

Unpaid Work Activities, FLSA, and Deeming Hours of Participation

Unpaid work activities covered by the Fair Labor Standards Act (FLSA):

The TANF regulations require states to comply with the FLSA when assigning participants to unpaid work activities. Unpaid work activities include **Unpaid Work Experience (UWE)** and **Community Service Programs (CSP)**.

Participants engaged in UWE and CSP cannot be required or PERMITTED to work in these activities (or a combination of these activities) for more hours than are allowed under the FLSA.

To determine the maximum number of hours that a participant can work in these activities during an entire month divide the participant's MFIP grant (both the cash portion and food portion*) by the higher of the state (\$6.15 per hour) or federal minimum wage (\$7.25 per hour). Then, round down to the nearest whole hour.

***Note:** Beginning May 2009 this calculation includes the non-MFIP Food Support for a child/parent receiving SSI. That means more FLSA hours in unpaid activities are allowed.

For example:

A participant's MFIP grant is \$365 (\$100 cash portion and \$265 food portion)

\$365 (MFIP grant) divided by \$7.25 (**federal minimum wage**) = 48.96 hours

Round down to the nearest whole hour: 48

In this example, the maximum number of hours this participant can work in UWE or CSP (or a combination of these two activities) during the entire month is **48**.

Deeming:

A participant who is engaged in an UWE or CSP for the maximum number of hours allowed under the FLSA is "deemed" to have met the federal TANF Work Participation Rate core hour requirement up to 87 hours.

Using the example above, if the participant is engaged in an UWE, CSP, or a combination of the two for 48 hours (the maximum number of hours allowed under the FLSA), the participant will have met the 87 core hour requirement. In other words, the state is allowed to "deem" the additional 39 hours needed to meet the 87 core hour requirement (48 actual hours plus 39 deemed hours = 87 core hours required).

But, if a participant fails to participate the maximum number of hours allowed or exceeds the 87 hours under the FLSA, no additional hours are deemed. Again, using the above example, if the Participant's unpaid work activity hours are not exactly equal to 48 hours, no additional hours would be deemed. The participant will not meet the 87 core hour requirement (unless the participant was engaged in additional core activities which, when added to the actual number of hours the participant was engaged in unpaid work activities, total 87 hours or more).

Tracking unpaid work hours (WF1) and the Federal WPR Report:

Record the actual number of hours the participant is engaged in an unpaid work activity each week. When the total monthly hours **equals** the maximum number allowed under the FLSA, DHS will report the additional “deemed” hours (behind the scene). **DO NOT RECORD THE “DEEMED” HOURS in WF1.**

FLSA prohibits exceeding maximum hours in unpaid work activity:

It is a violation of the FLSA to require or PERMIT a participant to be engaged in an unpaid work activity for more hours than is allowed under the FLSA.

Additional hours of other core and non-core activities is allowed:

A participant may be engaged in other core and non-core activities without violating the FLSA. The FLSA governs the number of hours we can require or permit a participant to work in an unpaid work activity.

Additional hours of job search/job readiness assistance, education and training, and paid employment may be added to the participant’s employment plan without violating the FLSA.

AmeriCorps/VISTA work exempt from FLSA and deeming provisions:

AmeriCorps and VISTA are considered community service programs. However, the hours a participant may be engaged in AmeriCorps or VISTA are not subject to the FLSA or the “deeming” provision.

Hours of participation in AmeriCorps and VISTA are recorded in MAXIS (JOBS panel). ES should enroll these participants in paid work experience in WF1. DHS does not count these hours from WF1.

TANF Work Participation Rate (WPR) Numerator:

A participant who is a single parent with a child under the age of six must be engaged in at least 87 hours of core activity during the month to be included in the federal TANF WPR numerator.

A participant who is not a single parent with a child under the age of six must be engaged in at least 130 hours in countable activities (core and non-core) of which 87 of those hours must be in core activities to be included in the federal TANF WPR numerator.

The provision that allows states to “deem” additional hours when a participant is engaged in an unpaid work activity the maximum number of hours allowed under the FLSA applies only to the core 87 hour requirement. It does not apply towards the additional 43 hours needed to meet the 130 hour requirement.

Two-Parent Cases:

The maximum number of hours allowed under the FLSA is case based (not person based). Use the family’s MFIP grant (both cash and food portions) to determine the maximum number of hours the family can participate in unpaid work activities. If a two-parent family has both parents engaged in an unpaid work activity, the total of their unpaid work hours cannot exceed the maximum allowed under the FLSA.