



Restaurants and Fast Food Establishments Under the Fair Labor Standards Act (FLSA)

This information is provided to give general information concerning the application of the FLSA to employers and employees of restaurants and fast food establishments.

The restaurant/fast food industry includes establishments which are primarily engaged in selling and serving to purchasers prepared food and beverages for consumption on or off the premises.

Coverage

Restaurants/fast food businesses with annual gross sales from one or more establishments that total at least \$500,000 are subject to the FLSA. Also, any person who works on or otherwise handles goods that are moving in interstate commerce is individually subject to the *minimum wage* and *overtime* protection of the FLSA. For example, a waitress or cashier who handles a credit card transaction would likely be subject to the Act.

Requirements

Minimum Wage: Covered non-exempt workers are entitled to a *federal minimum wage* \$7.25 per hour effective July 24, 2009. Wages are due on the regular payday for the pay period covered. Deductions made from wages for items such as cash shortages, required uniforms, or customer walk-outs are illegal if the deduction reduces the employee's wages below the *minimum wage* or cuts into overtime pay. Deductions made for items other than board, lodging, or other recognized facilities normally cannot be made in an overtime workweek. Tips may be considered as part of wages, but the employer must pay not less than \$2.13 an hour in direct wages and make sure that the amount of tips received is enough to meet the remainder of the *minimum wage*.

Food Credit: The employer may take credit for food which is provided at cost. This typically is an hourly deduction from an employee's pay. However, the employer cannot take credit for discounts given employees on food (menu) prices.

Tips: Tipped employees are those who customarily and regularly receive more than \$30 a month in tips. Employees must be informed in advance if the employer elects to use the tip credit, the amount of tip credit to be claimed, and the employer must be able to show that employees receive at least the applicable *minimum wage* when wages and tips are combined. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Overtime: Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in excess of 40 hours per week. Tipped employees who receive \$2.13 per hour in direct wages are also subject to overtime at one and one-half times the applicable *minimum wage*, not one and one-half times \$2.13.

Typical Problems

If uniforms are required by the employer the cost of the uniform is considered to be a business expense of the employer. If the employer requires the employee to bear the cost, such cost may not reduce the employee's wages below the *minimum wage* or cut into *overtime compensation*.

Exemptions from Overtime: Section 13(a)(1) of the FLSA provides an exemption from FLSA monetary requirements for an employee employed in a bona fide executive, administrative or professional capacity or as an outside salesperson. An employee will qualify for exemption if all pertinent tests relating to duties, responsibilities and salary, as set forth in Regulations, 29 CFR Part 541, are met. The salary and duties tests for the exemptions are fully described in Regulations Part 541.

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our Albuquerque District Office at 505-248-6100. You can also call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This information is for general information and is not to be considered in the same light as official statements of position contained in the regulations.