

# Section 203 – Fair Labor Standards and the Minimum Wage

# Labor Standards

Section 203 of the Congressional Accountability Act (CAA) applies certain rights and protections of the Fair Labor Standards Act of 1938 (FLSA) to covered employees. These rights and protections require payment of the minimum wage and overtime compensation to non-exempt employees, restrict child labor, and prohibit sex discrimination in wages paid to men and women.

The House of Representatives and Senate have adopted substantive regulations that are substantially the same as the substantive regulations promulgated by the Secretary of Labor under the FLSA. The regulations define interns (who are exempt from coverage) and establish special requirements regarding overtime pay and compensatory time off for covered employees whose work schedules directly depend on the schedule of the House or the Senate. These regulations can be found in the substantive regulations of the Office of Compliance (“Office of Compliance Regulations”).

## 1. Coverage

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The CAA provides that “interns,” as defined in Office of Compliance Regulations, are not covered by the Fair Labor Standards provisions of the CAA. The regulations define an intern as an individual who:

- ◆ is performing services in an employing office as part of a demonstrated educational plan; and
- ◆ is appointed on a temporary basis for a period not to exceed 12 months, provided that, if the intern is appointed for a shorter period, the intern may be reappointed as long as the total length of the internship does not exceed 12 months.

The regulations further provide that the definition of intern does not include volunteers, fellows, or pages, so the definition does not cause such individuals to be excluded from coverage.

For the Senate, the regulations also provide that the term “intern” includes a senior citizen intern appointed under applicable Senate resolutions.

The covered employees and employing offices subject generally to the CAA are described in the “Covered Employees” section of the *CAA Handbook* and the Office of Compliance web site ([www.compliance.gov](http://www.compliance.gov)).

## 2. Basic Wage and Hour Standards

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Except for employees to whom a specific exemption or exclusion applies, all covered employees are entitled to the following:

- ◆ Minimum wage: Covered employees are entitled to be paid a minimum wage rate, currently \$5.15 an hour.
- ◆ Overtime compensation: Covered employees are entitled to be paid for all hours worked over 40 in a workweek at a rate not less than one-and-one-half times the employee’s regular rate of pay.

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Overtime compensation owed to an employee may not be reduced by compensatory time off except as authorized by Office of Compliance Regulations for employees whose schedules directly depend on the schedule of the House of Representatives and the Senate and certain law enforcement employment, as described below.

The hours of employment that are subject to overtime requirements may include hours in addition to time the employee is required to work, if the employing office suffers or permits the employee to work the additional hours. Generally, minimum wage and overtime need not be paid for:

- ◆ travel time to and from the workplace; and
- ◆ other preliminary and postliminary activities, which occur before or after the principal work activities on any particular workday.

## 3. Exempt Employees

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### *a. Executive, administrative, and professional employees*

Covered employees employed in a bona fide executive, administrative, or professional capacity are exempt from the basic wage and hour standards. The criteria for these exemptions are set forth in Office of Compliance Regulations. Actual function, and not description or job title, determines the exempt status of a covered employee. The key criteria for status as an Executive, Administrative, or Professional can be found in the substantive regulations of the Office of Compliance.

### *b. Partial exemption for law enforcement and fire protection employees*

Office of Compliance Regulations provide a partial overtime-pay exemption for covered employees in law enforcement and fire protection positions. For law enforcement employees who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required until the number of hours worked exceeds the number of hours that bears the same relationship to 171 as the number of days in the work period bears to 28. For fire protection employees who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required until the number of hours worked exceeds the number of hours that bears the same relationship to 212 as the number of days in the work period bears to 28. Compensatory time, in lieu of overtime pay, may be available insofar as covered employees perform duties that satisfy the standard that is explained in Section 4 below.

## 4. Compensatory Time Off for Employees Whose Schedules Directly Depend on the Schedule of the House of Representatives and the Senate

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Office of Compliance Regulations authorize employing offices to provide compensatory time off, instead of overtime pay, for covered employees whose work schedules directly depend on the schedule of the House of Representatives and the Senate. A covered employee's work schedule "directly depends" on the schedule of the House or the Senate if the eligible employee:

- ◆ performs work that directly supports the conduct of business in the chamber; and
- ◆ works hours that regularly change in response to the schedule of the House and the Senate.

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Compensatory time off may be provided, instead of overtime pay, for any hours worked in excess of 60 in a workweek by a covered employee whose work schedule directly depends on the schedule of the House or the Senate. Accordingly, the employing office must provide:

- ◆ pay, at the rate of time-and-a-half, for all hours in excess of 40 and up to 60 in a workweek; and
- ◆ pay or time off, at the rate of time-and-a-half, for all hours in excess of 60 in a workweek.

The regulations state that, if the necessary conditions are met, pay for the first 60 hours of employment in a workweek could be governed by a “Belo” contract, discussed below.

These regulations do not apply to compensatory time off that accrued under other rules prior to January 23, 1996 (the effective date of the CAA), and disputes over the use of such time off should be directed to the authorities previously responsible for the rules.

## 5. Irregular Work Schedules

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Office of Compliance Regulations identify three additional methods that may be used to stabilize or reduce payroll costs for employees who work irregular or fluctuating hours.

### *a. Time-off plan for the same pay period*

Under such a plan, when an employee works overtime in one week, the employing office lays off the employee, or the employee may if permitted, choose not to work, a sufficient number of hours during some other week or weeks of the same pay period to offset the amount of compensation owed for the overtime worked (for example, at the one and one-half rate). Consequently, the desired wage or salary of the pay period covers the total amount of compensation, including overtime compensation, due the employee for each workweek taken separately.

An essential feature of a time-off plan is that the employer can control earnings by controlling the number of hours an employee is permitted to work. For this reason, such a plan cannot be applied to an employee whose pay period is weekly, nor to a salaried employee who is paid a fixed salary to cover all hours he or she may work in any particular workweek or pay period. Further, the overtime hours cannot be accumulated for time off to be given in another pay period.

### *b. Fixed salary for fluctuating hours*

The employing office and the employee may have an understanding or agreement that a fixed salary is to be considered straight-time pay for all hours, whether few or many, worked in a workweek. Such an arrangement is allowed when two conditions are satisfied: (1) the salary is sufficient to provide not less than the minimum wage in every workweek; and (2) in addition to the salary, the employee receives extra compensation for all overtime hours worked (for example, the hours over 40 in a workweek), at a rate not less than one-half the employee’s regular rate of pay. The regular rate of pay will vary from week to week, and is determined by dividing the number of hours worked in the workweek into the amount of the salary.

This “fixed salary for fluctuating hours” method allows an employing office to stabilize the amount paid per pay period, without need for the close supervision and control of the employee’s hours that is required for a time-off plan. The amount of pay will fluctuate somewhat, however, whenever the employee works overtime, because the fixed salary must be supplemented with an overtime premium for the overtime hours worked of one-half the regular rate of pay.

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## *c. “Belo” contracts (guaranteed compensation plan for irregular hours)*

In some situations, variation in overtime costs may be reduced by use of a so-called “Belo” contract. A Belo contract guarantees a certain amount of compensation, including an amount for overtime. Office of Compliance Regulations state that employing offices may use Belo contracts if the following four requirements are met:

- ◆ the arrangement is pursuant to a specific agreement between the employee and the employer, or a collective bargaining agreement;
- ◆ the employee’s duties necessitate irregular hours of work;
- ◆ the fluctuation in the employee’s hours is not entirely in the overtime range; and
- ◆ the contract guarantees a weekly overtime payment not to exceed 60 hours per week and the employee receives that payment regardless of the number of hours actually worked.

A Belo contract can afford even greater stability than a fixed salary for fluctuating hours, because the guaranteed payment under a Belo contract includes the overtime premium for all hours worked, whether few or many, up to the limits of the guarantee. However, in weeks when the guaranteed level of hours is exceeded, additional overtime compensation must be paid for the additional overtime hours. Furthermore, many employment situations do not satisfy the legal prerequisites for the use of a Belo contract.

## **6. Equal Pay Provisions**

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Section 203 of the CAA also applies the rights and protections of the Equal Pay Act provisions of the FLSA, which prohibit employers from discriminating between men and women on the basis of sex in the payment of wages when they perform substantially equal work under similar working conditions in the same establishment. The law also prohibits employing offices from reducing the wages of either sex to comply with the law. The law does not apply to pay differences based on factors other than sex, such as seniority, merit, or systems that determine wages based upon the quantity or quality of items produced or processed.

The Office of Compliance has not adopted regulations on the Equal Pay rights and protections as applied by the CAA. Employing offices and covered employees may find it helpful to refer to court decisions interpreting Title VII, as well as the interpretations, opinions, and other materials issued by the Equal Employment Opportunity Commission (EEOC), which is responsible for implementing the Equal Pay Act. The Board of Directors of the Office of Compliance has stated that it will recognize these interpretations, as appropriate.

## **7. Child Labor Standards**

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The law provides that covered employees 18 years or older may perform any job, whether hazardous or not, for unlimited hours.

Covered employees 16 and 17 years old may perform any nonhazardous job for unlimited hours. Office of Compliance Regulations, applicable to the Congressional Instrumentalities, declare certain occupations to be too dangerous for covered employees between 16 and 18 years of age to perform. These restrictions were included because of the hazardous nature of some of the support functions conducted by the instrumentalities, such as maintenance and repair.

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Under Office of Compliance Regulations, covered employees 14 and 15 years old may work outside school hours in various nonhazardous jobs under the following conditions: No more than 3 hours on a school day; 18 hours in a school week; 8 hours on a nonschool day; or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day when evening hours are extended to 9 p.m. The Board of Directors has not issued regulations authorizing employment of youths 14 and 15 years old in the House of Representatives, however, because the House by law sets a minimum age of 16 for its employees.

## **8. Matters Not Regulated by the Fair Labor Standards Provisions of the CAA**

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While the wage and hour provisions of the CAA set basic minimum wage and overtime pay standards, there are many employment practices regarding hours and pay that the FLSA does not regulate. For example, the FLSA does not require:

- ◆ Vacation, holiday, or sick pay
- ◆ Meal or rest periods
- ◆ Premium pay for weekend or holiday work
- ◆ Premium pay for work in excess of 8 hours per day, provided work does not exceed 40 hours in a workweek
- ◆ Discharge notice, reason for discharge, or immediate payment of final wages to terminated employees
- ◆ Severance pay

Also, the FLSA does not limit the number of hours in a day or days in a week that an employee may be required or scheduled to work if the employee is at least 16 years old.

Although not regulated under the CAA, some of these and similar matters are regulated for certain employing offices by applicable House or Senate rules, civil service laws, or regulations established by the individual employing office. Furthermore, an employing office's personnel practices with respect to these matters may be unlawful if they discriminate on the basis of race, color, religion, sex, national origin, age, or disability.

## **9. Intimidation or Reprisal**

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Intimidation, reprisal, or discrimination against a covered employee for opposing practices or for initiating or participating in a proceeding is prohibited.

## **10. Remedies**

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In case of a violation of the Fair Labor Standards provisions of the CAA, the covered employee may recover unpaid minimum wages or unpaid overtime compensation, and an additional equal amount as liquidated damages.

Office of Compliance Regulations state that an employing office may not be held liable for a failure to pay minimum wage or overtime compensation if the employing office proves that it relied in good faith on a written administrative regulation, order, ruling, approval or interpretation of the Wage and Hour Administrator of the Department of Labor.