



Article 13 & Fair Labor Standards Act:

Another Approach to the Overtime Issue

What is the Fair Labor Standards Act?

The Fair Labor Standards Act (FLSA) is the federal law which mandates a minimum wage of \$6.55 per hour, rising to \$7.25 per hour on July 24, 2009. The FLSA requires the minimum wage already referred to and also the payment of time and a half for overtime, if an employee is not otherwise exempt. The FLSA also includes record keeping requirements for employers and protects minors from having to work excessive hours or having to work in dangerous occupations.

Which OCSEA members are covered?

All OCSEA members are covered by the FLSA. [However, state employees cannot file individual suits based on the FLSA in federal or state courts because the courts have determined that the state is immune from suit by individual plaintiffs.] You can still file a complaint with the United States Department of Labor (see "Who enforces the Act?" below). The primary group of employees exempt by law are certain executive, administrative or professional employees who meet certain criteria in terms of job duties and salary. There are also other categories of employees who are exempt from minimum wage, overtime, or both.

Who enforces the Act?

The FLSA is enforced by the United States Department of Labor, Wage-Hour Division. In Ohio there are area offices in Columbus, Cleveland, and Cincinnati. There are also field stations located in other smaller cities. If you believe that your wages have been paid improperly under the FLSA, you should contact one of the area offices in Cleveland (216)357-5400, Columbus (614)469-5678, or Cincinnati (513)684-2908.

What remedies are available?

There are several remedies available to you under the FLSA. First, the Wage and Hour Division may conduct an investigation of the employer and supervise the payment of any back wages it finds due. Second, the Secretary of Labor may bring a court action for back wages and an equal amount as liquidated damages. So in other words, the Secretary of Labor can sue for twice what is owed to you in back wages. (The courts are currently holding that an employee may not file private suits.) The Secretary of Labor may still file a court action to obtain an injunction to restrain any person or employer from violating the FLSA.

How can the FLSA be used in overtime situations?

For overtime purposes, the FLSA makes the employer choose a period of time called a workweek. A workweek is a period of 168 hours during seven consecutive 24 hour periods. It can begin on any day of the week and any hour of the day established by the employer. Under Article 13.01 of the collective bargaining agreement between OCSEA and the State of Ohio, the workweek commences with the shift that includes 12:01 a.m. Sunday of each calendar week and ends at the start of the shift that includes 12:00 midnight the following Saturday. If during that period of seven consecutive 24 hour periods you work more than 40 hours and you are not otherwise exempt, then management must pay you time and one half. The FLSA prevents employers from averaging the number of hours worked by any employee over a two week period and then figuring overtime after 80 hours. For example, if an employee works 60 hours the first week of a

payroll period and only 20 hours the second week, the employee has worked a total of 80 hours. Under the FLSA management will be required to pay for 20 hours at time and a half that first week. Management cannot average together the 60 hours from the first week and 20 hours from the second week and pay just straight time for the 80 hours worked during the two weeks. This is true for State employees even though they are paid on a bi-weekly basis.

The FLSA does not require prior approval by management before overtime is worked (however, if management tells you not to work overtime, you are insubordinate if you do work it and could be subject to discipline). Because of that requirement, which is different than the state contract, Stanley Tyirich (Arbitration #146) lost his overtime case in arbitration but was able to get compensation for overtime worked under

the FLSA by contacting the U.S. Department of Labor Wage and Hour Division area office.

Will OCSEA represent you in a FLSA action?

No. OCSEA only represents bargaining unit employees with respect to the grievance procedure unless OCSEA makes a formal decision to take such action it deems necessary outside the collective bargaining act in order to address a systemic issue.

Are you protected if you file a complaint?

If you file a complaint under the FLSA, management is prohibited from firing you or in any other manner discriminating against you for filing a complaint or for participating in legal proceedings under the FLSA.

Reference

Article 13.01
Arbitration # 146



Revised 5/18

OCSEA

AFSCME Local 11 - AFL-CIO