LABOR STANDARDS INFORMATION

for

NEW AND SMALL BUSINESSES

U.S. Department of Labor
Wage and Hour Division

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This publication provides general information only and is not to be considered in the same light as official statements of position contained in Interpretative Bulletins and in opinion letters of the Wage and Hour Administrator. The Federal Register and the Code of Federal Regulations remain the official source for regulatory information published by the United States Department of Labor. We will make an effort to correct errors brought to our attention.

For additional information call our Wage-Hour toll-free information and help line, available 8 a.m. to 5 p.m. in your time zone, 1-866-4US-WAGE (1-866-487-9243). TDD* Phone (202) 693-7755

*Telecommunications Device for the Deaf

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INTRODUCTION

New and small businesses play an important role in our nation's economy. The Wage and Hour Division (the Division) of the United States Department of Labor (DOL or Department) is providing this resource to assist new and small businesses to properly and effectively stay in compliance with the laws and regulations administered by the Division.

Owning a small business or creating a new business brings many responsibilities, including compliance with federal wage and hour laws. Employers often have questions about some of those responsibilities. When employees are treated in a way that is consistent with our nation's employment standards laws, everyone benefits.

This package provides general information about the laws administered by the Division, the Department, and other federal agencies. This information is available both through our offices and on the Internet.

The Department's e-laws (Employment Laws Assistance for Workers and Small Businesses) program at www.dol.gov/elaws can provide an answer to many of your questions any time of the day or night. This interactive program was designed to give advice to business owners and other interested parties in a question and answer format, similar to that used by a human expert.

BACKGROUND/OVERVIEW

The Wage and Hour Division was created by the Fair Labor Standards Act of 1938. The Division is responsible for the administration and enforcement of a wide range of labor standards laws that collectively cover virtually all private, state and local government employment. The Division is comprised of a nationwide staff of investigators, supervisors, technical, and clerical employees.

MISSION

The Division's mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. The Division enforces labor standards under the following laws:

- Fair Labor Standards Act;
- Employee Polygraph Protection Act;
- Family and Medical Leave Act;
- Davis-Bacon and Related Acts;
- McNamara-O'Hara Service Contract Act;
- Garnishment Provisions of the Consumer Credit Protection Act;
- Migrant and Seasonal Agricultural Worker Protection Act;
- Field Sanitation and Temporary Labor Camp Provisions of the Occupational Safety and Health Act;
- Temporary Worker Provisions of the Immigration and Nationality Act.

MAJOR STATUTES ADMINISTERED BY THE WAGE AND HOUR DIVISION

FAIR LABOR STANDARDS ACT (FLSA)

The FLSA requires that most employees in the United States be paid at least the federal minimum wage and time and one-half their regular rate for hours worked beyond 40 in a workweek. The FLSA also includes youth employment and recordkeeping provisions. The FLSA covers all workers who are engaged in or producing goods for interstate commerce or are employed in certain enterprises.

YOUTH EMPLOYMENT (CHILD LABOR)

The FLSA sets 14 years of age as the minimum age for employment, and restricts hours of work and allowable occupations for 14 and 15 year olds. It also bans employment in specified hazardous occupations for those under 18 years of age. Special rules apply to minors employed in agriculture.

EMPLOYEE POLYGRAPH PROTECTION ACT (EPPA)

The EPPA limits private employers in the use of lie detector tests either for pre-employment screening of job applicants or for testing current employees during the course of employment. Polygraph tests are permitted under limited circumstances and subject to certain restrictions.

FAMILY AND MEDICAL LEAVE ACT (FMLA)

The FMLA requires employers of 50 or more employees (and all public agencies) to provide eligible employees up to 12 weeks of unpaid, job-protected leave each year for the birth and care of a newborn child, for placement with the employee of a child for adoption or foster care, or for the serious illness of the employee or of the employee's child, spouse, or parent.

CONSUMER CREDIT PROTECTION ACT (CCPA)

The CCPA's wage garnishment provisions limit the amount of an individual's disposable income that may be legally garnished and prohibit an employer from firing an employee whose pay is garnished for payment of any single debt.

DAVIS-BACON AND RELATED ACTS (DBRA)

The DBRA require payment of prevailing wages and fringe benefits to laborers and mechanics employed by contractors and subcontractors engaged in federally financed and assisted construction projects.

McNAMARA-O'HARA SERVICE CONTRACT ACT (SCA)

The SCA requires payment of prevailing wages and fringe benefits to service employees of contractors and subcontractors furnishing services to agencies of the U.S. Government.

IMMIGRATION AND NATIONALITY ACT (INA)

Under the INA:

- Section H-2A provides for enforcement of contractual obligations of job offers to which employers of temporary nonimmigrant agricultural workers have certified;
- Section D-1 provides for enforcement of employment conditions attested to by employers seeking to employ alien crewmembers to perform specified longshore activities at U.S. ports;
- Section H-1B provides for enforcement of labor condition applications filed by employers wishing to employ, temporarily, nonimmigrants in specified professional occupations; and
- Section H-1C provides for enforcement of attestations filed by employers wishing to employ temporarily, nonimmigrants as registered nurses.

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSPA)

The MSPA protects migrant and seasonal agricultural workers in their dealings with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing. All persons and organizations subject to the MSPA must observe certain rules when recruiting, soliciting, hiring, employing, transporting, or housing these workers, or when furnishing them to other employers.

FIELD SANTIATION PROVISIONS OF OCCUPATIONAL SAFETY AND HEALTH ACT (OSHAct)

The OSHAct was enacted to assure safe and healthful working conditions for workers. Agricultural employers are required to allow reasonable use of employer provided toilets, potable drinking water and hand-washing facilities to hand-laborers in the field, and inform each employee of the importance of good hygiene.

AGRICULTURAL TEMPORARY LABOR CAMP PROVISIONS OF OSHAct

Employers providing temporary housing to agricultural workers must meet certain standards for health and safety. These standards apply for housing built or under construction after April 3, 1980, or contracted to be built after March 4, 1980.

EASY TO UNDERSTAND INFORMATION EXPLAINING LEGAL REQUIREMENTS

The Division has plain language publications that businesses like yours have found useful in determining how to comply with federal worker protection laws. The following list of publications may be obtained from the nearest Wage and Hour District Office or by calling 1-866-4US-WAGE (1-866-487-9243).

Publications from the Division are available free of charge through the Wage and Hour Online Publications Ordering Form. Additional information is also available through the Division's website at www.wagehour.dol.gov.

OTHER MAJOR LAWS ADMINISTRED BY THE U.S. DEPARTMENT OF LABOR

The Department of Labor (DOL) administers and enforces more than 180 federal laws. These mandates and the regulations that implement them cover many workplace activities for about 10 million employers and 135 million workers.

The following is a brief description of many of DOL's principal statutes most commonly applicable to new and small businesses. For authoritative information on these laws, you should consult the agencies that administer the applicable statutes and regulations.

The Employee Retirement Income Security Act (ERISA) regulates employers who offer pension or welfare benefit plans for their employees. Title I of ERISA is administered by the Employee Benefits Security Administration (EBSA) (formerly the Pension and Welfare Benefits Administration) and imposes a wide range of fiduciary, disclosure, and reporting requirements on fiduciaries of pension and welfare

benefit plans and on others having dealings with these plans. These provisions preempt many similar state laws. Under Title IV, certain employers and plan administrators must fund an insurance system to protect certain kinds of retirement benefits, with premiums paid to the federal government's Pension Benefits Guaranty Corporation (PBGC). EBSA also administers reporting requirements for continuation of health-care provisions, required under the Comprehensive Omnibus Budget Reconciliation Act of 1985 (COBRA) and the health care portability requirements on group plans under the Health Insurance Portability and Accountability Act (HIPAA).

- EBSA Home Page: www.dol.gov/ebsa

The Occupational Safety and Health Act (OSHAct) is administered by the Occupational Safety and Health Administration. Safety and health conditions in most private industries are regulated by OSHA or OSHA-approved state programs, which also cover public sector employers. Employers covered by the OSH Act must comply with the regulations and the safety and health standards promulgated by OSHA. Employers also have a general duty under the OSH Act to provide their employees with work and a workplace free from recognized, serious hazards. OSHA enforces the Act through workplace inspections and investigations. Compliance assistance and other cooperative programs are also available.

- OSHA Home Page: www.osha.gov

The Uniformed Services Employment and Reemployment Rights Act (USERRA) Certain persons who serve in the armed forces have a right to reemployment with the employer they were with when they entered service. This includes those called up from the reserves or National Guard. These rights are administered by the Veterans' Employment and Training Service (VETS).

- VETS Home Page: www.dol.gov/vets

The Labor Management Reporting and Disclosure Act of 1959(LMRDA)(also known as the Landrum-Griffin Act) deals with the relationship between a union and its members. It protects union funds and promotes union democracy by requiring labor organizations to file annual financial reports, by requiring union officials, employers, and labor consultants to file reports regarding certain labor relations practices, and by establishing standards for the election of union officers. The Act is administered by the Office of Labor-Management Standards (OLMS).

- OLMS Home Page: www.dol.gov/olms

Non-discrimination and affirmative action requirements apply to certain federal contractors under Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act. These programs prohibit discrimination and require affirmative action with regard to race, sex, ethnicity, religion, disability, and veterans' status. The Office of Federal Contract Compliance Programs (OFCCP) administers these programs.

- OFCCP Home Page: www.dol.gov/ofccp

The Federal Mine Safety and Health Act of 1977 covers all people who work on mine property. The Mine Safety and Health Administration (MSHA) administers this Act. MSHA enforces safety and health requirements at more than 13,000 mines, investigates mine accidents, and offers mine operators training, technical, and compliance assistance.

- MSHA Home Page: www.msha.gov

The Black Lung Benefits Act (BLBA) provides for monthly payments and medical benefits to coal miners totally disabled from pneumoconiosis (black lung disease) arising from their employment in the nation's coal mines. The statute also provides monthly benefits to a deceased miner's survivors if the miner's death was due to black lung disease. The Office of Workers' Compensation Programs (OWCP) administers the Act.

- OWCP Home Page: www.dol.gov/owcp

OTHER U.S. DEPARTMENT OF LABOR RESOURCES AVAILABLE TO NEW AND SMALL BUSINESSES

The Employment and Training Administration (ETA) administers federal government job training and worker dislocation programs, federal grants to states for public employment service programs, and unemployment insurance benefits. These services are primarily provided through state and local workforce development systems.

The Business Relations Group in ETA helps businesses to understand the workforce system, identify their key workforce challenges, and connect to federal, state, and local resources.

- ETA Home Page: www.doleta.gov
- Business and Industry Link: www.doleta.gov/business

All DOL compliance assistance activities are designed to provide businesses, workers, and others with the knowledge and tools they need to comply with DOL's rules.

- DOL's Compliance Assitance Home Page: www.dol.gov/compliance
- New and Small Business: www.dol.gov/compliance/audience/smallbus.htm

The Poster Advisor is designed to help employers comply with the poster requirements of several laws administered by DOL. These laws require employers to display official DOL posters where employees can readily see them. DOL provides the posters, in English as well as in other languages, at no cost to employers.

- Poster Advisor: www.dol.gov/elaws/posters.htm
- OSBP Poster Page: www.dol.gov/osbp/sbrefa/poster/matrix.htm

The FirstStep Employment Law Advisor is a free online tool that helps employers simply and quickly determine which of DOL's major employment laws apply to their business or organization. Just as its name implies, it is a valuable "first step" resource for any business owner because it provides clear, easy-to-access information on how to achieve compliance with DOL's laws. To determine the laws applicable to a specific business, this Advisor poses questions, reviews the responses, and generates a customized list of DOL employment laws that likely apply to the user's business based on its number of employees and other factors.

- FirstStep Employment Law Advisor: www.dol.gov/elaws/firststep

OTHER GOVERNMENT RESOURCES TO AID NEW AND SMALL BUSINESSES

The U. S. Small Business Administration (SBA) helps Americans start, build and grow businesses. The SBA was created to aid, counsel, assist, and protect the interests of small business concerns, to preserve free competitive enterprise, and to maintain and strengthen the overall economy of our nation.

- SBA Home Page: www.sba.gov
- SBA Toll-Free Phone Number: 1-800-U-ASK-SBA (1-800-827-5722)

The Internal Revenue Service (IRS) provides America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

- IRS Home Page: www.irs.gov
- Small business link: www.irs.gov/businesses/small/index.html
- IRS Toll-Free Phone Number for Businesses: 1-800-829-4933

The National Labor Relations Board (NLRB) administers the National Labor Relations Act (NLRA), the primary law that governs relations between unions, employees, and employers in the private sector. The Act guarantees employees the right to organize and to bargain collectively with their employers or to refrain from such activities. The Act, which generally applies to all employers involved in interstate commerce, implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace. The NLRA also extends rights to employers, protecting commercial interests against unfair actions committed by labor organizations, and extends rights to labor organizations, protecting organizational and

collective-bargaining representative interests against unfair actions committed by employers.

- NLRB Home Page: www.nlrb.gov
- NLRB Toll Free Phone Number: 1-866-667-NLRB (1-866-667-6572)

The Social Security Administration (SSA) provides a base of economic security in today's society through a valuable package of retirement, disability, and survivors insurance. The Social Security system is designed so that there is a link between how much workers and their employers pay into the system over their working years and how much they will get in benefits.

- SSA Home Page: www.socialsecurity.gov
- Information and Resources for Employers: www.socialsecurity.gov/employer1.htm
- SSA Toll-Free Phone Number: 1-800-772-1213

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA) that cover all private employers, state and local governments, and education institutions that employ 15 or more individuals. These laws also cover private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training. The Age Discrimination in Employment Act (ADEA) covers all private employers with 20 or more employees, state and local governments (including school districts), employment agencies, and labor organizations. The Equal Pay Act (EPA) covers all employers who are covered by the FLSA. Virtually all employers are subject to the provisions of this Act.

- EEOC Home Page: www.eeoc.gov
- EEOC Toll-Free Phone Number: 1-800-669-4000

Business.Gov, the official business link to the U.S. Government, provides a single access point to

government services and information by helping small businesses save time and money spent on regulatory compliance by providing quick and easy access to business laws, government regulations, forms, and agency contacts.

- Home Page: www.business.usa.gov

At the U.S. government's official web portal, USA.gov the public may easily get U.S. government information and services on the web.

- Home Page: www.usa.gov
- Toll-Free Phone Number:
  1 (800) FED-INFO (1-800-333-4636)

STATE AND LOCAL LAWS

States and other jurisdictions often have their own employment standards laws. If both federal and state or local law apply to your business, you must comply with both. States use various names for the agencies regulating employment practices; however, common names for such state agencies are: Department of Consumer and Industry Services, Employment Services, Human Resources, Industrial Relations, Labor, or Workforce Development. For more information about your state's labor laws, look under the listing for State Government Agencies of your local telephone book or visit the Internet at www.dol.gov/whd/contacts/state_of.htm.

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996 (SBREFA)

In accordance with the provisions of the SBREFA, the Small Business Administration established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small entities about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small entities. Small entities wishing to comment on Wage and Hour Division enforcement activities may call 1-888-REG-FAIR (1-888-734-3247), or write the Office of the National Ombudsman, U.S. Small Business Administration, 409 3rd Street, SW, MC2120, Washington, DC 20416-0005, or visit the Ombudsman's internet website, www.sba.gov/ombudsman. The right to file a comment with the Ombudsman is in addition to any other rights a small entity may have, including the right to contest the assessment of a civil money penalty. Filing a comment with the Ombudsman neither extends the maximum time period for contesting the assessment of a penalty, nor takes the place of filing the response required to secure an administrative hearing on a penalty. The Wage and Hour Division does not consider filing of a comment with the Ombudsman as a factor in determining how to resolve issues raised during a compliance action.

FOR MORE INFORMATION

Call the Wage and Hour Division toll-free at **1-866-4US-WAGE** (1-866-487-9243) or visit our website at **www.dol.gov/whd**