

Fair Labor Standards Act

ND Labor Laws²⁰²²

FLSA Overview

- Establish limitations for youth labor
- Requires employers to pay a minimum wage
- Establishes overtime payment rules for covered nonexempt employees
- Sets out requirements for recordkeeping and employee notifications
- Administered by US Dept. of Labor, Wage & Hour Division

BASIC WAGE STANDARDS

- Non-exempt workers are entitled to minimum wage of \$7.25 per hour (since 2009)
- Non-exempt workers must be paid overtime at 1.5 times their regular hourly rate for hours worked over 40 in a workweek
- The employer is responsible for proving exemption from Overtime Requirements

EXEMPT EMPLOYEES

- Paid on a salary basis
- Receive a minimum salary of \$684/week
- AND
- Meet primary duties test
- Exempt employees are not subject to overtime pay or the minimum wage requirement

SALARY BASIS

- Predetermined amount paid each pay period
- Must be not less than \$684 per week
- To qualify for exemption:
- Must meet the salary basis test
- AND
- Job duties must meet Executive, Administrative, Professional, or Computer Professional definition

PRIMARY DUTIES TESTS FOR EXEMPTIONS

- Executive
- Administrative
- Professional
- Computer employees

EXECUTIVE EXEMPTION

- Primary duty is managing the organization or a recognized department or subdivision of organization
- Customarily and regularly directs two or more full time employees
- Authority to hire or fire or make recommendation that carry weight on significant employment decisions

EXECUTIVE EXEMPTION EXAMPLES

- Operational Directors
- CEO's
- Mid-level managers
- Others?

ADMINISTRATIVE EXEMPTION

- Performs office or non-manual work directly related to the management or general business operations of the employer
- Exercises discretion and independent judgment with respect to matters of significance

ADMINISTRATIVE EXEMPTION

DISCRETION AND INDEPENDENT JUDGEMENT

- Evaluating, acting and making a decision
- Authority to commit the district in matters that have significant financial impact/ Level of consequence of work performed
- Authority to deviate from procedures without prior approval
- Independent choice free from immediate supervision

ADMINISTRATOR IN AN EDUCATIONAL ESTABLISHMENT

- Work in a bona fide administrative capacity
- Operations directly in the field of education
- Exercise discretion and independent judgment with respect to matters of significance
- Related to academic instruction in an educational establishment

EDUCATIONAL ADMINISTRATORS

- Superintendent
- Principal
- Assistant Principal
- Dean of Students
- Curriculum Coordinators
- Educational Program Coordinators

PROFESSIONAL EXEMPTION

- Primary duty must be performance of work requiring knowledge of an advanced type in a field of science or learning
- Customarily acquired by a prolonged course of specialized intellectual instruction (learned professional)
- Work is predominantly intellectual in nature requiring consistent exercise of discretion and judgement
- Invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor (creative professional)

PROFESSIONAL EXAMPLES

- Teacher
- Registered Nurse
- Engineer
- Accountant

COMPUTER EMPLOYEES

- Primary duty must consist of one of the following:
 - Application of system analysis techniques including consulting with users to determine hardware, software, or system functional specifications
 - Design, development, documentation, analysis, creation, testing, modification, of computer systems or programs related to user or system design specifications or
 - Design, documentation, testing, creation or modification of computer programs related to machine operating systems
 - A combination of the above duties

COMPUTER EMPLOYEES

- Salary basis – \$684 per week, can be hourly but at least \$27.63 per hour
- Does not include:
 - Employees who repair hardware and peripherals
 - Employees who install software, troubleshoot problems, or train others to use computers
 - Employees who use computers to do their work

COMPUTER EMPLOYEE EXEMPTION EXAMPLES:

- Systems analyst
- Software engineer
- Computer programmer
- Network analyst
- Developer

EXEMPT EMPLOYEES

- Exempt from:
 - Overtime pay requirements
 - Timekeeping requirements
 - Minimum wage requirements

Exempt employees: paid to get the job done

PERMISSIBLE FULL-DAY DEDUCTIONS

- One or more full days if for personal reasons other than sickness or disability
- One or more full days for sickness or disability if in accordance with a bona fide leave plan
- Unpaid disciplinary suspensions
- First or last week of employment
- Unpaid Family and Medical Leave (FMLA)
- Offset pay for Jury duty, witness fees, military pay

NONEXEMPT EMPLOYEES

- All other employees where none of the permissible exemptions apply
- Nonexempt Employees are:
 - Subject to all requirements of the law
 - Must be paid at least minimum wage - \$7.25
 - Must be paid overtime for hours worked over 40 hours worked in a work week
- Nonexempt employees: paid for the time they work

COMPENSABLE TIME

- When the employee is suffered or permitted to work
 - What if they work extra hours without permission?
- Employee cannot waive the right to receive overtime or work “off the clock”.
- What about ‘volunteering’?
- DOL Fact Sheet #22 [Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act \(FLSA\) | U.S. Department of Labor \(dol.gov\)](#)

REQUIRED RECORDS

- Records for nonexempt employees:
 - Hours worked each day and each workweek
 - Hour and day when workweek begins
 - Total straight time earnings
 - Comp time earned, used, and paid out
 - Total regular pay and total overtime pay weekly
 - Deductions from wages
 - Total Wages paid for the pay period
 - Date paid and pay period covered

COMMON RECORDKEEPING PROBLEMS

- Lack of proper time records
- Records don't reflect actual time worked
- Records not reviewed by supervisor
- Multiple weeks on one time sheet (can't combine or average weeks to compute overtime)
- Inaccurate comp time records

BASICS OF OVERTIME

- Workweek
 - Seven consecutive 24 hour periods (168 hours) determined by employer
 - Each workweek stands alone (no averaging)
 - Work schedule may be adjusted within the defined workweek to minimize or eliminate overtime liability

BASICS OF OVERTIME

- Overtime
 - Any time worked over 40 hours in a workweek must be paid at 1.5 times the regular rate of pay
 - Hours Worked - do not include holidays, sick leave, vacation, etc when counting towards the 40 hours
 - Paid on the paycheck or by compensatory time

COMPENSATORY TIME OFF

- Overtime paid in the form of time off
 - 1.5 hours of paid time off for every hour **worked** over 40
 - FLSA limits accrual to 240 hours (160 hours x 1.5)
 - Accrued time does not expire
 - Paid at the current hourly rate when used
 - Must be paid at termination
- <https://www.dol.gov/whd/regs/compliance/whdfs7.pdf>

FLSA -NURSING MOTHERS

- Employer must provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth
- Provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public
- Only non-exempt employees are entitled to breaks to express milk under the law

NORTH DAKOTA LABOR REQUIREMENTS

- Majority of the requirements are the same as the Federal DOL requirements. [Min Wage Poster - Aug 2015.pdf \(nd.gov\)](#)
- A minimum 30-minute meal period must be provided in shifts exceeding five hours when there are two or more employees on duty.
- Employees may waive their right to meal period upon agreement with employer.
- Unpaid if completely relieved of duties.

PAID TIME OFF

- Paid time off includes annual leave, earned time, personal leave, or other provisions providing compensation for vacation.
- Paid time off is considered wages upon separation from employment and must be paid at the employee's regular rate of pay upon separation.

Questions?

Helpful Resources:

FLSA Handy Reference Guide:

[Handy Reference Guide to the Fair Labor Standards Act | U.S. Department of Labor \(dol.gov\)](#)

Fact Sheet #17A: FLSA Exemption for Executive, Administrative, Professional, Computer

https://www.dol.gov/whd/overtime/fs17a_overview.pdf

ND Dept of Labor

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ND Administrative Code

[North Dakota Administrative Code - Title 46 Article 2 Chapter 7 \(nd.gov\)](#)