

Employers, Know Your FLSA Basics

October 5, 2023

By Richard P. Romeo

Originally posted on 07/5/2019, content updated on 10/05/2023

Are you aware of your obligations under the Fair Labor Standards Act (FLSA)? Do you understand the differences between the FLSA and similar state statutes?

A surprisingly large number of decision-makers in established businesses are unable to sufficiently answer these questions. That can be a serious problem. Uncertainty around labor laws can expose a company to numerous legal and financial risks, including lawsuits and Department of Labor investigations that may result in the company owing back wages plus civil penalties and even attorneys' fees.

What Is the FLSA?

The FLSA is a federal statute that guarantees “non-exempt” employees the right to a minimum hourly wage, as well as time-and-a-half “overtime” compensation for any hours worked in excess of 40 hours in any given week. Since its passage in 1938, the law has been amended numerous times, but some form of minimum wage and overtime provisions have generally remained in place. However, there are also many state and local minimum wage and overtime laws in place and if those laws provide greater benefits or protections to workers than does the FLSA, then in such cases, employers must comply with those more stringent state and local laws.

First, under certain circumstances and in certain industries and trades, not all employees must be paid an hourly wage equal to the minimum wage. A worker who “customarily and regularly” earns a certain amount of tips each hour, and that amount varies by industry and geographic location in New York State, may be paid an hourly wage less than the New York minimum wage, so long as the employee’s total compensation is equal to or greater than what the employee would make otherwise.

Second, some employees, such as executives and salespeople, may also be exempt from overtime pay under the FLSA. Employers must be careful when classifying workers as exempt or non-exempt, as the distinction is nuanced and multifaceted.

Third, the FLSA is federal law. It applies to many businesses in the United States. However, employers must also follow wage and hour laws in any state and city in which they have employees—and state and local rules may hold businesses to different standards. For instance, [New York’s minimum wage](#) is higher than the federal minimum wage. In this and any other similar instances, the highest minimum wage applies.

How Can You Avoid an FLSA Violation?

FLSA violations can result in substantial damages for employers. Businesses that fail to properly pay their employees may face DOL penalties of tens of thousands of dollars, or even millions.

To stay on the right side of the law, stick to the following practices:

1. **Properly classify every employee as exempt or non-exempt.**
2. **Keep accurate records of how many hours your employees work each week.**
3. **Make proper calculations for overtime.**

An experienced labor and employment attorney can help you understand your legal obligations, address any existing liabilities, and ensure compliance with the FLSA as well as state and city wage and hour laws. If you have questions about this or any workforce legal matter, please contact me.

Until next time, if you have any questions about the rules that apply to your business, or any other Labor and Employment Law matter, please contact me.