



Fair Labor Standards Act (FLSA)

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Disclaimer

The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.

Finally, this presentation is current as of the date of this presentation, and the information contained herein is subject to change.



FLSA – The Fair Labor Standards Act

What is it?

How it affects
employers?

FLSA Basics

Minimum Wage

Overtime

Classification of
Employees

Retention of Wage
Records

Child Labor
Restrictions

Equal Pay for Equal
Work

DOL Wage & Hour Rulings (May 2021)

- ▲ • Tampa home healthcare service pays more than \$45K in back wages to 38 workers after US Department of Labor investigation reveals violations
- US Department of Labor finds Jackson security business willfully violated wage laws, recovers \$68K in back wages
- US Department of Labor investigation finds Tennessee contractor violated child labor laws related to teenage worker's fatal fall
- Detroit contractor pays \$82K in back wages, fringe benefits to 19 laborers after US Department of Labor finds federal violations
- US Department of Labor secures judgment requiring Southern California logistics company to pay \$122K in overtime back wages, damages, penalties
- US Department of Labor recovers more than \$150K in wages after investigation finds federal contractor failed to pay employees properly
- US Department of Labor recovers more than \$530K in back wages after investigation finds Florida employer missed multiple payrolls
- US Department of Labor secures court order requiring Tennessee disaster relief company and officer to pay \$87K in back wages and damages to employees who worked in US Virgin Islands
- US Department of Labor investigation finds Orange County assisted-living facilities operator shorted workers' pay
- US Department of Labor recovers more than \$33K in back wages for 22 workers at Florida home healthcare service
- Los Angeles garment contractor to pay back wages, penalties after US Department of Labor finds overtime violations
- US Department of Labor recovers \$36K in back wages for Fort Myers' grocery store workers after investigation finds overtime violations
- US Department of Labor recovers \$39K for 31 employees of Franklin area lawn care company

Common FLSA Mistakes

- *Miscalculating Overtime*
- *Failing to count work time properly*
 - *Meal & Rest Breaks*
 - *Travel & Training Time*
- **Wage Deduction & Reductions**
- **Properly identifying Exempt vs. Non-Exempt Employees**
- **Misclassification of employees as independent contractors**
- **Maintaining accurate and complete records (3 yrs. back)**

FLSA – Regular Workweek



**ANY REGULARLY RECURRING PERIOD OF
7 CONSECUTIVE 24-HOUR PERIODS. 29
CFR SEC. 778.105**



**MAY BEGIN ON ANY DAY AND AT ANY
HOUR OF THE DAY. 29 CFR SEC. 778.105**



**BUT ANY WORKWEEK CHANGE MUST BE
INTENDED TO BE PERMANENT. 29 CFR
SEC. 778.105**

FLSA Safe Harbor Policy

Correctly accounting for
work time

When wage reductions
can be made

Issues & Concerns

Exempt vs Non-Exempt



Exempt Employees



SALARY TEST



DUTIES TEST

Step 1: Salary Basis Test

Is the employee paid at least \$684 per week (effective Jan. 1, 2020) not subject to reduction due to variations in quantity/quality of work performed?

There are some limited exceptions to the salary basis requirement.



Step 2: Exemption Applicability

Does the employee perform any of the following types of jobs?

- Executive** – management is the employee’s primary duty
- Administrative** – employee performing nonmanual office work
- Professional/creative** – employee whose work requires highly advanced knowledge/education; creative and artistic professional
- Computer Professional** – employee involved in design or application of computers and related systems
- Outside Sales** – employee making sales or taking orders which influence sales outside of the employer’s premises

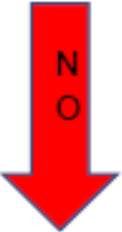


Step 3: Job Analysis

A thorough analysis of the job duties must be performed to determine exempt status. An exempt position must pass both the salary basis and the duties tests.



Employee is Non-Exempt



Employee is Non-Exempt

Pay Exempt Employees Correctly

You will receive your full salary for any workweek in which work is performed. However, under federal law, your salary is subject to certain deductions. For example, absent contrary state law requirements, your salary CAN be reduced for the following reasons in a workweek in which work was performed:

- Full day absences for personal reasons, including vacation.
- Full day absences for sickness or disability, since we have a sick day pay plan and short-term disability insurance plan.
- Full day disciplinary suspensions for infractions of safety rules of major significance (including those that could cause serious harm to others).
- Family and Medical Leave absences (either full or partial day absences).
- To offset amounts received as payment for jury and witness fees or military pay.
- Unpaid disciplinary suspensions of one or more full days for significant infractions of major workplace conduct rules set forth in written policies.
- The first or last week of employment in the event you work less than a full week.

Your salary also may be reduced for certain types of deductions, such as: your portion of health, dental or life insurance premiums; state, federal or local taxes, social security; or voluntary contributions to a 401(k) or pension plan. In any workweek in which you performed any work, your salary WILL NOT be reduced for any of the following reasons:

- Partial day absences for personal reasons, sickness or disability.
- Your absence because the facility is closed on a scheduled workday.
- Absences for jury duty, attendance as a witness, or military leave in any week in which you have performed any work.
- Any other deductions prohibited by state or federal law.



Employee
VS
Independent
Contractor (IC)



Independent Contractor Relationship

Employer Does NOT Pay:

- Employer share of Social Security and Medicare Taxes;
- Unemployment Taxes;
- Overtime;
- Workers' Compensation Premiums;
- Employee Benefits

Worker NOT Entitled to Make Discrimination Claims.

Employee vs Independent Contractor Tests

**Economic Realities
Test (FLSA)**

IRS Control Tests

**Common law 12
Significant Factors
– ERISA for benefit
determination**

**EEOC Guidance for
applicability of
discrimination
laws**

Classification of W2 Employees & 1099 Independent Contractors

There are major differences between these two types of workers, and classifying them properly with the IRS is important; otherwise, an organization could face costly fines and penalties from the IRS, or even a lawsuit against an organization.

Many organizations mistakenly believe that they have some freedom in determining how to classify their workers, but this just isn't the case. If an organization pays a worker who should be an employee as an independent contractor—and have no basis for it—the organization might be held liable for employment taxes for that worker along with interest and penalties.

The IRS considers three major categories in determining whether workers are employees or independent contractors:

1. Behavioral – Can your business control what, where, how, and when the worker carries out their job?
2. Financial – Who controls the economic aspects of the worker's job? What's the method of payment (e.g. a regular salary or a flat fee)?
3. Type of relationship – Do you provide this worker with employee benefits? What are the length and terms of this relationship, as outlined in a contract, employment agreement, other documentation?

The DOL has produced the following video: <https://www.youtube.com/watch?v=BTUkKFYBdrU>

W2 Employees

1099 Workers

Earnings: Employees submit time records and are paid in accordance with FLSA regulations; Minimum Wage and Overtime regulatory implications	Earnings: Independent Contractors typically work and receive payment in accordance to the terms of a signed agreement between the parties; services billed via an invoice; they pay their own taxes; and FLSA regulations including minimum wage is not applicable
Tax Withholdings: The organization is responsible for withholding taxes, including income tax, social security tax, and Medicare tax from an employee's paycheck (including unemployment taxes as part of the state payroll taxes)	Tax Withholdings: An Independent Contractor is responsible for paying its own employee and self-employment taxes
Benefits: Employees meeting eligibility criteria are eligible for this benefit	Benefits: N/A
Work: The organization controls what work will be done and how it will be done even if you give the employee freedom of action. Employees generally receive instruction on what, when, where and how they will work. The organization retains the right to control the details of how the services are performed	Work: Independent Contractors provide services to the general public. They service different customers or clients who pay them directly for their services. Independent Contractors control when and how the work will be performed.
Equipment, Tools & Resources: Your business provides the equipment, supplies and materials the worker uses to complete the work. Employees are typically reimbursed for business expenses they incur over the course of their employment.	Equipment, Tools & Resources: Independent Contractors typically provide their own equipment, supplies and materials to complete work, unless otherwise agreed upon and specifically outlined in an agreement with company.
Expenses: The organization pays the business expenses of the worker, such as office rent, insurance, supplies, or other expenses and reimbursements. If an employee ensures business expenses, expenses are typically reimbursed by the organization.	Expenses: Independent Contractors typically incur their own expenses to complete work, unless otherwise agreed upon and specifically outlined in an agreement with company..
Workplace Policies & Expectations: Employees are required to show up at a specific time and fulfill their responsibilities in a manner you designate.	Workplace Policies & Expectations: Independent Contractors have greater autonomy over their work processes. They are not to be on-boarded like employees, nor provided or expected to follow <u>all</u> of an organization's employment policies.
Length of Service: Employees with the intention of working with them for an undetermined length of time	Length of Service: Independent Contractors usually have defined scope of work or length of service terms limited to the fulfillment of work being performed
Control & Oversight: W2 workers are not their own business owners. They work for your company, participate in employee benefit programs, and work according to your business's needs and schedule.	Control & Oversight: An organization's control and oversight of independent contractors is expected to and should be limited.

Questions?





Thank you for your time

Additional questions?

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