

HR COMPLIANCE OVERVIEW

By Associates Insurance Agency



HIGHLIGHTS

Employers can consider the following best practices to comply with the FLSA's record keeping requirements:

- Understanding maintaining accurate records;
- Leveraging technology;
- Establishing timekeeping practices;
- Conducting internal audits;
- Training personnel; and
- Staying informed of regulatory changes.

“ NONCOMPLIANCE CAN TRIGGER AUDITS



FLSA RECORDKEEPING BEST PRACTICES

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay and youth employment standards for covered employers. It also requires employers to maintain accurate records of all hours worked and employee wages.

Accurate recordkeeping is essential to establishing legal compliance and transparency with an organization's workforce. Maintaining comprehensive and precise records helps employers validate payroll practices, confirm adherence to statutory requirements and respond to employee inquiries. Failure to meet the FLSA's recordkeeping requirements can lead to costly investigations, civil penalties, back wage liabilities and reputational damage.

Noncompliance can trigger audits from the U.S. Department of Labor (DOL) as well as litigation risks. By implementing best practices for FLSA recordkeeping, employers can mitigate these risks.

This Compliance Overview provides employers with a general overview of the FLSA's recordkeeping requirements and best practices to help employers develop and maintain an effective FLSA recordkeeping process.

ACTION STEPS

Employers should carefully consider their obligations under the FLSA and potential legal and business risks when creating and retaining accurate wage and hour records. This Compliance Overview provides best practices for complying with FLSA recordkeeping requirements.

OVERVIEW OF FLSA RECORDKEEPING REQUIREMENTS

The FLSA requires covered employers to keep certain records for each covered worker. While the law does not require these records to be kept in a particular form, it does require that the records include certain identifying information about employee wages, hours worked and other data and information. Employers may use any clear format, such as paper, microfilm or electronic, with reproductions identifiable by date or pay period and readily producible upon request. The information contained in the preserved records must be complete and accessible. While most of this information is generally maintained by employers in the ordinary course of business and is in compliance with other laws and regulations, it's vital that employers understand and comply with the FLSA's recordkeeping requirements to avoid costly penalties.



REQUIRED RECORDS

The FLSA's recordkeeping requirements differ depending on the type of worker. The following is an overview of the FLSA's recordkeeping requirements for nonexempt employees, exempt employees, commissioned salespersons, tipped employees and homeworkers.

NONEXEMPT EMPLOYEES

Under the FLSA, employers must keep payroll or other records for nonexempt employees that contain the following information:

- Personal information about the employee, including the employee's:
 - Full name;
 - Social Security number;
 - Home address, including zip code;
 - Occupation;
 - Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs., Miss or Ms.); and
 - Birth date if the employee is under 19 years of age;
- Time and day when the employee's workweek begins;
- Total hours worked each workday and workweek;
- Basis on which the employee's wages are paid (e.g., per hour, per week or piecework);
- Regular hourly pay rate;
- Total daily or weekly straight-time earnings;
- Total overtime pay for the workweek;
- All deductions from or additions to the employee's wages each pay period, including dates, amounts and nature of any additions or deductions;
- Total wages paid each pay period; and
- Date of payment and the pay period covered by the payment.

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EMPLOYERS
MAY USE ANY
TIMEKEEPING
METHOD
THEY
CHOOSE

Special information is required for employees who work under uncommon pay arrangements, have furnished lodging or other facilities, or receive remedial education.

Although the FLSA requires employers to maintain time records for nonexempt workers, employers may use any timekeeping method they choose. For example, employers may use a time clock, have a timekeeper track employees' work hours or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

If an employee works a fixed schedule from which they seldom vary, the employer may keep a record showing the exact schedule of daily and weekly hours and merely indicate that the worker followed the schedule. When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer must record the number of hours the worker actually worked on an exception basis.

“WHITE-COLLAR’ EXEMPTIONS



EXEMPT EMPLOYEES

The FLSA provides several exemptions from the federal minimum wage and overtime pay requirements. The most common of which are the “white-collar” exemptions. These exemptions generally apply to executive, administrative and professional (EAP) employees, outside sales personnel and certain computer and highly compensated employees. To qualify for a white-collar exemption, an employee must satisfy every applicable test for that exemption, including the salary-level test and duties test. Employers must keep the following records for exempt employees to comply with the FLSA’s recordkeeping requirements:

- Personal information about the employee, including the employee’s:
 - Full name;
 - Social Security number;
 - Home address, including zip code;
 - Occupation;
 - Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs. Miss or Ms.); and
 - Birth date if the employee is under 19 years of age;
- Time and day when the employee’s workweek begins;
- Total wages paid to the employee each pay period;
- Date of payment and workweek or work period covered by the payment; and
- Basis on which the employee’s wages were paid, including enough detail to calculate the employee’s total wages for each pay period.

COMMISSIONED SALESPERSONS

Certain employees who work for a retail or service establishment and are paid on a commission basis, in whole or in part, are exempt from the FLSA’s overtime requirements. The FLSA requires employers to keep the following records for commissioned salespersons:

- Personal information about the employee, including the employee’s:
 - Full name;
 - Social Security number;
 - Home address, including zip code;
 - Occupation;
 - Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs., Miss or Ms.); and
 - Birth date if the employee is under 19 years of age;
- Time and day when the employee’s workweek begins;
- Total compensation paid to the employee each pay period, showing the amount of earnings paid by commission and the amount of noncommission earnings;
- All deductions from or additions to the employee’s wages each pay period, including dates, amounts and nature of any additions or deductions;
- Date of payment and workweek or work period covered by the payment;
- Total hours the employee worked each workday and the total hours worked each workweek;
- A symbol, letter or notation in payroll records identifying that the employee is paid as a commissioned salesperson; and
- A copy of any arrangement or understanding reflecting the agreement to pay the employee as a commissioned salesperson.

TIPPED EMPLOYEES

Under the FLSA, tipped employees are those engaged in occupations in which they customarily and regularly receive more than \$30 a month in tips. Any employer that takes a tip credit must keep records of the following for tipped employees:

- Personal information about the employee, including the employee's:
 - Full name;
 - Social Security number;
 - Home address, including zip code;
 - Occupation;
 - Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs. Miss or Ms.); and
 - Birth date if the employee is under 19 years of age;
- Time and day when the employee's workweek begins;
- Total wages paid each pay period;
- Date of payment and workweek or work period covered by the payment;
- Total hours the employee worked each workday and the total hours worked each workweek;
- Total hours the employee worked each workday for which the employee did not receive tips, including the total daily or weekly straight-line payments for those hours;
- Total hours the employee worked each workday for which the employee received tips, including the total daily or weekly straight-time payments for those hours;
- A symbol, letter or notation in payroll records identifying that the employee's wage includes tips;
- Weekly or monthly amount of tips the employee received that the employee reports to the employer; and
- Amount to which the employer has determined that the employee's wages increased due to tips, updated each week.

Employers that do not take a tip credit but still operate a mandatory tip pool must keep records of each employee who receives tips and the weekly or monthly amount of tips received by each employee.

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INDUSTRIAL
HOMEWORK
MEANS THE
PRODUCTION
BY ANY
PERSON IN
OR ABOUT A
HOME



HOMEWORKERS

The FLSA imposes certain recordkeeping requirements on employers of homeworkers. Under the FLSA, industrial homework means the production by any person in or about a home, apartment, tenement or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production. The FLSA applies to homeworkers who are covered on an individual basis or whose employer is covered on an enterprise basis. In most instances, a homeworker is covered under the FLSA on the basis of individual coverage (i.e., production of goods for out-of-state shipment and/or receipt of out-of-state materials or goods used in the production process).

Employers must keep the following records for each homeworker:

- Personal information about the employee, including the employee's:
 - Full name;
 - Social Security number;
 - Home address, including zip code;
 - Occupation;
 - Sex, which can be identified by a gender-specific prefix (e.g., Mr., Mrs., Miss or Ms.); and
 - Birth date if the employee is under 19 years of age;
- Time and day when the employee's workweek begins;
- Total hours worked each workday and workweek;
- Basis on which the employee's wages are paid (e.g., per hour, per week or piecework);
- Regular hourly pay rate;
- Total daily or weekly straight-time earnings;
- Total overtime pay for the workweek;
- All deductions from or additions to the employee's wages each pay period, including dates, amounts and nature of any additions or deductions;
- Total wages paid each pay period;
- Date of payment and the pay period covered by the payment;
- With respect to each lot of work:
 - Date on which work is given out to the worker and amount of work given out;
 - Date on which work is turned in by the worker and amount of work turned in;
 - Type of articles worked on and operations performed;
 - Piece rates paid;
 - Hours worked on each lot of work turned in; and
 - Wages paid on each lot of work turned in;
- Name and address of each agent, distributor or contractor through whom homework is distributed or collected and the name and address of each homeworker to whom homework is distributed or from whom it is collected by each agent, distributor or contractor.



In addition to the records required by the FLSA, employers must keep a separate handbook for each homeworker. Employers must ensure that the homeworker enters the hours worked and other required information anytime work is performed and/or business-related expenses are incurred. The handbook must remain in the possession of the homeworker except at the end of each pay period, when it is to be submitted to the employer for transcription of the hours worked and other required information and for computation of wages to be paid. The handbook must include a provision for written verification by the employer attesting that the homeworker was instructed to accurately record all of the required information regarding their employment, and that, to the best of the homeworker's knowledge and belief, the information was recorded accurately. Once no space remains in the handbook for additional entries or upon termination of the homeworker's employment, the handbook must be returned to the employer. Employers must preserve each handbook for at least two years and make it available for inspection by the DOL's Wage and Hour Department (WHD) on request.

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THE
HANDBOOK
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THE
HOMEWORKER
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PERIOD

RECORD RETENTION

The FLSA requires employers to preserve certain records for at least three years, including payroll records, collective bargaining agreements, and sales and purchase records. Records on which wage computations are based, such as timecards, piecework tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages, must be retained for two years.

Employers may keep these records at their place of employment or in a central records office, and they must make them available for inspection by the WHD representatives upon request. If an employer stores records off-site, the employer must make them available to WHD representatives within 72 hours of a representative's request.

Best Practices for Complying With FLSA Recordkeeping Requirements

The FLSA requires covered employers to maintain accurate, complete and accessible records of employee work hours and wages to demonstrate compliance with minimum wage, overtime pay and other wage-hour provisions. Effective recordkeeping not only satisfies legal obligations but also protects organizations during audits or disputes. To comply with the FLSA's recordkeeping requirements, employers can consider implementing the following best practices.



MAINTAIN ACCURATE RECORDS

Maintaining accurate records is a cornerstone of an organization's FLSA compliance strategy. Detailed records of employees' hours worked, wages paid and any deductions made are essential for verifying compliance with minimum wage and overtime regulations and recordkeeping requirements. By maintaining and documenting this information, employers can demonstrate their adherence to FLSA recordkeeping requirements, protecting themselves from potential litigation or penalties. Additionally, accurate records serve as a valuable tool for internal audits to proactively identify potential areas of noncompliance. Employers should ensure that their record retention policies and practices align with FLSA requirements. Establishing and maintaining robust recordkeeping practices not only facilitates FLSA compliance but also fosters a culture of fairness and integrity within the workplace.



LEVERAGE TECHNOLOGY

Using technology to manage FLSA-related processes can aid employers in ensuring recordkeeping compliance. Many tools and services are available to assist employers in complying with FLSA requirements and managing practices related to minimum wage, overtime pay and recordkeeping. For example, many employers use automated time and attendance tracking systems or software to help them accurately track and document employee work hours. Technology can help streamline and reduce an organization's administrative burden by helping employers account for and comply with the FLSA's recordkeeping requirements. It can also help to eliminate many common human errors that result from using manual time tracking systems. Automated time and attendance tracking systems or software can create audit trails when changes are made to records or errors are corrected, which can help mitigate legal risks and serve as evidence of an employer's good-faith compliance efforts.

“ COLLECT FLSA- REQUIRED DATA AND INFORMATION

ESTABLISH TIME-TRACKING POLICIES

Establishing clear, consistent time tracking policies can help employers collect FLSA-required data and information, reduce errors and create a defensible audit trail. A written time-tracking policy should define why and how time will be tracked as well as potential consequences for employee violations. By defining clear rules for what counts as work time—covering clock-in/out procedures, breaks, rounding, missed-punch corrections and documented adjustments—and requiring real-time punches with manager and HR oversight, employers capture precise, complete records that satisfy FLSA's recordkeeping requirements.

“ EMPLOYERS CAN IDENTIFY ANY DISCREPANCIES ... BEFORE THEY ESCALATE INTO LEGAL ISSUES

CONDUCT INTERNAL AUDITS

Establishing adequate recordkeeping systems and implementing sensible time-tracking policies are vital to prevent FLSA violations. However, to ensure that systems and procedures are functioning as planned, employers can conduct periodic internal audits. Conducting regular internal audits is integral to an employer's FLSA compliance strategy, as it allows for systematic review and assessment of recordkeeping practices. These audits should review:

- Employment policies and procedures;
- Work-hour records and timekeeping systems;
- Job descriptions;
- Payroll records; and
- Personnel training curriculum.

By scrutinizing payroll records, timekeeping systems and employment policies, employers can identify any discrepancies or areas of potential noncompliance before they escalate into legal issues. Furthermore, internal audits enable employers to implement corrective measures and strengthen their FLSA compliance framework, thereby reducing the risk of costly litigation or penalties. The audits should look specifically at the organization's records to make sure they include any required identifying information about employee wages, hours worked and other information. Regular internal audits serve as a proactive approach to maintaining FLSA compliance and upholding fair labor practices within the organization.

If a problem surfaces during an audit, employers may be able to avoid legal actions by fixing legitimate issues promptly. After solving the problem, employers should determine the cause and take any steps needed to ensure, to the best of their ability, that the problem doesn't happen again. Solving the problem may require paying back wages, adjusting a job description or reclassifying employees altogether. Employers should also evaluate how best to communicate the problem and its solution to any affected individuals.

TRAIN PERSONNEL

One of the most effective ways to ensure organizational compliance with FLSA recordkeeping requirements is to train all personnel, supervisors and employees alike, on how to properly track and report hours worked. Employers can train their workforce to comprehend current FLSA recordkeeping requirements, including how to accurately track working hours and meal and rest breaks. Employees should also know how to identify potential recordkeeping violations or issues, such as missed time punches, and how to report those issues and violations. An organization can ensure its employees and managers are sufficiently trained by establishing regular and frequent training. At a minimum, employers can train employees and managers on FLSA requirements at the time of hire and once per year thereafter. Employers can also provide guides and resources to help their workforce improve their knowledge and understanding of the FLSA's recordkeeping requirements.

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MONITOR
GUIDANCE
FROM THE
DOL



STAYING INFORMED OF REGULATORY CHANGES

Staying informed about updates and changes to FLSA regulations is essential for maintaining compliance. Employers should monitor guidance from the DOL and seek legal counsel if needed to ensure their policies and practices align with current FLSA requirements. This will help employers comply with the most up-to-date FLSA requirements and regulations, fostering a fair and equitable workplace environment and mitigating the risk of costly litigation. In addition to FLSA recordkeeping requirements, some states and localities may have their own requirements. Accordingly, employers should also stay apprised of state and local recordkeeping regulations changes.



EMPLOYER TAKEAWAYS

Employers often face challenges related to FLSA recordkeeping requirements. Understanding which information needs to be retained for each worker can help employers implement best practices to improve organizational compliance. These efforts can reduce employers' overall operational costs, improve organizational efficiency and limit their potential legal exposure. To minimize potential errors and legal risks, employers can consider implementing the best practices outlined in this Compliance Overview.



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