Negotiating the Jungles of Human Resources Management and Compliance

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U.S. DEPARTMENT OF LABOR

News Release

U.S. DEPARTMENT OF LABOR RELEASES OVERTIME UPDATE PROPOSAL

WASHINGTON, DC - Today, the U.S. Department of Labor announced a Notice of Proposed Rulemaking (NPRM) that would make more than a million more American workers eligible for overtime.

Under currently enforced law, employees with a salary below $455 per week ($23,660 annually) must be paid overtime if they work more than 40 hours per week. Workers making at least this salary level may be eligible for overtime based on their job duties. This salary level was set in 2004.

This new proposal would update the salary threshold using current wage data, projected to January 1, 2020. The result would boost the standard salary level from $455 to $679 per week (equivalent to $35,308 per year).

The Department is also asking for public comment on the NPRM's language for periodic review to update the salary threshold. An update would continue to require notice-and-comment rulemaking.

In developing the proposal, the Department received extensive public input from six in-person listening sessions held around the nation and more than 200,000 comments as part of a 2017 Request for Information (RFI).

"Our economy has more job openings than job seekers and more Americans are joining the labor force," said Secretary Alexander Acosta. "At my confirmation hearings, I committed to an update of the 2004 overtime threshold, and today's proposal would bring common sense, consistency, and higher wages to working Americans."

"Commenters on the RFI and in-person sessions overwhelmingly agreed that the 2004 levels need to be updated," said Keith Sonderling, Acting Administrator for the Department's Wage and Hour Division.

The NPRM maintains overtime protections for police officers, fire fighters, paramedics, nurses, and laborers including: non-management production-line employees and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, and construction workers. The proposal does not call for automatic adjustments to the salary threshold.

A 2016 final rule to change the overtime thresholds was enjoined by the U.S. District Court for the Eastern District of Texas on November 22, 2016. As of November 6, 2017, the U.S. Court of Appeals for the Fifth Circuit has held an appeal in abeyance pending further rulemaking regarding a revised salary threshold. As the 2016 final rule was enjoined, the Department has consistently enforced the 2004 level throughout the last 15 years.

More information about the proposed rule is available at www.dol.gov/whd/overtime2019. The Department encourages any interested members of the public to submit comments about the proposed rule electronically at www.regulations.gov, in the rulemaking docket RIN 1235-AA20. Once the rule is published in the Federal Register, the public will have 60 days to submit comments for those comments to be considered.

Agency: Office of the Secretary
Date: March 7, 2019
Release Number: 19-412-NAT

Contact: Megan Sweeney
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United States Department of Labor

Wage and Hour Division

Wage and Hour Division (WHD)

Notice of Proposed Rulemaking: Overtime Update

On March 7, 2019 the Department of Labor announced a proposed rule that would make more than a million more American workers eligible for overtime.

Under currently enforced law, employees with a salary below $455 per week ($23,660 annually) must be paid overtime if they work more than 40 hours per week. Workers making at least this salary level may be eligible for overtime based on their job duties. This salary level was set in 2004.

This proposal would boost the proposed standard salary level to $679 per week (equivalent to $35,308 per year). Above this salary level, eligibility for overtime varies based on job duties.

In developing the proposal, the Department received extensive public input from six in-person listening sessions held around the nation and more than 200,000 comments that were received as part of a 2017 Request for Information (RFI). Commenters who participated in response to the RFI or who participated at a listening session overwhelmingly agreed that the currently enforced salary and compensation levels need to be updated.

The NPRM includes:

- The proposal increases the minimum salary required for an employee to qualify for exemption from the currently-enforced level of $455 to $679 per week (equivalent to $35,308 per year).
- The proposal increases the total annual compensation requirement for "highly compensated employees" (HCE) from the currently-enforced level of $100,000 to $147,414 per year.
- A commitment to periodic review to update the salary threshold. An update would continue to require notice-and-comment rulemaking.
- Allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level.
- No changes overtime protections for:
  - Police Officers
  - Fire Fighters
  - Paramedics
  - Nurses
  - Laborers including: non-management production-line employees
  - Non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, and construction workers
- No changes to the job duties test.
- No automatic adjustments to the salary threshold.

The Department will consider all timely comments in developing a final rule.

Disclaimer: This proposed regulation has been submitted to the Office of the Federal Register (OFR) for publication, and is currently pending placement on public inspection at the OFR and publication in the Federal Register. This version of the proposed regulations may vary slightly from the published document if minor technical or formatting changes are made during the OFR review process. Only the version published in the Federal Register is the official proposed regulation. The public will have 60 days to comment on the proposed regulation; the comment period will begin on the date of publication in the Federal Register.

Additional Information

- Notice of Proposed Rulemaking: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees (PDF)
  - Exhibit A: Methodology for Estimating Exemption Status and Exhibit B: Additional Tables
- Press Release [03/07/19]: U.S. Department of Labor Releases Overtime Update Proposal
- Fact Sheet: Notice of Proposed Rulemaking to Update the Regulations Defining and Delimiting the Exemptions for Executive, Administrative, and Professional Employees

- Frequently Asked Questions About the Proposed Rule
- Overtime Pay Website

United States Department of Labor

Wage and Hour Division

Wage and Hour Division (WHD)

Notice of Proposed Rulemaking (NPRM): Overtime

Overview

- The Notice of Proposed Rulemaking (NPRM) would make more than a million more American workers eligible for overtime.
- In developing the proposal, the Department received extensive public input from six in-person listening sessions held around the nation and more than 200,000 comments as part of a 2017 Request for Information (RFI).
- Commenters who participated in response to the Department's 2017 Request for Information, or who participated at a listening session in 2018 regarding the regulations, overwhelmingly agreed that the currently enforced salary and compensation levels need to be updated.
- Under currently enforced law, employees with a salary below $455 per week ($23,660 annually) must be paid overtime if they work more than 40 hours per week. Workers making at least this salary level may be eligible for overtime based on their job duties. This salary level was set in 2004.
- This proposal would boost the proposed standard salary level to $679 per week (equivalent to $35,308 per year). Above this salary level, eligibility for overtime varies based on job duties.
- NPRM includes:
  - The proposal increases the minimum salary required for an employee to qualify for exemption from the currently-enforced level of $455 to $679 per week (equivalent to $35,308 per year).
  - The proposal increases the total annual compensation requirement for "highly compensated employees" (HCE) from the currently-enforced level of $100,000 to $147,414 per year.
  - A commitment to periodic review to update the salary threshold. An update would continue to require notice-and-comment rulemaking.
  - Allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level.
  - No changes in overtime protections for:
    - Police Officers
    - Fire Fighters

- Paramedics
- Nurses
- Laborers including: non-management production-line employees
- Non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, and other construction workers

- No changes to the job duties test.
- No automatic adjustments to the salary threshold.

Background on the 2016 Overtime Rule

- A 2016 final rule to change the overtime thresholds was enjoined by the U.S. District Court for the Eastern District of Texas on November 22, 2016.
- As of November 6, 2017, the U.S. Court of Appeals for the Fifth Circuit has held an appeal in abeyance pending further rulemaking regarding a revised salary threshold.
- As the 2016 final rule was enjoined, the Department has consistently enforced the 2004 level throughout the last 15 years.

Frequently Asked Questions

- When will these changes take effect?

Q. What is the proposed rule about?

A. Using a commonsense approach and based on broad-based input, the Department proposes to update and revise the regulations that would make more than a million more American workers eligible for overtime. The Department is committed to an update of the 2004 overtime threshold, and this proposal would bring common sense, consistency, and higher wages to working Americans.

Q. Who would be exempt from overtime under this proposal?

A. To qualify for exemption, an employee generally must:

1. be salaried, meaning that he or she is paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test");

2. be paid at least a specified weekly salary threshold (the "salary level test"), $679 per week; and

3. primarily perform executive, administrative, or professional duties, as provided in the Department's regulations (the "duties test").

Q. Why is the Department revising its overtime regulations?

A. At his confirmation hearings, Secretary Acosta committed to an update of the 2004 overtime threshold. This proposal would bring commonsense, consistency, and higher wages to working Americans.

In light of district court's decisions enjoining invalidating the 2016 rule, public comments received in response to a July 26, 2017 Request for Information (RFI), and feedback received at public listening sessions held around the country to receive input on issues related to the salary level test, the overwhelming sentiment was that an adjustment was timely.

Q. What is the estimated economic impact of the proposed rule?

A. The Department estimates average transfers to employees to be approximately $429.4 million per year over the first ten years.

The Department estimates that average annualized direct employer costs will total approximately $120.5 million per year over the first ten years, including regulatory familiarization costs, adjustment costs, and managerial costs.
(Note: direct costs for employers under this proposed rule are expected to be $224 million less per year than under the 2016 rule.)

Finally, the Department estimates qualitatively that the proposed rule would prevent approximately 211 FLSA lawsuits per year, saving a total of $138.2 million per year in litigation costs.

Q. How many employees does the Department estimate will be impacted by the proposed salary level increases?

A. In Year 1, the Department estimates that 1.1 million currently exempt employees who earn at least $455 per week but less than the proposed standard salary level of $679 per week would, without some intervening action by their employers, become eligible for overtime. The Department estimates that an additional 201,100 workers who earn at least $100,000 but less than $147,414 per year, and who meet the minimal HCE duties test but not the standard duties test, would, without some intervening action by their employers, become eligible for overtime due to the proposed increase to the HCE total annual compensation level.

Q. How did the Department arrive at the proposed numbers?

A. The Department calculated the standard salary amount by applying the same method used to set the standard salary level in 2004—*i.e.*, by looking at the 20th percentile of earnings of full-time salaried workers in the lowest-wage census region (then and now the South), and/or in the retail sector nationwide. In applying this methodology, the Department specifically looked at Current Population Survey (CPS) earnings data from 2015-17 (the most recent data available at the time of the Department's analysis), and projected the resulting rate forward to January 2020.

The methodology used to set the standard salary level in 2004 has withstood the test of time, is familiar to employees and employers, and can be used without causing significant hardship or disruption to employers or the economy.

For the HCE annual compensation level, the Department proposes to set the threshold equivalent to the 90th percentile earnings of full-time salaried workers nationwide.

Q. Under the proposed rule, may employers use bonuses to satisfy part of the new standard salary level test?

A. The Department proposes to allow nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10 percent of the standard salary test requirement.

Such bonuses include, for example, nondiscretionary incentive bonuses tied to productivity and profitability. The Department recognizes that some businesses pay significantly larger bonuses; where larger bonuses are paid, however, the amount attributable toward the EAP standard salary level is capped at 10 percent of the required salary amount. The Department is inviting comment on whether the proposed 10 percent cap is appropriate, or if a higher or lower cap is preferable.

Q. Does the proposed rule change how employers may use bonuses to satisfy the salary level for highly compensated employees (HCEs)?

A. No, the Department is not proposing changes to how employers may use bonuses to meet the standard salary level component of the HCE test.

Q. How do I comment on this rule?

A. The Department encourages any interested members of the public to submit comments about the proposed rule electronically at www.regulations.gov, in the rulemaking docket RIN 1235-AA20. Comments must be submitted by 11:59 pm 60 days from the Federal Register publication in order to be considered.

Q. When will these changes take effect?

A. The NPRM is only a proposal. Any changes would not take effect until after publication of a Final Rule.

U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from minimum wage and overtime pay provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, 29 CFR Part 541.

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455* per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for executive, administrative, professional, computer and outside sales employees, and for more information on the salary basis requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than $455* per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455* per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption
To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455* per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than $455* per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption
To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than $455* per week **or**, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
  1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
  2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
  3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
  4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption
To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees
Highly compensated employees performing office or non-manual work and paid total annual compensation of $100,000 or more (which must include at least $455* per week paid on a salary or fee basis) are exempt from the

FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to "white collar" employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other "blue collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

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).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

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.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

Note (added January 2018):

* The Department of Labor is undertaking rulemaking to revise the regulations located at 29 C.F.R. part 541, which govern the exemption of executive, administrative, and professional employees from the Fair Labor Standards Act's minimum wage and overtime pay requirements. Until the Department issues its final rule, it will enforce the part 541 regulations in effect on November 30, 2016, including the $455 per week standard salary level. These regulations are available at: https://www.dol.gov/whd/overtime/regulations.pdf

Code of Federal Regulations
Title 29. Labor
Subtitle B. Regulations Relating to Labor
Chapter V. Wage and Hour Division, Department of Labor
Subchapter A. Regulations
Part 541. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees (Refs & Annos)
Subpart D. Professional Employees

29 C.F.R. § 541.301

§ 541.301 Learned professionals.

Currentness

(a) To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three elements:

(1) The employee must perform work requiring advanced knowledge;

(2) The advanced knowledge must be in a field of science or learning; and

(3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

(b) The phrase "work requiring advanced knowledge" means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

(c) The phrase "field of science or learning" includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

(d) The phrase "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word "customarily" means that the exemption is also available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but

who attained the advanced knowledge through a combination of work experience and intellectual instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry. However, the learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction.

(e)(1) Registered or certified medical technologists. Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association generally meet the duties requirements for the learned professional exemption.

(2) Nurses. Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. Licensed practical nurses and other similar health care employees, however, generally do not qualify as exempt learned professionals because possession of a specialized advanced academic degree is not a standard prerequisite for entry into such occupations.

(3) Dental hygienists. Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association generally meet the duties requirements for the learned professional exemption.

(4) Physician assistants. Physician assistants who have successfully completed four academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and who are certified by the National Commission on Certification of Physician Assistants generally meet the duties requirements for the learned professional exemption.

(5) Accountants. Certified public accountants generally meet the duties requirements for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks, bookkeepers and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals.

(6) Chefs. Chefs, such as executive chefs and sous chefs, who have attained a four-year specialized academic degree in a culinary arts program, generally meet the duties requirements for the learned professional exemption. The learned professional exemption is not available to cooks who perform predominantly routine mental, manual, mechanical or physical work.

(7) Paralegals. Paralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption

is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer would qualify for exemption.

(8) Athletic trainers. Athletic trainers who have successfully completed four academic years of pre-professional and professional study in a specialized curriculum accredited by the Commission on Accreditation of Allied Health Education Programs and who are certified by the Board of Certification of the National Athletic Trainers Association Board of Certification generally meet the duties requirements for the learned professional exemption.

(9) Funeral directors or embalmers. Licensed funeral directors and embalmers who are licensed by and working in a state that requires successful completion of four academic years of pre-professional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education, generally meet the duties requirements for the learned professional exemption.

(f) The areas in which the professional exemption may be available are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When an advanced specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession. Accrediting and certifying organizations similar to those listed in paragraphs (e)(1), (e)(3), (e)(4), (e)(8) and (e)(9) of this section also may be created in the future. Such organizations may develop similar specialized curriculums and certification programs which, if a standard requirement for a particular occupation, may indicate that the occupation has acquired the characteristics of a learned profession.

AUTHORITY: 29 U.S.C. 213; Pub.L. 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR, 1945–53 Comp., p. 1004); Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

Notes of Decisions (61)

Current through March 7, 2019; 84 FR 8277.

2013 WL 12101132
Only the Westlaw citation is currently available.
United States District Court, S.D. Florida.

Abdelhalim TADILI, individually and on behalf of all others similarly situated, Plaintiff,
v.
Brian FERBER, P.A., a Florida corporation, and Brian Ferber, individually, Defendants.

CASE NO. 12-80216-CIV-RYSKAMP/HOPKINS
|
Signed 11/22/2013

Attorneys and Law Firms

Brian Jay Militzok, Militzok & Levy, P.A., Hollywood, FL, for Plaintiff.

Stuart Michael Silverman, Boca Raton, FL, for Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

KENNETH L. RYSKAMP, UNITED STATES DISTRICT JUDGE

*1 THIS CAUSE comes before the Court pursuant to Defendants Brian Ferber, P.A. and Brian Ferber's ("Defendants") motion for summary judgment, filed July 15, 2013 **[DE 29]**. Plaintiff Abdelhalim Tadili ("Plaintiff") responded on August 1, 2013 **[DE 34]**. Defendants replied on August 11, 2013 **[DE 37]**. The Court scheduled a hearing on this motion for November 15, 2013. Plaintiff's counsel did not appear for the hearing, so the hearing did not occur. The Court informed the parties via endorsed order that it would review this motion without conducting a hearing. This motion is ripe for adjudication.

I. BACKGROUND

Plaintiff became employed by Defendants as a master dental technician at Defendants' Lake Worth, Florida office on or about March 21, 2011 at a $2,000.00 weekly salary. That employment arrangement lasted for seven weeks, up to approximately May 4, 2011. Plaintiff also worked for Defendant commencing in February 2011 for the purpose of constructing a dental lab. Construction of a dental lab would have cost Defendants $80,000.00, but Plaintiff offered to construct the lab for $35,000.00. Construction of the lab was complete as of March 26, 2011.

Plaintiff claims he was paid only $4,000.00 for his work as a master dental technician. At issue are Plaintiff's claim for unpaid minimum wages pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et. seq.* and a claim for recovery of unpaid wages pursuant to Fl. Stat. § 448.110. Each of these claims relate to Plaintiff's work as a master dental technician.

Defendants request summary judgment on the FLSA claim on the grounds that Plaintiff is exempt pursuant to both the learned professional exemption and the highly paid professional exemption. Defendants request summary judgment on the state unpaid wages claim on the grounds of insufficiency of Plaintiff's pre-suit notice.

II. LEGAL STANDARD

Summary judgment is proper when the evidence, viewed in the light most favorable to the nonmoving party, presents no genuine issue as to any material fact and compels judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Only the existence of a genuine issue of material fact, as opposed to a simple factual dispute, will preclude a grant of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). No genuine issue of material fact exists when the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

III. DISCUSSION

A. FLSA Claim

Plaintiff claims that he was not paid for all of his hours worked as a master dental technician because some monies he received from Defendants originally intended to be a "pay advance" actually went toward a down payment to Plaintiff for work Plaintiff performed on the dental lab. The Court has reviewed the record in this matter

and has concluded that it is unclear whether Plaintiff was paid for his work as a master dental technician. Plaintiff has provided tax records indicating that he received "non-employee" compensation in the amount of $16,000.00, which Plaintiff claims was for work performed constructing the lab. [1] The record indicates that Plaintiff was paid $4,000.00 for work as a master dental technician. Whether Plaintiff received other payment for work as a master dental technician is unclear. Ferber avers that Plaintiff was paid via both cash and check, but none of the checks allegedly tendered to Plaintiff are part of the record.

*2 Whether or not Plaintiff received full payment for his work as a master dental technician, Defendants are still entitled to summary judgment because Plaintiff is exempt from the FLSA pursuant to both the learned professional and the highly compensated employee exemptions to the statute.

To be exempt as a learned professional under 29 C.F.R. § 541.301(a), the following tests must be satisfied: (1) The employee must be compensated on a salary at a rate of not less than $455 per week exclusive of board, lodging or other facilities, and (2) The employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning, which knowledge is customarily acquired by a prolonged course of specialized instruction.

Plaintiff is also exempt as a highly compensated employee. Under 29 C.F.R. § 541.601(a), an employee who receives total annual compensation of at least $100,000 is exempt if the employee "customarily and regularly" performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee. "Total annual compensation" must include at least $455.00 per week paid on a salary or fee basis. 29 C.F.R. § 541.601(b).

Plaintiff makes the convoluted argument that since he was not paid for five of the seven weeks he worked, he was not compensated at a rate of greater than $455.00 per week. The statute does not allow for downward revisions of an employee's salary simply because an employee alleges he was not paid. An employee who is either a learned professional or a highly paid employee who is not paid for work performed may have a breach of contract claim for nonpayment of wages, but such employee will not have an FLSA claim. Plaintiff's $2,000.00 weekly salary exceeded a rate of $455.00 per week. [2] The learned professional and highly compensated employee exemptions apply, thereby entitling Defendants to summary judgment on Plaintiff's FLSA claim.

B. Florida Unpaid Wages Claim

Fl. Stat. § 448.110(6)(a) requires a plaintiff provide pre-suit notice of intent to sue. The notice "must identify the minimum wage to which the person aggrieved claims entitlement, the actual or estimated work dates and hours for which payment is sought, and the total amount of alleged unpaid wages through the date of the notice." Plaintiff's pre-suit notice also requests liquidated damages, attorneys' fees and costs. The demand for liquidated damages, attorneys fees, costs and the listing of other claims also renders the notice defective in that it demands more than the statute permits. *See Johnson v. Nobu Assocs. South Beach, LP*, No. 10-21691-CIV-KING/BANDSTRA, 2011 WL 780028, at *3 (S.D. Fla. Feb. 4, 2011) ("[P]laintiffs' pre-suit notice violated the terms of the pre-suit notice requirement by demanding more than the statute permits by requesting a total sum inclusive of liquidated damages and attorneys' fees."). Defendants are entitled to summary judgment on the Florida unpaid wages claim due to Plaintiff's defective pre-suit notice.

IV. CONCLUSION

THE COURT, being fully advised and having considered the pertinent portions of the record, hereby

*3 ORDERS AND ADJUDGES that Defendants' motion for summary judgment, filed July 15, 2013 **[DE 29]**, is GRANTED. It is further

ORDERED AND ADJUDGED that Defendants' motion to strike Plaintiff's affidavit, filed August 11, 2013 **[DE 38]**, is DENIED. Final judgment shall be entered by separate order.

DONE AND ORDERED at Chambers in West Palm Beach, Florida, this 22d day of November, 2013.

All Citations

Not Reported in Fed. Supp., 2013 WL 12101132

Footnotes

1 Plaintiff attaches this documentation to his affidavit filed August 1, 2013. Defendants request that the affidavit be stricken because Plaintiff did not previously disclose this information. Plaintiff claims that the motion to strike was the first he heard of the alleged nondisclosure and claims that any failure in that regard was an oversight. Discussion of monies Plaintiff received for construction of the dental lab is unrelated to Plaintiff's FLSA claim, as the FLSA claim addresses whether Plaintiff was paid for work as a master dental technician.

2 Even if the statute allowed for such salary revisions, Plaintiff's alleged total compensation for seven weeks of work, $4,000.00, would still total approximately $571.00 per week, which exceeds the $455.00 threshold.

1976 WL 41728 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion LetterFair Labor Standards Act (FLSA)

WH-376
March 5, 1976

***

*1 In accordance with our discussion of January 20, 1976, the Wage and Hour Division and the Office of the Solicitor of Labor have again considered your request that the two-year course of professional study required for registration as a dental hygienist be recognized as meeting the test in section 541.3(a)(1) of Regulations, Part 541.

As defined in Regulations, Part 541, a bona fide professional employee (for exemption from the minimum wage and overtime pay requirements under section 13(a)(1) of the Fair Labor Standards Act) means an employee whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

The Administrator is constrained by judicial decisions to interpret exemptions from the Act's provisions narrowly. Their application must be limited to those who come plainly and unmistakably within their terms and spirit. This is so because the application of an exemption deprives an employee of the monetary benefits which the Act otherwise provides. The term "professional" must necessarily be limited to those professions which have a recognized status and which are based on the acquisition of professional knowledge acquired through prolonged intellectual instruction and study.

The typical symbol of professional training and the best prima facie evidence of its possession is the appropriate degree, and in the professions a baccalaureate degree is a standard prerequisite. The Regulations have thus been drawn to have as one of the requirements for recognition as a bona fide professional employee such a course of intellectual training and study as that customarily required by colleges and universities to obtain a degree in a professional discipline.

We have again reviewed the material you previously submitted as well as material issued by several institutions which provide professional courses in dental hygiene. Without exception the latter consider the baccalaureate degree the symbol of recognition for completing a professional program of study.

We, therefore, adhere to our previously stated position that within the meaning of section 541.3(a)(1) of the Regulations, "a prolonged course of specialized instruction and study" means four academic years of preprofessional and professional study in an accredited university or college as set out in our letter of December 29, 1975.
Sincerely,

[Signature]
Deputy Administrator
Wage and Hour Division

1976 WL 41728 (DOL WAGE-HOUR)

1998 WL 852713 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion LetterFair Labor Standards Act (FLSA)

February 19, 1998

***

*1 This is in response to your request for an opinion as to whether a medical assistant position qualifies for the professional exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA).

The job description that you submitted indicates that the medical assistant checks charts; obtains needed medical information for the doctor or patient; opens, closes, and cleans stock, examination and procedures rooms; gathers information from new patients, and keeps patient flow consistent for the doctor; obtains urine specimens; performs venipuncture for lab tests; assists with examination of female patients; performs bladder instillations and physician directed procedures, such as catheter insertion, change, and irrigation, wound care, post-op care, uroflows, cystometrogram, and LLP; set-up vasectomy trays, I & Ds, circumcision trays, etc.; set-up TRUS and cysto rooms and assists doctors with procedures; charts patient information; performs injections; runs PSAs and maintains the machine; performs CMGs, bladder scans, and BCGs mixing. We were informed by your office that the training requirement for this position is one year of specialized training at a junior college, and certification by the State of Florida.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity as those terms are defined in the enclosed Regulations, 29 CFR Part 541. An employee will qualify for exemption as a bona fide professional employee if all the pertinent tests relating to duties, responsibilities, and salary are met. (See section 541.3(a)(1) of the Regulations.)

One of the tests for professional status under section 541.3(a)(1) requires that the employee's primary duty consists of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.

A "prolonged course of . . . study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes a longer intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. A "longer intellectual discipline in a particular course of study" means the equivalent of four academic years of pre-professional and professional study in an accredited university or college.

The work in question does not require a bachelor's degree and, in fact, only requires one year of training at a junior college. Work that can be performed by an employee with education and training which is less than that required for a bachelor's degree would not be work of a bona fide professional level within the meaning of the Regulations. It is, therefore, our opinion that the medical assistant would not qualify as a bona fide professional employee, as discussed in section 541.3, since the primary duty does not consist of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as required by the Regulations. Consequently, the employee must be paid in accordance with the minimum wage and overtime pay provisions of the FLSA.

*2 We trust that the above information is responsive to your request. If we can be of further assistance, please let us know.

Sincerely,

John R. Fraser
Acting Administrator

1998 WL 852713 (DOL WAGE-HOUR)

End of Document

1997 WL 998018 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion LetterFair Labor Standards Act (FLSA)

June 30, 1997

***

*1 This is in reply to your letter of January 13 requesting an opinion as to whether licensed veterinary technicians (LVTs) are exempt professional employees under section 13(a)(1) of the Fair Labor Standards Act (FLSA).

You indicate that you employ licensed veterinary technicians who attend a minimum of two years college and are licensed by the State of New York to perform various medical procedures.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity. In order to qualify for exemption under section 13(a)(1), an employee must meet all the pertinent tests relating to duties, responsibilities, and salary as contained in Regulations, 29 CFR Part 541. One of the tests for professional status under section 541.3(a)(1) requires that the employee perform work which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. For example, the professions of law, medicine, nursing, and theology have been traditionally recognized as professional within the meaning of section 541.3, since such professions require a prolonged course of specialized intellectual instruction. See section 541.301 and 541.302. Further examples of professions meeting the requirement for a prolonged course of specialized intellectual instruction and study are given in section 541.301(e)(1).

A "prolonged course of ... study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes an intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. Work which can be performed by employees with education and training which is less than that required for a bachelor's degree would not be work of a bona fide professional level within the meaning of the regulations.

It is clear that veterinary technician work involves primarily the use of skills and procedures which do not require four years of college or university training to obtain a degree in a professional discipline. The information provided suggests that the LVTs are best characterized as skilled nonexempt technicians. Therefore, it is our opinion that the LVTs do not meet the requirements in Regulation 541.3 for exemption as a professional employee. As a result these employees would be subject to both the minimum wage and overtime requirements of the FLSA and should be paid accordingly.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

*2 We trust that this satisfactorily responds to your inquiry.
Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy Fair Labor Standards Team

1997 WL 998018 (DOL WAGE-HOUR)

End of Document

U.S. Department of Labor
Wage and Hour Division

Important information regarding recent overtime litigation in the U.S. District Court of Eastern District of Texas.

U.S. Wage and Hour Division
(Revised July 2008)

Fact Sheet #23: Overtime Pay Requirements of the FLSA

This fact sheet provides general information concerning the application of the overtime pay provisions of the FLSA.

Characteristics

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

Requirements

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the minimum wage. The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions noted above) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. In addition, section 7(g)(2) of the FLSA allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. The requirements for computing overtime pay pursuant to section 7(g)(2) are prescribed in 29 CFR 778.415 through 778.421.

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

Typical Problems

Fixed Sum for Varying Amounts of Overtime: A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of $180 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is $12.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at $13.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire $78.00 must be included in determining the employees' regular rate.

Salary for Workweek Exceeding 40 Hours: A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of $405. In this instance the regular rate is obtained by dividing the $405 straight-time salary by 45 hours, resulting in a regular rate of $9.00. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ($4.50 x 5 = $22.50).

Overtime Pay May Not Be Waived: The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

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.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division
(Revised July 2008)

Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA)

This fact sheet provides a summary of the FLSA's recordkeeping regulations, 29 CFR Part 516.

Records To Be Kept By Employers

Highlights: The FLSA sets minimum wage, overtime pay, recordkeeping, and youth employment standards for employment subject to its provisions. Unless exempt, covered employees must be paid at least the minimum wage and not less than one and one-half times their regular rates of pay for overtime hours worked.

Posting: Employers must display an official poster outlining the provisions of the Act, available at no cost from local offices of the Wage and Hour Division and toll-free, by calling 1-866-4USWage (1-866-487-9243). This poster is also available electronically for downloading and printing at http://www.dol.gov/osbp/sbrefa/poster/main.htm.

What Records Are Required: Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the basic records that an employer must maintain:

1. Employee's full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee's workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee's wages are paid (e.g., "$9 per hour", "$440 a week", "piecework")
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee's wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

How Long Should Records Be Retained: Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by the Division's representatives, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

What About Timekeeping: Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

The following is a sample timekeeping format employers may follow but are not required to do so:

DAY	DATE	IN	OUT	TOTAL HOURS
Sunday	6/3/07	--------	--------	--------
Monday	6/4/07	8:00am	12:02pm	
		1:00pm	5:03pm	8
Tuesday	6/5/07	7:57am	11:58am	
		1:00pm	5:00pm	8
Wednesday	6/6/07	8:02am	12:10pm	
		1:06pm	5:05pm	8
Thursday	6/7/07	--------	--------	--------
Friday	6/8/07	--------	--------	--------
Saturday	6/9/07	--------	--------	--------
Total Workweek Hours:				**24**

Employees on Fixed Schedules: Many employees work on a fixed schedule from which they seldom vary. The employer may keep a record showing the exact schedule of daily and weekly hours and merely indicate that the worker did follow the schedule. When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer must record the number of hours the worker actually worked, on an exception basis.

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.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
Contact Us

Fact Sheet #73: Break Time for Nursing Mothers under the FLSA

This fact sheet provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act ("PPACA"), which took effect when the PPACA was signed into law on March 23, 2010 (P.L. 111-148). This law amended Section 7 of the Fair Labor Standards Act (FLSA).

General Requirements

Employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt State laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond 1 year after the child's birth).

Time and Location of Breaks

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

Coverage and Compensation

Only employees who are not exempt from section 7, which includes the FLSA's overtime pay requirements, are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies. *See* WHD Fact Sheet #22, Hours Worked under the FLSA.

FLSA Prohibitions on Retaliation

Section 15(a)(3) of the FLSA states that it is a violation for any person to "discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee."

Employees are protected regardless of whether the complaint is made orally or in writing. Complaints made to the Wage and Hour Division are protected, and most courts have ruled that internal complaints to an employer are also protected.

Any employee who is "discharged or in any other manner discriminated against" because, for instance, he or she has filed a complaint or cooperated in an investigation, may file a retaliation complaint with the Wage and Hour Division or may file a private cause of action seeking appropriate remedies including, but not limited to, employment, reinstatement, lost wages and an additional equal amount as liquidated damages.

Additional Resources

- Request for Information on Break Time for Nursing Mothers, Federal Register 75: 80073-80079, (2010, December 21): This notice is a request for information from the public regarding the recent amendment to the FLSA that requires employers to provide reasonable break time and a place for nursing mothers to express breast milk for one year after the child's birth. The Department seeks information and comments for its review as it considers how best to help employers and employees understand the requirements of the law.

- Questions and Answers about the Request for Information

- Presidential Memorandum for the Director of the Office of Personnel Management

- OPM Guidance on Nursing Mothers in the Federal Workforce

- Supporting Nursing Moms at Work: Employer Solutions
- CDC Healthier Worksite Initiative, Workplace Lactation Support Program Toolkit
- EEOC Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities
- National Conference of State Legislatures Compilation of State Breastfeeding Laws
- U.S. Breastfeeding Committee, Workplace Support and Coalitions Directory
- International Lactation Consultants Association, Worksite Lactation Support Directory
- The Surgeon General's Call to Action to Support Breastfeeding

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).**

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Contact Us

OSHA® FactSheet

Hepatitis B Vaccination Protection

Hepatitis B virus (HBV) is a pathogenic microorganism that can cause potentially life-threatening disease in humans. HBV infection is transmitted through exposure to blood and other potentially infectious materials (OPIM), as defined in the OSHA Bloodborne Pathogens standard, 29 CFR 1910.1030.

Any workers who have reasonably anticipated contact with blood or OPIM during performance of their jobs are considered to have occupational exposure and to be at risk of being infected. Workers infected with HBV face a risk for liver ailments which can be fatal, including cirrhosis of the liver and primary liver cancer. A small percentage of adults who get hepatitis B never fully recover and remain chronically infected. In addition, infected individuals can spread the virus to others through contact with their blood and other body fluids.

An employer must develop an exposure control plan and implement use of universal precautions and control measures, such as engineering controls, work practice controls, and personal protective equipment to protect all workers with occupational exposure. In addition, employers must make hepatitis B vaccination available to these workers. Hepatitis B vaccination is recognized as an effective defense against HBV infection.

HBV Vaccination

The standard requires employers to offer the vaccination series to all workers who have occupational exposure. Examples of workers who may have occupational exposure include, but are not limited to, healthcare workers, emergency responders, morticians, first-aid personnel, correctional officers and laundry workers in hospitals and commercial laundries that service healthcare or public safety institutions. The vaccine and vaccination must be offered at no cost to the worker and at a reasonable time and place.

The hepatitis B vaccination is a non-infectious, vaccine prepared from recombinant yeast cultures, rather than human blood or plasma. There is no risk of contamination from other bloodborne pathogens nor is there any chance of developing HBV from the vaccine.

The vaccine must be administered according to the recommendations of the U.S. Public Health Service (USPHS) current at the time the procedure takes place. To ensure immunity, it is important for individuals to complete the entire course of vaccination contained in the USPHS recommendations.

The great majority of those vaccinated will develop immunity to the hepatitis B virus. The vaccine causes no harm to those who are already immune or to those who may be HBV carriers. Although workers may desire to have their blood tested for antibodies to see if vaccination is needed, employers cannot make such screening a condition of receiving vaccination and employers are not required to provide prescreening.

Employers must ensure that all occupationally exposed workers are trained about the vaccine and vaccination, including efficacy, safety, method of administration, and the benefits of vaccination. They also must be informed that the vaccine and vaccination are offered at no cost to the worker. The vaccination must be offered after the worker is trained and within 10 days of initial assignment to a job where there is occupational exposure, unless the worker has previously received the vaccine series, antibody testing has revealed that the worker is immune, or the vaccine is contraindicated for medical reasons. The employer must obtain a written opinion from the licensed healthcare professional within 15 days of the completion of the evaluation for vaccination. This written opinion is limited to whether hepatitis B vaccination is indicated for the worker and if the worker has received the vaccination.

Declining the Vaccination

Employers must ensure that workers who decline vaccination sign a declination form. The purpose of this is to encourage greater participation in the vaccination program by stating that a worker declining the vaccination remains at risk of acquiring hepatitis B. The form also states that if a worker initially declines to receive the vaccine, but at a later date decides to accept it, the employer is required to make it available, at no cost, provided the worker is still occupationally exposed.

Additional Information

For more information, go to OSHA's Bloodborne Pathogens and Needlestick Prevention Safety and Health Topics web page at: https://www.osha.gov/SLTC/bloodbornepathogens/index.html.

To file a complaint by phone, report an emergency, or get OSHA advice, assistance, or products, contact your nearest OSHA office under the "U.S. Department of Labor" listing in your phone book, or call us toll-free at (800) 321-OSHA (6742).

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.

DSG 1/2011

A Guide to Restroom Access for Transgender Workers

Core principle: All employees, including transgender employees, should have access to restrooms that correspond to their gender identity.

Introduction

The Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) requires that all employers under its jurisdiction provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them. This publication provides guidance to employers on best practices regarding restroom access for transgender workers. OSHA's goal is to assure that employers provide a safe and healthy working environment for *all* employees.

Understanding Gender Identity

In many workplaces, separate restroom and other facilities are provided for men and women. In some cases, questions can arise in the workplace about which facilities certain employees should use. According to the Williams Institute at the University of California-Los Angeles, an estimated 700,000 adults in the United States are *transgender*—meaning their internal *gender identity* is different from the sex they were assigned at birth (e.g., the sex listed on their birth certificate). For example, a *transgender man* may have been assigned female at birth and raised as a girl, but identify as a man. Many transgender people *transition* to live their everyday life as the gender they identify with. Thus, a transgender man may transition from living as a woman to living as a man. Similarly, a *transgender woman* may be assigned male at birth, but transition to living as a woman consistent with her gender identity. Transitioning is a different process for everyone—it may involve social changes (such as going by a new first name), medical steps, and changing identification documents.

Why Restroom Access Is a Health and Safety Matter

Gender identity is an intrinsic part of each person's identity and everyday life. Accordingly, authorities on gender issues counsel that it is essential for employees to be able to work in a manner consistent with how they live the rest of their daily lives, based on their gender identity. Restricting employees to using only restrooms that are not consistent with their gender identity, or segregating them from other workers by requiring them to use gender-neutral or other specific restrooms, singles those employees out and may make them fear for their physical safety. Bathroom restrictions can result in employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.

OSHA's Sanitation Standard

Under OSHA's Sanitation standard (1910.141), employers are required to provide their employees with toilet facilities. This standard is intended to protect employees from the health effects created when toilets are not available. Such adverse effects include urinary tract infections and bowel and bladder problems. OSHA has consistently interpreted this standard to require employers to allow employees prompt access to sanitary facilities. Further, employers may not impose unreasonable restrictions on employee use of toilet facilities.

Model Practices for Restroom Access for Transgender Employees

Many companies have implemented written policies to ensure that *all* employees—including transgender employees—have prompt access to appropriate sanitary facilities. The core belief underlying these policies is that all employees should be permitted to use the facilities that correspond with their gender identity. For example, a person who identifies as a man should be permitted to use men's restrooms, and a person who identifies as a woman should be permitted to use women's restrooms. The employee should determine the most appropriate and safest option for him- or herself.

The best policies also provide additional options, which employees may choose, but are not required, to use. These include:

- Single-occupancy gender-neutral (unisex) facilities; and
- Use of multiple-occupant, gender-neutral restroom facilities with lockable single occupant stalls.

Regardless of the physical layout of a worksite, all employers need to find solutions that are safe and convenient and respect transgender employees.

Under these best practices, employees are not asked to provide any medical or legal documentation of their gender identity in order to have access to gender-appropriate facilities. In addition, no employee should be required to use a segregated facility apart from other employees because of their gender identity or transgender status. Under OSHA standards, employees generally may not be limited to using facilities that are an unreasonable distance or travel time from the employee's worksite.

Other Federal, State and Local Laws

Employers should be aware of specific laws, rules, or regulations regarding restroom access in their states and/or municipalities, as well as the potential application of federal anti-discrimination laws.

The Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), DOL, and several other federal agencies, following several court rulings, have interpreted prohibitions on sex discrimination, including those contained in Title VII of the *Civil Rights Act of 1964*, to prohibit employment discrimination based on gender identity or transgender status. In April 2015, the DOL's Office of Federal Contract Compliance Programs (OFCCP) announced it would require federal contractors subject to Executive Order 11246, as amended, which prohibits discrimination based on both sex and gender identity, to allow transgender employees to use the restrooms and other facilities consistent with their gender identity. Also in April 2015, the EEOC ruled that a transgender employee cannot be denied access to the common restrooms used by other employees of the same gender identity, regardless of whether that employee has had any medical procedure or whether other employees' may have negative reactions to allowing the employee to do so. The EEOC held that such a denial of access constituted direct evidence of sex discrimination under Title VII.

The following is a sample of state and local legal provisions, all reaffirming the core principle that employees should be allowed to use the restrooms that correspond to their gender identity.

Colorado: Rule 81.9 of the Colorado regulations requires that employers permit their employees to use restrooms appropriate to their gender identity rather than their assigned gender at birth without being harassed or questioned. 3 CCR 708-1-81.9 (revised December 15, 2014), available at http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251629367483.

For more information refer to: "Sexual Orientation & Transgender Status Discrimination—Employment, Housing & Public Accommodations," Colorado Civil Rights Division, available at: http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251631542607.

Delaware: Guidance from the Delaware Department of Human Resource Management provides Delaware state employees with access to restrooms that correspond to their gender identity. The guidance was issued pursuant to the state's gender identity nondiscrimination law.

Delaware's policy also suggests: Whenever practical, a single stall or gender-neutral restroom may be provided, which all employees may utilize.

However, a transgender employee will not be compelled to use only a specific restroom unless all other co-workers of the same gender identity are compelled to use only that same restroom.

For more information refer to: State of Delaware Guidelines on Equal Employment Opportunity and Affirmative Action Gender Identity, available at: http://www.delawarepersonnel.com/policies/documents/sod-eeoc-guide.pdf.

District of Columbia: Rule 4-802 of the D.C. Municipal Regulations prohibits discriminatory practices in regard to restroom access. Individuals have the right to use facilities consistent with their gender identity. In addition, single-stall restrooms must have gender-neutral signage. D.C. Municipal Regulations 4-802, "Restrooms and Other Gender Specific Facilities," available at: http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=4-802.

Iowa: The Iowa Civil Rights Commission requires that employers allow employees access to restrooms in accordance with their gender identity, rather than their assigned sex at birth.

For more information refer to: "Sexual Orientation & Gender Identity – An Employer's Guide to Iowa Law Compliance," Iowa Civil Rights Commission, available at: https://icrc.iowa.gov/sites/files/civil_rights/publications/2012/SOGIEmpl.pdf.

Vermont: The Vermont Human Rights Commission requires that employers permit employees to access bathrooms in accordance with their gender identity.

For more information refer to: "Sex, Sexual Orientation, and Gender Identity: A Guide to Vermont's Anti-Discrimination Law for Employers and Employees," Vermont Human Rights Commission, available at: http://hrc.vermont.gov/sites/hrc/files/pdfs/other%20reports/trans%20employment%20brochure%207-13-12.pdf.

Washington: The Washington State Human Rights Commission requires employers that maintain gender-specific restrooms to permit transgender employees to use the restroom that is consistent with their gender identity. Where single occupancy restrooms are available, the Commission recommends that they be designated as "gender neutral."

For more information refer to: "Guide to Sexual Orientation and Gender Identity and the Washington State Law Against Discrimination," available at: http://www.hum.wa.gov/Documents/Guidance/GuideSO20140703.pdf.

Additional Information

- American Psychological Association. Answers to your questions about transgender people, gender identity and gender expression, 2011: http://www.apa.org/topics/lgbt/transgender.aspx.
- Transgender Law Center's model employer policy, with an extensive section on restrooms, can be found at: http://transgenderlawcenter.org/wp-content/uploads/2013/12/model-workplace-employment-policy-Updated.pdf.
- "Restroom Access for Transgender Employees" on Human Rights Campaign website: http://www.hrc.org/resources/entry/restroom-access-for-transgender-employees.
- National Gay and Lesbian Task Force and the National Center for Transgender Equality. National Transgender Discrimination Survey, 2011: http://endtransdiscrimination.org/report.html.

How OSHA Can Help

OSHA has a great deal of information to assist employers in complying with their responsibilities under the law. Information on OSHA requirements and additional health and safety information, including information on OSHA's Sanitation standard, is available on the agency's website (www.osha.gov).

Workers have a right to a safe workplace (www.osha.gov/workers.html#2). The law requires employers to provide their employees with working conditions that are free of known dangers. An employer's duty to provide a safe workplace includes the duty to provide employees with toilet facilities that are sanitary and available, so that employees can use them when they need to do so. Employers also have a duty to protect all

their employees, regardless of whether they are transgender, from any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. For more information on workplace violence, please see OSHA's website at: www.osha.gov/SLTC/workplaceviolence.

Workers who believe that they have been exposed to a hazard or who just have a question should contact OSHA. For example, workers may file a complaint to have OSHA inspect their workplace if they believe that their workplace is unsafe or that their employer is not following OSHA standards. Just contact OSHA at: 1-800-321-OSHA (6742), or visit www.osha.gov. Complaints that are signed by an employee are more likely to result in an on-site inspection. It's confidential. We can help.

The *Occupational Safety and Health Act* (OSH Act) prohibits employers from retaliating against their employees for exercising their rights under the OSH Act. These rights include raising a workplace health and safety concern with the employer, reporting an injury or illness, filing an OSHA complaint, and participating in an inspection or talking to an inspector. If workers have been retaliated against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged adverse action. For more information, please visit www.whistleblowers.gov.

OSHA can also help answer questions or concerns from employers. To reach your closest OSHA regional or area office, go to OSHA's Regional and Area Offices webpage (www.osha.gov/html/RAmap.html) or call 1-800-321-OSHA (6742). OSHA also provides free, confidential on-site assistance and advice to small and medium-sized employers in all states across the country, with priority given to high-hazard worksites. On-site Consultation services are separate from enforcement activities and do not result in penalties or citations. To contact OSHA's free consultation program, or for additional compliance assistance, call OSHA at 1-800-321-OSHA (6742).

References:

Department of Labor, Office of Federal Contract Compliance Programs, 2015. "Frequently Asked Questions EO 13672 Final Rule", available at: http://www.dol.gov/ofccp/lgbt/lgbt_faqs.html#Q35.

National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011 at 56 (noting that only 22% of transgender people have been denied access to gender-appropriate restrooms), available at: http://endtransdiscrimination.org/report.html.

Gates, Gary J., How many people are lesbian, gay, bisexual, and transgender? Williams Institute, UCLA School of Law, 2011. Retrieved 5/18/2015 from: http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf.

Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011 at 56 (noting that only 22% of transgender people have been denied access to gender-appropriate restrooms), available at: http://endtransdiscrimination.org/report.html.

Lusardi v. McHugh, EEOC Appeal No. 0120133395 (Apr. 1, 2015), available at: http://transgenderlawcenter.org/wp-content/uploads/2015/04/EEOC-Lusardi-Decision.pdf.

Macy v. Holder, EEOC Appeal No. 0120120821 (2012); Attorney General Memorandum, Treatment of Transgender Employment Discrimination Claims (Dec. 15, 2015). Retrieved 5/18/2015 from: http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf.

Memorandum to Regional Administrators and State Designees of the Occupational Safety and Health Administration on the Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities (Apr. 6, 1998), available at: www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932.

OSHA®

Occupational Safety and Health Administration

OSHA 3795-2015

Notice to Employees
Minimum Wage in Florida

The 2019 minimum wage in Florida is $8.46 per hour, effective January 1, 2019, with a minimum wage of at least $5.44 per hour for tipped employees, in addition to tips.

The minimum wage rate is recalculated yearly on September 30, based on the Consumer Price Index.

An employer may not retaliate against an employee for exercising his or her right to receive the minimum wage. Rights protected by the State Constitution include the right to:

1. File a complaint about an employer's alleged noncompliance with lawful minimum wage requirements.
2. Inform any person about an employer's alleged noncompliance with lawful minimum wage requirements.
3. Inform any person of his or her potential rights under Section 24, Article X of the State Constitution and to assist him or her in asserting such rights.

An employee who has not received the lawful minimum wage after notifying his or her employer and giving the employer 15 days to resolve any claims for unpaid wages may bring a civil action in a court of law against an employer to recover back wages plus damages and attorney's fees.

An employer found liable for intentionally violating minimum wage requirements is subject to a fine of $1,000 per violation, payable to the state. The Attorney General or other official designated by the Legislature may bring a civil action to enforce the minimum wage.

For details, see Section 24, Article X of the State Constitution and Section 448.110, Florida Statutes.

YOUR RIGHTS UNDER USERRA
THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.

- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.

- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its website at **http://www.dol.gov/vets**. An interactive online USERRA Advisor can be viewed at **http://www.dol.gov/elaws/userra.htm**.

- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.

- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: **http://www.dol.gov/vets/programs/userra/poster.htm**. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.

U.S. Department of Labor
1-866-487-2365

U.S. Department of Justice

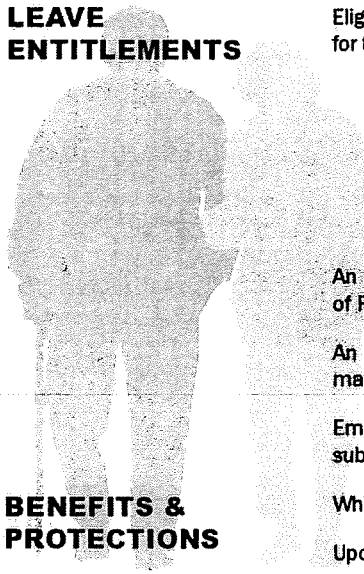
Office of Special Counsel

1-800-336-4590

Publication Date — April 2017

EMPLOYEE RIGHTS
UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION



LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

BENEFITS & PROTECTIONS

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

EMPLOYEE RIGHTS

UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE

$7.25 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

OVERTIME PAY

At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR

An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain work hours restrictions. Different rules apply in agricultural employment.

TIP CREDIT

Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least $2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least $2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

NURSING MOTHERS

The FLSA requires employers to provide reasonable break time for a nursing mother employee who is subject to the FLSA's overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child's birth each time such employee has a need to express breast milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

ENFORCEMENT

The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Heightened civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some state laws provide greater employee protections; employers must comply with both.
- Some employers incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay protections and correctly classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

WHD
WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd

Equal Employment Opportunity is
THE LAW

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN
Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES
Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS
The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION
Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX
In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES
Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

U.S. Department of Labor

OSHA®
Occupational Safety and Health Administration

Job Safety and Health
IT'S THE LAW!

All workers have the right to:

- A safe workplace.
- Raise a safety or health concern with your employer or OSHA, or report a work-related injury or illness, without being retaliated against.
- Receive information and training on job hazards, including all hazardous substances in your workplace.
- Request an OSHA inspection of your workplace if you believe there are unsafe or unhealthy conditions. OSHA will keep your name confidential. You have the right to have a representative contact OSHA on your behalf.
- Participate (or have your representative participate) in an OSHA inspection and speak in private to the inspector.
- File a complaint with OSHA within 30 days (by phone, online or by mail) if you have been retaliated against for using your rights.
- See any OSHA citations issued to your employer.
- Request copies of your medical records, tests that measure hazards in the workplace, and the workplace injury and illness log.

This poster is available free from OSHA.

Employers must:

- Provide employees a workplace free from recognized hazards. It is illegal to retaliate against an employee for using any of their rights under the law, including raising a health and safety concern with you or with OSHA, or reporting a work-related injury or illness.
- Comply with all applicable OSHA standards.
- Report to OSHA all work-related fatalities within 8 hours, and all inpatient hospitalizations, amputations and losses of an eye within 24 hours.
- Provide required training to all workers in a language and vocabulary they can understand.
- Prominently display this poster in the workplace.
- Post OSHA citations at or near the place of the alleged violations.

FREE ASSISTANCE to identify and correct hazards is available to small and medium-sized employers, without citation or penalty, through OSHA-supported consultation programs in every state.

Contact OSHA. We can help.

FLORIDA DEPARTMENT OF REVENUE

RT-83
R. 04/15

To Employees:

- **Your Employer** is registered with the Florida Department of Revenue as an employer who is liable under the Florida Reemployment Assistance Program* Law. This means that **You**, as employees, are covered by the Reemployment Assistance Program.
- **Reemployment taxes** finance the benefits paid to eligible unemployed workers. **Those taxes are paid by your employer and, by law, cannot be deducted from employee's wages.**
- You may be eligible to receive unemployment compensation benefits if you meet the following requirements:

    1. You must be totally or partially unemployed through no fault of your own.
    2. You must register for work and file a claim.
    3. You must have sufficient employment and wages.
    4. You must be **Able** to work and **Available** for work.

- You may file a claim for partial unemployment for any week you work less than full time due to lack of work if your wages during that week are less than your weekly benefit amount.
- You must report all earnings while claiming benefits. Failure to do so is a third degree felony with a maximum penalty of 5 years imprisonment and a $5,000 fine.
- Any employee who is discharged for misconduct connected with work may be disqualified from 1 to 52 weeks and until the worker has earned in new work, at least 17 times the weekly benefit amount of his or her claim.
- Any employee who voluntarily quits a job without good cause attributable to the employer, may be disqualified until the worker has earned in new work, at least 17 times the weekly benefit amount of his or her claim.
- If you have any questions regarding filing a claim for reemployment assistance benefits, call the Department of Economic Opportunity, Reemployment Assistance Program at 800-204-2418 or visit the website: **www.floridajobs.org**

Department of Economic Opportunity
Division of Workforce Services
Reemployment Assistance Program
MSC 229
107 East Madison Street
Tallahassee, Florida 32399-4135

This notice must be posted in accordance with Section 443.151(1) Florida Statutes, of the Florida Reemployment Assistance Program Law.

*Formerly Unemployment Compensation Program

IRS

Understanding Employee vs. Contractor Designation

FS-2017-09, July 20, 2017

The Internal Revenue Service reminds small businesses of the importance of understanding and correctly applying the rules for classifying a worker as an employee or an independent contractor. For federal employment tax purposes, a business must examine the relationship between it and the worker. The IRS Small Business and Self-Employed Tax Center on the IRS website offers helpful resources.

Worker classification is important because it determines if an employer must withhold income taxes and pay Social Security, Medicare taxes and unemployment tax on wages paid to an employee. Businesses normally do not have to withhold or pay any taxes on payments to independent contractors. The earnings of a person working as an independent contractor are subject to self-employment tax.

The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work, not *what* will be done and *how* it will be done. Small businesses should consider all evidence of the degree of control and independence in the employer/worker relationship. Whether a worker is an independent contractor or employee depends on the facts in each situation.

Help with Deciding

To better determine how to properly classify a worker, consider these three categories – Behavioral Control, Financial Control and Relationship of the Parties.

Behavioral Control: A worker is an employee when the business has the right to direct and control the work performed by the worker, even if that right is not exercised. Behavioral control categories are:

- Type of instructions given, such as when and where to work, what tools to use or where to purchase supplies and services. Receiving the types of instructions in these examples may indicate a worker is an employee.
- Degree of instruction, more detailed instructions may indicate that the worker is an employee. Less detailed instructions reflects less control, indicating that the worker is more likely an independent contractor.
- Evaluation systems to measure the details of how the work is done points to an employee. Evaluation systems measuring just the end result point to either an independent contractor or an employee.
- Training a worker on how to do the job -- or periodic or on-going training about procedures and methods -- is strong evidence that the worker is an employee. Independent contractors ordinarily use their own methods.

Financial Control: Does the business have a right to direct or control the financial and business aspects of the worker's job? Consider:

- Significant investment in the equipment the worker uses in working for someone else.
- Unreimbursed expenses, independent contractors are more likely to incur unreimbursed expenses than employees.
- Opportunity for profit or loss is often an indicator of an independent contractor.
- Services available to the market. Independent contractors are generally free to seek out business opportunities.
- Method of payment. An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time even when supplemented by a commission. However, independent contractors are most often paid for the job by a flat fee.

Relationship: The type of relationship depends upon how the worker and business perceive their

interaction with one another. This includes:

- Written contracts which describe the relationship the parties intend to create. Although a contract stating the worker is an employee or an independent contractor is not sufficient to determine the worker's status.
- Benefits. Businesses providing employee-type benefits, such as insurance, a pension plan, vacation pay or sick pay have employees. Businesses generally do not grant these benefits to independent contractors.
- The permanency of the relationship is important. An expectation that the relationship will continue indefinitely, rather than for a specific project or period, is generally seen as evidence that the intent was to create an employer-employee relationship.
- Services provided which are a key activity of the business. The extent to which services performed by the worker are seen as a key aspect of the regular business of the company.

Consequences of Misclassifying an Employee

Classifying an employee as an independent contractor with no reasonable basis for doing so makes employers liable for employment taxes. Certain employers that can provide a reasonable basis for not treating a worker as an employee may have the opportunity to avoid paying employment taxes. See Publication 1976, Section 530, Employment Tax Relief Requirements for more information.

In addition, the Voluntary Classification Settlement Program (VCSP) offers certain eligible businesses the option to reclassify their workers as employees with partial relief from federal employment taxes.

The IRS can help employers determine the status of their workers by using Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. IRS Publication 15-A, Employer's Supplemental Tax Guide, is also an excellent resource.

Workers who believe an employer improperly classified them as independent contractors can use Form 8919 to figure and report the employee's share of uncollected Social Security and Medicare taxes due on their compensation.

The IRS Small Business and Self-Employed Tax Center provides a multitude of resources for small businesses as well as self-employed independent contractors.

Additional Resources:

- Publication 15-A, Employer's Supplemental Tax Guide
- Form 1040-ES, Estimated Tax for Individuals
- Publication 505, Tax Withholding and Estimated Tax
- Publication 535, Business Expenses
- For information on eligibility for a voluntary program to reclassify workers as employees with partial relief from federal employment taxes, visit Voluntary Classification Settlement Program (VCSP).

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