

Fact Sheet #31: Nursing Care Facilities Under the Fair Labor Standards Act

This fact sheet provides general information concerning the application of the [minimum wage](#), [overtime pay](#) and child labor requirements of the [Fair Labor Standards Act \(FLSA\)](#) to skilled nursing care facilities, intermediate care facilities, and nursing and personal care facilities. It is designed to provide general information on the requirements of the FLSA and to alert employers to certain employment practices that result in FLSA violations.

Coverage: The FLSA covers all nursing care enterprises, public and private, whether operated for profit or not for profit.

Minimum Wage: FLSA covered employers are required to pay all nonexempt employees the Federal [minimum wage](#) of not less than \$6.55 an hour effective July 24, 2008, and \$7.25 an hour effective July 24, 2009, on their regularly scheduled payday.

Overtime: Employers must also pay all non-exempt employees a rate of time-and-one-half the regular rate of pay for each hour of overtime worked. Nursing care facilities may pay employees [overtime](#) after 40 hours in a 7 day workweek or alternatively, use the "8 and 80" system. Under the "8 and 80" system, the nursing care facility may pay employees -- with whom they have a prior agreement -- overtime for any hours worked after more than 8 hours in a day and more than 80 hours in a 14-day period.

Recordkeeping: Employers are required to maintain accurate payroll and time records. Time records must be preserved for two years and payroll records must be kept for three years. Employers must also record and maintain the dates of birth for employees under age 19.

Exemptions: Certain employees whose primary duties are managerial, administrative, or professional in nature are exempt from the FLSA's [minimum wage](#) and [overtime pay](#) requirements.

Youth Employment: The FLSA sets a minimum age of 14 for most youth employed in covered non-agricultural employment. Fourteen- and 15-year-olds can work for limited periods of time each day (outside school hours) in specified occupations which do not interfere with their schooling, health, or well-being. Sixteen- and 17-year-old individuals may work at any time for unlimited hours in all jobs not declared hazardous by the Secretary of Labor.

Common Industry Problems

Non-exempt employees must be compensated for any time during which they perform activities that benefit the employer.

The most common violation in the nursing care industry is the failure of employers to pay for all the [hours worked](#). This uncompensated time most frequently occurs when employers fail to pay for work performed:

- Before and after a worker's scheduled shift;
- During an employee's scheduled meal period; and
- While employees are attending staff meetings and compensable training sessions.

[Minimum wage](#) and [overtime pay](#) violations also occur when employers make [deductions](#) or demand reimbursement for the cost of required uniforms or equipment.

Individuals not otherwise employed by the facility who volunteer – without expectation of pay – to attend to the comfort of nursing home residents in a manner not otherwise provided by the facility are not considered employees under the FLSA. However, individuals (including residents) who perform work of any consequential economic benefit to the facility are employees and entitled to FLSA [minimum wage](#) and [overtime](#).

Overtime pay violations often occur when employers:

- Fail to pay overtime after 8 hours of work in a day for workers (both full time and part time) who are under the "8 and 80" system.
- Pay [overtime](#) after 80 hours worked during a biweekly period rather than after 40 hours in a workweek to employees not under the "8 and 80" system.
- Fail to combine hours worked in more than one department or at more than one facility when determining the total [overtime](#) hours worked.
- Fail to include in calculating [overtime](#) hours the time spent or hours worked while performing on-call assignments.
- Fail to include shift differential, bonuses or on-call fees in calculating an employee's regular rate.
- Fail to pay overtime to non-exempt, salaried employees (e.g., clerical staff, cooks, and activities directors).

Other Pertinent Labor Laws

- [The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act](#) requires employers to complete and maintain I-9 forms to verify the employment eligibility of all individuals hired after November 6, 1986, and contains certain anti-discrimination provisions.
- [The Family and Medical Leave Act](#) entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year for specified family and medical reasons.
- [The Employee Polygraph and Protection Act](#) prohibits most employers from using any type of lie detector test either for pre-employment screening of job applicants or, with certain exceptions, during the course of employment.
- [The Nursing Relief for Disadvantaged Areas Act of 1999](#) provides for the enforcement of employment conditions attested to by employers in disadvantaged areas employing H-1C temporary nonimmigrant registered nurses.
- [The McNamara-O'Hara Service Contract Act](#) requires the payment of prevailing wages and fringe benefits to service employees on contracts for the provision of services to the Federal government.

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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