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# The Fair Labor Standards Act (FLSA): An Overview

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# The Fair Labor Standards Act (FLSA): An Overview

## **Abstract**

[Excerpt] In 1937, the United States was recovering from the Great Depression. As part of the recovery effort, President Franklin D. Roosevelt endorsed a series of economic programs, known as the New Deal, to help stimulate and rebuild the U.S. economy. The National Industrial Recovery Act (NIRA) was the major statute enacted to help achieve these goals. Although the NIRA was eventually found unconstitutional, many of its provisions appeared in later New Deal statutes, including in the Fair Labor Standards Act of 1938 (FLSA).

## **Keywords**

Fair Labor Standards Act, FLSA, minimum wage, overtime, child labor

## **Comments**

### **Suggested Citation**

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# The Fair Labor Standards Act (FLSA): An Overview

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## Summary

The Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, and child labor protections. The FLSA covers most, but not all, private and public sector employees. In addition, certain employers and employees are exempt from coverage.

Provisions of the FLSA that are of current interest to Congress include the basic minimum wage, subminimum wage rates, exemptions from overtime and the minimum wage for persons who provide companionship services, the exemption for employees in computer-related occupations, compensatory time (“comp time”) in lieu of overtime pay, and break time for nursing mothers.

### Basic Minimum Wage

- The FLSA requires employers to pay covered, nonexempt employees at least the minimum wage. In 2007, the basic minimum wage was raised, in steps, from \$5.15 to \$7.25 an hour. The basic minimum wage was raised to \$7.25 an hour effective July 24, 2009. As of January 1, 2013, 19 states and the District of Columbia have minimum wage rates that are higher than the federal minimum wage rate.
- Basic minimum wage rates in American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI) are lower than in the continental United States. In 2007, Congress passed the Fair Minimum Wage Act of 2007 (P.L. 110-28), which mandated annual increases of \$0.50 an hour in the minimum wages of American Samoa and CNMI. In 2010, Congress temporarily suspended these increases. The minimum wage in CNMI increased by \$0.50 an hour to \$5.55 on September 30, 2012. In July 2012, Congress delayed the increases in American Samoa. The next minimum wage increases in American Samoa are scheduled for September 30, 2015.

### Subminimum Wage Rates

- Tipped employees may be paid less than the basic minimum wage, but their cash wage plus tips must equal at least the basic minimum wage of \$7.25. Employers may pay tipped workers \$2.13 an hour in cash wages, provided the employees receive at least \$5.12 an hour in tips. The latter amount is called a “tip credit.”
- Employers may pay special minimum wages (SMWs) to workers with disabilities. The purpose of the SMWs is to provide persons with disabilities the opportunity to work.

### Overtime

- The FLSA requires employers to pay at least time-and-a-half to covered, nonexempt employees who work more than 40 hours in a week at a given job.
- The FLSA allows covered, nonexempt state and local government employees to receive compensatory time off (comp time) for hours worked over 40 in a workweek. Comp time is time off with pay in lieu of overtime pay.

## **Exemptions**

- The FLSA exempts certain employers and employees from the minimum wage, overtime pay, or child labor standards of the act.
- Certain employees in computer-related occupations are exempt from both the minimum wage and overtime standards of the FLSA if they meet an hourly wage or weekly salary test and a job duties test.

Domestic service workers who provide companionship services in private homes are exempt from both the minimum wage and overtime requirements of the FLSA. Under regulations proposed by the U.S. Department of Labor (DOL), minimum wage and overtime coverage would be extended to companions employed by a third party. Overtime pay would be extended to live-in domestic service workers employed by a third party.

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In 1937, the United States was recovering from the Great Depression. As part of the recovery effort, President Franklin D. Roosevelt endorsed a series of economic programs, known as the New Deal, to help stimulate and rebuild the U.S. economy. The National Industrial Recovery Act (NIRA) was the major statute enacted to help achieve these goals. Although the NIRA was eventually found unconstitutional, many of its provisions appeared in later New Deal statutes, including in the Fair Labor Standards Act of 1938 (FLSA).<sup>1</sup>

## The Fair Labor Standards Act<sup>2</sup>

The FLSA provides for a federal minimum wage, overtime pay, and child labor protections. Congress endorsed the act because its provisions were meant to both protect workers and stimulate the economy. The FLSA also created the Wage and Hour Division (WHD) within the Department of Labor (DOL) to administer and enforce the act.<sup>3</sup>

At the time of the act's passage, Congress found that a few employers who paid substandard wages caused a decrease in wages within their respective industries, because other employers sought to compete in the marketplace with lower priced goods.<sup>4</sup> Congress also found that these decreased wages caused one-third of the U.S. population to be "ill-nourished, ill-clad, and ill-housed."<sup>5</sup> To counter these conditions, in 1938 Congress established a minimum wage of \$0.25 an hour, gradually increasing to \$0.40 an hour in 1945.<sup>6</sup> Congress has since legislated several increases in the minimum wage. It now stands at \$7.25 an hour.

The FLSA also mandates a pay rate of one-and-one-half times an employee's hourly wage for every hour the employee works beyond a standard work week. When enacted, the FLSA required employers to pay overtime for hours worked in excess of 44 hours in a week.<sup>7</sup> The 44-hour threshold was lowered to 40 hours in 1940. The purpose of the overtime provision is to reduce unemployment by encouraging employers to hire more workers, rather than requiring current employees to work more than 40 hours per week and pay the premium overtime rate.

Finally, under the FLSA Congress set certain conditions under which children could work. Not only was oppressive child labor considered immoral, as children often worked at the cost of their own health and education, but Congress also believed that the lower wages generally earned by children drove down the wages of adult workers.<sup>8</sup>

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<sup>1</sup> Stephanie Fitzgerald, *The New Deal: Rebuilding America* (Minneapolis, MN: Compass Point Books, 2007), p. 77.

<sup>2</sup> This section of the report was written by Alexandra Hegji.

<sup>3</sup> **Table A-3** in the **Appendix** provides a list of acronyms used in the report.

<sup>4</sup> U.S. Congress, House of Representatives Committee on Labor, *Fair Labor Standards Act, Conference Report to Accompany S. 2475*, 75<sup>th</sup> Cong., 3<sup>rd</sup> sess., June 11, 1938, Report No. 2738, p. 28.

<sup>5</sup> U.S. Congress, Senate Committee on Education and Labor, *Fair Labor Standards Act, Report to Accompany S. 2475*, 75<sup>th</sup> Cong., 1<sup>st</sup> sess., July 6, 1937, Report No. 884, p. 1.

<sup>6</sup> *Fair Labor Standards Act of 1938*, ch. 676, §§6, 7, and 12, 52 Stat. 1060, at 1062-64, 1067.

<sup>7</sup> *Ibid.*

<sup>8</sup> Although Congress articulated both social and economic reasons for regulating child labor, some commentators noted that President Roosevelt believed the addition of child labor provisions in the FLSA would make wage and hour provisions more palatable to Congress, thereby making FLSA enactment easier. *Ibid.*

The FLSA extends minimum wage, overtime pay, and child labor protections to individuals “employed by an employer.”<sup>9</sup> Congress has also “exempted” certain employers and employees from all or parts of the FLSA. For example, exemptions were provided to executive, administrative, or professional (EAP) employees; individuals employed at retail stores that did not have interstate operations, and agricultural employees. Additionally, the child labor provisions did not apply to children employed in the motion picture or theater industries.<sup>10</sup>

## Who Is Covered by the FLSA?

The FLSA covers employees and enterprises engaged in interstate commerce. An enterprise is covered if it has annual sales or business done of at least \$500,000.<sup>11</sup> Regardless of the dollar volume of business, the act applies to hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; federal, state, and local governments; and preschools, elementary and secondary schools, and institutions of higher education.<sup>12</sup>

Although enterprises that have *less than* \$500,000 in annual sales or business done are not covered by the FLSA, employees of these enterprises may be covered if they are individually engaged in interstate commerce. These employees may travel to other states for work, make phone calls or send emails to persons in other states, or handle records that are involved in interstate transactions.<sup>13</sup>

The \$500,000 enterprise threshold has not been raised since it was enacted in 1989. Employers are required to administer dual enterprise and individual tests to determine if individual employees are covered by the act. That is, although an enterprise may not be covered if it has less than \$500,000 in annual sales or business done, employees of the enterprise may be covered if they are individually engaged in interstate commerce.

The FLSA covers most, but not all, private and public sector employees. Persons who are not covered by the FLSA include individuals who are elected to state or local government offices and members of their staffs, policymaking appointees of elected officeholders of state or local governments, employees of legislative bodies of state or local governments, immediate family members of an employer engaged in agriculture, persons who volunteer their services to a state or local government (if the person is not employed by the government agency to perform the same services), and persons who volunteer their services to a private, nonprofit food bank and who receive groceries from the food bank.<sup>14</sup>

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<sup>9</sup> *Fair Labor Standards Act of 1938*, ch. 676, §§6, 7, 12, 52 Stat. 1060.

<sup>10</sup> *Ibid.*, at 1067-1068.

<sup>11</sup> The size of an enterprise is measured by its “annual sales or business done.” Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least \$500,000. Owners of rental properties are covered if they collect at least \$500,000 annually in rent. 29 C.F.R. §§779.258-779.259.

<sup>12</sup> U.S. Department of Labor, *Wages and Hours Worked: Minimum Wage and Overtime Pay*, available at <http://www.dol.gov/compliance/guide/minwage.htm#who>. 29 U.S.C. §203(s)(1).

<sup>13</sup> U.S. Department of Labor, *Coverage Under the Fair Labor Standards Act*, available at <http://www.dol.gov/whd/regs/compliance/whdfs14.pdf>. (Hereafter cited as DOL, *Coverage Under the Fair Labor Standards Act*.)

<sup>14</sup> 29 U.S.C. §203(e).

The FLSA exempts certain employers and employees from the minimum wage, overtime, or child labor standards of the act. For example, bona fide executive, administrative, and professional employees are exempt from both overtime and the minimum wage if they meet both a salary test and a job duties test. Certain employees in computer-related occupations are also exempt from both overtime and the minimum wage if they meet an hourly wage or weekly salary test and a job duties test. Domestic service workers who provide companionship services in private homes are exempt from both overtime and the minimum wage.

## **Relation of the FLSA to State Laws**

Under Section 18 of the FLSA, if states enact minimum wage, overtime, or child labor laws that are more protective of employees than what is provided by the FLSA, the state law applies. The FLSA defines a state as “any State of the United States or the District of Columbia or any Territory or possession of the United States.”<sup>15</sup> Because states may enact laws that are more protective of employees than what is provided by the FLSA, there are multiple minimum wage, overtime, and child labor standards nationwide.

## **Minimum Wage Rates**

Under Section 6 of the FLSA, employers must pay covered, nonexempt employees at least \$7.25 an hour.<sup>16</sup> However, the FLSA includes several subminimum wage rates. Employers may pay lower minimum wage rates to tipped employees; workers with disabilities; new hires under the age of 20; full-time students who work in retail or service establishments, agriculture, or institutions of higher education; and high school students who are at least 16 years of age and enrolled in a vocational education program.

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<sup>15</sup> 29 U.S.C. §203(c).

<sup>16</sup> Other federal laws or regulations establish minimum wage requirements for workers. These rates are generally higher, but cannot be lower, than the applicable federal or state minimum wage. The Davis-Bacon Act requires employers to pay employees at least the locally prevailing wage and fringe benefits on construction contracts of more than \$2,000 to which the federal government is a party. The Service Contract Act requires employers to pay workers at least the locally prevailing wage and fringe benefits on service contracts of more than \$2,500 with the federal government. Unlike minimum wage rates under the FLSA, prevailing wages under the Davis-Bacon Act and Service Contract Act are not legislated by Congress. Rather, prevailing wages under the two acts are based on wage surveys conducted by or for the U.S. Department of Labor.

As required by the Immigration and Nationality Act (INA) or regulations, minimum wage requirements also apply to foreign workers entering the United States under certain permanent employment-based visas and temporary nonimmigrant visas (e.g., the H-1B visa for temporary professional workers, the H-2A visa for temporary agricultural workers, and the H-2B visa for temporary nonagricultural workers). The minimum wage requirements for these workers are generally based on wage surveys, collective bargaining agreements, or prevailing wages under the Davis-Bacon Act or Service Contract Act.

## The Basic Minimum Wage

The basic minimum wage is raised periodically by Congress. The current basic minimum wage of \$7.25 went into effect on July 24, 2009.<sup>17</sup> As of January 1, 2013, 19 states and the District of Columbia have minimum wage rates that are higher than the federal minimum wage.<sup>18</sup>

Most employees are paid more than the basic minimum wage. According to the Bureau of Labor Statistics (BLS), in 2011 94.8% of employees who were paid by the hour were paid an hourly wage that was greater than the federal minimum wage of \$7.25.<sup>19</sup>

## Tipped Workers

Tipped employees may be paid less than the basic minimum wage, but their cash wage plus tips must equal at least the basic minimum wage.

Under Section 3(m) of the FLSA, a “tipped employee” is a worker who “customarily and regularly” receives more than \$30 a month in tips. Employers must allow tipped employees to keep all tips. However, the FLSA allows tips to be pooled and shared among tipped employees.

Under the FLSA, an employer may pay a tipped worker a minimum cash wage of \$2.13 if the employee receives at least \$5.12 an hour in tips (for a total hourly wage of \$7.25).<sup>20</sup> Employers may claim up to \$5.12 in tips as a tip credit. However, if a tipped employee receives less than \$5.12 an hour in tips, the employer must make up the difference with a higher cash wage. For example, if a tipped employee receives \$3.00 an hour in tips, the employer must pay the employee a cash wage of at least \$4.25 an hour.

In states with a minimum wage that is higher than the federal minimum wage, the tip credit may be more than \$5.12. On the other hand, as of January 1, 2012, seven states and Guam do not allow employers to claim a tip credit (i.e., employers must pay all tipped employees a cash wage that is at least the higher of the federal or state minimum wage). In 24 states and the District of Columbia, the minimum cash wage for tipped employees is greater than the federal minimum cash wage of \$2.13. In 13 states and the Virgin Islands, the minimum cash wage for tipped employees is \$2.13. In the remaining six states, five do not have state minimum wage laws and one exempts tipped employees from state law.<sup>21</sup>

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<sup>17</sup> See **Table A-1** in the **Appendix** for a history of federal laws that increased the basic minimum wage.

<sup>18</sup> See **Table A-2** in the **Appendix** for a list of state minimum wage rates.

<sup>19</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Characteristics of Minimum Wage Workers: 2011*, March 2, 2012, <http://www.bls.gov/cps/minwage2011.pdf>.

<sup>20</sup> 29 U.S.C. §203(m). In 1966, when the tip credit was added to the FLSA, an employer could claim up to 50% of the minimum wage as a tip credit. In 1996, the minimum cash wage for tipped employees was set at \$2.13 an hour, which was 50% of the, then, minimum wage of \$4.25 an hour.

<sup>21</sup> The five states that do not have minimum wage laws are Alabama, Louisiana, Mississippi, South Carolina, and Tennessee. In Georgia, tipped employees are exempt from the state minimum wage law. Puerto Rico allows a lower minimum wage for tipped workers than for nontipped workers.

## **Workers with Disabilities**

Under Section 14(c) of the FLSA, employers may pay special minimum wages (SMWs) to workers with disabilities. The purpose of the SMWs is to provide persons with disabilities the opportunity to work. A disability may be physical or mental. It may be related to age or an injury. Disabilities include blindness, mental illness or retardation, alcoholism, and drug addiction.<sup>22</sup>

Employers must receive certificates from the Wage and Hour Division (WHD) of DOL that authorize the employers to pay SMWs.<sup>23</sup> WHD issues certificates to four types of employers: work centers, hospital or residential care facilities, businesses, and School Work Exploration Programs (SWEP). Work centers (also called “community rehabilitation programs” and “sheltered workshops”) provide employment, training, and rehabilitation services. Hospital or residential care facilities employ “patient workers,” who are employed persons who also receive treatment or care. A business establishment that employs workers with disabilities at SMWs must receive a certificate from WHD. Under SWEP, schools place students with disabilities at work sites in the community.

In order to pay a disabled worker less than the basic minimum wage, the employee’s disabilities must impair his or her productive capacity in the job being performed. The wages paid must be “commensurate” to the worker’s productivity. The worker’s wage must be based on the worker’s productivity relative to the wages and productivity of experienced workers who are not disabled and who perform the same type and quality of work in the same geographic area. For disabled workers paid an hourly wage, employers must review the workers’ productivity, and adjust their wages accordingly, at least every six months. The wages of all disabled workers must also be adjusted at least once a year to take into account changes in wages paid to experienced, nondisabled workers.<sup>24</sup>

An employee paid a SMW, or the employee’s parent or guardian, may ask WHD to review the wage paid to the employee.

## **New Hires Under the Age of 20**

Under what is known as the “youth opportunity wage,” employers may pay a minimum wage of \$4.25 an hour to employees under the age of 20 for their first 90 consecutive calendar days of employment.<sup>25</sup> Hiring youth at a subminimum wage cannot displace other workers. After 90 consecutive days of employment or when the worker reaches age 20, whichever comes first, the employee must be paid at least the basic minimum wage.

The purpose of the youth subminimum wage is to provide employment opportunities to young persons, especially disadvantaged youth. Some policymakers question whether it is appropriate to pay subminimum wage rates to persons under 20, especially if they have held other jobs.

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<sup>22</sup> For a legislative history of Section 14(c), see out-of-print CRS Report RL30674, *Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act*, by William G. Whittaker (available to congressional clients upon request).

<sup>23</sup> The certificates also allow the payment of wages that are less than the prevailing wages on contracts subject to the Service Contract Act (SCA).

<sup>24</sup> 29 C.F.R. §525.

<sup>25</sup> 29 U.S.C. §206(g).

## **Full-Time Students**

Under Section 14(b) of the FLSA, employers may pay certain full-time students 85% of the basic minimum wage. The subminimum wage for full-time students applies to students employed by retail or service stores, in agriculture, or by institutions of higher education. Again, the purpose of the subminimum wage for full-time students is to provide these students with opportunities for employment. The FLSA does not impose an age limit on the subminimum wage for full-time students.

## **Student Learners**

Under Section 14(a) of the FLSA, employers may pay “student learners” 75% of the basic minimum wage. Student learners are high school students who are (1) at least 16 years old (or 18 if employed in an occupation that the Secretary of Labor has declared to be particularly hazardous for the employment of youth), (2) are receiving instruction in an accredited school, college, or university, and (3) are employed part-time by an employer as part of a vocational training program. The employer may pay student learners a subminimum wage for as long as the students are enrolled in the vocational education program. Employers must obtain certificates from DOL authorizing them to pay less than the basic minimum wage.<sup>26</sup>

## **Minimum Wage Rates in the Territories and Possessions of the United States**

When the FLSA was enacted in 1938, the minimum wage in Guam, Puerto Rico, and the Virgin Islands was set at the same rate as in the continental United States (\$0.25 an hour).<sup>27</sup> The minimum wage that applies in the continental United States has applied to Guam since 1938. However, in 1940 Congress enacted legislation that allowed Special Industry Committees (SICs) to set minimum wage rates by industry in Puerto Rico and the Virgin Islands. In 1989, Congress enacted legislation that eliminated the SIC structure in both territories. The minimum wage in the Virgin Islands has been the same as in the continental United States since 1989. In Puerto Rico, minimum wages by industry were raised, in steps, until they were the same as in the continental United States by April 1, 1996.

American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI) were not covered by the FLSA of 1938. In 1956, Congress enacted legislation that required the Secretary of Labor to establish minimum wages in American Samoa based on recommendations from SICs. In 2007, Congress passed the Fair Minimum Wage Act of 2007 (P.L. 110-28).<sup>28</sup> For American Samoa, the act mandated annual increases of \$0.50 an hour until the minimum wage in each industry reached the federal minimum wage. However, in 2010 Congress passed legislation (P.L. 111-244) that postponed the planned increases for 2010 and 2011.<sup>29</sup> In July 2012, Congress

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<sup>26</sup> 29 C.F.R. §§520.201(c), 520.501(a), and 520.506(a).

<sup>27</sup> For more information on minimum wages in the territories, see CRS Report RL30235, *Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*, by William G. Whittaker.

<sup>28</sup> The full name of P.L. 110-28 is the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

<sup>29</sup> The title of the 2010 legislation is To Clarify the Availability of Existing Funds for Political Status Education in the (continued...)

passed, and the President signed, the Insular Areas Act of 2011 (P.L. 112-149). The act delayed the increases in the minimum wages in American Samoa for 2012, 2013, and 2014. The next minimum wage increases in American Samoa are scheduled for September 30, 2015. Thereafter, increases will be made every three years until they reach the federal minimum wage.

In the mid-1970s, the United States and CNMI entered into a Covenant of Association. CNMI retained control over the minimum wage in the islands. However, as was the case with American Samoa, P.L. 110-28 mandated that the minimum wage in CNMI be raised by \$0.50 a year until it reached the same level as in the continental United States. However, P.L. 111-244 postponed the scheduled increase in the minimum wage for 2011. On September 30, 2012, the minimum wage in CNMI increased by \$0.50 an hour to \$5.55.

## Overtime

Under Section 7, employers must pay covered workers at least one-and-a-half times their regular hourly wage for hours worked over 40 hours a week at a given job. Employers may choose to pay more than time-and-a-half for overtime or to pay overtime to employees who are exempt from overtime under the FLSA.

Under the FLSA, overtime pay applies to hours worked in excess of 40 in a workweek. Thus, the law allows some flexibility in work hours. For example, an employer could schedule four 10-hour workdays in a workweek without asking employees to work overtime. Similarly, an employee who works a five-day workweek could work four hours one day and nine hours the other four days and not work overtime.<sup>30</sup>

## Comp Time in Lieu of Overtime Pay

The FLSA, under Section 7(o), allows covered, nonexempt state and local government employees to receive compensatory time off (“comp time”) for hours worked over 40 in a workweek.<sup>31</sup> Comp time is time off with pay in lieu of overtime pay. An employer and employees must agree that the employer will provide comp time. The agreement may be through a collective bargaining agreement or, if there is no such agreement, between the employer and individual employees. Comp time is calculated at a rate that is at least one-and-a-half times the number of overtime hours worked. In general, state and local government employees may accrue up to 240 hours of comp time. Law enforcement, fire protection, emergency response personnel, and employees engaged in seasonal activities may accrue up to 480 hours of comp time. Instead of providing comp time, an employer may pay an employee for any unused comp time. An employee must be allowed to use comp time on the date requested, unless doing so would “unduly disrupt” the

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(...continued)

Territory of Guam, and for Other Purposes (P.L. 111-244).

<sup>30</sup> Some states have overtime laws that are more protective of employees than the FLSA; for example, overtime pay may be required if an employee works more than 8 or 12 hours in a day. See U.S. Department of Labor, Wage and Hour Division, *Wage and Hour Division (WHD) Minimum Wage Laws in the States, January 1, 2012*, <http://www.dol.gov/whd/minwage/america.htm>.

<sup>31</sup> For background on the legislative origins of Section 7(o), see CRS Report R43088, *Compensatory Time and the Working Families Flexibility Act of 2013*, by Benjamin Collins and Gerald Mayer.

operations of the agency.<sup>32</sup> Section 7(o) does not apply to state and local government employees who are exempt from overtime.<sup>33</sup>

## **Break Time for Nursing Mothers**

The Patient Protection and Affordable Care Act (PPACA, P.L. 111-148) added new Section 7(r) to the FLSA.<sup>34</sup> Section 7 of the FLSA requires employers to pay at least time-and-a-half to employees who work overtime. Section 13 of the FLSA provides several exemptions to the overtime requirements of Section 7. Thus, new Section 7(r) does not apply to employers or employees who are exempt from overtime.

Section 7(r) requires covered employers to provide break time for nursing mothers. Break time must be provided for one year after the child's birth. Employers must provide space, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public. Only employees who are not exempt from the FLSA's overtime pay requirements are entitled to break times to express milk. Employers with fewer than 50 employees are not subject to the requirement if compliance would impose an undue hardship on the employer. Employers are not required to compensate nursing mothers for breaks taken for the purpose of expressing milk.

## **Exemptions from the Minimum Wage or Overtime Standards of the FLSA**

Most wage and salary workers are covered by the FLSA. However, under Section 13 of the act certain employers and employees are exempt from coverage. They may be exempt from either the minimum wage or overtime standards of the act, or both. This section considers some, but not all, of the current exemptions in Section 13. The focus is on those exemptions that have been the subject of recent legislation, hearings, or oversight.

### **Executive, Administrative, and Professional Employees**

When the Fair Labor Standards Act (P.L. 75-718) was enacted in 1938, Section 13(a)(1) provided an exemption, from both the minimum wage and overtime requirements of the act, for bona fide executive, administrative, and professional employees (the EAP exemption).<sup>35</sup> The act did not define the terms executive, administrative, or professional employee. Instead, the law stated that the terms would be defined in regulations issued by the Secretary of Labor.<sup>36</sup>

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<sup>32</sup> 29 C.F.R. §§553.20-553.28.

<sup>33</sup> Comp time for federal employees was first provided by the Federal Employees Pay Act of 1956 (P.L. 106) and is codified at Title 5 U.S.C. §5543.

<sup>34</sup> Section 7(r) of the FLSA was added by Section 4207, "Reasonable Break Time for Nursing Mothers," of PPACA.

<sup>35</sup> For more information on the exemption for executive, administrative, and professional employees, see CRS Report RL32088, *The Fair Labor Standards Act: A Historical Sketch of the Overtime Pay Requirements of Section 13(a)(1)*, by William G. Whittaker.

<sup>36</sup> Originally, the FLSA stated that regulations implementing the EAP exemption would be issued by the administrator of the newly created Wage and Hour Division (WHD) of DOL. The Fair Labor Standards Amendments of 1961 (P.L. 87-30) changed the authority to issue regulations from the administrator of the WHD to the Secretary of Labor.

Under current regulations, to qualify for the EAP exemption, employees must meet certain duties tests and be paid a salary of at least \$455 per week.<sup>37</sup> Job titles do not determine whether an employee is exempt.

To qualify for the exemption for executive employees, all of the following job duties tests must be met:

- The employee’s primary duty “is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof”;
- The employee “customarily and regularly directs the work of two or more other employees”; and
- The employee “has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.”<sup>38</sup>

To qualify for the exemption for administrative employees, both of the following job duties tests must be met:

- The employee’s primary duty “is the performance of office or nonmanual work directly related to the management or general business operations of the employer or the employer’s customers;” and
- The employee’s primary duty “includes the exercise of discretion and independent judgment with respect to matters of significance.”<sup>39</sup>

To qualify for the exemption for professional employees, the following job duties test must be met:

- The employee’s 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 “Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.”<sup>40</sup>

Periodically, DOL has modified the regulations that implement the EAP exemption. The regulations were last changed in 2004. The current minimum weekly salary of \$455 is an issue in implementing the exemption. Between changes in the threshold, weekly salaries may rise because

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<sup>37</sup> An employee whose total annual compensation is at least \$100,000 is exempt if he or she “customarily and regularly” performs at least one of the job duties tests for executive, administrative, or professional employees. 29 C.F.R. §541.601.

Before 2004, under Section 13(a)(1), executive, administrative, or professional employees were exempt if they met either a long or a short test. Under both tests, to be exempt, an employee had to meet both a salary test and a job duties test. U.S. Department of Labor, Wage and Hour Division, “Defining and Delimiting the Terms ‘Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman,’” *Federal Register*, vol. 5, October 15, 1940, pp. 4077-4078.

<sup>38</sup> 29 C.F.R. §541.100.

<sup>39</sup> 29 C.F.R. §541.200.

<sup>40</sup> 29 C.F.R. §541.300.

of inflation or increases in labor productivity. Thus, unless the threshold is raised (either legislatively or administratively), over time more employees become exempt from overtime pay. On the other hand, a higher threshold may make it more difficult for employers to administer overtime (i.e., because employers would have to keep track of hours worked for more employees).

The job duties tests are a second issue in implementing the EAP exemption. For an employee to be exempt, the employee's job duties must meet the requirements for exemption. The tests are complex and can result in workers being misclassified (e.g., they may be classified as exempt when they should be nonexempt). For employers, a higher salary threshold may make it easier to administer the job duties tests for exemption—because fewer employees would meet the minimum salary test.

## **Outside Salespersons**

Outside salespersons are also exempt under Section 13(a)(1) of the FLSA. Unlike executive, administrative, and professional employees, however, the \$455 salary test does not apply to outside salespersons.

To qualify for the exemption for outside sales employees, an employee must meet both of the following job duties tests:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer;<sup>41</sup> and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.<sup>42</sup>

An outside salesperson is someone who makes sales at the customer's home or place of business. The person may work hours that are convenient for the customer. Also, the hours worked by outside salespersons may be difficult for employers to monitor.

One issue with the exemption for outside salespersons is whether a sale involves the actual transfer of ownership of a company's goods or services. In a June 2012 decision by the U.S. Supreme Court, the court ruled that pharmaceutical sales representatives (also called "detailers") who encourage doctors to prescribe the use of a company's prescription drugs are outside salespersons, even though the drugs can only be sold with a doctor's prescription.<sup>43</sup>

Currently, regulations state that "Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls."<sup>44</sup> Some

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<sup>41</sup> Obtaining orders for "the use of facilities" includes selling advertising time on radio, television, or in newspapers, and soliciting freight for railroads or other transportation companies. U.S. Department of Labor, Wage and Hour Division, *Exemption for Outside Sales Employees Under the Fair Labor Standards Act (FLSA)*, [http://www.dol.gov/whd/regs/compliance/fairpay/fs17f\\_outsidesales.pdf](http://www.dol.gov/whd/regs/compliance/fairpay/fs17f_outsidesales.pdf).

<sup>42</sup> 29 C.F.R. §541.500.

<sup>43</sup> *Christopher v. SmithKline Beecham Corp.*, No. 11-204, pp. 4-5, 14-15 (U.S. Supreme Court 2012).

<sup>44</sup> 29 C.F.R. §541.502.

policymakers maintain that inside salespersons, whose primary duty is to make sales, should also be exempt.

## **Employees in Computer-Related Occupations**

In 1990, Congress directed the Secretary of Labor to issue regulations that would exempt from overtime and the minimum wage certain employees in computer-related occupations.<sup>45</sup> Before 1990, computer employees could be exempt from FLSA coverage if they met the requirements of the EAP exemption. Regulations in effect in 1990 stated that the exemption for learned professionals applied to employees who have acquired “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.” The regulations said that knowledge of an “advanced type” was knowledge that generally could not be attained with only a high school degree. Rather, learned professionals typically held an “academic degree.” The 1990 regulations went on to say that

The question arises whether computer programmers and systems analysts in the data processing field are included in the learned professions. At the present time there is too great a variation in standards and academic requirements to conclude that employees employed in such occupations are a part of a true profession recognized as such by the academic community with universally accepted standards for employment in the field.<sup>46</sup>

In 1990, Congress enacted legislation that directed the Secretary of Labor to issue regulations that would allow “computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers” to qualify as exempt executive, administrative, or professional employees under Section 13(a)(1) of the FLSA. The 1990 legislation also directed the Secretary of Labor to apply the EAP exemption to employees in computer-related occupations if they were paid on an hourly wage that was at least six-and-a-half times the basic federal minimum wage.

In 1992, the U.S. Department of Labor (DOL) published final regulations that implemented the 1990 legislation. The regulations treated computer employees as professional employees under the EAP exemption. The regulations stated that the exemption applied to “highly skilled” computer employees. To be exempt as a professional employee, the 1992 regulations said that a computer employee’s primary duty must consist of one or more of the following job duties:

- (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
- (2) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

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<sup>45</sup> For more on the exemption for employees in computer-related occupations, see CRS Report R42141, *Computer-Related Occupations Under the Fair Labor Standards Act (FLSA)*, by Gerald Mayer.

<sup>46</sup> 29 C.F.R. §§541.302 (July 1, 1990, edition).

(4) a combination of the aforementioned duties, the performance of which requires the same level of skills.

Finally, the 1992 regulations stated that “While such employees commonly have a bachelor’s or higher degree, no particular academic degree is required for this exemption.”<sup>47</sup>

When the final regulations implementing the 1990 legislation went into effect, the basic federal minimum wage was \$4.25 an hour. Thus, computer employees who were paid by the hour were exempt if they met the new job duties test and were paid at least \$27.63 an hour (i.e., 6½ times \$4.25).

In 1996, Congress added Section 13(a)(17) to the FLSA. Section 13(a)(17) applies specifically to employees in computer-related occupations. Under Section 13(a)(17), the minimum hourly wage for computer professionals was fixed at \$27.63 an hour. The exemption includes in statute much of the language from the 1992 regulations that defined the primary duties of exempt computer professionals.

In 2004, DOL issued new regulations that revised the salary and duties tests for the EAP exemption. The regulations also simplified the duties tests for computer professionals to reflect the 1996 amendments to the FLSA. Under the 2004 regulations, computer professionals are exempt from the minimum wage and overtime standards of the FLSA if they meet the job duties test provided in regulations and, if they are paid an hourly wage, are paid at least \$27.63 an hour or, if they are paid a salary, are paid at least \$455 a week.<sup>48</sup> The same duties tests apply to both salaried and hourly computer employees.<sup>49</sup>

Skilled computer workers are not necessarily exempt from the minimum wage or overtime requirements of the FLSA. Employees engaged in the manufacture or repair of computer hardware are not exempt. Employees whose work is highly dependent on the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming, are not exempt computer professionals.<sup>50</sup>

## **Domestic Service Employees**

When the FLSA was enacted in 1938, it did not cover domestic service employees. The Fair Labor Standards Amendments of 1974 (P.L. 93-259) extended minimum wage and overtime coverage to include domestic service workers who are employed in private households.<sup>51</sup> Domestic service workers include housekeepers, cooks, full-time babysitters, and others.<sup>52</sup>

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<sup>47</sup> U.S. Department of Labor, Wage and Hour Division, “Fair Labor Standards Act: Computer-Related Occupations; Exemption from Minimum Wage and Overtime Compensation Requirements; Final Rule,” *Federal Register*, vol. 57, October 9, 1992, p. 46744.

<sup>48</sup> The minimum weekly salary of \$455 may be paid in periods longer than a week (e.g., \$910 biweekly or \$1,971.66 a month). 29 C.F.R. §541.600(b).

<sup>49</sup> 29 C.F.R. §541.400(b).

<sup>50</sup> 29 C.F.R. §541.401.

<sup>51</sup> The 1974 amendments added Sections 6(f) and 7(l) to the FLSA. Section 6(f) extended minimum wage coverage to domestic service employees. Section 6(f) states that

Any employee (1) who in any workweek is employed in domestic service in a household shall be  
(continued...)

In addition to extending minimum wage and overtime coverage to domestic service employees, the 1974 amendments added two exemptions that affect two types of domestic service workers: domestic service workers who provide companionship services and live-in domestic service workers. Under Section 13(a)(15) of the FLSA, domestic service workers who provide companionship services in private homes are exempt from both the minimum wage and overtime standards of the act. Section 13(b)(21) of the act exempts from overtime, but not the minimum wage, domestic service workers who provide live-in domestic services.

On December 27, 2011, DOL issued a Notice of Proposed Rulemaking (NPRM) that would change the definition of companionship services.<sup>53</sup> Under current regulations:

- Companionship services are defined as “those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs.”
- Companionship services may include household work related to the care of the aged or infirmed individual, such as preparing meals, bed making, or washing clothes. General household work (such as housecleaning) may also be included in companionship services. However, general household work must be “incidental” to providing companionship services. Current regulations define incidental as 20% or less of the total hours worked.
- Companionship services do not include services performed by trained personnel, such as registered or practical nurses.<sup>54</sup>

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(...continued)

paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee’s compensation for such service would not because of section 209(a)(6) of the Social Security Act (42 U.S.C. 409(a)(6)) constitute wages for the purposes of title II of such Act (42 U.S.C. 401 et seq.), [i.e., the employee’s pay must be wages for purposes of Social Security] or (2) who in any workweek (A) is employed in domestic service in one or more households, and (B) is so employed for more than 8 hours in the aggregate, shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b) of this section. [Note: Section 6(b) requires employers to pay employees at least the minimum wage rate required in Section 6(a) of the FLSA.]

Section 7(l) extended overtime coverage to domestic service employees. Section 7(l) states that

No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a) of this section. [Note: Section 7(a) requires employers to pay covered employees at least one-and-a-half times their regular rate of pay for overtime.]

<sup>52</sup> DOL, *Coverage Under the Fair Labor Standards Act*.

<sup>53</sup> U.S. Department of Labor, Wage and Hour Division, “Application of the Fair Labor Standards Act to Domestic Service,” *Federal Register*, vol. 76, December 27, 2011, pp. 81190-81244. (Hereafter cited as DOL, *Application of the Fair Labor Standards Act to Domestic Service*.) DOL twice extended the comment period on the proposed rule. Comments were due on or before March 21, 2012. U.S. Department of Labor, Wage and Hour Division, “Application of the Fair Labor Standards Act to Domestic Service,” *Federal Register*, vol. 77, March 13, 2012, pp. 14688-14689.

<sup>54</sup> 29 C.F.R. §552.6. DOL, *Application of the Fair Labor Standards Act to Domestic Service*, p. 81195. A registered nurse may be exempt from the minimum wage and overtime standards of the FLSA as a professional employee under section 13(a)(1) of the act.

The NPRM would narrow the exemption for companionship services. Under the proposed rule:

- The definition of companionship services would be limited to fellowship and protection (eliminating the reference to “care”). Fellowship and protection may include activities such as conversation, reading, watching television, going for walks, or visiting with friends of the person being cared for. A companion may also help the person use a wheelchair or walker and help the person move from one area of the home to another.
- Companions could spend up to 20% of total hours worked on incidental “intimate personal care” services. These services must be performed in conjunction with providing companionship services and may include occasional feeding, dressing, bathing, or grooming. A companion may occasionally drive the person to run errands or to appointments or social events. Incidental intimate personal care services would not include household work that benefits other members of the household, such as housekeeping, making meals, or doing laundry.
- Companionship services would not include medical care provided by persons with specialized training.<sup>55</sup>

The proposed rule would also extend minimum wage and overtime coverage to companions employed by a third party employer, and extend overtime coverage to live-in domestic workers employed by a third party. The exemption for companions would continue to apply to companions employed directly by an individual or family (provided the companions meet the new definition of companionship services). Live-in domestic workers employed directly by individuals or families would still be exempt from overtime.<sup>56</sup>

DOL’s target date for issuing a final rule is April 2013.<sup>57</sup>

## **Child Labor**

The FLSA sets minimum age requirements for youth employed outside of school hours in agricultural and nonagricultural occupations. In nonagricultural occupations, the act sets a general minimum age for employment of 16. In agricultural occupations, the general minimum age to work is 14.<sup>58</sup>

The FLSA includes a number of exceptions to the general minimum age requirements of the act. Under a parental exemption, a child of any age may be employed by his or her parent (or person standing in the place of a parent) in any occupation in a business, including a farm, owned or operated by the parent. But, youth under 18 cannot be employed in mining or manufacturing, including in a business owned or operated by a parent.<sup>59</sup>

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<sup>55</sup> DOL, *Application of the Fair Labor Standards Act to Domestic Service*, pp. 81193-81195, 81244.

<sup>56</sup> *Ibid.*, pp. 81195-81196.

<sup>57</sup> Office of Information and Regulatory Affairs, Office of Management and Budget, *Application of the Fair Labor Standards Act to Domestic Service*, RIN1235-AA05, <http://www.reginfo.gov/>.

<sup>58</sup> For more information on child labor, see CRS Report RL31501, *Child Labor in America: History, Policy, and Legislative Issues*, by Gerald Mayer.

<sup>59</sup> Information on the age limits for youth employment are from U. S. Department of Labor, Wage and Hour Division, (continued...)

Youth under a certain age cannot work in occupations determined by the Secretary of Labor to be hazardous to minors. The minimum age to work in hazardous occupations in nonagricultural occupations is 18. In agricultural occupations, the minimum age is 16.

The FLSA also provides exemptions from the limits on employment in hazardous occupations. In agriculture, youth between the ages of 14 and 15 may work in certain hazardous occupations if they are student learners.<sup>60</sup> Minors ages 14 and 15 can operate tractors or other machinery if they hold a certificate of training from a 4-H or vocational agriculture training program. The restrictions on employment in hazardous occupations in agriculture do not apply to youth employed on farms owned or operated by a parent.

Youth ages 12 and 13 can work in agriculture with the written consent of their parents on a farm where a parent (or person standing in the place of a parent) is also employed.

Youth who are covered by the FLSA and are not exempt must be paid at least the applicable federal or state minimum wage. However, employees in agriculture are exempt from the overtime requirements of the FLSA.<sup>61</sup>

On September 2, 2011, DOL issued a proposed rule to change the regulations that implement the child labor provisions in agriculture. In the proposed rule, DOL said that “None of the revisions proposed in this NPRM in any way change or diminish the statutory child labor parental exemption in agricultural employment” in the FLSA.<sup>62</sup> Nevertheless, in response to concerns about the potential effects of the proposed rule on the parental exemption, DOL announced, on February 1, 2012, that it was going to reconsider the part of the rule dealing with the interpretation of the parental exemption. DOL said that instead of applying the parental exemption to farms that are “wholly” owned by the parent (or person standing in place of a parent) the exemption would apply to farms that are “substantially” owned by the parent. Thus, the parental exemption would apply to farms where the parent is a part owner of the farm, a partner in a partnership, or an officer of a corporation that owns the farm if the parent holds a substantial ownership interest in the partnership or corporation.<sup>63</sup>

On April 26, 2012, DOL announced that it was withdrawing the proposed rule. DOL stated that “The decision to withdraw this rule—including provisions to define the ‘parental exemption’—was made in response to thousands of comments expressing concerns about the effect of the

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*Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 102, available at <http://www.dol.gov/whd/regs/compliance/childlabor102.pdf>; and U. S. Department of Labor, Wage and Hour Division, *Child Labor Provisions in Nonagricultural Occupations Under the Fair Labor Standards Act*, Child Labor Bulletin 101, available at <http://www.dol.gov/whd/regs/compliance/childlabor101.pdf>.

<sup>60</sup> A student learner is someone who is enrolled in a vocational education program in agriculture under a written agreement that, among other things, ensures that the work of the student is incidental to the training.

<sup>61</sup> 29 U.S.C. 213(b)(12). Employees on small farms are exempt from both the minimum wage and overtime requirements of the FLSA. A farmer who did not employ more than 500 “man days” of labor in any calendar quarter in the preceding calendar year is exempt from the minimum wage and overtime requirements of the act. A “man day” is any day in which an employee performed agricultural work for at least one hour.

<sup>62</sup> U.S. Department of Labor, Wage and Hour Division, “Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties,” *Federal Register*, vol. 76, September 2, 2011, available at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-02/pdf/2011-21924.pdf>, p. 54841.

<sup>63</sup> U.S. Department of Labor, Wage and Hour Division, *U.S. Labor Department to Re-Propose ‘Parental Exemption’ of Child Labor in Agriculture Rule*, February 1, 2012, <http://www.dol.gov/opa/media/press/whd/WHD20120203.htm>.

proposed rules on small family-owned farms.” DOL also stated that the regulation will not be pursued for the duration of the Obama Administration.<sup>64</sup>

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<sup>64</sup> U.S. Department of Labor, Wage and Hour Division, *Labor Department Statement on Withdrawal of Proposed Rule Dealing With Children Who Work in Agricultural Vocations*, <http://www.dol.gov/opa/media/press/whd/WHD20120826.htm>.

## Appendix. Major Amendments to the FLSA, Federal Minimum Wage Rates, and List of Acronyms

This appendix briefly describes major amendments to the Fair Labor Standards Act (FLSA).

**Table A-1** shows the history of legislated changes in the basic federal minimum wage. **Table A-2** shows the minimum wage rates in the states and other jurisdictions as of January 1, 2012. **Table A-3** provides a list of acronyms used in the report.

### Major Amendments to the FLSA

The FLSA has been amended several times since 1938.<sup>65</sup> The amendments generally expanded coverage of the act, created subminimum wage rates, and increased the basic minimum wage.

#### 1947 Amendments

In 1947, Congress passed the Portal-to-Portal Act. The act addressed issues arising out of several court cases. First, Congress addressed the practical definition of hours worked, for which an employee must be paid. Congress excluded from hours worked time spent traveling to and from work. Congress also stated that some “preliminary” and “postliminary” activities performed before or after the workday are not hours worked.<sup>66</sup> However, workers could be compensated for such activities if the worker and employer agreed to such employment terms or if compensation for the activities was customary in the place of employment.<sup>67</sup>

The 1947 amendments also allow parties to settle a worker’s minimum wage or overtime claim if “there exists a bona fide dispute as to the amount payable.”<sup>68</sup> However, parties cannot agree to a settlement that would result in a wage less than the minimum wage or payment of less than time-and-a-half for overtime.<sup>69</sup>

Additionally, in the 1947 amendments Congress prohibited class action suits under the statute, unless the Secretary of Labor filed the suit as the representative of workers. It also limited the availability of compensation recovered in a class action suit only to those employees who affirmatively agreed to be a part of the suit.<sup>70</sup> Finally, the amendments set a two-year statute of limitation (time limit) in which a worker could file a claim.<sup>71</sup>

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<sup>65</sup> The review of major amendments to the FLSA was written by Alexandra Hegji.

<sup>66</sup> For instance, absent an employer-worker agreement or workplace custom, employers may not be required to pay workers minimum wage or overtime pay for the time workers spend changing clothes at the beginning and end of shifts while on work premises. See, for example, *Genuth v. National Biscuit Co.*, 81 F. Supp. 213 (S.D.N.Y. 1948).

<sup>67</sup> 29 U.S.C. §252.

<sup>68</sup> 29 U.S.C. §253(a).

<sup>69</sup> *Ibid.*

<sup>70</sup> 29 U.S.C. §216.

<sup>71</sup> 29 U.S.C. §255.

## **1961 and 1966 Amendments**

In 1961, Congress amended FLSA exemptions such that employers of retail workers in enterprises with annual sales in excess of \$1 million were required to pay minimum wage and overtime rates.<sup>72</sup>

In 1966, Congress expanded coverage of the FLSA to include workers employed in any enterprise with annual sales of at least \$250,000 and employees of all businesses engaged in construction, repair, laundering, and cleaning services. Additionally, for the first time, FLSA coverage was extended to employees of hospitals, elementary and secondary schools, and institutions of higher education.<sup>73</sup> The 1966 amendments also added a “tip credit,” which allowed employers to include a portion of an employee’s tips as part of the minimum wage.<sup>74</sup> Finally, the 1966 amendments restricted the employment of youth under the age of 16 in agriculture in occupations found by the Secretary of Labor to be particularly hazardous, except when the employee is employed by a parent on a farm owned or operated by the parent.<sup>75</sup>

## **1974 Amendments**

The 1974 FLSA amendments extended coverage to most federal, state, and local government employees. However, fire protection and law enforcement employees (including security personnel in correctional institutions) of public agencies were given special treatment, such as a complete exemption from overtime for agencies that employ fewer than five employees in fire protection or law enforcement and a partial exemption from overtime for fire protection and law enforcement employees whose work period extends from 7 to 28 consecutive days.<sup>76</sup>

## **1985 Amendments**

In 1985, Congress amended the FLSA to allow state and local governments to offer their workers compensatory time off from work in lieu of overtime pay.<sup>77</sup>

## **1989 Amendments**

In 1989, FLSA coverage was extended to enterprises with annual sales of at least \$500,000. The amendments also repealed the retail exemption, under which employees of almost all small retail enterprises were exempt from the minimum wage and overtime rates.

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<sup>72</sup> *Fair Labor Standards Amendments of 1961*, P.L. 87-30.

<sup>73</sup> 1966 U.S.C.A.N. §3003, 3008.

<sup>74</sup> 29 U.S.C. §203(m).

<sup>75</sup> U.S. House of Representatives, *Fair Labor Standards Amendments of 1966, Conference Report to Accompany H.R. 13712*, 89<sup>th</sup> Cong., 2<sup>nd</sup> sess., Report No. 2004, September 6, 1966, p. 18.

<sup>76</sup> *Fair Labor Standards Amendments*, 1974, P.L. 93-259.

<sup>77</sup> *Fair Labor Standards Amendments of 1985*, P.L. 99-150.

### **The 1996 Small Business Job Protection Act**

In 1996, Congress exempted certain computer professionals from minimum wage and overtime regulations.<sup>78</sup> The 1996 amendments also brought within the FLSA's minimum wage coverage all government employees employed as of April 1, 1996.

### **The 2007 Increases in the Basic Minimum Wage**

On May 25, 2007, President George W. Bush signed into law a supplemental appropriations bill titled the "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007" (P.L. 110-28). Title VIII of the act, "Fair Minimum Wage and Tax Relief," increased the basic federal minimum wage from \$5.15 to \$5.85 an hour effective July 2007, from \$5.85 to \$6.55 an hour effective July 2008, and from \$6.55 to \$7.25 an hour effective July 2009.

### **The Equal Pay Act**

The Equal Pay Act (EPA), although commonly referred to on its own, was an amendment to the FLSA. The EPA was enacted in 1963 and prohibits gender-based pay discrimination.<sup>79</sup>

### **Break Time for Nursing Mothers**

The 2010 Patient Protection and Affordable Care Act (PPACA) amended the FLSA to require covered employers to provide reasonable break time to nonexempt employees to express breast milk for a nursing child.

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<sup>78</sup> 29 U.S.C. §213(a)(17).

<sup>79</sup> 29 U.S.C. §§206-209.

**Table A-1. Federal Minimum Wage Laws**

Public Law and Date Enacted	Wage Rate	Effective Date of Wage Rate
P.L. 75-718, enacted June 25, 1938	\$0.25 0.30 0.40	October 1938 October 1939 October 1945
P.L. 81-393, enacted October 26, 1949	0.75	January 1950
P.L. 84-381, enacted August 12, 1955	1.00	March 1956
P.L. 87-30, enacted May 5, 1961	1.15 1.25	September 1961 September 1963
P.L. 89-601, enacted September 23, 1966	1.40 1.60	February 1967 February 1968
P.L. 93-259, enacted April 8, 1974	2.00 2.10 2.30	May 1974 January 1975 January 1976
P.L. 95-151, enacted November 1, 1977	2.65 2.90 3.10 3.35	January 1978 January 1979 January 1980 January 1981
P.L. 101-157, enacted November 17, 1989	3.80 4.25	April 1990 April 1991
P.L. 104-188, enacted August 20, 1996	4.75 5.15	October 1996 September 1997
P.L. 110-28, enacted May 25, 2007	5.85 6.55 7.25	July 2007 July 2008 July 2009

**Source:** CRS Report RL33791, *Possible Indexation of the Federal Minimum Wage: Evolution of Legislative Activity*, by William G. Whittaker.

**Table A-2. Minimum Wage Rates in the States and Other Jurisdictions, as of January 1, 2013**

<b>Jurisdictions (20) With Minimum Wage Rates Higher Than the Federal Minimum Wage</b>		
Alaska (\$7.75)	Illinois (\$8.25)	New Mexico (\$7.50)
Arizona (\$7.80)	Maine (\$7.50)	Ohio (\$7.85)
California (\$8.00)	Massachusetts (\$8.00)	Oregon (\$8.95)
Colorado (\$7.78)	Michigan (\$7.40)	Rhode Island (\$7.75)
Connecticut (\$8.25)	Missouri (\$7.35)	Vermont (\$8.60)
District of Columbia (\$8.25)	Montana (\$7.80)	Washington (\$9.19)
Florida (\$7.79)	Nevada (\$8.25)	
<b>Jurisdictions (24) With Minimum Wage Rates the Same as the Federal Minimum Wage (\$7.25)</b>		
Delaware	Maryland	Pennsylvania
Guam	Nebraska	South Dakota
Hawaii	New Hampshire	Texas
Idaho	New Jersey	Utah
Indiana	New York	U.S. Virgin Islands
Iowa	North Carolina	Virginia
Kansas	North Dakota	West Virginia
Kentucky	Oklahoma	Wisconsin
<b>Jurisdictions (7) With Minimum Wage Rates Less Than the Federal Minimum Wage<sup>a</sup></b>		
American Samoa (\$4.18-\$5.59) <sup>b</sup>	Georgia (\$5.15)	Puerto Rico (\$4.10)
Arkansas (\$6.25)	Minnesota (\$6.15)	Wyoming (\$5.15)
Commonwealth of the Northern Mariana Islands (CNMI) (\$5.55) <sup>b</sup>		
<b>Jurisdictions (5) With No State Minimum Wage Requirement<sup>a</sup></b>		
Alabama	Mississippi	Tennessee
Louisiana	South Carolina	

**Source:** U.S. Department of Labor, Wage and Hour Division, *Changes in Basic Minimum Wages in Nonfarm Employment Under State Law: Selected Years 1968 To 2013*, <http://www.dol.gov/whd/state/stateMinWageHis.htm#UORh87RHDAk>. U.S. Department of Labor, Wage and Hour Division, *Employee Rights Under the Fair Labor Standards Act*, <http://www.dol.gov/whd/regs/compliance/posters/cnmi.pdf>.

**Notes:** Coverage patterns vary from one jurisdiction to another. The table shows the highest wage applicable under current law.

- a. In states with a minimum wage that is lower than the federal minimum wage or with no minimum wage, state law applies to workers who are not covered by the FLSA.
- b. On September 30, 2012, the minimum wage in CNMI increased by \$0.50 an hour to \$5.55. In American Samoa, the next wage increases are scheduled for September 30, 2015. The rates will then rise every three years until they reach the federal minimum wage.

**Table A-3. List of Acronyms**

<b>Acronym</b>	<b>Description</b>
BLS	Bureau of Labor Statistics of the U.S. Department of Labor
CNMI	Commonwealth of the Northern Mariana Islands
CPI-U	Consumer Price Index for All Urban Consumers
DOL	U.S. Department of Labor
EAP	Executive, administrative, and professional employees
EPA	Equal Pay Act
FLSA	Fair Labor Standards Act
NIRA	National Industrial Recovery Act
NPRM	Notice of Proposed Rule Making
PPACA	Patient Protection and Affordable Care Act
SIC	Special Industrial Committees
SMW	Special minimum wage rates for persons with disabilities
SWEP	School Work Experience Program
WHD	Wage and Hour Division of the U.S. Department of Labor

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