



# FAIR LABOR STANDARDS ACT



UNITED STATES DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION

[dol.gov/whd](https://dol.gov/whd)  
1-866-487-9243

# Major Provisions



Coverage



Youth  
Employment



Minimum Wage



Recordkeeping

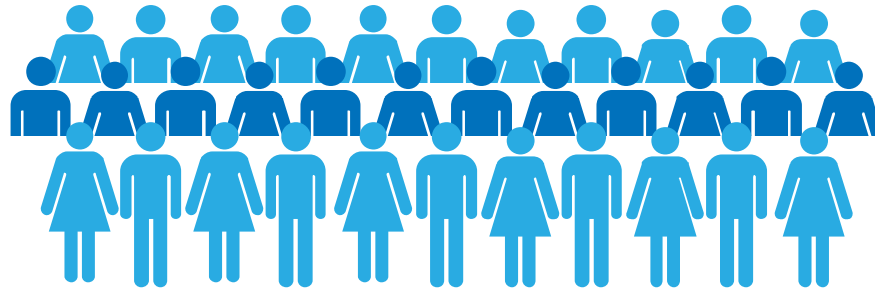


Overtime

# Employment Relationship

In order for the FLSA to apply, there must be an employment relationship between the “employer” and the “employee”

# Coverage



Over 135 million workers in more than 7 million workplaces protected or covered by the FLSA, enforced by the Wage and Hour Division of the U.S. Department of Labor

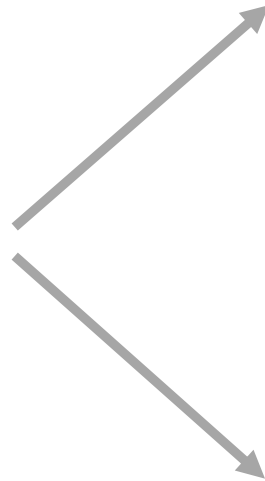


**FACT SHEET:**  
FLSA Coverage

# Coverage



**Two Types**  
of Coverage



## **Enterprise Coverage**

Enterprise, as a whole, is covered and all employees are entitled to FLSA protections



## **Individual Coverage**

Enterprise, as a whole, is NOT covered; however individual employees are covered and entitled to FLSA protections

# Enterprise Coverage



Enterprise coverage may apply to a business if:

- It engages in commercial activities that result in no less than \$500,000 in annual dollar volume (ADV), sales or total business, and
- It has two or more employees

# Individual Coverage

Includes workers engaged in:

- Interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to such production
- Domestic service, including home care
- Employees of non-profits may also be covered individually

# Coverage



Employees who *may* not be covered include those employed by:

- Small construction companies
- Small independently owned retail or service businesses



# Minimum Wage



Covered, non-exempt employees must be paid at least the federal minimum wage, in cash or the equivalent, free and clear, for all hours worked

Current federal minimum wage

# Minimum Wage

## Compensation includes:

- Wages (salary, hourly and piece rates)
- Commissions
- Certain bonuses
- Tips received by eligible employees up to \$5.12 per hour (where the employer takes a tip credit)
- Reasonable cost of room, board, other “facilities” provided by employer for employee’s benefit

# Minimum Wage

**Deductions** from pay are illegal if:

- Items are primarily for the benefit or convenience of employer, and
- Deduction reduces employee earnings below required minimum wage

Examples of illegal deductions: deductions for tools, damages to property, cash register shortages



**FACT SHEET:**  
Deductions

# Minimum Wage

## Hours Worked



An employee must be paid for all of the time considered to be “hours worked” under the FLSA.

This may include time spent engaged to wait, on-call, in training, or travelling, as well as sleep time.

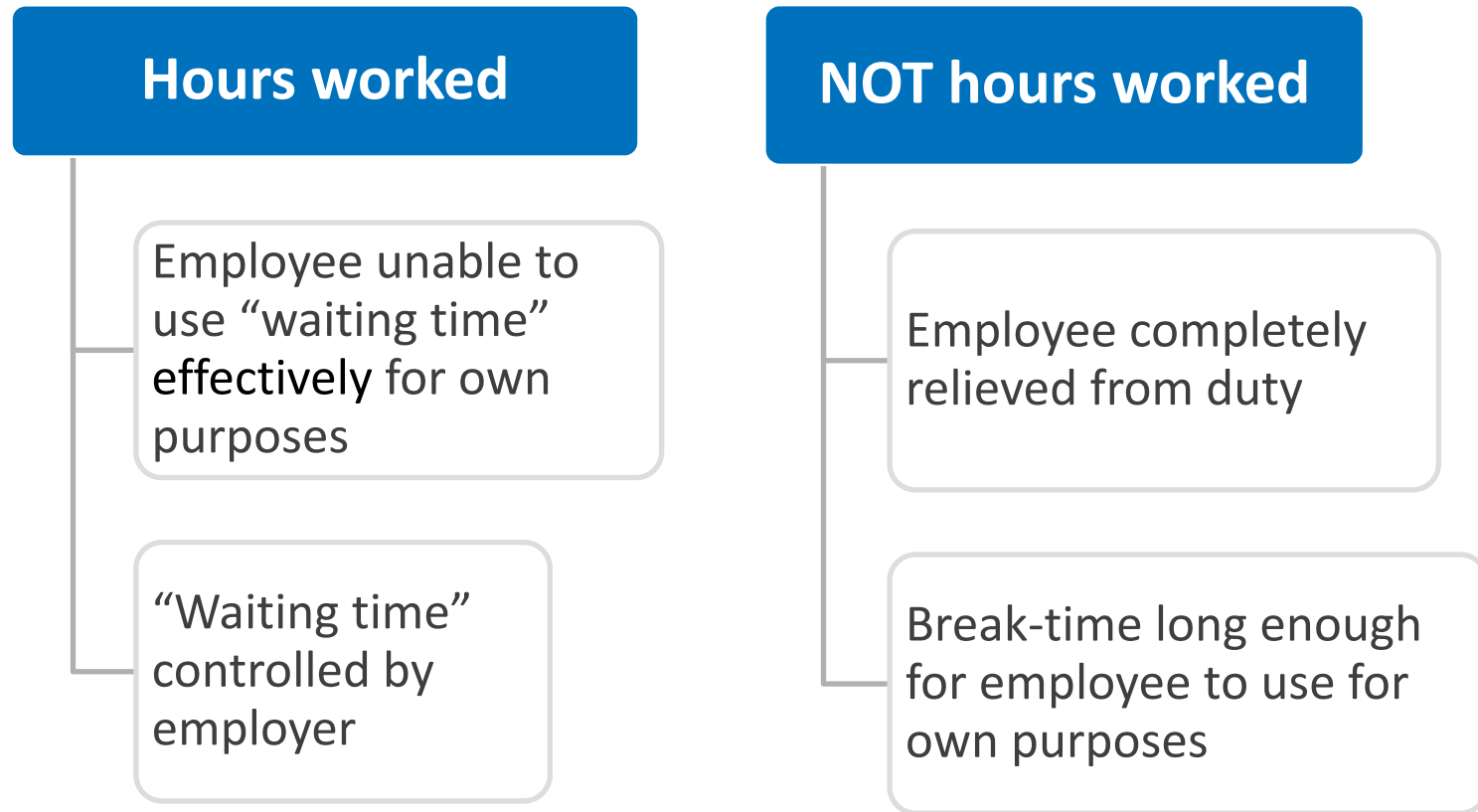
Work not requested but “suffered or permitted” is work time.



**FACT SHEET:**  
Hours Worked

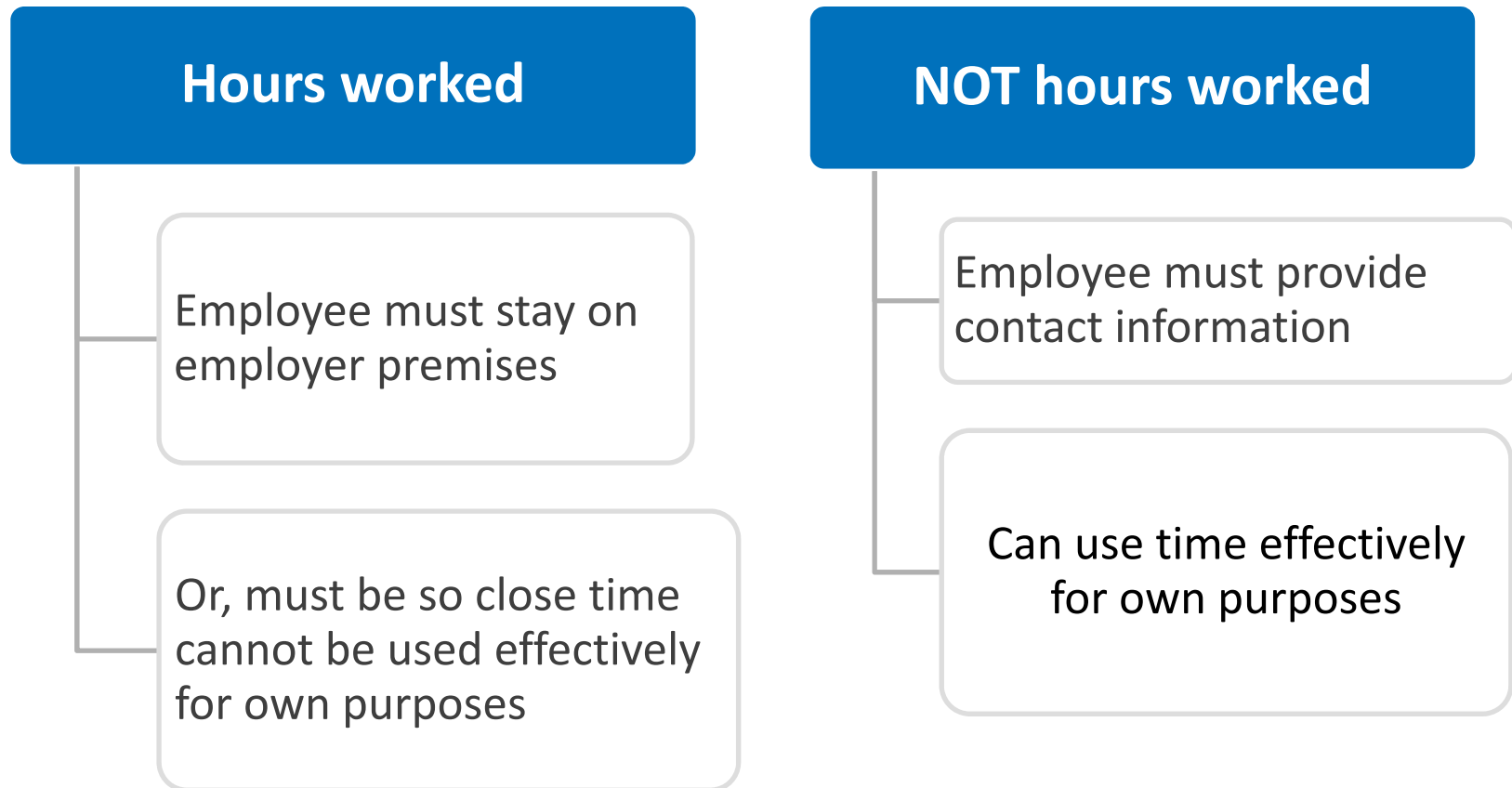
# Minimum Wage

## Waiting Time



# Minimum Wage

## On-Call Time



# Minimum Wage

## Rest and Meal Periods

- Short rest breaks (20 min or less) are compensable
- Bona fide meal periods (typically 30 minutes or more) need not be paid as hours worked
- Worker must be completely relieved of duty for meal period not to be compensable time.

# Minimum Wage

## Training Time

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

- Attendance outside regular work hours
- Attendance voluntary
- Course, lecture, meeting not job related, ***and***
- Employee does not perform any productive work



# Minimum Wage

## Travel Time

- Ordinary home to work travel is *not* compensable work time
- Travel between job sites during normal work day *is* work time and thus compensable hours worked
- Special rules apply to travel away from employee's home community

# Minimum Wage

## Hours Worked Summary and Common Violations

- ***Suffered or Permitted:*** working “off the clock”
- ***Waiting Time:*** engaged to wait
- ***On-Call Time:*** not free from duty or employer control
- ***Meal and Rest Periods:*** not free from duty
- ***Training Time:*** unpaid training during work time
- ***Travel Time:*** unpaid travel between job sites
- ***Sleep Time:*** deduct for sleep in less than 24-hour shift

# Minimum Wage

## Minimum Wage Summary and Common Violations

- ***Compensation Included:*** Required minimum wage in cash and/or allowable equivalent
- ***Deductions:*** Illegal deductions, minimum wage not paid
- ***Tipped Employees:*** Tips not retained by employees, cash wage not paid
- ***Hours Worked:*** Work suffered or permitted not recorded, or paid

# Overtime



Covered, non-exempt employees must receive one and one-half times their regular rate of pay for all hours worked over forty in a workweek

All time that is hours worked must be counted when determining overtime hours worked.



FACT SHEET:  
Overtime

# Overtime



- Compliance determined by workweek
- Each workweek stands alone
- Workweek is 7 consecutive 24-hour periods (168 hours)

# Overtime

## Regular Rate

- Determined by dividing total earnings in workweek by total number of hours worked in workweek

$$\text{Total Compensation} \div \text{Total Hours Worked} = \text{RR}$$

- *Regular Rate* may not be less than the applicable minimum wage
- *Total earnings include commissions, certain bonuses, and cost of room, board, and other facilities provided primarily for the employee's benefit*

# Overtime

## “White Collar” Exemption: Executive Duties

- Primary duty is management of enterprise or customarily recognized department or subdivision
- Customarily and regularly directs work of two or more employees
- Authority to hire, or fire employees; or, recommendations as to hiring, firing, advancement, promotion, change of status, given particular weight



**FACT SHEET:**  
Executive Duties Exemption

# Overtime

## “White Collar” Exemption: Administrative Duties

*Management or General Business Operations Includes:*

- Tax, Finance, Budgeting, Accounting
- Auditing, Legal and Regulatory Compliance
- Quality Control, Insurance, Safety and Health
- Purchasing, Procurement
- Advertising, Marketing, Research
- Human Resources, Labor Relations, Benefits
- Computer Network, Internet, Database Administration



**FACT SHEET:**  
Administrative Duties Test



# Overtime

## **“White Collar” Exemption: Professional Duties Other commonly exempt professions**

- Lawyers
- Teachers
- Accountants
- Pharmacists
- Engineers
- Actuaries
- Chefs
- Certified Athletic Trainers
- Licensed Funeral Directors
- Embalmers

# Overtime

## **“White Collar” Exemption: Computer-related Occupations**

Additionally, exempt employees must also receive either:

- Guaranteed Salary of at least \$455 weekly
- Hourly rate of at least \$27.63

# Overtime

## Common Overtime Violations

- **Regular Rate:** Failure to include production bonuses, shift differentials, piece rates in determining the regular rate for calculating OT compensation due
- **Combined hours, rates for dual jobs:** Failure to combine all hours in dual jobs or multiple sites of single employer
- **Tipped Employees:** Failure to calculate correct cash OT payment

# Overtime

## Common Overtime Violations

- **“White Collar” Exemptions:** Misapplication of exemption, or improper assumption that all salaried employees are exempt
- **Deductions:** Improper deductions in OT weeks
- **Misclassification:** Improper treatment of employee as independent contractor
- **Hours worked:** Failure to record, pay for all hours worked
- **State Law:** Confusion between state and federal law

# Youth Employment



Federal youth employment rules set both hours and occupational standards for youth



**FACT SHEET:**  
Youth  
Employment

# Youth Employment

- **16 and 17 year olds**

Unlimited hours; may work in any occupation other than those declared hazardous by Secretary of Labor

- **14 and 15 year olds**

May work outside school hours and for limited periods of time; only non-manufacturing, non-hazardous jobs, and specific conditions apply

- **Children under 14**

With limited exceptions, no employment permitted in covered, non-agricultural occupations

# Recordkeeping



- All employers subject to any provision of the FLSA must make, keep, and preserve certain records
- Time clocks are not required and records need not be kept in any particular form
- Every covered employer must keep basic records for each worker, with additional requirements for non-exempt workers



**FACT SHEET:**  
Recordkeeping  
Requirements

# Recordkeeping

**“Basic records” that a covered employer must keep for each non-exempt worker include:**

- Full name, sex , DOB if younger than 19
- Regular rate of pay, total hours worked, total daily or weekly straight-time earnings, total overtime compensation, if any
- Deductions, date of payment and pay period for payment



# Recordkeeping

## Posting

Covered employers must post a notice explaining the FLSA, as prescribed by the Wage and Hour Division, in a conspicuous place such as a lunch room or employee lounge area.

Download the poster electronically at :

[www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm](http://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm)

To request by phone call:

**1-866-487-9243**

# Section 14(c): Subminimum Wage

Workforce Innovation and Opportunity Act (WIOA)

Section 14(c) Provisions

Establishing Coverage

Determining Hours Worked

The Process to Determine SMW

Record & Notice Requirements

# Section 14(c): Subminimum Wage

## **Workforce Innovation and Opportunity Act (WIOA):**

Places limitations on the payment of subminimum wages to individuals with disabilities by mandating the completion of certain requirements prior to the payment of a subminimum wage.

# Section 14(c): Subminimum Wage

## **Workforce Innovation and Opportunity Act (WIOA):**

- Places limitations on the payment of subminimum wages to individuals with disabilities by mandating the completion of certain requirements prior to the payment of a subminimum wage.
- Amended Title V
- Department of Education also has authority
- Section 511 of Rehabilitation Act
- Section 11 of the FLSA
- Pre-Subminimum Wage Employment – Youth with a disability
- Individual who is age 24 or younger (youth)

# PAID Program

## PAID Program

The Wage and Hour Division's (WHD) new nationwide pilot program, the Payroll Audit Independent Determination (PAID) program, facilitates resolution of potential **overtime and minimum wage** violations under the Fair Labor Standards Act (FLSA). The program's primary objectives are to resolve such claims expeditiously and without litigation, to improve employers' compliance with overtime and minimum wage obligations, and to ensure that more employees receive the back wages they are owed—faster.



Under the PAID program, employers are encouraged to conduct audits and, if they discover overtime or minimum wage violations, to self-report those violations. Employers may then work in good faith with WHD to correct their mistakes and to quickly provide 100% of the back wages due to their affected employees.

## How the PAID Program Works



On this website, interested employers can find the resources they need to participate in PAID, starting with relevant FLSA compliance assistance materials.

After reviewing these materials, employers must then audit their compensation practices for potentially non-compliant practices. Once an employer identifies any potential claims it wants to resolve, the employer must then:

- Specifically identify the potential violations;
- Identify which employees were affected;
- Identify the timeframes in which each employee was affected; and
- Calculate the amount of back wages the employer believes are owed to each employee.

Next, the employer should contact WHD to discuss the issues for which it seeks resolution. WHD will then inform the employer of the manner in which the employer must submit required information, including the following:

- The back wage calculations described above, along with supporting evidence and methodology;
- A concise explanation of the scope of the potential violations for possible inclusion in a release of liability;
- A certification that the employer reviewed all of the PAID program's information, terms and compliance assistance materials; and
- A certification that the employer meets all eligibility criteria of the PAID program.

WHD will then evaluate this information and contact the employer to discuss next steps, including the collection of any other information necessary for WHD to assess the back wages due for the identified compensation practices. Employers are responsible for issuing payment by the end of the next full pay period after receiving the summary of unpaid wages and must provide timely proof of payment to WHD.

# FLSA Enforcement

## Limits of the FLSA FLSA does ***NOT*** require

- Vacation, holiday, severance, sick pay
- Meal or rest periods, holidays off, vacations
- Premium pay for weekend or holiday work
- Discharge notice, reason for discharge
- Limit on number of hours or days employees  
16 years or older may work
- Pay raises, fringe benefits

# FLSA Enforcement



- Carried out by the Wage and Hour Division in the U.S. and territories
- If violations found, the Wage and Hour Division secures agreement to comply in future, supervises voluntary payment of back pay as applicable



**FACT SHEET:**  
Visits to  
Employers

# FLSA Enforcement

- 2-year statute of limitations generally applies to back pay recovery; if willful violation, a 3-year statute of limitations may apply
- If voluntary agreement not obtained, the Wage and Hour Division may bring suit to restrain employer from violating FLSA and/or obtain back wages and liquidated damages
- Employees may file private suit for back pay, liquidated damages, plus attorney and court fees



# FLSA Enforcement

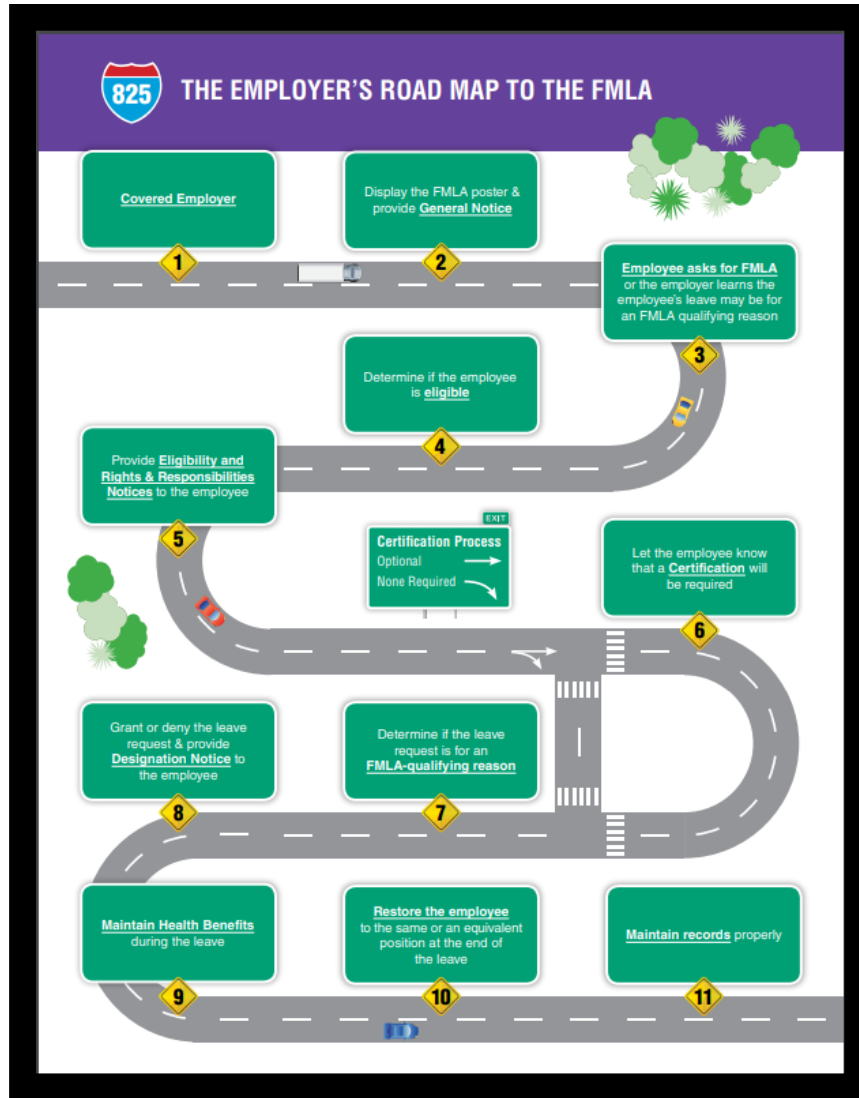
## Penalties

- Willful violations may be prosecuted with fines amounting to thousands of dollars
- Violators of youth employment are subject to civil money penalties
- Willful, repeat violations of minimum wage or overtime requirements subject to civil money penalties for each violation

## Civil Money Penalties Chart



## THE EMPLOYER'S ROAD MAP TO THE FMLA



# FLSA Compliance Assistance

- Call WHD toll free and confidential information and helpline:  
**1-866-4US-WAGE (1-866-487-9243)**
- Call or visit the nearest Wage and Hour Division Office: WHD Offices
- Employment Laws Assistance for Workers and Small Businesses (ELAWS): Elaws