

# Employment Laws for Design Firms Part One

by  
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This information will be published in two parts. In this first article, we'll look at the hiring process and some important compensation issues. In the second article, we'll discuss employment-related documentation, anti-discrimination laws, guidelines for leaves and accommodations, as well as laws covering employee benefits.

Employment laws, sometimes referred to as “labor” laws, operate to protect the rights of individual workers and employers, and to promote productive, safe workplaces. Employment laws often create tripping hazards for the unwary employer as such laws exist on the federal, state, and local level and can vary substantially based on the employer’s location. Federal law often establishes only a “floor” for the protection of employees’ rights; states are authorized to and frequently implement enhanced protections. This article is intended to be an overview of the employment laws applicable to design firms, outlining the laws governing the beginning, middle, and end of an employment relationship.

## **1. How to Hire Employees Legally**

Laws with respect to hiring employees focus on avoiding bias based on aspects of the applicant’s history or personal characteristics that are not related to an ability to do the job. Other laws govern what documents must be obtained from new employees and when, and how firms should go about hiring workers who are under the age of 18.

### **1a. Background check laws — Fair Credit Reporting Act (“FCRA”)**

Many companies have adopted the practice of conducting background checks on employees either before or after making a job offer. This can be done for a variety of reasons: to prevent negligent hiring lawsuits for hiring employees with certain kinds of criminal background history, or because some clients require it. Background checks can provide employers with significant relevant information about a potential employee, including credit information, criminal conviction history, and sex offender status. Background checks can even review an employee’s social media history. There are, however, multiple federal, state, and local laws regulating when and how background checks may be conducted, what consent is required prior to obtaining them, and what notification must be provided to the employee when the background check is received should the report contain negative information. For this reason, background checks can create a legal minefield for the unknowing employer. By way of example, here is a brief summary of some relevant background check laws.

The FCRA’s name is somewhat misleading, because while it uses the term “credit” in its title, it also applies to background checks obtained for the purposes of employment. Specifically, the FCRA governs when and how a third-party background check may provide a report about an individual’s “credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living” in connection with that person’s application for credit or for employment. The FCRA also covers background checks done after employment has commenced, for example, when an employee receives a promotion or reassignment, in connection with an internal investigation, or when an employer decides to begin implementing a background check requirement and employees have already been engaged. Among other



**IMAGE 1:**

The FCRA is overseen, interpreted, and enforced by the Federal Trade Commission:  
[www.ftc.gov](http://www.ftc.gov)

requirements, the FCRA mandates that an employee must provide written consent before a background check can be conducted, and the consent must be provided using a specific format. The FCRA also requires that employers provide the applicant (or employee) with at least five days prior notification if the employer intends not to hire or take other adverse action against the employee based in whole or in part on information contained in the report. This notification is intended to allow the employee or applicant time to review the adverse information, and if possible, provide explanation or a correction to faulty background check information.

The FCRA, however, is not the only law regarding background checks. While the FCRA applies only to background checks conducted by third-party background check companies and not the employer itself, almost every state and many localities have additional background check laws that impose requirements on both background check companies and on employers who conduct their own checks. These laws similarly govern when checks can be conducted, what forms must be used in order to obtain appropriate consent, what information can be sought, and what notifications employers are required to provide before taking adverse action based on information obtained in the check. Employers can face significant financial penalties for violations of the FCRA or state and local laws in their background check processes. For these reasons, it is generally recommended that companies either utilize a reputable third-party company or consult an employment law attorney before implementing a background check program.

**1b. Laws prohibiting employers from asking about criminal and salary history.** Additional federal, state, and local laws prohibit employers from asking job applicants about their criminal conviction, criminal arrest, and salary histories.

**1B-I. ARREST HISTORY.**

The FCRA specifically bars background-screening companies from reporting “records of arrest that, from date of entry, antedate the report by more than seven years.” This means that the FCRA will provide companies with criminal history information, including arrests, indictments, and other records relating to a crime that was dismissed or acquitted, apart from convictions of crimes so long as such information predates the report by up to seven years. Many states, however, have instituted specific background check and other laws that prohibit employers from considering criminal arrest history. For example, the New York Fair Credit Reporting Act, GBL § 380 et seq., prohibits both background check companies and employers from seeking information relating to violations/traffic offenses, arrests or charges not resulting in a felony or misdemeanor conviction. And the New York Human Rights Law, Executive Law Section 296(16), considers it to be an unlawful discriminatory practice to inquire about or act adversely upon arrest records “not then pending”, juvenile

or youthful offender offenses and sealed convictions. At least fifteen other states, including Alaska, Arkansas, California, Colorado, Kansas, Kentucky, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Mexico, Texas and Washington, as well as the District of Columbia, have laws that place some sort of limit on the reporting of criminal arrest history (i.e. limiting such reporting to salaries above a certain amount, or prohibiting reporting of arrests that are currently pending or that did not result in a conviction).

#### 1B-II. CRIMINAL CONVICTION HISTORY.

Certain legal protections exist for job applicants with criminal records. Title VII of the Civil Rights Act of 1964 (“Title VII”), which shall be discussed in more detail below (see “Avoiding Discrimination Claims”, section 4), provides on its face that it is unlawful for an employer to “fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin”. Although these protected categories do not include criminal arrest or conviction status, the Equal Employment Opportunity Commission (“EEOC”), which is the federal agency charged with interpreting and enforcing Title VII, has taken the position that a covered employer's reliance on a criminal record to deny employment may violate Title VII based on “disparate treatment (i.e. where either candidates with similar conviction history are treated differently) or “disparate impact” (i.e. an employer with a blanket policy of excusing all applicants with criminal records could screen out a disproportionate number of candidates based on race/ethnicity, which in turn could constitute illegal discrimination). For this reason, the EEOC requires that employers making employment decisions based on criminal conviction history not reject candidates out of hand, but rather take into account factors such as the nature/gravity of the offense, the nature of the job, and the time elapsed since the conviction/completion of the sentence to reach a determination of whether denying employment on the basis of conviction history is job-related and consistent with business necessity.



#### IMAGE 2:

The Equal Employment Opportunity Commission is an independent federal agency that administers and enforces civil rights laws against workplace discrimination including Title VII, ADA, ADEA, and GINA:  
[www.eeoc.gov](http://www.eeoc.gov)

In addition, almost every state has a related law that requires employers to engage in some kind of analysis before denying employment based on criminal convictions or pending arrests. Some states, such as New York, have enacted laws prohibiting employers from conducting criminal conviction background checks *until after a conditional offer of employment has been extended*.

#### 1B-III. SALARY HISTORY.

There is currently no federal law barring employers from asking job applicants about what salary they earned at their last job. However, in recognition that historic salary inequities between men and women can be continued by the next employer, even where such employer does not intend to discriminate, several states and localities have enacted laws prohibiting this question.

These states/localities currently include California, Delaware, Massachusetts (effective July 2018), New York City, Oregon (effective January 2019), and Puerto Rico (effective March 2018).

**1c. Other Prohibited Interview Questions.** The job interview is an important factor in the employee selection process. Carefully designed interview questions can help you identify whether a candidate has the behaviors, skills and experience necessary for the job you are seeking to fill. Other questions can make your company the subject of a lawsuit. Aside from issues relating to criminal history and salary history, employers should be mindful of the federal, state, and local laws prohibiting discrimination on the basis of protected class characteristics. While questions that relate to these protected class characteristics are not illegal per se, they can be a sign to a rejected candidate that the company relied upon improper and illegal factors in rejecting the applicant's candidacy.

#### 1C-I. WHAT ARE THE PROTECTED CLASS CHARACTERISTICS?

As defined in Title VII, employers may not discriminate, including with respect to hiring, based on a candidate's "race, color, religion, sex, or national origin". Title VII also includes the Pregnancy Discrimination Act ("PDA"), which prohibits discrimination against women on the basis of pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. Title VII has certain limitations; it applies only to employers who employ at least 15 employees. Title VII does not apply to smaller employers, and it notably does not provide protections to workers engaged as independent contractors. Some other relevant federal laws that protect employees with respect to hiring include the Americans with Disabilities Act ("ADA"),<sup>1</sup> which covers employers of 15+ employees and prohibits discrimination on the basis of an actual or perceived disability; the Age Discrimination in Employment Act ("ADEA") (20+ employees), prohibiting discrimination against employees over 40 years of age; and the Genetic Information Nondiscrimination Act ("GINA") (15+ employees), prohibiting employers from requiring or asking employees to provide genetic information.

Every state and many localities have additional anti-discrimination laws that may expand upon these categories of protected class characteristics. For example, while federal law provides no protection for employees based upon sexual orientation, many states and localities provide such protections and in addition protect employees from discrimination on the basis of gender identity and gender expression. Depending upon the state in which your office is located or where your employees are located, additional protected categories can include military status, marital status, caregiver status, and status as a victim in a domestic violence or other criminal proceeding. Some states even provide

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<sup>1</sup> More information about this in the next article.

protections based upon personal appearance (such as beards and tattoos) and political affiliation. In addition, state and local laws may cover smaller employers and/or cover independent contractors.

#### 1C-II. HOW SHOULD A FIRM APPROACH INTERVIEW QUESTIONS?

Employers should carefully craft interview questions that are designed to ascertain an applicant's fit for the position while not soliciting information about protected class characteristics. For example, employers should not ask applicants if they have children or what child-care arrangements they have made to be able to work. Nor should employers ask applicants if they are U.S. citizens, how old they are, or if they would require personal time for particular religious holidays. Employers may ask questions that ascertain an applicant's eligibility. For example, an employer may state that the job requires an employee to travel frequently, or work late nights with little notice, and ask if the applicant believes they would be able to meet this requirement.

**1d. What employment-related documents should be obtained and how should such documents be kept?** Federal law requires that all employers obtain a completed U.S. Citizenship and Immigration Services (USCIS) Form I-9 from each new employee prior to actually commencing work. [Form I-9](#) is intended to verify the identity of the new employee and to document that such employee is legally authorized to work in the United States. In order to complete Form I-9, employees are required to present proof of identity and authorization using specific designated documents. Depending upon the document, employees are required to provide either one or more valid forms of proof. These documents typically include: a valid passport, permanent resident card, driver's license or state identification card, school ID, birth certificate, or a Social Security Account Number card. Employees should be instructed to bring these forms of proof on their first day of work, and employers are required to examine these eligibility and identity document(s), determine that they reasonably appear to be genuine, and record the document information on the Form I-9. (Employers are not required to complete a Form I-9 for individuals engaged as independent contractors.) Many employers will verify the information they have received by accessing the E-Verify section of the USCIS website. As the site explains, "While participation in E-Verify is voluntary for most businesses, some companies may be required by state law or federal regulation to use E-Verify. For example, most employers in Arizona and Mississippi are required to use E-Verify. E-Verify is also mandatory for employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation E-Verify clause."



**IMAGE 3:**  
U.S. Citizenship and Immigration Services is part of the Department of Homeland Security:  
[www.uscis.gov](http://www.uscis.gov)

Additional federal, state and local laws cover what employment-related documents should be kept, and for how long. Because these requirements vary, it is recommended that you consult with your attorney or accountant for more specific information, but general retention recommendations are as follows:



Most, but not all, documents related to employment should be kept in your employee's personnel file including job descriptions, job applications, offers of employment, the employee's W-4 form, signed acknowledgment of receipt of the firm's handbook, performance evaluations, records or notes of disciplinary proceedings, notes or warnings regarding attendance or tardiness, forms relating to compensation or benefits, employment agreements (if any, such as non-compete agreements or confidentiality agreements), documents relating to an employee leaving the company (i.e. exit interviews, separation agreements, documents relating to continued benefits, and documents related to unemployment benefits).

There are some documents that should not be kept in personnel files either for reasons relating to potential lawsuits or because of requirements under federal or state law. Some of the documents that fall into this category are employee medical records. The ADA requires that these records be kept in a separate file and that employers limit access to that file to those who require such access in order to perform their job (i.e. HR or benefits personnel). I-9 forms should also be kept separately from personnel and other files. The U.S. government maintains the right to inspect these forms so they should be kept accessible but not mixed with other sensitive personnel documents.

The following lengths of time are generally recommended based on either requirements in the law or on the statute of limitations period associated with employment-related claims that would rely upon such documents as evidence:

- » *Pre-employment records such as résumés, applications and related materials, interview records/notes:* 3 years for applicants not hired, 4 years after date of termination for employees.
- » *Background checks, employment verifications, reference-related documents:* 5 years.
- » *I-9 forms:* the later of 3 years from date of hire or 1 year following termination of employment.
- » *Compensation, job history, and timekeeping records:* 4 years following termination of employment.
- » *FMLA and other leave-related records:* 3 years following termination of employment.

**1e. Hiring employees under the age of eighteen.** Employers should be aware that federal and state child labor laws also place restrictions and guidelines around employing workers who are less than eighteen years of age. Federal child labor laws are authorized by the Fair Labor Standards Act of 1938 ("FLSA"), which establishes minimum wage, overtime pay, recordkeeping, and youth-employment standards affecting employees in the private sector, as well as federal, state, and local governments. This section shall focus on the youth employment standards, which were enacted to ensure that when young people

work, the work is safe and does not jeopardize their health, well-being, or educational opportunities.

#### 1E-I. WORK HOURS FOR MINORS

The FLSA is interpreted and enforced by the United States Department of Labor (“USDOL”), which has issued rules and guidelines as to how employers must comply with the FLSA. The FLSA sets a minimum wage for employment of minors (in non-agricultural positions) starting at the age of 14, and places restrictions on hours of work for minors between the ages of 14 and 16. For example, under the FLSA, 14- and 15-year olds can work three hours in a school day, or eight hours on a non-school day, up to a total of 18 hours in a school week or 40 hours in a non-school week. They may only work between 7 a.m. and 7 p.m., except between June 1 and Labor Day, during which evening hours are extended to 9 p.m. Workers who are 14 or 15 years old may only perform certain specified jobs (which include “intellectual or creative work” and “errand or delivery work by foot, bicycle and public transportation”), while 16- and 17-year old workers may be employed to perform a broader range of jobs so long as they do not include tasks that the USDOL has determined to be dangerous (and which are unlikely to be involved in performing design company work). The FLSA does not require that minors obtain work permits.

Many states have enacted child labor laws as well. These laws are frequently more restrictive than the FLSA and govern the same requirements: permissible hours of employment and limits on minors performing jobs deemed potentially dangerous. State law frequently requires that permits/working papers be obtained by both the company and the minor prior to commencing work.

#### 1E-II. PAYMENT OF MINOR EMPLOYEES

The FLSA permits employers to pay minors a certain reduced minimum wage for their first 90 consecutive calendar days of employment, but thereafter requires that minors be paid at least full federal minimum wage.<sup>1</sup> State law may not permit an initial reduced minimum wage and may require employers to pay higher minimum wage rates to minors. Employers are advised to consult with counsel or determine state and local requirements before setting pay.

## **2. How to Pay Employees Properly**

Once an employee has been properly hired, additional laws govern how and when employees should be paid. This area is again governed by federal, state, and local laws with state laws frequently requiring that employees receive higher rates of pay, and be provided with greater protections from paycheck deductions.

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<sup>1</sup> See section 2a-iii below.



**2a. The Fair Labor Standards Act and Related State Laws.** As noted above, the FLSA, in addition to child labor standards, sets requirements for employers with respect to minimum wage, overtime, and recordkeeping requirements. State laws may impose similar and more protective requirements.

#### 2A-I. WHO IS GOVERNED BY THE FLSA?

Unlike the anti-discrimination laws described above, which have coverage limits based on the number of employees, the FLSA applies to employers whose annual sales total \$500,000 or more or who are engaged in interstate commerce. In reality, this law covers nearly all workplaces as the definition includes employees of firms who regularly use the mail or telephones for interstate communication, or who handle, ship, or receive goods moving in interstate commerce.

#### 2A-II. WHEN ARE EMPLOYEES ENTITLED TO OVERTIME PAY?

A common misconception is that only hourly workers are entitled to receive overtime pay. This is not the law under the FLSA, which classifies workers as either “non-exempt” (entitled to overtime pay) or “exempt” (not entitled to overtime pay). While exempt workers will always be salaried, non-exempt employees can be either salaried or hourly. All workers are considered non-exempt unless they meet the two-part FLSA test: the worker must be paid at least \$455 per week (this number may be higher under state law) *and* the worker must meet a list of “executive”, “administrative”, or “professional” job duties requirements.

Generally speaking an “executive” employee is one with the primary duty of managing the enterprise (i.e. managing a department, regularly directing the work of two or more full-time employees, and having hiring/firing authority). “Administrative” employees’ primary duty must involve the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers (i.e., accounting or human resources, but not the design work itself) and this primary duty must include “the exercise of discretion and independent judgment with respect to matters of significance.” Design firms should particularly take note of the “creative professional” exemption, which is available where an employee’s primary duty involves the performance of work requiring “invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.” Determination of exempt creative professional status is made on a case-by-case basis, and while the USDOL has not provided specific advice with respect to design professionals, it has advised that this requirement generally is met by, inter alia, “... painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; ... and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an “animator” of motion-picture cartoons, or as a retoucher of

photographs, since such work is not properly described as creative in character.” 29 C.F.R. 541.302.<sup>1</sup> Certain other exemptions exist, including for “highly compensated” individuals who, so long as they meet the minimum salary basis (currently \$100,000 or more), may meet a reduced duty test.

Importantly, this is an area where state law can substantially differ from federal law. Many states provide for different variations on the job duties and also set a different, and sometimes substantially higher, salary basis for exempt status. For example, while the FLSA only requires that employees who meet the job duties test be paid \$455 per week to be considered exempt, California employees must be paid \$880/week (for employers of 26 or more employees) or \$840/week (for employers of 25 or fewer employees). In New York, the salary basis for exempt status depends on the size and location of the employer, with different rates set for employers located in New York City (\$975/week for employers of 11 or more employees and \$900/week for employers of 10 or fewer employees), Nassau/Suffolk/Westchester Counties (\$825), and the remainder of the state (\$780). Employers should be sure to check their state and local requirements before making the determination to pay an employee on an exempt basis.

#### 2A-III. MINIMUM WAGE AND OVERTIME LAWS

The USDOL has, since July 2009, mandated a nationwide minimum wage of \$7.25 per hour. State and local laws can differ from these requirements. Where employees are subject to both state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages. State laws may also exempt particular occupations or industries from the minimum wage standard or set subminimum rates for minors and/or students, or have a training wage for new hires. Different minimum wage requirements may also apply to employees who receive tips as part of their compensation package. Some state or local minimum wage amounts automatically adjust upward each year based on inflation data. Employers are encouraged to consult the law of their particular location prior to setting compensation. Currently, at least 28 states mandate a higher minimum wage than \$7.25 per hour. Other states have laws setting the minimum wage as equal to the federal minimum wage, or have no requirement as to minimum wage, in which case the federal standard would control.

The USDOL also mandates that employers pay non-exempt employees (those who do not meet the test set forth above) overtime for hours worked over 40 in a workweek (i.e. seven consecutive 24-hour periods) at a rate not less than one-and-one-half their regular rates of pay (“time and a half”). The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days. Non-exempt employees who are paid on a salaried basis, as opposed to

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<sup>1</sup> More information about FLSA exempt status tests can be found here [https://www.dol.gov/whd/overtime/fs17a\\_overview.htm](https://www.dol.gov/whd/overtime/fs17a_overview.htm).

days of rest (although state law might), unless overtime is worked on such being paid hourly, are still entitled to receive overtime pay. In such cases, the employee's weekly pay should be divided by 40 to determine the straight-time rate. Normally, overtime pay earned in a particular workweek must be paid on the regular payday for the pay period in which the wages were earned.

As with the minimum wage, some states may impose other systems with respect to the pay of overtime, and employers should be sure to consult the laws applicable to their locality. For example, in some states, employers must pay overtime after 8 hours per day *and* 40 hours per week. Other states may require payment of 2x an employee's regular rate after a certain number of hours and/or on a seventh consecutive workday. Compensatory, or "comp" time may be provided to exempt employees as a courtesy, but should never be paid to non-exempt employees in lieu of overtime.

#### 2A-IV. LAWS WITH RESPECT TO UNPAID INTERNSHIPS

The rules with respect to unpaid internships are the same for both minors and workers over the age of 18. While the FLSA requires "for-profit" employers to pay employees for their work, interns and students may under certain circumstances not meet the legal requirement to be considered "employees" under the FLSA. Under such circumstances, the FLSA will not require that compensation be paid for their work. The appropriate test to be used has been the subject of significant recent litigation, most notably in class-action cases brought against Fox Searchlight by interns who had worked on movies including *Black Swan*, and against the Hearst Corporation by interns who had worked for various magazines including *Cosmopolitan* and *Harper's Bazaar*. In these lawsuits, interns complained that their internships, which in some cases had been done for academic credit, were not particularly educational and involved significant levels of menial tasks. The interns thus claimed that they should have been paid as employees and demanded payment of minimum wage and overtime pay for the hours they had worked, in addition to other damages including attorneys' fees.

As a result of these and other lawsuits, the USDOL currently takes the position that proper classification of workers as unpaid interns should be done by looking at the "economic reality" of the intern-employer relationship to determine which party is the "primary beneficiary" of the relationship.<sup>1</sup> Courts have identified the following seven factors as part of this "primary beneficiary" test:

» *The extent to which the intern and the employer clearly understand that there is no expectation of compensation.* Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.

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<sup>1</sup> For more detailed information, please see [DOL Fact Sheet No. 71.](#)» »

- » *The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.*
- » *The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.*
- » *The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.*
- » *The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.*
- » *The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.*
- » *The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.*

Courts have described the “primary beneficiary test” as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case and the fact that the intern is currently a student, or receives academic credit for the internship, is not always dispositive. If analysis of these circumstances reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA. Employers are also advised to review state or local laws for variation on the FLSA standard.

#### 2A-V. PROHIBITION AGAINST UNPAID ‘VOLUNTEERS’

The USDOL allows individuals to volunteer their time, freely and without anticipation of compensation, for religious, charitable, civic, or humanitarian purposes to non-profit organizations. These exceptions do not apply to for-profit design firms; volunteering to work without pay for a for-profit business is strictly prohibited.

#### 2A-VI. WHAT RECORDS MUST EMPLOYERS KEEP UNDER THE FLSA?

For non-exempt employees, the FLSA requires that employers keep records including the time and day of the week when the employee's workweek begins, the hours worked each day and total hours worked each work week, and the basis on which employee's wages are paid (e.g., "\$9 per hour", "\$440 a week"). Employers are also required to record each non-exempt employee's regular hourly pay rate, total daily or weekly straight-time earnings, total overtime earnings for the workweek, all additions to or deductions from wages, total wages each pay period, and date of pay and pay period covered by the payment.

## 2A-VII. DEDUCTIONS FROM PAYCHECKS

There are strict rules governing when an employer can make direct deductions from an employee's paycheck, whether it be for overuse of paid time off, or for damaged property. This is again governed by the FLSA and related state or local law. Of course employers must make deductions for tax withholding. Employers may also make deductions that benefit the employee (although some states require that written consent first be obtained) or for court orders such as garnishment of wages, child support orders, etc. (state law may impose limits on how much garnishment can be made).

Under the FLSA, when the employee in question is a non-exempt employee, the general rule is that an employer may make deductions for overuse of paid time off; employees must only be paid for work they have actually performed. With respect to things such as property damage, parking tickets for company vehicles, unaccounted for petty cash, etc., the FLSA also permits such deductions so long as they do not take the employee below the minimum wage for the workweek. State laws may take a more protective view and prohibit these types of deductions, or allow them only if an employee admits to being responsible for the loss or shortage. The rule that is more advantageous to the employee will control.



**IMAGE 4:**

The Fair Labor Standards Act is administered and enforced by the Department of Labor: [www.dol.gov](http://www.dol.gov)

Deductions for exempt employees are more restrictive, as the FLSA and related regulations require that an exempt employee receive their full salary for any workweek in which the employee performs work for the employer, and cannot be reduced based on the quality or quantity of work. Certain exceptions exist, such as for initial/final weeks of employment (where a partial week is worked), or for full-day absences as a result of personal reasons or use of paid leave time pursuant to a plan, policy, or practice.

The information in this first article was intended to help you get off to a good start as an employer. We'll continue our discussion in the next article, which has important information about employment-related documentation, anti-discrimination laws, guidelines for leaves and accommodations, as well as laws that cover employee benefits.

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**DISCLAIMER:** Legal information is not the same as legal advice – the application of law to an individual’s specific circumstances. Although care has been taken to make sure that this information is accurate and useful, it is recommended that you consult a lawyer if you want professional assurance that this information, and your interpretation of it, is appropriate to your particular situation.

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