



**Warehousing Workers**

# An Overview of the Fair Labor Standards Act (FLSA)



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

[dol.gov/agencies/whd](https://dol.gov/agencies/whd)  
1-866-4-US-WAGE

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**Essential Workers**

**Essential Protections**

# Warehouse Workers

## **Warehouse workers and duties might include:**

- Delivery drivers
- Long-haul truckers
- Port truckers
- Material Handler
- Forklift Operator
- Shipping and Receiving

# Presentation Outline

1. Employment Relationship
2. Misclassification
3. Coverage
4. Minimum Wage
5. Hours Worked
6. Overtime
7. Recordkeeping
8. Child Labor
9. Family and Medical Leave Act
10. How to File a Complaint

# Employment Relationship

The FLSA's protections apply when there is an employment relationship between the “employer” and the “employee.”



# Misclassification (cont..)

**We generally consider the following factors when determining if a worker is an employee or independent contractor:**

1. Is the work an integral part of the employer's business?
2. Does the worker's managerial skill affect his or her opportunity for profit and loss?
3. Relative investments of the worker and the employer
4. The worker's skill and initiative
5. The permanency of the worker's relationship with the employer
6. Employer control of work relationship
7. Independent business organization and operation



# Misclassification (cont.)

**Misclassified employees are often denied:**

- Minimum wage
- Overtime pay
- Health insurance
- Workers' compensation
- Unemployment insurance





# Misclassification

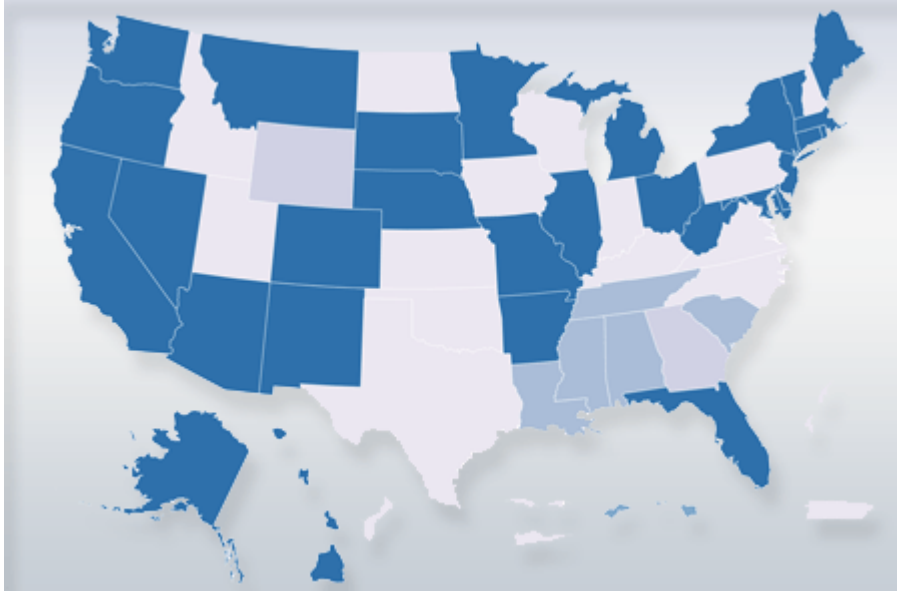
## **Misclassified workers may really be an employee even if the worker:**

- Agrees to be paid by cash or by check, on the books or off the books
- Receives a 1099 tax form
- Signs an independent contractor agreement
- Engages in work away from company property
- Is registered as an independent contractor or other business entity under state law

# Joint Employment

An employee may have two or more employers who are both responsible for paying the minimum wage and overtime for all hours the employee works.

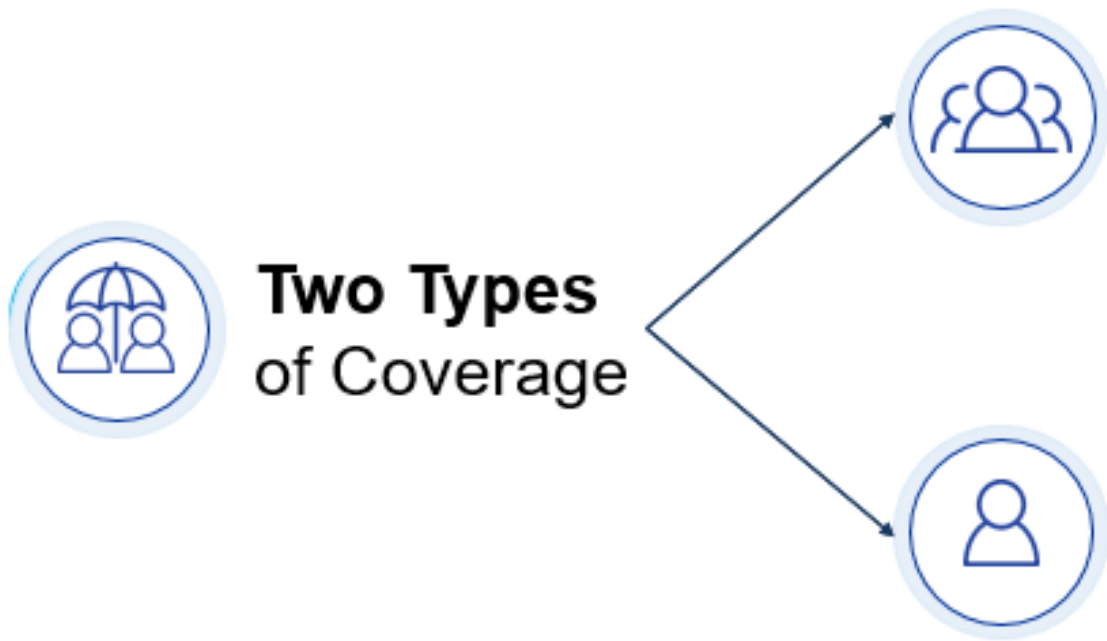
# FLSA Coverage



Over 148 million workers in more than 10 million workplaces are protected or covered by the FLSA, which is enforced by the Wage and Hour Division of the U.S. Department of Labor.

[View Fact Sheet #14: FLSA Coverage](#)

# Two Types of FLSA Coverage



## Enterprise Coverage

Enterprise, as a whole, is covered and all employees are entitled to FLSA protections

## Individual Coverage

Enterprise, as a whole, is NOT covered; however individual employees are covered and entitled to FLSA protections

# Minimum Wage

FLSA covered employers generally must pay employees at least the **federal minimum wage of \$7.25 per hour.**





# Minimum Wage

## May include:

- Wages (salary, hourly, and piece rates)
- Commissions
- Certain bonuses (attendance, production, and performance)
- Shift differentials
- Reasonable cost or fair value of room, board, other “facilities” provided by employer for employee’s benefit

# Calculations: Minimum Wage

**The minimum wage is calculated on a weekly basis:**

$$\text{Hourly Rate} = \frac{\text{Gross Weekly Straight Time Pay}}{\text{Total Hours Worked Weekly}}$$

Hourly rate must be at least \$7.25 per hour.

# Hours Worked



An employee must be paid for all of the time considered to be “hours worked” under the FLSA. This may include time spent engaged to wait, on-call, in training, or traveling. Work not requested but “suffered or permitted” is work time.

[View Fact Sheet# 22: Hours Worked](#)

# Waiting Time

## Hours Worked

- Employee unable to use “waiting time” effectively for own purposes
- “Waiting time” controlled by employer

## NOT Hours Worked

- Employee completely relieved from duty
- Time period long enough for employee to use for own purposes

# On-Call Time

## Hours Worked

- Employee must stay on employer premises
- Or, must be so close to the employer's premises that the time cannot be used effectively for employee's own purposes

## NOT Hours Worked

- Employee must provide contact information
- Can use time effectively for own purposes



# Meetings and Training

- Time spent in mandatory job-related meetings or training is considered *hours worked* and must be paid.
- This is true for trainings before the start of the workday or at the end.



# Travel Time

- Commuting from home to work generally is not compensable work time
- Travel between job sites during normal workday is work time and thus compensable hours worked

# Rest and Meal Periods

- Short rest breaks (20 min or less) are compensable.
- Bona fide meal periods (typically 30 minutes or more) need not be paid as hours worked.
- Worker must be completely relieved of duty for meal period not to be paid time.

# Break Time & Space for Nursing Mothers

The FLSA provides nursing employees, for up to 1 year after the child's birth, with:

- Reasonable break time to express breast milk
- A place, other than a bathroom, that may be used to express milk



# Minimum Wage and COVID-19



If my employer requires COVID-19 testing during the workday, do I need to be paid for the time spent undergoing the testing?



# Illegal Deductions

**Deductions** from pay are illegal if:

- Items are primarily for the benefit or convenience of employer, and
- Deduction reduces employee earnings below required minimum wage

Examples of illegal deductions: may include deductions for damages to property; required company uniforms; and fuel or transportation costs during deliveries.

# Overtime: Workweek



- Compliance determined by workweek
- Each workweek stands alone
- Workweek is 7 consecutive 24-hour periods (168 hours)

# Workweek Example

**Seven-day workweek: Wed 12:00 a.m. to Tue 11:59 p.m.**

Shift time in	Shift time out	Meal Break (30 minutes)	Shift Hours Worked	Hours worked this workweek
Wed 10 p.m.	Thu 9:30 a.m.	2 a.m. – 2:30 a.m.	11	11
Thu 10 p.m.	Fri 7:30 a.m.	2 a.m. – 2:30 a.m.	9	9
Fri 8 p.m.	Sat 6:30 a.m.	2 a.m. – 2:30 a.m.	10	10
Sat 10 p.m.	Sun 6:30 a.m.	2 a.m. – 2:30 a.m.	8	8
Sun Off				
Mon Off				
Tue 1:30 p.m.	Wed 6:00 a.m.	8 p.m. – 8:30 p.m.	16	10
		<b>Total</b>	<b>54</b>	<b>48</b>

# Overtime

## Regular Rate

- Determined by dividing total earnings in workweek (except for statutory exclusions) by total number of hours worked in workweek

$$\text{Gross Weekly Straight Time Pay} \div \text{Total Hours Worked} = \text{RR}$$

- Regular Rate may not be less than the applicable minimum wage
- Total earnings include commissions, certain bonuses, and cost of room, board, and other facilities provided primarily for the employee's benefit

# Steps for Computing Total Pay

- 1. Hourly Pay Due =**  
Hourly Rate X All Hours Worked
- 2. Total Compensation =**  
Hourly Pay + Other compensation (commissions, nondiscretionary bonuses, etc.)
- 3. Regular Rate =**  
Total Compensation ÷ Total Hours Worked
- 4. Half-Time Rate =**  
Regular Rate x .5
- 5. Overtime Pay Due**  
Half-Time Rate X Overtime Hours Worked
- 6. Total Wages:**  
Overtime Pay Due + Straight Time Pay Due



# Example #1

- Employee is paid \$750 for this workweek
- Employee works 50 hours this workweek
- The employee does not receive any other compensation this week

# Example #1 Continued

- **Hourly Rate:** \$15
- **Hours Worked:** 50
- **Additional Pay:** \$0

## **1. Straight Time Pay Due:**

$$\text{\$15} \times 50 \text{ hours} = \text{\$750}$$

## **2. Half-Time Rate:**

$$\text{\$15} \times .50 = \text{\$7.50}$$

## **3. Overtime Pay Due:**

$$\text{\$7.50} \times 10 \text{ OT hours} = \text{\$75}$$

## **4. Total Wages Due:**

$$\text{\$750} + \text{\$75} = \text{\$825.00}$$

# Bonuses

The FLSA allows employers to exclude certain bonuses from the regular rate for overtime pay if:

- The employer has sole discretion to determine whether to pay bonus and amount of the payment.
- The employee has not been promised the bonus

# Bonuses

Promised bonuses that encourage employee production generally are required to be included in the regular rate of pay for overtime purposes.

## Example #2

- Employee is paid \$750 in straight time pay.
- Employee works 50 hours in a workweek.
- The employee receives a \$150 bonus for meeting an announced production target.

# Example #2 Continued

**Hourly Rate: \$15**

**Hours Worked: 50**

**Bonus Paid: \$150**

**Regular Rate: \$18**

1. **Straight Time Pay Due:**  
 $\$15 \times 50 \text{ hours} = \$750$
2. **Regular Rate:**  
 $(\$750 + \$150) \div 50 \text{ hours} = \$18$
3. **Half-Time Rate:**  
 $\$18 \times .50 = \$9$
4. **Overtime Pay Due:**  
 $\$9 \times 10 \text{ OT hours} = \$90$
5. **Total Pay:**  
 $\$90 + 750 + \$150 = \$990$

# Recordkeeping

Your employer must keep records of all wages paid to you and all hours you worked, no matter where the work is done.

[View Fact Sheet #21:  
Recordkeeping Requirements](#)





# Child Labor: Nonagricultural (cont....)

Child labor provisions under FLSA are designed to protect the educational opportunities of youth and prohibit their employment in jobs that are detrimental to their health and safety.

Child Labor rules restrict the hours that youth under 16 years of age can work and lists hazardous occupations too dangerous for young workers to perform.

[View Fact Sheet #43: Child Labor Provisions for Nonagricultural Occupations](#)

# Child Labor: Nonagricultural (cont...)

- **16 and 17 year olds**

Unlimited hours; may work in any occupation other than those declared hazardous by Secretary of Labor

- **14 and 15 year olds**

May work outside school hours and for limited periods of time; only specific non-manufacturing, non-hazardous jobs, and specific conditions apply

- **Children under 14**

With limited exceptions, no employment permitted in covered, non-agricultural occupations

# Child Labor: Nonagricultural (cont..)

## HO 2. DRIVING A MOTOR VEHICLE OR WORK AS AN OUTSIDE HELPER ON MOTOR VEHICLES



Minors under age 17 may not drive on public roads as part of their job.

# Child Labor: Nonagricultural (cont.)

## HO 7. POWER-DRIVEN HOISTING APPARATUS



Bans the operation of most power-driven hoisting apparatus such as elevators, bobcats, cranes, and most high lift trucks, including forklifts

# Child Labor: Nonagricultural

## HO 12. POWER-DRIVEN PAPER-PRODUCTS MACHINES, SCRAP PAPER BALERS, AND PAPER BOX COMPACTORS



Bans the operation of power-driven paper-products machines, including scrap paper balers and paper box compactors

# Family and Medical Leave Act

- Up to twelve workweeks of unpaid leave per leave year for qualifying reasons
- Up to twenty-six workweeks of military caregiver leave during a single 12-month period
- Job protection
- Protection of benefits and status while on leave
- Return to the same or an equivalent position

# Common Violations found in the Warehouse Industry

- Failure to pay proper overtime
- Failure to include production bonuses in overtime pay
- Improper deductions for meal/rest breaks not taken
- Unpaid hours worked for time spent in meetings or training
- Failure to pay for completing pre- and post-shift work
- Misclassification as independent contractor
- Minors operating forklifts and box compactors



# FLSA Compliance Assistance

- Call WHD toll free and confidential information and helpline: 1-866-4US-WAGE (1-866-487-9243) or visit [dol.gov/agencies/whd](https://dol.gov/agencies/whd)
- Visit the nearest Wage and Hour Division Office (WHD Offices): [dol.gov/agencies/whd/contact/local-offices](https://dol.gov/agencies/whd/contact/local-offices)
- Employment Laws Assistance for Workers and Small Businesses (ELAWS): [dol.gov/agencies/whd/compliance-assistance/elaws-advisors](https://dol.gov/agencies/whd/compliance-assistance/elaws-advisors)

# How to File a Complaint

- Complaints can be submitted by phone.
- Complaints can come from third parties.
- Complaints are confidential.
- WHD does not ask workers about their immigration status.
- No fee to file a complaint.

# Who May File a Complaint

- Employees – Former and Present
- Parent/Guardian
- School Officials
- Other Employers
- Advocacy Groups
- Other Agencies



# Complaint Intake Information

## **Employee's name**

- Contact information
- Address and phone number
- Employee's duties/work
- Circumstances or actions that caused potential violation of the law
- Copies of pay stubs or personal hours worked records if available

## **Employer's name**

- Point of contact
- Address and phone number

This information is not required, but helps develop the case.

# Retaliation

Employers cannot retaliate or discriminate against someone who files a complaint or participates in an investigation.

# Connect with Us

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