

6.3

Enumerated and Implied Powers

Standard 6.3: Enumerated and Implied Powers

Distinguish among the enumerated and implied powers in the United States and the Massachusetts Constitution. (Massachusetts Curriculum Framework for History and Social Studies) **[8.T6.3]**

FOCUS QUESTION: What is the Difference Between Enumerated and Implied Powers?

This standard looks at the differences between **enumerated** and **implied** powers in the United States and Massachusetts Constitutions.

- **Enumerated powers** are those expressly granted to Congress by the Constitution.
- **Implied powers** enable the federal government to carry out tasks outlined by the enumerated powers.

Modules for this Standard Include:

1. [INVESTIGATE: The Enumerated and Implied Powers of the U.S. Constitution](#)
2. [UNCOVER: Federal Minimum Wage Laws, Young Workers and the Implied Powers of Congress](#)
 - [MEDIA LITERACY CONNECTIONS: Military Recruitment and the Media](#)
3. [ENGAGE: Should the Nation Adopt a Living Wage Rather Than a Minimum Wage?](#)

1. INVESTIGATE: The Enumerated and Implied Powers of the U.S. Constitution

The **enumerated powers** are listed in [Article 1 Section 8](#) of the U.S. Constitution. Among the 18 direct powers given to Congress are the power to levy and collect taxes, borrow money, regulate commerce, coin money declare war, and support an army and navy (for a full list, see [Key Constitutional Grants to Powers to Congress](#)).

The 18th power gives the federal government the ability to create and enact laws that are “**necessary and proper**” for its use of the other 17 powers. The Necessary and Proper clause (sometimes called the “[Elastic Clause](#)”) gives Congress **implied powers**; that is powers not named in the Constitution, but necessary for governing the country. Historically, the way Congress has used its implied powers has led to important developments in law and society.

[Garrett Epps \(2011, para. 13.\)](#) a contributing writer at The Atlantic, uses the example of U.S. Armed Forces to summarize how enumerated and implied powers of the government function. Congress has the explicit power "to raise and support" armies and it has an implied power to designate an American flag for those forces to use. If

it did not do so, soldiers would have 50 different flags for 50 different states, an impossible situation. In this case, the expressed powers of the federal government include the implied powers needed to carry them out.

You can find more information about the necessary and proper clause in [Topic 5.1 of this book](#).

Suggested Learning Activity

- **Role-Play**
 - Explore the examples of how Congress has exercised its use of implied powers in the article [The Implied Powers of Congress](#).
 - In small groups, propose a law that is necessary and proper for the federal government to enact and enforce.
 - As a class, discuss and debate the proposed laws and vote on which ones should be approved as an official government power.

Online Resources for Enumerated and Implied Powers

- [Justifying the Implied Powers of the Federal Government](#)
- Video: [Implied Powers of the President of the U.S.](#)
- Wiki Page: [John Marshall and Marbury v. Madison](#)
- [Enumerated Powers of the State](#), University of Nevada Las Vegas.

2. UNCOVER: Federal Minimum Wage Laws, Young Workers and the Implied Powers of Congress

Minimum wage laws are an example of both Congress and state governments using their implied powers to enact change in society. “Minimum wage laws establish a base level of pay that employers are required to pay certain covered employees” ([Legal Information Institute](#), Cornell University).

In 2019, the federal minimum wage was set at \$7.25 per hour. That same year, 29 states and the District of Columbia had higher wage rates; seven states had moved to \$15 an hour. The minimum wage rate in Massachusetts was raised to \$12 per hour, effective January 1, 2019.

For much of United States history, however, there was no such thing as a minimum wage or a minimum wage law.

EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

FEDERAL MINIMUM WAGE

\$7.25 PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

OVERTIME PAY

At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR

An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain hour restrictions. Different rules apply in agricultural employment.

TIP CREDIT

Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employer's tip combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

NURSING MOTHERS

The FLSA requires employers to provide reasonable break time for a nursing mother employee who is subject to the FLSA's overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child's birth each time such employee has a need to express breast milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

ENFORCEMENT

The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Negligent civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some states have provided greater employee protections; employers must comply with both.
- Some employees incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA minimum wage and overtime pay protections and correctly classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.



[Employee Rights Under the Fair Labor Standards Act](#), United States Department of Labor, Public Domain

Massachusetts passed the nation's first minimum wage law in 1912, followed by Oregon in 1914. But a 1923 Supreme Court decision struck down the District of Columbia's minimum wage law as unconstitutional under the Fifth Amendment. Over time, public attitudes changed and so did the opinion of the Supreme Court when they declared a state minimum wage law constitutional in 1937 ([West Coast Hotel v. Parrish](#)).

Following that decision, President Franklin Roosevelt proposed, and Congress passed, the [Fair Labor Standards Act of 1938](#), setting the minimum wage at \$0.25 an hour (\$1.00 in 1938 is worth \$17.45 in 2019 dollars).

Rules and Rights for Young Workers

Teens and pre-teens are often unaware of their rights as young workers. The Fair Labor Standards Act (1938) also set the maximum work week at 44 hours, banned child labor and established rules about the minimum age for **young workers** (also known as underage workers).

Presently, 14 years-old is the minimum age for employment outside of agricultural settings. Youngsters under 16 years-old also have limits on the number of hours they can work each week. The U.S. Department of Labor has ruled that youth at any age can be employed to "deliver newspapers; perform in radio, television, movie, or theatrical productions; work in businesses owned by their parents . . . perform babysitting, or perform minor chores around a private home" ([Fair Labor Standards Act Advisor](#)).

Some states offer greater protections for young workers than others and in those places, the greater protections offered by the state apply to all youngsters.

Child Farmworkers

The plight of child farmworkers in the United States is a serious "hidden problem" ([In Our Backyard: The Hidden Problem of Child Farmworkers in America](#)). Children working in agriculture are not covered by the Fair Labor Standards Act. Children as young as 12 can be hired to perform farm labor ([Center for Public Integrity](#), 2020). It has been estimated that there are some 500,000 child farmworkers in the United States, some as young as 8 years-old and some working more than 10 hours a day ([Child Labor in the United States](#), American Federation of Teachers). The number is contested and some groups believe there could be more than one million children working on farms, many of whom are immigrants whose parents are undocumented.

Media Literacy Connections: Military Recruitment and the Media

Getting soldiers to serve in the nation's military offers an example of the complex dynamics surrounding the government's enumerated and implied powers. The Constitution gives the federal government the **enumerated power to raise armies and a navy**. Article I states Congress has the power "to provide for the common Defense and general Welfare of the United States."

But, establishing a **draft** (mandatory enrollment in the armed forces) is an **implied power** that was used at different times in U.S. history from the Civil War to 1973. The U.S. military has been an all-volunteer force since that time with now more than 1.3 million active troops in six armed services: Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force.



[Seal of the United States Space Force](#) | Public Domain

There are multiple debates surrounding what Congress should do with its implied powers regarding military service. Should the demographic composition of the military more closely resemble society as a whole? Should military service be mandatory for all young people, [as it is in many countries around the world](#)? Is excluding women from the draft unconstitutional? Should Congress use its implied powers to institute mandatory military/national service instead of an all-volunteer armed forces?

In this activity, you will investigate how the military uses the media to recruit individuals into the armed services as a backdrop to whether the U.S. should continue to have all-volunteer forces.

- **[Activity: Using the Media for Military Recruitment](#)**

Suggested Learning Activities

Debate (in-class or on [Flipgrid](#))

- Should the minimum wage be raised to \$15 an hour nationwide?
- Explore the arguments for and against this change:
 - [Should the Minimum Wage Be Increased? Background on the Issue](#)
 - [Seattle's Minimum Wage is now \\$15 an hour: is that a good idea?](#) by economist Gary Burtless
- If there was a national minimum wage implemented, how would that affect your hometown?
 - What is the minimum wage now and how could it differ?
- Should the minimum wage be raised?
 - Create a pros and cons list of a high minimum wage, how would this affect small or mid-sized businesses?
 - Who would face the most consequences and benefits of this increase?

Express Your Ideas about the Minimum Wage

- Explore the [#raisethewage](#) hashtag and [@MinimumWageInfo](#) handle on Twitter.
- Design a visual social media post representing your thoughts about minimum wage laws.
- Bonus points: Tweet your design on Twitter using the previously mentioned hashtag or handle.

Design a Social Media Campaign for the Protection of Child Farmworkers

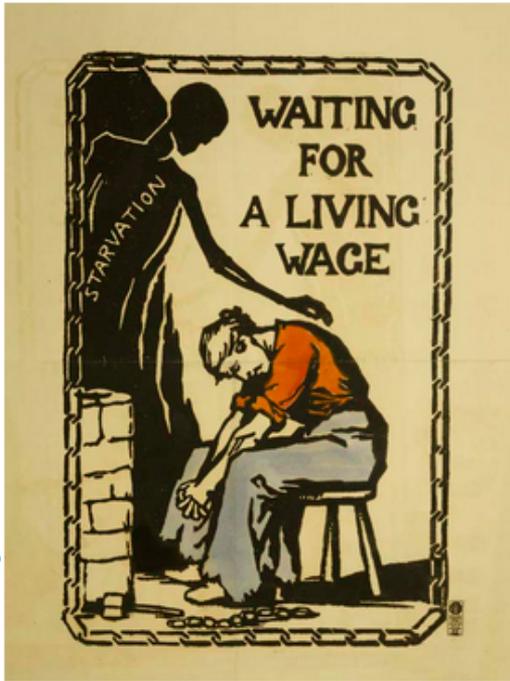
- Research the issues facing young workers in your state, on farms and in other areas.
- Create a social media campaign designed to convince members of state government to use their implied powers to enact change
- Create a public service announcement that focuses on the rights and protections of child farmworkers and other young workers.

Additional Resources:

[The Children's Act for Responsible Employment \(CARE\) Act](#)

3. Engage: Should the Nation Adopt a Living Wage Rather Than a Minimum Wage?

A **Living Wage** is the minimum income needed for an individual or a family to meet their basic needs for food, shelter, clothing, health care, and other needs ([What is a Living Wage?](#) from Global Living Wage Coalition). A living wage is based on the reality that most people cannot live adequately earning a minimum wage.



[Waiting for a Living Wage Poster 1913](#) by Catherine Courtauld, Public Domain

A [Living Wage Calculator](#) from Massachusetts Institute of Technology demonstrates the gap that exists between minimum wage and a living wage. In 2019, a single adult with one child earning \$11 an hour minimum wage actually needs to earn \$29.66 an hour to support their family.

Suggested Learning Activities

- **Play & Discuss**

- Play the simulation game [Spent](#) and try to live on a monthly budget with limited financial resources.
 - What did you have to give up to make it through the month?
 - What do you think should be the living wage in your community?

- **Research and Report**

- Find out how much money people earn in different jobs and occupations at the Occupational Outlook Handbook from the U.S. Government’s [Bureau of Labor Statistics](#).
 - Which jobs provide a salary at or above living wage? Which jobs do not? Why do you think this gap exists?

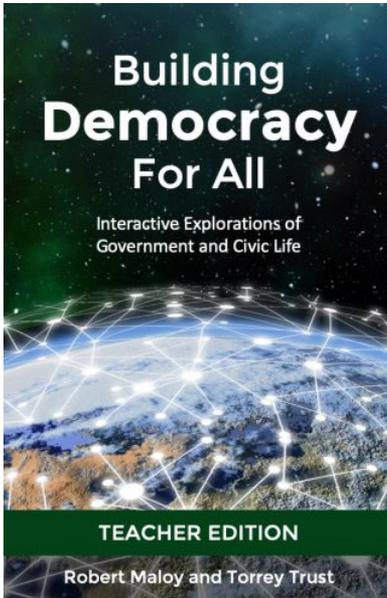
Online Resources for Minimum and Living Wage Laws

- [Minimum Wage, Living Wage and Worker Productivity](#).
- [Basic Needs Budget Calculator](#) shows how much it takes for families to afford minimum daily necessities, from National Center for Children in Poverty.
- [The Minimum Wage Just Went Up—But the Fight for a Living Wage is More Urgent Than Ever](#), Valley Advocate, February 24, 2016

Standard 6.3 Conclusion

The United States and Massachusetts constitutions have both enumerated (directly stated) and implied (assumed to exist) powers. **INVESTIGATE** outlined what those enumerated and implied powers are in the federal constitution. **UNCOVER** looked at the history of

minimum wage laws as an example of the implied powers of the federal government. **ENGAGE** asked whether our country should adopt a living wage rather than a minimum wage as people's living standard.



Maloy, R. W. & Trust, T. (2020). *Building Democracy for All*. Equity Press. <https://equitypress.org/democracy>