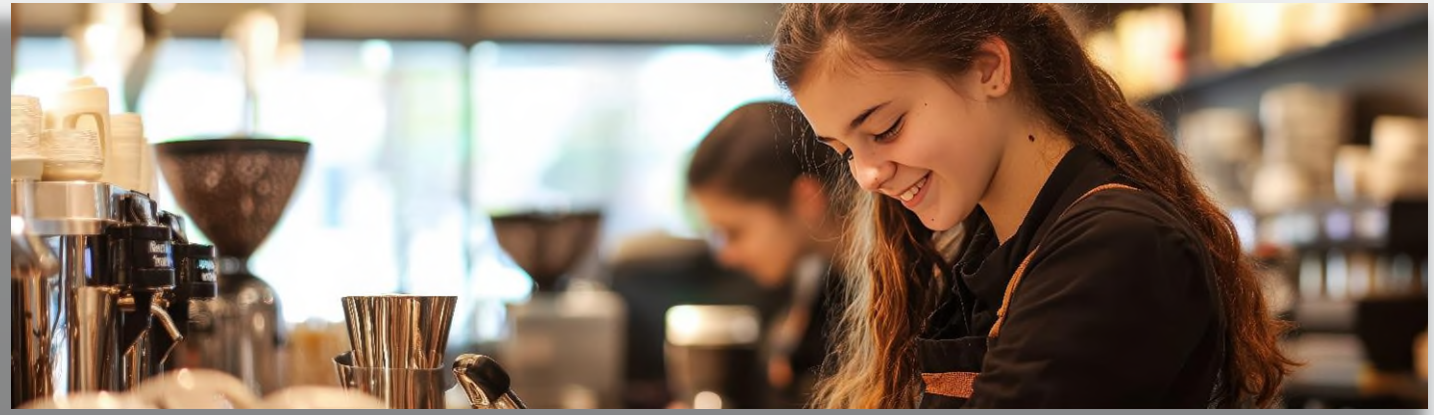


The Fair Labor Standards Act, PAID, and the PUMP Act

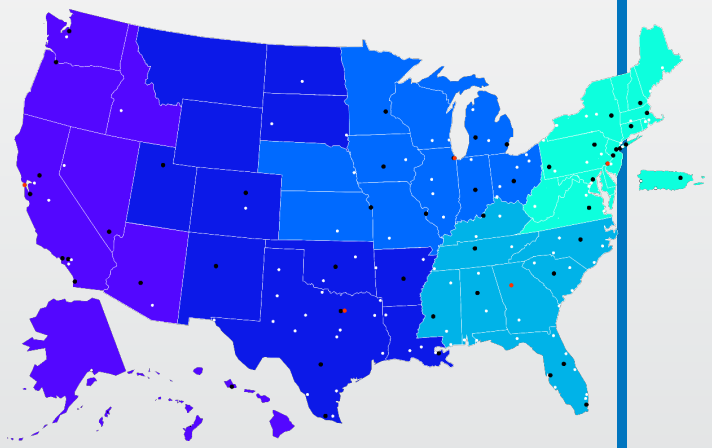
Presented by Sarah Decker, US DOL WHD

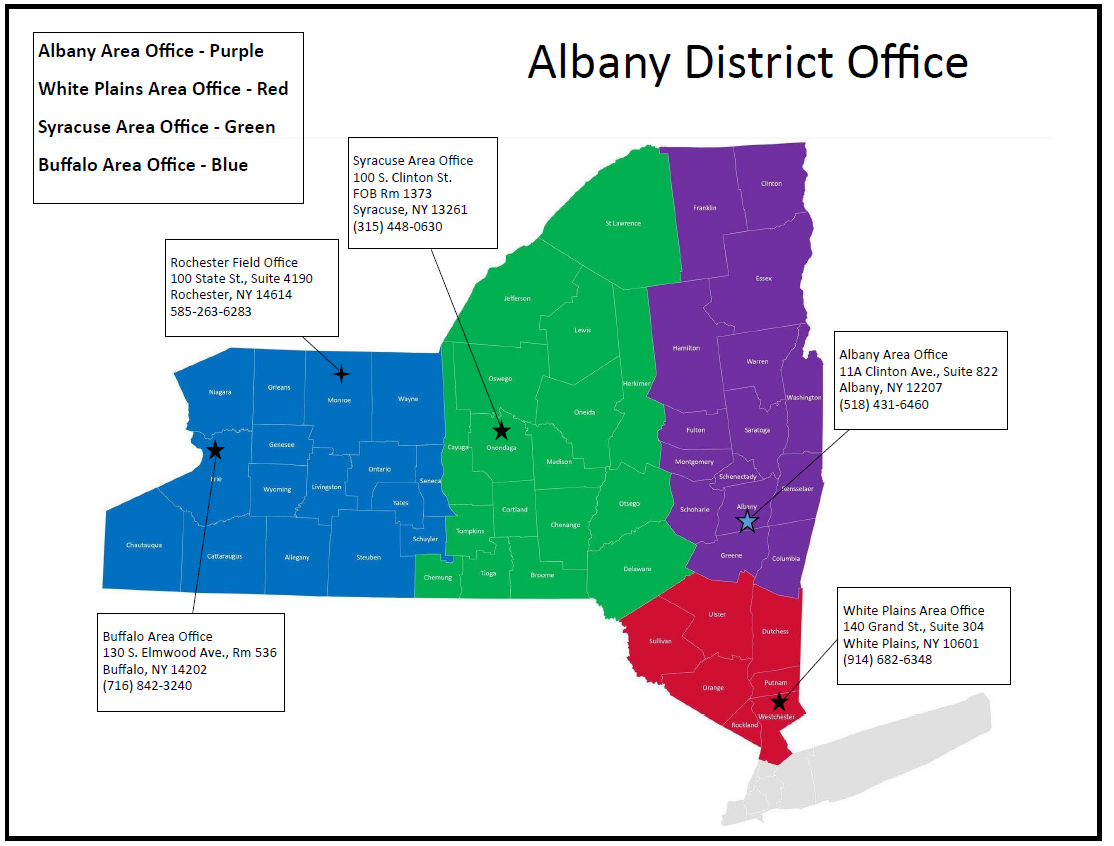
WHD Mission

To promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce



WHD Offices




Albany Area Office - Purple
White Plains Area Office - Red
Syracuse Area Office - Green
Buffalo Area Office - Blue
Albany District Office
Syracuse Area Office
100 S. Clinton St.
FOB Rm 1373
Syracuse, NY 13261
(315) 448-0630
Rochester Field Office
100 State St., Suite 4190
Rochester, NY 14614
585-263-6283
Albany Area Office
11A Clinton Ave., Suite 822
Albany, NY 12207
(518) 431-6460
Buffalo Area Office
130 S. Elmwood Ave., Rm 536
Buffalo, NY 14202
(716) 842-3240
White Plains Area Office
140 Grand St., Suite 304
White Plains, NY 10601
(914) 682-6348
Version 06/26/2025

Topics for Today

- Fair Labor Standards Act
- Common Violations
- The PAID Program
- The PUMP Act / Break Time for Nursing Mothers
- What's new with WHD



FLSA Coverage

Enterprise Coverage



Enterprise coverage may apply to a business if:

- Its commercial activities result in no less than $500,000 in annual dollar volume (ADV), sales or total business
- It has two or more employees

Fact Sheet #14

Individual Coverage



Individual coverage may apply to employees of businesses not covered on an enterprise basis. Includes workers engaged in:

- Interstate commerce,
- Production of goods for interstate commerce, or
- Activity that is closely related and directly essential to such production

Named Enterprise Coverage

A business or a non-profit organization may also be covered by the FLSA as a "named enterprise."

Named enterprises:

- Include hospitals, residential medical or nursing care facilities, schools, preschools, and government agencies
- Are covered regardless of their ADVs
- Must afford minimum wage and overtime protections to all employees, unless exempt

Current Minimum Wage

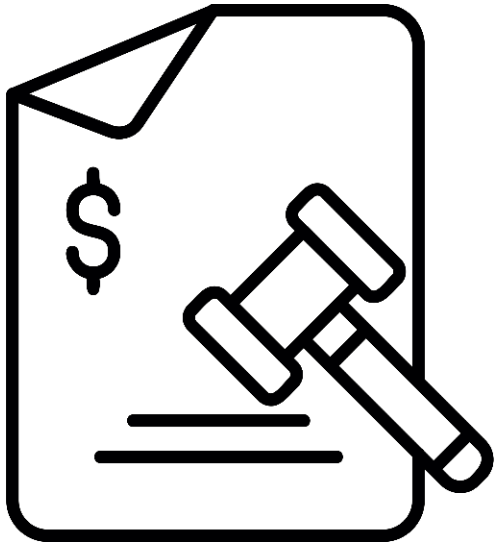
$7.25 **Current federal minimum wage**



Covered, non-exempt employees must be paid at least the federal minimum wage, in cash or the equivalent, free and clear, for all hours worked

Common Minimum Wage Violations

- **Deductions:** Minimum wage deductions (e.g. uniform costs, cash register shortages, breakages)
- **Tipped Employees:** Tips not retained by employees; cash wage not paid; failure to calculate correct cash overtime pay
- **Hours Worked:** Work "off the clock" (e.g. pre-shift work, travel time between work sites, meetings, post-shift work)



Hours Worked

t “suffered or permitted” is work time



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

Training Time

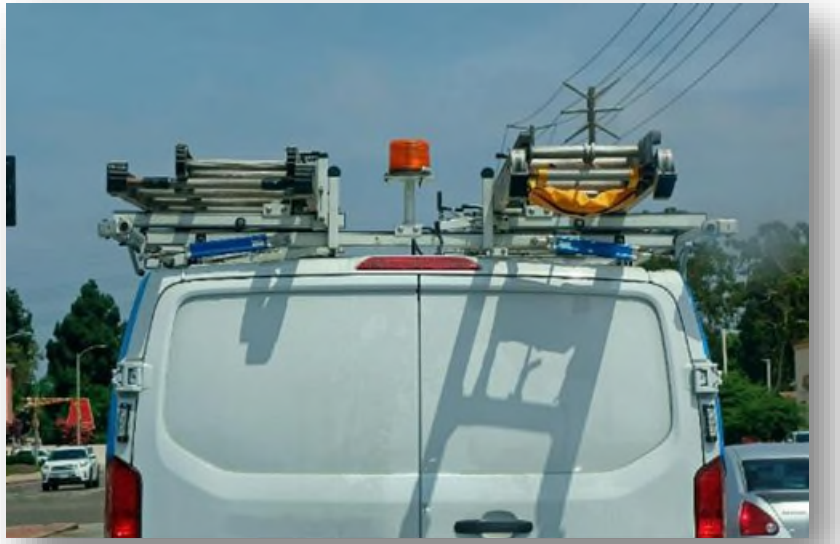


Time spent in meetings, lectures, or training is considered *hours worked* and must be paid, unless:

1. Attendance outside regular work hours,
2. Attendance voluntary,
3. Course, lecture, meeting not job related, *and*
4. Employee does not perform any productive work

Travel Time

- Ordinary home to work travel is *not* compensable work time
- Travel between job sites during normal workday *is* work time and thus compensable hours worked
- Special rules apply to travel away from employee's home community



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 compensable time



Hours Worked - Common Violations

- **Suffered or Permitted:** working “off the clock”
- **Waiting Time:** engaged to wait
- **On-Call Time:** not free from duty or employer control
- **Meal and Rest Periods:** not free from duty
- **Training Time:** unpaid training during work time
- **Travel Time:** unpaid travel between job sites
- **Sleep Time:** deduct for sleep in less than 24-hour shift

Overtime Rate



- Covered, non-exempt employees must receive one and one-half times their regular rate of pay for all hours worked over forty in a workweek
- All time that is hours worked must be counted when determining overtime hours worked

Fact Sheet #23

Regular Rate

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

Total Compensation (except for statutory exclusions)

÷

Total Hours Worked

=

Regular Rate (RR)

RR 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

Exercise: Production Bonus

Hourly Rate: $9.00

Bonus per week: $10.00

Hours Worked: 48

Total Weekly Compensation

48 hours x $9.00 =	**$432.00**
$432 + $10.00 =	**$442.00 ST**
$442.00 ÷ 48H =	**$9.21 RR**
$9.21 x .5 =	**$4.61**
$4.61 x 8H = OT	**$36.88**

$442.00 + $36.88 = $478.88

Exclusions from the Regular Rate

- **Gifts** – e.g., coffee, snacks, t-shirts, raffle prizes
- **Discretionary bonuses**
- **Payments for time not worked**
- **Reimbursements for business expenses**
- **Overtime premium payments**
- **“Perks” and conveniences for the employee** – e.g., gym membership, tuition assist.
- **Profit sharing plans, stock options**
- **Retirement and insurance plan contributions**

Regular Rate Fact Sheet #56A

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

  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

Most Common Exemptions

The most common FLSA minimum wage and overtime exemption -- often called the “EAP” or “541” exemption -- applies to certain:



Executive Employees



Administrative Employees



Professional Employees

541 or “EAP” Exemptions

- Salary Basis
- Salary Level
- Job Duties

Salary Basis Test



- Regularly receives a predetermined amount of compensation each pay period
- Compensation cannot be reduced due to variations in the quality or quantity of the work performed
- Need not be paid for any workweek when no work is performed

Reference: 29CFR 541.602

Minimum Salary Levels

Standard Salary Level

Pursuant to 29 CFR 541.600

$ 684 per week

Highly Compensated Employees (HCE)

Total annual compensation level, pursuant to 29 CFR 541.601

$107,432 per year

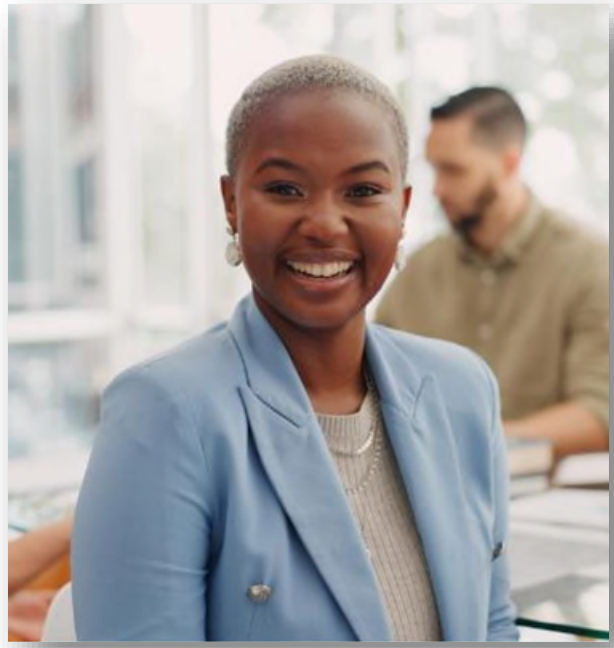
Executive Duties

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

Fact Sheet #17B

Administrative Duties

- Primary duty is office or non-manual work directly related to the *management or general business operations* of the employer or the employer's customers, and
- Exercise of discretion and independent judgment in matters of significance
  - Such as analysis, making determinations, setting prices, assessing risk, committing company resources, negotiating, and similar tasks



Fact Sheet #17C

Professional Duties



Performance of work requiring advanced knowledge in field of science or learning customarily acquired by a prolonged course of specialized instruction

Fact Sheet #17D

Professional: Other Commonly Exempt Professions



- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Dental Hygienists
- Chefs
- Certified Athletic Trainers
- Licensed Funeral Directors

Common Misapplication of Exemptions

Non-Exempt Professions

- Licensed Practical Nurses
- Paralegals, legal assistants
- Engineering Technicians
- Accounting clerks, bookkeepers typically performing routine work
- Cooks performing predominantly routine mental, manual, mechanical or physical work

Fact Sheet #17O

Outside Sales Exemption

Primary duty must be:

- Making sales or
- Obtaining orders or contracts for services for the use of facilities paid by the customer and
- Customarily and regularly working-away from employer's place of business

There are no salary basis and salary level tests for the outside sales exemption

Fact Sheet #17F

Commission Employees – 7(i) Overtime Exemption

Overtime exemption applies only if:

1. Employed by a retail or service establishment
2. More than half employee's total earnings in representative period are commissions on goods, services
3. Total compensation divided by number of hours worked, or regular rate, exceeds one and one-half times the minimum wage

If ALL conditions are not met, exemption does not apply

Fact Sheet #20

Common Overtime Violations

- **Regular Rate:** Failure to include production bonuses, shift differentials, piece rates in determining the regular rate for calculating OT compensation due
- **Combined hours, rates for dual jobs:** Failure to combine all hours in dual jobs or multiple sites of single employer
- **Tipped Employees:** Failure to calculate correct cash OT payment



Common Overtime Violations, continued

- **541 Exemptions:** Misapplication of exemption, or improper assumption that all salaried employees are exempt
- **Deductions:** Improper deductions in OT weeks
- **Misclassification:** Improper treatment of employee as independent contractor
- **Hours worked:** Failure to record, pay for all hours worked
- **State Law:** Confusion between state and federal law

Limits of the FLSA

FLSA does NOT require

- Vacation, holiday, severance, sick pay
- Meal or rest periods, holidays off, vacations
- Premium pay for weekend or holiday work
- Discharge notice, reason for discharge
- Limit on number of hours or days employees 16 years or older may work
- Pay raises, fringe benefits

FLSA Enforcement



Investigative Process

1. 

Initial Conference

Our investigator holds an initial conference with the employer and/or the employer's representative and tours the employer's establishment.

2. 

Conducting Interviews

Our investigator interviews employees in private.

3. 

Reviewing Records

The WHD investigator reviews the employer's records to determine compliance.

4. 

Final Conference

We hold a final conference with the employer and/or the employer's representative to discuss any violations found and how to correct them. If back wages are owed to employees, the investigator will request payment of back wages.

Fact Sheet #44

Enforcement

- 2-year statute of limitations generally applies to back pay recovery
- 3-year statute of limitations may apply if willful violations found
- If voluntary agreement not obtained, the Wage and Hour Division may bring suit to restrain employer from violating FLSA and/or obtain back wages and liquidated damages
- Employees may file private suit for back pay, liquidated damages, plus attorney and court fees

Penalties

- Willful violations may be prosecuted with fines amounting to thousands of dollars
- Violators of youth employment are subject to civil money penalties
- Willful, repeat violations of minimum wage or overtime requirements are subject to civil money penalties for each violation

Civil Money Penalties Chart




PAID

What is PAID?

The Payroll Audit Independent Determination (PAID) is a self-audit program that enables employers to resolve FLSA wage violations and certain FMLA leave violations without litigation.

Benefits of Participation

FOR EMPLOYERS

- Resolution outside of litigation
- More streamlined than a full investigation
- No civil money penalties
- Two-year period



A Unique Opportunity

FLSA is a unique law

Employers cannot be released from claims via *private releases*

Violations resolved through PAID offer that release

Who can participate in this program?

Employers who are:

- Covered by the FLSA or the FMLA
- Seeking to resolve FLSA wage violations and certain FMLA violations
- Willing to meet program requirements
- Acting in good faith
- Willing to commit to future compliance under the FLSA and/or the FMLA

Who cannot participate in this program?

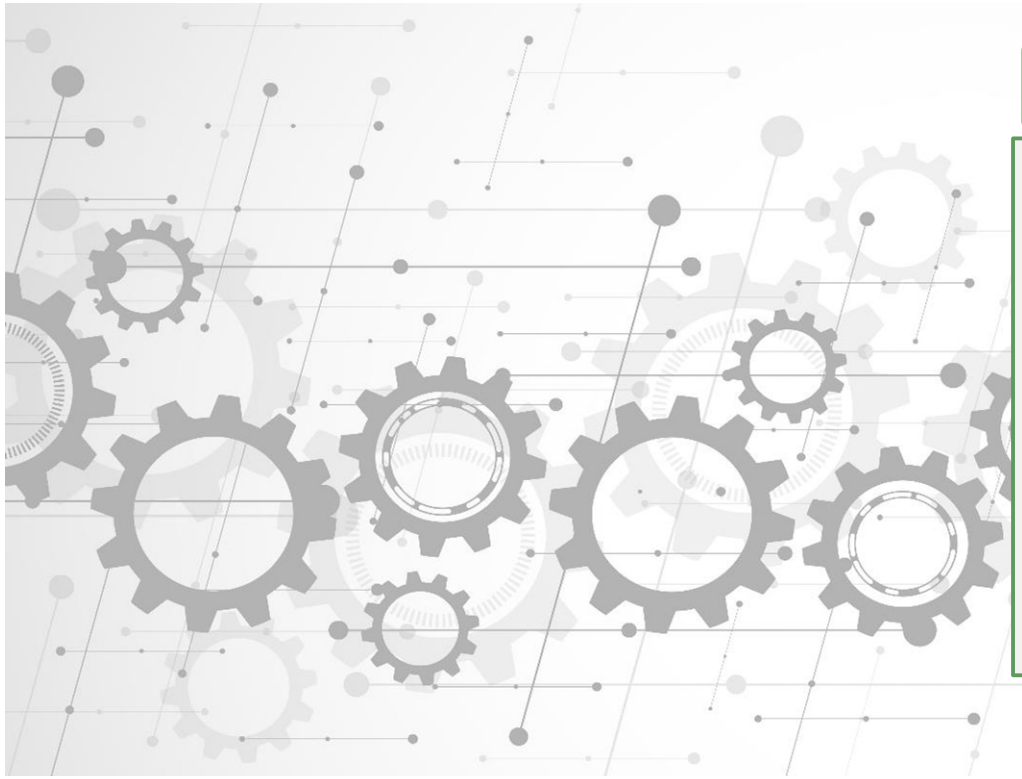
Employers who are:

- Currently under investigation for the same issues
- Currently in litigation, for the same issues, that began before the employer applied for PAID
- Acting in “bad faith”

What types of violations does this

Fair Labor Standards Act	Family & Medical Leave Act
• Minimum Wage • Overtime	• Employee was denied leave • Employee was not returned to same job or an equivalent job • Employee received a penalty for using FMLA leave

Before PAID Can Happen



Preparation

coverage

2. Confirm participation eligibility

3. Review compliance material

www.dol.gov/agencies/whd/paid

PAID Web



Resolve FLSA and FMLA Violations Quickly and Avoid Litigation

The Wage and Hour Division (WHD) offers the Payroll Audit Independent Determination (PAID) program to help employers resolve potential minimum wage and overtime violations under the Fair Labor Standards Act (FLSA), as well as certain potential violations under the Family and Medical Leave Act (FMLA). This program allows employers to correct mistakes efficiently and ensure employees receive back wages or other remedies promptly, all while avoiding litigation.

Under PAID, employers are encouraged to conduct audits and, if they discover FLSA or FMLA violations, to self-report those violations. Employers may then work in good faith with WHD to correct their mistakes and to quickly provide 100% of the back wages due or other remedies to their affected employees.

Expand All ▼

- How PAID Works +
- Can I Participate in PAID +
- FLSA Employer Eligibility for PAID +
- FMLA Employer Eligibility +
- FLSA Certification Requirements +
- FMLA Certification Requirements +
- Conduct Your Self-Audit +
- Payment and Other Remedies to Employees +
- Additional Resources +

PAID
Webs

FLSA
Eligib

FLSA Employer Eligibility for PAID —

When contacting WHD about potentially participating in PAID to resolve FLSA minimum wage, overtime, or tip retention violations, be prepared to certify the following as true:

- You are an employer covered by the FLSA.
- The employees included in your proposed PAID self-audit are not subject to prevailing wage requirements under the H-1B, H-2B, or H-2A Visa Programs, the Davis Bacon Act or Related Acts, or the Service Contract Act.
- Neither WHD nor a court of law has found within the last three years that you have violated the FLSA minimum wage and/or overtime requirements.
- You are not currently a party to any litigation (e.g., private, with WHD, or with a state enforcement agency) asserting that the compensation practices at issue in this proposed PAID self-audit violate FLSA minimum wage and/or overtime requirements.
- To the best of your knowledge, WHD is not currently investigating the compensation practices at issue in this proposed PAID self-audit.
- You have informed WHD of any recent complaints of which you are aware by your employees or their representatives to you or your representatives, to WHD, or to a state wage enforcement agency asserting that the compensation practices at issue in this proposed PAID self-audit violate FLSA minimum wage and /or overtime requirements.
- You have not previously participated in PAID within the last three years to resolve potential FLSA minimum wage or overtime violations.
- You acknowledge that you have a continuing duty, during the audit process, to update WHD on any changes to the above information and/or representations.
- You acknowledge that participating in the PAID program does not cut off employee rights under other state or local laws.

WHD maintains its discretion to determine whether to accept employers into PAID. Potential participants are examined on a case-by-case basis.

PAID
Webs

Revi
Chec

FLSA Certificate Information

To verify completion of the FLSA compliance assistance review, you must subm
documentation. If you do not receive or save your certificate, you may need to

Your Name*

John Doe

Business Name*

John Doe, Inc.

FLSA Basics – Self-Led Training Checklist

1. **Get an Overview**

- [x] **Review:** Handy Reference Guide to the Fair Labor Standard
- [x] **Watch:** *Does the FLSA apply to my business?* 5:07 min

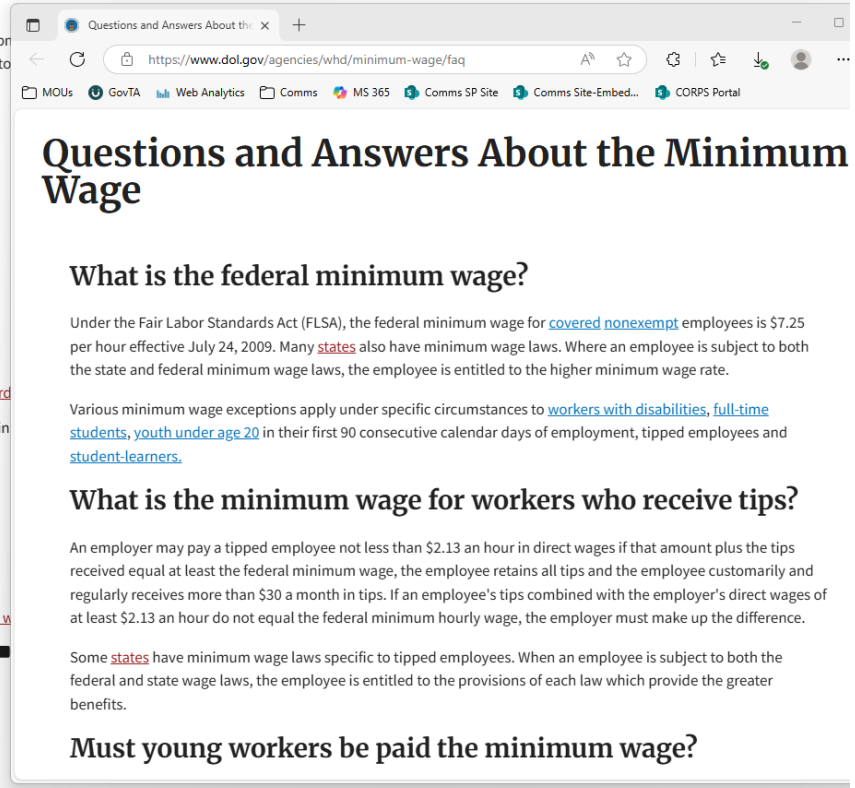


2. **Understand Who's Covered**

- [x] **Review:** Which workers are "employees" entitled to FLSA w
- [ ] **Watch:** *Minimum Wage – What applies to my business?*



- [ ] **Review:** Which employees must be paid at least the federal minimum wage?



PAID
Webs

Certif

After you complete the Compliance Review, the system will generate a **Certificate of Completion**. Please print the certificate or save it as a pdf. You will need to present it to WHD with the rest of your documents.



The United States Department of Labor

Certificate of Completion

This certifies that:

John Doe

John Doe, Inc.

Has successfully completed the review of compliance assistance materials required for the PAID program.

7/24/2025

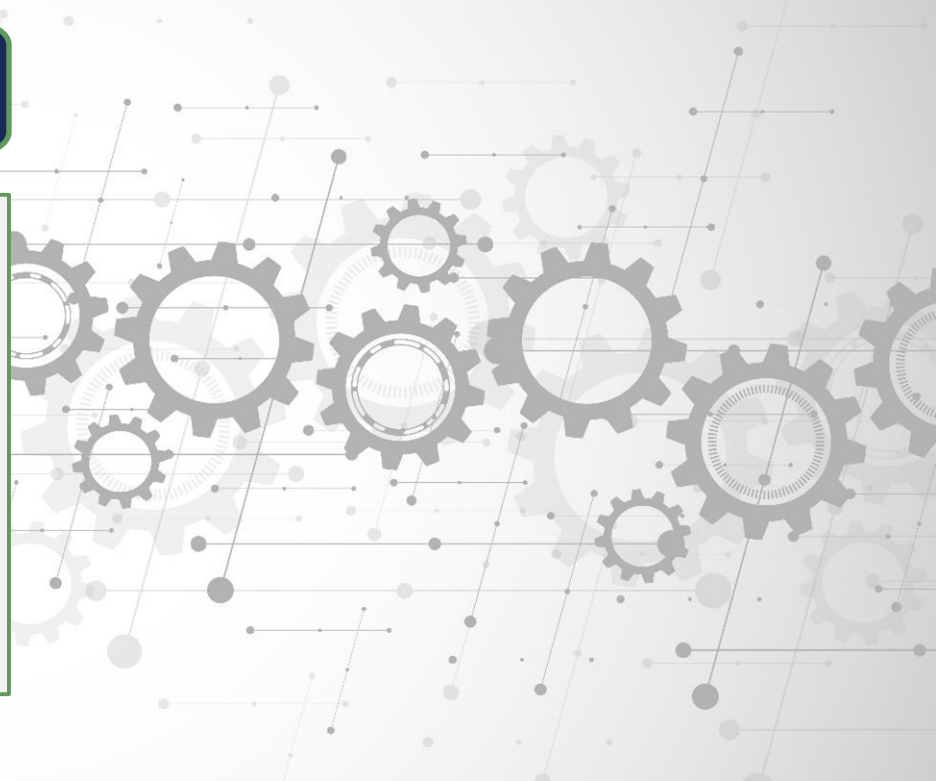
Keep your certificate to submit to the Wage and Hour Division with your required information.

PAID

RAID Process

The Process

1. Employer self-audit
2. Report to WHD
3. WHD Review
4. Resolution and payment/remedy



Employer Self-Audit

- Identify specific violations found
- Identify affected employees
- Identify timeframes
- Calculate back wages and/or propose FMLA remedies



Report to WHD

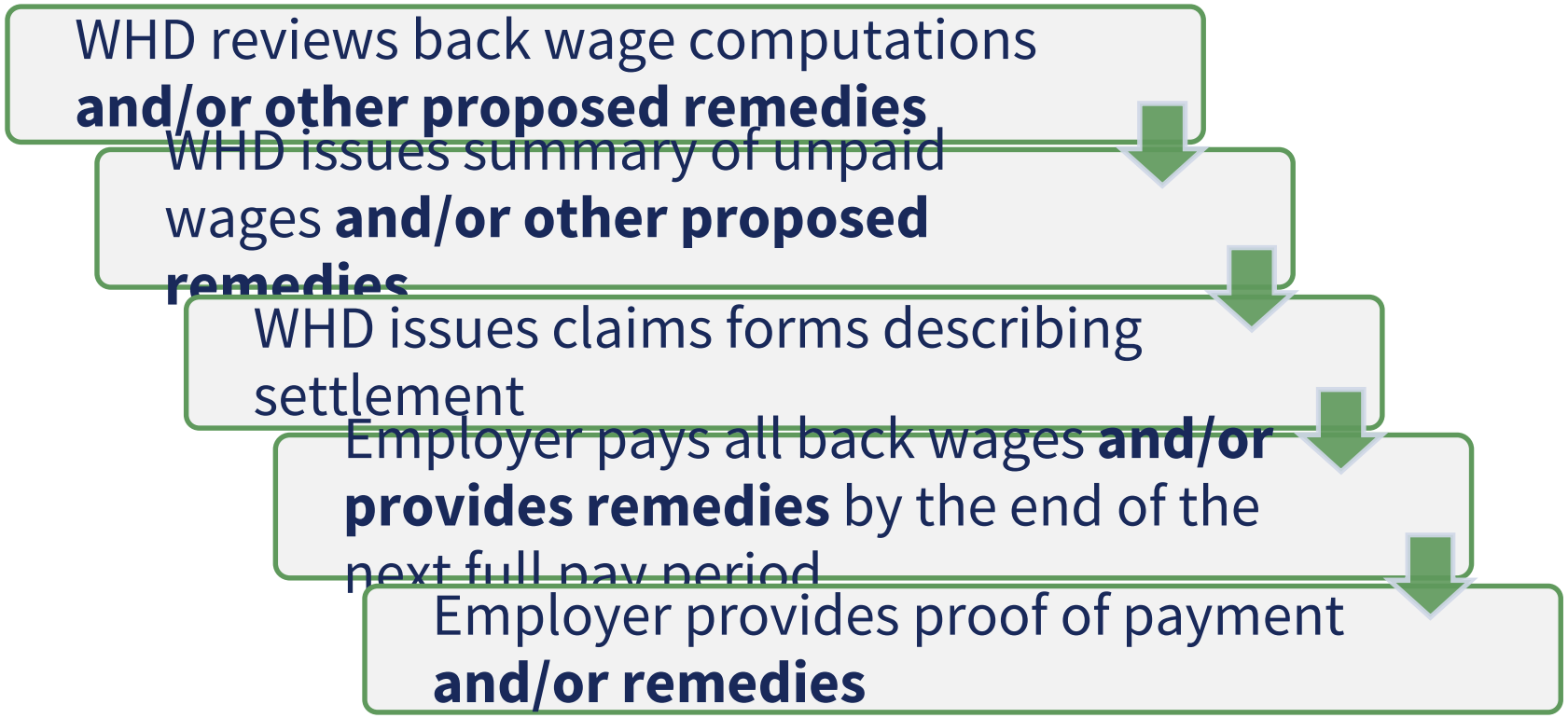
Contact WHD to submit:

- The names, addresses, and phone numbers of all affected employees
- Back wage calculations with supporting evidence and methodology or methodology and supporting evidence for determining other remedies due
- Supporting evidence for identified violations, such as payroll records or relevant leave records
- Records of hours worked of each affected employee or records demonstrating the nature of FMLA violations during applicable time frame

What to Bring WHD

- Records to show the corrected practices to comply with the FLSA and/or FMLA;
- Concise explanation of potential violations for possible inclusion in liability release;
- Certification that the employer reviewed all PAID information, terms, and compliance assistance materials; and
- Certification that the employer meets all eligibility criteria of the PAID program.

Review and Resolution



Am I setting myself up?



If WHD denies an employer's good faith request to participate in the program, will WHD then investigate the employer based on the information the employer already provided?

Will DOL expand the scope?



If an employer comes to WHD prepared to resolve a potential violation at one location, might DOL seek information regarding other employees at other locations?

Am I the first?

- Employers from coast to coast have participated
- Variety of industries
- For profit, not-for-profit, government

How will I learn more about PAID?



Visit our website:
www.dol.gov/agencies/whd/paid

Call us: 866-4US-WAGE

PUMP at Work Protections






Under the Fair Labor Standards Act

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

FLSA Pump at Work Protections

The FLSA requires employers to provide reasonable break time and a private place other than a bathroom for an employee to pump breast milk for her nursing child for one year after the child's birth each time such employee has need to pump at work.



Reasonable Break Time



The FLSA requires employers to provide nursing employees:

- Reasonable break time
- Each time such employee has need to pump at work
- For one year after the child's birth

The frequency of breaks needed to pump at work, as well as the duration of each break, will likely vary.

Compensation for Break Time

- As with other breaks under the FLSA, the nursing employee must be completely relieved from duty or the time spent pumping must be counted as hours worked for the purposes of minimum wage and overtime requirements.
- If an employer already provides paid break time and if an employee chooses to use that time to pump, she must be compensated in the same way that other employees are compensated for break time.
- An employer must also pay for pump breaks if required by Federal or State law or municipal ordinance.

Space

Nursing employees must be provided a space that is:

- Shielded from view,
- Free from intrusion from coworkers and the public, and
- May be used to pump breast milk.

The space cannot be a bathroom.



Additional Resources

WHD | U.S. Department of Labor

Overtime Pay: Fact Sheets

FLSA Protections to Pump at Work

Payroll Audit Independent Determination (PAID)

Need Guidance?

Get the answers you need to understand how labor laws apply to your specific situation.



Request an OPINION LETTER today at www.dol.gov/agencies/whd/opinion-letters/request

Project Firewall



Protecting America’s highly skilled workers through enforcement and compliance assistance.

- A new initiative that helps WHD investigate companies in competitive industries, so the H-1B visa program is not misused in ways that may harm U.S. workers.
- Project Firewall Information on Website
-

Possible H-1B Violations

- Displacement
- Failure to recruit American workers
- Not offering the job to a qualified American worker
- Retaliation
- Use of H-1B workers during strikes or lockouts
- Misrepresentation
- Failure to pay correct wages
- Failure to provide benefits
- Adverse effect on working conditions of American workers

New in WHD (Regulatory Enforcement)

- Dual Jobs and Tipped Employees
- Application of the Fair Labor Standards Act to Direct Care Workers (Enforcement Guidance)
- Notice of Proposed Rule: Employee or Independent Contractor Status Under the FLSA, FMLA, and MSPA (Enforcement Guidance)
- Prohibition on Seeking Liquidated Damages in Administrative Settlements under the FLSA

As of 10/26/2026

Contact Us

- **Call our toll-free information and helpline at 1-866-4US-WAGE (1-866-487-9243)**
- **Call or visit the nearest Wage and Hour Division Office: WHD Offices**
- Sarah Decker
  Outreach Specialist
  Albany NY District Office
  Phone: (518) 844-4178
  Email: Decker.Sarah@dol.gov

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