

FEDERAL MINIMUM WAGE INCREASE Are There Exceptions?

The United States Congress recently amended the Fair Labor Standards Act (FLSA) to increase the federal minimum wage in three phases. As a result, ***covered nonexempt workers*** are entitled to a minimum wage of not less than \$5.85 per hour effective July 24, 2007; to \$6.55 per hour effective July 24, 2008; and to \$7.25 per hour effective July 24, 2009. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after forty hours of work per workweek.

The minimum wage law applies to employees of enterprises that have annual gross volume of sales or business done of at least \$500,000. It also applies to employees of smaller firms if the employees are engaged in interstate commerce or in the production of goods for commerce, such as employees who work in transportation or communications or who regularly use the mails or telephones for interstate communications. Other persons, such as guards, janitors, and maintenance employees who perform duties which are closely related and directly essential to such interstate activities are also covered by the FLSA. It also applies to employees of federal, state or local government agencies, hospitals and schools, and it generally applies to domestic workers.

There are two ways in which an employee can be covered by the Federal law: "enterprise coverage" and "individual coverage." Employees who work for certain businesses or organizations (or "enterprises") are covered by the FLSA. These enterprises, which must have at least two employees, are: those that have an annual dollar volume of sales or business done of at least \$500,000; and, hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies. Even when there is no enterprise coverage, employees are protected by the FLSA Individual Coverage if their work regularly involves them in commerce between States. The FLSA covers individual workers who are engaged in commerce or in the production of goods for commerce. Also, domestic service workers (such as housekeepers, full-time babysitters, and cooks) are normally covered by the law. With only some exceptions, overtime must be paid for work over forty hours a week.

Various minimum wage exceptions apply under specific circumstances to workers with disabilities, full-time students, youth under age twenty in their first ninety consecutive calendar days of employment, tipped employees and student-learners.

FLSA authorizes employers to pay special minimum wages to ***worker with disabilities***. The disability must actually impair the worker's earning capacity for the work being performed. Examples are blindness, mental illness, mental retardation, cerebral palsy, alcoholism and drug addiction.

The ***Full-time Student Program*** is for full-time students employed in retail or service stores, agriculture, or colleges and universities. The employer that hires students can

obtain a certificate from the Department of Labor which allows the student to be paid not less than eighty-five percent of the minimum wage. The certificate also limits the hours that the student may work to 8 hours in a day and no more than twenty hours/week when school is in session and forty hours when school is out, and requires the employer to follow all child labor laws. Once students graduate or leave school for good, they must be paid \$5.85 per hour effective July 24, 2007; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009. There are some limitations on the use of the full-time student program. For information on the limitations or to obtain a certificate, contact the Department of Labor Wage and Hour Southwest Region Office at 525 S. Griffin Square, Suite 800, Dallas, TX, 75202, telephone: (972) 850-2603.

The ***Student Learner*** program is for high school students age sixteen years or over and enrolled in vocational education courses. The employer can obtain a certificate from the DOL allowing the student to be paid not less than seventy-five percent of the minimum wage as long as they are enrolled in vocational education. This program is for high school students at least 16 years old who are enrolled in vocational education (shop courses). The employer that hires the student can obtain a certificate from the Department of Labor which allows the student to be paid not less than 75% of the minimum wage, for as long as the student is enrolled in the vocational education program.

Employers interested in applying for a student learner certificate should contact the Department of Labor Wage and Hour Regional Office at:

USDOL Wage and Hour Division
525 South Griffin Square, Suite 800
Dallas, TX 75202
(972) 850-2600

A minimum wage of \$4.25/hour applies to those ***under age twenty*** during their first ninety consecutive calendar days of employment. After ninety consecutive days or after the employee reaches age twenty, the employee must receive a minimum wage increase as per newly established FLSA Minimum Wage Increase guidelines.

An employer may pay a ***tipped employee*** not less than \$2.13 an hour in direct wages if that amount plus the tips received equal at least the federal minimum wage, the employee retains all tips and the employee customarily and regularly receives more than thirty dollars a month in tips. If an employee's tips combined with the employer's direct wages of at least \$2.13 an hour do not equal the federal minimum hourly wage, the employer must make up the difference.

Child labor regulations prohibit persons younger than eighteen years old from working in certain jobs and additionally set rules concerning the hours and times employees under sixteen years of age may work. For ***younger workers***, a minimum wage of \$4.25 per hour applies to those under the age of twenty during their first ninety consecutive calendar days of employment with an employer, as long as their work does not displace other workers. After ninety consecutive days of employment or the after the employee

reaches twenty years of age, whichever comes first, the employee must receive a minimum wage of \$5.85 per hour effective July 24, 2007; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009.

Many states also have minimum wage laws. Where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher minimum wage rate. Texas is one of ten states in the US with minimum wage rates that are the same as the Federal wage rates. Twenty six states within the nation reflect minimum wage rates that are higher than the Federal rates. Texas' State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act.

The Wage and Hour Division has a [Handy Reference Guide to the Fair Labor Standards Act](#) that explains how the law applies. Call 1-888-4-USWAGE (1-866-487-9243) for a printed copy of the guide. *For additional information, visit our Wage-Hour website: <http://www.wagehour.dol.gov> and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm in your time zone, 1-866-4USWAGE (1-866-487-9243).*

To obtain answers to your questions regarding local, state and federal labor laws, contact *WorkSource of the South Plains Board Administration at (806) 744-1987 or visit us online at www.spworksource.org.*