

Daycare Centers and Preschools Under the Fair Labor Standards Act (FLSA)

Fact Sheet #46, November 2007, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division

This fact sheet provides general information on how the FLSA applies to daycare centers and preschools.

Characteristics

Daycare centers and preschools provide custodial, educational, or developmental services to preschool age children to prepare them to enter elementary school grades. This includes nursery schools, kindergartens, head start programs, and any similar facility primarily engaged in the care and protection of preschool age children. Individuals who care for children in their home are not considered daycare centers unless they have employees to assist them with the care of the children.

Coverage

The 1972 Amendments to the FLSA specifically extended FLSA coverage to preschools as covered “enterprises,” regardless of whether public or private or operated for profit or not for profit, and without regard to the annual dollar volume of the business. As a result, all such enterprises are required to comply with applicable provisions of the FLSA.

Requirements

The FLSA requires covered employers to:

- Establish the workweek for pay purposes (7 consecutive 24-hour periods), which may begin on any day of the week in the employer’s discretion (but remains fixed once established).
- Maintain complete and accurate records of each employee’s daily and weekly hours worked each week.
- Pay at least the federal minimum wage to all nonexempt employees of not less than ... \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009, for all hours actually worked.
- Pay at least one-and-one-half times each employee’s regular rate of pay as overtime compensation to each nonexempt employee for all hours worked over 40 in each workweek.
- Comply with all youth employment standards, such as restrictions on working hours, operating certain equipment, or performing work in certain occupations for minors under age 16 and, if under age 18, restrictions against

performing certain hazardous occupations (which include driving a school bus, among others).

Preschool Teachers: Bona fide teachers in preschool and kindergarten settings may qualify for exemption from the minimum wage and overtime pay requirements as “professionals” under the same conditions as a teacher in an elementary or secondary school. Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in this activity as a teacher in educational establishment. It should be noted that, although a preschools may engage in some educational activities, preschool employees whose primary duty is to care for the physical needs for the facility’s children would ordinarily not meet the requirements for exception as teachers under the applicable regulations.

Rest and Meal Periods: Employers that authorize short breaks or rest periods must count them as hours worked. Rest period of short duration, usually 20 minutes or less, are common in industry (and promote employee efficiency) and are customarily paid for as working time. *Bona fide* meal periods (typically 30 minutes or more) generally need not be compensated as work time as long as the employee is completely relieved from duty for the entire meal period for the purpose of eating a regular meal. The employee is not relieved from duty if required to perform any duties, whether active or inactive, while eating. Thus, an employee is not considered “relieved” if required to continue to watch over children while they and the employee eat their meal.

Lectures, Meetings and Training Programs: Attendance at lectures, meetings, training programs, and similar activities must be counted as working time unless *all four of the following criteria are met:* (1) it occurs outside normal scheduled hours of work; (2) it is completely voluntary; (3) it is not job-related (unless the employee attends an independent school or college on his/her own initiative outside work hours); and (4) no other work is performed during the period. The time spent attending training that is required by the state for day care center licensing is working time for which employees must be compensated.

Typical Problems

Issues that the Wage and Hour Division’s experience has shown to be problems in the industry include:

1. not recording all hours of work, for instance, taking someone off the clock for lunch even though the person is required to remain with children and supervise them, attending parent staff meetings, running errands for the employer such as going to the grocery store, etc.;
2. employees reporting early or staying late who are paid a flat fee for this extra time, instead of paying proper overtime (time-and-one-half the regular rate of pay) for such extra hours;

3. taking improper deductions from employees' pay, such as for items that primarily benefit the employer, which causes them to be paid less than minimum wage or which cuts into the overtime due the employee;
4. classifying employees, who do not meet all the tests for exemption, as exempt teachers and not paying such non-exempt staff appropriate overtime compensation; and
5. paying overtime compensation after 80 hours in two weeks instead of the required overtime payment after 40 hours in each week.

Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) requires that FMLA-covered employers allow eligible employees to take up to a total of 12 workweeks of unpaid leave during any 12-month period for:

1. birth and care of a newborn child of the employee;
2. placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;
3. care for a child, spouse or parent with a serious health condition; and
4. medical leave when the employee is unable to work because of a serious health condition.

The FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), and to private sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year. To be eligible for FMLA benefits, an employee must have worked for the employer for a total of 12 months, have worked at least 1,250 hours over the previous 12 months, and work at a location where at least 50 employees are employed by the employer within 75 miles.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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