

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [CS/HB 541](#)

TITLE: Minimum Wage Requirements

SPONSOR(S): Chamberlin

COMPANION BILL: [CS/SB 676](#) (Martin)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Careers & Workforce](#)

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SUMMARY

Effect of the Bill:

The Proposed Committee Substitute (PCS) amends the Florida Minimum Wage Act (Act) to allow employees to opt out of receiving the state minimum wage for work-study, internship, preapprenticeship program, or other similar work-based learning opportunities.

Fiscal or Economic Impact:

The PCS does not appear to have a fiscal impact on state or local government. The bill allows certain employees to opt out of receiving minimum wage. The fiscal impact on such employees is indeterminate.

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ANALYSIS

EFFECT OF THE BILL:

The PCS amends the [Act](#) to provide specific [exemptions](#) from state [minimum wage requirements](#) for certain [employees](#). The PCS provides that [employers](#) are not required to pay the state minimum wage to employees in a structured work-study, internship, preapprenticeship, or other similar work-based learning opportunity, provided such employees choose to opt out of receiving the state minimum wage. However, such employees must be paid at or above the federal minimum wage. The PCS requires such opt out be voluntary and prohibits an employer from coercing an employee to opt out or conditioning an offer of employment on the employee opting out. Under the PCS, the written waiver voluntarily signed by the employee must state that the employee acknowledges his or her right to the state minimum wage pursuant to the State Constitution and that the employee is knowingly and voluntarily choosing to receive a lesser amount for his or her work-based learning opportunity. The PCS specifies that an employee's waiver to opt out of the state minimum wage is only valid for 12 months after the date his or her employment with the employer begins. Thereafter, the PCS requires the employee be paid at or above the state minimum wage regardless of his or her position or job title with the employer. (Section [1](#))

The effective date of the bill is July 1, 2025. (Section [2](#))

FISCAL OR ECONOMIC IMPACT:

PRIVATE SECTOR:

Indeterminate. The bill allows certain employees to opt out of receiving minimum wage.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Fair Labor Standards Act

STORAGE NAME: h0541b.CWS

DATE: 3/25/2025

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.¹ In 1938, the FLSA established a minimum wage of \$.25 an hour. The current federal minimum wage rate is \$7.25 an hour, which went into effect July 24, 2009. The FLSA applies to employment within any state in the U.S., the District of Columbia, or any territory or possession of the U.S.²

The FLSA covers most private and public sector **employees**. However, certain employers and employees are exempt from coverage, including individuals with disabilities, youth workers, tipped workers, and executive, administrative, and professional workers. The FLSA covers businesses if the business has annual sales of at least \$500,000.³ It also covers certain individual employees if such employee is engaged in interstate commerce.

The FLSA applies to all:⁴

- **Governments:** Federal, state, or local government agencies.
- **Hospitals:** Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.
- **Schools:** Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. It does not matter if the school or institution is public or private or operated for profit or not-for-profit.

The FLSA includes several **exemptions** from the federal minimum wage provisions, including:⁵

- Executive, administrative, and professional employees.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery.
- Farm workers employed by certain employers.
- Casual babysitters and persons employed as companions for the elderly or infirm.
- Border patrol agents.⁶
- **Tipped employees**, as long as their tips, combined with the employer's cash wage, equal at least the federal minimum wage (\$7.25). The minimum cash wage for tipped employees is \$2.13 per hour, with the employer able to claim a tip credit of up to \$5.12 per hour.⁷
- **Learners, apprentices, and messengers employed primarily in delivering letters and messages, under special certificates issued by the Department of Labor.**⁸

The FLSA provides for the employment of certain individuals at wage rates below the minimum wage including student-learners (vocational education students), as well as full-time students employed by retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Certificates issued by the Department of Labor's Wage and Hour Division are required for this type of employment.⁹

¹ 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.

² Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, <https://crsreports.congress.gov/product/pdf/R/R42713>, (last visited March 7, 2025). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.)

³ The size of an enterprise is measured by its “annual sales or business done.” Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least \$500,000. Owners of rental properties are covered if they collect at least \$500,000 annually in rent. 29 C.F.R. §§779.258-779.259.

⁴ U.S. Department of Labor, Fair Labor Standards Act Advisor, <https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp>, (last visited March 7, 2025).

⁵ 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)

⁶ See Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong. (2014).

⁷ 29 U.S.C. § 203(m)(2)(A).

⁸ 29 U.S.C. § 214.

⁹ U.S. Department of Labor, Subminimum Wage, <https://www.dol.gov/general/topic/wages/subminimumwage>

The FLSA exempts certain people who volunteer to perform services for a state or local government agency or who volunteer for humanitarian purposes for non-profit food banks. There is also a recognized exception for individuals who volunteer their time, freely and without anticipation of compensation, for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships for public sector and non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.¹⁰

The FLSA was amended in 2014, concerning border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least \$290 per week during the 2018 championship season from the federal minimum wage rate and overtime pay. These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.¹¹

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.¹² **Consequently, no state law may weaken the worker protections in the FLSA.** However, state laws that impose greater worker protections will supersede those in the FLSA.¹³

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage and two states have a minimum wage that is below the federal minimum wage.¹⁴ For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

Florida law does not indicate or allow for wage exceptions for learners, apprentices, or messengers. Thus, the FLSA provisions apply.

Florida's Minimum Wage Contained in Article X, Section 24 of the Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.¹⁵ Prior to this date, Florida did not have a state minimum wage so the FLSA applied for covered workers. Section 24 provides the amount of the minimum wage and the procedure for calculating increases in the minimum wage.¹⁶ The amendment also provides that “all working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services.”¹⁷

On November 3, 2020, Florida voters again approved a constitutional amendment related to the state's minimum wage, Amendment 2, to gradually increase the state's minimum wage to \$15 an hour by the year 2026.¹⁸ Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to \$10 per hour. Each year, thereafter, Florida's minimum wage will increase by \$1 until the minimum wage reaches **\$15 per hour on September 30, 2026**. Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had been done from 2004 to 2021.

¹⁰ U.S. Department of Labor, Wage and Hour Division, Fact Sheet #71: Internship Programs Under the Fair Labor Standards Act, <https://www.dol.gov/agencies/whd/fact-sheets/71-flsa-internships>

¹¹ [s. 448.110, F.S.](#), expressly references ss. 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, s. 214 has not been amended since 1989. (See Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941).

¹² 29 U.S.C. §218.

¹³ Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview, Updated March 8, 2023*, <https://crsreports.congress.gov/product/pdf/R/R42713>, (last visited March 7, 2025).

¹⁴ U.S. Department of Labor, Consolidated Minimum Wage Table, <https://www.dol.gov/agencies/whd/mw-consolidated> (last visited March 7, 2025).

¹⁵ Art. X, s. 24, Fla. Const.

¹⁶ Art. X, s. 24(c), Fla. Const.

¹⁷ Art. X, s. 24(a), Fla. Const.

¹⁸ U.S. Department of State, *Notice of Increase to State of Florida's Minimum Wage*, <https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf> (last visited March 7, 2025).

The Florida Constitution references the FLSA and specifically ties the meaning¹⁹ of “[employer](#),” “[employee](#),” and “wage,” to the meanings established under the FLSA and its implementing regulations.²⁰ It also indicates that case law, administrative interpretations, and other guiding standards developed under the federal FLSA must guide the construction of Florida’s Constitution related to Section 24 and any implementing statutes or regulations.²¹

The FLSA defines:²²

- “Employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.”
- “[Employee](#)” as “any individual employed by an employer.”

The FLSA requires “for-profit” employers to pay **employees** for their work. Interns and students, however, may not be “**employees**” under the FLSA—in which case the FLSA does not require compensation for their work. Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA.²³ This determination is made on a case-by-case basis.

This test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. Courts²⁴ have identified the following seven factors as part of the test:

- The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
- The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
- The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
- The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
- The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
- The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
- The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Courts have described the “primary beneficiary test” as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

¹⁹ *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004). (“The proposed amendment does not state that it is adopting the FLSA’s definition of the term “employee,” but provides that it is adopting the *meaning* of the term “employee,” which is a much broader concept.”)

²⁰ Art. X, s. 24(b), Fla. Const.

²¹ Art. X, s. 24(f), Fla. Const.

²² 29 U.S.C. §203.

²³ E.g., *Benjamin v. B & H Educ., Inc.*, --- F.3d ---, 2017 WL 6460087, at *4-5 (9th Cir. Dec. 19, 2017); *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536-37 (2d Cir. 2016); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1211-12 (11th Cir. 2015); see also *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152-53 (1947); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 529 (6th Cir. 2011).

²⁴ *Schumann v. Collier Anesthesia, PA*, 803 F.3d 1199 (11th Cir. 2015) (Adopting a modified version of the “primary beneficiary” test, which examines the “economic reality” of the relationship between the intern and employer to determine who benefits most.)

If analysis of these circumstances reveals that an intern or student is actually an **employee**, then he or she is entitled to both minimum wage and overtime pay under the FLSA. On the other hand, if the analysis confirms that the intern or student is not an employee, then he or she is not entitled to either minimum wage or overtime pay under the FLSA.

[Florida Minimum Wage Act](#)

The Act implements the minimum wage provisions in the Florida Constitution.²⁵ The Act designates the Department of Commerce (DC) as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.²⁶

The Act provides that, effective May 2, 2005, employers are required to pay employees a [minimum wage](#) at an hourly rate of \$6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FLSA and its implementing regulations are eligible to receive the state minimum wage pursuant to the Florida Constitution and this statute. The provisions of ss. 213 and 214 of the federal FLSA, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.²⁷

The Act requires DEO to calculate an adjusted state minimum wage rate and requires the Department of Revenue (DOR) and DEO to annually publish the amount of the adjusted state minimum wage and the effective date on their websites. The Act authorizes persons to file a complaint or inform any person of his or her potential rights pursuant to Section 24 regarding unpaid wages.²⁸ The Act also authorizes the Attorney General (AG) to bring a civil action to enforce these provisions. The AG may seek injunctive relief, and for willful violations, may seek to impose a fine of \$1,000 per violation, payable to the state.²⁹

As it relates to the federal minimum wage and the FLSA, the Act specifies that:³⁰

- **Only those individuals entitled to receive the federal minimum wage under the FLSA, and its implementing regulations, are eligible to receive the state minimum wage; and**
- **Provisions related to federal minimum wage exemptions in the FLSA are considered incorporated in the Act.**

RECENT LEGISLATION:

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	CS/CS/HB 433	Esposito	Trumbull	Became law on July 1, 2024 and implementation began on September 30, 2026.

²⁵ Ch. 2005-353, Laws of Fla., codified in [s. 448.110, F.S.](#)

²⁶ S. [448.110\(10\), F.S.](#) HB 5 (2023) renames the Department of Economic Opportunity as the Department of Commerce; SB 82 (2024), section 220, makes this conforming change in the Florida Minimum Wage Act.

²⁷ S. [448.110\(3\), F.S.](#)

²⁸ S. [448.110\(6\), F.S.](#)

²⁹ S. [448.110\(7\), F.S.](#)

³⁰ S. [448.110\(3\), F.S.](#)

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Careers & Workforce Subcommittee	12 Y, 4 N, As CS	3/25/2025	Kiner	Kiner

THE CHANGES ADOPTED BY THE COMMITTEE:

The PCS retained the main substance of the bill, but made the following revisions:

- Clarified the employee’s decision to opt-out must be voluntary and that an employer may not coerce an employee to opt-out or condition an offer of employment on the employee’s decision to opt-out.
- Clarified the opt-out provision applies to the state minimum wage only and that an employer must pay an employee at or above the federal minimum wage.
- Included a provision requiring parental consent for an employee younger than 18 years of age to opt-out of the state minimum wage.
- Included a provision limiting an employee’s opt-out to the first 12 months after the date his or her employment begins.
- Included a severability clause.

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.
