

Fact Sheet #24: Homeworkers Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to homeworkers.

Characteristics

Under the FLSA, industrial homework (as defined in [29 CFR 530.1\(d\)](#)) means the production by any person in or about a home, apartment, tenement, or room in a residential establishment, of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homemaker in such production.

Coverage

The FLSA applies to homeworkers who are covered on an "individual" basis or whose employer is covered on an "enterprise" basis. The enterprise coverage test requires a specified annual dollar volume of business. However, in most instances, a homemaker is covered under the FLSA on the basis of individual coverage (i.e. production of goods for out of state shipment and/or receipt of out of state materials or goods used in the production process).

Requirements

Homework requires [certification](#) in only seven specific industries: women's apparel, jewelry manufacturing, knitted outerwear, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing and embroideries. Certification occurs when the employer obtains an employer certificate, or homeworkers obtain individual certification, from the Department's Wage and Hour Division, authorizing such work. Certified employers of homeworkers in these industries will be required to renew their certificate every two years. Employer certification is not available for women's apparel and certain hazardous jewelry manufacturing operations; only individual certification is permitted. Homework under the FLSA is not restricted in any industry other than those listed above. However, all individually covered homework is subject to the FLSA's minimum wage, overtime and recordkeeping requirements.

Homeworker employees must be paid the Federal [minimum wage](#). This rate must be met regardless of whether the worker is paid by time, piece, job, incentive, or any other basis. The cost of tools, tool repair, or other similar requirements, may not be borne by the worker where such cost would reduce the wages paid below the required [minimum wage](#) or in any way reduce wages due for overtime hours. [Overtime](#) must be paid at one and one-half times the employee's regular rate of pay for each hour worked in excess of 40 hours in any workweek. The regular rate includes all remuneration for employment, such as piece rate earnings and commissions paid. Time and one-half of the average piece rate of pay is to be paid for hours worked over 40 per week, if the average is greater than the employee's regular rate of pay (never less than the required [minimum wage](#)).

Records which must be kept for all employees include: name, social security number, home address and telephone number, date of birth (if under 19 years of age), hours worked each day (including time spent transporting), total hours worked each workweek, basis of pay computations, regular pay, overtime premium pay, total gross pay, deductions (specifying the nature and amount of each), and net pay. All employees who have been hired since November of 1986 must also fill out the I-9 form, required by INS.

When employing homeworkers, a separate [homeworker handbook](#) is required. These handbooks are available through Wage and Hour offices. Employers are responsible for ensuring that handbooks are completed as required. The handbooks require homeworkers to also list business related expenses, such as equipment and supplies.

In the case of clerical workers who may perform duties at home on only an occasional or sporadic basis, employers are not required to follow homework regulations. However, all hours, including the time worked at home, must be recorded and compensated as required by the FLSA for every employee.

Typical Problems

- (1) Employer improperly treats homeworkers as "independent contractors".
- (2) Employer fails to maintain required record of hours, production, etc., or fails to instruct the employee to record the required data in the DOL homeworker handbook.
- (3) Employer fails to assure that homeworker paid on piece rate basis has earned the [minimum wage](#).
- (4) The employer must bear the cost of tools purchased as well as tool maintenance and repair to the extent that these costs cut into the [minimum wage](#) or overtime wages required.
- (5) Employer fails to count as hours worked preparatory and concluding activities, time spent at the shop, travel time and training time.
- (6) Employer fails to ensure proper certification for the restricted industries.

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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