

## 1.3: Fair Labor Standards Act

### Learning Outcomes

- Discuss the Fair Labor Standards Act (FLSA)



Signed into law in 1938, then-President Franklin D Roosevelt referred to the Fair Labor Standards Act as “the most far-reaching, far-sighted program for the benefit of workers ever adopted in this or any other country.”<sup>[1]</sup> As History.com reports, “the FLSA was designed to ‘put a ceiling over hours and a floor under wages.’” More broadly, the intent was to eliminate “labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency and well being of workers.”<sup>[2]</sup>

### Minimum Wage

To that end, FLSA establishes minimum wages, overtime pay, recordkeeping, and youth employment standards for all American workers.

The initial minimum wage was \$0.25/hour, rising, over the period of 71 years, to the current federal rate of \$7.25 per hour (since July 24, 2009). On July 18, 2019, the House passed a bill raising the federal minimum wage to \$15.00 per hour and extending the \$15.00 per hour minimum to tipped workers, who are currently paid a minimum of \$2.13.<sup>[3]</sup> However, ABC News reports that “the bill has almost no chance [of passing] in the Republican-controlled Senate.”

States, cities and counties can set their own minimum wage laws. When an employer is subject to multiple minimum wage laws, the higher minimum wage prevails.

### ✓ California Minimum Wage

For perspective, as of January 1, 2019, the minimum wage in California is \$12.00 per hour, or \$11.00 per hour for employers with 25 or fewer employees.<sup>[4]</sup> The state minimum wage is scheduled to increase annually to \$15.00 per hour in 2022 or 2023, if the employer has less than 26 employees.

On July 1, 2019, the minimum wage increased in seven Bay Area cities, with new minimums ranging from \$13.50 per hour in Alameda and Fremont to \$16.30 per hour in Emeryville. San Francisco and Berkeley increased the minimum wage from \$15.00 to \$15.59 an hour.<sup>[5]</sup>

Note that the minimum wage is law; employee and employer or cannot negotiate a lower wage and the minimum applies to adults as well as minors—there is no distinction made between adults and minors when it comes to payment of the minimum wage. As stated on the California Department of Industrial Relations website, “The minimum wage is an obligation of the employer and cannot be waived by any agreement, including collective bargaining agreements.”<sup>[6]</sup>

### Working Hours and Overtime



Employees covered by the Act must receive overtime pay at a rate of at least 1.5 times their regular rate of pay for any hours worked over 40 in a workweek. The Act does not require overtime pay for work on weekends or holidays unless the overtime hours are worked on those days. An employee's workweek does not need to coincide with the calendar week. It is, however, a fixed and regularly recurring period of 168 hours.<sup>[7]</sup> The Act defines hours worked as "all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace."<sup>[8]</sup>

### Exempt vs Non-Exempt

FLSA regulations with regards to hours and overtime pay apply to non-exempt employees only. In some cases, the distinction between exempt and non-exempt is based on job classification. In other cases, the distinction is based on three factors, as outlined below:<sup>[9]</sup>

- **Compensation test.** If employees are paid less than \$23,600 per year, they are considered non-exempt.
- **Salary test.** Generally, if employees are paid on a salary basis—that is, they have a "guaranteed minimum" amount of money they can count on receiving for any work week in which they perform "any" work—they are exempt.
- **Work performed.** Employees who meet the compensation and salary tests are exempt only if they also perform exempt job duties. Exempt job duties fall into three categories: "executive," "professional," and "administrative." For additional details and interpretation, refer to attorneys Chamberlain, Kaufman & Jones' discussion of [FLSA coverage](#).

Most employees must meet all three "tests" to be exempt.

### Record Keeping

FLSA's recordkeeping requirements including the following:

- Employers must post an official poster outlining the provisions of the Act
- Employers must keep records for each non-exempt worker that include specific identifying information, hours worked and wages earned. For details, refer to the U.S. Department of Labor Wage & Hour Division's [FLSA Recordkeeping Fact Sheet](#).
- Payroll and related records (e.g., collective bargaining agreements) must be retained onsite or in a central records office for 3 years
- Supporting documentation (i.e., work and time schedules and records of any adjustments to wages) should be retained for two years

Records must be open for inspection by Wage & Hour Division representatives, who may ask the employer to make extensions, computations, or transcriptions.

### Workers under 18

As stated by the U.S. Department of Labor, "The youth employment provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being or educational opportunities." FLSA provisions applicable to nonagricultural occupations are summarized below; for [Child Labor Requirements in Agricultural Occupations](#) refer to the associated DOL compliance page.

Both Federal and State laws govern the employment of young workers; when both are applicable, the stricter standard applies.

Minimum Age Standards For Employment<sup>[10]</sup>

Under 14—May not be employed in non-agricultural occupations covered by the FLSA. Permissible employment includes acting, delivering newspapers, minor chores around private homes, or casual baby-sitting.

14–15—May be employed outside school hours in a variety of non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions.

16–17—The basic minimum age for employment. May be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor.

18—No longer subject to youth employment provisions.

Children of any age are generally permitted to work for businesses entirely owned by their parents; however, children under 16 may not be employed in mining or manufacturing, and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.

### ? Practice Question

<https://assessments.lumenlearning.co...essments/18171>

1. "[Fair Labor Standards Act](#)." United States History. Accessed August 22, 2019. ↵
2. Ibid. ↵
3. Mascaro, Lisa. "[\\$15 Minimum Wage Bill Passes House; Senate Prospects are Dim](#)." ABC News. July 18, 2019. Accessed August 22, 2019. ↵
4. "[Minimum Wage](#)." State of California Department of Industrial Relations. Accessed August 22, 2019. ↵
5. "[Minimum Wage Increases in Seven Bay Area Cities, Including San Francisco](#)." ABC News. July 01, 2019. Accessed August 22, 2019. ↵
6. "Minimum Wage." State of California Department of Industrial Relations. Accessed August 22, 2019. ↵
7. "[Overtime Pay](#)." U.S. Department of Labor. Accessed August 22, 2019. ↵
8. "[Compliance Assistance – Wages and the Fair Labor Standards Act \(FLSA\)](#)." Accessed August 22, 2019. ↵
9. Ibid. ↵
10. "[Child Labor Provisions of the Fair Labor Standards Act \(FLSA\) for Nonagricultural Occupations](#)." U.S. Department of Labor Wage and Hour Division. Accessed August 22, 2019. ↵

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