



Fair Labor Standards Act Overtime Pay Requirements

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Introduction

The Fair Labor Standards Act (FLSA) was enacted in 1938 with the goal of establishing minimum national labor standards, including for weekly hours of work. To that end, the FLSA requires that employers pay covered, nonexempt employees at a rate of one-and-a-half times their regular rate of pay for hours worked in excess of 40 per week in a given job. This In Focus provides an overview of the FLSA overtime pay requirements and recent legislative proposals to amend them.

General Provisions

Section 7(a)(1) of the FLSA ([29 U.S.C. §207\(a\)\(1\)](#)) provides the following:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

The Regular Rate of Pay

An employee's *regular rate of pay* is calculated in each workweek in which the employee is entitled to overtime pay. It is an hourly rate determined using the following formula:

$$\frac{\text{Total compensation} - \text{statutory exclusions}}{\text{Total Hours Worked}}$$

The regular rate must include all compensation “for employment paid to, or on behalf of, the employee” in the workweek in which overtime hours occur. Total compensation includes the worker’s hourly rate of pay and other employment-related payments received during the workweek, such as nondiscretionary bonuses (e.g., productivity-based bonuses), on-call pay required by state and local laws, and the reasonable value of meals or lodging provided as compensation to employees.

Some payments to employees are not considered to be compensation, and the act explicitly excludes them from the regular rate. These statutory exclusions include certain employer gifts, paid leave (e.g., paid sick leave, paid holidays), employer contributions to the employee’s health plan, and payments for reimbursable business expenses, among others.

Example: Overtime Pay for an Hourly Worker

The regular rate of pay in a workweek in which an employee earned an hourly wage of \$12 and worked 46 hours would be

$$\frac{\$12/\text{hour} \times 46 \text{ hours worked}}{46 \text{ hours worked}} = \$12/\text{hour}$$

The employee would be entitled to \$12 per hour for 40 hours of work and \$18 per hour (=1.5 x \$12 per hour) for the 6 overtime hours, a total of \$588 for the workweek.

Example: Overtime Pay for an Hourly Worker Who Received a Production Bonus

If the worker received a \$46 production bonus in addition to her hourly rate of \$12, her regular rate of pay would be

$$\frac{(\$12 \times 46) (\text{hourly pay}) + \$46 (\text{bonus})}{46 \text{ hours}} = \$13/\text{hour}$$

In this instance, the employee would be entitled to \$13 per hour for 40 hours of work and \$19.50 per hour (=1.5 x \$13) for the 6 overtime hours, for a total of \$637 for the workweek.

Example: Overtime Pay for a Tipped Worker

The FLSA permits employers to count up to \$5.12 (per hour) in tips received by a tipped worker toward the employer’s minimum wage obligation. (The federal minimum wage is currently \$7.25 per hour.) For example, an employer would meet its FLSA minimum wage obligation if it paid at least \$21.30 to a tipped worker in a workweek in which the employee worked 10 hours (i.e., \$2.13 per hour for 10 hours) and received tips of at least \$51.20 (i.e., \$5.12 per hour for 10 hours). Employers may also apply the tip credit—up to \$5.12 per hour—toward their FLSA overtime pay obligations.

Employers must use the employee’s full wage (i.e., at least the federal minimum wage) when calculating the regular rate of pay for a tipped worker and must include service charges, commissions, bonuses, and other compensation received by the tipped employee during the workweek. Any tips received by the employee in excess of the tip credit need not be included in the regular rate because such tips are not compensation paid by the employer to the employee.

For example, the regular rate for a tipped worker whose employer claimed a tip credit of \$5.12 per hour, and who worked 50 hours in a workweek and received at least \$256 in tips (=50 hours x \$5.12 per hour), would be

$$\frac{[\$2.13 (\text{cash wage}) + \$5.12 (\text{tip credit})] \times 50 \text{ hours}}{50 \text{ hours}} = \$7.25/\text{hour}$$

Such an employee would be entitled to \$7.25 per hour for 40 hours of work and \$10.875 per hour (=1.5 x \$7.25 per hour) for the 10 overtime hours, for a total of \$398.75 for the workweek. Because the employee earned at least \$256 (= \$5.12 per hour x 50 hours) in tips during the work week, the employer could claim the maximum tip credit (\$256 = \$5.12 per hour x 50 hours) and pay a direct cash wage of \$142.75 to the employee.

State and Local Government Employees' Compensatory Time Option

The FLSA allows covered, nonexempt state and local government employees to receive [compensatory time off](#) (comp time)—paid time off in lieu of overtime pay—for hours worked over 40 in a workweek. Comp time is calculated at a rate that is at least one-and-a-half times the number of overtime hours worked.

An employer and employee must agree that the employer will provide comp time in lieu of overtime pay. The agreement may be through a collective bargaining agreement or, if there is no such agreement, between the employer and individual employees.

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. An employee must be allowed to use comp time on the date requested, unless doing so would “[unduly disrupt](#)” the operations of the agency. Employers must compensate employees for [unused accrued compensatory time](#).

Overtime Pay Exemptions

While generally [broad in coverage](#), the FLSA exempts several worker groups from its overtime provisions. For example, agricultural employees, certain domestic service employees, some transportation workers (including certain interstate truck drivers and taxicab drivers), movie theater employees, and some salaried executive, administrative, and professional employees, among others, are not entitled to overtime pay under the FLSA.

The act also provides for partial exemptions from its overtime pay requirements for some groups of workers. For example, employees engaged in law enforcement and fire protection and employed by public agencies may be paid overtime on the basis of longer work periods (e.g., up to 28 consecutive days) and have higher work-hours thresholds for overtime pay (e.g., [for a 14-day work period, such law enforcement personnel must receive overtime pay after 86 hours worked](#)).

FLSA Does Not Govern Scheduling

The FLSA does not limit the number of hours an employee may work (e.g., there are no daily or weekly limits), and it does not govern how work hours are scheduled. For example, the act does not limit an employer’s ability to schedule 7 consecutive 24-hour workdays (but would generally require overtime pay for hours worked beyond 40 for covered, nonexempt employees).

Enforcement

The FLSA authorizes the Department of Labor (DOL) to conduct workplace inspections and investigations to determine

if FLSA violations have occurred and to enforce the FLSA provisions.

Based on the results of an investigation, DOL may order an employer to pay back wages and liquidated damages to affected employees, may assess [civil money penalties](#) for repeat or willful violations of the FLSA overtime provisions, or both. If DOL is unable to administratively resolve a dispute, it may 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 cooperate with DOL). DOL may also seek an order for payment of civil money penalties from a DOL Administrative Law Judge and can recommend criminal prosecution for willful violations.

In lieu of action by DOL, employees may file a lawsuit in U.S. district court for back wages and liquidated damages, or injunctive relief. Lawsuits may be filed individually or as collective actions. A prevailing employee may recoup reasonable attorney fees and court costs from an employer who is found to violate the act.

Recent Legislative Proposals

Some bills introduced in the 119th Congress have proposed various amendments to the FLSA overtime pay provisions and related exemptions.

- Proposed amendments to the overtime pay requirement include the Thirty-Two Hour Workweek Act ([H.R. 10323/S. 5384](#)) and the Double the Wage for Overtime Act of 2026 ([H.R. 9216/S. 5268](#)).
- Proposed amendments to the regular rate statutory exclusions include the Empowering Employer Child and Elder Care Solutions Act ([H.R. 2270](#)) and the Valuing Employee Stock Today Act ([H.R. 8660](#)).
- Proposals to add, modify, or remove FLSA overtime exemptions include the Outdoor Recreational Outfitting and Guiding Act ([H.R. 3499](#)), the Ensuring Access to Affordable and Quality Home Care for Seniors and People with Disabilities Act ([H.R. 2304](#)), the Restoring Overtime Pay Act of 2026 ([H.R. 8868/S. 4551](#)), the Guaranteeing Overtime for Truckers Act ([H.R. 1962/S. 893](#)), and the Fairness for Farmworkers Act ([H.R. 10273/S. 5304](#)).
- The Working Families Flexibility Act of 2025 ([H.R. 2870/S. 1158](#)) would allow private sector employees to receive compensatory time in lieu of overtime pay.
- The Protect Local Farms Act ([H.R. 240](#)) would preempt certain state laws entitling agricultural employees to overtime pay.

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