



Wage and Hour Basics

Oregon Labor Law Conference

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Fair Labor Standards Act (FLSA)

Establishes:

- Minimum Wage Standard
- Overtime Standards (threshold 40 hrs / wk)
- Exempt from Overtime
- Recordkeeping
- Youth employment standards

29 U.S.C. § 201 through § 219

29 C.F.R. § 510 through § 794

FLSA is Minimum Coverage

FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced.

Collective bargaining agreements cannot waive or reduce the FLSA's protections. 29 C.F.R. § 541.4

Dual Coverage

Most employers must comply with both FLSA and State wage and hour laws, depending on what provides the greater benefit to the employee.

State Wage & Hour Laws



- Method of paying wages.
- Paydays.
- Earnings / Wage Statements
- Deductions from wages.
- Minimum Wages
- Overtime Wages
- Rest and Meal Periods
- Travel Time
- Recordkeeping
- End of employment / Final paycheck.



RCW 49.12, 49.46 and 49.48
WAC 296-126 and 296-128

ORS ch 652 and 653
OAR 839-001- and 839-020-

Wage & Hour Enforcement

U.S. Department of Labor – Wage and Hour Division

Washington State Labor & Industries (L&I)

Oregon Bureau of Labor & Industries (BOLI)

Employees – private right of action

Common Conduct Resulting in Unpaid Wages

- Misclassification
- Hours Worked
 - Work Time
 - Off-the-Clock Work
 - Training Time
 - Meetings / Education
 - Waiting Time
 - Travel Time
- Rest and Meal Periods
- Calculating Hours & Wages
 - Rounding
 - Deductions
 - Overtime
 - Bonuses
- Wages at the End of Employment

Misclassification as Exempt

Whether an employee can be properly classified as “exempt” from overtime is subject to numerous, multipart tests that often depend on the job duties. Do not just rely on a job description.

FLSA Exemptions (partial list):

Executive Exemptions
Administrative Exemptions
Professional Exemption
Computer Employee Exemption
Outside Sales
Highly Compensated Employees

Washington Exemptions (examples):

Motion Picture projectionists (covered by CBA)
Occasional labor in or about private residence
Farm / Ranch employees
Newspaper carriers
Vessel operating crews (Wa DOT)
Seaman

Oregon Exemptions (examples):

Hand Harvest / pruning laborers
Domestic service on casual basis
Taxicab operator
Golf course caddy
Resident manager of adult foster home
Volunteer firefighter
Volunteer campground host
National Ski Patrol



Employ / Work Time / Hours Worked

FLSA: “Employ” means to engage, suffer or permit to work. This includes all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.

Washington: “Hours worked,” means all hours during which the employee is authorized or required, known or reasonably believed by the employer to be on duty on the employer’s premises or at a prescribed work place.

Oregon: “work time” means all time worked and time of authorized attendance. This includes all hours for which an employee is employed by and required to give to the employer and includes all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place and all time the employee is suffered or permitted to work.



Employer Obligations

Washington: If the work is performed, it must be paid. It is the employer's responsibility *to ensure* that employees do not perform work that the employer does not want performed.

Oregon: It is the duty of the employer to *exercise control* and see that the work is not performed if it does not want the work to be performed. The mere promulgation of a policy against such work is not enough.

Minimum Wages – Amount and Timing

Must pay at least minimum wage rate! Even if paid on a basis other than hourly (commission, piece rate, by day, etc.)

No offset or credit against minimum wage rate for tips / gratuities to the employee from customers.

Employer must pay at least minimum wages on pay day!



Overtime

Calculated at 1.5 times *regular rate of pay*. That's not automatically the hourly rate of pay.

Bonuses: Be cautious of any bonus structure that affects / reduces overtime. *Brunozzi et al v. Cable Communications, Inc.*, 851 F.3d. 990 (9th Cir. 2017). Discretionary bonuses do not need to be included in the overtime rate of pay calculation.

Washington: An employer may not avoid or negate payment of regular or overtime wages by issuing a rule or policy that such time will not be paid or must be approved in advance.

“Comp Time” in lieu of overtime is not allowed under the FLSA



Off-the-Clock Work Time



EXAMPLES

- Donning / Doffing work gear
- Preparatory and concluding work activities
- Shift change meetings
- employee voluntarily starts a little early, or continues to work at the end of the shift.
- Takes work home
- Emails outside regular hours
- Text messages regarding work

Employer has a duty to control the work time if they do not want to pay the wages. If the employer knows or has reason to believe that the employee is continuing to work, such time is working time.



Training / Meetings

Training and meeting time is not work time, subject to wages, if:

- Attendance is voluntary
- Employee performs no productive work (no other work is concurrently performed)
- Not directly related to employee's current work or job duties
- Time spent is outside normal hours



Travel Time is not hours worked when ...

Home to Work Travel: travel from home before the regular workday and returns home at the end of the workday is **not work time**. (Portal to Portal)

but can be hours worked if ...

- Employee works during the travel time, it is work time subject to wages.
- Transporting necessary non-personal tools and equipment in the vehicle between home and first or last job site of the day.
- Receives daily assignments from home
- Home to Work on a Special One Day Assignment in Another City
- Travel That is All in a Day's Work
- Travel Away from Home Community Overnight

Rest and Meal Periods



Rest Period: in each 4 hour segment, scheduled mid-point

Meal Period:

Washington: meal period in 5 hour segment

Oregon: meal period in 6 hour segment

8 hour shift: 2 paid 10-minute rest periods; 1 30-minute unpaid, duty free, meal period

10 hour shift: Washington employee gets 2 30-minute meal periods.

Meal Period: completely relieved from duty and receive 30 minutes of uninterrupted mealtime. If required to be available, or “on-call”, then entire meal period must be paid.

Washington: employee may voluntarily waive a meal period – not rest period.

Oregon: generally no waiver allowed, unless employee serves food or beverages, receives tips.

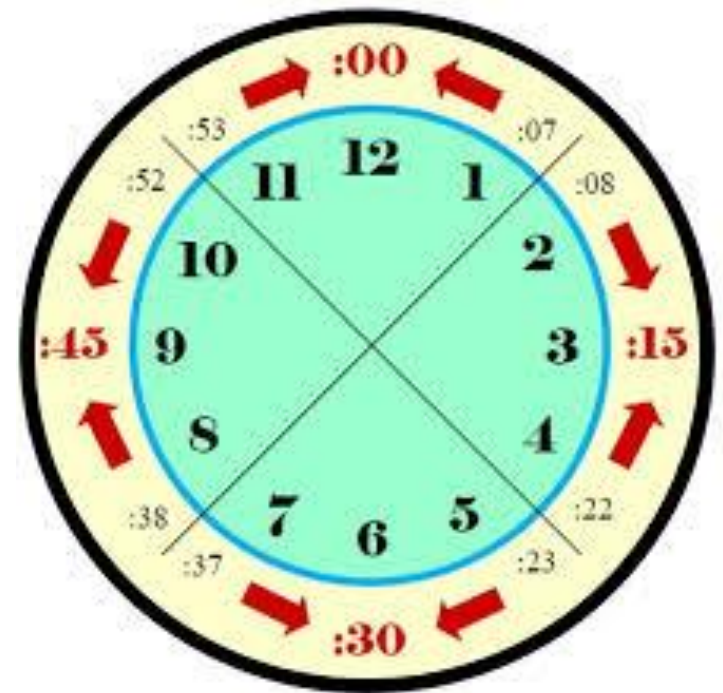
Rounding Start and Stop Time

OREGON: no authority permitting rounding. Oregon statutes refer to “all wages” paid.

FLSA & WASHINGTON: permit true rounding where the rounding (in practice) works both for and against the employee. Commonly called the “7 minute rule”.

Key is whether by calculation *or practice* the round tends to favor the employer.

Employers cannot round, deduct, or average any time from a meal or rest period.



Deductions

Required by law
Subject to collective bargaining
Otherwise, highly detailed limitations



Washington:

- expressly authorizes the deduction in writing
- in advance
- for a lawful purpose
- for the benefit of the employee.

These deductions may reduce the employee's gross wages below the state minimum wage.

WAC 296-126-028

Oregon:

- Authorization in writing
- For the employee's benefit
- Ultimate recipient of the money
- Authorized by collective bargaining agreement
- As a result of garnishment ORS 18.736
- Loan to employee

ORS 653.610(3). Cannot deduct to pay less than minimum wage.

Wages at the End of Employment

Washington: wages due next regular pay day.

Oregon:

- Wages due at the end of employment:
 - Next business day: fired or discharged by employer, or ends by mutual agreement
 - Last day of employment when employee gives not less than 48 hours' notice
 - 5 business days or next payday if employee does not give notice
- Changes to timing
 - Contract of Employment. ORS 652.140(2)(a)
 - Collective Bargaining Agreement. ORS 652.140(5)

ACCRUED VACATION, SICK TIME, PTO: may be due at the end of employment depending on the employer's policies and practices



Resources

- BOLI website
 - FAQ section for Wage and Hour Division
 - BOLI handbooks
- Washington Labor & Industries
 - Wage & Hour summaries
- Department of Labor
 - Fact Sheets
- Attorneys specializing in wage and hour laws



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