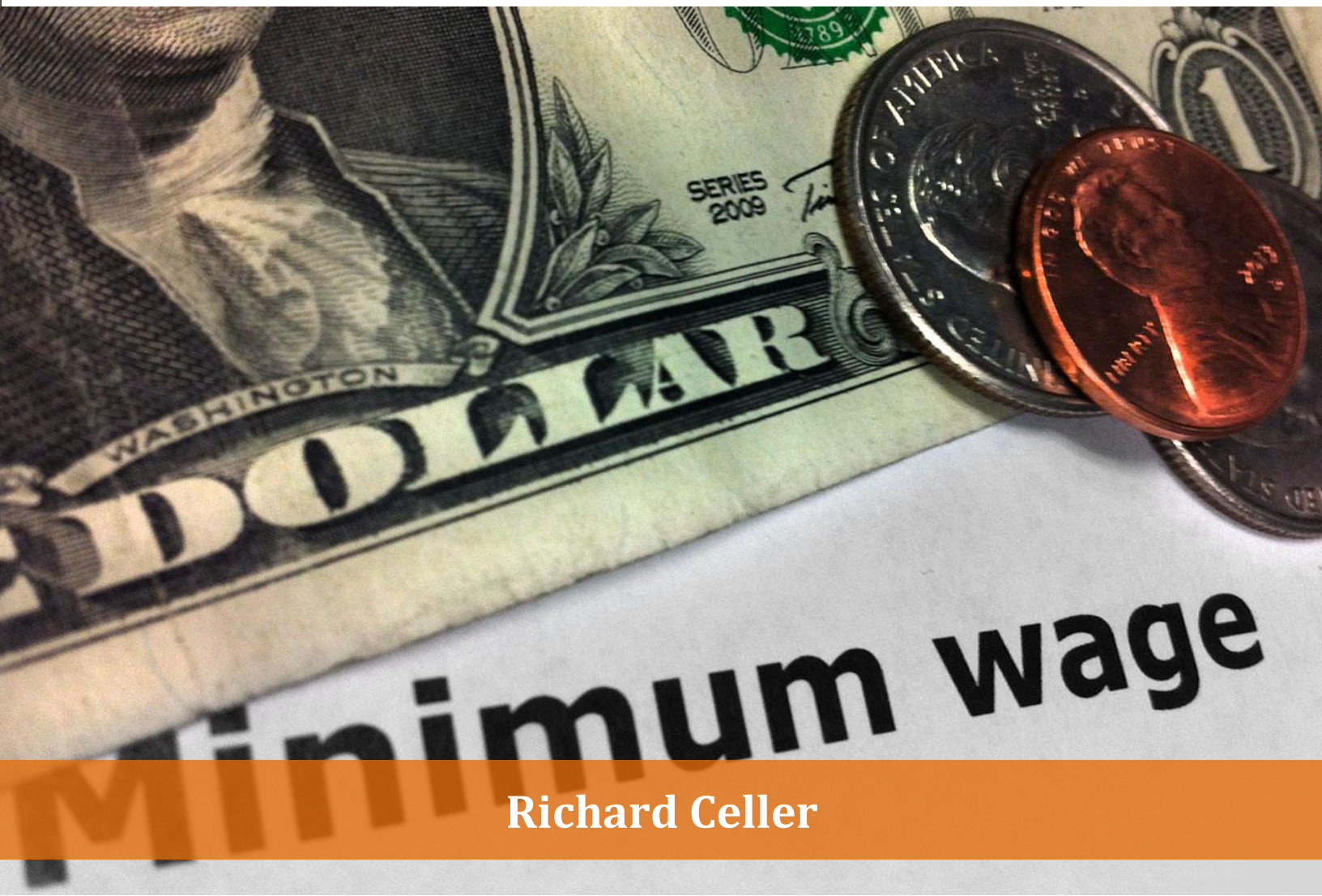


# MINIMUM WAGE LAWS IN FLORIDA – ARE YOU COVERED?

*“In Florida, for example, the “Florida Minimum Wage Act” determines the state minimum wage which is currently set at \$7.93 per hours. If an employee is subject to both the federal and state minimum wage law the worker is legally entitled to be paid the higher of the two rates.”*



Richard Celler



Unlike many other countries, workers in the United States enjoy numerous protections in the workplace. Workers who suffer a work related illness or injury, for example, are generally covered by workers' compensation. The minimum wage an employer is required to pay is even regulated by federal and/or state law for most employees. If your employer is paying you less than what the law requires, you may be entitled to pursue a wage claim against your employer.

You must first, however, establish that you are covered by a federal or state wage law. Because the wage laws in the United States are complex and subject to change it is always best to consult with an experienced Florida employment law attorney if you believe your employer is violating your rights as an employee; however, a basic understanding of the federal and state wage laws is something that should benefit all workers.



## WHAT IS THE CURRENT MINIMUM WAGE?



Although you undoubtedly know that a minimum wage law exists, you may not realize that *many* minimum wage laws exist. The federal Fair Labor Standards Act, or FLSA, established a federal minimum wage which is currently set at \$7.25 per hour. Many people, however, are unaware that the individual states may also implement a minimum wage law. In Florida, for example, the “Florida Minimum Wage Act” determines the state minimum wage which is currently set at \$7.93 per hours. If an employee is subject to both the federal and state minimum wage law the worker is legally entitled to be paid the higher of the two rates.

## WHO IS COVERED BY THE FAIR LABOR STANDARDS ACT?



At the federal level, the FLSA governs issues relating to wages and overtime. Not all employees, however, are covered by the FLSA. Therefore, to know whether you are entitled to the protections afforded

workers under the FLSA you must first determine if you are covered by the FLSA. According the United States Department of Labor, or D.O.L., “All employees of certain enterprises having workers 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 such commerce by any person, are covered by the FLSA.” “Certain enterprises”, for purposes of the FLSA, include:

- Businesses with an annual gross volume of sales or business done of \$500,000 or more OR
- Certain hospitals, long-term care facilities, and schools.

In addition, if the enterprise was covered by the FLSA on March 31, 1990 when the \$500,000 threshold was added, the enterprise remains covered even if they do not meet the threshold.

## IF I AM NOT A COVERED EMPLOYEE AM I STILL SUBJECT TO THE MINIMUM WAGE LAWS?



Employees of enterprises that are subject to the FLSA are clearly subject to the minimum wage and overtime protections found within the FLSA; however, you may still be protected even if your employer does not meet the above-referenced FLSA requirements. Employees who 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” may still be covered by the federal minimum wage and overtime laws. In essence, this means that if your job involves interstate commerce in any way, you may be covered.

If, for example, your job requires any of the following, you may be covered:

- Handling, shipping, or receiving merchandise that moves across state lines
- Communicating, via telephone or mail, across state lines
- Transporting goods across state lines
- Keeping records of interstate transactions
- Work for employers who are contracted to do custodial, clerical, or maintenance work for businesses engaged in interstate commerce.
- Traveling across state lines for work
- Work in the communications industry

Finally, domestic service workers may also be covered if either of the following applies:

- Wages in any calendar year from a single employer surpass the limit set by the Social Security Administration each year.

They work more than 8 hours a week for any one employer.



## CAN AN EMPLOYER EVER LEGALLY PAY LESS THAN MINIMUM WAGE?

Even if an employer is covered by the FLSA there are some circumstances under which an employee may legally be paid less than minimum wage. Some examples of situations in which an employer *may* be allowed to pay an employee less than minimum wage include:

- Vocational education students
- Full-time students in retail establishments
- Agricultural employees
- Disabled workers
- Seasonal workers
- Youth workers

Tipped employees may be paid the “tipped employee” minimum wage as long as the employer can prove that the employee will make at least the regular minimum wage when the hourly wage is combined with tips. The federal “tipped employee” minimum hourly rate is \$2.13; however, Florida law requires tipped employees to be paid a minimum hourly rate of \$4.91.

## EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL AND OUTSIDE SALES EMPLOYEES

Certain types of “white collar” employees are also exempt from minimum wage laws. Employees whose jobs are classified as executive, administrative, professional, or sales positions are typically salaried employees. As a salaried



employee you are not paid by the hour. Instead, you receive an agreed upon income from your employer regardless of the number of hours you work each week. You may also earn commission in addition to your base salary. With this pay structure in mind it makes it difficult to implement a minimum hourly wage rate. Moreover, these employees generally earn considerably more than minimum wage as a matter of course. Your job title does not determine if you are an exempt employee. To be classified as an exempt employee you must be paid a salary of at least \$455 per week and your job duties must pass the appropriate test for an executive, administrative, professional, computer, outside sales, or highly compensated employee.



If you believe that you are covered by the federal and/or state minimum wage law(s) yet your employer is not compensating you accordingly, consult with an experienced Florida employment law attorney right away to discuss your legal options.

United States Department of Labor, [Minimum Wage Laws in the States](#)

United States Department of Labor, [Fair Labor Standards Act](#)

United States Department of Labor, [Handy Reference Guide to the Fair Labor Standards Act \(FLSA\)](#)

United States Department of Labor, [Fact Sheet #17A](#)

## About the Author



### Richard Celler

Richard Celler is the Managing Partner of Richard Celler Legal, P.A., a/k/a the Florida Overtime Lawyer. He created this firm after having served as the Founding Member and Managing Partner of one of the largest employee/plaintiff side employment law divisions in the United States.

In November 2013, Mr. Celler left big firm life with the idea of reopening his own litigation firm with an emphasis on something most big firms cannot provide – a lower volume of cases, and more focus on the needs and attention of every single client.

Mr. Celler's practice focuses on all areas of the employment context from discrimination, harassment, and retaliation under the Florida Civil Rights Act, Title VII, the Family Medical Leave Act, and other employment related statutes. Additionally, Mr. Celler represents individuals in whistleblower and wage and hour litigation (overtime, minimum wage, commissions, final paychecks).

Many firms charge clients for an initial consultation to discuss their claims. Mr. Celler does not. You can call him or email him to discuss your case for free. If he elects to represent you, your case will be handled on a contingency basis, which means that he only gets paid, if you get paid. We encourage you to look at the remainder of our website for information on your rights and benefits in the workplace – [www.floridaovertimelawyer.com](http://www.floridaovertimelawyer.com).

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