

# Index to Contents of OmniFinder CD

**Version 7.02 — April 13, 2009**

The tables which begin after this introductory information provide a complete listing of the contents of the **Wage-Hour OmniFinder CD** provided to participants in Deerfield Seminar's seminar presentations. The following information is provided to assist you in locating information on the disk:

## FORMAT

All files (except posters and letter opinions added since 2007) are provided in both Word Perfect and Microsoft Word format. For example, if you wish to view or print a U.S. Department of Labor letter opinion with the file name "85-10-03A", go to the "Opinions" directory on the CD and look in the "80s" subdirectory or folder for ...

File Name	Format
85-10-03A.DOC	Microsoft Word
85-10-03A.WPD	Word Perfect

The file name used in this example and a number of others, is marked with a "❖" symbol after this file name. Where this symbol is present, this means that a third file is also included on the disk; in this case, with the file name "85-10-03A.PDF". These files are **Adobe Acrobat** files. In some cases, the source document for the file contains tables or extended calculations illustrating the manner in which overtime is to be calculated or something other than paragraphs of text. Where this occurs, Deerfield Seminars provides you with a third alternative for opening the file to ensure that the columns of calculations, for example, are properly formatted and can be easily interpreted by users. You probably have an **Adobe Acrobat** reader on your computer already if you regularly use the internet. If not, you may download a free copy from the Adobe Corporation web page at [www.adobe.com](http://www.adobe.com).

## CONTENTS OF SUBDIRECTORIES ON DISK

The information on the disk is located in seven different subdirectories, according to the source of information:

### *Index*

This directory contains, in Adobe Acrobat format, a copy of this section, the index to the contents of the disk.

### *Laws*

This subdirectory contains the full text of the two federal laws that are discussed extensively in our seminar, the Fair Labor Standards Act and the Portal-to-Portal Act. In addition, the texts of the federal Family and Medical Leave Act and Uniformed Services Employment and Reemployment Act are also provided in this subdirectory.

## CFRs

The subdirectory contains the text of federal regulations in the 500-999 series of Volume 29 of the Code of Federal Regulations. These are the regulations and interpretive bulletins which are under the jurisdiction of the United States Department of Labor's Wage and Hour Division. In addition, 29 CFR Part 1620 is provided; this regulation is issued by the Equal Employment Opportunity Division (EEOC), but pertains to the equal pay provisions of the Fair Labor Standards Act.

## Preambles, Other Federal Register Documents

When federal agencies promulgate regulations in the Federal Register, the regulation is preceded by a regulatory preamble. This regulatory preamble often provides a great deal of useful information regarding the history and interpretation of the regulations, including summaries of comments submitted by affected parties, references to court decisions and legislative documents which guided the issuing agency in determining the language to be used in the regulation, departmental policy, and other similar matters.

This directory also contains other Federal Register documents relating to the US Department of Labor's rulemaking process, such as requests for comments, reports on requests for comments, and proposed regulations.

## FOH

This subdirectory contains chapters of the Wage and Hour Division's Field Operations Handbook. These documents provide guidance to federal wage-hour investigators and other DOL officials concerning the department's interpretation of the law as it applies to numerous real-world situations. Employers can often obtain valuable insight into departmental enforcement policy by reference to the Field Operations Handbook.

This difficult-to-locate information was obtained by Deerfield Seminars by submission of a Freedom of Information Act request to the Department of Labor, and is updated annually.

## Miscellaneous

This subdirectory contains copies of information such as Wage and Hour Division Fact Sheets and other miscellaneous interpretive information provided by the department to employers and employees, as well as advisory memoranda to Wage and Hour Division regional administrators and district directors recently made available on the internet at the WHD web site. Generally, these are relatively brief (2-3 page) summaries of the law as it relates to certain specific types of employers or fact situations, such as restaurants and fast food establishments, automobile dealerships, and the like.

Some fact sheets are provided in Adobe Acrobat format, generally those where formatting might be awkward if only word processing files were provided. As usual, these files are marked by a special symbol ( "♣" ).

## Opinions <sup>1</sup>

This subdirectory, by far the largest on the CD, contains the full text of nearly a thousand letter opinions issued over the years by the Wage and Hour Division Administrator. In order to assist you in locating opinions of interest to your situation, Deerfield Seminars has provided a brief subject heading for each letter opinion; in addition, we have subdivided the opinions into six subcategories as follows:

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<sup>1</sup> Since there are thousands of letter opinion files provided, users could spend an inconvenient amount of time scrolling through files to reach the one desired if all were in a single directory. For this reason, the files are located in separate directories by decade. To search for the file "85-10-03A.doc", for example (a letter opinion published October 10, 1985), go to the "80's" subdirectory.

We have attached to this list a copy of a letter opinion as an example of the type of information which may be located in the letter opinion directories on the disk.

**NOTE:** as an additional comment concerning opinion letters, it is noted that a large group of opinion letters signed by the Wage and Hour Division Administrator and staff in early January 2009 in the last few days of the George Bush Administration, but apparently not mailed until after the inauguration of President Barack Obama, were published to the WHD web site on March 2, 2009 but simultaneously withdrawn. These opinions are denoted by enclosing the file name in brackets and in italics; e.g., *[09-01-16Q]*.

Exemptions — These opinions provide guidance from the department concerning the applicability of various minimum wage and overtime, or overtime only, exemptions to specific occupations or industries. The opinions are further broken down alphabetically by specific exemption (starting with agricultural employees), and within subcategory by date of issuance — the earliest opinions are listed first, the most recent last.

Hours Worked and Overtime — Letter opinions in this category provide information about numerous hours worked and overtime issues. Opinions deal with compensatory time; whether sleep time, travel time, or training time must be treated as hours worked in various situations; how to calculate regular rate of pay for overtime; and other issues.

Coverage and Employment — These opinions provided guidance concerning whether particular employees or employers are covered, whether an individual (such as a golf pro at a country club or others) may be treated as an independent contractor, and various issues surrounding volunteer status in public sector or not-for-profit environments.

Wage Payment and Deductions — This subcategory includes letter opinions pertaining to permissible deductions from minimum wage and other deductions as well as tip credit and other wage payment issues.

Provisions Applicable to Public Agencies — These opinions relate to issues only applicable to public employers, including letters dealing with the alternative overtime provisions for police and fire employees provided for in section 207(k) of the FLSA and others.

Child Labor — Letter opinions dealing with employment of minors.

Miscellaneous — These opinions deal with topics which are otherwise unclassifiable.

Beginning with letter opinions issued in 2005, file names are in **boldface** if signed by the Wage and Hour Division Administrator.

#### *Posters*

Finally, this subdirectory on the disk provides copies, in **Adobe Acrobat** format only, of all current posters required by the Wage and Hour Division and other U.S. Department of Labor agencies.

Most posters are available in color and black-and-white versions; a number are available in both English and Spanish versions as well.

# Disk Contents

## Federal Laws

Statute	Directory: Laws
	File Name
Fair Labor Standards Act	FLSA ✦
Family and Medical Leave Act	FMLA ✦
Portal-to-Portal Act	Portal
Uniformed Services Employment and Reemployment Act	USERRA

## Code of Federal Regulations

Directory: CFRs	Title
File Name	
20 CFR 1002	Regulations under the Uniformed Services Employment and Reemployment Rights Act of 1994
29 CFR 500	Migrant and Seasonal Agricultural Worker Protection
29 CFR 501	Enforcement of Contractual Obligations for Temporary Alien Agricultural Workers Admitted under Section 216 of the Immigration and Nationality Act
29 CFR 505	Labor Standards on Projects or Productions Assisted by Grants from the National Endowments for the Arts and Humanities
29 CFR 507	Enforcement of H-1b Labor Condition Applications
29 CFR 511	Wage Order Procedure for American Samoa
29 CFR 515	Utilization of State Agencies for Investigations and Inspections
29 CFR 516	Records to be Kept by Employers
29 CFR 519	Employment of Full-time Students at Subminimum Wages
29 CFR 520	Employment of Student-Learners
29 CFR 525	Employment of Workers with Disabilities under Special Certificates
29 CFR 528	Annulment or Withdrawal of Certificates for the Employment of Student-learners, Apprentices, Learners, Messengers, Handicapped Persons, Student-workers, and Full-time Students in Agriculture or in Retail or Service Establishments At Special Minimum Wage Rates
29 CFR 530	Employment of Homeworkers in Certain Industries
29 CFR 531	Wage Payments under the Fair Labor Standards Act of 1938
29 CFR 536	Area of Production
29 CFR 541	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees ( <i>New regulations effective August 23, 2004</i> )
29 CFR 547	Requirements of a "Bona Fide Thrift or Savings Plan"
29 CFR 548	Authorization of Established Basic Rates for Computing Overtime Pay
29 CFR 549	Requirements of a "Bona Fide Profit-sharing Plan or Trust"
29 CFR 550	Defining and Delimiting the Term "Talent Fees"
29 CFR 551	Local Delivery Drivers and Helpers; Wage Payment Plans
29 CFR 552	Application of the Fair Labor Standards Act to Domestic Service
29 CFR 553	Application of the Fair Labor Standards Act to Employees of State and Local Governments
29 CFR 570	Child Labor Regulations, Orders and Statements of Interpretation
29 CFR 575	Waiver of Child Labor Provisions for Agricultural Employment Of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops
29 CFR 578	Minimum Wage and Overtime Violations — Civil Money Penalties
29 CFR 579	Child Labor Violations — Civil Money Penalties

29 CFR 580	Civil Money Penalties-procedures for Assessing and Contesting Penalties
29 CFR 697	Industries in American Samoa
29 CFR 775	General
29 CFR 776	Interpretative Bulletin on the General Coverage of the Wage and Hours Provisions of the Fair Labor Standards Act of 1938
29 CFR 778	Overtime Compensation
29 CFR 779	The Fair Labor Standards Act as Applied to Retailers of Goods or Services
29 CFR 780	Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects under the Fair Labor Standards Act
29 CFR 782	Exemption from Maximum Hours Provisions for Certain Employees of Motor Carriers
29 CFR 783	Application of the Fair Labor Standards Act to Employees Employed as Seamen
29 CFR 784	Provisions of the Fair Labor Standards Act Applicable to Fishing and Operations on Aquatic Products
29 CFR 785	Hours Worked
29 CFR 786	Miscellaneous Exemptions
29 CFR 788	Forestry or Logging Operations in Which Not More than Eight Employees Are Employed
29 CFR 789	General Statement on the Provisions of Section 12(a) and Section 15(a)(1) of the Fair Labor Standards Act of 1938, Relating to Written Assurances
29 CFR 790	General Statement as to the Effect of the Portal-to-portal Act of 1947 on the Fair Labor Standards Act of 1938
29 CFR 791	Joint Employment Relationship under Fair Labor Standards Act of 1938
29 CFR 793	Exemption of Certain Radio and Television Station Employees from Overtime Pay Requirements under Section 13(b)(9) of the Fair Labor Standards Act
29 CFR 794	Partial Overtime Exemption for Employees of Wholesale or Bulk Petroleum Distributors under Section 7(b)(3) of the Fair Labor Standards Act
29 CFR 801	Application of the Employee Polygraph Protection Act of 1988
29 CFR 825Old	Family and Medical Leave Act (effective until January 15, 2009)
29 CFR 825 ✦	Family and Medical Leave Act (effective January 16, 2009)
29 CFR 870	Restrictions on Garnishment
29 CFR 1620	The Equal Pay Act

## Preambles, Other Federal Register Documents

Document	Directory: Preambles
	File Name
<b>Application of the Fair Labor Standards Act to Employees of State and Local Governments.</b> The regulatory preamble which was published by the Department of Labor's Wage and Hour Division on January 16, 1987 when Regulations, 29 CFR Part 553, Application of the Fair Labor Standards Act to Employees of State and Local Governments was published. The preamble provides important supplemental information useful to public agencies and their representatives concerning rationale, legislative history, and other matters underlying positions ultimately contained in this regulation, which remains in effect today.	52FR2012 ✦
<b>Interim Final Rule — Public Sector Salary Deductions.</b> On September 6, 1991 the Wage and Hour Division, US Department of Labor, published an IFR (Interim Final Rule) relating to rules authorizing public sector employers to make deductions from pay for absences of exempt employees of less than a full day under some circumstances without being disqualified from the exemption. This Interim Final Rule was later replaced on August 19, 1992 with the publication of a final rule incorporating some changes from the interim rule below. The preamble and final rule later adopted are provided on this disk under the file name 57FR37666. The text includes the interim final rule as well as the background information and discussion published therewith September 6, 1991.	56FR45824 ✦
<b>Final Rule — Public Sector Salary Deductions.</b> The regulatory preamble which was published by the Department of Labor's Wage and Hour Division on August 19, 1992 when Regulations, 29 CFR Part 541, Exemptions from Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Public Sector Employers; Rule and Proposed Rule was published (this is the rule change permitting public agencies to deduct from the salaries of exempt employees for absences of less than a full day). The preamble provides important supplemental information useful to public agencies and their representatives concerning rationale, legislative history, and other matters underlying positions ultimately contained in this regulation, which were carried forward without change in the new regulation effective August 23, 2004.	57FR37666 ✦
<b>The Family and Medical Leave Act of 1993; Final Rule.</b> Adopted January 6, 1995, this is the official announcement of the FMLA regulations which went into effect on February 6, 1995 and are currently in effect as of the date of this update. (The rulemaking process is well under way to revise these regulations; see 71FR69504 and 72FR35550 below.)	80FR2181 ✦
<b>Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees — Proposed Rule and Request for Comments.</b> Published on March 31, 2003, this document was the proposal for changes to Regulations, 29 CFR Part 541, which preceded the publication of the final rule which went into effect on August 23, 2004. Numerous changes to the proposal were incorporated in the final rule, so this document is of historical interest only.	68FR15560 ✦

<b>Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees — Final Rule.</b> Published April 23, 2004 in the <u>Federal Register</u> , this document is the extensive preamble to the regulations governing the exemptions for white collar employees which went into effect on August 23, 2004 and are still in effect.	69FR22122 ❖
<b>Request for Information on the Family and Medical Leave Act of 1993.</b> On December 1, 2006 the Department of Labor advanced the rulemaking process for regulations 29 CFR part 825, relating to the Family and Medical Leave Act, with this request for comments, which identified a number of areas of the existing regulations which were under scrutiny and inviting the public's comments on any proposed changes.	71FR69504 ❖
<b>Child Labor Regulations, Orders and Statements of Interpretation: Notice of proposed rulemaking and request for comments.</b> Published April 17, 2007 in the <u>Federal Register</u> , this document (and the one immediately following it in this listing and the <u>Federal Register</u> ) notifies the public of proposed new regulations governing employment of minors and requests comments.	72FR19328 ❖ 72FR19337 ❖
<b>Family and Medical Leave Act Regulations: A Report on the Department of Labor's Request for Information; Proposed Rule.</b> On June 28, 2007, the Department of Labor issued in the <u>Federal Register</u> a summary of the comments received relating to upcoming proposed revisions to Family and Medical Leave Act regulations (these comments were solicited December 1, 2006 in the <u>Federal Register</u> ; see 7FR69504 above.)	72FR35550 ❖
<b>The Family and Medical Leave Act of 1993; Proposed Rule.</b> On February 11, 2008, the Wage and Hour Division, United States Department of Labor, published proposed revisions to existing FMLA regulations (29 C.F.R. Part 825) in the <u>Federal Register</u> . These proposed revisions address matters concerning the amendments to FMLA signed into law on January 28, 2008, as well as revising the regulations in other areas for the first time since their initial promulgation in 1995. The comment period for the proposal expires on April 11, 2008.	73FR7876 ❖
<b>Updating Regulations Issued Under the Fair Labor Standards Act; Proposed Rule</b> On July 28, 2008 the Wage and Hour Division issued proposed revisions and updates to nine different regulations: 29 CFR Parts 4, 531, 553, 778, 779, 780, 785, 786, and 790. The comment period for these revisions expired on September 26, 2008.	73FR43654 ❖
<b>The Family and Medical Leave Act of 1993; Final Rule.</b> Following issuance of the proposed rule on February 11, 2008, the Wage and Hour Division issued final rules on November 17, 2008. These regulations go into effect on January 16, 2009. The file 29FR67934.pdf is a 201 page document, single-spaced in three columns with narrow margins. The other file name listed at right, 73FR67934_temp.pdf, is the same document in a double-spaced one column document with wide margins taking up 762 pages. This document may be more suitable for users who need to print the document for study and possible markup.	73FR67934 ❖ 73FR67934_temp ❖

## Miscellaneous Wage and Hour Division Publications

Document	Directory: Miscellaneous
	File Name
Basic Information (Wage and Hour Division brochure)	Basic Information ❖
Fact Sheet #1: The Construction Industry Under the Fair Labor Standards Act (FLSA)	WHDFS01.PDF ❖
Fact Sheet #2: Restaurants and Fast Food Establishments Under the Fair Labor Standards Act (FLSA)	WHDFS02.PDF ❖
Fact Sheet #3: Professional Offices Under the Fair Labor Standards Act (FLSA)	WHDFS03.PDF ❖
Fact Sheet #4: Security Guard/Maintenance Service Industry Under The Fair Labor Standards Act (FLSA)	WHDFS04.PDF ❖
Fact Sheet #5: Real Estate and Rental Agencies Under the Fair Labor Standards Act (FLSA)	WHDFS05.PDF ❖
Fact Sheet #6: The Retail Industry under the Fair Labor Standards Act (FLSA)	WHDFS06.PDF ❖
Fact Sheet #7: State and Local Governments Under the Fair Labor Standards Act (FLSA)	WHDFS07.PDF ❖
Fact Sheet #8: Police And Fire Fighters Under The Fair Labor Standards Act (FLSA)	WHDFS08.PDF ❖
Fact Sheet #9: Manufacturing Establishments Under The Fair Labor Standards Act (FLSA)	WHDFS09.PDF ❖
Fact Sheet #10: Wholesale and Warehouse Industries Under the Fair Labor Standards Act (FLSA)	WHDFS10.PDF ❖
Fact Sheet #11: Automobile Dealers Under the Fair Labor Standards Act (FLSA)	WHDFS11.PDF ❖
Fact Sheet #12: Agricultural Employers Under The Fair Labor Standards Act (FLSA)	WHDFS12.PDF ❖
Fact Sheet #13: Employment Relationship Under The Fair Labor Standards Act (FLSA)	WHDFS13.PDF ❖
Fact Sheet #14: Coverage Under The Fair Labor Standards Act (FLSA)	WHDFS14.PDF ❖
Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)	WHDFS15.PDF ❖
Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)	WHDFS16.PDF ❖
Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)	WHDFS17A.PDF ❖
Fact Sheet #17B: Exemption for Executive Employees Under the Fair Labor Standards Act (FLSA)	WHDFS17B.PDF ❖
Fact Sheet #17C: Exemption for Administrative Employees Under the Fair Labor Standards Act (FLSA)	WHDFS17C.PDF ❖
Fact Sheet #17D: Exemption for Professional Employees Under the Fair Labor Standards Act (FLSA)	WHDFS17D.PDF ❖
Fact Sheet #17E: Exemption for Employees in Computer-Related Occupations Under the Fair Labor Standards Act (FLSA)	WHDFS17E.PDF ❖

Fact Sheet #17F: Exemption for Outside Sales Employees Under the Fair Labor Standards Act (FLSA)	WHDFS17F.PDF ❖
Fact Sheet #17G: Salary Basis Requirement and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17G.PDF ❖
Fact Sheet #17H: Highly-Compensated Workers and the Part 541-Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17H.PDF ❖
Fact Sheet #17I: Blue-Collar Workers and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17I.PDF ❖
Fact Sheet #17J: First Responders and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17J.PDF ❖
Fact Sheet #17K: Veterans and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17K.PDF ❖
Fact Sheet #17L: Insurance Claims Adjusters and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17L.PDF ❖
Fact Sheet #17M: Financial Services Industry Employees and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17M.PDF ❖
Fact Sheet #17N: Nurses and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17N.PDF ❖
Fact Sheet #17O: Technologists and Technicians and the Part 541 Exemptions Under the Fair Labor Standards Act (FLSA)	WHDFS17O.PDF ❖
Fact Sheet #17P: Construction Workers and the Part 541 Exemptions under the Fair Labor Standards Act (FLSA)	WHDFS17P.PDF ❖
Fact Sheet #17Q: Journalists/Reporters and the Part 541-Exemptions under the Fair Labor Standards Act (FLSA)	WHDFS17Q.PDF ❖
Fact Sheet #17R: Administrative Duties Test: Court Decision	WHDFS17R.PDF ❖
Fact Sheet #18: Section 13(a)(3) Exemption for Seasonal Amusement or Recreational Establishments Under the Fair Labor Standards Act (FLSA)	WHDFS18.PDF ❖
Fact Sheet #19: The Motor Carrier Exemption Under the Fair Labor Standards Act (FLSA)	WHDFS19.PDF ❖
Fact Sheet #20: Employees Paid Commissions by Retail Establishments Who are Exempt Under Section 7(i) from Overtime Under The FLSA	WHDFS20.PDF ❖
Fact Sheet #21: Recordkeeping Requirements Under the Fair Labor Standards Act (FLSA)	WHDFS21.PDF ❖
Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)	WHDFS22.PDF ❖
Fact Sheet #23: Overtime Pay Requirements of the FLSA	WHDFS23.PDF ❖
Fact Sheet #24: Homeworkers Under the Fair Labor Standards Act (FLSA)	WHDFS24.PDF ❖
Fact Sheet #25: The Home Health Care Industry Under the Fair Labor Standards Act (FLSA)	WHDFS25.PDF ❖
Fact Sheet #27: New Businesses Under The Fair Labor Standards Act (FLSA)	WHDFS27.PDF ❖
Fact Sheet #28: The Family and Medical Leave Act of 1993	WHDFS28.PDF ❖
Fact Sheet #31: Nursing Care Facilities Under the Fair Labor Standards Act	WHDFS31.PDF ❖
Fact Sheet #32: Youth Minimum Wage - Fair Labor Standards Act	WHDFS32 ❖
Fact Sheet #33: Residential Care Facilities (Group Homes) Under the Fair Labor Standards Act	WHDFS33.PDF ❖
Fact Sheet #38: Employing Youth in Grocery Stores under the Fair Labor Standards Act (FLSA)	WHDFS38.PDF ❖
Fact Sheet #44: Visits to Employers	WHDFS44.PDF ❖
Fact Sheet #45: Hotel and Motel Establishments Under the Fair Labor Standards Act (FLSA)	WHDFS45.PDF ❖
Fact Sheet #46: Daycare Centers and Preschools Under the Fair Labor Standards Act (FLSA)	WHDFS46.PDF ❖
Fact Sheet #52: The Health Care Industry and Youth Employment	WHDFS52.PDF ❖
Fact Sheet #53: The Health Care Industry and Hours Worked	WHDFS53.PDF ❖
Fact Sheet #54: The Health Care Industry and Calculating Overtime Pay	WHDFS54.PDF ❖
Fact Sheet #56: Stock Options under the Fair Labor Standards Act (FLSA)	WHDFS56.PDF ❖
Handy Reference Guide to the Fair Labor Standards Act	WH1282 ❖
Automobile, Truck, Trailer, and Farm Implement Dealers Under the Fair Labor Standards Act	WH1294
Employment Relationship Under the Fair Labor Standards Act	WH1297
Overtime Compensation under the Fair Labor Standards Act	WH1325
Hospitals and Residential-Care Establishments Under the Fair Labor Standards Act	WH1326
Motor Carriers and other Transportation Firms under the Fair Labor Standards Act	WH1359
Executive, Administrative, Professional and Outside Sales Exemptions Under the Fair Labor Standards Act	WH1363
Uniforms and Their Maintenance Under the Fair Labor Standards Act	WH1428
Coefficient Table	Coefficient Table
Advisory Memorandum 2005-1: Application of Section 13(a)(15) to Third Party Employers	Advisory Memo 2005-1
Advisory Memorandum 2006-1: Guidance on MSPA Vehicle Safety Standards	Advisory Memo 2006-1
Advisory Memorandum 2006-2: <u>IBP v. Alvarez</u> , 126 S.Ct. 514 (2005)	Advisory Memo 2006-2
Field Assistance Bulletin 2006-3: Computer Employees Professional Exemption	Advisory Memo 2006-3
Field Assistance Bulletin 2007-2: Change in Application of the FLSA § 13(b)(1) "Motor Carrier Exemption"	Advisory Memo 2007-2

## Field Operations Handbook: Chapters Provided

Directory: FOH	Chapter Topic
File Name	
Chapter 10 ✦	FLSA Coverage - Employment Relationship, Statutory Exclusions, Geographical Limits
Chapter 11 ✦	Individual Coverage - FLSA
Chapter 12	Enterprise Coverage - FLSA
Chapter 20	Agriculture, Related and Seasonal Exemptions
Chapter 21 ✦	Retail or Service Establishment Exemptions from Secs. 6 and 7
Chapter 22 ✦	Executive, Administrative, Professional and Outside Salesperson Exemptions FLSA Sec 13(a)(1)
Chapter 23 ✦	Newspaper and Other Communication Exemptions
Chapter 24 ✦	Transportation Exemptions
Chapter 25 ✦	Other Exemptions
Chapter 30 ✦	Records, Minimum Wage, and Payment of Wages
Chapter 31 ✦	Hours Worked
Chapter 32 ✦	Overtime
Chapter 64 ✦	Employment of Workers with Disabilities at Special Wages Under Section 14(e)

## Letter Opinions - Exemptions

Topic	Exemption(s)	Directory: Opinions
		File Name
Agricultural Employees — Range Production of Livestock, Other Livestock-Raising Activities, 500 Man-Day Test; <i>Employment Relationship — Sheep Shearing Contractor</i>	213(a)(6), 213(b)(12)	67-04-11A
<i>Coverage — Workers Hired to Perform Repairs by Homeowners, Farmers, or Business Owners;</i> Agricultural Employees — Construction Workers Hired by Farmers	213(a)(6), 213(b)(12)	67-07-26A
Agricultural Employees — Range Production of Livestock	213(a)(6)(E)	67-12-12A
Agricultural Employees — Range Production of Livestock; <i>Child Labor — Limitation of Parental Exemption in Corporate Agriculture to Wholly-Owned Corporations</i>	213(a)(6)(E)	68-05-28C
Agricultural Employees — Construction Work on Farms	213(b)(12)	68-05-31B
Agricultural Employees — Erection of Silos, Graneries	213(a)(6)	68-07-30A
Agricultural Employees — Agricultural Processing of Crops Grown by Other Farmers	213(b)(12)	72-09-20A
Agricultural Employees — Cotton Ginning Employees Transporting Cotton to Holding Area near Gin	213(h)	73-01-08A
Agricultural Employees — Loaders for Crop-dusting Operation	213(b)(12)	73-06-04A
Agricultural Employees — Inapplicability of Exemption to Certain Conglomerate Employers	213(a)(6), 213(g)	75-07-23A
Agricultural Employees — Application of Exemptions to Operations of Farms Leased to Corporation	213(a)(6), 213(b)(12)	78-04-05A
Agricultural Employees — Employees of Public Water Control Districts	213(b)(12)	85-11-08B
Agricultural Employees — Inapplicability of Exemption to Christmas Tree Workers	213(b)(12), 203(f)	91-01-09A
Agricultural Employees — Application of Exemption to Church-run Greenhouse; <i>Child Labor — Employment by Church-run Greenhouse</i>	213(a)(6), 213(b)(12)	98-01-09A
Agricultural Employees — Processing Pelts	213(b)(12)	01-01-17B
Agricultural Employees — Exemption not Applicable to Crabmeat Pickers and Packers at Onshore Seafood Processing Facility	213(a)(5)	04-02-05A

Agricultural Employees — Section 13(a)(5)(C) Minimum Wage and Overtime Exemption Not Applicable to Crabmeat Pickers and Packers Paid Piece Rate	213(a)(5)(C)	04-02-05B
Agricultural Employment — Employees of Contractor Clearing Brush on Farms or Ranches of Customers	213(b)(12)	05-01-12A
<i>White Collar Employees — Bookkeeper/Office Manager, Maintenance Supervisor, and Maintenance Personnel - Rural Water District</i> ; Agricultural Employment — Employees of Rural Water District	213(b)(12)	<b>05-10-11A</b>
Agricultural Employment — Dairy Farm Workers; Exemption Inapplicable in any Workweek in which Employee Engages in Nonexempt Work	213(b)(12)	06-07-06B ♣
Air Carrier Exemption — Exemption Inapplicable if Employee Performs More Than 20 Nonexempt Work in Week; <i>White Collar Employees — Charter or Instructor Pilot</i>	213(b)(3)	65-10-27A
Air Carrier Exemption — Applicability to Commuter Airlines and Air Taxi/Charter Operations	213(b)(3)	72-01-18A
Air Carrier Exemption — Applicability to Air Ambulance Service	213(b)(3)	05-09-16C
Apprenticeship Programs — Registration of Program with State Apprenticeship Agency	214(a)	77-07-22A
"Belo Contracts" — Deductions not Permitted for Short Weeks	207(f)	66-08-25A
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<i>Small Police and Fire Agencies — Four-Person Police Department Exempt from Overtime Requirement; White-Collar Employees — Police Chief; Hours Worked — On-call Time</i>	213(a)(1)	05-09-16B
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White Collar Employees — Police Lieutenants, Police Captains, and Fire Battalion Chiefs	213(a)(1)	05-10-14A
White Collar Employees — Aviation Museum Curator	213(a)(1)	05-10-24A
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White Collar Employees — Staffing Managers Employed by Temporary Staffing Agency	213(a)(1)	05-10-25A
White Collar Employees — Social Workers and Caseworkers	213(a)(1)	05-11-04A
White Collar Employees — Exemption Inapplicable Where Salary Requirement not Met; <i>Seasonal Amusement or Recreational Establishments — Individuals Employed by Sports Marketing Agency Ineligible for Exemption</i>	213(a)(1)	05-11-04A
<i>Houseparents for Institutionalized Orphans — Exemption Inapplicable Where Children cared for by Houseparents are non Orphans; Exemption only Applicable to Houseparents who are Married; White Collar Employees — Exemption Inapplicable to Houseparents in Childrens' Homes; Enterprise Coverage — Enterprise Coverage Inapplicable to Nonprofit Institution not Operated for Business Purpose</i>	213(a)(1)	05-11-14B
White Collar Employees — Paralegals	213(a)(1)	05-12-16A
White Collar Employees — Mortgage Loan Officers as Outside Sales Employees	213(a)(1)	06-03-31A
White Collar Employees — Solicitors for Charitable Donations not Outside Salespersons	213(a)(1)	06-05-22A ✦
White-Collar Employees — Acquisition Agents, Relocation Agents, and Property Management Agents	213(a)(1)	06-06-29A ✦
White-Collar Employees — Employee Preparing Bids on Government Contracts	213(a)(1)	06-06-29D ✦
White Collar Employees — Senior Legal Analyst	213(a)(1)	06-07-24A ✦
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White Collar Employees — Mortgage Loan Officers	213(a)(1)	06-09-08A ✦
White Collar Employees — Loss Prevention Managers	213(a)(1)	06-09-08B ✦
White Collar Employees — Gasoline Service Station Managers	213(a)(1)	06-09-08C ✦
White Collar Employees — Case Managers for People with Developmental Disabilities	213(a)(1)	06-09-08D ✦
White Collar Employees — Propane Delivery Driver/Salespersons; <i>Commissioned Employees, Retail or Service Establishments — Propane Delivery Driver/Salespersons</i>	213(a)(1)	06-09-14D ✦
White Collar Employees — Community Events Supervisors	213(a)(1)	06-09-21A ✦
White Collar Employees — Store Manager need not Physically Supervise Two or More Employees	213(a)(1)	06-09-21B ✦
White Collar Employees — Instructors in Career School Teaching Automotive, Diesel, Other Repair and Technician Skills	213(a)(1)	06-10-26A ✦
White Collar Employees — Information Technology Support Specialist	213(a)(1)	06-10-26B ✦
White Collar Employees — Employee Association Meeting and Travel Coordinator, Administrative Assistants	213(a)(1)	06-10-26C ✦
White Collar Employees — "Registered Representatives" in Financial Services Industry; <i>Salary Basis Employment — Deductions not Permitted from Minimum Guarantee may be Made from Compensation Which is in Addition to Minimum Guarantee</i>	213(a)(1)	06-11-27A ✦
White-Collar Employees — Copy Editors and Senior Copy Editors	213(a)(1)	06-12-21A ✦
White-Collar Employees — Film Location Managers	213(a)(1)	06-12-21B ✦
White Collar Employees — Home Sales Employees	213(a)(1)	07-01-25A ✦
White Collar Employees — Home Sales Employees	213(a)(1)	07-01-25B ✦
White Collar Employees — Construction Superintendent	213(a)(1)	07-01-25C ✦
White Collar Employees — Timeshare Salespeople	213(a)(1)	07-01-25D ✦
White Collar Employees — Radiology Technicians	213(a)(1)	07-02-01A ✦
White Collar Employees — Case Managers Working with People with Disabilities	213(a)(1)	07-02-08B ✦
White Collar Employees — School Resource Officers	213(a)(1)	05-02-15A ✦
White Collar Employees — Court Reporters	213(a)(1)	07-08-23A
White Collar Employees — Field Inspectors for Association of Cattle Producers and Operators	213(a)(1)	07-09-17B ✦
White Collar Employees — Plant Managers	213(a)(1)	08-02-29A ✦
White Collar Employees — Purchasing Agents	213(a)(1)	08-03-06A ✦
White Collar Employees — Product Technology Application and Marketing Analyst	213(a)(1)	08-04-21A ✦
White Collar Employees — Sales of Novelty Items at Promotional Events	213(a)(1)	08-05-08A ✦
White Collar Employees — Service Coordinators Assisting Program Participants with Gaining Access to Medical, Social, Educational, and Other Community Services.	213(a)(1)	08-06-09A ✦
White Collar Employees — Substitute Teachers	213(a)(1)	08-09-26A ✦
White Collar Employees — Cosmetology School Instructors	213(a)(1)	08-10-01A ✦

White Collar Employees — Day Care Workers Employed by Day Care Center Licensed by Social Services Department	213(a)(1)	08-09-29B ✦
White Collar Employees — Assistant Athletic Instructors and the Teacher Exemption	213(a)(1)	08-12-01A ✦
White Collar Employees — Certified Occupational Therapist Assistant	213(a)(1)	08-12-19A ✦
White Collar Employees — Store Manager Trainees	213(a)(1)	08-12-19C ✦
White Collar Employees — Convention and Visitors Service Sales Managers	213(a)(1)	09-01-14C ✦
White Collar Employees — Company Chief Pilot as Executive; Pilots as Professionals; Non-Enforcement Policy With Respect to Pilots Holding FAA Airline Transport Certificate or Commercial Certificate Performing Certain Specific types of Flying Duties	213(a)(1)	09-01-14E ✦
White Collar Employees — Helicopter Pilots; Non-Enforcement Policy With Respect to Pilots Holding FAA Airline Transport Certificate or Commercial Certificate Performing Certain Specific types of Flying Duties	213(a)(1)	[09-01-14H] ✦
White Collar Employees — Project Superintendants Employed by Construction Company	213(a)(1)	[09-01-15A] ✦
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Hours Worked — Employer may Legally Count as Hours Worked Hours Which are not Hours Worked under the Fair Labor Standards Act	00-05-22B
Hours Worked — Training Program	00-09-14B
Hours Worked — Meal Periods (When 15-Minute Unpaid Meal Periods are Acceptable)	00-09-25A

Hours Worked — Cleaning of Protective Gear; Requirement for Employer to Record and Compensate for Hours Worked by Each Individual Employee Instead of Average Amount of Time of All Employees	01-01-15A
Hours Worked — Pesticide Training	01-01-17A
Hours Worked — Unpaid Ride-Along Program for Detention Officers	01-02-16C
Hours Worked — Travel Time in an Employer Vehicle	01-04-18A
Hours Worked — Training Required by Law; Training Corresponding to Bona Fide Educational Institution Offerings	01-05-03A
Hours Worked — Unauthorized Extension of Break	01-05-19B
<i>Volunteers — Nurses Time Participating in Community Service Activities Compensable if Under Control of Employer, Not Compensable if Under Control of Third Parties; Hours Worked — Training Time</i>	01-07-31A
Hours Worked — For Purposes of Section 3(o) of FLSA, "Clothes" Includes Protective Gear; "Washing" Refers only to Washing of Person, Not Protective Gear	02-06-06A
Hours Worked — Sleep Time; <i>Regular Rate — Weighted Average</i>	02-08-13A
Hours Worked — Time Employee Required to Remain at Home While on Sick Leave Does Not Have to be Included as Hours Worked	02-11-01A
<i>Volunteers — Employees Volunteering to Perform Services, Various Issues; Hours Worked — Employees Performing Volunteer Firefighting Duties During Regular Working Hours and Paid Regular Pay Without Charging Accrued Leave are Performing Employment Hours as "Volunteers", and All Firefighting Hours to be Counted as Hours Worked, Compensated by Employer</i>	03-04-14A
Hours Worked — Sleep Time, Group Home Employees Permanently Residing on Premises of the Employer	04-07-27A
Hours Worked — Employees Required to Remain on Premises During Meal	04-08-06A
Hours Worked — Effect of Failure to Count or Pay for Hours Beyond Two Hours Schedule for Run Unless Time Exceeded Scheduled Time by More than Half Hour; Difference Between Overtime and Nonovertime Workweeks	04-08-12A
Hours Worked — Time Spent by Firefighters Who Miss 24-Hour Work Shifts While Attending Out-of-Town Training	04-09-20B
Hours Worked — Time Spent Returning Home in Midst of Multi-Week Travel for Employer at Employer's Expenses but for Convenience of Employee not Hours Worked Even When it Cuts Across Normal Hours of Work	04-09-21A
Hours Worked — Twenty Minute Unpaid Meal Period Permissible Where Union and Employer Agree and all Employees Work Close to Break Area	04-11-22A
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<i>Small Police and Fire Agencies — Four-Person Police Department Exempt from Overtime Requirement; White-Collar Employees — Police Chief; Hours Worked — On-call Time</i>	05-09-16B
<i>Alternative Overtime Periods, Police and Fire Employees — Time Spent Attending Training Academy as "Law Enforcement Activities" for Purposes of § 207(k); Hours Worked — Time Recruit Required to Spend Typing up Lecture Notes in Academy Must be Counted as Hours Worked</i>	06-01-17B
Hours Worked — Wash-up and Travel Time After Employee Leaves Work Site for Lunch not Hours Worked, Even if Paid by Employer under Labor Agreement; Entire Lunch Period is not Hours Worked if Employee is Paid under Agreement for Washing Up and Chooses to do so During Meal Period	06-01-17C
Hours Worked — Time Employee Volunteers in Community Activities not Compensable Even if Such Activities are Included in Employer's Performance-Based Compensation System; <i>Volunteers — Employer's Encouragement and Sponsorship of Volunteer Activities Does not Result in Employee's Time Spent in Such Activities Inclusion in Employment Hours</i>	<b>06-01-27A</b>
Hours Worked — Time Spent by Restaurant Employees Voluntarily Studying English Outside of Regular Working Hours	<b>06-03-03A</b>
Hours Worked — Training Time in Use of Firearm for Off-Duty Carry	<b>06-06-01B</b> ✦
Hours Worked — Time Law Enforcement Officer Spends Transporting Prisoners	06-06-23C ✦
Hours Worked — Putting on and Taking off Protective Safety Equipment in the Meat Packing Industry and FLSA Section 3(o); <i>Letter Opinions — Good Faith Reliance</i>	<b>07-05-14A</b> ✦
Hours Worked — Meal Periods of Less than One Half-Hour; <i>Recordkeeping — Employer Not Required to have Employee Punch Out and In for Meal Period to Deduct for Unpaid Meal</i>	07-05-14C
Hours Worked — Missed Unpaid Meal Periods Counted as Hours Worked; <i>De Minimis Hours; Overtime — Offsetting Overtime Pay Due for Daily Overtime Paid by Employer; Wage Payments — No Requirement for Additional Payment for Missed Unpaid Meal Period in Non-Overtime Workweek if Employee Still Earned Minimum Wage</i>	08-05-15B ✦
Hours Worked — On-Call Time: Hours Worked in Winter Months when Ambulance Personnel Subject to 3-5 Calls Per Day, Not Hours Worked During Summer Months when only Subject to A Few Calls per Week	08-05-23A ✦
Hours Worked — On-Call Time	08-12-18E ✦
Hours Worked — Training Required by Law; Training Corresponding to Bona Fide Educational Institution Offering	<b>09-01-07A</b> ✦
Hours Worked — On-Call Time of Ambulance Personnel	<b>[09-01-14F]</b> ✦
Hours Worked — Time Spent by Employees at Home Performing Web-Based Prerequisite Training for Work Related Training Conducted during Working Hours is Hours Worked	<b>09-01-15H</b> ✦
Hours Worked — Time Spent Outside of Class in Studying for Required Training must be Counted as Working Hours; Employer may Limit Such Hours by Must Ensure that Employee does not Spend More	<b>09-01-15J</b> ✦
Hours Worked — On Call Time, Travel Time on Call-Outs	<b>09-01-16B</b> ✦
Overtime — Various Daily Overtime Issues	71-07-06A
Overtime — Established Basic Rates	73-04-14A

Overtime — Established Basic Rates	73-07-16A
Overtime — Federal Firefighters	76-07-22A
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Overtime — Crediting "Premium" Overtime at 2.1 Times Regular Pay Toward Statutory Overtime Due	87-10-05A
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Overtime — Individual may not Waive Right to Overtime Resulting from Working Two Jobs for County School System	94-06-17A
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Overtime — Overtime Prepayment Plan	95-10-17A
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Overtime — Overtime Required for Dispatchers After 40 Hours in Workweek, Even Where Labor Agreement Provides for Overtime after 48 Hours in Workweek	<b>06-09-28A ❖</b>
<i>Hours Worked — Missed Unpaid Meal Periods Counted as Hours Worked; De Minimus Hours; Overtime — Offsetting Overtime Pay Due for Daily Overtime Paid by Employer; Wage Payments — No Requirement for Additional Payment for Missed Unpaid Meal Period in Non-Overtime Workweek if Employee Still Earned Minimum Wage</i>	08-05-15B ❖
Recordkeeping — Early and Late Punches	69-03-06B
Recordkeeping — Records of Working Hours Stored only in Computer Database	95-03-10A
Recordkeeping — School Employees Paid Over Entire Year for Work Performed in School Year	<b>06-07-14A ❖</b>
<i>Hours Worked — Meal Periods of Less than One Half-Hour; Recordkeeping — Employer Not Required to have Employee Punch Out and In for Meal Period to Deduct for Unpaid Meal</i>	07-05-14C ❖
Recordkeeping — Manner of Recording Hours of Employees Required to Perform On-Line Training at Home	08-02-14A ❖
Regular Rate — Reduction in Working Hours, Alternating Workweeks of Different Fixed Lengths; <i>Wage Payments — Overtime Prepayment Plans</i>	65-06-22A
Regular Rate — Lay-Off Benefit Plan	65-09-07A
Regular Rate — Profit-Sharing Plan Contributions must be Included in Regular Rate if 20% of More of Employee's Share Based on Attendance	65-11-12A
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<i>Hours Worked — Inclusion of Extra Hour Worked by Shiftworker at end of Daylight Savings Time; Regular Rate — Exclusion of Extra Hour Paid to Shiftworker at Beginning of Daylight Savings Time</i>	67-04-06A
<i>Hours Worked — School Employees Working for Third Parties at Functions on School Premises; Employment Relationship — School Employees Working for Third Parties at Functions on School Premises; Regular Rate — Busy vs. Slack Season Rates</i>	67-08-03A
Regular Rate — Benefit Plan: 10% Minimum/25% Maximum Contribution Excludable, 5% Minimum/50% Maximum Contribution to be Included	67-08-28A

Regular Rate — Two Jobs; <i>Employment Relationship — Student Working in Cafeteria; Child Labor — Students 14-15 Years of Wage Working During Lunch or Periods When they have no Class Deemed Working "Outside of School Hours"</i>	67-12-12B
Regular Rate — Inclusion of On-Call Pay; Lump Sum paid for Overtime Hours Does Not Satisfy Overtime Requirement Even if Equal to or Greater Than Hourly Amount	68-01-04B
<i>Tip Credit — Compulsory Service Charge Not Tip; Deductions from Minimum Wage — Compulsory Service Charge May be Used in Meeting Minimum Wage Requirement; Commissioned Employees, Retail or Service Establishments— Country Club Not Open to General Public May Not Utilize Exemption; Regular Rate — Inclusion of Compulsory Service Charge</i>	68-01-17A
Regular Rate — Exclusion of Bonus Paid as Percentage of Total Earnings	68-02-13A ❖
Regular Rate — Varying Pay Rate Inversely with Overtime Hours Worked Not Permitted	68-02-19A
<i>"Belo Contracts" — Bean Inspectors; Hours Worked — On-Call Employees Working at Their Homes Handling Service Calls from Customers; Regular Rate — Inclusion of Amounts Paid to Employees to be Available for Callouts</i>	68-03-18A
Regular Rate — Overtime Payment at Rate Applicable to Work Performed during Overtime Hours	68-04-01B
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<i>Employment Relationship — Nurse Aide Training Program; Regular Rate — One Week's Pay After Six Weeks Employment</i>	68-12-20A
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Regular Rate — Profit Sharing Plan Payments	72-05-09B
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Regular Rate — Call-In Pay Equal to One and One-Half Straight Time Rate for Hospital Employees Exclusively Working on Call-In Basis not "Regular Rate" for Overtime; <i>"8 and 80" Overtime Provisions — Regular Rate for Employee Exclusively Working on Call-In Basis</i>	73-05-25A
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Regular Rate — Percentage Contributions for Benefit Plans	73-11-26A
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Regular Rate — Profit Sharing Plan Payments	77-10-20A

Regular Rate — Exclusion of Negotiated Amount Per Hour Worked by Employee to be Paid into Benefit Fund for Disposition During Next Negotiations	78-08-21C
Regular Rate — Inclusion of Reasonable Cost or Fair Value of Free Lodging Provided During the Summer to Students Employed Under Special Certificates; <i>Student Workers, Retail or Service Establishments — Free Lodging Provided in Summer</i>	78-10-12A
Regular Rate — Different Rate for Travel Time	79-02-22A
Regular Rate — Lump Sum Ratification Bonuses	81-04-21A
Regular Rate — Inclusion of Meals and Lodging Furnished to Employees	85-07-12A
Regular Rate — Inclusion by City of Amounts Required to be Paid by State to Police Officers	85-10-23A
Regular Rate — Monthly Payments to Employee for Use as Salary or to Purchase Health Insurance, Other Benefits	85-11-07A
Regular Rate — Lump Sum Longevity Payments	85-11-08C
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Regular Rate — Inclusion of Bonuses, Longevity Pay	86-08-26A
Regular Rate — Alternative Overtime Provisions, Police and Fire Employees; <i>Alternative Overtime Periods, Police and Fire Employees — Calculation of Regular Rate</i>	86-11-09A ✦
Regular Rate — Alternative Overtime Provisions, Police and Fire Employees; Alternative Overtime Provisions, Police and Fire Employees — Calculation of Regular Rate	87-01-23A ✦
Regular Rate — Payment of Day Rate vs. Hourly	87-03-24A
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Hours Worked — <i>On-Call Time</i> ; Regular Rate — Inclusion of On-Call Pay	87-09-16A
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Regular Rate — Profit Sharing Plan Payments	94-03-08A
Regular Rate — Payment of "Per Event" Rather than Hourly Rate; Payment of Full and Part-Time Employees Performing the same Work on a Different Basis	94-03-23A
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Regular Rate — Craft Retention Incentive Payments	94-05-11A
Regular Rate — Bonuses as Percentage of Base Rate	94-06-01A
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White Collar Employees — <i>Court Reporters; Employment Relationship — Performance of Employment and Independent Contractor Duties in Same Work Week</i> ; Regular Rate — Method of Determining Rate When Court Reporter Performs Salaried and Per Page Duties in Same Work Week	94-08-26B
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Regular Rate — Inclusion of 25% Premium for Hours Between Agreed Maximum Hours and Statutory Maximum	96-10-25A
Regular Rate — Payment to Public Works Employees for Obtaining EMT Qualifications, Which they use as Volunteer Paramedics; <i>Volunteers — Nominal Fees (\$115 Annual Payment for Mileage to City Workers who Serve as Volunteer Firefighters and Paramedics); Performing Volunteer Firefighting or EMT Duties During Normal Working Hours Does not Jeopardize Volunteer Status for Firefighting or EMT Duties Outside of Normal Hours</i>	97-01-22A
Regular Rate — (1) Lump Sum Bonus for Operational Improvements; (2) Bonus Paid as Percentage of Total Earnings	97-01-23B
Hours Worked — <i>On-Call Time (Canine Officer for Two Weeks out of Six Must not Take Leave, Drink Alcoholic Beverages, Carry Pager, and be Able to Respond Within Ten Minutes)</i> ; Regular Rate — Compensation of Employees for Being in On-Call Status	97-03-11A
Regular Rate — Corrections Officers; Various Issues	97-06-11A

Regular Rate — Employee Working Multiple Jobs	97-09-05A
<i>Fluctuating Workweek — Deductions from Leave for Absences; Regular Rate — Inclusion of Commissions; Other Issues</i>	97-12-24A
Regular Rate — Inclusion of Payments Under Stock Option Plan	99-02-12A
Regular Rate — Bonus Paid as Percentage of Employee Earnings	98-02-23C
Regular Rate — Inclusion of Supplemental Leave Payout	98-04-17B
<i>Transportation Employees — Fuel Distribution Drivers; Regular Rate — Employees Paid Combination of Hourly and Per Unit Rates</i>	98-04-27B
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<i>Hours Worked — Time Police Officer Volunteers to Perform Dispatch Work Must be Combined with Other Hours; Regular Rate — Employee Performing Different Type of Work at Different Pay Rate</i>	98-08-28A
Regular Rate — Calculation of Effect of Shift Premium	99-01-08A
Regular Rate — Payment of Different Rate for Travel Time Between Clients to Home Health Care Workers	99-01-22A
Regular Rate — Exclusion of Profit Sharing Plan	99-04-02A
Regular Rate — Approval of "Savings Plan"	99-04-08A
<i>Work Schedules — Rotating 12-Hour Shifts; Regular Rate — Reduction in Hourly Rate for Employees Working 36, 44, 40 and 40 Hour Weeks</i>	99-05-27B
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Regular Rate — Inclusion of Incentive Payments for Referring New Customers	99-08-26A
Regular Rate — Inclusion of Cost of Housing; <i>Fluctuating Workweek - Payment to Apartment Supervisor Paid Salary for Working up to 100 Hours Per Week; Hours Worked - Lack of Maximum Hours Prohibition under FLSA</i>	99-09-01A
<i>Hours Worked - EMT Training Required by City of Firefighters; Regular Rate - Inclusion of Premium for Maintaining EMT Certification, Educational Incentives, Bilingual Incentives, and Other Payments in Regular Rate</i>	99-09-30D
Regular Rate — Exclusion of \$5/Hour Paid to Employees Regularly Working 36 Hours/Week for Working in Excess of 36 Hours; Inclusion of \$5/Hour Paid to Employees for Working in Excess of 36 Hours/Week if Employees Regularly Work in Excess of 36 Hours Week	99-10-21A
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<i>White Collar Employees — Funeral Directors or Embalmers; Regular Rate — Inclusion of Quarterly "No-Compete" Payments to Employees</i>	99-11-23A
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Regular Rate — Employees "Grandfathered" at Higher Rate Under Labor Agreement must be Paid Overtime at that Higher Rate	00-07-05B
Regular Rate — Percentage Bonus	01-02-05A
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Regular Rate — Inclusion of Payments of Cash to Employees in Lieu of Receiving Leave Benefits	01-02-14D
Regular Rate — Approval of 401(k) Plan as "Bona Fide Thrift or Savings Plan"	01-02-14E
Regular Rate — Piece Rate Workers	01-05-01A
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Regular Rate — Conditions for Exclusion of Cash Payments Made Under Cafeteria Benefits Plan	03-07-02A
Regular Rate — Cash Out Payment of Accrued Vacation	04-04-05A
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Regular Rate — Payment of Different Rate to Firefighters Performing Different Duties; Payment of Overtime under Section 207(g)(2)	05-02-14A
<i>White-Collar Employees — Non-exempt Office Assistant also Performing Exempt Coordinator Duties for Same Public Agency; Regular Rate — Employee Performing Jobs with Different Rates of Pay</i>	05-03-17A
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<i>White Collar Employees — Non-exempt College Employees Who Also Teach; Regular Rate — Employee Working Two Jobs</i>	<b>05-08-26A</b>
Regular Rate — Percentage of Gross Earnings as Bonus: No Requirement to Include Prior Year's Percentage Bonus in Total Earnings in Calculating Bonus for Current Year	<b>05-08-26H</b>
Regular Rate — Exclusion of "Call-Back" Pay	<b>05-10-03A</b>
Regular Rate — Inclusion of Retention or Stay Bonus; Non-Inclusion of Interest Paid Employees who Elect to Receive Bonus Payment over a Period of Years	<b>05-11-04D</b>
Regular Rate — Inclusion of Educational Incentive Paid to Firefighters Pursuant to State Law	05-11-29A

Regular Rate — Percentage of Total Earnings as Bonus	06-02-17A
Regular Rate — Payment of Different Rate to Canine Officer for Care of Dog; Payment of Overtime under Section 207(g)(2)	<b>06-03-10A</b>
Regular Rate — Exclusion of Employer Contributions under Employee Stock Purchase Plan	<b>06-03-10C</b>
Regular Rate — Inclusion of Team Bonus Plan Payments	06-04-27A
Regular Rate — Plan Where Employee Working Alternating 48 and 36 Hour Weeks Receives only Straight-time for 48-hour Weeks Not in Compliance with FLSA	06-05-04A
Regular Rate — Inclusion of Incentive Pay	06-05-11A ✦
Regular Rate — Inclusion of Non-Discretionary Bonus	06-05-11B ✦
Regular Rate — Determination of Drivers Rates in Succeeding Quarter Based upon Performance Criteria During Preceding Quarter	06-06-29B ✦
Regular Rate — Pay for Foregoing Holiday may be Excluded	06-07-24B ✦
Regular Rate — Pay for Being in On-Call Status during one Week of Two-Week Pay Period must be Calculated in Regular Rate for Workweek in Which the Employee was On-Call and Not Averaged over The Two-Week Pay Period	<b>08-09-22A ✦</b>
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<i>Outside Employment — City and Downtown Development Authority Separate Employers for Purposes of Exemption</i>	207(p)(1)	02-06-07A
<i>Outside Employment — Exemption Applies to Troopers Escorting Loads for Separate Employers Where Law Requires Such Escorts; Hours Excluded Even Where Public Agency Pays Troopers Through Normal Payroll and is Reimbursed by Separate Employer</i>	207(p)(1)	03-05-09A
<i>Outside Employment — Troopers Performing Additional Duties Under Program with District Attorney Offices not Subject to Exemption Where Employment Relationship with Separate and Independent Employer does not Exist</i>	207(p)(1)	04-08-26A
<i>Outside Employment — Municipal Fire Department and Private Nonprofit Ambulance Service With Ambulances Assigned to Fire Station Separate Employers Purposes of Exemption</i>	207(p)(1)	05-11-14C
<i>Outside Employment — Police Officers Who Work for a Third Party Servicing a City-owned Coliseum</i>	207(p)(1)	<b>06-04-28A</b>
<i>Outside Employment — City and Law Enforcement Board Separate Employers</i>	207(p)(1)	06-10-05A ✦
<i>Outside Employment — City and Convention Authority Separate Employers</i>	207(p)(1)	<b>07-12-31A ✦</b>
<i>Regular Rate — Alternative Overtime Provisions, Police and Fire Employees; Alternative Overtime Provisions, Police and Fire Employees — Calculation of Regular Rate</i>	207(k)	86-11-19A ✦
<i>Regular Rate — Alternative Overtime Provisions, Police and Fire Employees; Alternative Overtime Provisions, Police and Fire Employees — Calculation of Regular Rate</i>	207(k)	87-01-23A ✦
<i>Regular Rate — Alternative Overtime Provisions, Police and Fire Employees; Alternative Overtime Provisions, Police and Fire Employees — Calculation of Regular Rate</i>	207(k)	88-05-18A ✦
<i>Small Police and Fire Agencies</i>	213(b)(20)	87-09-29A
<i>Small Police and Fire Agencies</i>	213(b)(20)	89-04-12A
<i>Small Police and Fire Agencies; Compensatory Time — "Comp-Time" for Hours in Excess of Agreed Standard but Below Statutory Maximum Hours Standard; Overtime — Validity of Waiver of Overtime for Hours in Excess of Agreed Standard but Below Statutory Maximum Hours Standard</i>	213(b)(20)	99-10-29B
<i>Small Police and Fire Agencies — Four-Person Police Department Exempt from Overtime Requirement; White-Collar Employees — Police Chief; Hours Worked — On-call Time</i>	213(b)(20)	05-09-16B
<i>White Collar Employees — Effect of Nonexempt Off-Duty Employment on Exempt Status of Police Officers; Special Detail Work, Police and Fire Employees — County Maintenance of Roster of Volunteers</i>	207(p)(1)	98-05-28D
<i>Occasional and Sporadic Employment — City Police Officers Performing Law Enforcement Services for City Parks and Community Services Department; Special Detail Work — City Police Officers Performing Work for Crime Control and Prevention District</i>	207(p)(1)	99-04-01F
<i>Special Detail Work — City and County Separate Employers</i>	207(p)(1)	99-04-24A
<i>Voluntary Substitutions — Employees Substituting for Injured or Sick Firefighter Who has Exhausted Sick Leave and Whose Injury or Illness is Not Job-Related</i>	207(p)(3)	86-04-18A
<i>Compensatory Time — Transfers of Compensatory Time to Other Employees; Voluntary Substitutions — Use of Compensatory Time by Employee While Substituting for Another Employee</i>	207(p)(3)	87-01-02B
<i>Voluntary Substitutions — "Payback" not Required by FLSA</i>	207(p)(3)	93-12-13A
<i>Voluntary Substitutions — Employee "Trading Time" with His or Herself Not Permitted under Exemption</i>	207(p)(3)	90-05-09B

Voluntary Substitution — No Requirement that Substituted Time be Repaid; Employer May Limit Number of Times Work Substitutions can be Exchanged	207(p)(3)	04-11-23A
Voluntary Substitution — No Requirement for Repayment; No Limit on how Early Employees may Agree to Substitute; Documentation of Voluntary Substitution	207(p)(3)	04-11-04B
Voluntary Substitution — Shift Substitution and Minimum Wage Requirements	207(p)(3)	08-03-17A ✦
Work Schedules — Averaging Weekly Hours over 3-Month Period Not in Compliance with 7(k) (Law Enforcement)	207(k)	85-08-06A

## Letter Opinions - Child Labor

Topic	Directory: Opinions
	File Name
<i>Agricultural Employees — Range Production of Livestock</i> ; Child Labor — Limitation of Parental Exemption in Corporate Agriculture to Wholly-Owned Corporations	65-05-28C
<i>Regular Rate — Two Jobs</i> ; <i>Employment Relationship — Student Working in Cafeteria</i> ; Child Labor — Students 14-15 Years of Age Working During Lunch or Periods When they have no Class Deemed Working "Outside of School Hours"	67-12-12B
<i>Employment Relationship — Middle School Students in "Work/Study" Program</i> ; Child Labor — Restrictions Inapplicable Where no Employment Relationship Exists	94-12-06A
Child Labor — Loading and Unloading Light Hand Tools from Trucks by 14 and 15 Year Olds Employed by City Parks and Recreation Department	03-09-02A
Child Labor — Occupations Permitted for 14-15 Year Olds Minors Employed by City Parks, Libraries, Other Departments; Use of Ladders; Lifeguards	03-09-02B
Child Labor — Enforcement Policy on Lifeguards Employed at Pools	05-05-25A

## Letter Opinions - Miscellaneous

Topic	Directory: Opinions
	File Name
Back Pay — Reversion to Overtime after 40 Hours Where Employer Fails to Pay Overtime after Higher Standard Under Alternative Overtime Provisions	75-05-01B
Discrimination — Wage Reduction to Comply with FLSA	86-05-13B
Discrimination — Reduction In Hourly Rates	88-04-27A
Enforcement — Deferral to Arbitration Awards	67-12-22C
<i>Hours Worked — Hours Police Officer Required to Work Driving Truck for Volunteer Fire Department must be included in Hours Worked for Overtime</i> ; FLSA General Issues — FLSA does not Prohibit Employer Requiring Police Officer to Leave Post and Drive Fire Truck When Emergency Arises	94-04-04A
<i>Overtime — Employer may Excuse or Lay Off Employee who has Worked Statutory Maximum Hours for Remainder of Overtime Period to Avoid Overtime Liability</i> ; FLSA General Issues — FLSA Does not Require that Employee Calling in Sick after Reaching Maximum Hours Receive Sick Leave	94-05-06B
FLSA General Issues — Employee's Right to Sue Employer	94-09-20A
FLSA General Issues — Act not Applicable to Employee Outside of the United States for Entire Workweek or in Certain Insular Areas of the United States	94-11-28A
FLSA General Issues — WHD Lacks Authority to Exempt Employee Holding Two Jobs from Overtime; Individual or Union may Not Waive Rights under FLSA	95-02-21A
FLSA General Issues — Department of Labor Administers no laws Requiring Leave for Volunteer Fire Service	95-07-11B
FLSA General Issues — FLSA Does not Regulate Maximum Hours or Work Schedules	95-07-27A

FLSA General Issues — Fringe Benefits, Minimum and Maximum Hours Standards Not Imposed	96-10-17A
Letter Opinions — Validity Where Split in Authority Exists Among Circuit Courts	72-04-20B
Letter Opinions — Good Faith Reliance	87-04-23A
<i>Alternative Overtime Provisions, Police and Fire Employees — Application to EMT's</i> ; Letter Opinions — Good Faith Defense	87-10-09A
Postings — Multi-Employer Work Sites	03-03-03A
Recordkeeping — Early and Late Punches	69-03-06B
Recordkeeping — Records of Working Hours Stored only in Computer Database	95-03-10A
Recordkeeping — School Employees Paid Over Entire Year for Work Performed in School Year	<b>06-07-14A</b> †
<i>Hours Worked — Meal Periods of Less than One Half-Hour</i> ; Recordkeeping — Employer Not Required to have Employee Punch Out and In for Meal Period to Deduct for Unpaid Meal	07-05-14C †
Recordkeeping — Manner of Recording Hours of Employees Required to Perform On-Line Training at Home	08-02-14A †
Tribal Employers — Federal OPM Enforcement vs. Wage and Hour Division Enforcement for Others; <i>White Collar Employees — Tribal Nurses; Work Schedules — "9 and 80" or "9/5/4" Schedules</i>	01-06-01A
<i>Hours Worked — Putting on and Taking off Protective Safety Equipment in the Meat Packing Industry and FLSA Section 3(o)</i> ; Letter Opinions — Good Faith Reliance	<b>07-05-14A</b> †

## Federal Posters

Poster	Directory: Posters
	File Name
Equal Employment Opportunity	eeoc.pdf
Equal Employment Opportunity (Spanish))	eeospc.pdf
Family and Medical Leave Act (English)	fmlaen.pdf
Family and Medical Leave Act (Spanish)	fmlasp.pdf
Family and Medical Leave Act (Family Military Leave)	NDAAMndmnts.pdf
Family and Medical Leave Act (Family Military Leave - Spanish)	NDAASpan.pdf
Migrant and Seasonal Agricultural Workers Protection Act (English and Spanish - Black and White)	mSPAenspbw.pdf
Migrant and Seasonal Agricultural Workers Protection Act (English and Spanish - Color)	mSPAensp.pdf
Migrant and Seasonal Agricultural Workers Protection Act (English and Haitian - Color)	mSPAencr.pdf
Minimum Wage (Large Black and White)	minwagebw.pdf
Minimum Wage (Large Color)	minwage.pdf
Minimum Wage (Small Black and White)	minwagebwp.pdf
Minimum Wage (Small Color)	minwagep.pdf
Minimum Wage (Large Color - Spanish)	minwagesp.pdf
Minimum Wage (Large Black and White - Spanish)	minwagepbw.pdf
Minimum Wage (Small Color - Spanish)	minwagespP.pdf
Minimum Wage (Small Black and White - Spanish)	minwagespbwP.pdf
Minimum Wage (Chinese)	minwagecn.pdf
Minimum Wage (State and Local Governments)	wh1365State.pdf
Minimum Wage (Agriculture)	wh1386agrcltr.pdf
Notice to Workers with Disabilities Paid at Special Minimum Wages	disabc.pdf
Notice to Workers with Disabilities Paid at Special Minimum Wages (Spanish)	disabspanc3p.pdf
OSHA	oshac.pdf
Polygraph Protection Act	eppac.pdf
USERRA (Private and State Government)	userra_private.pdf

# Sample Letter Opinion

## Employment Relationship — Joint Employment (Employment of Employee by Affiliated Nursing Homes) [05-04-11B]

This is in response to your request for an opinion on the application of “joint employment” under the Fair Labor Standards Act (FLSA) to one of your clients, a health care system (the System) consisting of two acute care hospitals, a nursing home, and one combined long-term hospital and nursing home. The System is owned by a single, not-for-profit parent holding company that has no employees.

Each facility within the System has its own Human Resources Department, employee handbook, payroll system, retirement plan, and Federal Identification Number. There is no regular interchange of employees among the facilities. You present the example of a Licensed Practical Nurse who works at an acute care hospital during the week and at the nursing home on the weekend. You ask whether this employee would be due overtime pay if the total of his or her hours at both locations exceeds 40 in a week.

As you know, “employee” under Section 3(e) of the FLSA means any individual employed by an employer, and “employer,” under Section 3(d), includes any person acting directly or indirectly in the interest of an employer in relation to an employee. The term “employ” means to suffer or permit to work, and includes the principles of joint employment. Joint employment refers to a condition in which a single individual stands in the relation of an employee to two or more persons at the same time. A determination of whether the employment is to be considered joint employment depends upon all the facts in the particular case. If the facts establish that two or more employers are not completely disassociated with respect to the employment a particular employee, a joint employment situation exists (29 CFR 791.2(a)).

The regulations on joint employment are located in 29 CFR Part 791, copy enclosed. Nothing in the FLSA prevents an individual employed by one employer from also entering into an employment relationship with a different employer. An employee who performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, generally will be jointly employed where the employers are not completely disassociated with respect to the employment of the particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer (29 CFR 791.2(b)(3)). For example, where one business entity controls another through total stock ownership, and/or interlocking directorates and common corporate officers, we have concluded that employees of the latter are simultaneously employees of the former. See opinion letters of January 7, 1986 and December 4, 1984.

Based on the information you have provided, it is our opinion that all employees of the System’s facilities are under the common control of the parent company. You have provided numerous instances of association between the System’s various employing entities. For example, the nursing home and the combined hospital/nursing home share a common President and Board of Directors. At times, the hospital’s Human Resources Department provides administrative support for the Human Resources staff of the nursing home. The System’s Vice President of Human Resources and several senior executives and senior managers “have responsibility for more than one entity” within the System. Some of the facilities’ personnel policies are the same, such as those regarding the Family and Medical Leave Act, workplace harassment, and anti-nepotism. Non-union employees of the System have a common health care plan. System job vacancies are posted within the System before they are advertised publicly. Thus, multiple associations exist within the System and we believe these outweigh the fact that each entity does its own hiring and has its own pay scale and payroll system. Thus, we believe that a joint-employment relationship exists in weeks in which an individual works for more than one of the System’s employers. As you know, joint employers are responsible, both individually and jointly, for compliance with the FLSA, including the overtime compensation provisions. Therefore, the entities must aggregate all hours worked in a workweek by an employee who works for more than one entity. See opinion letters of July 13, 1998 and January 7, 1999 [99-01-07B]; *Chao v. A-One Medical Services, Inc.*, 346 F.3rd 908 (9th Cir. 2003).

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to a pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion letter is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to Portal Act, 29 U.S.C. 259. See 29 C.F.R. 790.17(d), 790.19; *Hultgren v. County of Lancaster, Nebraska*, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above information is responsive to your inquiry.

[Signed by Deputy Administrator Alfred B. Robinson]