

APPAREL CONTRACTOR GUIDE TO COMPLIANCE UNDER THE FAIR LABOR STANDARDS ACT



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

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◆ Requirements of FLSA

The Fair Labor Standards Act (FLSA) is the Federal law that governs the payment of wages and various workplace practices. This law is enforced by the Wage and Hour Division of the United States Department of Labor.

◆ Minimum Wage

The minimum wage under Federal Law is \$6.55 per hour after July 24, 2008; and will be \$7.25 per hour on July 24, 2009. It may be higher under State Law. If the State and Federal minimum wage laws are both applicable, the employer must pay the higher of the two rates to comply with both State and Federal requirements. For example, if a State's Minimum Wage is \$8.00 and the Federal Minimum Wage is lower than \$8.00, the employer must pay \$8.00 per hour to meet the State's minimum wage requirement.

If a production employee is paid a flat salary or by the number of pieces he or she produces, the employer must calculate whether the employee has earned the minimum wage for all the hours worked that week. If the amount paid per piece produced is less than the minimum hourly wage earned for the hours worked, the employer must pay the difference up to the minimum hourly wage.

It is not legal to pay piece rate workers only their piece rates if minimum wage has not been earned.

Example:

A production worker earns \$400 for producing a certain number of pieces in a week and works 40 hours to produce those pieces. The employer must divide the earnings (\$400) by the number of hours worked (40) to determine if minimum wage has been paid. \$400 divided by 40 hours equals \$10.00 per hour. That is more than the current minimum wage and is a legal wage to pay when the employee works 40 hours.

If, however the employee works 40 hours and earns \$200 for pieces produced, the employee will earn only \$5.00 an hour (\$200 divided by 40 hours), which is below the minimum wage. The employer must now increase the wage so the required minimum wage will be paid.

Thus, if the minimum wage is \$6.55, the employer must pay \$1.55 extra for every hour worked; in this case it would be 40 hours times \$1.55 which is \$62.00 additional earnings, making the required payment for minimum wage \$262.00 (\$200 for pieces plus \$62.00 of "make up minimum wage").

If the minimum wage is \$7.25, the employer must pay \$2.25 extra for every hour worked; in this case it would be 40 hours times \$2.25 which is \$90.00 additional earnings, making the required payment for minimum wage \$290.00 (\$200 for pieces plus \$90.00 of "make up minimum wage").

◆ Overtime

FLSA requires employers to pay time and one half when employees work more than 40 hours in a week. When an employee is paid an hourly rate of \$8.00 an hour this means that the employee is paid \$12.00 an hour for each hour over 40 for the week.

When employees are paid piece rates for their production, the law still requires an additional overtime payment "in addition to the piece rates paid."

Example:

The overtime calculation for a piece worker – Before determining the overtime payment, the employer must first divide the pieces earned by the hours worked to make sure that minimum wage has been paid as explained in the section above. Thus, if a piece rate worker earns \$400 and has worked 50 hours, the employer divides the \$400 by 50 which equals \$8.00 which is above the current minimum wage and no minimum wage make up is necessary for the straight time. Overtime, however must still be paid on the rate earned, \$8.00 per hour. The employer multiplies 0.5 times the \$8.00 (which equals \$4.00) and determines the additional half time or overtime due the piece worker by multiplying the half time rate (\$4.00) times the number of overtime hours worked (10) which equals \$40.00. The total due the employee who worked 50 hours is \$440.00 (piece rate earned plus additional half time for overtime hours).

The overtime calculation for an hourly worker – An employee works 50 hours in a week and has a rate of \$8.50 an hour. The employer must pay the employee 50 hours at \$8.50 an hour (\$425) and 10 overtime hours must be paid an additional \$4.25 per hour (\$42.50) in order for time and a half to be paid. Thus, the "straight time earnings" are \$425 and the additional half time or extra overtime earnings are \$42.50. The employee must be paid \$467.50. This may also be arrived at by paying 40 hours at \$8.50 (\$340) and 10 hours at time-and-a-half (1.5 times \$8.50 is \$12.75; 10 hours of time-and-a-half is \$127.50), which is \$467.50, the total wage required by law.

◆ Youth Employment

The youth employment provisions of FLSA prohibit hiring employees under the age of 16 in manufacturing. The manufacturing process includes: cutting, sewing, trimming, pressing, and packaging of apparel. No one under 16 can work in a factory where manufacturing occurs. Additionally 16 and 17-year-olds are forbidden from performing certain activities deemed hazardous by the Department of Labor. Also, many states require work permits for children under the age of 18 that frequently restrict the hours that 16 and 17-year-olds may work. There are no youth employment restrictions on employees who are 18 years or older.

Employers should be careful not to allow children in the factory, as they may begin to "help" their relatives or other employees. Under the law this "helping" constitutes work and is a violation of the Federal youth employment regulations.

◆ Recordkeeping

FLSA requires employers to:

- Keep records of the hours employees worked each day and the total number of days worked each week (e.g. time cards)
- Record the name, address, and social security number of all employees
- Record the date and amount of wages paid for every pay period and the deductions made from employee wages
- Keep daily records of pieces or work units produced when they are used as the basis for earnings
- Keep all tables or schedules that provide the piece rates the employer uses to compute wages
- Show total overtime and straight-time earnings and how they are calculated
- Record the birth dates of all employees under the age of 19
- Record the time and day the work week begins and ends for the employees, e.g. Sunday through Saturday
- Post the Federal minimum wage and overtime poster at his or her place of business

Other Federal laws require that employers fill out and maintain I-9 (employment eligibility) and W-4 (income tax) forms on all employees they hire.

Payroll, sales, and purchase records must be kept for three years. Supplementary records must be kept for two years. Employers must make their records available for inspection.

State Laws may require additional records to be kept.

◆ No Homework

The FLSA also prohibits the manufacturing of ladies' and children's apparel at home. Working at home often results in violations of minimum wage and overtime laws, as well as youth employment laws. Some state laws prohibit all types of clothing from being manufactured at home. California law, for example, allows for apparel goods being made at home to be seized and confiscated.

◆ What are "Hot Goods"?

"Hot goods" are pieces that have been made in violation of the Federal minimum wage or overtime laws. The FLSA has two provisions that prohibit the shipment of these goods into commerce. Section 15(a)(1) of the FLSA says it is illegal to ship "hot goods." This law affects both the shop that is making the goods and the shipper who owns the goods. Thus if minimum wage or the required overtime has not been given to the employee(s), the law prohibits the goods from being moved. The Department of Labor "objects" to the shipping of "hot goods" and requires the contractor or manufacturer to take corrective action before it lifts its objection and allows the goods to be shipped. These corrective actions normally include resolving any wage liabilities (correct payment of all wages) and having the manufacturer and contractor agree to obey the FLSA in the future. In the case of the shipper/manufacturer, the Department of Labor may initiate a "monitoring" program to curtail violations at the contractor shops it uses.

Section 12(a) of the FLSA forbids shipping into commerce any goods produced in an establishment where there has been prohibited youth employment. When a youth employment violation occurs at a shop, goods may not be removed from that shop for thirty days. Contractors and manufacturers that violate youth employment laws may be required to pay a civil money penalty.

◆ What is the Purpose of "Monitoring"?

"Monitoring" is a program the United States Department of Labor developed to help manufacturers and shippers avoid shipping "hot goods." Manufacturers that violate the FLSA must take positive steps to ensure that the goods they were shipping were made in compliance with minimum wage, overtime, and youth employment provisions. The Department developed a series of activities for manufacturers to significantly reduce violations of the FLSA at the contractor shop. This series of activities has become known as "monitoring".

Normally, "monitoring" starts with an agreement between the contractor and the manufacturer that allows the manufacturer to look at the employment records and speak with the contractor's employees about the pay practices at the contractor's shop. This agreement between the contractor and manufacturer requires the contractor to follow the Wage and Hour laws indicated above and allows the manufacturers to check the contractor's compliance with these laws. Monitoring is done either by the manufacturer's own personnel or by personnel the manufacturer has designated to perform the "monitoring." When the manufacturer finds wage violations at the contractor's shop, the manufacturer must immediately make sure that these practices are corrected.

◆ Further Information

More information is available at no cost about these and related employment issues at the Wage and Hour Offices of the United States Department of Labor, 1-866-4US-WAGE (1-866-487-9243). For TTY services call 1-877-889-5627. Or, visit the Wage and Hour Division Home Page on the Internet at <http://www.wagehour.dol.gov>

This Guide is intended to provide general guidance only. It does not describe all the factors which may be pertinent to the application of the FLSA and should not be viewed as having legal force as statutes, regulations, or formal opinions do.

FOR MORE INFORMATION

Call the Wage and Hour Division at
1-866-487-9243 (toll free) or visit our website at www.wagehour.dol.gov.