

# Uniforms, Dress Codes, and the FLSA

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Employers should be aware that many states have their own laws and regulations concerning uniform requirements—including what constitutes a uniform and what costs an employer must bear in connection with uniforms. It is important for employers to understand these laws for each state in which they have employees.

## **What Is the Definition of a Uniform Under the FLSA?**

Neither the FLSA nor its implementing regulations provide any definition of the term “uniform.”

According to the U.S. Department of Labor's (DOL) [Field Operations Handbook](#) for FLSA compliance, if an employer “merely prescribes a general type of ordinary basic street clothing to be worn while working” and permits variations in details of the clothes to be worn, the clothing items will not be considered uniforms.

Obviously, that is not a very precise definition. Indeed, it is not as much a definition of the word “uniform” as it is an explanation of what is *not* a uniform. As is often the case with legal standards, the issue of whether an item of clothing constitutes a uniform depends on a variety of factors.

## **What Types of Clothing Are Typically Considered Uniforms Under the FLSA?**

There are three basic categories of clothing items that, in most cases, will be considered uniforms under the FLSA:

- Clothing items that an employer requires an employee to wear that bear the employer's logo—e.g., polo shirts with the employer's business name embroidered on the front or hats with the employer's logo
- Clothing items that the employer requires an employee to wear that may be likened to costume pieces—e.g., bustiers, fishnet stockings or "sailor" shirts
- Clothing items that the employer requires an employee to wear that are specialized or distinctive—i.e., a red blazer or evening gowns of a specific style and color

These types of clothing are considered unique to the job an employee is performing for the employer and typically cannot or would not be worn in the employee's daily wardrobe.

## **What Types of Clothing Typically Are Not Considered Uniforms Under the FLSA?**

There are several types of clothing items that usually will not be considered uniform items under the FLSA, including

- ordinary shirts, pants, and skirts of unspecified color and style;
- ordinary shirts, pants, and skirts of a specific color or style, or both that is fairly standard—e.g., white button-down shirts, khaki pants, black pants, black skirts, or t-shirts without logos;
- jeans; and
- slip-resistant shoes.

These types of clothing typically qualify as ordinary streetwear and can be worn outside of the specific job. In addition, they can be used in multiple different employment settings—not just the particular employment setting at issue.

## **Which Factors Will Determine Whether Clothing Is a Uniform?**

There are several factors that the DOL and courts may consider when evaluating whether a particular clothing item constitutes a uniform under the FLSA, including

- whether there are specifications, requirements, and limitations on the employee's choice with respect to the clothing items to be worn (the more specialized the clothing item or the more limitations the

employer places on the style, color, or other specifications, the more likely the item will be considered a uniform item);

- whether the items can be purchased in ordinary clothing and retail shops and online locations, as opposed to “uniform” shops or other retailers specified by the employer; and
- whether the items may be worn and used for other types of jobs or other purposes.

In general, the more choice an employer provides to employees in selecting the clothing they wear to work, the less likely the clothing will be considered a uniform.

### **If An Employer Requires Uniforms, What Does It Need to Do to Comply With the FLSA?**

The primary issue for employers with regard to uniforms and the FLSA is ensuring that employees’ wages do not drop below the federal minimum wage. The potential costs that may be considered in this analysis include not only the costs of purchasing and replacing uniforms, but also the costs associated with specialized cleaning, such as “ironing, dry cleaning, commercial laundering, or other special treatment.”

Employers that pay their employees at the federal minimum wage rate (currently \$7.25) or that utilize the tip credit to make up some portion of the minimum wage (currently a minimum of \$2.13 per hour plus tips), are most at risk of incurring liability if they do not properly understand their obligations with respect to uniforms. For minimum-wage employees, any cost associated with the purchase of a uniform or the specialized cleaning of a uniform will drop the employee’s pay below the minimum wage for the week in which the cost was incurred. Employers that pay their employees above the minimum wage have a lower risk of liability—and the higher the wage, the lower the risk. For example, an employer that pays \$7.50 per hour has a \$.25 per hour cushion to offset uniform costs (\$10.00 in a 40-hour workweek). However, an employer that pays \$15.00 per hour has a cushion of \$7.75 per hour (\$310.00 in a 40-hour workweek), and is not likely to be at risk of liability with respect to uniform costs in most workweeks.

Employers that require uniforms may take one or more of the following steps to ensure that their employees’ pay does not drop below the minimum wage:

- Provide the uniforms to employees free of charge.

This is a common practice for employers that require employees to wear attire with an employer logo.

- Pay employees an amount designed to compensate them for the costs of the uniforms.

This should not be in the form of a flat amount or one-time amount that does not take into consideration the actual costs of the uniforms or the costs of replacement. Rather, the employer should conduct an analysis to determine the actual costs of the uniforms and make sure that the amount provided is sufficient. An

employer that utilizes this method may want to set up a program to have employees purchase the uniforms from a specific retailer—perhaps utilizing a volume discount—to enable the employer to control these costs.

- Provide laundering of the uniform items free of charge.

Under this system, employees leave the uniform items behind at the end of a shift or workweek and receive clean uniform items upon their return to work. This system allows employers to control the costs of the laundering and ensures that they will not be at risk of having employees' claim that they are bearing the costs of laundering their uniforms.

- Provide a set amount of \$3.35 per week or \$.67 per day as additional compensation to cover the costs of specialized laundering.

This is the amount set forth in the DOL Field Operations Handbook that the DOL has advised it will accept as satisfying an employer's requirement to compensate employees for special maintenance of uniforms, where the cost otherwise would cause their pay to drop below the minimum wage.

### **What if Employees Want More Uniform Items Than They Need—Are Employers Required to Pay for That?**

No – as long as an employer has provided employees with a reasonable number of uniforms relative to the number of shifts they work during the typical workweek and the type of work at issue.

Employees who work only two or three shifts per week may need only one or two sets of uniforms, depending on the nature of the work—and how dirty they may get during the shift. However, one or two uniforms may not be sufficient for employees who often work five days per week and/or who work in positions where the uniforms get quite dirty.

Where the employer has provided employees with a sufficient number of uniform items, and the employees wish to have additional items—based on their own desire or convenience—the employer is not responsible for paying for those additional items.

### **What About Replacement Uniforms—Do Employers Have to Pay for Those Even When It's the Employee's Fault the Uniforms Need to Be Replaced?**

Uniforms that are worn regularly are going to suffer from ordinary wear and tear that may make them unwearable or inappropriate for the work setting after a period of time—and the uniforms will need to be replaced. However, there are occasions when uniforms need to be replaced due to an employee's own negligence or conduct—e.g., the employee has lost parts of the uniform, has worn the uniform item in an

inappropriate setting and it was damaged, or has subjected the uniform to an extraordinary amount of wear and tear during a short period of time.

In most cases, the employer should pay for the replacement uniform items if the costs of such replacement items would otherwise cause the employee's pay to drop below the minimum wage. This is true even when it is the employee's fault that the uniform needs to be replaced.

An employer that is concerned about an employee who appears to need replacement items on a frequent basis should consider addressing the issue through discipline and, possibly, discharge.

### **Is Everything With a Logo Necessarily a Uniform?**

No. Only clothing items that the employer *requires* employees to wear qualify as uniforms. So, if an employer has logo items that it does not require its employees to wear—logo jackets, hats, bags, etc.—and it is the employees' choice to purchase those additional items, then the employer is not responsible for paying for them or factoring those purchases into the minimum wage analysis.

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