

Is a selectboard member who performs roadwork for a municipality covered by the Fair Labor Standards Act (FLSA)?

No. An individual who holds public office, and is not subject to any civil service law, will not be covered by the Fair Labor Standards Act, regardless of the activity he or she performs.

The FLSA is a federal law that establishes standards for hours worked, overtime pay or compensatory time off, minimum wage, child labor, and other areas of employment practice. The FLSA does not cover all local employees. Employees who are excluded from the Act's minimum wage, overtime and recordkeeping provisions include those individuals who are "not subject to the civil service laws of the state, political subdivision, or agency which employs him; and who holds a public elective office of that state political subdivision or agency." 29 U.S.C. § 203(e)(2)(C).

The Vermont Fair Employment Practices Act (VFPEA) governs wage and hour standards, child labor, and other issues relating to the employer/employee relationship in Vermont. Generally, where state and federal law differ, the one more favorable to the employee will control. Like its federal counterpart, VFPEA excludes "employees of a political subdivision of this state" from overtime pay requirements. 21 V.S.A. § 384(b)(6).

In a 1986 Wage Hour Opinion Letter, the Department of Labor (DOL) addressed the applicability of the FLSA to elected officials who work for a municipality beyond their elected capacity. The DOL found that the officials were considered noncovered employees. Accordingly, even when performing roadwork, elected officials are not considered "employees" for purposes of the FLSA and therefore are not regulated by its minimum wage, overtime and recordkeeping provisions.

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