



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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Application to State and Local Governments

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Application to State and Local Governments

Reference Number: MTAS-904

This document details the specifics of the act: what the act requires, who is covered, who is not covered, hours worked and compensation, overtime pay, record keeping, and penalties. It should become a well-used resource in your municipal government library.

When passed in 1938, the act did not apply to local governments. It specifically covered “employees engaged in interstate commerce, employees engaged in the production of goods for commerce, and employees in an enterprise engaged in commerce or in the production of goods for commerce” (private sector employees). State and local government employees first became subject to the minimum wage and overtime pay provisions of the Fair Labor Standards Amendments of 1966, which became effective February 1, 1967.

The 1966 amendments specifically extended coverage to state and local government employees engaged in the operation of hospitals, residential care facilities, schools and mass transit systems. The Education Amendments of 1972 extended the provisions to virtually all remaining state and local government employees who were not covered as a result of the 1966 amendments.

On June 24, 1976, the Supreme Court ruled in *National League of Cities v. Usery (NLOC)*, 426 U.S. 833 (1976), that, under the 11th Amendment, “the minimum wage and overtime pay provisions of the FLSA were not constitutionally applicable to the integral operations of the states and their political subdivisions in areas of ‘traditional governmental functions’.” The court specifically found that such functions included, among others, schools and hospitals, fire prevention, police protection, sanitation, public health, and parks and recreation. The court’s decision did not affect application of the minimum wage and overtime pay provisions to state and local government employees engaged in activities that were not traditional functions of government or of the other substantive provisions of FLSA (the child labor and the equal pay provisions).

On February 19, 1985, the Supreme Court ruled in *Garcia v. San Antonio Metropolitan Transit Authority et al.* 469 U.S. 528 (1985), and *Donovan v. San Antonio Metropolitan Transit Authority et al.*, 468 U.S. 1213, 104 S.Ct. 3582-83, 82L.Ed.2d 880 (1984), that the minimum wage and overtime pay provisions of FLSA applied to public mass transit employees of the San Antonio Metropolitan Transit Authority. In so doing, the courts overruled their earlier decision in *National League of Cities v. Usery*, thus allowing the minimum wage and overtime pay provisions to be applied “in toto” to state and local government employees who are engaged in traditional governmental activities.

The application of the *Garcia* decision, however, was delayed by legislative action in November 1985 with passage of the Fair Labor Standards Amendment of 1985. The amendment provided that no state or local government would be liable for minimum wage or overtime violations until April 15, 1986, and established new guidelines for compensatory time off and for volunteers. On April 18, 1986, the Department of Labor issued proposed regulations extending the minimum wage and overtime provisions of the act to state and local governments. The proposed regulations did not take effect until January 16, 1987.

In 1987, the final regulations were released by the Department of Labor, Wage and Hour Division (29 C.F.R. § 541 *et seq.*); however, on May 5, 1986, the Wage and Hour Division of DOL issued a memo to all assistant regional wage and hour administrators stating that the DOL:

“... would not assert a violation of the act against any employer who, in good faith, relies on an interpretation contained in the proposed rules, which is subsequently revised in the final rules.”

The inclusion of public employees under the act presented some unusual problems for state and local governments resulting from the pay practices of public employers. Basically, the salary basis test eliminated the executive, administrative and professional exemptions from use by public employers because principles of public accountability prevented them from paying employees for time not worked. To remedy the situation, the DOL released final regulations in August 1992 to amend the salary basis test for public employers to allow docking of exempt employee’s pay for partial-day absences. The regulations provided that “the executive, administrative and professional exemptions would not be lost for public sector employees who were subject to a pay system established by statute, ordinance or

regulation or by a policy or practice established pursuant to principles of public accountability.” 29 C.F.R. § 541.710.

On April 23, 2004, the DOL unveiled sweeping changes to its regulations implementing the “white collar” exemption to the FLSA. The rule changes established a new salary test and pay-docking rules, adjusted the job duty test and established a new “highly compensated employee” provision.

The Fair Minimum Wage Act of 2007 made the first increase in the minimum wage rate since 1997. Introduced on January 5, 2007, the act established an incremental increase in the minimum wage. The current rate, as of July 24, 2009, is \$7.25 per hour.

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