

# Your BUSINESS

Summer 2011 • New Jersey



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## Fair Labor Standards

The Fair Labor Standards Act, or FLSA, is a federal law that establishes minimum wage, overtime pay, recordkeeping and youth employment standards for employees in the private sector and in federal, state and local governments. The law applies to the vast majority of workers in the U.S. While the FLSA governs many important aspects of a worker's terms of employment, it is not all-encompassing. For example, it doesn't set requirements for vacation, holiday, severance or sick pay; meal or rest periods, holidays off or vacations; premium pay for weekend or holiday work; raises or fringe benefits; or the form of a discharge notice, acceptable reasons for discharge or final wages for terminated employees.

One of the most important elements of the FLSA is the designation of certain types of employees as "exempt." Exempt status under the FLSA indicates that a worker is exempted from overtime pay provisions or both the minimum wage and overtime pay provisions. FLSA section 13(a)(1) exempts workers employed as bona-fide executives, administrators, professionals and outside sales people, while other sections of the law also exempt certain technology employees. It's important to note that the job title, by itself, doesn't denote exempt status. To qualify for the executive, learned professional, administrative, technology, outside sales or employee exemption, a worker

must meet a series of qualifications that define the characteristics of their job. For example, to qualify for the Administrative Exemption, a worker must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week; his or her primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and his or her primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. The specific tests for different exemptions are analyzed by the U.S. Department of Labor website at: [www.dol.gov/whd/regs/compliance/fairpay/fs17a\\_overview.pdf](http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.pdf).

Obviously, diligent businesses strive to classify their workers properly for the purpose of determining the manner of pay, eligibility for overtime and related issues. However, even inadvertent violations of these laws can subject businesses to substantial fines and penalties, and to legal liability. It is exceedingly important that a business owner obtain the correct package of coverage to ensure that the business will be protected in the unfortunate event that a violation of this, or other employment laws is alleged.

**EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT**  
THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOURS DIVISION

**FEDERAL MINIMUM WAGE**  
**\$7.25 PER HOUR**  
BEGINNING JULY 24, 2009

**OVERTIME PAY** At least 1½ times your regular rate of pay for all hours worked in excess of 40 hours per week.

**CHILD LABOR** An employee must be at least 16 years old to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside of home in non-mining, non-hazardous jobs under the following conditions:  
• No more than 3 hours on a school day or 18 hours in any week.  
• 8 hours on a non-school day or week.  
Also, work may not begin before 7 a.m. and must end by 7 p.m. through Labor Day, when evening hours apply in agricultural employment.

**TIP CREDIT** Employers of "tipped employees" must not claim a tip credit against their minimum wage. The minimum wage, when combined with the employer's cash wage, must meet the minimum hourly wage, the employer's cash wage and the tip conditions must also be met.

**ENFORCEMENT** The Department of Labor may require a civil court action, for the employees if the employer's violations may result in civil or criminal penalties. Employers may be assessed civil penalties for repeated violation of the minimum wage provisions. In addition, a civil penalty of up to \$11,000 for each employee may be assessed for a child labor violation that causes the employer to be assessed such assessments may be assessed if the employer is found to be willful or repeated. The Department of Labor may also assess civil penalties for employers who file a complaint.

## Flooding concerns

Floods are one of the most common natural disasters. Winter run-off, heavy rains and water backup from overloaded drainage systems can cause thousands of dollars in damages to businesses. Unfortunately, too many business owners find out too late that their business insurance policy does not cover flooding. Year after year, flooding is not only more common, it is more devastating. With few exceptions, a business needs to get flood insurance from the National Flood Insurance Program.

The NFIP offers flood insurance at federally subsidized, premium rates, which is available through your independent insurance agent. Please stop by or give us a call to determine whether or not your business needs flood insurance. A 30-day waiting period exists between the time the coverage is purchased and the time it goes into effect, although that waiting period may be waived for lender-required flood insurance.

Businesses in high-risk flood areas are not the only ones who need flood insurance. In fact, approximately 25 percent of all flood insurance claims come from areas that are not considered high risk. Keep in mind, flooding can occur any place at any time. Waiting until the next storm warning to purchase flood insurance is dangerous, since coverage probably will not begin in time.

Most importantly, contact our agency to get the coverage you need to protect your business from the devastation flooding can cause.

## Key-person life insurance

Despite all the hours of hard work invested in creating and running a business, many fail to obtain adequate protection. Just as we buy life insurance policies to protect our families from financial hardship in the event of an accident or death, small businesses should be aware that business life insurance can provide similar protection for their companies.

Also referred to as key-person life insurance, these policies are crucial for businesses that depend heavily on the contributions of a few people. In a sole proprietorship, the company typically rises and falls with the actions of the owner. If he or she dies, the business is no more. The revenue stream dries up for the owner's family and employees, and creditors could claim both the business and the personal assets of the owner.

With business life insurance, however, the money paid out on the policy can fund a buy-sell agreement to keep the company functioning until it can be bought or appropriately dissolved. The

payout from a policy also can be used by a surviving employee to purchase the rights to the business and keep it going.

Similarly, partnerships run these same risks. When one partner passes away, life insurance can provide funds to the remaining partner or partners, so they can purchase the share of their former colleague. Even large corporations are not immune to these hardships. If a high-ranking executive, key sales manager or major stockholder dies, the company may face layoffs, lost business or a falling price on the market. Business life insurance can provide the funds and resources needed to recover from such a blow.

No matter the size, your business and all those connected to it will face some turmoil if a key loss occurs. No one wants all the effort and investment they put into their company to go to waste. With business life insurance, you can protect your investment, and the people that depend on it, in the same way your personal life insurance policy protects your family at home.





## Workers' compensation fraud growing problem

Fortunately, you don't have to lurk in dark alleys with a camcorder to keep your business from becoming a victim of workers' compensation fraud. Learn to identify fraud and take a proactive approach to fighting it.

### What is workers' comp fraud?

Fraud happens when employees knowingly lie to collect benefits. They may claim an injury was work-related when it wasn't, exaggerate an injury, or secretly continue working while collecting benefits. Workers' compensation fraud is commonly recognized and is the type that employers are likely to discover.

Many employers feel that the longer an employee stays off work and collects benefits, the more likely the claim is bogus. Collecting benefits for a work-related injury is not fraud. Under state law, injured employees don't have to get back on the job until the doctor releases them to work.

### Tips to help identify fraud

There is no fool-proof way to identify fraud without evidence, but there are red flags. Employers should call their carriers

immediately if they identify two or more of these flags:

- **Unhappy employee.** The employee feels he or she has a reason to lie about the claim. Perhaps he or she was denied vacation time, demoted or fired.
- **Employee is hard to contact.** The employee may be working another job while collecting benefits. This practice, called "double-dipping," is fraud.
- **No witnesses.** Make note of alleged accidents with no witnesses, especially if the employee's duties rarely call for him or her to work alone.

### "Fraud happens when employees knowingly lie to collect benefits."

- **Varying accounts of accident.** The injured worker may describe the accident differently to the employer and the doctor, or witnesses' accounts may differ from the injured worker's account.
- **Accidents on Fridays or Mondays.** Accidents that occur on Fridays or

Mondays should raise suspicion, especially if other red flags appear.

It's easier to prevent workers' compensation fraud than it is to prove it.

- Conduct background checks on applicants and verify references.
- Make the workplace safer to reduce the chance of accidents and the opportunity for someone to fake an injury.
- Tell job candidates if they get injured on the job, the company will work with their doctor to help them return to work as soon as medically reasonable.
- Explain that workers' compensation fraud hurts everyone, not just the insurance carrier. Let employees know that fraudulent claims can force employers to decrease benefits, lay off employees, or even go out of business.
- Make it clear that fraud can carry serious consequences, including termination and prosecution.
- Keep regular contact with employees who are off work due to an injury.

Call us with any questions or concerns you may have regarding workers' compensation fraud. We'll be glad to help.



## Windstorm reminder



June 1 through Nov. 30 is hurricane season. And, hurricanes and windstorms are a real threat to business owners along the eastern seaboard. Homeowners are not the only ones to suffer from these events; businesses suffer just as much.

When the property of a business is destroyed by a windstorm, or access to business property is denied by a civil authority, there follow two potential consequences. One: Business operations cannot resume, in whole or in part, until the property is restored. Two: Some or all of the operations can continue only by the acquisition of another location. Business interruption insurance is designed to help in both situations; “business income coverage” for lost income and the payment of continuing expenses (such as, rent and payroll) if operations cease, and “extra expense coverage” if operations can continue at a substitute location.

If you still are losing income after your property has been restored, business income coverage automatically extends 30 days after the property is restored on most policies. Generally, this extension can be increased up to 730 days. In addition, “utility services coverage” can be purchased to protect your income, for example, in the event your phone lines are disrupted or you lose electrical power. Even if your property suffered no damage, the standard business interruption policy automatically covers four weeks of business income loss when access to the business is prohibited by a civil authority.

Please call us, before hurricane season hits, to answer any questions or concerns you may have regarding business interruption insurance. We’re here to help.

## News from our agency

### Saving on business insurance

Business insurance is a necessity to protect your business from financial destruction. This can limit your liability in the event of a natural disaster or other misfortune. New businesses have different needs from established ones and your coverage should grow as your business grows. Various types of insurance are required by law, while other types are needed for your particular business.

A few of the common types of business insurance are:

- **Business owners**—This comprehensive insurance policy will provide coverage tailored to meet the individual business needs. Liability and property coverage are included to meet the basic insurance requirements.
- **General liability**—This protects your business against lawsuits from bodily injury claims, advertising claims and/or property damage. There are many types of liability insurance.
- **Property**—This will protect your building and/or business property in the event of a loss such as fire or windstorm.

Automobile insurance for an individual vehicle or a fleet; and workers’ compensation coverages also are available.

Finally, give us a call. We’re here to help. As a professional, independent agency, we have access to several different companies. You can contact us at (856) 935-0845 or by visiting our website at [www.hdyoung.com](http://www.hdyoung.com). You also can find us on Facebook.

