CORE
COALITION OF RESIDENTIAL EXCELLENCE

Executive Director's Report
April 2024

WAGE and Hour Update

On April 23, 2024, a news release from the U.S. Department of Labor

BIDEN-HARRIS ADMINISTRATION FINALIZES RULE TO INCREASE COMPENSATION THRESHOLDS FOR OVERTIME ELIGIBILITY, PROVIDING PROTECTIONS FOR MILLIONS OF WORKERS.

Effective July 1, 2024, the salary threshold will increase to the equivalent of an annual salary of $43,888 and increase to $58,656 on Jan. 1, 2025. The July 1 increase updates the present annual salary threshold of $35,568 based on the methodology used by the prior administration in the 2019 overtime rule update. On Jan. 1, 2025, the rule's new methodology takes effect, resulting in the additional increase. In addition, the rule will adjust the threshold for highly compensated employees. Starting July 1, 2027, salary thresholds will update every three years, by applying up-to-date wage data to determine new salary levels.

This rule will restore the promise to workers that if you work more than 40 hours in a week, you should be paid more for that time," said Acting Secretary Julie Su. "Too often, lower-paid salaried workers are doing the same job as their hourly counterparts but are spending more time away from their families for no additional pay. That is unacceptable. The Biden-Harris administration is following through on our promise to raise the bar for workers who help lay the foundation for our economic prosperity."

The department conducted extensive engagement with employers, workers, unions and other stakeholders before issuing its proposed rule in September 2023, and considered more than 33,000 comments in developing its final rule. The updated rule defines and delimits who is a bona fide executive, administrative and professional employee exempt from the Fair Labor Standards Act's overtime protections.

"The Department of Labor is ensuring that lower-paid salaried workers receive their hard-earned pay or get much-deserved time back with their families," said Wage and Hour Administrator Jessica Looman. "The rule establishes clear, predictable guidance for employers on how to pay employees for overtime hours and provides more economic security to the millions of people working long hours without overtiime pay."

Key provisions of the final rule include the following:

- Expanding overtime protections to lower-paid salaried workers.

- Giving more workers pay or valuable time back with their family: By better identifying which employees are executive, administrative or professional employees who should be overtime exempt, the final rule ensures that those employees who are not exempt receive time-and-a-half pay when working more than 40 hours in a week or gain more time with their families.

- Providing for regular updates to ensure predictability. The rule establishes regular updates to the salary thresholds every three years to reflect changes in earnings. This protects future erosion of overtime protections so that they do not become less effective over time.

The rule's effective date is July 1, 2024. Learn more about the department's efforts to restore and extend overtime protections.

Agency
Wage and Hour Division
Date
April 23, 2024
Release Number
24-717-NAT
https://www.dol.gov/newsroom/releases/whd/whd20240423-0

Perhaps, sadly, the Federal Minimum Wage has not budged from $7.25 an hour in the past 15-years. Reportedly, around twenty states have established minimum wages that exceed the Federal base line.

So, how will the new wage and hour guidelines impact children's homes and residential schools? For a definitive answer, I'd recommend you check with you labor law attorney.

In order for the protections of FSLA to extend to an organization, two things must be evaluated:

(1) Is the organization a covered enterprise?

(2) Is a particular worker individually covered?

The Fair Labor Standards Act was adopted in 1938. Of course, there have been many modifications across the years. In 1961, the law was amended to include enterprise coverage, and also specified the need for certain kinds of businesses to be included.

ENTERPRISE COVERAGE

Section 3 (s)(1) (B) of the Act defines an "Enterprise engaged in commerce or in the production of goods for commerce" to mean an enterprise that:

(A) (i) has employees engaged in commerce or in the production of goods for commerce or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and
(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for the mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) Is an activity of a public agency.

[Note: An amendment subsequently introduced by Senator Dent in the 1960s set aside the need for some schools to fall under FSLA. The amendment is found at 29 USC 213(b)(24):

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as parents of children –

(A) who are orphans or one of whose natural parents is deceased, or

(B) enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institutions if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a case basis at an annual rate of not less than $10,000]

Individual Coverage

Even when there is no enterprise coverage, employees are protected by the FLSA if their work regularly involves them in commerce between States ("interstate commerce). The FLSA covers individual workers who are "engaged in commerce or in production of goods for commerce.

Examples of employees who are involved in interstate commerce include those who: produce goods (such as a worker assembling components in a factory or a secretary typing letters an office that will be sent out of state, regularly make telephone calls to other persons located in other states, handle records of interstate transactions, travel to other states on their jobs, and do janitorial work in buildings where goods are produced for shipment outside the state.

Employees whose work involves or relates to the movement of persons or things across state lines are also considered engaged in interstate commerce. Such activities include:

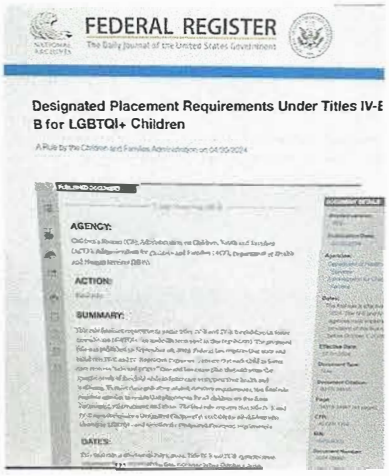
- Making out-of-state phone calls;
- Receiving/sending interstate mail or electronic communications;
- Ordering or receiving good from an out-of-state supplier; and
- Handling credit card transactions or performing accounting or bookkeeping for such activities.

The Department (W&H) however, will not assert that an employee, who on isolated occasions spends an insubstantial amount of time performing such work, is individually covered by the FLSA.

[Note: The aforementioned information was taken from Guidance for Non-Profit Organizations on Paying Overtime under the Fair Labor Standards Act.]

[Please note that the Coalition of Residential Excellence makes no value judgment or endorsement related to current enforcement of the Department of Labor related to the aforementioned guidance.]
Further, the rule specifies that nothing in the rule should be construed as requiring or authorizing a state to penalize a provider that does not seek or is determined not

Final Rule Regarding Services to Children in Foster Care who are LGBTQI


FEDERAL REGISTER
The Daily Journal of the United States Government

Designated Placement Requirements Under Titles IV-E
B for LGBTQI+ Children

AGENCY:

ACTION:

SUMMARY:

DATES:

On April 30, 2024, the Children's Bureau (CB); Administration on Children, Youth and Families (ACYF); Administration for Children and Families (ACF); Department of Health and Human Services (HHS) issued final requirements under titles IV-E and IV-B for children in foster care who are LGBTQI+ (Lesbian, Gay, Bisexual, Transgender, Queer and Intersex).

In terms of background, reportedly there is an overrepresentation of LGBTQI+ children in the Child Welfare System who face poor outcomes in foster care. According to a study published in 2016 of the population of youth who have been involved in both the foster care and juvenile justice systems, found that LGBTQ+ juvenile-justice involved youth were three times more likely to have been removed from their home and twice as likely to have experienced being physically abused in their homes prior to removal than their non-LGBTQ+ juvenile-justice involved counterparts.

In addition, LGBTQI+ children are overrepresented in the foster care population. One recent confidential survey revealed that 32 percent of foster youth ages 12-21 surveyed report that they identify as having a diverse sexual orientation or gender identity. Another large confidential survey found that 30.4 percent of foster children aged 10-18 identify as LGBTQ+. A recent study using nationally representative survey data found that youth with a minority sexual orientation, such as lesbian, gay, and bisexual youth, are nearly two and a half times as likely as heterosexual youth to experience a foster care placement.

This rule finalizes requirements under titles IV-E and IV-B for children in foster care who are LGBTQI+ (an umbrella term used in this regulation). The proposed rule was published on September 28, 2023. Federal law requires that state and tribal title IV-E and IV-B agencies ("agencies") ensure that each child in foster care receives "safe and proper" care and has a case plan that addresses the specific needs of the child while in foster care to support their health and wellbeing. To meet these and other related statutory requirements, this final rule requires agencies to ensure that placements for all children are free from harassment, mistreatment, and abuse. The final rule requires that title IV-E and IV-B agencies ensure a Designated Placement is available for all children who identify as LGBTQI+ and specifies the Designated Placement requirements.

The final rule does not require any provider to become a Designated Placement. Further, the rule specifies that nothing in the rule should be construed as requiring or to penalize a provider that does not seek or is determined not to qualify as a Designated Placement provider. It also says nothing in this rule shall limit any State, tribe, or local government from imposing or enforcing, as a matter of labor policy, requirements that provide greater protection to LGBTQI+ children that this rule provides.

The final rule is effective on July 1, 2024. Title IV-E and IV-B agencies must implement the provisions of this final rule on or before October 1, 2026.

https://www.federalregister.gov/documents/2024/04/30/2024-08982/designated-placement-requirements-under-titles-iv-e-and-iv-b-for-lgbtqi-children#:~:text=This%20final%20rule%20specifies%20that,including%20related%20to%20a%20child's

Proclamation of National Foster Care Month, 2024
https://www.whitehouse.gov/briefing-room/presidential-actions/2024/04/30/a-proclamation-on-national-foster-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