

HOW TO USE THIS HANDBOOK

TA has produced this handbook as a general summary and teaching guide in order to help employers understand the basic requirements of Oregon's wage and hour laws and to avoid potential liability for violations. Please keep in mind, however, that this handbook is not intended as legal advice regarding any particular situation. Those seeking legal advice should contact an attorney.

The tabbed sections of this handbook address each of the major topics of Oregon's wage and hour laws. Specific information on a given topic may also be found by way of the table of contents or the subject matter index.

Several sections of this handbook contain answers to commonly asked questions, best practice tips and legislative updates to further illustrate the application of wage and hour law.

Significant differences between federal and state wage and hour laws are highlighted, and citations to the text of the relevant statutes, rules and regulations are provided for ease of reference. All the statutes and regulations referred to in this handbook can easily be accessed by way of the internet. Links to the full text of the laws and administrative rules enforced by BOLI are available on our website at: <http://www.oregon.gov/BOLI>. Federal statutes (specifically, the Fair Labor Standards Act) and implementing regulations are also available on the internet at the U.S. Department of Labor's website, www.dol.gov.

Employers should be aware that additional requirements (beyond the scope of this handbook) also apply to specific types of employers, including farm and forest labor contractors, construction contractors on public works projects, and private employment agencies. Employers are encouraged to contact TA for further information on any of these topics.

WAGE AND HOUR LAW

Wage and hour laws regulate a variety of aspects of employment relationships and include requirements on items like minimum wage, overtime, wage payment and recordkeeping requirements as well as basic working conditions such as rest and meal period requirements.

INTER-RELATIONSHIP OF STATE AND FEDERAL LAW

Oregon employers should be aware that most employment relationships are subject to regulation under both state and federal wage and hour laws. Although often similar, the provisions of state and federal law are not identical. Where one or the other provides a higher standard on similar matters such as the minimum wage or overtime, the standard that is most advantageous to the employee will apply. OAR 839-020-0115(3).

FEDERAL WAGE AND HOUR LAW

Federal wage and hour law is set out by the Fair Labor Standards Act (“FLSA”) and codified as 29 U.S.C. § 201, *et seq.* Regulations implementing the FLSA are found in the Code of Federal Regulations (“C.F.R.”) at Title 29 - Labor, Chapter V, Wage and Hour Division, Department of Labor.

FEDERAL COVERAGE

Not all employment relationships are subject to federal law, but employers should be aware that there are two ways in which federal coverage can be established, enterprise coverage and individual coverage. The FLSA applies to *all employees* of certain enterprises. These enterprises are:

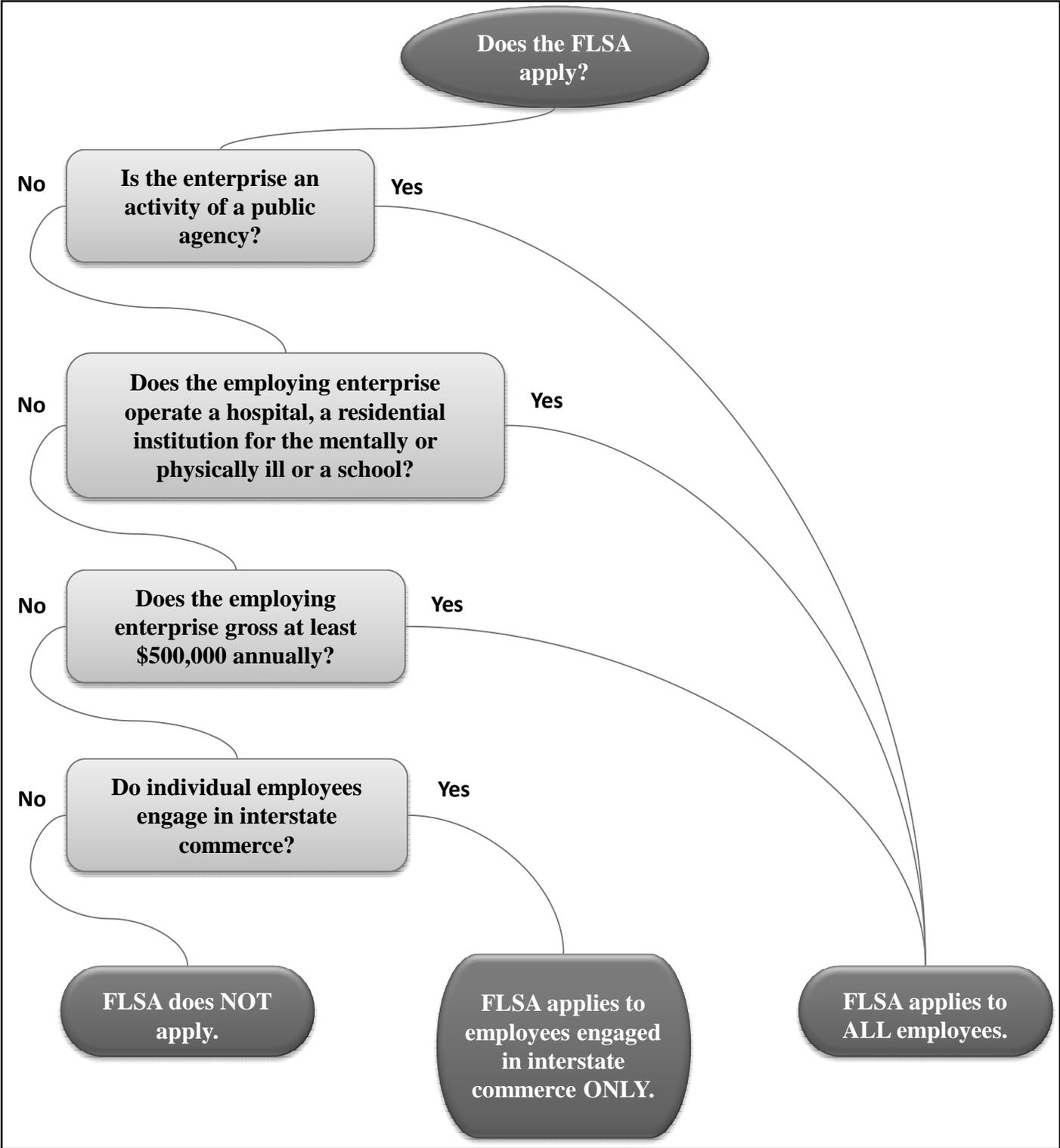
1. those with annual gross volume of sales made or business done is \$500,000 or more; or
2. those which are engaged in the operation of a hospital, an institution primarily engaged in the care of those who are physically or mentally ill or disabled or aged, and who reside on the premises, a school for children who are mentally or physically disabled or gifted, a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
3. those which are an activity of a public agency.

The FLSA may also apply to individual employees of an enterprise even if the enterprise itself is not covered. In addition to occupations specifically named in the FLSA (such as certain domestic employment), the FLSA applies to any employees who are themselves engaged in interstate commerce, the production of goods for interstate commerce, or a closely-related process or occupation directly essential to production of goods for interstate commerce.

The definition of interstate commerce is construed very broadly. For example, employees engaged in interstate commerce include those who: work in communications or transportation; regularly use the mail, telephone, computer e-mail system and/or facsimile machine to communicate with persons in another state; make deposits in banks; use an electronic device which authorizes a credit card purchase; keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross state lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or the production of goods for interstate commerce. 29 C. F. R. § 779.103 *et seq.*

Q. Is there an easy way to know if my business is subject to federal (FLSA) regulation?

A. The flow chart on the following page may help. Alternatively, you could visit the U.S. Department of Labor (USDOL) website at www.dol.gov. You may also contact USDOL directly at 503-326-3057.



FEDERAL WAGE AND HOUR LAW ENFORCEMENT

The Wage and Hour Division of the United States Department of Labor (USDOL) is charged with enforcement of the FLSA. To enforce the federal minimum wage and overtime laws, the USDOL has statutory authority to inspect records and require two years back payment of unpaid wages. If a violation is found to be “willful,” the division may go back a third year and require additional payment of unpaid minimum wages and/or overtime. If a lawsuit results from a dispute with an employer, liquidated damages (twice the amount of unpaid wages) may be sought as well.

OREGON WAGE AND HOUR LAW

All Oregon employers are subject to state wage and hour laws, including those who are also covered by federal law. Employees of the federal government are the only exception to this rule, as they are NOT subject to Oregon’s wage and hour laws. ORS 652.310(1)(a) and 653.020(4).

The full text of Oregon’s wage and hour laws is found within the Oregon Revised Statutes (“ORS”), chapters 652 and 653. These two chapters are commonly referred to as Oregon’s Wage Collection Law and Oregon’s Minimum Wage and Overtime Law, though each chapter contains provisions that extend beyond those general descriptions. Child labor laws and working conditions requirements, for example, can be found in Oregon’s Minimum Wage and Overtime Law, and daily overtime requirements for manufacturing establishments actually appear in Oregon’s Wage Collection Law.

The Oregon Administrative Rules (“OAR”) that interpret and implement these statutes are found at OAR chapter 839, divisions 001, 020, and 021. Both statutes and rules can be accessed online through TA’s website at www.oregon.gov/BOLI/TA under the headings “Oregon Revised Statutes” and “Administrative Rules.”

OREGON WAGE AND HOUR LAW ENFORCEMENT

The Commissioner of the Oregon Bureau of Labor and Industries is charged with enforcing laws and adopting administrative rules regarding Oregon’s minimum wage and overtime requirements, working conditions, child labor, and wage collection. Those enforcement duties are carried out by the Bureau’s Wage and Hour Division.

Oregon’s Wage Collection Law, set out in ORS Chapter 652, authorizes the Commissioner to investigate and attempt equitable settlement of wage claims that have been made by any employees who have worked in Oregon. The Commissioner has the authority to initiate and conduct contested case hearings or file lawsuits against employers or other responsible parties to recover unpaid wages, penalty wages, civil penalties, court costs, and attorney fees. ORS 652.330, 652.332.

The Commissioner may assess civil penalties for willful violations of many rules and statutes enforced by the Wage and Hour Division. Examples include, but are not limited to, willful violations of minimum wage and final pay requirements, failure to keep required records, failure to post the minimum wage poster, and violations of various rules relating to working conditions. ORS 653.256, OAR 839-020-1010.