

# Hiring work-release prisoners? Some aren't covered by FLSA's pay, overtime rules

Some employers—eager to add workers without stretching their labor budgets—tap into work-release programs that have jail and prison inmates do work for private companies and nonprofit organizations.

If you're considering hiring inmates through a work-release program, carefully weigh whether you will have to pay them as regular employees under the Fair Labor Standards Act (FLSA), or whether you may be able to pay them less.

According to a recent 5th Circuit Court of Appeals decision, prisoners specifically sentenced to hard labor may not be covered by the FLSA. Their employers may pay them less than minimum wage, and they're not eligible for overtime pay.

**Recent case:** John Williams was convicted of being a habitual criminal and sentenced to hard labor. He was placed on supervised release and had to perform jobs for several employers, plus do maintenance work. He often worked many more hours per week than 40, but was not paid overtime or minimum wage.

Williams sued, alleging he should have been covered by the FLSA.

But the 5th Circuit Court of Appeals said, unlike ordinary prisoners on work release, someone sentenced to hard labor isn't an "employee" for FLSA purposes. (*Williams v. Henagan, et al.*, No. 07-30997, 5th Cir., 2010)

**Final note:** Before considering hiring work-release prisoners, consult your attorney. Be ready to take certain safeguard measures, including providing adequate supervision. You wouldn't want, for example, to send a violent felon into customers' homes.