

## **Applicability of the Fair Labor Standards Act (FLSA) to Head Start and Early Head Start Grantees**

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Administration for Children and Families

ACYF  
Administration on Children, Youth and Families

1. Log No. ACYF-IM-HS-01-01
2. Issuance Date: 05/03/01
3. Originating Office: Head Start Bureau
4. Key Words: Labor Standards; Overtime; Minimum Wage

**PROGRAM INSTRUCTION** [[See Attachments at the bottom](#)]

**TO:** Head Start and Early Head Start Grantees and Delegate Agencies

**SUBJECT:** Applicability of the Fair Labor Standards Act (FLSA) to Head Start and Early Head Start Grantees

### **INSTRUCTION:**

The purpose of this Program Instruction (PI) is to inform Head Start and Early Head Start grantees that they are covered by the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector, and in Federal, State and local governments.

Although it has been generally understood that grantees which are public agencies are subject to the FLSA, there has been some lack of clarity about the applicability of the FLSA to grantees that are private non-profit or for-profit agencies. After consultation with the U.S. Department of Labor (U.S. DOL), we have now established that private non-profit and for-profit agencies operating Head Start or Early Head Start programs are subject to the requirements of the FLSA by virtue of being engaged in the operation of a "pre-school." In addition, we have learned that over the past year, several private, non-profit Head Start grantees have been found out of compliance with FLSA standards and have been required to take corrective action, including payment of back wages to employees.

The FLSA includes the following major requirements that relate to Head Start and Early Head Start grantees:

- All employees are covered except executive, administrative, and professional employees who are defined as exempt by the FLSA and applicable regulations (see the fourth attachment);
- Covered employees are entitled to not less than the current minimum wage;
- There are specific recordkeeping requirements, especially for non-exempt employees -- see page 9 of the first attachment, Handy Reference Guide and Office of Management and Budget (OMB) Circulars [A-87](#) and [A-122](#) , attachments B, Selected Items of Cost;
- Covered employees must be paid overtime at a rate of not less than one and one-half times their regular rate of pay after 40 hours of work in a workweek; and
- Training which is not voluntary is considered work time. For example, if a teacher's continued employment depends on getting an associate degree, attending college would be considered work time. (See sections 785.27 and 785.28 of the U.S. Department of Labor Regulations, Part 785).

This PI cannot answer all of the questions that could be raised about the FLSA. Please find attached to this PI several publications of the U.S. DOL that will assist you in meeting the requirements of the FLSA. I encourage you to contact one of the district offices of the Wage and Hour Division of the U.S. DOL to get answers to any question about the FLSA and how it applies to your agency and its employees. Attached is a nationwide list of district office locations and telephone numbers. You may also call (toll free) 1-866-487-9243 to obtain the listing of any district office. Also, you may reach the U.S. DOL on the Internet at <http://www.dol.gov/esa/whd/>.

In addition, you should be aware that many States also have labor laws that may affect the management of your agency. The U.S. DOL cannot assist you with State law; you should contact the appropriate agency in your State to inquire about relevant State law. State laws will govern if they are more stringent than Federal law. State Labor Offices/State Laws website: <http://www.dol.gov/esa/programs/whd/state/state.htm>

Douglas Klafehn  
Acting Associate Commissioner  
Head Start Bureau

**Attachments:**

- [Handy Reference Guide to the Fair Labor Standards Act](#)
- [List of U.S. DOL District Offices of the Wage & Hour Division](#)
- [Poster Advising Employees of Rights under the FLSA](#)
- [Executive, Administrative, Professional and Outside Sales Exemptions under the FLSA](#)
- [Hours Worked Under the FLSA \(U.S. DOL Regulations, Part 785\)](#)

Applicability of the Fair Labor Standards Act (FLSA) to Head Start and Early Head Start Grantees. ACYF-PI-HS-01-01. HHS/ACF/ACYF/HSB. 2001. English.