



Essential Workers Essential Protections



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

dol.gov/agencies/whd
1-866-487-9283

Wage and Hour Division

Who we are



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Enforcing Workplace Protections

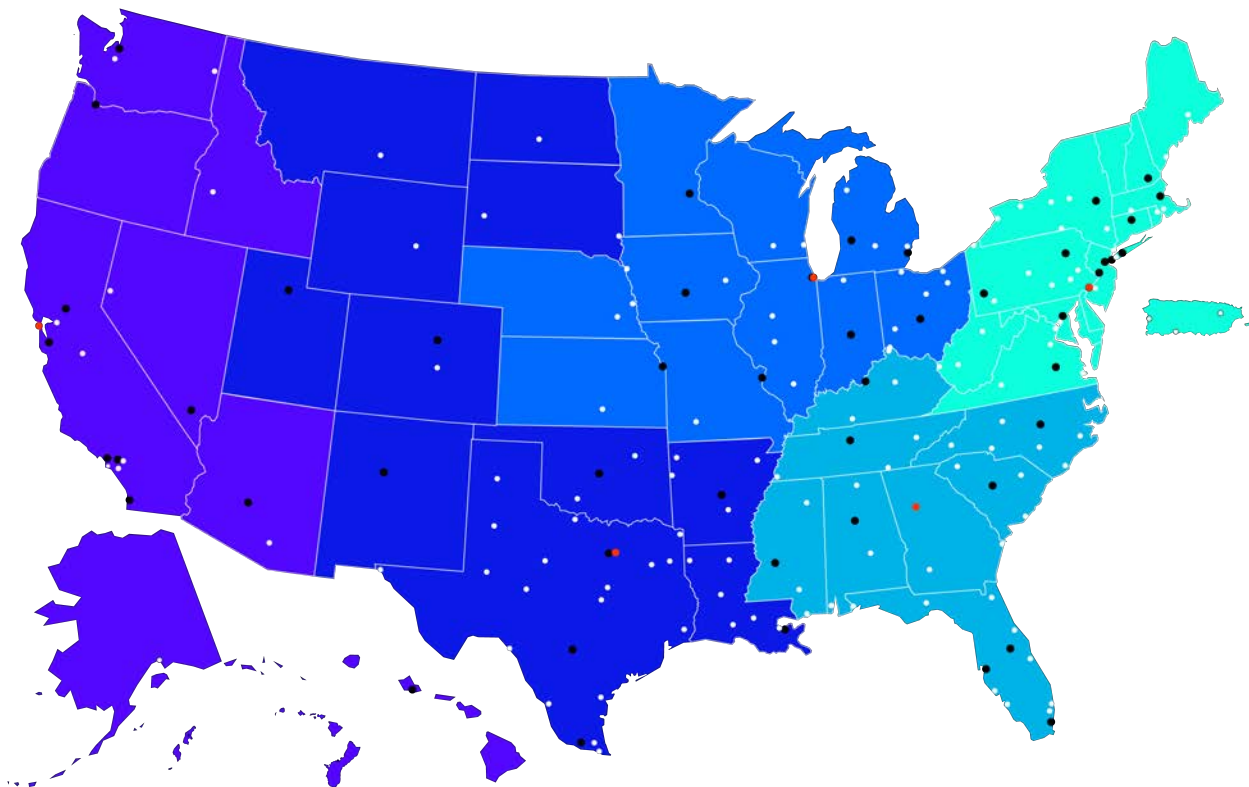
- 10 million establishments nationwide and 148 million workers covered.
- More than 200 WHD offices throughout the country.
- More than 200 languages spoken.



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Helping Workers Throughout the Country



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Achieving Compliance

- Investigations
- Outreach to workers
- Education for employers
- Partnerships



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Wage and Hour Division

We serve workers and employers



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Essential Protections



- Payment of minimum wages and overtime
- Youth employment standards
- Job protections for time taken for the birth of a child or caring for sick family members
- Housing and transportation standards for farm workers
- Payment of prevailing wage rates for federally funded construction and service contract work
- Standards for hiring and paying workers temporarily in the U.S under H-2A, H-1B and H-2B visas



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Essential Protections Under the FLSA



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Fair Labor Standards Act



Essential Protections:

- Minimum wage: \$7.25 per hour
- Overtime at “time and one-half” for hours worked over forty in a workweek
- Recordkeeping requirements
- Prohibited youth employment
- Anti-retaliation provisions



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Child Labor

In non-agricultural jobs...

- Minimum age of employment is 14
- Hours and occupations are restricted for 14- and 15-year-olds
- Hazardous occupations are prohibited for every covered worker under 18 years of age
- Some exceptions for minors working for their parents



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Hours Restrictions

In non-agricultural jobs...

- Apply to 14- and 15-year-olds only
- Not during school hours
- No more than 3 hours on a school day or 8 hours on a non-school day
- No more than 18 hours during school weeks or 40 hours during non-school weeks
- Not before 7 a.m. and not after 7 p.m. except from June 1 to Labor Day when the time is extended until 9 p.m.



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Jobs 14 and 15-year olds can do

If an occupation is not specifically permitted, it is prohibited for youth ages 14 and 15. Jobs that are allowed include:

- Office and clerical work
- Cashiering and selling
- Price marking, assembling orders, packing
- Bagging and carrying out customers' orders



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More allowable jobs...

- Errands and deliveries by foot, bike, bus or train
- Certain clean-up work and yard work
- Pumping gas and hand cleaning cars
- Kitchen work, preparing and serving food (but very limited cooking)



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More allowable jobs...

Most cooking is prohibited, but 14- and 15-year-olds may:

- Cook with electric or gas grills that do not entail cooking over an open flame, and
- Cook with deep fryers that are equipped with and utilize automatic devices that raise and lower the baskets in and out of the hot oil or grease.



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Work 14 and 15-year-olds may not do:

- Work in or about boiler or engine rooms
- Maintenance or repair of a building or equipment
- Work in freezers and meat coolers
- Outside window washing
- Baking



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Work 14 and 15-year-olds may not do:

- Work involving power-driven food slicers and grinders, choppers or cutters and bakery mixers
- Loading and unloading goods to and from trucks, railcars or conveyors
- Work in areas where meats are prepared for sale
- All occupations declared to be hazardous for 16- and 17-year-olds



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HO 2:

Driving or Outside motor vehicle helper

- No employee under 17 may drive motor vehicles on public roads
- 17 year olds may drive under limited, occasional, incidental circumstances (daylight, less than 20% of work hours, seat belt use, drivers ed, etc.)
- Bans driving for delivery work
- Bans driving for route sales
- Bans driving that involves towing
- Bans driving of golf carts, ATVs, and motorcycles on public roads
- Prohibits the transportation of others
- Bans working as an outside helper on motor vehicles (riding on motor vehicles outside the cab for the purpose of assisting in transporting or delivering goods)



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HO 10:

power driven meat processing machines

Bans the operation of power driven meat processing machines, such as meat slicers, saws, and meat choppers even if used on items other than meat. Also bans all occupations in slaughtering, processing, and packing.

*This HO provides a limited exemption for 16-and 17-year-olds who are bona-fide student learners and apprentices.



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HO 11:

power driven bakery machines

Bans the operation of power driven machines such as vertical dough mixers, some batter mixers, dough rollers, and dough sheeters.



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HO 12:

power driven paper products machines

Bans the operation of paper products machines, including balers and compactors.

16- and 17-year-olds can *load* certain power-driven compactors and balers

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Overtime

- **Seasonal Amusement or Recreational Establishments**
- No minimum wage or overtime is due employees of some seasonal amusement parks or recreational facilities
- The FLSA child labor requirements still apply in these establishments

Exemptions

Exemptions

There are numerous exemptions from the minimum wage and/or overtime standards of the FLSA

One of the most common FLSA minimum wage and overtime exemptions is often called the “**541**,” “**white collar**” or “**EAP**” exemption

Overtime

Three Tests for the “White Collar” Exemptions

1. **Salary Basis**
2. **Salary Level**
3. **Job Duties**



FACT
SHEET:
[Blue Collar
Workers](#)

Overtime

Salary Level Test

For most employees the minimum salary level required for exemption is **\$684.00 per week.**

Salary Basis Test

- An exempt employee must regularly receive a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- If employer chooses to use nondiscretionary bonuses and incentive payments to meet the standard salary level, the employee must be paid at least 90% of the standard salary level for any week in which the employee performs **any** work

Duties Tests

No Changes

- The Final Rule did not make any changes to the Duties Tests

Executive Duties

No Changes

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight

Administrative Duties

No Changes

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

Professional Duties

No Changes

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

OR

- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

Computer-related Occupations

To qualify for the computer employee exemption, an employee, such as a computer analyst, programmer, or software engineer, must receive either:

- A guaranteed salary or fee of \$684 per week or more, or
- An hourly rate of not less than \$27.63 per hour and
- Their primary duty must be in design, development, or creation of computer systems, systems analysis etc. (as defined in the regulations).

Hours Worked

- Hours worked per day and per workweek for the same employer
- Whether or not the employer counts the time as work time



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Regular Rate of Pay

$$\text{HOURLY RATE} = \frac{\text{Gross Weekly Straight Time Pay}}{\text{Total Hours Worked Weekly}}$$



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Overtime

Exclusions from the *Regular Rate*

- **Gifts** – e.g., coffee, snacks, t-shirts, raffle prizes, certain longevity bonuses, certain sign-on bonuses
- ***Discretionary* bonuses** – e.g., severance bonuses, referral bonuses for employees not primarily engaged in recruiting activities, bonuses for overcoming challenging or stressful situations
- **Payments for time not worked** – includes paid leave, paid leave buybacks, “show up” or “reporting pay”, “call-back pay”
- **Reimbursements for business expenses** – includes business supplies, tools, cell phone plans, credentialing exam fees, travel expenses



FACT
SHEET:
[Regular Rate](#)

Overtime

Exclusions from the *Regular Rate*

- **Overtime premium payments**
- **“Perks” and conveniences for the employee** – e.g., gym memberships, gym access, fitness classes, wellness programs, employee discounts on retail and services, on-the-job medical care, tuition payments, adoption assistance, parking benefits and spaces
- **Profit sharing plans, stock options**
- **Retirement and insurance plan contributions** - also includes plans for accident, unemployment, legal services, or other events that could cause significant future financial hardship or expense



Overtime

Discretionary Bonuses

- Discretionary bonuses may be excluded from the regular rate if **all** the following criteria are met:
 1. The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine whether to pay the bonus;
 2. The employer has the sole discretion, until at or near the end of the period that corresponds to the bonus, to determine the amount of the bonus; and
 3. The bonus payment is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly.
- Labels are not determinative.



FACT
SHEET:
[Regular Rate](#)

Essential Protections Under the FMLA



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Family and Medical Leave Act

Essential Protections:

- Twelve workweeks of unpaid leave per leave year for qualifying reasons
- Job protection
- Protection of benefits and status while on leave
- Return to the same or an equivalent position



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Common Questions

Can an employee who is sick with COVID-19, or who is caring for a family member who is sick with COVID-19, take FMLA leave?



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Tax Credits for Paid Sick Leave

- American Rescue Plan extended tax credits for employers through September 30, 2021
- Up to \$12,000 per worker
- Visit [IRS.gov](https://www.irs.gov) for more information



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The H-2B Visa Program

- The Immigration and Nationality Act (INA) provides for the admission of nonimmigrants in the H-2B visa classification to perform temporary non-agricultural labor or services in the United States. 8 U.S.C. §1101(a)(15)(H)(ii)(b).
- The Department of Homeland Security (DHS) delegated H-2B enforcement responsibility to WHD on **January 18, 2009** for all Applications for Temporary Employment Certifications filed on or after that date.
- Regulations: 20 CFR part 655, 29 CFR part 503



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WHD's H-2B Enforcement Responsibility

- Whether the employer conducted the required recruitment for U.S. workers.
- Whether U.S. workers were offered employment.
- Whether U.S. workers were improperly laid off or displaced.
- Review of job order and certification obligations, including wages and working conditions, for H-2B workers and protected-U.S. workers.



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U.S. Worker Protections

Employer Obligations to U.S. Workers



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U.S. Worker Recruitment Requirements

The employer must:

- Submit a job order to the State Workforce Agency (SWA), which must remain open until 21 days before the employer's first date of need;
- Place a newspaper advertisement on two separate days, one of which must be a Sunday;
- Contact its former U.S. employees;
- Maintain a recruitment report.



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U.S. Worker Hiring Requirements

- The employer must hire qualified U.S. applicants, and may not refuse to hire the U.S. applicants for discriminatory reasons.
- Employers must not impose any restrictions or obligations on U.S. workers that will not also be imposed on H-2B workers.
 - Each job qualification and requirement must be listed in the job order



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Prohibition of Preferential Treatment

- An employer must offer U.S. workers terms and working conditions at least as favorable as those offered or provided to H-2B workers.



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Prohibition of U.S. Worker Layoff or Displacement

- The employer may not layoff its U.S. employees in the period beginning 120 days before the date of need through the end of the certification.
 - If such a layoff has occurred in the period beginning 120 days before the first date of need, the employer must contact those former workers and solicit their return to the job.
 - If a lawful, job-related layoff is necessary after H-2B workers have arrived, the employer must layoff all H-2B workers before laying off U.S. workers.



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Payment of Required Wages

- The offered wage must equal or exceed the highest of the:
 - Prevailing wage obtained from ETA, or
 - federal, state, or local minimum wage.
- The employer must pay the offered wage during the entire period of employment.
- Wages must be paid free-and-clear.
- The employer must pay at least every two weeks, or the prevailing frequency in the geographical area.



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Travel Time and Hours Worked

- Ordinary home-to-work travel is not work time
- Travel between job sites during the normal work day is work time
 - If an employee is required to report to a meeting place to receive instructions, perform other work there, or to pick up equipment or tools, the travel from the designated meeting place to the work places is part of the day's work and must be counted as hours worked.
 - If the employee is required to return to the employer's office or job site, the travel time back to the office is counted as hours worked.



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Tools, Equipment, and Deductions

- Employers must make all deductions required by law.
- Deductions not required by law must be disclosed in the job order and must be reasonable.
- Deductions for expenses that are for the primary benefit of the employer are not reasonable and therefore may not bring an employee's wages below the H-2B required wage rate.
- The employer must provide workers all tools, supplies, and equipment required to perform the assigned duties at no cost to the worker.



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Disclosure

- The employer must provide a copy of the job order to both the H-2B workers and protected U.S. workers .
 - H-2B workers who are abroad must receive the job order no later than when they apply for the visa.
 - H-2B workers already in the U.S. must receive the job order no later than when the job offer is made.
- Job order must be provided in a language understood by the worker.



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Transportation and Visa Fees

Inbound transportation:

- The employer must provide *or* pay for transportation and daily subsistence to the place of employment *or* reimburse workers when 50% of the job order has elapsed.

Outbound transportation:

- The employer must provide *or* pay for return transportation and subsistence if the worker completes the job order period or is dismissed early with or without cause.

Visa fees:

- Employer is always liable for visa fees & related expenses in or before the first workweek.



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Place of Intended Employment & Job Classification

- The employer must not place an H-2B worker outside the area of intended employment listed on the job order.
- The employer is also prohibited from placing H-2B workers outside the certified occupation listed on the job order.



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Prohibited Fees

- The employer, its agent, and its attorneys must not seek or receive payments from workers related to the certification, including agent or attorney fees and recruitment costs.
- The employer must contractually forbid any agent or recruiter whom the employer engages directly or indirectly in international recruiting from seeking or receiving payments from prospective workers.



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Other H-2B Program Obligations

- The job must be a bona-fide, full-time temporary position, with full time defined as 35 or more hours per week
- There must be no strike or lockout at any of the employer's worksites in the same geographic area
- Display workers' rights poster
- Provide an earnings statement to each worker on or before each payday.
- Retain required documents for 3 years.



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Other H-2B Program Obligations

- Cooperate with WHD investigators.
- Notify ETA and DHS in writing within two days if a worker separates prior to the end date of employment certified in the Application.
- Not intimidate, threaten, discharge, or discriminate against any person who has exercised their rights under the H-2B program.
- Comply with other applicable laws.
 - FLSA overtime



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Online Resources



- Worker.gov
- Employer.gov



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Contact Us

- Visit www.dol.gov/agencies/whd
- Call our toll-free information and helpline at 1-866-4US-WAGE (1-866-487-9243)



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Compliance Assistance

- **Northern New England District Office**
- **PHONE: 603-666-7716**
- **Web: www.dol.gov/agencies/whd**

- **Brian Cleasby, CORPS**
- **Phone: 603-606-3116**
- **Email: cleasby.brian@dol.gov**