

Basic Overview of Laws

Results

You have indicated that:

- You want a Basic Overview of Laws
- The nature of your business or organization is: Services, Other
- The maximum number of employees your business or organization employs or will employ during the calendar year is 1 - 10.
- You hire or plan to hire foreign workers under the following programs:
 - Permanent Employment (Permanent Alien Employment Certification)
 - Temporary Nonagricultural Workers (H-2B)
- Your business or organization currently maintains or plans to maintain a health benefits plan for employees.
- Your establishment is located in: California, which has its own OSHA state plan.

Based on the information you provided in response to the questions in the Advisor, the following employment laws administered by the Department of Labor (DOL) likely apply to your business or organization. Please note that the Advisor covers only the [major employment laws administered by DOL](#). In addition, the Advisor does not identify laws administered by other federal agencies that might be applicable to your business or organization.

- Consumer Credit Protection Act (wage garnishments)
- Employee Polygraph Protection Act (EPPA)
- Employee Retirement Income Security Act (ERISA)
- Fair Labor Standards Act (FLSA)
- Fair Labor Standards Act (FLSA)/Child Labor
- The Immigration and Nationality Act - Permanent Employment (Permanent Alien Employment Certification)
- The Immigration and Nationality Act - Temporary Nonagricultural Workers (H-2B)
- Occupational Safety and Health Act (OSH Act)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
- Whistleblower Protection Provisions

In addition to posters of general application, certain organizations may be required to display posters that can only be obtained from DOL's Office of Workers' Compensation Programs (OWCP). [More information on these posters is available](#). Links to federal employment posters are always available on the [Poster Page](#). Please note that some localities have workplace poster requirements, as do some other federal agencies such as the Department of Housing and Urban Development which requires [certain businesses to post its Equal Housing Opportunity poster](#).

Thank you for using the Department of Labor's *FirstStep* Employment Law Advisor. Please return to the [beginning of this Advisor](#) if you want to check the requirements for another establishment.

Title III, Consumer Credit Protection Act (CCPA)
(15 USC §1671 et seq.(PDF); 29 CFR Part 870)

Who is Covered

Title III of the Consumer Credit Protection Act (CCPA) protects employees from discharge by their employers because their wages have been garnished for any one debt, and it limits the amount of an employee's earnings that may be garnished in any one week. Title III applies to all employers and individuals who receive earnings for personal services (including wages, salaries, commissions, bonuses, and income from a pension or retirement program, but ordinarily not including tips).

Basic Provisions/Requirements

Title III of the Consumer Credit Protection Act (CCPA) is administered by the [Wage and Hour Division \(WHD\)](#) of the Department of Labor's Employment Standards Administration. The Wage and Hour Division has no authority with regard to garnishments, other than protecting the employee from being fired in certain circumstances and limiting the amount being garnished.

Wage garnishment occurs when an employer withholds the earnings of an individual for the payment of a debt as the result of a court order or other equitable procedure. Title III prohibits an employer from discharging an employee because his or her earnings have been subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect it. Title III does not, however, protect an employee from discharge if the employee's earnings have been subject to garnishment for a second or subsequent debt.

Title III also protects employees by limiting the amount of earnings that may be garnished in any workweek or pay period to the lesser of 25 percent of disposable earnings or the amount by which disposable earnings are greater than 30 times the federal minimum hourly wage prescribed by Section 6 (a)(1) of the Fair Labor Standards Act of 1938. This limit applies regardless of how many garnishment orders an employer receives. The federal minimum wage is \$5.85 per hour effective July 24, 2007; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009.

In court orders for child support or alimony, Title III allows up to 50 percent of an employee's disposable earnings to be garnished if the employee is supporting a current spouse or child, and up to 60 percent if the employee is not doing so. An additional five percent may be garnished for support payments over 12 weeks in arrears. The restrictions noted in the preceding paragraph do not apply to such garnishments.

"Disposable earnings" is the amount of earnings left after legally required deductions (e.g., federal, state and local taxes, Social Security, unemployment insurance, and state employee retirement systems) have been made. Deductions not required by law (e.g., union dues, health and life insurance, and charitable contributions) are not subtracted from gross earnings when the amount of disposable earnings for garnishment purposes is calculated.

Title III specifies that garnishment restrictions do not apply to bankruptcy court orders and debts due for federal and state taxes. Nor do they affect voluntary wage assignments, i.e., situations where workers voluntarily agree that their employers may turn over a specified amount of their earnings to a creditor or creditors.

There are no poster, notice, recordkeeping or reporting requirements under Title III of the Consumer Credit Protection Act.

Compliance Assistance Available

The Department of Labor provides employers, workers and others with clear and easy-to-access information and assistance on how to comply with the Consumer Credit Protection Act. Compliance assistance related to the Act — including [Employment Law Guide: Wage Garnishment](#), [Federal Wage Garnishment Law Fact Sheet](#), and regulatory and interpretive materials — is available on the [Compliance Assistance "By Law" Web page](#).

Relation to State, Local, and Other Federal Laws

If a state wage garnishment law differs from Title III, the employer must observe the law resulting in

the smaller garnishment, or prohibiting the discharge of an employee because his or her earnings have been subject to garnishment for more than one debt.

Penalties/Sanctions

Violations of Title III may result in reinstatement of a discharged employee, payment of back wages, and restoration of improperly garnished amounts. Where violations cannot be resolved through informal means, the Department of Labor may initiate court action to restrain violators and remedy violations. Employers who willfully violate the discharge provisions of the law may be prosecuted criminally and fined up to \$1,000, or imprisoned for not more than one year, or both.

DOL Contacts

Employment Standards Administration (ESA), [Wage and Hour Division](#)

[Contact WHD](#)

Tel: 1-866-4USWAGE (1-866-487-9243); TTY: 1-877-889-5627

Employee Polygraph Protection Act of 1988 (EPPA) (29 USC §2001 et seq.; 29 CFR Part 801)

Who is Covered

The Employee Polygraph Protection Act (EPPA) applies to most private employers. The law does not cover federal, state, and local governments. The law does apply to most private employees who contract with governmental entities.

Basic Provisions/Requirements

The Employment Standards Administration's [Wage and Hour Division](#) (WHD) enforces the EPPA.

The EPPA prohibits most private employers from using lie detector tests, either for pre-employment screening or during the course of employment.

Employers generally may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act.

Employers may not use or inquire about the results of a lie detector test or discharge or discriminate against an employee or job applicant on the basis of the results of a test, or for filing a complaint, or for participating in a proceeding under the Act.

Subject to restrictions, the Act permits polygraph (a type of lie detector) tests to be administered to certain job applicants of security service firms (armored car, alarm, and guard) and of pharmaceutical manufacturers, distributors, and dispensers.

Subject to restrictions, the Act also permits polygraph testing of certain employees of private firms who are reasonably suspected of involvement in a workplace incident (theft, embezzlement, etc.) that resulted in specific economic loss or injury to the employer.

Where polygraph examinations are allowed, they are subject to strict standards for the conduct of the test, including the pretest, testing, and post-testing phases. An examiner must be licensed and bonded or have professional liability coverage. The Act strictly limits the disclosure of information obtained during a polygraph test.

Notices/Posters

Poster. Every employer subject to EPPA (whether prohibited or permitted to conduct polygraph tests) shall post and keep posted on its premises a notice explaining the Act. The notice must be posted in a prominent and conspicuous place in every establishment of the employer where it can readily be observed by employees and applicants for employment. There is no size requirement for the poster.

The EPPA poster is available in [English](#) and [Spanish](#). Posting of the EPPA poster in Spanish is optional.

Notices. There are some notices that must be given to examinees and examiners in instances where polygraph tests are permitted:

When a polygraph test is administered pursuant to the economic loss or injury exemption, the employer is required to provide the examinee with a statement prior to the test, in a language understood by the examinee, which fully explains the specific incident or activity being investigated and the basis for testing particular employees. The statement must contain, at a minimum, the following information:

- An identification of the specific economic loss or injury to the business of the employer
- A description of the employee's access to the property that is the subject of the investigation
- A detailed description of the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation
- The signature of a person (other than the polygraph examiner) authorized to legally bind the employer

Every employer who requests an employee or prospective employee to submit to a polygraph

examination, pursuant to the ongoing investigation, drug manufacturer, or security services EPPA exemptions, must provide:

- Reasonable written notice of the date, time, and place of the examination and the examinee's right to consult with counsel
- Reasonable written notice of the nature and characteristics of the polygraph instrument and examination
- Extensive written notice explaining the examinee's rights, including a list of prohibited questions and topics, the examinee's right to terminate the examination, and the examinee's right to file a complaint with the Department of Labor alleging violations of EPPA

Employers must also provide written notice to the examiner identifying the persons to be examined.

Recordkeeping

In the limited instances where EPPA permits the administration of polygraph tests, recordkeeping requirements apply both to employers and polygraph examiners. Employers and polygraph examiners must retain required records for a minimum of three years from the date the polygraph examination is conducted (or from the date the examination is requested if no examination is conducted). Records to be kept include:

- Employers investigating an economic loss or injury must maintain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular employee and proof of service of that statement to the examinee.
- Employers who manufacture, distribute or dispense controlled substances must maintain records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.
- Every employer who requests an employee or prospective employee to submit to a polygraph examination pursuant to the ongoing investigation, drug manufacturer, or security services EPPA exemptions must maintain:
 - A copy of the written statement that sets forth the time and place of the examination and the examinee's right to consult with counsel
 - A copy of the written notice provided by the employer to the examiner identifying the persons to be examined
 - Copies of all opinions, reports or other records furnished to the employer by the examiner relating to such examinations
- All polygraph examiners must maintain all opinions, reports, charts, written questions, lists and other records relating to polygraph tests of such persons, as well as records of the number of examinations conducted during each day, and the duration of each test period.

All exempt private sector employers and polygraph examiners retained to administer examinations to persons identified by employers must keep the required records safe and accessible at the place or places of employment or business or at one or more established central recordkeeping offices where employment or examination records are customarily maintained. If the records are maintained at a central recordkeeping office, other than in the place or places of employment or business, such records must be made available within 72 hours following notice from the Secretary of Labor or an authorized representative such as from the Wage and Hour Division.

Reporting

There are no reporting requirements under EPPA.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Employee Polygraph Protection Act. Compliance assistance related to the Act — including [Employment Law Guide - Lie Detector Tests](#), [Employee Polygraph Protection Act \(EPPA\) Fact Sheet](#), and regulatory and interpretive materials — is available on

the [Compliance Assistance "By Law" Web page](#).

Relation to State, Local, and Other Federal Laws

The law does not preempt any provision of any state or local law or any collective bargaining agreement that is more restrictive with respect to lie detector tests.

Penalties/Sanctions

The Secretary of Labor can bring court action to restrain violators and assess civil money penalties up to \$10,000 per violation. An employer who violates the law may be liable to the employee or prospective employee for legal and equitable relief, including employment, reinstatement, promotion, and payment of lost wages and benefits.

Any person against whom a civil money penalty is assessed may, within 30 days of the notice of assessment, request a hearing before an Administrative Law Judge. If dissatisfied with the Administrative Law Judge's decision, such person may request a review of the decision by the Secretary of Labor. Final determinations on violations are enforceable through the courts.

DOL Contacts

Employment Standards Administration (ESA), [Wage and Hour Division](#)
[Contact WHD](#)

Tel: 1-866-4USWAGE (1-866-487-9243); TTY: 1-877-889-5627

Employee Retirement Income Security Act (ERISA) (29 USC §1001 et seq., 29 CFR Part 2509 et seq.)

Who is Covered

The provisions of Title I of Employee Retirement Income Security Act (ERISA) cover most private sector employee benefit plans. Such plans are voluntarily established and maintained by an employer, an employee organization, or jointly by one or more such employers and an employee organization.

Pension plans — a type of employee benefit plan — are established and maintained to provide retirement income or to defer income until termination of covered employment or beyond. Other employee benefit plans, called welfare plans, are established and maintained to provide health benefits, disability benefits, death benefits, prepaid legal services, vacation benefits, day care centers, scholarship funds, apprenticeship and training benefits, or other similar benefits.

In general, ERISA does not cover plans established or maintained by government entities or churches for their employees, or plans which are maintained solely to comply with workers' compensation, unemployment, or disability laws. ERISA also does not cover plans maintained outside the United States primarily for the benefit of nonresident aliens or unfunded excess benefit plans.

Basic Provisions/Requirements

ERISA sets uniform minimum standards to ensure that employee benefit plans are established and maintained in a fair and financially sound manner. In addition, employers have an obligation to provide promised benefits and satisfy ERISA's requirements for managing and administering private pension and welfare plans.

The Department of Labor's Employee Benefits Security Administration (EBSA), together with the Internal Revenue Service (IRS), has the statutory and regulatory authority to ensure that workers receive the promised benefits. The Department has principal jurisdiction over Title I of ERISA, which requires persons and entities that manage and control plan funds to:

- Manage plans for the exclusive benefit of participants and beneficiaries
- Carry out their duties in a prudent manner and refrain from conflict-of-interest transactions expressly prohibited by law
- Comply with limitations on certain plans' investments in employer securities and properties
- Fund benefits in accordance with the law and plan rules
- Report and disclose information on the operations and financial condition of plans to the government and participants
- Provide documents required in the conduct of investigations to ensure compliance with the law

The Department also has jurisdiction over the prohibited transaction provisions of Title II of ERISA. However, the IRS generally administers the rest of Title II of ERISA, as well as the standards of Title I of ERISA that address vesting, participation, nondiscrimination, and funding.

Any individual or organization affected by ERISA may request an advisory opinion or information letter about the interpretation or application of the statutory provisions (or the implementing regulations, interpretive bulletins, or exemptions) within the Department's jurisdiction. *ERISA Procedure 76-1*, 41 *Federal Register* 36281 (August 27, 1976) sets forth the procedures governing the advisory opinion process.

Fiduciary Standards. Part 4 of Title I sets forth standards and rules for the conduct of plan fiduciaries. In general, persons who exercise discretionary authority or control over management of a plan or disposition of its assets are "fiduciaries" for purposes of Title I of ERISA. Fiduciaries are required, among other things, to discharge their duties solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. In discharging their duties, fiduciaries must act prudently and in accordance with documents governing the plan, to the extent such documents are consistent with ERISA.

ERISA prohibits certain transactions between an employee benefit plan and "parties in interest," which include the employer and others who may be in a position to exercise improper influence over the plan, and such transactions may trigger civil monetary penalties under Title I of ERISA. The Internal Revenue Code ("Code") also prohibits most of these transactions, and it imposes an excise tax on "disqualified persons" (whose definition generally parallels that of parties in interest) who participate in such transactions.

Exemptions. Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules and give the Departments of Labor and Treasury, respectively, authority to grant administrative exemptions and establish exemption procedures. Reorganization Plan No. 4 of 1978 transferred the Treasury Department's authority over prohibited transaction exemptions to the Labor Department, with certain exceptions.

The statutory exemptions generally include loans to participants, the provision of services needed to operate a plan for reasonable compensation, loans to employee stock ownership plans, and investment with certain financial institutions regulated by other state or federal agencies. (See ERISA Section 408 for the conditions of the exemptions.) The Department of Labor may grant administrative exemptions on a class or individual basis for a wide variety of proposed transactions with a plan. Applications for individual exemptions must include, among other information:

- A detailed description of the exemption transaction and the parties for whom an exemption is requested
- The reasons a plan would have for entering into the transaction
- The percentage of assets involved in the exemption transaction
- The names of persons with investment discretion
- The extent of plan assets already invested in loans to, property leased by, and securities issued by parties in interest involved in the transaction
- Copies of all contracts, agreements, instruments, and relevant portions of plan documents and trust agreements bearing on the exemption transaction
- Information about plan participation in pooled funds when the exemption transaction involves such funds
- A declaration by the applicant, under penalty of perjury, attesting to the truth of representations made in such exemption submissions
- Statement of consent by third-party experts acknowledging that their statement is being submitted to the Department as part of an exemption application

The Department's exemption procedures are set forth at 29 CFR 2570.30 through 2570.51.

Continuation of Health Coverage. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) included provisions for continuing health care coverage. These provisions, which are codified in Part 6 of Title I of ERISA, apply to group health plans of employers with 20 or more employees on a typical working day in the previous calendar year.

COBRA gives "qualified beneficiaries" (a covered employee's spouse and dependent children) the right to maintain, at their own expense, coverage under their health plan that would be lost due to a "qualifying event," such as termination of employment, at a cost comparable to what it would be if they were still members of the employer's group.

Plans must give covered individuals an initial general notice informing them of their rights under COBRA and describing the law. The law also obliges plan administrators, employers, and qualified beneficiaries to provide notice of certain "qualifying events." In most instances of employee death, termination, reduced hours of employment, entitlement to Medicare, or bankruptcy, the employer must provide a specific notice to the plan administrator. The plan administrator must then advise the qualified beneficiaries of the opportunity to elect continuation coverage.

The Department's regulatory and interpretive jurisdiction over the COBRA provisions is limited to the COBRA notification and disclosure provisions.

Jurisdiction of the Internal Revenue Service. The IRS has regulatory and interpretive responsibility for all provisions of COBRA not under the Department's jurisdiction. In addition, the IRS generally administers and interprets the ERISA provisions relating to participation, vesting, funding, and benefit accrual, contained in parts 2 and 3 of Title I.

Health Insurance Portability and Accountability Act of 1996. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, was enacted on August 21, 1996. HIPAA amended ERISA to provide for improved portability and continuity of health insurance coverage connected with employment, among other things.

The HIPAA portability provisions relating to group health plans and health insurance coverage offered in connection with group health plans are set forth under a new Part 7 of Subtitle B of Title I of ERISA. These provisions include rules relating to exclusions of preexisting conditions, special enrollment rights, and prohibition of discrimination against individuals based on health status-related factors.

The Newborns' and Mothers' Health Protection Act of 1996, signed into law on September 26, 1996, requires plans that offer maternity coverage to pay for at least a 48 hour hospital stay following childbirth (a 96 hour stay when a cesarean section is performed).

The Women's Health and Cancer Rights Act, signed into law on October 21, 1998, contains protection for patients who elect breast reconstruction in connection with a mastectomy. For plan participants and beneficiaries receiving benefits in connection with a mastectomy, plans offering coverage for a mastectomy must also cover reconstructive surgery and other benefits related to a mastectomy.

Notices/Posters

Poster. There are no federal health plan or retirement plan poster requirements.

Notices. ERISA contains several notice requirements for **health plans** including, but not limited to, a Summary Plan Description (SPD), special enrollment notice, and certificates of creditable coverage. Other notices required by COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985), the Health Insurance Portability and Accountability Act (HIPAA), the Women's Health and Cancer Rights Act (WHCRA), and the Newborns' and Mothers' Health Protection Act (Newborns' Act) may be required depending on the number of employees and the benefits offered by the plan. The [Reporting and Disclosure Guide for Employee Benefit Plans](#) has been prepared by EBSA and can be used as a quick reference tool for certain basic disclosure requirements under ERISA.

EBSA has also created several sample and model notices:

- Notices required under HIPAA, WHCRA, and the Newborn's Act
- COBRA general notice
- COBRA election notice

ERISA contains several notice requirements for **retirement or pension plans**, such as the SPD, individual benefit statements, and the summary annual report. The [Reporting and Disclosure Guide for Employee Benefit Plans](#) has been prepared by EBSA with assistance from the Pension Benefit Guaranty Corporation (PBGC). It is intended to be used as a quick reference tool for certain basic disclosure requirements under ERISA.

Not all ERISA disclosure requirements are reflected in this guide. For example, the guide, as a general matter, does not focus on disclosures required by the Internal Revenue Code or the provisions of ERISA for which the Treasury Department and Internal Revenue Service have regulatory and interpretive authority. This publication also reflects the law prior to the enactment of the Pension Protection Act of 2006. Further information on the [Pension Protection Act](#) is available on the EBSA Web site.

Recordkeeping

ERISA contains recordkeeping requirements. For information, visit the [EBSA Compliance Assistance page](#).

Reporting

EBSA, in conjunction with the [Internal Revenue Service \(IRS\)](#) and the [Pension Benefit Guaranty Corporation](#) publishes the [Form 5500 Annual Return/Report](#). The Form 5500 Annual Return/Report is used by plan administrators to satisfy annual reporting obligations under ERISA and the Internal Revenue Code. The Form 5500 is filed and processed under the [ERISA Filing Acceptance System \(EFAST\)](#). The [instructions](#) to the Form 5500 provide helpful information regarding the filing requirements. In addition, the [Reporting and Disclosure Guide for Employee Benefit Plans](#) can be used as a quick reference tool for certain basic reporting requirements under ERISA.

Each year, **pension plans** are required to file the Form 5500 Annual Return/Report regarding their financial condition, investments, and operations. However, many **health and welfare benefit plans** that meet certain conditions do not have to file the Form 5500 Annual Return/Report. However, for those that do, EBSA publishes the forms used by plan administrators to satisfy various annual reporting obligations under ERISA and the Internal Revenue Code.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Employee Retirement Income Security Act. Compliance assistance related to the Act, includes:

- [Employment Law Guide Chapter: Employee Benefit Plans](#)
- [An Employer's Guide to Group Health Continuation Coverage Under COBRA \(PDF\) \(The Consolidated Omnibus Reconciliation Act of 1986\)](#)
- [Compliance Assistance Guide - Health Benefits Coverage Under Federal Law \(PDF\)](#) - Includes general descriptions of the four health care laws and FAQs.
- [Health Benefits Advisor](#) - The Advisor helps workers and their families better understand employer and employee organization provided group health benefits and the laws that govern them, especially when they experience changes in their life and work situations.
- [ERISA Fiduciary Advisor](#) - The Advisor provides information and answers to a variety of questions about who is a fiduciary and their responsibilities under ERISA.
- [Employee Benefits Security Administration \(EBSA\) Compliance Assistance Portal](#)
- [Frequently Asked Questions](#)
- [Small Business Retirement Savings Advisor](#) – The Advisor provides answers to a variety of questions about retirement savings options for small business employers and determines which program is most appropriate for a business.
- [ERISA Fiduciary Advisor](#) – The Advisor provides information and answers to a variety of questions about who is a fiduciary and their responsibilities under ERISA.

Additional compliance assistance, including explanatory brochures, fact sheets, and regulatory and interpretive materials, is available on the [Compliance Assistance "By Law" Web page](#).

Relation to State, Local, and Other Federal Laws

Part 5 of Title I states that the provisions of ERISA Titles I and IV supersede state and local laws which "relate to" an employee benefit plan. ERISA, however, does not preempt certain state and local laws, including state insurance regulation of multiple employer welfare arrangements (MEWAs). MEWAs generally constitute employee welfare benefit plans or other arrangements providing welfare benefits to employees of more than one employer, not pursuant to a collective bargaining agreement.

In addition, ERISA's general prohibitions against assignment or alienation of pension benefits do not apply to qualified domestic relations orders. Plan administrators must comply with the terms of qualifying orders made pursuant to state domestic relations law that award all or part of a participant's benefit in the form of child support, alimony, or marital property rights to an alternative payee (spouse, former spouse, child, or other dependent). Finally, group health plans covered by ERISA must provide benefits in accordance with the requirements of qualified medical child support orders issued under state domestic relations laws.

Penalties/Sanctions

ERISA confers substantial law enforcement responsibilities on the Department. Part 5 of Title I of ERISA gives the Department authority to bring a civil action to correct violations of the law, provides investigative authority to determine whether any person has violated Title I, and imposes criminal penalties on any person who willfully violates any provision of Part 1 of Title I.

EBSA has authority under ERISA Section 502(c)(2) to assess civil penalties for reporting violations. A penalty of up to \$1,000 per day may be assessed against plan administrators who fail or refuse to comply with annual reporting requirements. Section 502(i) gives the agency authority to assess civil penalties against parties in interest who engage in prohibited transactions with welfare and nonqualified pension plans. The penalty can range from five percent to 100 percent of the amount involved in a transaction.

A parallel provision of the Code directly imposes an excise tax against disqualified persons, including employee benefit plan sponsors and service providers, who engage in prohibited transactions with tax-qualified pension and profit sharing plans.

Finally, Section 502(l) requires the Department to assess mandatory civil penalties equal to 20 percent of any amount recovered with respect to fiduciary breaches resulting from either a settlement agreement with the Department or a court order as the result of a lawsuit by the Department.

DOL Contacts

[Employee Benefits Security Administration \(EBSA\)](#)

[Contact EBSA](#)

Tel: 1-866-444-EBSA (3272); TTY: 1-877-889-5627

Fair Labor Standards Act of 1938 (FLSA), as amended
(29 USC §201 et seq.; 29 CFR Parts 510 to 794)

Who is Covered

The Fair Labor Standards Act (FLSA) establishes standards for minimum wages, overtime pay, recordkeeping, and child labor. These standards affect more than 100 million workers, both full-time and part-time, in the private and public sectors.

The Act applies to enterprises with employees who engage in interstate commerce, produce goods for interstate commerce, or handle, sell, or work on goods or materials that have been moved in or produced for interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business applies (i.e., the Act does not cover enterprises with less than this amount of business).

However, the Act does cover the following regardless of their dollar volume of business: hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally, or physically disabled or gifted; preschools, elementary, and secondary schools and institutions of higher education; and federal, state, and local government agencies.

Employees of firms that do not meet the \$500,000 annual dollar volume test may be covered in any workweek when they are individually engaged in interstate commerce, the production of goods for interstate commerce, or an activity that is closely related and directly essential to the production of such goods.

The Act covers domestic service workers, such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters, if they receive at least \$1,300 (2001) in cash wages from one employer in a calendar year, or if they work a total of more than eight hours a week for one or more employers.

An enterprise that was covered by the Act on March 31, 1990, and that ceased to be covered because of the increase in the annual dollar volume test to \$500,000, as required under the 1989 amendments to the Act, continues to be subject to the overtime pay, child labor, and recordkeeping requirements of the Act.

The Act exempts some employees from its overtime pay and minimum wage provisions, and it also exempts certain employees from the overtime pay provisions alone. Because the exemptions are narrowly defined, employers should check the exact terms and conditions for each by contacting their local [Wage and Hour Division office](#) within the Department of Labor's Employment Standards Administration (ESA).

The following are examples of employees exempt from both the minimum wage and overtime pay requirements:

- Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and certain skilled computer professionals (as defined in the Department of Labor's regulations)¹
- Employees of certain seasonal amusement or recreational establishments
- Employees of certain small newspapers and switchboard operators of small telephone companies
- Seamen employed on foreign vessels
- Employees engaged in fishing operations
- Employees engaged in newspaper delivery
- Farm workers employed on small farms (i.e., those that used less than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year)
- Casual babysitters and persons employed as companions to the elderly or infirm

The following are examples of employees exempt from the overtime pay requirements only:

- Certain commissioned employees of retail or service establishments
- Auto, truck, trailer, farm implement, boat, or aircraft salespersons employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers
- Auto, truck, or farm implement parts-clerks and mechanics employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers
- Railroad and air carrier employees, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans
- Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations
- Domestic service workers who reside in their employers' residences
- Employees of motion picture theaters
- Farmworkers

Certain employees may be partially exempt from the overtime pay requirements. These include:

- Employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors
- Employees of hospitals and residential care establishments that have agreements with the employees that they will work 14-day periods in lieu of 7-day workweeks (if the employees are paid overtime premium pay within the requirements of the Act for all hours worked over eight in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours)
- Employees who lack a high school diploma, or who have not completed the eighth grade, who spend part of their workweeks in remedial reading or training in other basic skills that are not job-specific. Employers may require such employees to engage in these activities up to 10 hours in a workweek. Employers must pay normal wages for the hours spent in such training but need not pay overtime premium pay for training hours.

Basic Provisions/Requirements

The Employment Standards Administration's [Wage and Hour Division](#) administers and enforces FLSA with respect to private employment, state and local government employment, and federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and Tennessee Valley Authority.

The Act requires employers of covered employees who are not otherwise exempt to pay these employees a minimum wage of not less than \$5.85 per hour effective July 24, 2007; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009. Youths under 20 years of age may be paid a minimum wage of not less than \$4.25 an hour during the first 90 consecutive calendar days of employment with an employer. Employers may not displace any employee to hire someone at the youth minimum wage.

Employers may pay employees on a piece-rate basis, as long as they receive at least the equivalent of the required minimum hourly wage rate. Employers of tipped employees (i.e., those who customarily and regularly receive more than \$30 a month in tips) may consider such tips as part of their wages, but employers must pay a direct wage of at least \$2.13 per hour if they claim a tip credit. They must also meet certain other conditions.

The Act also permits the employment of certain individuals at wage rates below the statutory minimum wage under certificates issued by the Department of Labor:

- Student learners (vocational education students)
- Full-time students in retail or service establishments, agriculture, or institutions of higher education
- Individuals whose earning or productive capacities for the work to be performed are impaired by physical or mental disabilities, including those related to age or injury

The Act does not limit either the number of hours in a day or the number of days in a week that an employer may require an employee to work, as long as the employee is at least 16 years old. Similarly, the Act does not limit the number of hours of overtime that may be scheduled. However, the Act requires employers to pay covered employees not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek, unless the employees are otherwise exempt.

Employers must keep records on wages, hours, and other information as set forth in the Department of Labor's regulations. Most of this data is the type that employers generally maintain in ordinary business practice.

The Act prohibits performance of certain types of work in an employee's home unless the employer has obtained prior certification from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health hazards are not involved). Employers wishing to employ homeworkers in these industries are required to provide written assurances to the Department of Labor that they will comply with the Act's wage and other requirements, among other things.

The Act generally prohibits manufacture of women's apparel (and jewelry under hazardous conditions) in the home except under special certificates that may be issued when the employee cannot adjust to factory work because of age or disability (physical or mental), or must care for a disabled individual in the home.

Special provisions apply to state and local government employment.

It is a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act. The Act also prohibits the shipment of goods in interstate commerce that were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

Notices/Posters

Every employer of employees subject to the FLSA's minimum wage provisions must post, and keep posted, a [notice](#) explaining the Act in a conspicuous place in all of their establishments. Although there is no size requirement for the poster, employees must be able to readily read it. The FLSA poster is also available in [Spanish](#), [Russian](#) and in [Chinese](#). There is no requirement to post the poster in languages other than English.

Covered employers are required to post the general Fair Labor Standard's Act poster; however, certain industries have posters designed specifically for them. [Agricultural Employees \(PDF\)](#) and [State & Local Government Employees \(PDF\)](#) can either post the general [Fair Labor Standards Act](#) poster or their specific industry poster. There are also posters for [American Samoa \(PDF\)](#) and [Northern Mariana Islands \(PDF\)](#). Every employer who employs workers with disabilities under special minimum wage certificates is also required to post the [Employee Rights for Workers with Disabilities/Special Minimum Wage Poster](#).

Recordkeeping

Every employer covered by the Fair Labor Standards Act (FLSA) must keep certain records for each covered, [nonexempt](#) worker.

There is no required form for the records. However, the records must include accurate information about the employee and data about the hours worked and the wages earned. The following is a listing of the basic payroll records that an employer must maintain:

- Employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records
- Address, including zip code
- Birth date, if younger than 19
- Sex and occupation

- Time and day of week when employee's workweek begins.
- Hours worked each day and total hours worked each workweek
- Basis on which employee's wages are paid (e.g., "\$9 per hour", "\$440 a week", "piecework")
- Regular hourly pay rate
- Total daily or weekly straight-time earnings
- Total overtime earnings for the workweek
- All additions to or deductions from the employee's wages
- Total wages paid each pay period
- Date of payment and the pay period covered by the payment

For a full listing of the basic records that an employer must maintain, see the [Wage and Hour Division Fact Sheet #21: Recordkeeping Requirements under the FLSA](#). Employers are required to preserve for at least three years payroll records, collective bargaining agreements, and sales and purchase records. Records on which wage computations are based should be retained for two years. These include time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages.

Reporting

The FLSA does not contain any specific reporting requirements, however, the above referenced records must be open for inspection by the Wage and Hour Division's representatives, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the FLSA. Among the many resources available to help you comply with the Act are:

- [The Handy Reference Guide to the FLSA](#)
- [Fair Labor Standards Act \(FLSA\) Coverage and Employment Status Advisor](#) — Helps employers and employees understand and determine coverage of employees under the FLSA.
- [Fair Labor Standards Act \(FLSA\) Hours Worked Advisor](#) — Helps employers and employees determine which work-related activities are considered "hours worked" and thus hours for which employees must be paid.
- [Fair Labor Standards Act \(FLSA\) Overtime Security Advisor](#) — Helps employees and employers determine whether a particular employee is exempt from the FLSA's minimum wage and overtime pay requirements.
- [Fair Labor Standards Act \(FLSA\) Overtime Calculator Advisor](#) - Helps employers and employees compute the amount of overtime pay due in a sample pay period based on information from the user.
- [Fair Labor Standards Act \(FLSA\) Section 14\(c\) Advisor](#) — Helps employers, employees and their family members understand FLSA Section 14(c), which authorizes employers, after receiving a certificate from DOL, to pay less than the federal minimum wage to workers who have disabilities for the work being performed.
- [Fair Labor Standards Act \(FLSA\) Child Labor Rules Advisor](#) — Helps young workers and their employers, parents, and educators understand the FLSA's child labor provisions, which dictate the hours youth can work and the jobs they may and may not perform.
- [FLSA Recordkeeping Fact Sheet](#)
- [Comprehensive FLSA Presentation \(Microsoft® PowerPoint®\)](#)

Additional compliance assistance, including explanatory brochures, fact sheets, and regulatory and interpretive materials, is available on the [Compliance Assistance "By Law" Web page](#) and the [Wage and](#)

[Hour Division Home Page.](#)

Relation to State, Local, and Other Federal Laws

State laws also apply to employment subject to this Act. When both this Act and a state law apply, the law setting the higher standards must be observed.

Penalties/Sanctions

The Department of Labor uses a variety of remedies to enforce compliance with the Act's requirements. When Wage and Hour Division investigators encounter violations, they recommend changes in employment practices to bring the employer into compliance, and they request the payment of any back wages due to employees.

Willful violators may be prosecuted criminally and fined up to \$10,000. A second conviction may result in imprisonment. Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to civil money penalties of up to \$1,000 per violation.

When the Department of Labor assesses a civil money penalty, the employer has the right to file an exception to the determination within 15 days of receipt of the notice. If an exception is filed, it is referred to an Administrative Law Judge for a hearing and determination as to whether the penalty is appropriate. If an exception is not filed, the penalty becomes final.

The Department of Labor may also bring suit for back pay and an equal amount in liquidated damages, and it may obtain injunctions to restrain persons from violating the Act.

DOL Contacts

Employment Standards Administration (ESA), [Wage and Hour Division](#)
[Contact WHD](#)

Tel: 1-866-4USWAGE (1-866-487-9243); TTY: 1-877-889-5627

Fair Labor Standards Act of 1938 (FLSA), as amended
(29 USC §201 et seq.; 29 CFR Parts 570 to 580)
Child Labor (Nonagricultural Work)

Who is Covered

Please see the [Fair Labor Standards Act \(FLSA\) section](#) above for an explanation of coverage under the Act.

The child labor provisions of the Fair Labor Standards Act are designed to protect the educational opportunities of youths and to prohibit their employment in jobs and under conditions detrimental to their health and well-being.

While 16 is the minimum age for most nonfarm work, youths aged 14 and 15 may work outside of school hours in certain occupations under certain conditions. They may, at any age: deliver newspapers; perform in radio, television, movies, or theatrical productions; work for their parents in their solely owned nonfarm businesses (except in mining, manufacturing, or in any other occupation declared hazardous by the Secretary); or gather evergreens and make evergreen wreaths.

Basic Provisions/Requirements

The Employment Standards Administration's [Wage and Hour Division](#) administers and enforces FLSA with respect to private employment, state and local government employment, and federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and Tennessee Valley Authority.

Please see the [FLSA section](#) above for an explanation of all minimum wage and overtime requirements of the Act.

The child labor provisions include restrictions on hours of work and occupations for youths under age 16. These provisions also set forth 17 hazardous occupations orders for jobs that the Secretary has declared too dangerous for those under age 18 to perform.

The Act prohibits the interstate shipment of goods produced in violation of the child labor provisions. It is also a violation of the Act to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the Act.

The permissible jobs and hours of work, by age, in nonfarm work are as follows:

- Youths age 18 or older are not subject to restrictions on jobs or hours
- Youths age 16 and 17 may perform any job not declared hazardous by the Secretary, and are not subject to restrictions on hours
- Youths age 14 and 15 may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than three hours on a school day, 18 hours in a school week, eight hours on a non-school day, or 40 hours in a non-school week. In addition, they may not begin work before 7 a.m. or work after 7 p.m., except from June 1 through Labor Day, when evening hours are extended until 9 p.m. Those enrolled in an approved Work Experience and Career Exploration Program (WECEP) may work up to 23 hours in school weeks and three hours on school days (including during school hours).

Detailed information on the occupations determined to be hazardous by the Secretary is available from the local [Wage and Hour Division offices](#) of the Department of Labor's Employment Standards Administration.

Notices/Posters

Please see the [FLSA section](#) above for an explanation of the FLSA poster requirements.

Recordkeeping

Every employer covered by the Fair Labor Standards Act (FLSA) must keep certain records for each covered, nonexempt worker. There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and the wages earned. The following is a listing of the basic records that an employer must maintain:

- Employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records
- Address, including zip code
- Birth date, if younger than 19
- Sex and occupation
- Time and day of week when employee's workweek begins.
- Hours worked each day and total hours worked each workweek
- Basis on which employee's wages are paid
- Regular hourly pay rate
- Total daily or weekly straight-time earnings
- Total overtime earnings for the workweek
- All additions to or deductions from the employee's wages
- Total wages paid each pay period
- Date of payment and the pay period covered by the payment

For a listing of the basic records that an employer must maintain, see the [FLSA Recordkeeping Fact Sheet](#). Employers are required to preserve for at least three years payroll records, collective bargaining agreements, and sales and purchase records. Records on which wage computations are based should be retained for two years (i.e., time cards and piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages).

Employers who employ full-time students under the FLSA's subminimum wage provision must also keep the records.

Prior to paying an employee the subminimum wage, as allowed under certain provisions of the FLSA, employers may have to apply for a certificate from the U. S. Department of Labor. See the [form instructions page](#) for additional information.

There are three different kinds of applications that may be used to apply for authority to pay full-time students subminimum wages under section 14(b):

- WH-200 - Designed to be used by Retail or Service Establishments or Agricultural employers to request authority to employ full-time students at subminimum wages for a total number of hours that:
 - (1) equal 10% of the total monthly hours of employment, or
 - (2) are greater than 10% of the total monthly hours of employment.
 Employers must submit a separate application for every establishment that will employ such students.
- WH-201 - Designed to be used by an institution of higher education that wishes to employ its students at special minimum wages. A separate application must be submitted for every campus where such students will be employed at less than the minimum wage.
- WH-202 - Designed to be used by Retail or Service Establishments or Agricultural employers to request authority to employ 6 OR FEWER full-time students at subminimum wages. Employers need to submit only one application to cover all establishments, but may not employ more than 6 full-time students at subminimum wages on any one work day throughout the entire enterprise.

Completed applications should be forwarded to:

U. S. Department of Labor
 Employment Standards Administration
 Wage and Hour Division
 National Certification Team
 230 South Dearborn, Room 514

Chicago, Illinois 60604-1757

Phone: 1-312 596-7195

Reporting

The records referenced above must be open for inspection by the Wage and Hour Division's representatives, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Fair Labor Standards Act. Among the many resources available to help you comply with the Act are:

- The Handy Reference Guide to the FLSA
- Fair Labor Standards Act (FLSA) Child Labor Rules Advisor — Helps young workers and their employers, parents, and educators understand the FLSA's child labor provisions, which dictate the hours youth can work and the jobs they may and may not perform.
- YouthRules! — Educates teens, parents, educators, and employers about the hours youth can work, the jobs they can do, and how to prevent workplace injuries.
- Employer's Pocket Guide on Youth Employment (PDF)
- FLSA Recordkeeping Fact Sheet

Additional compliance assistance, including explanatory brochures, fact sheets, and regulatory and interpretive materials, is available on the [Compliance Assistance "By Law"](#) Web page.

Relation to State, Local, and Other Federal Laws

Many states have child labor laws. When both this Act and a state law apply, the law setting the higher standards must be observed.

Penalties/Sanctions

Employers are subject to a civil money penalty of up to \$11,000 (\$10,000 for violations occurring prior to January 7, 2002) per worker for each violation of the child labor provisions. When a civil money penalty is assessed, employers have the right to file an exception to the determination within 15 days of receipt of the notice of such penalty. When an exception is filed, it is referred to an Administrative Law Judge for a hearing and determination as to whether the penalty is appropriate. Either party may appeal the decision of the Administrative Law Judge to the Secretary of Labor. If an exception is not timely filed, the penalty becomes final.

The Act also provides for a criminal fine of up to \$10,000 upon conviction for a willful violation. For a second conviction for a willful violation, the Act provides for a fine of not more than \$10,000 and imprisonment for up to six months, or both. The Secretary may also bring suit to obtain injunctions to restrain persons from violating the Act.

DOL Contacts

Employment Standards Administration (ESA), [Wage and Hour Division](#)
[Contact WHD](#)

Tel: 1-866-4USWAGE (1-866-487-9243); TTY: 1-877-889-5627

Immigration and Nationality Act
Permanent Employment (Permanent Alien Employment Certification)
Sections 203 and 212(a)(5)(A) of the Immigration and Nationality Act
(8 USC §1101 et seq; 20 CFR Part 656 (PDF))

Who is Covered

Section 212(a)(5)(A) of the Immigration and Nationality Act (INA) applies to employers seeking to hire foreign workers immigrating to the United States for the purpose of permanent employment.

Basic Provisions/Requirements

A permanent labor certification issued by the Department of Labor (DOL) is most often the first step in allowing an employer to hire a foreign worker to work as an immigrant in the United States. In most instances, before the U.S. employer can submit a petition to the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) to employ a foreign worker as an immigrant, the employer must obtain an approved labor certification from the DOL's Office of Foreign Labor Certification (OFLC) in the Employment and Training Administration (ETA). The DOL must certify to the USCIS that there are no U.S. workers able, willing, qualified, and available to accept the job at the prevailing wage for that occupation in the area of intended employment and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

An employer must file with ETA an Application for Permanent Employment Certification ([ETA Form 9089](#)). The employer has the option of filing an application electronically ([using web-based forms and instructions](#)) or by mail. The application describes in detail the job duties, educational requirements, training, experience, and other special capabilities the employee must possess to do the work, and a statement of the prospective immigrant's qualifications.

Prior to filing ETA Form 9089 with ETA, the employer must request a prevailing wage determination from the [State Workforce Agency \(SWA\)](#) having jurisdiction over the proposed area of intended employment. In addition, the employer (except for those applications involving college or university teachers selected pursuant to a competitive recruitment and selection process, [Schedule A occupations](#), and shepherders) **must** attest, in addition to a number of other conditions of employment, to having conducted certain recruitment activities to find U.S. workers prior to filing the application.

The employer must recruit under the standards for professional occupations set forth in 20 CFR 656.17 (e)(1) if the occupation involved is on the list of occupations, published in Appendix A to the preamble of the [final regulation](#), for which a bachelor's or higher degree is a customary requirement. For all other occupations not normally requiring a bachelor's or higher degree, employers can recruit under the requirements for nonprofessional occupations at 20 CFR 656.17(e)(2).

Notices/Posters

There is no poster requirement. However, employers must provide notice of the filing of the application and be able to document that notice was provided, if requested. Notice must be provided between 30 and 180 days before an application is filed.

Notice must be given to:

- The bargaining representative, if any, of the employer's employees in the occupational classification for which the certification is being sought in the employer's location of intended employment
- Employees at the facility or location of employment, if there is no bargaining representative
- Household employees, only if one or more U.S. worker is employed

The notice must be posted for 10 consecutive business days and must be visible and in a conspicuous place. Employers must also publish the notice in any and all in-house media, electronic and printed, in accordance with the normal procedures used for recruitment for similar positions in the organization.

The notice must include the statement that an application has been filed under the program; address of the appropriate DOL officer; and information in the job advertisements including wage rate and job

description.

Recordkeeping

Labor Certification Process. DOL processes applications for Alien Employment Certification (ETA Form 9089). The date the labor certification application is filed is known as the filing date and is used by USCIS and the U.S. Department of State as the priority date. After the labor certification application is approved by DOL, it should be submitted to the USCIS service center with an I-140, Immigrant Petition for Alien Worker. You may access the [State Department Visa Bulletin](#) to learn which priority dates are currently being processed.

Records. The employer is required to retain documentation supporting the application for five years from the date of filing the Application for Permanent Employment Certification. This documentation varies depending on the type of application filed (for a professional, a non-professional position, or for a college or university professor engaged from a competitive recruitment process) but generally includes recruitment documentation, including information regarding the number of potential U.S. applicants and the reasons for rejection of these workers. The SWA prevailing wage determination documentation is not submitted with the application, but it must be retained for five years from the date the employer files the application.

Reporting

There are no reporting requirements.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Immigration and Nationality Act. Among the many resources available to help you comply with the Act are:

- [Employment Law Guide: Permanent Employment of Workers Based on Immigration](#) - Describes the requirements on the part of employers seeking to hire foreign workers immigrating to the U.S. for the purpose of employment, including the application process for employers to obtain a permanent alien employment certification.
- [Permanent Labor Certification Web Page](#)

Additional compliance assistance including explanatory brochures, fact sheets, and regulatory and interpretive materials is available on the [Compliance Assistance "By Law"](#) Web page.

Relation to State, Local, and Other Federal Laws

Various other laws, such as workers' compensation, tax (unemployment insurance, local, state, and federal), the Fair Labor Standards Act, and the Family Medical and Leave Act, may apply to the employment of workers with a permanent labor certification.

Penalties/Sanctions

If possible fraud or willful misrepresentation involving a labor certification is discovered before a final labor certification determination, ETA will refer the matter to the Department of Homeland Security (DHS) for investigation. In addition, ETA can take steps to revoke an approved labor certification if ETA finds the certification was not justified, including if fraud or willful misrepresentation is discovered. Additionally, DHS or the Department of State may invalidate a labor certification if the agency determines there has been fraud or willful misrepresentation involving the labor certification.

DOL Contacts

Employment and Training Administration, [Office of Foreign Labor Certification](#)

E-mail: ETApagemaster@dol.gov

Tel: 1-877-US2-JOBS (1-877-872-5627) or 202-693-3010; TTY: 1-877-889-5627

Immigration and Nationality Act
Temporary Nonagricultural Workers (H-2B)
Sections 101(a)(15)(H)(ii)(b) and 214(c)(1),(c)(14), and (g)(1) and (g)(9) of
the Immigration and Nationality Act of 1952, as amended and 20 CFR Part 655
Subparts A and 8 CFR Part 214.2(h)(6)

Who is Covered

The Immigration and Nationality Act (INA) allows employers to hire foreign workers to meet a temporary need for nonprofessional, nonagricultural skills.

Basic Provisions/Requirements

The Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration (ETA) administers the labor condition application process of the H-2B program.

The regulations of the U.S. Citizenship and Immigration Services (USCIS), 8 CFR 214.2(h)(6), apply to employers who wish to import temporary nonagricultural workers classified under Section 101(a)(15)(H)(ii)(b) to work in temporary jobs in the United States. Section 214(c)(1) of the Immigration and Nationality Act (INA) requires the Department of Homeland Security (DHS) to consult with appropriate agencies before determining whether any worker can be admitted under Section 101(a)(15)(H)(ii)(b). Section 214(g)(1) of the INA provides that the number of aliens during any fiscal year who can be issued visas or provided nonimmigrant status under Section 101(a)(15)(H)(ii)(b) cannot exceed 66,000.

USCIS regulations require that an employer who files an H-2B petition with the USCIS (except for temporary employment on Guam) must include a certification from the Department of Labor stating that qualified workers are not available in the U.S. and that the foreign worker's employment will not adversely affect wages and working conditions of similarly employed U.S. workers. If the Department of Labor notifies the employer that certification cannot be made, the employer may submit countervailing evidence to USCIS.

To obtain certification, employers must file applications for certification of temporary nonagricultural jobs on Part A of an Application for Alien Employment Certification, Form ETA 750, with the State Workforce Agency (SWA) serving the geographic area where the alien will work. To receive a timely determination, the employer should apply at least 60 but no more than 120 days before the workers are needed.

The employment for which certification is requested must be for less than one year, and the need for the service or labor must be a one-time occurrence, seasonal need, peak load need, or intermittent need. Training and Employment Guidance Letter 21-06, change 1 states the requirements for obtaining temporary nonagricultural labor certifications.

Other detailed information may also be found on the H-2B Certification for Temporary Nonagricultural Work Web page.

After receiving an application, the SWA prepares a job order and places it into the Employment Service System for 10 days. The employer, after filing the application with the SWA, advertises the job opportunity in a newspaper of general circulation for three consecutive days, or in a professional, trade, or ethnic publication, whichever is most appropriate for the occupation and most likely to bring responses from U.S. workers.

The employer must also document that unions and other recruitment sources, appropriate for the occupation and customary to the industry, could not refer qualified U.S. workers. After the employer completes the required recruitment, it must submit a recruitment report that explains the lawful job-related reasons for not hiring each U.S. worker that applied.

The DOL decision regarding H-2B certification request is **advisory** to the USCIS approval process. The certification or notice of denial by DOL is to be used by the employer to support its visa petition filed with USCIS. To obtain the H-2B work visa, the employer uses USCIS Form I-129, Petition for Nonimmigrant Worker (PDF). The Labor Certification Determination and the Form I-129 are then submitted to USCIS.

Notices/Posters

There are no notice requirements.

Recordkeeping

Labor Certification Application Process. Every H-2B application must include the following documentation:

- Two (2) originals of ETA Form 750, Part A, signed and dated by the employer and double-sided. Part B of this form is not required.
- Documentation of any efforts to advertise and recruit U.S. workers prior to filing the application.
- A detailed statement of the temporary need on the employer's letterhead with signature.
- Supporting evidence and documentation that justifies the chosen standard of temporary need (i.e. one-time occurrence, intermittent, seasonal, or peakload need).

If the employer is represented by an attorney, the attorney must file a Notice of Appearance (Form G-28) with the application package.

The employer will prepare a recruitment report summarizing the results of the effort after being directed to recruit by the SWA. The employer must sign the report and include the following information:

- Identification of each recruitment source by name
- The name, address, telephone number, and resume (if provided) of each U.S. worker who applied for the job
- Explanation of the lawful job-related reasons for not hiring each U.S. worker

Documentation from the application process must be retained for the employment period of the foreign worker.

Reporting

There are no reporting requirements.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Immigration and Nationality Act. Among the many resources available to help you comply with the Act are:

- [Employment Law Guide: Temporary Nonagricultural Workers \(H-2B Visas\)](#) - Describes the procedures for obtaining a labor certification and the contractual obligations of employers seeking to hire foreign workers to come to the U.S. to perform temporary nonagricultural work using the H-2B nonimmigrant visa classification.
- [H-2B Certification for Temporary Nonagricultural Work Web page](#)

Additional compliance assistance including explanatory brochures, fact sheets, and regulatory and interpretive materials is available on the [Compliance Assistance "By Law" Web page](#).

Relation to State, Local, and Other Federal Laws

Various other laws, such as workers' compensation, tax (unemployment insurance, local, state, and federal) and the Family and Medical Leave Act, may apply to the employment of these workers.

Penalties/Sanctions

The Save Our Small and Seasonal Businesses Act of 2005 (Act) authorized, effective October 1, 2005, the imposition of such administrative remedies (including civil monetary penalties in an amount not to exceed \$10,000 per violation) as DHS determines to be appropriate if an employer is found to have committed a substantial failure to meet any of the conditions of the petition or a willful misrepresentation of a material fact in such petition. The Act permits DHS to delegate to the Secretary of Labor the authority to impose sanctions. The Act also authorizes DHS to deny petitions filed with

respect to these employers for a period of one to five years.

DOL Contacts

Employment and Training Administration, [Office of Foreign Labor Certification](#)

E-mail: ETApagemaster@dol.gov

Tel: 1-877-US2-JOBS (1-877-872-5627) or 202-693-3010; TTY: 1-877-889-5627

The Occupational Safety and Health Act of 1970 (OSH Act)
(29 USC §651 et seq.; 29 CFR Parts 1900 to 2400)

Who is Covered

In general, the Occupational Safety and Health Act of 1970 (OSH ACT) covers all employers and their employees in the 50 states, the District of Columbia, Puerto Rico, and other U.S. territories. Coverage is provided either directly by the federal Occupational Safety and Health Administration (OSHA) or by an OSHA-approved state job safety and health plan. Employees of the U.S. Postal Service also are covered.

The Act defines an employer as any "person engaged in a business affecting commerce who has employees, but does not include the United States or any state or political subdivision of a State." Therefore, the Act applies to employers and employees in such varied fields as manufacturing, construction, longshoring, agriculture, law and medicine, charity and disaster relief, organized labor, and private education. The Act establishes a separate program for federal government employees and extends coverage to state and local government employees only through the states with OSHA-approved plans.

The Act does not cover:

- Self-employed persons
- Farms which employ only immediate members of the farmer's family
- Working conditions for which other federal agencies, operating under the authority of other federal laws, regulate worker safety. This category includes most working conditions in mining, nuclear energy and nuclear weapons manufacture, and many aspects of the transportation industries
- Employees of state and local governments, unless they are in one of the states operating an OSHA-approved state plan

Basic Provisions/Requirements

Enforcement and administration of the OSH Act in states under federal jurisdiction is handled primarily by [OSHA](#). Safety and health standards related to field sanitation and certain temporary labor camps in the agriculture industry are enforced by the Employment Standards Administration's [Wage and Hour Division](#) (WHD) in states under federal jurisdiction.

The Act assigns OSHA two regulatory functions: setting standards and conducting inspections to ensure that employers are providing safe and healthful workplaces. OSHA standards may require that employers adopt certain practices, means, methods, or processes reasonably necessary and appropriate to protect workers on the job. Employers must become familiar with the standards applicable to their establishments and eliminate hazards.

Compliance with standards may include ensuring that employees have been provided with, have been effectively trained on, and use personal protective equipment when required for safety or health. Employees must comply with all rules and regulations that apply to their own actions and conduct.

Even in areas where OSHA has not set forth a standard addressing a specific hazard, employers are responsible for complying with the OSH Act's "general duty" clause. The general duty clause [Section 5 (a)(1)] states that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

The Act encourages states to develop and operate their own job safety and health programs. OSHA approves and monitors these "state plans," which operate under the authority of state law. There are currently 22 states and jurisdictions operating complete state plans (covering both the private sector and state and local government employees) and four (Connecticut, New Jersey, New York, and the Virgin Islands) that cover state and local government employees only. States with OSHA-approved job safety and health plans must set standards that are at least as effective as the equivalent federal standard. Most, but not all of the state plan states, adopt standards identical to the federal ones.

Federal OSHA Standards. Standards are grouped into four major categories: general industry (29

CFR 1910); construction (29 CFR 1926); maritime (shipyards, marine terminals, longshoring--29 CFR 1915-19); and agriculture (29 CFR 1928). While some standards are specific to just one category, others apply across industries. Among the standards with similar requirements for all sectors of industry are those that address access to medical and exposure records, personal protective equipment, and hazard communication.

Access to Medical and Exposure Records: This regulation provides a right of access to employees, their designated representatives, and OSHA to relevant medical records, including records related to that employee's exposure to toxic substances.

Personal Protective Equipment: This standard, which is defined separately for each segment of industry except agriculture, requires employers to provide employees with personal equipment designed to protect them against certain hazards and to ensure that employees have been effectively trained on the use of the equipment. This equipment can range from protective helmets to prevent head injuries in construction and cargo handling work, to eye protection, hearing protection, hard-toed shoes, special goggles for welders, and gauntlets for iron workers.

Hazard Communication: This standard requires manufacturers and importers of hazardous materials to conduct hazard evaluations of the products they manufacture or import. If a product is found to be hazardous under the terms of the standard, the manufacturer or importer must so indicate on containers of the material, and the first shipment of the material to a new customer must include a material safety data sheet (MSDS). Employers must use these MSDSs to train their employees to recognize and avoid the hazards presented by the materials.

OSHA regulations also cover such items as [recordkeeping](#), [reporting](#), and [posting](#).

Cooperative Programs: OSHA offers a number of opportunities for employers, employees, and organizations to work cooperatively with the Agency. OSHA's major cooperative programs are the Voluntary Protections Program (VPP), the Safety and Health Achievement Recognition Program (SHARP), the Alliance Program, and the OSHA Strategic Partnership Program (OSPP).

Voluntary Protection Programs. The Voluntary Protection Programs (VPP) are an OSHA initiative aimed at extending worker protection beyond the minimum required by OSHA standards. The VPP is designed to:

- Recognize the outstanding achievements of those who have successfully incorporated comprehensive safety and health programs into their total management systems
- Motivate others to achieve excellent safety and health results in the same outstanding way
- Establish a relationship between employers, employees, and OSHA that is based on cooperation rather than coercion

An employer may apply for VPP at the nearest [OSHA regional office](#). OSHA reviews an employer's VPP application and visits the worksite to verify that the safety and health program described is in effect at the site. All participants must send their injury information annually to their OSHA regional offices. Sites participating in the VPP are not scheduled for programmed inspections. However, OSHA handles any employee complaints, serious accidents/catastrophes, or fatalities according to routine procedures.

The VPP is available in states under federal jurisdiction. Some states operating OSHA-approved state plans have similar programs. Additionally, all OSHA-approved state plans that cover private-sector employees in the state operate similar programs. Interested companies in these states should contact the appropriate state agency for more information.

Safety and Health Achievement Recognition Program (SHARP). This program recognizes small employers who operate an exemplary safety and health management system. Employers who are accepted into SHARP are recognized as models for worksite safety and health. Upon receiving SHARP recognition, the worksite will be exempt from programmed inspections during the period that the SHARP certification is valid. To participate in SHARP, an employer must contact its state's Consultation Program and request a free consultation visit that involves a complete hazard identification survey.

Alliance Program. Through the Alliance Program, OSHA works with businesses, trade and professional organizations, unions, educational institutions, and other government agencies. Alliance Program

participants work with OSHA to leverage resources and expertise to help develop compliance assistance tools, training opportunities, and other information to help employers and employees prevent on-the-job injuries, illnesses and fatalities. OSHA's alliances with organizations in industries such as meat, plastics, healthcare, maritime, printing, chemical, construction, paper and telecommunications industries, are working to address safety and health hazards with at-risk audiences, such as youth, immigrant workers, and small business.

Strategic Partnership Program. In this program, OSHA enters into an extended, voluntary, cooperative relationship with employers, associations, unions, and/or councils. Partnerships often cover multiple worksites, and in some instances, affect entire industries. Partner worksites may be very large, but most often they are small businesses averaging 50 or fewer employees. Strategic Partnerships are designed to encourage, assist, and recognize efforts to eliminate serious hazards and achieve a high level of worker safety and health. All Partnerships emphasize sustained efforts and continuing results beyond the typical three-year duration of the agreement.

For further information on OSHA's cooperative programs, visit the [Cooperative Programs section of OSHA's Web site](#).

Notices/Posters

Poster. You have indicated that your establishment is in California, which has its own state OSHA Plan. Each state or territory with a state plan has a poster that employers covered by the plan must display. Please contact the [safety and health office in California](#) to obtain a copy of your state's OSHA poster.

State plans do not cover all employers in the state. Coverage varies by state. For example, the types of employment that may not be covered under a state plan may include parts of the maritime industry and shipbuilding, or contractors operating on military bases or on other Federally-owned land. Employers not covered under the state plan must comply with the Federal OSHA requirements, and each establishment would have to display the OSHA "[Job Safety and Health: It's the Law](#)" poster. The poster is also available in [Spanish](#). The OSHA poster must be displayed in a conspicuous place where employees and applicants for employment can see it. Reproductions or facsimiles of the poster shall be at least 8 1/2 by 14 inches with 10 point type. Posting of the notice in other languages is not required.

If you are unsure about whether you must display the Federal or state poster, contact your [Federal OSHA office](#) in California or your state plan OSHA office.

Notices. Employees, former employees and their representatives have the right to review the OSHA Form 300, Log of Work-related Illnesses and Injuries, in its entirety. Employers are required to post the [Summary of Work-related Injuries and Illnesses \(Form300A\)](#) in a visible location so that employees are aware of the injuries and illnesses that occur in their workplace.

Employers are required to post the Summary Form (300A) by February 1 of the year following the year covered by the form and keep it posted until April 30th of that year.

Recordkeeping

Remember [OSHA approved state plan states](#) must adopt occupational injury and illness recording requirements that are substantially identical to the Federal OSHA requirements. Since each state plan's requirements may differ slightly, the Federal OSHA requirements are described below.

Records for employers with 10 or fewer employees. Employers with ten 10 or fewer employees at all times during the last calendar year do not need to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that records must be kept. However, all employers covered by the OSH Act must report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees.

Reporting

Remember [OSHA approved state plan states](#) must adopt occupational injury and illness reporting requirements that are substantially identical to the Federal OSHA requirements. Since each state plan's requirements may differ slightly, the Federal OSHA requirements are described below.

All employers must report any workplace incident to OSHA within eight (8) hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees. Employers must orally report the fatality/multiple hospitalization by telephone or in person to the Area OSHA office that is nearest to the site of the incident. Employers may also use the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Occupational Safety and Health Act. Among the many resources available to help you comply with the Act are:

- [Compliance Assistance Quick Start](#) - Provides introductory step-by-step instruction to Occupational Safety and Health Administration (OSHA) compliance assistance resources.
- [OSHA E-Tools and Electronic Products for Compliance Assistance](#) - Provides links to e-tools, Power Point® presentations, and CD-ROMs.
- [Employment Law Guide: Occupational Safety and Health](#) - Provides a summary of the Occupational Safety and Health Act.
- [Occupational Safety and Health Administration \(OSHA\) Compliance Information](#) - Provides a portal to OSHA's compliance assistance resources.
- [OSHA Compliance Frequently Asked Questions](#) - Highlights topics and specific questions that are often asked of OSHA.

In addition to [The OSHA Recordkeeping Handbook](#) and [OSHA's recordkeeping Web page](#), OSHA provides other compliance assistance materials to help employers with their recordkeeping obligations. These include:

- ["Do I need to fill out the OSHA Log of Work-Related Injuries and Illnesses?" Brochure](#)
- [Partially Exempt Industries](#)
- [Fact Sheet - Highlights of OSHA's Recordkeeping Rule](#)
- [What should I do if there is a fatality or catastrophe at my work site?](#)
- [Frequently Asked Questions](#)

Additional compliance assistance, including explanatory brochures, fact sheets, and regulatory and interpretive materials, is available on the [Compliance Assistance "By Law" Web page](#).

Relation to State, Local, and Other Federal Laws

The OSH Act covers all private sector working conditions that are not addressed by safety and health regulations of another federal agency under other legislation. OSHA also has the authority to monitor the safety and health of federal employees. The OSHA-approved state-plan states extend their coverage to state and local government employees.

Finally, OSHA is also responsible for administering a number of whistleblower laws relating to safety and health as described in the [Whistleblower Protection](#) section of this Guide.

Penalties/Sanctions

Every establishment covered by the Act is subject to inspection by OSHA compliance safety and health officers (CSHOs). These individuals, who are chosen for their knowledge and experience in occupational safety and health, are thoroughly trained in OSHA standards and in the recognition of occupational safety and health hazards. In states with their own OSHA-approved state plan, pursuant to state law, state officials conduct inspections, issue citations for violations, and propose penalties in a manner that is at least as effective as the federal program.

OSHA conducts two general types of inspections, programmed, and unprogrammed. Establishments with high injury rates receive programmed inspections, while unprogrammed inspections are used in

response to fatalities, catastrophes, and complaints (which are further addressed by OSHA's complaint policies and procedures). Various OSHA publications and documents detail OSHA's policies and procedures for inspections.

Types of violations and penalties. The OSH Act authorizes OSHA to treat certain violations, which have no direct or immediate relationship to safety and health, as *de minimus*, requiring no penalty or abatement. OSHA does not issue citations for *de minimus* violations.

Other Than Serious Violation: A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. A proposed penalty of up to \$7,000 for each violation is discretionary.

Serious Violation: A violation where a substantial probability that death or serious physical harm could result and where the employer knew, or should have known, of the hazard. A penalty of up to \$7,000 for each violation must be proposed.

Willful Violation: A violation that the employer intentionally and knowingly commits. The employer either knows that what he or she is doing constitutes a violation, or is aware that a condition creates a hazard and has made no reasonable effort to eliminate it. The Act provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than \$70,000 but not less than \$5,000 for each violation.

Proposed penalties for other-than-serious and serious violations may be adjusted downward depending on the employer's good faith (demonstrated efforts to comply with the Act through the implementation of an effective health and safety program), history of violations, and size of business. Proposed penalties for willful violations may be adjusted downward depending on the size of the business. Usually no credit is given for good faith.

If an employer is convicted of a willful violation of a standard that has resulted in the death of an employee, the offense is punishable by a court imposed fine or by imprisonment for up to six months, or both. A fine of up to \$250,000 for an individual, or \$500,000 for an organization (authorized under the Omnibus Crime Control Act of 1984 (1984 OCCA), not the OSH Act), may be imposed for a criminal conviction.

Repeated Violation: A violation of any standard, regulation, rule, or order where, upon reinspection, a substantially similar violation is found. Repeated violations can bring fines of up to \$70,000 for each such violation. To serve as the basis for a repeat citation, the original citation must be final; a citation under contest may not serve as the basis for a subsequent repeat citation.

Failure to Correct Prior Violation: Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day the violation continues beyond the prescribed abatement date.

Citation and penalty procedures may differ somewhat in states with their own OSH programs.

Appeals process.

Appeals by Employees: If a complaint from an employee prompted the inspection, the employee or authorized employee representative may request an informal review of any decision not to issue a citation.

Employees may not contest citations, amendments to citations, penalties, or lack of penalties. They may contest the time allowed in the citation for abatement of a hazardous condition. They also may contest an employer's Petition for Modification of Abatement (PMA), which requests an extension of the abatement period. Employees who wish to contest the PMA must do so within 10 working days of its posting or within 10 working days after an authorized employee representative has received a copy.

Within 15 working days of the employer's receipt of the citation, the employee may submit a written objection to OSHA regarding the abatement date. The OSHA area director forwards the objection to the Occupational Safety and Health Review Commission, which operates independently of OSHA.

Employees may request an informal conference with OSHA to discuss any issues raised by an inspection, citation, notice of proposed penalty, or the employer's notice of intention to contest.

Appeals by Employers: When issued a citation or notice of a proposed penalty, an employer may request an informal meeting with OSHA's area director to discuss the case. Employee representatives may be invited to attend the meeting. To avoid prolonged legal disputes, the area director is authorized to enter into settlement agreements that may revise citations and penalties.

Notice of Contest: If the employer decides to contest the citation, the time set for abatement, or the proposed penalty, he or she has 15 working days from the time the citation and proposed penalty are received in which to notify the OSHA area director in writing. An orally expressed disagreement will not suffice. This written notification is called a "Notice of Contest."

There is no specific format for the Notice of Contest. However, it must clearly identify the employer's basis for contesting the citation, notice of proposed penalty, abatement period, or notification of failure to correct violations. To better identify the scope of the contest, it also should identify the inspection number and citation number(s) being contested.

A copy of the Notice of Contest must be given to the employees' authorized representative. If any affected employees are unrepresented by a recognized bargaining agent, a copy of the notice must be posted in a prominent location in the workplace, or else served personally upon each unrepresented employee.

Appeal Review Procedure: If the written Notice of Contest has been filed within 15 working days, the OSHA area director forwards the case to the Occupational Safety and Health Review Commission (OSHRC). The Commission is an independent agency not associated with OSHA or the Department of Labor. The Commission assigns the case to an Administrative Law Judge (ALJ).

The ALJ may disallow the contest if it is found to be legally invalid, or a hearing may be scheduled for a public place near the employer's workplace. The employer and the employees have the right to participate in the hearing; the OSHRC does not require that they be represented by attorneys.

Once the ALJ has ruled, any party to the case may request a further review by OSHRC. Also, any of the three OSHRC commissioners may individually move to bring a case before the Commission for review. Commission rulings may be appealed to the U.S. Courts of Appeals.

Appeals In State-Plan States: States with their own occupational safety and health programs have their own systems for review and appeal of citations, penalties, and abatement periods. The procedures are generally similar to federal OSHA's, but a state review board or equivalent authority hears cases.

DOL Contacts

[Occupational Safety and Health Administration \(OSHA\)](#)

[Contact OSHA](#)

Tel.: 1-800-321-OSHA (1-800-321-6742); TTY: 1-877-889-5627

Uniformed Services Employment and Reemployment Rights Act (USERRA) **(38 USC §§4301 through 4334)**

Who is Covered

The Uniformed Services Employment and Reemployment Rights Act (USERRA) was signed on October 13, 1994. The Act applies to persons who perform duty, voluntarily or involuntarily, in the "uniformed services," which include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service commissioned corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA. In addition, under the Public Health Security and Bioterrorism Response Act of 2002, certain disaster response work (and authorized training for such work) is considered "service in the uniformed services."

Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty performed by National Guard and reserve members, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty.

USERRA covers nearly all employees, including part-time and probationary employees. USERRA applies to virtually all U.S. employers, regardless of size.

Basic Provisions/Requirements

The [Veterans' Employment and Training Service \(VETS\)](#) enforces USERRA.

The pre-service employer must reemploy service members returning from a period of service in the uniformed services if those service members meet five criteria:

- The person must have held a civilian job
- The person must have given notice to the employer that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable
- The cumulative period of service must not have exceeded five years
- The person must not have been released from service under dishonorable or other punitive conditions
- The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment

USERRA establishes a five-year cumulative total on military service with a single employer, with certain exceptions allowed for situations such as call-ups during emergencies, reserve drills, and annually scheduled active duty for training.

Employers are required to provide to persons entitled to the rights and benefits under USERRA a notice of the rights, benefits, and obligations of such persons and such employers under USERRA.

USERRA also allows an employee to complete an initial period of active duty that exceeds five years (e.g., enlistees in the Navy's nuclear power program are required to serve six years).

Notices/Posters

Employers are required to provide to persons covered by USERRA, a notice of the rights, benefits and obligations of the employees and workers under USERRA. Employers may provide the notice of "[Your Rights Under USERRA](#)" by posting it where employer notices are customarily placed, by mailing it, or by distributing it via electronic mail. There is no size requirement for the poster version of the notice.

- Uniformed Services Employment and Reemployment Rights Act (USERRA) poster

Recordkeeping

There are no required records under USERRA.

Reporting

There are no required reports under USERRA.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Uniformed Services Employment and Reemployment Rights Act. Among the many resources available to help you comply with the Act are:

- [eLaws Uniformed Services Employment & Reemployment Rights Act \(USERRA\) Advisor](#) - Helps employees and employers understand veterans' employee eligibility and job entitlements for reservists and National Guard members returning to private employment. Allows service members to submit a USERRA complaint form electronically.
- [Employment Law Guide - Uniformed Service Members](#) - Describes the basic provisions and requirements of reemployment rights and veterans' preference given to persons who perform duty, voluntarily or involuntarily, in the uniformed services, including: the Army, Navy, Marine Corps, Air Force, Coast Guard, as well as the reserve components of each of these services, the National Guard, Commissioned Corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.
- [Frequently Asked Questions for Reservists being Called to Active Duty](#).

Additional compliance assistance including explanatory brochures, fact sheets, and regulatory and interpretive materials is available on the [Compliance Assistance "By Law" Web page](#).

Relation to State, Local, and Other Federal Laws

USERRA does not preempt state laws providing greater or additional rights, but it does preempt state laws providing lesser rights or imposing additional eligibility criteria.

Penalties/Sanctions

A court may order an employer to compensate a prevailing claimant for lost wages or benefits. USERRA allows for liquidated damages for "willful" violations.

DOL Contacts

[Veterans' Employment and Training Service \(VETS\)](#)

E-mail: contact-vets@dol.gov

Tel: 1-866-4-USA-DOL (1-866-487-2365) or 202-693-4770; TTY: 1-877-889-5627

Whistleblower Protection Provisions
Occupational Safety & Health Act (OSH Act), 29 USC § 660(c)
Surface Transportation Assistance Act (STAA), 49 USC § 31105
Asbestos Hazard Emergency Response Act (AHERA), 15 USC § 2651
International Safety Container Act (ISCA), 46 USC App. § 1506
Energy Reorganization Act of 1974 (ERA), 42 USC § 5851
Clean Air Act (CAA), 42 USC § 7622
Safe Drinking Water Act (SDWA), 42 USC § 300j-9(i)
Federal Water Pollution Control Act (FWPCA), 33 USC § 1367
Toxic Substances Control Act (TSCA), 15 USC § 2622
Solid Waste Disposal Act (SWDA), 42 USC § 6971
Comprehensive Environmental Response, Compensation, and Liability Act
(CERCLA), 42 USC § 9610
Wendell H. Ford Aviation Investment and Reform Act (AIR21), 49 USC § 42121
Sarbanes-Oxley Act (SOA), 18 USC § 1514A
Pipeline Safety Improvement Act (PSIA), 49 USC § 60129
National Transit Systems Security Act (NTSSA)
Federal Rail Safety Act

The Occupational Safety and Health Administration (OSHA) administers the employee protection (or "whistleblower") provisions of sixteen statutes.

Who is Covered

Under the Occupational Safety and Health Act (OSH Act), employees who believe that their employer has discriminated or retaliated against them for raising or reporting safety or health concerns may file a complaint with the Occupational Safety and Health Administration (OSHA). Under the Surface Transportation Assistance Act (STAA), employees in the trucking industry may file complaints with OSHA if they believe that their employer has discriminated against them for reporting safety concerns or for refusing to drive under dangerous circumstances or in violation of safety rules.

Similarly, under the other statutes, employees also may file complaints with OSHA if they believe that their employer has discriminated against them for reporting protected safety concerns involving the airline or pipeline industries, for reporting protected environmental concerns including asbestos in schools, or for reporting potential securities fraud.

The Department of Labor also enforces the anti-retaliation provisions of several other statutes that are not administered by OSHA. Information concerning many of these additional anti-retaliation statutes is available in other sections of the Advisor describing the statutes enforced by different Department agencies, such as the Fair Labor Standards Act, Employee Retirement Income Security Act and the Federal Mine Safety and Health Act. Please return to the [list of laws](#) for additional information.

Basic Provisions/Requirements

The [Occupational Safety and Health Administration](#) administers and enforces the whistleblowing provisions of the OSH Act and the fifteen other statutes.

Generally, the employee protection provisions listed above prohibit an "employer" or any "person" (the definition of which may vary from statute to statute) from discharging or otherwise discriminating against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee engaged in specified "protected" activities.

The protected activities typically include: (1) initiating a proceeding under, or for the enforcement of, any of these statutes, or causing such a proceeding to be initiated; (2) testifying in any such proceeding; (3) assisting or participating in any such proceeding or in any other action to carry out the purposes of these statutes; or (4) complaining about a violation.

The Energy Reorganization Act of 1974 (ERA), the Wendell H. Ford Aviation Investment and Reform Act (AIR21), the Sarbanes-Oxley Act (SOA), and the Pipeline Safety Improvement Act (PSIA) specifically

cover an employee's internal complaints to his or her employer, and it is the Secretary's position, as set forth in regulations, that employees who express safety or quality assurance concerns internally to their employers are protected under the other whistleblower statutes. With the exception of the Fifth Circuit, the courts of appeals that have considered whether internal complaints are protected have agreed with the Secretary.

Notices/Posters

There are no recordkeeping, reporting, poster, or other notice requirements for employers under the Whistleblower Protection provisions administered and enforced by OSHA.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Whistleblower Protection provisions. Compliance assistance related to the Act, including:

- Employment Law Guide - Whistleblower Protection - Provides a summary of the provisions of whistleblower statutes.
- OSHA Whistleblower Program Web site

Additional compliance assistance, including explanatory brochures, fact sheets, and regulatory and interpretive materials, is available on the Compliance Assistance ["By Law"](#) Web page.

Relation to State, Local, and Other Federal Laws

The Supreme Court has held that the employee protection provisions of the ERA do not preempt existing state statutes and common law claims. The other statutes listed above should be consulted separately to determine whether or not their employee protection provisions are supplementary to protection provided by state laws.

Penalties/Sanctions

Upon receipt of a timely complaint, OSHA notifies the employer and, if conciliation fails, conducts an investigation. Where OSHA finds that complaints filed under the OSH Act, the AHERA, and the ISCA have merit they are referred to the Solicitor's Office for legal action. Complaints under these three statutes found not to have merit will be dismissed.

Where OSHA finds a violation after investigating complaints under the other statutes listed above, it will issue a determination letter requiring the employer to pay back wages, reinstate the employee, reimburse the employee for attorney's and expert witness fees, and take other steps to provide necessary relief. Complaints found not to have merit will be dismissed.

Parties who object to OSHA's determinations under the statutes listed above (except for the OSH Act, the AHERA, and the ISCA) may request a hearing before the Department of Labor's [Office of Administrative Law Judges \(OALJ\)](#). Judges' decisions are reviewed by the Department of Labor's [Administrative Review Board](#), which the Secretary has designated to issue final agency decisions.

Under the STAA, if OSHA finds in favor of the employee, litigation usually is conducted by the Solicitor's Office, but sometimes by the employee. Under the other statutes, litigation generally is conducted by the private parties themselves. Employers and employees may seek judicial review of an adverse ARB decision.

Under the AIR21, the SOA, and the PSIA, employees who file complaints frivolously or in bad faith may be liable for attorney's fees up to \$1,000.

DOL Contacts

[Occupational Safety and Health Administration \(OSHA\)](#)
[Contact OSHA](#)

Tel.: 1-800-321-OSHA (1-800-321-6742); TTY: 1-877-889-5627
