

## Wages and Exemptions

### *Work-based Learning Guide 2016*

#### **Minimum Wage**

Teacher-coordinators must be aware of occupations and businesses which are covered by minimum wage laws and the compensation that is required to be paid.

#### **Exceptions to Minimum Wage**

Because employers of work-based learning students are asked to provide training as well as employment, exceptions to the federal minimum wage can be made. Regular student-learners and disabled learners may receive exemption from the federal minimum wage requirement that will allow employers to pay 75 percent of the minimum wage for student-learners and 50 percent for disabled students. Application for subminimum wages must be filed before the student begins employment.

#### **Comparison of State and Federal Wage and Hour Laws**

ISSUE	IOWA	FEDERAL
<b>Minimum Wage</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Not less than \$7.25/hour for covered nonexempt workers.</li> <li><input type="checkbox"/> Business volume: \$300,000</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Not less than \$7.25/hour for covered nonexempt workers, effective September 1, 1997.</li> <li><input type="checkbox"/> Overtime pay, at a rate of not less than 1-1/2 times the regular pay rate required after 40 hours of work in a work-week. Some exceptions for overtime pay in certain industries, like hospitals.</li> <li><input type="checkbox"/> Business volume: \$500,000</li> </ul>

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ISSUE	IOWA	FEDERAL
<p><b>Initial Employment or Training Minimum Wage</b></p>	<ul style="list-style-type: none"> <li>☐ \$6.35/hour minimum initial rate for first 90 consecutive calendar days of employment with the employer</li> </ul>	<ul style="list-style-type: none"> <li>☐ \$6.35/hour minimum training wage for first 90 consecutive calendar days of employment, <u>limited to employees under 20 years of age</u></li> <li>☐ Employer must comply with more stringent law, so only those Iowa employers <u>not</u> covered by federal law will be permitted to pay workers 20 years old and older \$6.35/hour for first 90 consecutive calendar days of employment.</li> </ul>
<p><b>Youth Minimum Wage</b></p>	<ul style="list-style-type: none"> <li>☐ No Iowa requirement; basic minimum wage applies to all employees of all ages in Iowa</li> </ul>	<ul style="list-style-type: none"> <li>☐ \$6.35/hour minimum permitted for employees under 20 years of age during first 90 consecutive calendar days of employment with an employer.</li> <li>☐ Employers are prohibited from reducing employees' hours, wages, or benefits, or otherwise displacing current employees to hire at youth minimum wage.</li> </ul>

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ISSUE	IOWA	FEDERAL
<p><b>Tipped Employees Minimum Wage</b> (employees customarily and regularly receiving more than \$30/month in tips)</p>	<ul style="list-style-type: none"> <li>☐ \$4.35/hour minimum, as long as tipped employee receives at least an average of \$7.25/hour in tips</li> <li>☐ Tips may be considered part of employee wages, but such wage credit must not exceed <b>40 percent</b> of the minimum wage</li> <li>☐ For initial employment or training wage employees, employer must pay 60 percent, or \$2.55/hour, and an average of 40 percent, or \$1.70/hour, in tips, for a total of \$4.25/hour</li> <li>☐ Employers who elect to use tip credit provision must inform employee <b>in advance</b> and must be able to show that employee receives at least the minimum wage when direct wages and tip credit are combined. If employee's tips and employer's direct wages of at least \$3.09/hour do not equal minimum hourly wage, employer must make up the difference. Employees must retain all tips, except when participating in valid tip pooling or sharing arrangement.</li> </ul>	<ul style="list-style-type: none"> <li>☐ \$2.13/hour, as long as tipped employee receives at least \$3.02/hour in tips</li> <li>☐ Employers who elect to use tip credit provision must inform employee <b>in advance</b> and must be able to show that employee receives at least the minimum wage when direct wages and tip credit are combined. If employee's tips and employer's direct wages of at least \$2.13/hour do not equal minimum hourly wage, employer must make up the difference. Employees must retain all tips, except when participating in valid tip pooling or sharing arrangement.</li> <li>☐ Employer required to comply with more stringent law, so Iowa employer must comply with Iowa law.</li> </ul>

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ISSUE	IOWA	FEDERAL
<p><b>Subminimum Wage Provisions</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Certain individuals may be employed at less than the statutory minimum wage, as an incentive to provide employment opportunities for specific populations</li> <li><input type="checkbox"/> Covers student-learners (work-based learning education students); full-time students in retail or service businesses, agriculture, or institutions of higher education; individuals whose earning or productive capacity is impaired by age or physical or mental disability or injury</li> <li><input type="checkbox"/> Employment permitted only under certificates issued by the US Department of Labor, Wage &amp; Hour Division</li> <li><input type="checkbox"/> All federal certificates are honored by the Iowa Division of Labor Services, as long as the percentage granted is applied to the appropriate Iowa minimum wage</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Certain individuals may be employed at less than the statutory minimum wage identified in the FLSA, as an incentive to provide employment opportunities for specific populations</li> <li><input type="checkbox"/> Covers student-learners (work-based learning education students); full-time students in retail or service businesses, agriculture, or institutions of higher education; individuals whose earning or productive capacity is impaired by age or physical or mental disability or injury</li> <li><input type="checkbox"/> Employment permitted only under certificates issued by the US Department of Labor, Wage &amp; Hour Division</li> </ul>
<p><b>Exemptions from Minimum Wage*</b></p> <p>*See illustrative, non-inclusive examples on page C-51.</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Specific exemptions exclude some employers</li> <li><input type="checkbox"/> Because exemptions are narrowly defined, employers should carefully check exact terms and conditions*</li> <li><input type="checkbox"/> Detailed information about exemption from Iowa minimum wage law is available from the Iowa Division of Labor Services</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Some employers exempt from overtime pay law or both minimum wage and overtime pay laws</li> <li><input type="checkbox"/> Because exemptions are narrowly defined under FLSA, employers should carefully check exact terms and conditions*</li> <li><input type="checkbox"/> Detailed information is available from local USDOL Wage &amp; Hour offices</li> </ul>

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<p><b>Employers Covered</b></p>	<p>An enterprise of related activities performed through unified operation or common control by one or more individuals for a common purpose, and is</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Engaged in laundering, cleaning, or repairing of clothing or fabrics; or</li> <li><input type="checkbox"/> Engaged in the business of construction or reconstruction; or</li> <li><input type="checkbox"/> Engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, aged, or mentally ill or physically disabled who reside on the premises, a school for mentally ill or physically disabled or gifted children, a preschool, a day care, an elementary or secondary school, or an institution of higher education (public or private, operated for profit or nonprofit); or</li> <li><input type="checkbox"/> Comprised exclusively of one or more retail or service establishments whose annual gross volume of sales made or business done is not less than \$300,000, exclusive of separately stated retail excise taxes; or</li> </ul> <p>Any other type of enterprise having annual gross volume of sales made or business done of not less than \$250,000, exclusive of separately stated retail excise taxes; or</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> An activity of a public agency</li> <li><input type="checkbox"/> Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby-sitters are covered if they receive at least \$100 in cash wages from the same employer in a calendar year or work more than 8 hours in a week for one or more employers</li> </ul> <p><i>continued...</i></p>	<p>An enterprise of related activities performed through unified operation or common control by one or more individuals for a common purpose, and</p> <ul style="list-style-type: none"> <li>- Has annual gross volume of sales made or business done is not less than \$500,000, exclusive of separately stated retail excise taxes; or</li> <li>- Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, aged, or mentally ill or physically disabled who reside on the premises, a school for mentally or physically disabled or gifted children, a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or nonprofit); or</li> <li>- Is an activity of a public agency</li> </ul> <ul style="list-style-type: none"> <li><input type="checkbox"/> Construction and laundry/dry cleaning businesses, regardless of annual dollar volume of business; new businesses created after April 1, 1990, must meet \$500,000 test for coverage under FLSA</li> <li><input type="checkbox"/> Any enterprise covered by FLSA on March 31, 1990 that ceased to be covered because of the \$500,000 test remains subject to FLSA provisions for overtime pay, child labor, and record keeping</li> <li><input type="checkbox"/> Employees of firms engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce</li> </ul> <p><i>continued...</i></p>

	<ul style="list-style-type: none"> <li>• Employees of enterprises engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce that have been exempted under state law may be covered by federal law</li> <li>• Employees of firms not covered under Iowa law may still be subject to federal law if they are <u>individually</u> engaged in interstate commerce or in the production of goods for interstate commerce</li> </ul>	<ul style="list-style-type: none"> <li>• Employees of firms not covered under FLSA or state law may still be subject to minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely related process or occupation directly essential to such production, including employees who work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication; keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross state lines in the course of employment; work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce</li> <li>• Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby-sitters are covered if they receive at least \$100 in cash wages from one employer in a calendar year or the amount pursuant to an adjustment provision in the Internal Revenue Code, or they work more than 8 hours in a week for one or more employers</li> </ul>
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<p><b>Payments and Deductions</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Required wages, including benefits agreed to by company policy or contract, due on regular pay day for pay period covered</li> <li><input type="checkbox"/> All wages due to suspended or terminated employee by next regular pay day</li> <li><input type="checkbox"/> Deductions <u>not</u> legal for items such as cash or merchandise shortages, employer-required uniforms, and tools of trade; others must be authorized in writing by employee; deductions without employee written authorization, if for loss due to employee's intentional or willful disregard of employer interests</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Wages required by FLSA due on regular pay day for pay period covered</li> <li><input type="checkbox"/> Deductions for items such as cash or merchandise shortages, employer-required uniforms, and tools of the trade are <u>not</u> legal to the extent that they reduce employee wages below minimum rate required by FLSA or reduce amount of overtime pay due under FLSA</li> </ul>
<p><b>Recovery of Back Wages</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Labor Commissioner may supervise payment of back wages</li> <li><input type="checkbox"/> Labor Commissioner may bring suit for back wages, liquidated damages, attorney's fees, and court costs</li> <li><input type="checkbox"/> Employee may file private suit for back wages, liquidated damages, attorney's fees, and court costs</li> <li><input type="checkbox"/> 2-year statute of limitations</li> <li><input type="checkbox"/> Complaints must be filed within one (1) year of date that unpaid wages were due</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Wage &amp; Hour Division may supervise payment of back wages</li> <li><input type="checkbox"/> Secretary of Labor may bring suit for back wages and an equal amount of liquidated damages</li> <li><input type="checkbox"/> Employee may file private suit for back pay and equal amount as liquidated damages, plus attorney's fees and court costs</li> <li><input type="checkbox"/> Secretary of Labor may obtain injunction to restrain any person from violating FLSA, including unlawful withholding of proper minimum wage and overtime pay</li> <li><input type="checkbox"/> Employee may <u>not</u> bring suit if back wages have been paid under supervision of Wage &amp; Hour Division or if Secretary of Labor has already filed suit to recover</li> <li><input type="checkbox"/> 2-year statute of limitations; 3-year limit in the case of willful violation</li> </ul>

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<b>Poster</b>	<ul style="list-style-type: none"> <li data-bbox="630 464 971 636">☐ “Iowa Minimum Wage Law” poster must be displayed where it can be easily seen by workers of employers covered under minimum wage law</li> <li data-bbox="630 646 971 699">☐ Poster available from Iowa Division of Labor Services</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="1006 464 1344 604">☐ FLSA explanation must be posted in a conspicuous place by every employer of workers subject to FLSA minimum wage</li> </ul>
<b>Contacts</b>	<ul style="list-style-type: none"> <li data-bbox="630 720 971 919">☐ Iowa Division of Labor Services 1000 East Grand Avenue Des Moines, IA 50319 515-281-5337 515-281-3606 800-562-4692</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="1006 720 1344 888">☐ US Department of Labor Wage &amp; Hour Division Room 643 Federal Bldg 210 Walnut Street Des Moines, IA 50309 515-284-4625</li> <li data-bbox="1006 919 1344 1039">712-323-8614 C. Bluffs 319-362-8074 C. Rapids 319-324-2038 Davenport 319-233-2903 Waterloo</li> </ul>

**\*Examples of Exemptions from Federal Minimum Wage Laws**

Examples are illustrative and non-inclusive. Refer to page C-46.

Exempt from Overtime Pay	Partial Exemption from Overtime Pay	Exempt from BOTH Minimum Wage and Overtime Pay
<ul style="list-style-type: none"> <li><input type="checkbox"/> Certain commissioned employees of retail or service businesses: auto, truck, trailer, farm implement, boat, or aircraft sales workers, or parts clerks and mechanics servicing autos, trucks, or farm implements, who are employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers</li> <li><input type="checkbox"/> Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans</li> <li><input type="checkbox"/> Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations</li> <li><input type="checkbox"/> Domestic service workers living in the employer's residence</li> <li><input type="checkbox"/> Employees of motion picture theaters</li> <li><input type="checkbox"/> Farm workers</li> <li><input type="checkbox"/> Workers listed as exempt from minimum wage</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Employees engaged in certain operations on agricultural commodities</li> <li><input type="checkbox"/> Employees of certain bulk petroleum distributors</li> <li><input type="checkbox"/> Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual 7-day work week if employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours</li> <li><input type="checkbox"/> Employees without high school diplomas or who have not attained 8th grade level education can be required to spend up to 10 hours in a work-week engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Executive, administrative, and professional employees, including teachers and academic administrative personnel in elementary and secondary schools</li> <li><input type="checkbox"/> Outside sales employees</li> <li><input type="checkbox"/> Employees of certain computer-related occupations, as defined in Department of Labor regulations</li> <li><input type="checkbox"/> Employees of certain seasonal amusement or recreational establishments</li> <li><input type="checkbox"/> Employees of certain small newspapers and employees engaged in newspaper delivery</li> <li><input type="checkbox"/> Seamen employed on foreign vessels and employees engaged in fishing operations</li> <li><input type="checkbox"/> Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year</li> <li><input type="checkbox"/> Casual baby-sitters and persons employed as companions to the elderly or infirm</li> </ul>

### **Federal Exemption Certificates for Student-Learners**

As nearly as possible, students should be provided with employment conditions that are identical to those of any other beginning worker. Because employers of students are asked to provide training as well as employment, exceptions to the federal minimum wage law can be made. Regular student-learners and learners with disabilities may receive exemption from the federal minimum wage requirement that will allow employers to pay 75 percent of the minimum wage for student-learners and 50 percent for students with disabilities. Exemptions may be obtained by filing Wage & Hour Form 205 for regular student-learners and Wage & Hour Form 222 for students with disabilities. More information on federal regulations for employing a full-time student at subminimum wages - <http://www.ecfr.gov/cgi-bin/text-idx?SID=c86f52d088d0ef79954c2f36a627da18&node=pt29.3.519&rgn=div5>

To qualify for exemption from federal minimum wage provisions:

- Certification by the appropriate school official on an application for a special student-learner certificate shall constitute a temporary authorization for employment and, at the end of 30 days, it shall become the permanent student-learner certificate, unless modified or denied by the Wage & Hour Division of the US Department of Labor;
- Except for designated exemptions, students under 16 years of age are not eligible to receive student-learner certificates, and students under 18 years of age cannot receive certificates to work in hazardous occupations;
- Student-learners may not be employed at the subminimum wage rate for more than 40 hours combined of school instruction and work; and
- Students may work for more than 40 hours per week combined school instruction and work if they are paid the prevailing wage rate for any additional hours.

In addition, the application will not be approved if:

- The job does not require a sufficient degree of skill to necessitate a substantial learning period;
- Another worker is displaced;
- Wage rates or working standards of experienced workers would be depressed;
- The occupational needs of the community or industry do not warrant the training of students at less than the statutory minimum wage;
- There are serious outstanding violations of the Fair Labor Standards Act; and
- The number of students at certificate rates is more than a small proportion of the establishment's working force.

Some businesses that provide training stations may not be within the jurisdiction of federal wage laws. However, all employers are covered by state and/or federal child labor laws. Teacher-coordinators should make certain that the employment is permitted under child labor laws and should be very careful to ensure that students do not become a source of inexpensive labor for the employer. Compliance can be assured through careful development of training plans and regular coordinator supervision at work sites.

### **Public Schools, Child Labor, and Subminimum Wages**

Based on a US Supreme Court ruling in 1985, the Iowa Department of Education distributed a memo to Special Needs coordinators regarding child labor and subminimum wages for school-sponsored employment. That memo remains valid. Excerpts are provided here:

...public schools are subject to paying minimum wages unless subminimum wage certificates are submitted and approved with the US Department of Labor in Kansas City....

The US Department of Labor...form can be used to apply for subminimum wages down to 50% of the minimum wage...for disabled students in work experience programs. The percent level can go lower than 50% if the application is accompanied by a report from a medical doctor. Student learner (any student enrolled in a cooperative work experience program) applications can be obtained from the US Department of Labor and can be used to apply for subminimum wages down to the 75% level. Full-time students (students attending school full-time and employed part-time after or before school hours and not part of a cooperative program) can be employed at subminimum wages down to the 85% level.

One exception to paying minimum wages is still open to public schools. Students are able to work in jobs in the school for less than or up to one hour per day without pay as long as the work is part of the student's school program and the work situation meets child labor regulations[,] especially in regard to hazardous orders. Work performed under these conditions is not considered "employment." Consequently, wages do not have to be paid. [The school must be the employer, not a contractor or subcontractor of the school.]

### **Interpretation of FLSA and Minimum Wage for Work-based Learning Programs**

In 1995, the Iowa Department of Education received a letter of interpretation from Maria Echaveste, Administrator in the Employment Standards Administration, Wage and Hour Division of the US Department of Labor in Washington, DC, regarding the Fair Labor Standards Act and training programs such as School-To-Work. That interpretation remains valid.

This is in response to your letter to Senator Hatfield concerning the application of the Fair Labor Standards Act (FLSA) to students participating in training programs such as those which will be sponsored under the School-To-Work Opportunities Act (STW). You are concerned that business participation in STW programs may be at risk due to the perception that provisions of the FLSA present barriers. Your letter and other inquiries demonstrate that there is considerable misunderstanding as to when a STW participant must be considered an employee under FLSA.

The minimum wage provisions of the FLSA do not apply to students in training programs unless there is an employment relationship and the employer meets the coverage tests of the FLSA. Although these criteria do not differ based on the age of the employee or whether the employee is working under auspices of a STW program, we believe that many of the STW training programs will *not* [emphasis added] result in an employment relationship. If the program is carefully structured and provides a bona fide training experience, the FLSA should not be an impediment to the participation of employers in STW programs.

The Office of School-To-Work of the Departments of Labor and Education has advised us that a learning experience at an employer's work site that includes all of the following elements is consistent with a learning experience under the STW:

1. A planned program of job training and work experience for the student, appropriate to the student's abilities, which includes training related to pre-employment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate;
2. The learning experience encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills;
3. The learning experience has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills; and
4. The learning experience provides for real or simulated tasks or assignments which push students to develop higher-order critical thinking and problem-solving skills.

A student enrolled in a STW learning experience would not be considered an employee within the meaning of the FLSA, if the following additional criteria were met:

1. The student receives on-going instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided;
2. The placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee – i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he or she would otherwise work;
3. The student is not entitled to a job at the completion of the learning experience – but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and
4. The employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience – although the student may be paid a stipend for expenses such as books or tools.

If all the foregoing criteria were met, an employer would not be required to pay wages to a student enrolled in a STW learning experience. If, however, some of the above criteria were not met, it is still possible that a STW participant would not be an employee under FLSA; however, all of the facts and circumstances would have to be considered.

We assure you that proper administration of STW programs is important to the Department of Labor. The Wage and Hour Division will assist the State offices administering STW programs in any issues which may arise under the FLSA, and will contact them in an attempt to resolve any matters which come to our attention involving the administration of STW programs in accordance with the requirements of the FLSA.