



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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Requirements of the Act

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://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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Requirements of the Act

Reference Number: MTAS-907

Requirements of FLSA

The FLSA requires employers to comply with the minimum wage, overtime pay, equal pay, record keeping and child labor standards for employees who are covered by the act. Except for the child labor restrictions, the act does not impose any limitations on the number of hours that may be worked by employees covered under the act. Instead, it seeks to limit the number of hours worked by requiring additional pay, called overtime pay, for hours worked in excess of the established 40-hour maximum during any seven consecutive 24-hour periods. Work may begin at any time of day and any day of the week.

Minimum Wage

Reference Number: MTAS-1513

State and local governments must pay their employees a minimum wage of not less than \$7.25 per hour as of July 24, 2009. Under the act, "employees do not have to be paid on an hourly basis merely because the statute specifies a minimum wage on this basis. Employees may be paid on an hourly, salaried, commission, monthly, piecework or any other basis as long as pay covering each work week equals or exceeds the minimum wage standard. The minimum wage need not be paid in cash; it can be paid in whole or in part in board, lodging or other facilities." 29 C.F.R. § 531.27.

Special Sub-minimum Wages

Reference Number: MTAS-1514

The FLSA allows sub-minimum wages for learners, student-learners, messengers, apprentices, disabled workers, patient workers and full-time students of institutes of higher learning. Special certificates must be obtained from the Wage and Hour Division for workers to be employed at sub-minimum rates (except for workers qualifying for the youth "opportunity wage"). Employers may not displace other employees to hire workers at the lower rate of pay or make partial displacements by reducing hours, wages or employment benefits. 29 C.F.R. § 520.408(d).

"Employers are allowed to pay employees less than 20 years of age an 'opportunity' wage of \$4.25 per hour for the first 90 days of their employment. Similarly, hiring an employee less than 20 years of age and then discharging them at the end of the 90-day period is illegal. Approval/certificates of the 'opportunity wage' are not issued if lower wage rates limit full-time job opportunities for others in the work place." 29 U.S.C. § 206(g); 29 C.F.R. §§ 520.201 – 520.503 also provide the procedures to apply for special certification. 29 C.F.R. § 520.506 provides information about how to comply with the terms of the certificate, and 29 C.F.R. § 520.508 provides record keeping compliance information.

"Students in institutions of higher education may be employed at a sub-minimum wage. If the appropriate certificate procedures are followed and regulatory requirements are met, then full-time students of institutions of higher education may be paid no less than 85 percent of the federal minimum wage for work they perform for their school." 29 C.F.R. § 519.11. "Full-time students at any educational level (but at least 14 years of age) employed by retail or service establishments, or in agriculture, may be paid wages no less than 85 percent of the minimum wage." 29 C.F.R. § 519.2(a). "Additionally, student-learners who receive instruction at an accredited school, college or university and work part-time in a bona-fide vocational training program may be paid no less than 75 percent of the minimum wage." 29 C.F.R. Part 520, Subpart E.

Special certificates authorizing the employment of apprentices in skilled trades at sub-minimum wages may also be requested. Section 29 C.F.R. § 520.300 defines a "skilled trade" as one with the following characteristics:

1. It is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training
2. It is clearly identified and commonly recognized throughout an industry
3. It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience
4. It requires related instruction to supplement the on-the-job training
5. It is not merely part of an apprentice occupation and does not fall into any of the following categories: marketing; sales administration; administrative support; executive and managerial; professional and semi-professional occupations (occupations for which entrance requirements customarily include education of college level)

A special sub-minimum wage also may be paid to learners. "A learner is a worker 'who is being trained' for an occupation, which is not customarily recognized as an apprentice trade, for which skill, dexterity and judgment must be learned and who, when initially employed produces little or nothing of value." 29 C.F.R. § 520.300. "Learners must be paid no less than 95 percent of the minimum wage (special rules apply for piece rate wages). An employee cannot, however, be considered a learner once he or she has acquired 240 hours of job-related and/or vocational training with the same employer or training facility during the past three years. Employers must also apply to DOL for learners' certificates prior to employing learners at the sub-minimum wage rate." 29 C.F.R. §§ 520.201 – 520.503.

29 C.F.R. Part 525 provides greater flexibility in establishing the hourly wages paid to disabled workers in sheltered workshops. "A worker with a disability" is one whose earning or productive capacity is impaired by age, physical or mental deficiency or injury." 29 C.F.R. § 525.3(d). "The regulations stipulate that certificates will be issued only to those individuals whose earning capacity is impaired to the extent that the individual is unable to earn at least the minimum wage." 29 C.F.R. § 525.12. No fixed percentage is set. The rate is subject to DOL approval and may be appealed by the worker.

ELIGIBLE SUB-MINIMUM PAY

TYPES OF EARNERS	ELIGIBLE EMPLOYERS	% OF MINIMUM WAGE
Students		
<ul style="list-style-type: none"> • Full-time students of institutions of higher education. 29 C.F.R. § 519.11. 	Institutions of higher education	No less than 85%
<ul style="list-style-type: none"> • Full-time students at any level, at least 14 years of age. 29 C.F.R. § 519.1. 	Retail, service or agricultural establishments	No less than 85%
<ul style="list-style-type: none"> • Part-time student-learners, at least 16 years old, working in a bona fide vocational training program. 29 C.F.R. § 520 Subpart E. 	Accredited school, college or university	No less than 75%
Disabled		
<ul style="list-style-type: none"> • Disabled or aged workers. 29 C.F.R. § 525.1. 	All employers	No fixed percentage; rate subject to DOL approval and may be appealed by the worker
Apprentices		
29 C.F.R. § 520 Subpart D	Most employers, with certain exceptions	No less than the special minimum wage specified in the Apprentice Program and Apprentice Agreement unless DOL administrators issue a certificate modifying the terms
Learners		
29 C.F.R. § Part 520 Subpart D	Most employers, with certain exceptions	No less than 95%; special rules for piece rate wages

Overtime Pay

Reference Number: MTAS-1515

Overtime pay required by the FLSA is “extra pay for hours worked over 40 during a work week. 29 C.F.R. § 778.101 A workweek is any seven consecutive 24-hour periods. 29 C.F.R. § 778.103 The work week may begin at any time of day and any day of the week. 29 C.F.R. § 778.104 Work periods for firefighters, police and hospital workers may vary.

The act specifically directs an employer to pay covered employees one and one-half times their regular hourly rate for hours worked in a work week beyond 40. The time and one-half overtime premium generally is calculated by first determining the regular hourly rate of the employee. This is done by dividing the employee’s total regular pay (including salary, mandatory bonuses, incentive pay, goods, food, lodging, etc.) by the number of hours worked during the work week. 29 C.F.R. § 778.109. The calculation produces an hourly rate that is the basis upon which employers pay time and one-half for hours worked in excess of 40 hours per workweek.

Equal Pay Act

Reference Number: MTAS-1516

The Equal Pay Act (EPA), 29 U.S.C. § 206(d), enacted in 1963 as an amendment to the Fair Labor Standards Act, prohibits compensation discrimination against employees on the basis of sex when the work is performed under similar working conditions and requires equal skill, effort and responsibility. The provisions of the EPA apply not only to employees covered by the minimum wage and overtime requirements, but to all employees of a covered enterprise. Men are protected under the EPA equally with women. 29 C.F.R. § 1620.1(c).

Under the EPA, a wage differential is permitted between men and women if one of four justifications is shown:

1. A bona fide seniority system
2. A merit system
3. A system that measures earnings in terms of quantity or quality of production
4. Any other factor other than sex

The EPA also prohibits employers from complying with the provisions by reducing the wage rate of any employee. 29 U.S.C. § 206(d)(1) For example, if a woman was being paid \$600 for a job found to be equal in skill, effort and responsibility to that of a male being paid \$700, the employer would not be permitted to reduce the male employee's compensation to \$600 to comply with the EPA. Administrative enforcement of the EPA was originally delegated to the Secretary of Labor, but in 1979 this responsibility was transferred to the Equal Employment Opportunity Commission. Violators are subject to fines and imprisonment.

Child Labor Provisions

Reference Number: MTAS-1517

The FLSA was amended on July 19, 2010, making changes to the provisions of the Child Labor Law. The new provisions included lifting restrictions limiting the industries 14- and 15-year-olds were permitted to work; establishing new prohibition on youth peddling and setting higher penalties for violations resulting in serious injury or death. The full text of the legislation can be found here [1].

The regulations previously limited the occupations local governments could employ minors as a part of their regular workforce or in a summer jobs for youth program. The FLSA provides that 14- and 15-year-olds may work not only in state and local governments, retail, food service and gasoline service establishments, but also in other environments such as banks, insurance companies, advertising agencies and information technology firms <https://www.dol.gov/whd/regs/compliance/childlabor101.pdf> [2].

Fourteen- and 15-year-olds may now perform "work of an intellectual or artistically creative nature such as computer programming, the writing of software, teaching or performing as a tutor, serving as a peer counselor or teacher's assistant, singing, playing a musical instrument and drawing. Fifteen-year-olds may now work as lifeguards at traditional swimming pools and certain water amusement park attractions such as wave pools, lazy rivers and baby pools and elevated water slides. Fourteen- and 15-year-olds may load and unload onto and off of motor vehicles "light, non-power driven, hand tools" (such as rakes or shovels) and "personal protective equipment" used as part of their own work, as well as personal items like backpacks or lunch boxes. Fourteen- and 15-year-olds may perform work requiring them "to occasionally enter freezers only momentarily to retrieve items."

"Minors between 14- and 16-years-old may work outside school hours. Fourteen- and 15-year-olds who are excused from compulsory school attendance may now work at businesses that use machinery to process wood products. They may not work more than eight hours in any one day when school is not in session. They may not work more than three hours in any one day when school is in session. They may not work more than 40 hours in any one week when school is not in session. They may not work more than 18 hours in any week when school is in session. Finally, minors may work only between 7 a.m. and 7 p.m. in any one day, except during the summer (June 1 through Labor Day) when the evening hour is 9 p.m." 29 C.F.R. § 570.35(a). 29 C.F.R. § 570.35(b) provides an exception to the above restrictions for

minors 14 and 15 years of age for “minors who are employed to perform sports concession services at professional sporting events.” 29 C.F.R. § 570.35(b).

The revisions prohibit 14- and 15-year-olds from riding on a motor vehicle “outside of an enclosed passenger compartment” such as a bed of a pickup truck, the running board of a van or the bumper of a garbage truck. These workers may ride inside passenger compartments, but only under specific conditions. The changes also expand the list of prohibited “power-driven machinery” 14- and 15-year-olds are not allowed to operate to include lawn mowers, golf carts, all-terrain vehicles, trimmers, cutters, weed-eaters, edgers, food slicers, food grinders, food choppers, food processors, food cutters, and food mixers. Fourteen- and 15-year olds are specifically prohibited from “catching and cooping” all kinds of poultry in preparation for transport to market.

“Minors between 16 and 18 years of age are also prohibited from working in certain hazardous occupations.” 29 C.F.R. § 570.2(a)(ii). “Minors under 17 years of age are prohibited from driving on public roads as part of employment.” 29 U.S.C. § 213(c)(6). Sixteen- and 17-year-olds may now operate power-driven pizza dough rollers and portable, counter-top food mixers.

There were also changes to the hazardous occupations for 16- and 17-year-olds, most of which are new prohibitions. First, the prohibition against working in logging and in the operation of saw mills is expanded to include working in forest firefighting and other forestry service. While the current regulations prohibit them from operating power-driven hoisting devices, the new regulations expand this to include most work with elevators, cranes, derricks and man-lifts. The meat-processing prohibition was expanded to include working in slaughtering, meat-processing and rendering occupations including poultry slaughtering establishment.

The regulations expand the old prohibition against the operating and unloading of certain paper balers and paper box compactors to “all balers and compactors. The saw and shears prohibition now includes chain saws and other power-driven saws and wood chippers, and abrasive cutting discs. Counter-top Mixers and Pizza Dough Roller are the only areas where DOL relaxed the regulations now allowing 16- and 17-year-olds to operate portable counter-top mixers, such as those used in private homes, and allowing minors to operate certain pizza dough rollers.

The Act, however, continues to provide that 17-year-old workers may drive cars and trucks at work during **daylight** hours only. They must have a valid driver’s license with no record of moving violations at the time of hire and have completed a state-approved driving school. The vehicle must have a seat belt and the employer must instruct the employee to use it. The vehicle must not weigh more than 6,000 pounds and the driving must not involve towing of vehicles, urgent deliveries, route deliveries or sales. The 17-year-old must not travel more than 30 miles from the place of employment. Finally, the driving must be occasional and incidental to the teen’s employment. The act also restricts the transportation of goods and passengers by 17-year-old drivers.

Minors 16 and 17 years of age may not be employed during those hours when the minor is required to attend class nor between the hours of 10:00 pm and 6:00 am, Sunday through Thursday, preceding a school day. However, if there is a Parental/Consent Form signed, then the minor may work until midnight, but no more than three (3) nights per week Sunday through Thursday.

If a minor is being homeschooled, the same rules apply, unless there is a letter of consent from the parent/guardian conducting the homeschooling. Tenn. Code. Ann. § 50-5-105 (c). Here is a link to parental/consent form: https://www.tn.gov/content/dam/tn/workforce/documents/Forms/CHILDLABORPARENTALCONSENTFORM_Revised10.04.2018.pdf [3]

Links:

- [1] <http://www.ecfr.gov/cgi-bin/text-idx?SID=c4387a34fcaa0b36d657d3574da730e4&node=pt29.3.570&rgn=div5>
- [2] <https://www.dol.gov/whd/regs/compliance/childlabor101.pdf>
- [3] https://www.tn.gov/content/dam/tn/workforce/documents/Forms/CHILDLABORPARENTALCONSENTFORM_Revised10.04.2018.pdf

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