

Pennsylvania Wage & Hour Facts

The following general guidelines provide an overview of the Pennsylvania Minimum Wage Act and other laws and regulations governing the payment of wages in Pennsylvania.

Federal law imposes additional requirements on Pennsylvania employers, such as the federal Fair Labor Standards Act overtime rules that took effect nationwide on August 23, 2004. Employers must comply with the requirements of federal and state law, which are not always the same. Where federal and state laws differ, employers must follow the rule that provides the greater benefit to the employee.

Basic Wage Standards

The minimum wage for businesses is \$7.25 per hour, effective July 24, 2009. Pennsylvania's minimum wage is tied to the federal rate; if the federal minimum wage increases above the Pennsylvania minimum, Pennsylvania's minimum wage will automatically increase to match the federal rate. The Pennsylvania Minimum Wage Act also contains various exceptions to these minimum rates, including, but not limited to, those working as trainees, student workers, farm laborers and other employees who are specifically exempt from the Act.

All wages other than overtime wages must be paid on the regular payday for each pay period. Generally, employers are required to have paydays of at least twice each month, with the first payday occurring between the first and 15th day of the month, and the second payday occurring between the 15th and the last day of the month. Employers may pay their employees more frequently than twice per month if they wish.

Overtime pay at a rate of not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek. Overtime wages must be paid by the following payday, to allow for any necessary calculations following the close of the pay period, collection and analysis of time cards and the like.

Only certain deductions from wages lawfully may be made, and those deductions are set out in detail in the applicable regulations. Deductions that are permitted by the regulations, other than normal tax deductions, will generally require written employee authorization, and deductions cannot reduce gross pay below minimum wage.

Certain aspects of the employment relationship are not regulated under Pennsylvania law. For example, Pennsylvania law does not require:

1. Vacation, holiday, severance or sick pay
2. Meal or rest periods for non-agricultural workers and employees who are 18 years of age or older

3. Time off for holidays or vacations
4. Pay raises or fringe benefits
5. Premium pay for weekend or holiday work
6. A discharge notice, reason for discharge or immediate payment of final wages to discharged employees

Pennsylvania law also does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, unless the employee is a minor (i.e., under 18 years-old) or works at a movie theater.

Exemptions

Some employees are exempt from minimum wage and/or overtime pay requirements. Exemptions generally are narrowly defined, and employers should carefully check the exact terms and conditions for each exemption under both federal and Pennsylvania law to determine if it applies. The specific salary and duty requirements of the Pennsylvania exemptions are summarized on the reverse side of this page. Pennsylvania's exemptions differ from federal law, and employees must meet the tests under both Pennsylvania and federal law to be exempt.

Recordkeeping

Pennsylvania law requires employers to keep records on wages, hours and other items. Most of the information is of the kind normally maintained by employers in the ordinary course of business and in compliance with other laws and regulations. The records do not have to be kept in any particular form, and time clocks are not required. The following records, among others, must be kept for three years from the date of entry for all employees subject to the minimum wage and/or overtime pay requirements:

1. Name, home and address
2. Date of birth, if the employee is under 19 years of age
3. Gender and occupation (for purposes of equal pay laws)
4. Time and day when the workweek begins
5. Total hours worked each workday and each workweek
6. Total daily or weekly straight time wages earned
7. Regular hourly rate of pay
8. Total weekly overtime pay earned for each workweek
9. Total additions to and deductions from wages
10. Allowances, if any, claimed as part of the minimum wage
11. Total wages paid each pay period
12. Date of payment and the pay period covered

PENNSYLVANIA WAGE & HOUR EXEMPTIONS

Executive

34 Pa. Code § 231.82

Short test:

- Salaried, paid at least \$250/wk exclusive of board, lodging or other facilities
- Primary duty is the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof
- Customarily and regularly directs the work of two (2) or more other employees

Long test:

- Primary duty is the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof
- Customarily and regularly directs the work of two (2) or more other employees
- Authorized to hire or fire or make suggestions/recommendations as to hiring, firing, advancement, promotion or other change in status that are given particular weight
- Customarily exercises discretionary powers
- Does not devote more than 20% (40% if retail or service establishment employee) of workweek hours to activities not directly and closely related to the previously described work (exception: employees who are in sole charge of an independent establishment or a physically separated branch establishment or own at least 20% of the enterprise in which they are employed)
- Salaried, paid at least \$250/wk exclusive of board, lodging or other facilities

Administrative

34 Pa. Code § 231.83

Short test:

- Salaried, paid at least \$250/wk exclusive of board, lodging or other facilities
- Primary duty is office or nonmanual work directly related to management policies or general operation of the employer or its customers, including work requiring the exercise of discretion and independent judgment

Long test:

- Primary duty is office or nonmanual work directly related to management policies or general operation of the employer or its customers
- Customarily and regularly exercises discretion and independent judgment
- Regularly and directly assists an employer or an employee employed in a bona fide executive or administrative capacity, performs under only general supervision specialized or technical work requiring special training, experience or knowledge, or executes under only general supervision special assignments and tasks
- Does not devote more than 20% (40% if retail or service establishment employee) of workweek hours to activities not directly and closely related to the previously described work
- Salaried, paid at least \$250/wk exclusive of board, lodging or other facilities.

Professional

34 Pa. Code § 231.84

Short test:

- Salaried, paid at least \$250/wk exclusive of board, lodging or other facilities
- Primary duty is work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study, or work that is original and creative in character in a recognized field of artistic endeavor, including work requiring the exercise of discretion and independent judgment, or the performance of work requiring invention, imagination or talent in a recognized field of artistic endeavor

Long test:

- Primary duty is work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study, or work that is original and creative in character in a recognized field of artistic endeavor
- Work requires the consistent exercise of discretion and judgment
- Work is predominately intellectual and varied in character, such that the output or result cannot be standardized in relation to a given period of time
- Does not devote more than 20% of workweek hours to activities that are not an essential part of and necessarily incident to the previously-described work
- Salaried, paid at least \$250/wk exclusive of board, lodging or other facilities

Outside Sales Representative

34 Pa. Code § 231.85

- Employed for the purpose of, and customarily and regularly engaged in more than 80% of work time away from the employer's place(s) of business in, the following:
 - Making sales, including any sale, exchange, contract to sell, consignment for sale, or other disposition or selling, and delivering articles or goods
 - Obtaining orders or contracts for the use of facilities for which a consideration will be paid by the client or customer (may not spend more than 20% of workweek hours in work not directly related to and in conjunction with the making of sales) (work performed incidental and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, is not regarded as nonexempt work)

Ian D. Meklinsky, Esq. | 609.895.6756 | imeklinsky@foxrothschild.com