

West Virginia Division of Labor State Versus Federal Overtime Jurisdiction

West Virginia Division of Labor
Wage & Hour Section

Overtime Wages Fact Sheet 1 - West Virginia Code Chapter 21, Article 5C, Section 1
(July 2016)

DETERMINING JURISDICTION BETWEEN STATE AND FEDERAL OVERTIME WAGE REQUIREMENTS

West Virginia's Minimum Wage and Maximum Hour Standards contain a provision within the definition of employer stating that *relative to maximum hours and overtime compensation only*, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent (80%) of the persons employed are subject to any federal act relating to maximum hours and overtime compensation.

That means if 80% of an employer's workforce is subject to the provisions of the Fair Labor Standards Act (FLSA), the maximum hour and overtime requirements of West Virginia's Minimum Wage & Maximum Hour Standards **will not apply.** §21-5C-1(e)

DETERMINING STATE JURISDICTION

In order to determine whether a company is covered under the overtime provisions of state law, an assessment must first be made to establish whether the company itself, or at least 80% of the company's employees, fall under the overtime provisions of the Fair Labor Standards Act. If federal jurisdiction can be established by federal enterprise coverage or individual employee interstate commerce activity, then the requirements of state law cannot be applied.

In order for state overtime laws to apply, *all* of the following conditions *must* be met.

1. The company *does not* qualify for federal "enterprise" coverage.
2. Eighty percent (80%) of the company's employees do not qualify individually for federal overtime coverage based on work duties considered as interstate commerce activity.
3. The company has the required six non-exempt employees working at any one separate, distinct, and permanent business location.

Once a company meets all of the above conditions, the jurisdictional requirements of state law relating to the enforcement of overtime wages are also met. That means the company's non-exempt employees that are working at a business location where the six employee requirement is met are covered by state overtime laws. *See Overtime Wages Fact Sheet 2.*

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JURISDICTIONAL REQUIREMENTS OF THE FAIR LABOR STANDARDS ACT (FLSA)

In order to decide whether a company qualifies under the Fair Labor Standards Act as an enterprise, or if a company's employees may be covered individually due to interstate commerce activity, it is necessary to understand how those determinations are made. In an effort to assist individuals in making such decisions, an outline of the federal rules relating to enterprise and individual employee coverage are provided in the next sections.

FLSA Enterprise Coverage

In order for an "employer" to be covered under the provisions of the Fair Labor Standards Act (FLSA), and therefore under the authority of the United States Department of Labor (USDOL) for overtime wages, that employer must meet federal "enterprise" requirements. Once a company qualifies as an "enterprise" under the provisions of the FLSA, then 100% of that employer's employees are considered to be covered by the FLSA.

Enterprise Coverage Defined

1. Employers that have at least two (2) employees and an annual dollar volume of sales or business of at least \$500,000.00.
2. Hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies that have at least two (2) employees.
3. An employer that's engaged in interstate commerce activity relating to trade, commerce, transportation, transmission, or communications across state lines that has at least two employees.

Individual Employee Coverage

When the company itself does not qualify for federal "enterprise" coverage, it is possible for its employees to qualify for individual coverage under the FLSA based on individual work duties. Any employee performing work that qualifies him or her as being engaged in commerce or the production of goods for commerce across state lines is entitled to overtime wage coverage under the FLSA.

When a company does not meet the conditions necessary to qualify for "enterprise" coverage, but has employees that are considered to be "individually engaged in interstate commerce activity", if the number of employees individually covered equal or exceed 80% of the company's total employees, that employer is considered as having 80% of its employees covered by the FLSA.

Examples of Individual Employee Interstate Commerce Activity

The following list provides some examples of activities that would qualify an individual employee as being engaged in interstate commerce activity.

- a. Employees that produce goods, such as a worker that assembles components in a factory.
- b. A secretary that types letters, emails or prepares faxes in an office that will be sent out of state.

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- c. An employee that regularly makes telephone calls to persons located in other states.
- d. An employee that handles records of interstate transactions.
- e. Employees that process credit card payments for services or purchases.
- f. Employees that travel to other states as part of their jobs.
- g. Employees that perform janitorial work in buildings where goods are produced for shipment outside the state.
- h. Employees that receive and stock goods received across state lines.
- i. Domestic service workers, such as housekeepers, full-time babysitters and cooks may also be covered.
- j. In-home Health Care Workers.

Any questions relating to whether a specific activity would qualify an employee for individual coverage should be addressed directly to the Wage & Hour Division of the United States Department of Labor (USDOL).

Contact Information for the USDOL: 1-866-4-USA-DOL (1-866-487-2365) or www.dol.gov.