

Wage and Hour laws

The Fair Labor Standards Act, 29 U.S.C. 216, et seq., is a federal law that establishes minimum wage for employees and provides that non-exempt employees be paid at a rate of no less than time and one half for all time worked in excess of 40 hours in a work week. It is the employer's burden to keep records that memorialize an employee's time. The two most prevalent violations of the law include misclassification of employees and the failure to pay employees overtime. Often, employers will simply tell employees that they are not paid on an hourly basis and are "salaried."

Employers may say this as part of a scheme to convince employees that they are not entitled to over-time compensation. Whether an employee is entitled to be paid overtime compensation depends on the actual tasks and responsibilities assumed by the employee and not by the label that the employer places on the employee's job. A complete description of the "exemptions" to the overtime pay requirement can be found at 29 CFR Part 541. See Department of Labor fact sheets, exemptions from overtime pay, "Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees." (available at http://www.dol.gov/esa/whd/overtime_pay.htm). Misclassification can also occur where the employer classifies employees as "independent contractors." Many times employees are classified as independent contractors when -- as a matter of law -- they are actually employees. While, there is a series of legal tests to determine whether an individual is an employee or an independent contractor, as a starting point, no employee should assume that just because an employer classifies an employee as an independent contractor that worker is legally an independent contractor. Even when employees are properly classified as non-exempt, employers routinely short employees on overtime compensation. This can occur by failing to pay increments of time, i.e. 1-30 minutes, each day. At the end of the year, this time adds up to a significant number and employers save substantial dollars at worker expense. Finally, many states have their own wage and hour laws. Laws at the state level can provide for the timing of wage payments, i.e. twice a month, the requirement that workers are paid for breaks or that they have breaks, and the right to collect -- through private litigation -- unpaid wages and benefits.