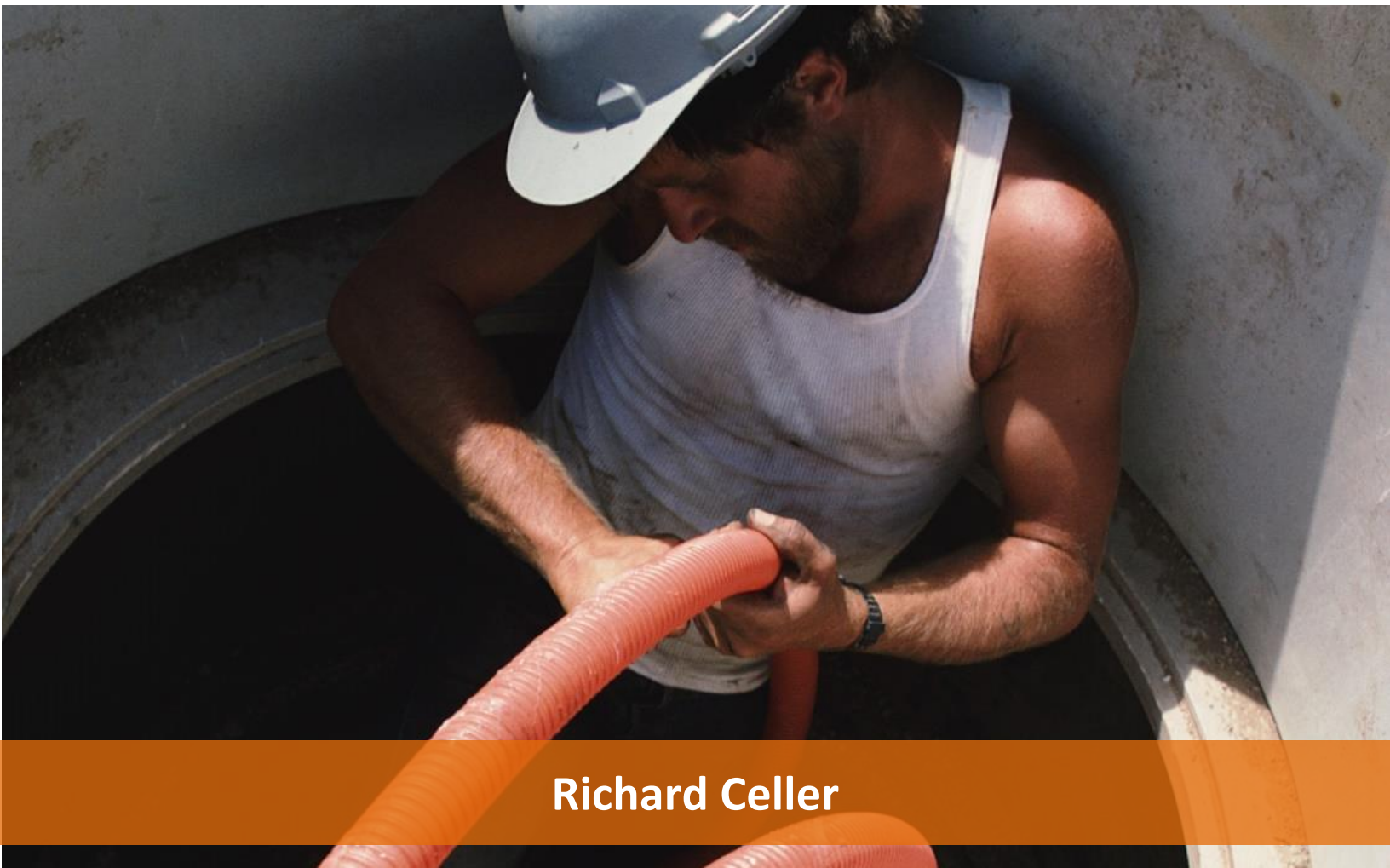


# THE FAIR LABOR STANDARDS ACT OF 1938

*“Because of the complex nature of the provisions of the Fair Labor Standards Act it is imperative that you consult with an experienced Florida employment law attorney if you feel your rights under the FLSA have been violated or you are an employer who wishes to remain in compliance with the FLSA.”*



Richard Celler

By the time they enter the workforce, most people are aware that there are federal laws relating to both the minimum hourly wage and overtime pay in the United States. What they may not know is that those laws are found in the Fair Labor Standard Act, or FLSA, which was originally signed into law almost 100 years ago. Like many historical pieces of legislation, the FLSA was controversial at the time it was passed into law, facing opposition from several directions. Nevertheless, the FLSA became the law of the land and remains the legal foundation on which concepts such as fair pay and the prohibition against child labor stand today.



## HISTORY

The FLSA was born out of the Great Depression against some fairly serious odds. Signed into law on June 25, 1938 by President Franklin D. Roosevelt, the FLSA was a landmark law that changed the social and economic landscape of the United States. Along with the typical political opposition a law of this sort often faces, Roosevelt also faced opposition from the Supreme Court of the United States, or SCOTUS. During the years leading up to the passage of the FLSA, SCOTUS had repeatedly shot down state and federal attempts at enacting child labor and wage-hour laws. Remarkably, SCOTUS essentially changed its

apparent course right about the time Roosevelt signed the FLSA into law, paving the way for its success.

## WHO IS COVERED?

Contrary to popular belief, not all employers are covered by the provisions found in the FLSA. The FLSA applies to “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.” “Enterprises” as used in the preceding definition refers to “the related activities performed through unified operation or common control by any person or persons for a common business purpose and:

1. whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated); OR
2. is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill 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 not for profit); OR
3. is an activity of a public agency.

Although this definition of “enterprises” may appear to leave out a substantial chunk of the workforce, employees of companies not covered by the

“enterprises” definition may still be subject to the FLSA 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. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or 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.”

## MINIMUM WAGE

Most people are aware of the minimum wage provisions found in the FLSA; however, there are a number of common misperceptions about those provisions as well. The FLSA requires a covered employer to pay a non-exempt employee a minimum hourly wage which is periodically adjusted and is currently set at \$7.25 per hour.

## STATE VS. FEDERAL MINIMUM WAGE LAWS

Along with the federal minimum wage set by the FLSA, individual states may set a minimum wage as well. If an employee is subject to both a state and federal minimum wage law the employee is entitled to be paid the higher of the two wages. In the State of Florida, for example, the minimum wage is currently set at \$8.05 per hour by state law. Therefore, an employee subject to both state and

federal minimum wage laws would be entitled to the higher state rate of \$8.05 per hour in Florida.

## EXCEPTIONS TO THE MINIMUM WAGE LAW

The FLSA provides certain exceptions to the requirement that all non-exempt employees be paid at least the federal minimum wage law, including, but not limited to, the following:

- Student learners
- Full-time students in retail or service establishments
- Employees with a physical or mental disability
- Youth under the age of 20 during the first 90 days of employment

## EXEMPTIONS FROM THE MINIMUM WAGE LAW

Along with exceptions to the minimum wage requirement, the FLSA also includes a number of *exemptions*. The following categories of employees are considered exempt from both the minimum wage and overtime provisions of the FLSA:

- Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in DOL regulations);



- Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farmworkers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year;
- Casual babysitters and persons employed as companions to the elderly or infirm.

## OVERTIME PAY



Along with setting the minimum hourly rate that non-exempt workers must be paid by a covered employer, the FLSA also requires those same workers to be paid overtime for all time worked over 40 hours in a workweek. A “workweek” is defined as “a

period of 168 hours during 7 consecutive 24-hour periods.” Overtime pay is computed at the rate of not less than one and one half times the worker’s regular hourly rate of pay.

## EXEMPTIONS FROM THE OVERTIME LAW

Just as some workers are exempt from the minimum wage law, the FLSA also exempts certain types of workers from the overtime provisions found in the law, including, but not limited to:

- Certain commissioned employees of retail or service establishments; 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;
- 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;
- Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations;
- Domestic service workers living in the employer's residence;
- Employees of motion picture theaters
- Farmworkers

## CHILD LABOR



The issue of child labor was one of the original catalysts for the passage of the Fair Labor Standards Act. Although child labor had long existed, it became a much more visible and potentially dangerous issue during the Great Depression. The child labor provisions found in the FLSA are extensive; however, some of the more important provisions include:

- Minors age 16 and 17 in the non-agricultural sector may not perform “hazardous” jobs but may perform any non-hazardous job for unlimited hours.
- Minors age 14 and 15 may not perform manufacturing, mining or hazardous jobs.
- Minors age 14 and 15 in the non-agricultural sector cannot work more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-



school day, or 40 hours in a non-school week. During the school year work cannot begin before 7:00 a.m. nor end after 7:00 p.m.

- Minors age 14 and 15 in the agricultural sector can perform any non-hazardous job outside of school hours.
- Minors age 12 and 13 in the agricultural sector may work non-hazardous jobs with written consent of a parent or on a parent's farm.
- Minors under 12 years old may perform jobs on farms owned or operated by parent(s), or with a parent's written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements

## RECORDKEEPING

Finally, the FLSA requires covered employers to keep certain records pertaining to employees and wages paid to those employees. The FLSA does not require the information to be kept in any specific fashion; however, it must be accessible should it be needed. Most of the required information would routinely be kept by an employer in the normal course of business, including:

- Personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- Hour and day when workweek begins;
- Total hours worked each workday and each workweek;
- Total daily or weekly straight-time earnings;
- Regular hourly pay rate for any week when overtime is worked;
- Total overtime pay for the workweek;

- Deductions from or additions to wages;
- Total wages paid each pay period; and
- Date of payment and pay period covered.

Because of the complex nature of the provisions of the Fair Labor Standards Act it is imperative that you consult with an experienced Florida employment law attorney if you feel your rights under the FLSA have been violated or you are an employer who wishes to remain in compliance with the FLSA.

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

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

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

FLSA, [Coverage under the FLSA](#)

Youth Rules, [Know the Rules](#)

<http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

## 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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