

FLSA recordkeeping requirements

Basic requirements

An employer is required to maintain numerous pieces of information with respect to each employee to whom the FLSA applies. The most important information pertains to the number of hours worked per day.

Each employer must keep required records in a safe and accessible location at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Upon request, all of the required records and information must be made available to an authorized Department of Labor representative.

No particular order or form of records is required by the regulations. The records and information which an employer is required to maintain may even be preserved on microfilm or in word processing memory so long as adequate projection or viewing equipment is available, reproductions are clear and identifiable by date or pay period, and transcriptions are made available upon request. **Regardless of how the information is maintained or preserved, it is essential the data and records be accurate.**

Failure to maintain any records or to maintain inaccurate records may expose an employer to liability in an action by an employee for back wages. In such cases, the employer must prove the actual time an employee worked. **Where an employer's records are inadequate or inaccurate, the Department of Labor will rely on the notes, records, or memory of the employee in arriving at a determination. Only as a last resort will the Department of Labor adopt an employer's estimate of the time worked.**

Employers should also be aware of any state specific recordkeeping requirements. As with all laws, employers must follow the more stringent law regardless of whether it is state or federal.

13 recordkeeping requirements

The FLSA requires employers to retain the following information for all covered, non-exempt employees. Most of the information required under the Act any company would keep as part of their ordinary business practice.

13 pieces of information required for recordkeeping

1. The employee's full legal name as it appears on and is used for Social Security recordkeeping purposes. On the same record, it is also necessary to include any symbol or number that may be used in place of the employee's name on any time, work, or payroll records.
2. The employee's home address, including ZIP code.
3. The employee's date of birth, if that employee is under age 19.
4. The sex and occupation of the employee. An employee's sex may be indicated by the use of the prefixes Mr., Mrs., Miss, or Ms. This information is necessary for purposes of ensuring compliance with the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. The employer should not ask applicants to reveal their sex, but should record this information only after an applicant is hired.
5. The time and day of the week on which the employee's workweek begins. If an employee is a member of a workforce or other establishment where all of the workers have a workweek beginning at the same time and on the same day, a single notation of that information for the entire group is sufficient.
6. The regular hourly rate of pay for any workweek in which overtime compensation is due, an explanation of the basis on which wages are paid (hourly, daily, monthly, weekly or by piece, commission or other basis), and the amount and nature of each payment which is excluded from the "regular rate."
7. The total number of hours worked each workday and total hours worked each workweek. For purposes of this requirement, a workday is any fixed period of 24 consecutive hours and a workweek is any fixed and regularly recurring period of 7 consecutive workdays.
8. The actual start and stop time for hourly employees.
9. Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, excluding any premium overtime pay.
10. Total premium pay for overtime hours.
11. Total additions to or deductions from wages paid each pay period including any garnishments or wage assignments.
12. Total wages paid during each pay period.
13. The dates of payment and the pay periods covered by each payment.

Exempt employees

An employer is also required to maintain the same records similar to those listed in 13 pieces of information, excluding items 6 through 10, for every professional, executive, administrative, highly compensated or computer employee, or outside salesperson. In addition, employers must maintain records documenting the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the exempt employee's total compensation including fringe benefits.

Room and board

In addition to all other required records, an employer must maintain records which substantiate the cost to the employer of providing room and board (or other facilities). Combined records are permissible. For example, if an employer provides housing for its employees, separate records for each house are unnecessary. The employer may combine records of its housing costs, such as maintenance, utilities, and repairs for all houses together.

Tips

Each employee whose wage is determined in part by tips he or she earns must include a notation or symbol on the employee's pay record that identifies him as a tipped employee. Employers must keep a record of tips reported (by the employee) on a weekly or monthly basis, a record that reflects the tip credit applied, and a record **showing that any changes in the tip credit were given to the employee in writing in each week where a change occurred.** If an employee performs both tipped and non-tipped work, the employer must keep separate records for the hours worked in each classification.

Homeworkers

The employer must maintain records, by "lot" of work, showing:

- when work was given or begun
- when work was turned in
- the amount of work completed
- the kind of articles worked on
- the hours worked for each lot
- the wages paid for finished lots.

A separate handbook that an employer obtains from the Wage and Hour Division must be kept for each homeworkeer. The homeworkeer records the proper information that the employer then uses to compute wages. Completed handbooks must be maintained for two years, including handbooks of terminated employees.

Hospitals and residential care

Hospital and residential care employers which follow the 8/80 overtime pay plan must keep somewhat different records. These employers must keep all records listed in the **13 pieces of information** except items 5 and 7–9. They must additionally keep records that show:

- the time and day of the week on which the employee's 14-day work period begins
- hours worked each workday and total hours worked each 14-day work period
- total straight-time wages for hours worked during the 14-day period
- total overtime compensation paid for hours worked in excess of 8 per day and 80 in the work period
- a copy of the agreement or understanding with respect to using the 8/80 plan (if there is no written agreement, the employer must keep a memorandum memorializing the terms of agreement).

Belo agreements

Employers must maintain all the records listed in the **13 pieces of information** except items 8 and 9. They must additionally keep records that show:

- total weekly guaranteed earnings total weekly compensation in excess of weekly guaranty
- a copy of the contract or agreement containing the Belo plan (if there is no written agreement, the employer must keep a memorandum memorializing the terms of the agreement).

Records preservation

In addition to the recordkeeping requirements noted above, the law also requires employers to preserve the following information:

- for a period of three years:
 - all payroll records or other records containing the required employee information
 - from their last effective date, all written:
 - ♦ collective bargaining agreements
 - ♦ plans, trusts, employment contracts
 - ♦ individual written contracts or summaries of oral agreements
 - ♦ any applicable certificates and notices

- ♦ records of the total dollar volume of sales or business and the total volume of goods purchased or received.
- for a period of two years:
 - all basic time and earning cards or sheets showing employees' daily starting and stopping times or the amounts of work performed by employees during the designated period when those amounts are the basis of employees' wages
 - all tables or schedules which provide the rates used to compute regular or overtime pay
 - originals or copies of all customer orders or invoices, shipping or delivery records not including sales slips, cash register tapes or the like)
 - records of additions to or deductions from wages paid including employee purchase orders or wage assignments
 - records used to determine operating and maintenance costs, depreciation, and interest charges, if these costs and charges are involved in making additions or deductions from wages paid, such as deductions for lodging.

Whenever a complaint is lodged against an employer by one or more of its employees, the Department of Labor may require the employer to conduct a self-audit of its records and document its position concerning employee exemptions and hours worked. An investigator will spot-check the employer's audit and if any inconsistencies are found will commence a full-blown audit.

Using a payroll service

The use of a payroll service does not excuse an employer from making sure the proper records are kept. The employer must either keep its own records or make sure, perhaps by contract, the payroll service is keeping the records required under the FLSA.

Flexible staffing and hours

Flexible staffing and scheduling arrangements create similar complications for employers. If non-exempt, hourly employees are working different hours from day to day or week to week, the employer will need to be increasingly vigilant in monitoring the actual number of hours worked at a given time.

Commonly asked questions and answers

Q. Is an employee who keeps her own time sheets prevented from later claiming they are inaccurate?

A. No. It is the employer, not the employee, who bears the responsibility for accurate recordkeeping. Where an employer asks the employee to keep a record of his or her time, the employer is generally responsible for checking those records and making sure they accurately reflect the employee's true hours.

Q. If my employees are paid “room” and “board” as part of their wages, what records must I keep?

A. In addition to all other required records, an employer must maintain records that document the cost to the employer of providing room and board (or other facilities). Combined records are permissible. For example, if an employer provides housing for its employees, separate records for each house are unnecessary. The employer also may combine records of its housing costs, such as maintenance, utilities, and repairs for all houses together.

Q. Are any additional records required for tipped employees?

A. Yes. Each employee whose wage is determined in part by tips he or she earns must include a notation or symbol on the employee’s pay record which identifies him as a tipped employee. Employers must keep a record of tips reported (by the employee) on a weekly or monthly basis, a record which reflects the tip credit applied, and a record showing that any changes in the tip credit were given to the employee in writing in each week where a change occurred. If an employee performs both tipped and non-tipped work, the employer must keep separate records for the hours worked in each classification.

Q. What could happen if my company fails to keep appropriate records?

A. The Department of Labor can charge employers who fail to keep appropriate records or who keep false records with a recordkeeping violation. The employer may be subject to an injunction against future violations and criminal sanctions. See Chapter 14, **Enforcement**.

Additionally, failure to keep records may expose an employer to liability for back wages. The Department of Labor will rely on an employee’s notes or testimony about his or her hours worked if the employer has failed to keep proper records. Without records, the employer will usually be unsuccessful in disputing the number of hours the employee claims to have worked.

Q. Does an employer need to maintain records on exempt employees?

A. Yes. An employer must keep many of the same records for exempt employees as for non-exempt employees. See page 12, **Exempt vs. non-exempt employees**.

Q. Can an employer avoid wage and hour recordkeeping problems by using a payroll service?

A. No. The use of a payroll service does not excuse an employer’s obligation to keep accurate records.

