


**U.S. Department of Labor
2017 Updates**

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Pending Rules

Fair Pay and Safe Workplaces
(‘Blacklisting’)

Congress nullifying - CRA




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Pending Rules

Fiduciary Rule

White House memo to DOL
DOL requests 180 day delay
(October 2017)




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Pending Rules

OT/White Collar Rule

Enjoined: legal challenge progressing
DOL has requested extension to May 1




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Pending Rules

Persuader Rule

Enjoined – DOL has not appealed




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Secretary of Labor

Puzder: out

Acosta: in?



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Rules Taking Effect in 2017

OSHA Injury and Illness Reporting Rule

Effective 12/1/2016; injunction denied; legal challenge ongoing. OSHA has issued reminder



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Rules Taking Effect in 2017

Increased Civil Money Penalties

Civil Penalties Inflation Adjustment Act Improvements Act of 2015



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Rules Taking Effect in 2017

Increased Civil Money Penalties

Pre-August 2016, up to \$1,100 for each repeat or willful violation of FLSA minimum-wage or overtime requirements. August 2016, max raised to \$1,894. January 2017 increase: up to \$1,925.




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Rules Taking Effect in 2017

New I-9 Form


Effective 1/22/17



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Hours Worked Under the FLSA



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The most common complaint received by DOL's Wage and Hour Division:


"I have not been paid for all of my hours' worked".



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Hours Worked Issues


- ❖ Suffered or Permitted
- ❖ Preparatory & Concluding Activities
- ❖ Waiting Time
- ❖ On-Call Time
- ❖ Meal and Rest Periods
- ❖ Training Time
- ❖ Travel Time
- ❖ Sleep Time
- ❖ Working from Home



Suffered or Permitted

“Work not requested but suffered or permitted is work time.”
(29 CFR Part 785.11)


“.....it is the duty of management to exercise its control and see that the work is not performed if it does not want it to be performed”.
(29 CFR Part 785.13)



Pre- and Post-Shift

First and Last Principal Activities
Examples:

- Donning and Doffing
- Setup
- Computers




Waiting Time

Counted as hours worked when:

- ❖ Employee is unable to use the time effectively for his or her own purposes; and
- ❖ Time is controlled by the employer

Not counted as hours worked when:

- ❖ Employee is completely relieved from duty; and
- ❖ Time is long enough to enable the employee to use it effectively for his or her own purposes

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On-Call Time

On-call time is hours worked when:

- ❖ Employee has to stay on the employer's premises, or;
- ❖ Employee cannot use that time effectively for his or her own purposes


On-call time is not hours worked when:

- ❖ Employee is merely required to be available, and;
- ❖ Employee is provided sufficient response time

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Meal and Rest Periods


- ❖ Meal periods are not hours worked when the employee is completely relieved of duties and the break is long enough to eat a meal – generally 30 minutes
- ❖ Rest periods of short duration (normally 5 to 20 minutes) are counted as hours worked and must be paid

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Training Time

Time employees spend in meetings, lectures or training is considered hours worked and must be paid, unless:


- ❖ Attendance is outside regular working hours
- ❖ Attendance is voluntary
- ❖ The course, lecture, or meeting is not job related
- ❖ The employee does not perform any productive work during attendance

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Training Time Exception


Training mandated by a higher authority that is also 'portable' for the EE is not compensable. Examples:

- ❖ Firearms training for law enforcement
- ❖ CEU's for health care EE's, preschool staff

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Travel Time

- ❖ Ordinary home to work travel is not work time
- ❖ Travel between job sites during the normal work day is work time
- ❖ Special rules apply to travel away from the employee's home community

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Travel Time Special Rules


One-day trips:

- ❖ All travel time compensable for driver and passengers*

Overnight trips:

- ❖ All TT compensable for driver
- ❖ Passengers' TT compensable for hours that fall into their regular workday

*normal home-to-work drive time is deductible




Sleep Time

Less than 24 hour shift

- ❖ Employee who is on duty for less than 24 hours is considered to be working even if allowed to sleep or engage in other personal pursuits


Shift of 24 hours or more

- ❖ Parties can agree to exclude bona fide sleep and meal periods



Other HW Rules

- ❖ Medical Attention
- ❖ Addressing Grievances
- ❖ Working Away From the Office



Thank You



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