

Presenter



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Wage and Hour Laws

- Minimum wage
- Maximum hours
- Overtime pay
- Child labor
- Equal pay
- Payroll requirements
- Recordkeeping

The Fair Labor Standards Act

- Administered by the Wage and Hour Division of the U.S. Department of Labor.
- Establishes a national minimum wage floor.
- Requires overtime compensation for millions of Americans.
- Penalizes employers who violate the law.
 - Back pay
 - Liquidated damages
 - Attorney's fees and costs

State and Local Laws

- State Laws
 - West Virginia Minimum Wage and Maximum Hour Law
 - West Virginia Wage Payment and Collection Act
 - Kentucky Wages and Hours Law
 - Kentucky Wage Payment Law
 - Ohio Minimum Wage Law
 - Ohio Wage Payment Law
 - Pennsylvania Wage Payment and Collection Law
 - Pennsylvania Minimum Wage Act of 1968

- Local Laws

FLSA Minimum Wage and Overtime Requirements

- Employers must pay non-exempt employees:
 - At least minimum wage for all hours worked (the current federal rate is \$7.25 per hour).
 - Overtime compensation for all time worked over 40 in a workweek.
- Overtime compensation generally must be at least 1.5 times the employee's "regular rate of pay."

Minimum Wages in the Area

- Federal – \$7.25
- West Virginia – \$8.75
- Ohio – \$10.45*
- Kentucky – \$7.25
- Pennsylvania – \$7.25

Salary Basis Test

The salary basis test generally involves two components. The test requires an employee to be paid an amount that both:

- Satisfies a minimum threshold.
 - The employee must receive a predetermined amount at least equal to **\$684** a week, paid on a salary or fee basis.
- Is paid on a “salary or fee basis.”
 - The predetermined amount cannot be subject to reduction because of the quality or quantity of the employee's work.
 - The employer cannot take any improper deductions from the predetermined amount.

2024 Salary Level Increases Overturned

<u>DATE</u>	<u>STANDARD SALARY LEVEL</u>	<u>HIGHLY COMPENSATED EMPLOYEE LEVEL</u>
Implemented in 2019; current as of February 2025	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024 (overturned November 15, 2024)	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027, and every 3 years thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.

Calculating Overtime

- Generally, overtime pay = 1.5 x regular rate of pay.
- Regular rate of pay includes all remuneration paid to, or on behalf of, the employee for work performed during the week, including:
 - Wages.
 - Salary.
 - Commissions.
 - Non-discretionary bonuses.

Calculating Overtime

- Overtime pay is calculated on a workweek basis and averaging hours over two or more weeks is not permitted.
- An employee can be paid on a piece-rate, salary, commission, or some other basis, but all earnings (except the statutory exclusions) must be totaled and converted to an hourly rate (the regular rate).
- The regular rate is typically calculated by dividing the total pay in a given workweek by the total number of hours actually worked that week.

Calculating Overtime

An employee's regular rate of pay **excludes**:

- Gifts.
- Pay for occasional periods of no work, such as paid vacation and sick leave.
- Reimbursements for work-related expenses.
- Discretionary bonuses.
- Benefit plan contributions and payments to certain profit-sharing plans.
- Certain premium payments.
- Certain stock-related income.
- Talent fees.

Day Rate

- Set amount of pay an employee receives each day regardless of the amount of time worked.
- Helix Energy Solutions Group, Inc. v. Hewitt (2023)
 - Day rate cannot be used to satisfy the salary-basis test for exempt employees.
 - Therefore, employees paid on a day-rate basis are entitled to overtime.

Calculating Overtime for Day Rate

- Divide the employee's total compensation for the workweek by the employee's hours worked to arrive at regular rate.
- Employee is then owed an additional 50% of the regular rate for all overtime hours.

Compensable Time

Under the DOL's "**continuous workday**" principle, all activities that occur between the beginning and end of a workday constitute compensable working time.

When a workday begins and ends can be more complicated than simply clocking in and out.

Employers must also consider:

- Activities occurring before or after (**preliminary or postliminary** to) an employee's principal work activities. If preliminary or postliminary activities are sufficiently related (**integral and indispensable**) to the employee's principal activities, they may be compensable.
- *De minimis* time.

Compensable Time

Commonly litigated issues include:

- Donning and doffing (time spent putting on and taking off clothing, safety equipment, and work-related gear).
- Pre-shift activities (booting up a computer, pre-shift meetings).
- Travel time in certain situations.
- Walking time (from locker to time clock, from time clock to front door).
- Waiting or on-call time.
- Training, onboarding, and seminars.
- Testing.
- Volunteer work if not voluntary.
- Security or bag checks.

Recordkeeping

- Date and time when workweek begins
- Regular rate of pay
- Daily and weekly hours worked
- Total wages due for the workweek
- Total premium compensation
- Total additions or deductions
- Payment date and period covered by each payment
- Other requirements

What is an Independent Contractor?

Generally, an independent contractor is a worker who:

- Offers their services to the public for a fee.
- Is not economically dependent on any single company.
- Is **not** an employee.

What is an Independent Contractor?

An independent contractor typically:

- Charges a fee for their services.
- Is engaged only for the time required to perform a specified service or task.
- Retains control over the method and manner of work.
- Retains economic independence and is free to offer their services to more than one company.
- Is responsible for paying their own income, Social Security, and Medicare taxes.
- Is not covered by most federal, state, or local laws designed to protect employees.

What is an Independent Contractor?

An independent contractor typically does not:

- Receive company-sponsored benefits, such as paid vacation, health insurance, or retirement benefits.
- Perform the same work as the company's employees.
- Have the “indicia” of an employee, such as using the client company's uniforms, name badges, or business cards.

What is an Independent Contractor?

An employee, by comparison, is subject to significant oversight and control by the company and:

- Is paid wages and receives company-sponsored benefits.
- Is employed for a continuous period and performs whatever tasks the company requires.
- Generally, pays their income, Social Security, and Medicare taxes through the amounts their employer is obligated to withhold from their wages.
- Is economically dependent on the employer.
- Is protected by applicable federal, state, and local employment laws.

Independent Contractor v. Employee

- (1) opportunity for profit or loss depending on managerial skill;
- (2) investments by the worker and the potential employer;
- (3) degree of permanence of the work relationship;
- (4) nature and degree of control;
- (5) extent to which the work performed is an integral part of the potential employer's business; and
- (6) skill and initiative.

Consequences of Misclassification

The penalties for misclassification can be serious. If a company misclassifies an employee as an independent contractor, it must ensure compliance going forward and may be liable for:

- Back wages and overtime pay.
- Employee benefits, including stock options, retirement benefits, and health plan coverage (or the value of those benefits).
- Disability payments and workers' compensation.
- Tax and insurance obligations.
- Liquidated damages.
- Civil monetary penalties.

Consequences of Misclassification

Improperly classifying an employee as an independent contractor could lead to claims for:

- Unpaid overtime compensation and reimbursement of work-related expenses.
- Reasonable accommodation and return to work benefits under the ADA and its state equivalents.
- Leaves of absence under the FMLA and its state equivalents.
- Plant closure and mass layoff notice and penalties under WARN and its state equivalents.
- Discrimination under Title VII, ADEA, and other federal, state, and local anti-discrimination laws.

Tax and Insurance Obligations

The tax and insurance liabilities for misclassification are significant and can include:

- Years of unpaid federal, state, and local income tax withholdings.
- Social Security and Medicare contributions.
- Workers' compensation and unemployment insurance premiums, including federal unemployment taxes.
- Interest and penalties.
- Affordable Care Act penalties.

Best Practices

- Pay contractors by the project or by an agreed-on flat fee at regular intervals, not by the hour, week, or month.
- Do not reimburse independent contractors for business expenses.
- Do not provide contractors with employee-type benefits like paid vacation, paid holidays, sick leave, and retirement benefits.
- Do not schedule hours or days of work for contractors or their employees.
- Avoid requiring uniforms, grooming standards, and similar workplace requirements typically imposed on employees.
- Issue separate guidelines for independent contractors, vendors, and other third parties instead of providing them with a copy of the employee handbook.

Best Practices

- Do not invite contractors to employee-only events or meetings.
- Do not provide contractors with company business cards.
- Do not give independent contractors job titles.
- Deal with performance problems as contract modification or breach issues, not as disciplinary issues. Do not conduct performance evaluations for independent contractors. Do not involve Human Resources in the business relationship with independent contractors.
- Determine if the company's competitors classify similar workers as employees instead of independent contractors.
- Regularly audit the company's independent contractor arrangements and template agreements.
- Do not control the details of how the independent contractor performs the work. Focus on the end result rather than the details.

Disclaimer

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Questions?

