

FAIR LABOR STANDARDS ACT (FLSA) AND DEEMING HOURS OF PARTICIPATION

Participants engaged in Unpaid work activities covered by FLSA

The new TANF regulations developed as part of the Deficit Reduction Act require states to comply with the FLSA when assigning participants to unpaid work activities. Unpaid work activities include **Unpaid Work Experience** and **Community Service Programs**.

Participants engaged in unpaid work experience and community service programs 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 federal minimum wage (\$7.25 per hour). Then, round down to the nearest whole hour.

For example:

**A participant's MFIP grant is \$350 (\$100 cash portion and \$250 food portion)
\$350 (MFIP grant) divided by \$7.25 (federal minimum wage) = 48.2 hours
Round down to the nearest whole hour: 48**

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

Deeming

A participant who is engaged in an unpaid work activity for the maximum number of hours allowed under the FLSA is "deemed" to have met the federal TANF Work Participation Rate core hour requirement (87 hours).

Using the example above, if the participant is engaged in an unpaid work activity (i.e. unpaid work experience, community service programs 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 hour requirement).

But, if a participant fails to participate in the maximum number of hours allowed under the FLSA, no additional hours are deemed. Again, using the above example, if the participant was engaged in an unpaid work activity for 47 (or fewer) 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 TANF Work Participation Rate 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.**

Exceeding the maximum number of hours in an unpaid work activity under the FLSA is prohibited

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 and VISTA work are 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), not 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. A two-parent family with both parents engaged in an unpaid work activity, the total of their unpaid work hours cannot exceed the maximum allowed under the FLSA.