FLSA
INFORMATION POSTER

WHAT YOU NEED TO KNOW ABOUT THE FAIR LABOR STANDARDS ACT (FLSA)

The Fair Labor Standards Act establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments.

SALARY BASIS POLICY

Salary Basis Requirement

To qualify for an overtime exemption, employees generally must be paid at not less than $684 per week on a salary basis. (Note: Some states require a lower minimum salary to qualify as exempt). Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to certain exceptions, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.

Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee's predetermined salary, that employee is not paid on a "salary basis." If the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

Salary Deductions Policy

Deductions from pay are permissible under certain circumstances:

- When an exempt employee is absent from work for one or more full days for personal reasons other than sickness or disability;
- For absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for salary lost due to illness;
- To offset amounts employees receive as jury or witness fees, or for temporary military duty pay;
- For penalties imposed in good faith for infractions of safety rules of major significance;
- For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
- In the employee's initial or terminal week of employment if the employee does not work the full week; or
- For unpaid leave taken by the employee under the Federal Family and Medical Leave Act.

TIPPED EMPLOYEES UNDER THE FLSA

An employer of a tipped employee is only required to pay $2.13 an hour in direct wages if that amount, plus the tips received, equals at least the federal minimum wage, the employee retains all tips and the employee customarily and regularly receives more than $30 a month in tips. If an employee's tips combined with the employer's direct wages of at least $2.13 an hour do not equal the federal minimum hourly wage, the employer must make up the difference. State law may adjust this rate (but not below $2.13 per hour).

Some states have minimum wage laws specific to tipped employees. Under the Consolidated Appropriations Act of 2018, an employer is prohibited from using an employee's tips for any reason other than as a credit against its minimum wage obligation to the employee ("tip credit") or in furtherance of a valid tip pool. Only tips actually received by the employee may be counted in determining whether the employee is a tipped employee and in applying the tip credit. As of May 2021, employers who do not take a tip credit need to update their recordkeeping to include non-tipped workers.

EMPLOYMENT RELATIONSHIP CLASSIFICATION

An employment relationship under the FLSA must be distinguished from a strictly contractual one. Such a relationship must exist for any provision of the FLSA to apply to any person engaged in work which may otherwise be subject to the Act.

Independent Contractors vs. Employees

The Court has held that it is the total activity or situation which controls the classification of the employment relationship. Among the factors which the Court has considered significant are:

1. The extent to which the services rendered are an integral part of the principal's business.
2. The permanency of the relationship.
3. The amount of the alleged contractor's investment in facilities and equipment.
4. The nature and degree of control by the principal.
5. The alleged contractor's opportunities for profit and loss.
6. The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
7. The degree of independent business organization and operation.

BREAK TIME FOR NURSING MOTHERS UNDER THE FLSA

This notice provides general information on the break time requirement for nursing mothers in the Patient Protection and Affordable Care Act ("PPACA"), which amended Section 7 of the Fair Labor Standards Act (FLSA), and under the 2022 PUMP for Nursing Mothers Act (PUMP Act).

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." The frequency of breaks needed to express milk as well as the duration of each break will likely vary. State law may increase, but not decrease, this permissible duration after the child's birth.

Under the PUMP Act, employees are allowed to file monetary lawsuits against employers who deny them break time for nursing or any other nursing violations under the FLSA.

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." If the space is not dedicated to the nursing mother's use, it must be available for the exclusive use of nursing mothers temporarily when needed in order to meet the statutory requirement.

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt state laws that provide greater protections to employees. The law also prohibits retaliation against employees who file a or participate in a complaint under the FLSA.

Under the PUMP Act, pumping time counts as time worked when calculating minimum wage and overtime if an employee is not completely relieved from their work duties during the pumping break.

OVERTIME EXEMPTIONS

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. Further information from the Department of Labor on FLSA exemptions at www.dol.gov.

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 $684 per week. Updates to the per-weekly minimum are published occasionally by the Department of Labor at www.dol.gov. 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 DOL's regulations.

Executive Exemption

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

- Compensated on a salary basis at a rate not less than $684 per week;
- Primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- Customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- Have the authority to hire or fire other employees, or recommend the hiring, firing, or any other change of status of other.

Administrative Exemption

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

- Compensated on a salary or fee basis at a rate not less than $684 per week;
- Primary duty must be performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- Primary duty includes exercising discretion and independent judgment with respect to matters of significance.

Professional Exemption

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

- Compensated on a salary or fee basis at a rate not less than $684 per week;
- Primary duty must be performing 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.

Creative Professional Employee Exemption

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

- Compensated on a salary or fee basis at a rate not less than $684 per week;
- Primary duty must be performing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer exemption, the following tests must be met:

- Compensated either on a salary or fee basis at a rate not less than $684 per week or, if compensated on an hourly basis, at a rate not less than $27.63 an hour;
- 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 Employee Exemption

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

- Primary duty must be making sales, 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
- 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 $107,432 or more [which must include at least $684 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. The wage required to qualify as a highly compensated employee may be adjusted from time to time.

State-Specific Criteria

Some states have their own overtime exemption rules that are more stringent than the federal FLSA. Where an employee is subject to both state and federal overtime laws, the employee is entitled to overtime according to the one that is most beneficial to them. A state exemption may not be used to treat an employee less favorably than the employee would be treated under the federal FLSA. State law may adjust this rate (but not below $2.13 per hour).

FOR MORE INFORMATION

Visit tinyurl.com/FLSA-Digital or scan this QR code for more information:

- **State Minimum Wages**
- **Employment Rights for Workers with Disabilities**
- **Child Labor Provisions**