

Remedies

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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“Employees claiming FLSA violations can sue their employer for their unpaid minimum wages or their unpaid overtime compensation and the recovery of back wages and liquidated damages (an amount equal to the wages improperly withheld).” 29 U.S.C. § 216(b). “Class action suits, however, may not be brought under the FLSA, but actions on behalf of all similarly situated employees may be brought against an employer if each party gives consent in writing to become a party and such consent is filed in the court in which the action is brought.” 29 U.S.C. § 216(b).

An employee may not file a suit if:

1. The employee has received back pay for wages due under the FLSA under supervision of the Secretary of Labor,
2. The Secretary of Labor has filed suit to recover the unpaid wages or liquidated damages; or
3. The Secretary of Labor has filed suit to enjoin the employee’s right to sue in his or her own name and recover liquidated damages. 29 U.S.C. § 216(c).

When an employee brings a back-pay suit on his own behalf and wins, the court may require the employer to pay the employee’s reasonable attorney fees. The employee may, if successful, also recover court costs, including the employees’ witness fees and other miscellaneous cost of the litigation. “The Secretary of Labor can also bring a lawsuit against an employer on an employee’s behalf for the recovery of back wages and liquidated damages, or for back wages and an injunction enjoining the employer from committing any further violations of the FLSA.” 29 U.S.C. §§ 216, 217. If the Secretary seeks an injunction, the employer cannot be liable for liquidated damages; however, if the employee sues directly, the employee can recover attorney’s fees while the Secretary of Labor cannot.

“The employee or the Secretary of Labor must file suit within two (2) years after a violation occurs, or three (3) years if the employer has willfully broken the law.” 29 U.S.C. § 255. Willful violations occur if the employer knew that its conduct was prohibited by the act or showed reckless disregard for the requirement of the act. “Persons who willfully violate the act are subject to a fine of up to \$10,000, or imprisonment for up to six months, or both.” 29 U.S.C. § 216(a). The penalty of imprisonment applies only after two violations are filed by the U.S. Department of Justice. The statute of limitation for criminal prosecution is five years.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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