively or administratively), over time more employees become exempt from overtime pay.

³⁸ DOL-WHD, *Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions under the Fair Labor Standards Act (FLSA)*, September 2019, <https://www.dol.gov/agencies/whd/fact-sheets/17g-overtime-salary>.

³⁹ 29 C.F.R. §541.100.

⁴⁰ 29 C.F.R. §541.200.

⁴¹ 29 C.F.R. §541.300.

On the other hand, a higher threshold may make it more difficult for employers to administer overtime (i.e., because employers would have to keep track of hours worked for more employees).

The job duties tests are a second issue in implementing the EAP exemption. For an employee to be exempt, the employee's job duties must meet the requirements for exemption. The tests are complex and can result in workers being misclassified (e.g., they may be classified as exempt when they should be nonexempt). For employers, a higher salary threshold may make it easier to administer the job duties tests for exemption—because fewer employees would meet the minimum salary test.

Outside Salespersons

Outside salespersons are also exempt under Section 13(a)(1) of the FLSA. An outside salesperson is someone who makes sales at the customer's home or place of business.⁴² Different from most workplace-based employees, an outside salesperson may work hours that are convenient for the customer, and have work hours that may be difficult for employers to monitor.

To qualify for the exemption for outside sales employees, an employee must meet both of the following job duties tests:

- the employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer;⁴³ and
- the employee must be customarily and regularly engaged away from the employer's place or places of business.⁴⁴

Unlike executive, administrative, and professional employees, the \$684 weekly salary test does not apply to outside salespersons.

One issue with the exemption for outside salespersons is whether a sale involves the actual transfer of ownership of a company's goods or services. In a June 2012 decision by the U.S. Supreme Court, the court ruled that pharmaceutical sales representatives (also called "detailers") who encourage doctors to prescribe the use of a company's prescription drugs are outside salespersons, even though the drugs can only be sold with a doctor's prescription.⁴⁵

Employees in Computer-Related Occupations

The FLSA provides an exemption from both minimum wage and overtime pay for employees in computer-related occupations who meet certain tests regarding their job duties and are paid at

⁴² DOL regulations provided that outside sales do not include sales made by mail, telephone or the internet unless such contact is used merely as an adjunct to personal calls. 29 C.F.R. §541.502.

⁴³ Obtaining orders for "the use of facilities" includes selling advertising time on radio, television, or in newspapers, and soliciting freight for railroads or other transportation companies. DOL-WHD, *Exemption for Outside Sales Employees Under the Fair Labor Standards Act (FLSA)*, <https://www.dol.gov/agencies/whd/fact-sheets/17f-overtime-outside-sales>.

⁴⁴ 29 C.F.R. §541.500.

⁴⁵ *Christopher v. SmithKline Beecham Corp.*, No. 11-204, pp. 4-5, 14-15 (U.S. Supreme Court 2012).

least \$684 per week on a salary basis or paid on an hourly basis at a rate not less than \$27.63 an hour.⁴⁶

The exemption applies to employees whose primary duty consists of the following:

- the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- the design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
- a combination of the aforementioned duties, the performance of which requires the same level of skills.

The same duties tests apply to both salaried and hourly computer employees.⁴⁷

Not all skilled computer workers are exempt from the FLSA minimum wage or overtime requirements. For example, employees engaged in the manufacture or repair of computer hardware are not exempt, nor are employees whose work is highly dependent on the use of computers and computer software programs (e.g., engineers, drafters, and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming.⁴⁸

Domestic Service Employees

Domestic service workers who are employed by a business or agency, or employed in a private household, are covered by the FLSA minimum wage and overtime provisions, unless they are subject to an exemption.⁴⁹ The FLSA includes minimum wage and overtime exemptions for domestic service workers employed by an individual, family, or household who provide companionship services and an overtime (but not minimum wage) exemption for domestic service workers who reside in their employer's home (i.e., *live-in* domestic service workers).

Domestic Service Employees Who Provide Companionship

Under Section 13(a)(15) of the FLSA, domestic service workers who provide companionship services in private homes are exempt from both the minimum wage and overtime standards of the act. Domestic service employees who provide companionship and are employed by a third-party employer are not exempt from minimum wage and overtime provisions.

DOL regulations indicate the following:⁵⁰

⁴⁶ The minimum weekly salary of \$684 may be paid in periods longer than a week (e.g., \$1,368 biweekly). 29 C.F.R. §541.600(b).

⁴⁷ 29 C.F.R. §541.400(b).

⁴⁸ 29 C.F.R. §541.401.

⁴⁹ Domestic service workers include housekeepers, cooks, gardeners, full-time babysitters, and others. 29 C.F.R. §552.3.

⁵⁰ 29 C.F.R. §552.6.

- Companionship services are limited to fellowship and protection. *Fellowship* includes social, physical, and mental activities, such as conversation, reading, games, crafts, or accompanying the person on walks, to appointments, or to social events. *Protection* means the employee is present with the person in the person’s home or accompanying the person outside their home to monitor their safety and well-being.
- Companions can spend up to 20% of total hours worked per person per week on care that is “attendant to and in conjunction with the provision of fellowship and protection.” Providing care means assisting the person with activities of daily living (such as dressing, grooming, feeding, bathing, and toileting) and instrumental activities of daily living (which are tasks that allow a person to live independently at home, such as meal preparation, driving, light housework, managing finances, helping the person take medications, and arranging for medical care).
- Companionship services do not include domestic services performed mainly for the benefit of other members of the household. Companionship services do not include medically related services provided for the person.

Domestic Service Workers Who Provide Live-In Domestic Services

Section 13(b)(21) of the FLSA exempts domestic service workers who provide live-in domestic services from overtime—but not minimum wage—provisions. Live-in domestic service employees who are employed by a third-party employer are not exempt from overtime coverage.

An employee must reside on the employer’s premises either *permanently* or for *extended periods of time* to be considered a live-in domestic service worker under the FLSA.⁵¹ DOL guidance indicates that an employee is considered to *reside permanently* at their employer residence if “he or she lives, works, and sleeps on the employer’s premises seven days per week and therefore has no home of his or her own other than the one provided by the employer under the employment agreement.”⁵² DOL further indicates that a worker *resides on the employer’s premises for an extended period* of time “when he or she lives, works and sleeps on the employer’s premises for five days a week (120 hours or more)” or “spends less than 120 hours per week working and sleeping on the employer’s premises, but spends five consecutive days or nights residing on the premises.”⁵³ Employees who do not meet these criteria are not considered live-in domestic service workers for FLSA purposes, and their employers cannot claim the overtime pay exemption.

Employers are responsible for paying live-in domestic workers at least the applicable minimum wage rate for all hours worked.⁵⁴ DOL regulations provide that the employee and the employer may exclude from total working hours, by agreement, the amount of sleeping time, meal time, and other periods of complete freedom from all duties (i.e., when the employee may either leave the premises or stay on the premises for purely personal pursuits). To be excluded from hours worked, periods of free time (other than those relating to meals and sleeping) must be of

⁵¹ 29 C.F.R. §785.23.

⁵² DOL-WHD, *Fact Sheet #79B: Live-in Domestic Service Workers Under the Fair Labor Standards Act (FLSA)*, September 2013, <https://www.dol.gov/agencies/whd/fact-sheets/79b-flsa-live-in-domestic-workers>.

⁵³ DOL guidance indicates that “residing on the premises of the household implies more than temporary activity” and gives the following example: “workers who work temporarily for the household for only a short period of time, such as two weeks, are not considered live-in domestic service workers”. *Ibid.*

⁵⁴ 29 C.F.R. §552.102.

sufficient duration to enable the employee to make effective use of the time. If the sleeping time, meal periods, or other periods of free time are interrupted by a call to duty, the interruption must be counted as hours worked.

Child Labor

The FLSA prohibits the employment of *oppressive child labor* in the United States and the shipment of goods made in proximity to oppressive child labor.⁵⁵ The act establishes a general minimum age of 16 years for employment in nonhazardous occupations, and a minimum age of 18 years for employment in any occupation determined by the Secretary of Labor to be hazardous to the health or well-being of minors. However, children younger than 16 may work if certain conditions are met, and rules for agricultural and nonagricultural employment vary significantly.

Minimum Ages for Employment in Nonagricultural Work

For nonexempt children, the minimum age for employment in nonagricultural occupations is

- 18 years for occupations determined by the Secretary of Labor to be hazardous to the health and well-being of children (i.e., “hazardous occupations”);
- 16 years for employment in nonhazardous occupations; or
- 14 years for a limited set of occupations, with restrictions on hours and work conditions, as determined by the Secretary of Labor.

Under federal law, a child under the age of 14 may not be employed unless his or her employment is explicitly excluded from the definition of oppressive child labor (e.g., a parent is the child’s sole employer in a nonhazardous occupation) or exempt from the FLSA child labor provisions (e.g., newspaper delivery).

Minimum Age for Employment in Agriculture

With some exceptions, the minimum age for employment in agricultural occupations is

- 16 years for employment in any agricultural job, including those determined to be hazardous by the Secretary of Labor, with no restrictions on hours of work;
- 14 years for employment in nonhazardous agricultural jobs, outside of school hours⁵⁶;
- 12 years (up to 13 years) for employment in nonhazardous agricultural jobs, outside of school hours, with the written consent of a parent; written consent is not required if the work takes place on a farm that also employs the child’s parent⁵⁷;
- 10 years (and up to 11 years) for employment to hand-harvest select crops for up to eight weeks in nonhazardous agricultural jobs, outside of school hours, with

⁵⁵ 29 U.S.C. §212.

⁵⁶ 29 U.S.C. §213(c)(1)(C). DOL regulations identify the set of jobs and activities that—subject to hours-of-work restrictions—do not constitute oppressive child labor for children ages 14 and 15 years old; these are at 29 C.F.R. §570.33.

⁵⁷ 29 U.S.C. §213(c)(1)(B).

- the written consent of a parent, providing the employer has obtained a waiver permitting this employment from the Secretary of Labor⁵⁸; or
- any age (up to 12 years), for employment in nonhazardous agricultural jobs, outside of school hours on certain small farms, with a parent’s written consent.⁵⁹

A child of any age who is employed by a parent on a farm owned or operated by the parent may work without restriction.⁶⁰ DOL regulations also provide limited exemptions to child labor rules concerning hazardous agricultural occupations for student learners and graduates of vocational training programs that meet regulatory criteria.⁶¹

Exemptions from the Child Labor Provisions

FLSA excludes certain occupations and work arrangements entirely from coverage of its child labor provisions. These include the following:

- **Children with a Parental Employer:** Children who work for a parent or a person standing in place of a parent (hereinafter, “parent”)⁶² in an occupation other than manufacturing, mining, or hazardous work may be employed at any age and for any number of hours.⁶³
- **Child Performers:** Children of any age may be employed as actors or performers in motion pictures or in theatrical, radio, or television productions.⁶⁴
- **Newspaper Delivery Persons:** Children of any age may be employed to deliver newspapers to consumers.⁶⁵
- **Evergreen Wreath Producers (Homebased):** Children of any age may be employed as homeworkers to make evergreen wreaths and to harvest forest products used in making such wreaths.⁶⁶

⁵⁸ The conditions under which the Secretary of Labor will grant a waiver permitting the employment of 10 and 11 year old children to harvest certain crops are in 29 U.S.C. 213(c)(4) and 29 C.F.R. § part 575. However, as DOL notes “the Department was enjoined from issuing such waivers in 1980 because of issues involving exposure, or potential exposure, to pesticides (see National Ass’n of Farmworkers Organizations v. Marshall, 628 F.2d 604 (DC Cir. 1980)). Therefore, no waivers have been granted under FLSA section 13(c)(4) for thirty years.” DOL-WHD, “Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations-Civil Money Penalties - A Proposed Rule,” 75 Federal Register 54842, September 2, 2011.

⁵⁹ 29 U.S.C. §213(c)(1)(A). Applies to the employment of children on farms that are exempt from FLSA minimum wage provisions because they employed fewer than 500 “man-days of agricultural labor” during any calendar quarter in the previous calendar year. FLSA defines a man-day of agricultural labor as “any day during which an employee performs any agricultural labor for not less than one hour;” 29 U.S.C. §203(u).

⁶⁰ 29 U.S.C. §213(c)(2).

⁶¹ 29 C.F.R. §570.72.

⁶² *Parent or person standing in place of a parent* is defined in 29 C.F.R. §570.126 as including “natural parents, or any other person, where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent.”

⁶³ This exemption stems from the FLSA definition of oppressive child labor at 29 U.S.C. §203(1), which excludes children employed by a parent in most nonhazardous occupations. For children employed in nonagricultural work, the parent must be the sole employer for the exemption to hold. The parent need not be the sole employer for children working in agriculture on a farm owned or operated by the parent.

⁶⁴ 29 U.S.C. §213(c)(3).

⁶⁵ 29 U.S.C. §213(d).

⁶⁶ 29 U.S.C. §213(d).

The act also relaxes restrictions on oppressive child labor in select occupations or industries—notably in agriculture—by exempting them from the child labor provisions when certain conditions are met.

Hazardous Occupations

The Secretary of Labor has determined 17 groups of nonagricultural occupations to be hazardous or detrimental to the health or well-being of children between the ages of 16 and 18 years.⁶⁷ Employment in these jobs—formalized in regulation as the Secretary’s “hazardous occupation orders” or “orders”—is prohibited, with limited exemptions for registered apprentices and student learners.⁶⁸ In some instances, the orders ban children’s employment in entire industries (e.g., coal mining) with some exceptions for office, sales, or maintenance work; others prohibit children’s exposure to materials (e.g., radioactive substances) or equipment (e.g., power-driven hoisting apparatus).

The Secretary also identifies 11 hazardous agricultural occupations in which—with few exceptions—a child below the age of 16 may not be employed.⁶⁹ These include, for example, handling or applying certain agricultural chemicals, and working on a farm in a pen occupied by a stud horse maintained for breeding purposes. The prohibition on employment in *agricultural* hazardous occupations does not apply to children employed by a parent on a farm owned or operated by the parent.⁷⁰ When certain requirements are met, student learners and graduates of tractor or machine operation programs that meet regulatory criteria may be employed in select hazardous occupations.

Minimum Wage and Overtime Provisions Apply to Child Workers

Youth who are covered by the FLSA and are not exempt must be paid at least the applicable federal or state minimum wage.⁷¹ Overtime rules also apply; however, employees in agriculture—including child employees—are exempt from the overtime requirements of the FLSA.⁷²

FLSA Administration

The FLSA authorizes the Secretary of Labor to conduct workplace inspections and investigations to determine if FLSA violations have occurred and to enforce the FLSA provisions.⁷³ The

⁶⁷ 29 C.F.R. §§570.50-570.68.

⁶⁸ The prohibition on minors’ employment in the nonagricultural hazardous occupations applies even if the child is employed by a parent. The conditions under which a registered apprentice or student learner may participate in hazardous occupation tasks are described in 29 C.F.R. §570.50 (b) and (c).

⁶⁹ Hazardous agricultural occupations are described in 29 C.F.R. §570.71; exemptions to the ban on children’s employment in hazardous agricultural occupations are in 29 C.F.R. §570.72.

⁷⁰ 29 U.S.C. §213(c)(2).

⁷¹ See the “Minimum Wage Rates” section for a discussion of subminimum wage rates that may be paid to new hires under age 20, full-time students, and student learners, if certain conditions are met.

⁷² Under certain conditions, agricultural employees, including children, are exempt from both FLSA minimum wage and overtime provisions.

⁷³ 29 U.S.C. §211(a) provides that WHD “may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated

Secretary of Labor has delegated inspection authority to WHD, which oversees enforcement of the FLSA and several other federal laws governing workplaces.⁷⁴

Minimum Wage and Overtime Pay Enforcement and Penalties

Employees who believe their rights to payment of a minimum wage or overtime pay under the FLSA have been violated have two courses of action. Employees may (1) file a complaint with WHD or (2) bring a private civil action against an employer for violations.

WHD Enforcement Remedies: Minimum Wage and Overtime Pay

Based on the results of an investigation, WHD may order an employer to provide payment of back wages and liquidated damages to affected employees, and may assess civil money penalties for repeat or willful violations of the FLSA minimum wage or overtime provisions.

Where such administrative settlements are not productive, WHD may instead file a lawsuit in a U.S. District Court on behalf of employees for back wages and liquidated damages, or injunctive relief (e.g., to restrain violations such as unlawful withholding of pay or retaliation against employees who cooperative with DOL). WHD may further seek an order of payment of civil money penalties (e.g., for willful violations) from a U.S. Department of Labor Administrative Law Judge. WHD may also recommend criminal prosecution of willful violations.

Private Civil Action Against an Employer: Minimum Wage and Overtime Pay

In lieu of action by WHD, employees may file a lawsuit in U.S. District Court for back wages and liquidated damages, or injunctive relief.⁷⁵ Lawsuits may be filed individually or as collective actions. In addition to any judgment awarded, an employee may recoup reasonable attorney and court fees from an employer who violates the act.

Child Labor Enforcement and Penalties

Two remedies are available for violations of the FLSA child labor provisions. The Secretary of Labor may assess civil money penalties or seek other relief, including injunctive relief.

Employers who violate the FLSA child labor provisions may be assessed a civil penalty of

- up to \$15,138 for each employee who was the subject of a child labor violation; or
- up to \$68,801 for each violation that causes the death or serious injury of a minor employee, a penalty may be doubled if the violation is a repeated or willful violation.⁷⁶

any provision of this chapter, or which may aid in the enforcement of the provisions of the act.”

⁷⁴ These include the FLSA, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act, among others. See DOL-WHD, “Major Laws Administered/Enforced,” <http://www.dol.gov/whd/regs/statutes/summary.htm>.

⁷⁵ An employee who accepts a settlement agreement supervised by WHD waives their rights to pursue a remedy (for the same violations) through litigation.

⁷⁶ These civil money penalties took effect on January 16, 2023, and are as adjusted for inflation as provided by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (P.L. 114-74). The term *serious injury* is defined at 29 U.S.C. Section 216(e)(1)(B) and refers to “the permanent loss or substantial impairment of one of the senses ... [or] of a bodily member, organ, or mental faculty” or “permanent paralysis or substantial impairment that

U.S. district courts have jurisdiction to enjoin violations of the FLSA's child labor provisions.⁷⁷ For example, a federal court may order an employer to halt employment of a minor in a hazardous occupation or may enjoin a producer from shipping goods out of state from an establishment in or about which a child labor violation has occurred.

Criminal penalties are also prescribed for willful violations of the FLSA's child labor provisions.

causes loss of movement or mobility of an arm, leg, foot, hand, or other body part.”

⁷⁷ 29 U.S.C. §217.

Appendix. Major Amendments to the FLSA, Federal Minimum Wage Rates, and List of Acronyms

This appendix briefly describes major amendments to the Fair Labor Standards Act (FLSA). **Table A-1** shows the history of legislated changes in the basic federal minimum wage. **Table A-2** provides a list of acronyms used in the report.

Major Amendments to the FLSA

The FLSA has been amended several times since 1938.⁷⁸ The amendments generally expanded coverage of the act, created subminimum wage rates, and increased the basic minimum wage.

1947 Amendments

In 1947, Congress passed the Portal-to-Portal Act. The act addressed issues arising out of several court cases. First, Congress addressed the practical definition of hours worked, for which an employee must be paid. Congress excluded from hours worked time spent traveling to and from work. Congress also stated that some “preliminary” and “postliminary” activities performed before or after the workday are not hours worked.⁷⁹ However, workers could be compensated for such activities if the worker and employer agreed to such employment terms or if compensation for the activities was customary in the place of employment.⁸⁰

The 1947 amendments also allow parties to settle a worker’s minimum wage or overtime claim if “there exists a bona fide dispute as to the amount payable.”⁸¹ However, parties cannot agree to a settlement that would result in a wage less than the minimum wage or payment of less than time-and-a-half for overtime.⁸²

Additionally, in the 1947 amendments Congress prohibited class action suits under the statute, unless the Secretary of Labor filed the suit as the representative of workers. It also limited the availability of compensation recovered in a class action suit only to those employees who affirmatively agreed to be a part of the suit.⁸³ Finally, the amendments set a two-year statute of limitation (time limit) in which a worker could file a claim.⁸⁴

⁷⁸ The review of major amendments to the FLSA was written by Alexandra Hegji.

⁷⁹ For instance, absent an employer-worker agreement or workplace custom, employers may not be required to pay workers minimum wage or overtime pay for the time workers spend changing clothes at the beginning and end of shifts while on work premises. See, for example, *Genuth v. National Biscuit Co.*, 81 F. Supp. 213 (S.D.N.Y. 1948).

⁸⁰ 29 U.S.C. §252.

⁸¹ 29 U.S.C. §253(a).

⁸² *Ibid.*

⁸³ 29 U.S.C. §216.

⁸⁴ 29 U.S.C. §255.

1961 and 1966 Amendments

In 1961, Congress amended FLSA exemptions such that employers of retail workers in enterprises with annual sales in excess of \$1 million were required to pay minimum wage and overtime rates.⁸⁵

In 1966, Congress expanded coverage of the FLSA to include workers employed in any enterprise with annual sales of at least \$250,000 and employees of all businesses engaged in construction, repair, laundering, and cleaning services. Additionally, for the first time, FLSA coverage was extended to employees of hospitals, elementary and secondary schools, and institutions of higher education.⁸⁶ The 1966 amendments also added a “tip credit,” which allowed employers to include a portion of an employee’s tips as part of the minimum wage.⁸⁷ Finally, the 1966 amendments restricted the employment of youth under the age of 16 in agriculture in occupations found by the Secretary of Labor to be particularly hazardous, except when the employee is employed by a parent on a farm owned or operated by the parent.⁸⁸

The Equal Pay Act

The Equal Pay Act (EPA), although commonly referred to on its own, was an amendment to the FLSA. The EPA was enacted in 1963 and prohibits gender-based pay discrimination.⁸⁹

1974 Amendments

The 1974 FLSA amendments extended coverage to most federal, state, and local government employees. However, fire protection and law enforcement employees (including security personnel in correctional institutions) of public agencies were given special treatment, such as a complete exemption from overtime for agencies that employ fewer than five employees in fire protection or law enforcement and a partial exemption from overtime for fire protection and law enforcement employees whose work period extends from 7 to 28 consecutive days.⁹⁰ The amendments also extended minimum wage and overtime coverage to include domestic service workers who are employed in private homes.

1985 Amendments

In 1985, Congress amended the FLSA to allow state and local governments to offer their workers compensatory time off from work in lieu of overtime pay.⁹¹

⁸⁵ *Fair Labor Standards Amendments of 1961*, P.L. 87-30.

⁸⁶ 1966 U.S.C.A.N. §3003, 3008.

⁸⁷ 29 U.S.C. §203(m).

⁸⁸ U.S. House of Representatives, *Fair Labor Standards Amendments of 1966, Conference Report to Accompany H.R. 13712*, 89th Cong., 2nd sess., Report No. 2004, September 6, 1966, p. 18.

⁸⁹ 29 U.S.C. §§206-209.

⁹⁰ *Fair Labor Standards Amendments*, 1974, P.L. 93-259.

⁹¹ *Fair Labor Standards Amendments of 1985*, P.L. 99-150.

1989 Amendments

In 1989, FLSA coverage was extended to enterprises with annual sales of at least \$500,000. The amendments also repealed the retail exemption, under which employees of almost all small retail enterprises were exempt from the minimum wage and overtime rates.

The 1996 Small Business Job Protection Act

In 1996, Congress exempted certain computer professionals from minimum wage and overtime regulations.⁹² The 1996 amendments also brought within the FLSA’s minimum wage coverage all government employees employed as of April 1, 1996.

The 2007 Increases in the Basic Minimum Wage

On May 25, 2007, President George W. Bush signed into law a supplemental appropriations bill titled the “U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007” (P.L. 110-28). Title VIII of the act, “Fair Minimum Wage and Tax Relief,” increased the basic federal minimum wage from \$5.15 to \$5.85 an hour effective July 2007, from \$5.85 to \$6.55 an hour effective July 2008, and from \$6.55 to \$7.25 an hour effective July 2009.

Break Time for Nursing Mothers

The 2010 Patient Protection and Affordable Care Act (PPACA) amended the FLSA to require covered employers to provide reasonable break time to nonexempt employees to express breast milk for a nursing child.

Table A-1. Federal Minimum Wage Laws

Public Law and Date Enacted	Wage Rate	Effective Date of Wage Rate
P.L. 75-718, enacted June 25, 1938	\$0.25	October 1938
	0.30	October 1939
	0.40	October 1945
P.L. 81-393, enacted October 26, 1949	0.75	January 1950
P.L. 84-381, enacted August 12, 1955	1.00	March 1956
P.L. 87-30, enacted May 5, 1961	1.15	September 1961
	1.25	September 1963
P.L. 89-601, enacted September 23, 1966	1.40	February 1967
	1.60	February 1968
P.L. 93-259, enacted April 8, 1974	2.00	May 1974
	2.10	January 1975
	2.30	January 1976
P.L. 95-151, enacted November 1, 1977	2.65	January 1978
	2.90	January 1979
	3.10	January 1980
	3.35	January 1981
P.L. 101-157, enacted November 17, 1989	3.80	April 1990
	4.25	April 1991

⁹² 29 U.S.C. §213(a)(17).

Public Law and Date Enacted	Wage Rate	Effective Date of Wage Rate
P.L. 104-188, enacted August 20, 1996	4.75 5.15	October 1996 September 1997
P.L. 110-28, enacted May 25, 2007	5.85 6.55 7.25	July 2007 July 2008 July 2009

Source: DOL, History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938 – 2009, <https://www.dol.gov/agencies/whd/minimum-wage/history/chart>.

Table A-2. Acronyms Used in This Report

Acronym	Description
BLS	Bureau of Labor Statistics of the U.S. Department of Labor
CNMI	Commonwealth of the Northern Mariana Islands
DOL	U.S. Department of Labor
EAP	Executive, administrative, and professional employees
EPA	Equal Pay Act
FLSA	Fair Labor Standards Act
NIRA	National Industrial Recovery Act
PPACA	Patient Protection and Affordable Care Act
SIC	Special Industrial Committees
SMW	Special minimum wage rates for persons with disabilities
SWEP	School Work Experience Program
WHD	Wage and Hour Division of the U.S. Department of Labor

Author Information

Sarah A. Donovan
Specialist in Labor Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.