

KNOW YOUR RIGHTS:

The Fair Labor Standards Act: Part II

In this second installment examining the Fair Labor Standards Act (FLSA) of 1938, we continue to explore how it applies to your day-to-day work routine.

In the September/October *In Transit*, we looked at what constitutes work time. We now turn our attention to the wage and overtime rules set forth in the FLSA.

As we previously noted, it is important to keep in mind that FLSA regulations are baseline rules, and an employer may not seek through a collective bargaining agreement to lessen the rights afforded employees under the FLSA. Collective bargaining agreements and state laws can, however, broaden the regulations of the FLSA, and that is no different when it comes to overtime pay and minimum wage requirements.

As always, remember that the following information provides general guidelines and individual cases will vary based upon the particular facts and circumstances.

OVERTIME PAY

Compliance with FLSA overtime wage payment requirements is determined on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours composed of seven consecutive 24-hour periods.

The workweek does not need to be defined as a calendar week and may begin on any day and at any hour of the day as set by the employer. Once established, however, the workweek remains fixed regardless of which hours an employee works.

Although the FLSA does not require overtime pay if an employee works in excess of eight hours on a given day, there is no limit on the number of hours employees may work in any workday or workweek.

For covered, nonexempt employees, the FLSA requires overtime pay at a rate of not less than one and one half times an employee's regular rate of pay after 40 hours of work in a workweek.

Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless of course the work done on those days results in exceeding the 40 hours of work in the employee's workweek.

The employer and employee cannot agree to waive overtime payment that is due under the FLSA, but it is possible that your collective bargaining agreement could provide for additional overtime benefits not mandated by the FLSA.

In addition to the FLSA's overtime regulations, 34 states have also enacted their own overtime pay laws. In situations where an employee is subject to both the state and federal overtime laws, the employee is entitled to overtime according to the higher standard (i.e., the standard that will provide the higher rate of pay).

MINIMUM WAGE

While the collective bargaining agreement negotiated by your local union will generally set forth the relevant wage structure, it is still important to have a fundamental understanding of the minimum wage law.

The federal minimum wage for covered nonexempt employees is \$7.25 per hour, a standard that went into effect on July 24, 2009. Most states have also established their own minimum wage, while five actually have no minimum wage law at all.

Similar to situations in which a state has its own overtime pay regulations, where an employee is subject to both the state and federal minimum wage, the employee is entitled to the higher of the two minimum wages. The Department of Labor provides a helpful guide to state minimum wage laws at <http://www.dol.gov/whd/minwage/america.htm>.

RECORDKEEPING AND REPORTING

Employers are required to keep accurate records on employees and their wages and hours worked. While there is no specific form for such records, some of the basic records that must be kept include: the time and day of the week upon which an employee's workweek begins, the hours worked each day and the total hours worked each workweek, total straight-time and overtime earnings each workweek, and pay days and the pay period covered by each paycheck.

There are no specific reporting requirements in the FLSA with regard to these records, but the employer's records must be kept open for inspection by the Department of Labor's Wage and Hour Division. The records may be kept at the place of employment or at a central records office.

If you feel your employer is not adhering to any FLSA requirements, we recommend you consult with your appropriate local union representatives. In addition, you may contact the DOL's Wage and Hour Division at <http://www.dol.gov/whd/america2.htm> or 1-866-4USWAGE to file a complaint. 