

Fact Sheet #1: The Construction Industry Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the [FLSA](#) to the construction industry.

Characteristics

Businesses involved in this industry are engaged in the activities of new construction or reconstruction. The repair or renovation of existing commercial and/or residential structures, as well as roadway and bridge construction, are also a part of this industry. The following work activities are included in the construction industry: painting, sandblasting, tuckpointing, roofing, guttering, spouting, water well drilling, installation of flooring and landscaping.

Coverage

A business in the construction industry must have two or more employees and have an annual gross sales volume of \$500,000 or more to be subject to the FLSA. Individual coverage applies to employees whose work regularly involves them in commerce between states ("interstate commerce"). Any person who works on or otherwise handles goods that are moving in interstate commerce or who works on the expansion of existing facilities of commerce is individually subject to the protection of the FLSA and the current [minimum wage](#) and [overtime pay](#) requirements, regardless of the sales volume of the employer. Other persons, such as guards, janitors, and maintenance employees who perform duties which are closely related and directly essential to such interstate activities are also covered by the FLSA.

Requirements

Employers who are covered under the FLSA must comply with the [recordkeeping requirements](#) of Regulations, [29 CFR Part 516](#).

Also, an employer must establish a workweek (7 consecutive 24-hour periods) and must pay [overtime](#) when hours worked exceed 40 in the workweek. [The practice of paying overtime only after 80 hours in a bi-weekly pay period is illegal since each workweek must stand alone.](#)

For non-exempt employees, covered employers must pay the [Federal minimum wage](#) and time and one half the regular rate of pay for time worked over 40 hours in a workweek. These businesses must also be aware of the potential for violations of the [youth employment requirements](#) of the FLSA. This is especially critical due to the dangerous nature of both the work performed and the tools used in this industry.

If the employer performs work on a federally financed project or a project in which the Federal government has provided assistance in financing the project, a different and somewhat stricter set of labor standards applies. Typically this would require that employees performing on such contracts be paid a "prevailing wage rate".

Youth Minimum Wage: The 1996 Amendments to the FLSA allow employers to pay a [youth minimum wage](#) of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the [youth minimum wage](#).

Typical Problems

(1) Failure to record all hours actually worked to include time spent working before or after the shift. (2) Shorting of hours by using terms such as down time or rain delay. (3) Failure to compensate for meal breaks where the employee is not completely relieved of all duties to enjoy uninterrupted time for the meal. (4) "Banking" of overtime hours or payment of overtime in the form of "comp time". (5) Failure to combine the hours worked for overtime purposes by an employee in more than one job classification for the same employer within the same workweek. (6) Failure to segregate and pay overtime hours on a workweek basis when employees are paid on a bi-weekly or semi-monthly basis. (7) Failure to pay for travel from shop to work-site and back.

Some Other Pertinent Labor Laws: (1) [The Immigration Reform and Control Act](#) requires employers to complete and maintain I-9 forms to verify the employment eligibility of all individuals hired after November 6, 1986. (2) [The Wage Garnishment Law](#) limits the amount of an individual's income that may be garnished and prohibits firing an employee whose pay is garnished for a single debt. (3) [The Employee Polygraph Protection Act](#) prohibits most private employers from using any type of lie detector test either for pre-employment screening or during the course of employment. (4) [The Family and Medical Leave Act](#) requires covered employers to provide eligible employees up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons. (5) [The Davis-Bacon and Related Acts](#) require payment of prevailing wages on federally funded or assisted construction projects.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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