

Fact Sheet #6: The Retail Industry Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the [FLSA](#) to employees of the retail industry.

Characteristics

A retail establishment is an establishment 75% of whose annual dollar volume of sales is not for resale and is recognized as retail in the particular industry. Some examples of establishments which may be retail are: automobile repair shops, bowling alleys, gasoline stations, appliance service and repair shops, department stores and restaurants. Some examples of establishments which are not retail are: accounting firms, medical and dental clinics, construction companies, radio and television stations.

Coverage

Employees of retail establishments may be covered by the Act in either of two ways. Any retail establishment which is part of an enterprise with an annual dollar volume of sales of at least \$500,000 (exclusive of excise taxes at the retail level that are separately stated) must abide by the Act's requirements. Any employee of a retail establishment, regardless of its sales volume, who is engaged in interstate commerce activities is "covered" on an individual basis. Some examples of such activities are: ordering goods from out-of-state, verifying and processing credit card transactions, using the mail or telephone for interstate communications, keeping records of interstate transactions, or handling, shipping, or receiving goods moving in commerce.

Requirements

Covered, non-exempt retail establishments are required to meet certain standards under the Act relative to wages and employment of minors.

Covered, non-exempt employees are entitled to the [Federal minimum wage](#). [Overtime pay](#) at a rate not less than one and one-half times the employee's regular rate of pay is required after 40 hours are worked in a workweek. Certain retail or service employees paid by [commissions](#) may be exempt from overtime pay.

[Youth Minimum Wage](#): The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

The FLSA [youth employment regulations](#) forbid the employment in non-agricultural jobs of minors under 14, restrict the hours of work and limit occupations for 14 & 15 year olds, and forbid the employment of 16 & 17 year olds in hazardous occupations.

The Act requires employers to keep records of wages, hours, and other items, as specified in the [recordkeeping regulations](#). With respect to an employee subject to both [minimum wage](#) and [overtime provisions](#), records must be kept as prescribed by Regulations, [29 CFR Part 516](#). Records required for exempt employees differ from

those for non-exempt workers, for employees working under uncommon pay arrangements, or for employees to whom lodging or other facilities are furnished.

Typical Problems

Hours Worked: Employers must record and pay for all hours worked by employees including any time controlled by the employer, such as time spent "engaged to wait." Where employees report to work at their scheduled time, the employer must begin counting that as work time. However, if the employer immediately tells the employees that they are not needed, completely relieves them of duty, and gives them a specific report-back time which enables the employees to use the time for their own benefit, this time does not have to be counted as working time. If the employees are only told to wait until they are needed, and are not given a specific report-back time that is long enough to use for their own benefit, all of the waiting time is to be counted as hours worked.

Illegal Deductions: Deductions made from employees' wages for such items as cash or merchandise shortages, required uniforms, and tools of the trade are not legal to the extent that they reduce the wages below the statutory [minimum wage](#) or reduce the amount of [overtime pay](#).

Salaried Employees: A salary, by itself, does not exempt employees from the [minimum wage](#) or from [overtime](#). Whether employees are exempt from [minimum wage](#) and overtime depends on their job duties and responsibilities as well as the salary paid. Often, in retail businesses, salaried employees do not meet all the requirements specified by the regulations to be considered as exempt from overtime pay. Regulations [29 CFR Part 541](#) contain a discussion of the requirements for several exemptions under the FLSA (i.e., executive, administrative, and professional employees -- including computer professionals, and outside sales persons).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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