

Employment Law Update:
Compensation Issues Under FLSA/Wage and Hour

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OVERVIEW AND SOURCES OF MISSOURI WAGE & HOUR LAWS

I. Statutory Authority

In Missouri, the two primary sources of laws regulating an employee's work hours and the wages paid for that work are:

1. The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 ("FLSA"); and
2. Missouri Revised Statutes, Chapter 290, Wages, Hours and Dismissal Rights ("Missouri Wage Law").

In most instances, the FLSA will control, if it applies.

Generally speaking, the FLSA and the Missouri Wage Law provide that all **covered, nonexempt** employees be paid (1) a **minimum wage**; and (2) **overtime premium pay** for all hours worked over 40 in a **workweek**. See 29 U.S.C. §§ 206-207; Mo. Rev. Stat. §§ 290.502-.505.

Definitions:

1. **Covered employee:** A worker to which the FLSA or the Missouri Wage Law applies. These laws only apply to "employees."

Under the FLSA, courts use a six-factor, "economic reality" test to determine if a worker is an employee. Those factors are:

- (1) the degree of control over the manner in which the work is performed;
- (2) the worker's opportunity for profit or loss depending on his managerial skill;
- (3) the worker's investment in equipment or materials, or his employment of workers;
- (4) whether the service rendered requires a special skill;
- (5) the degree or permanence of the working relationship; and
- (6) whether the service rendered is an integral part of the employer's business.

See Loyd v. Ace Logistics, LLC, 2008 U.S. Dist. LEXIS 100633, *9-10 (W.D. Mo. 2008).

Missouri courts typically use the so-called “IRS 20-Factor Test” to aid in the determination of whether an employer has the right to control an worker such that he or she is an “employee.” Those factors are:

(1) instructions; (2) training; (3) integration; (4) services rendered personally; (5) hiring, supervising, and paying assistants; (6) continuing relationship; (7) set hours of work; (8) full time required; (9) doing work on employer's premises; (10) order or sequence set; (11) oral or written reports; (12) payment by hour, week, month; (13) payment of business and/or traveling expenses; (14) furnishing of tools and materials; (15) significant investment; (16) realization of profit or loss; (17) working for more than one firm at a time; (18) making service available to general public; (19) right to discharge; and (20) right to terminate.

See K&D Auto Body, Inc. v. Division of Emp. Sec., 171 S.W.3d 100, 105 (Mo. Ct. App. W.D. 2005).

2. **Nonexempt employee:** An employee to which neither the FLSA exemptions enumerated at 29 U.S.C. § 213, the quasi exemptions listed at 29 U.S.C. § 207, nor the exceptions to who is an employee listed at Mo. --- Rev. Stat. § 290.500(3)(a-o).
3. **Minimum wage:** A minimal amount of money that an employee must actually receive for all hours worked.
4. **Overtime premium pay:** Rate of pay owed employees for all hours worked beyond a certain point. Under both the FLSA and the Missouri Wage Law, “overtime” is generally owed when the employee works more than 40 hours in a seven day period. Other states have different weekly overtime rules and some even have daily overtime rules. See Appx. A.

II. Regulations

The Department of Labor (“DOL”) has issued extensive regulations regarding the FLSA and it is difficult to overstate their importance to an FLSA analysis. It is usually not sufficient to simply review the statute. Rather, the regulations must be reviewed. These regulations are published at 29 C.F.R., Subtitle B (parts 500 to 899).

Specifically, Congress has delegated the definition to several of the exemptions to the DOL. See 29 U.S.C. § 213; see e.g., 29 C.F.R. pt. 541. Additionally, the regulations serve as a “blank-filler” for a number of “gray areas” regarding actual wage payments. See 29 C.F.R. part 531.

The Missouri Department of Labor and Industrial Relations has also issued regulations regarding application of the Missouri Wage Law. See 8 CSR 30-4.010, et seq. These regulations track the federal regulations applicable to the FLSA, but they should always be considered to confirm that a different standard does not apply. See Appx. B.

QUIRKS IN THE FLSA REGULATIONS AND STATE WAGE AND HOUR LAWS

I. Differences between Missouri and Federal Overtime Rates

One recent quirk in Missouri wage and hour law was the recent divergence in the federal and Missouri overtime rates. Since January 1, 2009 and continuing through July 24, 2009, the Missouri minimum wage rate has been \$7.05 per hour. The federal rate has only been \$6.55. Therefore, Missouri employers should have been paying at least \$7.05 per hour.

On the other hand, the federal rate went up to \$7.25 on July 24, 2009. Therefore, the minimum wage rate for all employees is now raised to \$7.25 per hour. This is because Missouri's minimum wage is always at least the federal rate. See Mo. Rev. Stat. § 290.502.

II. Amusement Park Workers, Hospital Employees, and Public Safety Officers

The weekly maximum that Missouri employers need to worry about is 40 hours in a seven-day period. See 29 U.S.C. § 213; Mo. Rev. Stat. § 290.505. There are, however, exceptions to this general rule.

The first class of Missouri employees whose overtime analysis uses a different maximum hour limit are amusement park workers. Many workers who are employed by a seasonal amusement or recreational establishment are exempt all together from the FLSA. See 29 U.S.C. § 213(a)(3). However, Missouri law provides that those employees who are exempt from the FLSA's overtime requirement are owed overtime for any hours worked in excess of 52 during a workweek. See 29 U.S.C. § 213(a)(3); Mo. Rev. Stat. § 290.505.2.

A second set of workers with a different number of maximum hours are employees of a "hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises." 29 U.S.C. § 213(j). For these workers, so long as there is an advance agreement, the employer can utilize a fourteen-day workweek. Under the fourteen-day workweek, the employee is entitled to overtime when he or she works more than eight hours in a day or eighty hours during the fourteen-day workweek. Id.

The third set of workers with a different number of maximum hours are public safety officers working for public agencies in fire protection and law enforcement. Employers of these workers can use a "workweek" of up to 28 days. If a 28 day workweek is used, the overtime is only owed for hours worked beyond 216 in the 28 day period. If the employer uses a workweek of more than 7 days, but less than 28, then the maximum number of hours that can be worked prior to being owed overtime is proportional to the 216 hours in 28 days limit.

Missouri law specifically incorporates these exceptions. See Mo. Rev. Stat. § 290.505.3.

III. Fluctuating Workweek

One common technique for minimizing overtime liability is the utilization of the “fluctuating workweek.” Under the fluctuating workweek system, a nonexempt employee is paid a set salary for all hours worked during the week. The employee must agree to this system in advance and his or her hours must be flexible. However, the employer is still required to pay an overtime premium when the employee works more than 40 hours during the workweek. The calculation is not intuitive though. See 29 U.S.C. § 207(f); 29 C.F.R. § 778.114; see also 29 C.F.R. §§ 778.406-.414.

The best way to understand the calculation is to look at an example.

1. Assume the employee is guaranteed a salary of \$400 a week. If the employee works 40 hours, then the employee is paid \$400, if the employee works 36 hours, she still gets \$400. However, the analysis is different if the employee works 52 hours one workweek.
2. To calculate the employee’s regular rate for that week, the employer must divide the \$400 salary by the number of hours worked. ($\$400 / 52 = \7.69).
3. The employee is owed overtime premium pay of “time and a half” for all hours over 40. However, in this instance, the employee has already received \$7.69 per hour for all 52 hours worked. Therefore, the only thing more that is owed is the “and a half.”
4. The employer should then divide that week’s regular rate in half to obtain the overtime premium rate ($\$7.69 / 2 = \3.85).
5. The employee’s total overtime premium pay for the week is calculated by the number of overtime hours by that week’s overtime premium rate ($12 \times \$3.85 = \200.20)
6. Accordingly, the employee’s total pay for the week is the sum of the week’s guaranteed salary and that week’s overtime premium pay ($\$400 + \$200.20 = \$600.20$).

It is important to realize that this fluctuating workweek calculation must be done on a week by week analysis.

From a practical point of view, the fluctuating workweek has the impact of lowering an employee’s hourly rate when the employee works more hours. In our example above, the employee might think of herself as being paid \$10 per hour when she works 40 hours, but she is in reality only paid \$7.69 per hour when she works 52 hours.

COMMISSION AND BONUSES

Many employers utilize commissions and bonuses to incentivize employees. However, there are important differences in how commissions and bonuses may affect employees' pay, depending on whether the employee fits within one of the FLSA's exemptions.

I. Outside Sales Exemption and Other "White-Collar" Exemptions

Exempt employees, by their nature, are not owed overtime premium pay. See generally 29 U.S.C. §§ 207, 213 (defining those classes of employees that are not owed overtime). Accordingly, an employer is much freer to provide incentive payments, so long as the terms of the applicable exemption are still met.

For example, employees that are exempt by virtue of the executive, administrative, and professional exemptions may be paid performance and other bonuses so long as the employee receives a sufficient amount of guaranteed, weekly pay. See 29 C.F.R. §§ 541.100, .200, .300; see also 29 C.F.R. § 541.602 (defining what it means to be paid on a salary basis).

The outside sales exemption applies to those employees who principally work outside of a set location and whose primary duty is to obtain orders for sales. See 29 U.S.C. § 213(a)(1); 29 C.F.R. § 541.500. These employees are commonly paid commissions. It is important that the employer realize that the outside sales exemption does not apply to sales people who spend the majority of their time working at a single location.

II. Commission Payments to Retail and Service Employees

If employees of retail and service establishments are paid enough in commissions, then the requirement that the employer pay an overtime premium may be obviated. See 29 U.S.C. §213(i). To fit within this exception, the employee must (1) work at a retail or service establishment; (2) the employee's regular rate of pay must work out to be at least one and one-half times the applicable minimum wage; and (3) at least half of the employee's total pay must be comprised of commissions. Id. A common example of employees paid under this system are department store shoe and suit salespeople.

III. Commissions and Bonuses for Non-exempt Employees

Commissions and bonuses paid to nonexempt employees can have an important impact on the amount of money that is owed for overtime. This is because overtime premium pay is defined to be one and one-half times the employee's **regular rate** of pay for that week. See 29 U.S.C. § 207(a); 29 C.F.R. §778.308. An employee's regular rate includes, with certain limited exceptions, all remuneration paid to the employee during that workweek. See 29 U.S.C. § 207(e); 29 C.F.R. part 778.

The following types of payment are not included in the regular rate:

1. “Christmas bonuses” and other purely discretionary bonuses that do not depend on the number of hours worked, productivity, or efficiency are not included. See 29 U.S.C. § 207(e)(1); and
2. Vacation and sick pay. See 29 U.S.C. § 207(e)(2); 29 C.F.R. § 778.216.

However, the following types of payment must be considered when calculating the regular rate:

1. Non-discretionary or productivity bonuses. See 29 U.S.C. § 207(e)(1); 29 C.F.R. §§ 778.208-.213. (E.g., money paid on a set schedule to a coal miner for exceeding his daily quota would have to be considered when calculating the regular rate.);
2. Commissions. See 29 C.F.R. § 778.117; and
3. The regular rate must be calculated before most deductions are taken into consideration. See 29 C.F.R. §§ 778.304, .307.

It is important to note that the calculation of an employee’s regular rate is a week by week analysis. See 29 C.F.R. § 778.109. Therefore, employers must be careful to ensure that the proper overtime rate is utilized each week.

PERMISSIBLE AND IMPERMISSIBLE DEDUCTIONS

Employers are usually familiar with deductions that are required by law (i.e., state and federal income tax, FICA, etc.) and court ordered deductions such as garnishments and wage orders from the Bankruptcy Court. These are all specifically allowed by the FLSA See 29 C.F.R. part 531. However, other deductions become much more complicated and an employer must be careful that an improper deduction does not have far-reaching consequences.

I. Deductions From Exempt Employees Paid on a Salary Basis

A number of the exemptions to the FLSA require that an employee be paid on a salary basis. See 29 C.F.R. part 541. The fundamental definition of a salary basis is that it does not vary based on the quality for the quantity of the work performed. See 29 C.F.R. § 541.602. Therefore, if a “salaried” employee performs any work during the workweek, then the employee is entitled to her full salary. Id. One caveat to this rule is that an employer can deduct from the salary, in full-day increments, if the employee is absent from work for a full day for personal reasons. Id. Additionally, penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee’s salaried status.

II. Deductions From Non-exempt Employees

Common deductions include the cost of tools, damaged property, and uniforms. See 29 U.S.C. § 531.3(d)(2). There are generally two considerations for deductions to nonexempt workers. First, the employer must always fulfill its obligation to pay minimum wage for all hours worked. See 29 U.S.C. § 206. Secondly, overtime must be paid in cash, or its equivalent, and the employer cannot consider the value of non-cash items as a part of its overtime payment. See 29 C.F.R. § 531.27.

The term “wages” is defined at 29 U.S.C. § 203(m). Generally, wages are required to be cash, or its equivalent, paid to the employee “free and clear.” See 29 C.F.R. §§ 531.24, .35. In addition to the cash paid, an employer may also count the reasonable value of “furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees.” 29 U.S.C. § 203(m).

Something can be considered a “facility” under the above definition, if the facility is primarily for the benefit of the employee. If the item is primarily for the employer’s benefit, though, then it does not count towards wages. See 29 C.F.R. § 531.32(c). Therefore, the employer must be certain who truly benefits from a “facility” before it is considered a part of the wage. Another point to remember concerning deductions is that the employer cannot consider the deduction of tool, damage, and uniform expenses when calculating the regular rate for purposes of overtime premium pay. See 29 C.F.R. § 531.37.

PAYMENTS OWED UPON TERMINATION

I. Applicable Missouri Statutes

The FLSA does not set a specific time when wages must be paid, other than to say that overtime must be paid on the regular payday for the pay period in which it was earned. See 29 C.F.R. §778.106. Most states, though, have statutes and rules that define when wage are due. This is true in Missouri, but Missouri also has a statute specifically dealing with wages due after the employment is terminated. See Mo. Rev. Stat. §§ 290.080-.090, .110.

Mo. Rev. Stat. § 290.080 requires that most employees be paid at least twice a month and no later than 16 days after the wages were earned. See id. Manufacturing employers must make their payments within 15 days of the work having been performed. See Mo. Rev. Stat. § 290.090. However, executive, administrative, professional employees, and sales employees paid on commission may, permissibly, only be paid monthly. See Mo. Rev. Stat. § 290.080.

When an employee is fired, his wages are due on that day. See Mo. Rev. Stat. § 290.110. There is a possibly hefty penalty for not paying a discharged worker his wages when they are due. Id. However, the employee must take action to “trigger” that penalty. Specifically, for the penalty provision of section 290.110 to apply, the employee must send a written request to the employer. Id. The employer then has seven days for the payment to arrive at the location designated by the employee. Id. If the payment does not timely arrive, then the penalty is that the employer will owe the employee an additional amount as though the employee were still working. See Mo. Rev. Stat. § 290.110. This penalty is capped, in that it cannot exceed beyond sixty days. Id.

II. Severance, Vacation, and Sick Pay for the Terminated Employee

A. Severance Agreements and Severance Pay

The FLSA does not require, and therefore does not speak to the issues of, severance, vacation or sick pay. Accordingly, an employer must look to state law to determine its obligations.

Absent a contractual provision to the contrary, an employee is not “owed” severance pay. Severance pay is usually the name given to payments that an employer may choose to give its employees at the end of the employee’s term of employment. These payments are sometimes given from a sense of loyalty to the employee, but they are more often made to bring finality to the employment relationship.

Most “severance agreements” are really just releases or other agreements that the employer wants the former employee to make. In exchange for the worker’s agreement, the employer is willing to make a payment. These contracts are not particularly unlike other contracts that a person might negotiate in that the terms can be almost anything

that the parties can legally agree to. There are, however, some additional requirements for an employee to waive certain rights (e.g., age discrimination claims) and there are some rights that an employee cannot simply waive (e.g., rights under the FLSA). See 29 U.S.C. §§ 216(b), 626(f).

B. Vacation and Sick Pay

An issue that can often become quite contentious between an employer and a former employee is whether “earned” vacation and/or sick pay must be paid out to an employee once the employment relationship ends. The answer to this question is, predictably, “it depends.”

Vacation and sick pay are governed by principles of contract law. See Hoffmeyer v. Davco Food, Inc., 803 S.W.2d 49, 51 (Mo. Ct. App. E.D. 1990). Therefore, if there is an explicit agreement between the parties, then that agreement will control. Absent an explicit agreement, a course of conduct can create an implied contract. See id. Therefore, if an employer usually pays out vacation or sick pay, then the employer will likely be required to continue that policy. However, if an employer never pays out vacation or sick pay, then it would be difficult for the employee to show an expectation to that pay.

OTHER COMMON WAGE AND HOUR PITFALLS

In very broad terms, there are three basic ways that an employer can violate wage and hour laws:

1. Not paying an employee for all of the time that is compensable;
2. Not paying an employee enough money for the compensable time worked by the employee (usually this deals with overtime premium pay); and
3. Failing to classify the employee as the type of employee who is owed overtime premium pay for certain hours worked.

To be sure, these three categories of errors cover a lot of ground. However, an employer who considers each of these issues stands a much better chance of successfully going through a wage and hour audit by the Department of Labor or a lawsuit.

I. Time spent for the employer's benefit is work

The FLSA uses a “suffer or permit” standard for determining when a worker is “employed.” See 29 U.S.C. § 203(g). That is, if the employer knows, or has reason to know, that an individual is performing tasks for the benefit of the employer, then that time is considered work.

After the FLSA was enacted, Congress also passed the Portal-to-Portal Act which removed certain “time” from that time that would be considered compensable. See 29 U.S.C. § 251, et seq. Specifically, time spent performing preliminary and postliminary tasks is excluded. See 29 U.S.C. § 254. However, the Supreme Court has made clear that tasks that are integral and indispensable to the work must be included. See IBP, Inc. v. Alvarez, 546 U.S. 21, 30 (2005). Additionally, all time must be counted from the performance of the first to the last compensable tasks. See Alvarez, 546 U.S. at 28-29. Accordingly, an employer can be found liable if it does not account for all such time spent working.

II. Failing to properly calculate overtime premium pay

The calculation of the correct regular rate is critical for an employer to comply with its overtime obligations under both the FLSA and Missouri law. Section 3 of these materials outlines the factors that must be considered when calculating an employee's regular rate. If an employer pays “time and a half” of the wrong rate, then the employer may be open to liability for two times the difference in what was paid and what should have been paid. See 29 U.S.C. § 216(b).

III. Improperly classifying employees

“Exemptions to the FLSA must be narrowly construed.” McDonnell v. City of Omaha, 999 F.2d 293, 295 (8th Cir. 1993). “Employers have the burden of proving that the exemption applies, and they must demonstrate that employees fit plainly and unmistakably within [the exemption’s] terms and spirit.” Id. at 296 (quoting Arnold v. Ben Kanowsky, Inc., 361 U.S. 388, 392 (1960)). As such, employers must be cautious that each employee, or group of employees, fits within one of the enumerated exemptions. It is important that employers not “mix and match” the criteria for the different exemptions. Even though an employee might fit within multiple exemptions, each exemption must stand on its own. See 29 C.F.R. 541.704.

Employers should also note that exemptions are applied on a week by week basis. Therefore, if a worker performs substantially different tasks over time, the employer must ensure that the employee has met the criteria for at least one exemption during each workweek in which overtime is not paid.

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APPENDIX A

U.S. Department of Labor, Minimum Wage Laws in the States (accessed July 14, 2009)
<<http://www.dol.gov/esa/minwage/america.htm>>



U.S. Department of Labor Employment Standards Administration

Wage and Hour Division (WHD)

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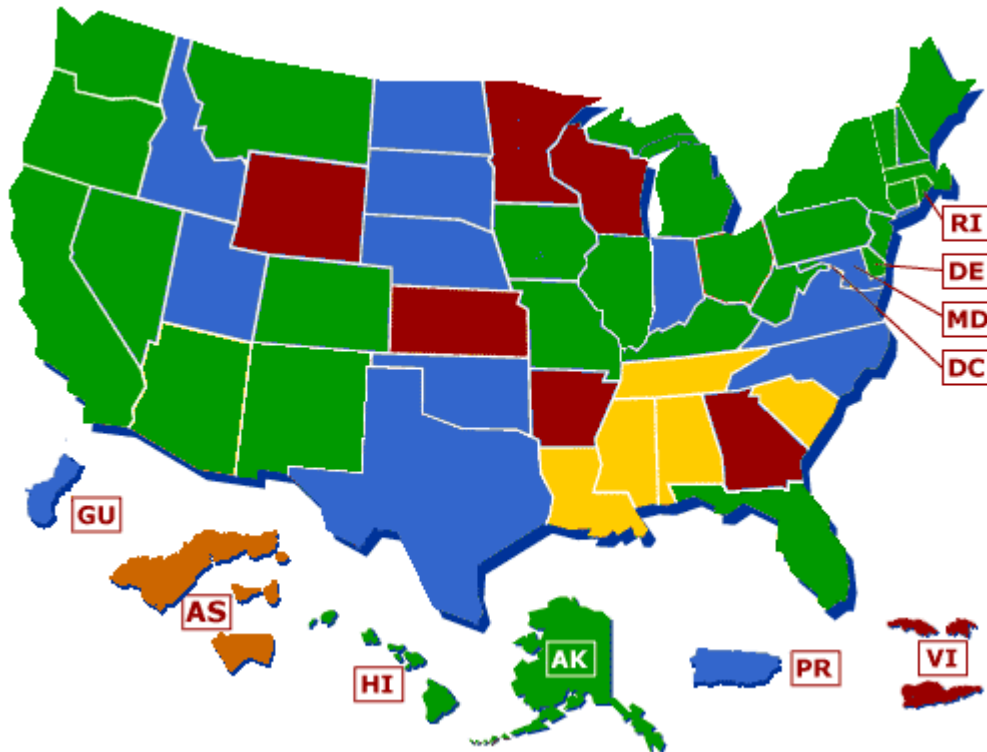
To promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce.

Minimum Wage Laws in the States - July 1, 2009

[Historical Table](#)

Click on any state or jurisdiction to find out about applicable minimum wage laws.

Note: Where Federal and state law have different minimum wage rates, the higher standard applies.



- States with minimum wage rates higher than the Federal
- States with minimum wage rates the same as the Federal
- States with minimum wage rates lower than the Federal
- States with no minimum wage law
- Territories

American Samoa has [special minimum wage rates](#)

**Minimum Wage and Overtime Premium Pay Standards Applicable to
Nonsupervisory NONFARM *Private Sector* Employment
Under State and Federal Laws
July 1, 2009 ¹**

[Consolidated State Minimum Wage Update Table](#)

Alabama Minimum Wage Rates

ALABAMA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>No state minimum wage law.</i>				

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Alaska Minimum Wage Rates

ALASKA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.15	8	40

Under a voluntary flexible work hour plan approved by the Alaska Department of Labor, a 10 hour day, 40 hour workweek may be instituted with premium pay after 10 hours a day instead of after 8 hours.

The premium overtime pay requirement on either a daily or weekly basis is not applicable to employers of fewer than 4 employees.

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AMERICAN SAMOA

American Samoa has [special minimum wage rates](#).

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Arizona Minimum Wage Rates

ARIZONA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly

		\$7.25	
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Rate is increased annually based upon a cost of living formula.

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Arkansas Minimum Wage Rates

ARKANSAS	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of 4 or more employees)</i>		\$6.25	N/A	40

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California Minimum Wage Rates

CALIFORNIA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$8.00	8 Over 12 (double time)	40; on 7th day: First 8 hours (time and half) Over 8 hours on 7th day (double time)

Any work in excess of eight hours in one workday and any work in excess of 40 hours in one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be at the rate of one and one-half times the regular rate of pay. Any work in excess of 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek shall be paid no less than twice the regular rate of pay. California Labor Code section 310. Exceptions apply to an employee working pursuant to an alternative workweek adopted pursuant to applicable Labor Code sections and for time spent commuting. (See Labor Code sections 510 for exceptions).

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Colorado Minimum Wage Rates

COLORADO	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.28	12	40

Minimum wage rate and overtime provisions applicable to retail and service, commercial support service, food and beverage, and health and medical industries.

Rate is increased annually based upon a cost of living formula.

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Connecticut Minimum Wage Rates

CONNECTICUT	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
				40
		\$8.00		
	01/01/10	\$8.25		

In restaurants and hotel restaurants, for the 7th consecutive day of work, premium pay is required at time and one half the minimum rate.

The Connecticut minimum wage rate automatically increases to 1/2 of 1 percent above the rate set in the Fair Labor Standards Act if the Federal minimum wage rate equals or becomes higher than the State minimum.

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Delaware Minimum Wage Rates

DELAWARE	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.15		

The Delaware minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum.

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District of Columbia Minimum Wage Rates

DISTRICT OF COLUMBIA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.55		40

In the District of Columbia, the rate is automatically set at \$1 above the Federal minimum wage rate if the District of Columbia rate is lower.

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Florida Minimum Wage Rates

FLORIDA	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.21		N/A

Rate is increased annually based upon a cost of living formula.

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Georgia Minimum Wage Rates

GEORGIA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of 6 or more employees)</i>		\$5.15		

The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act when the Federal rate is greater than the State rate.

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Guam Minimum Wage Rates

GUAM	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$5.85		40

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Hawaii Minimum Wage Rates

HAWAII	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.25		40

An employee earning a guaranteed monthly compensation of \$2,000 or more is exempt from the State minimum wage and overtime law.

The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act unless the State wage rate is higher than the Federal.

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Idaho Minimum Wage Rates

IDAHO	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$6.55		
	07/24/2009	\$7.25		

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Illinois Minimum Wage Rates

ILLINOIS	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of 4 or more employees, excluding family members)</i>		\$8.00		
	07/01/2010	\$8.25		40

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Indiana Minimum Wage Rates

INDIANA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of 2 or more employees)</i>		\$6.55		
	07/24/2009	\$7.25		40

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Iowa Minimum Wage Rates

IOWA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.25		

The Iowa minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum.

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Kansas Minimum Wage Rates

KANSAS	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$2.65		46

The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act.

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Kentucky Minimum Wage Rates

KENTUCKY	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.25		40 7th day

The 7th day overtime law, which is separate from the minimum wage law differs in coverage from that in the minimum wage law and requires premium pay on the seventh day for those employees who work seven days in any one workweek.

The state adopts the Federal minimum wage rate by reference if the Federal rate is greater than the State rate.

Compensating time in lieu of overtime is allowed upon written request by an employee of any county, charter county, consolidated local government, or urban-county government, including an employee of a county-elected official.

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Louisiana Minimum Wage Rates

LOUISIANA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>There is no state minimum wage law.</i>		N/A		N/A

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Maine Minimum Wage Rates

MAINE	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.25		40
	10/01/2009	\$7.50		

The Maine minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum with the exception that any such increase is limited to no more than \$1.00 per hour above the current legislated State rate.

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Maryland Minimum Wage Rates

MARYLAND	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
	07/24/2009	\$6.55 \$7.25		40

The Maryland minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum wage rate.

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Massachusetts Minimum Wage Rates

MASSACHUSETTS	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$8.00		40

The Massachusetts minimum wage rate automatically increases to 10 cents above the rate set in the Fair Labor Standards Act if the Federal minimum wage equals or becomes higher than the State minimum.

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Michigan Minimum Wage Rates

MICHIGAN	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of 2 or more employees)</i>		\$7.40		40

The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act unless the State wage rate is higher than the Federal.

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Minnesota Minimum Wage Rates

MINNESOTA	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>Large employer (enterprise with annual receipts of \$625,000 or more)</i>		\$6.15		48
<i>Small employer (enterprise with annual receipts of less than \$625,000)</i>		\$5.25		48

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Mississippi Minimum Wage Rates

MISSISSIPPI	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>No state minimum wage law.</i>		N/A		N/A

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Missouri Minimum Wage Rates

MISSOURI	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.05		40

In addition to the exemption for federally covered employment, the law exempts, among others, employees of a retail or service business with gross annual sales or business done of less than \$500,000.

Premium pay required after 52 hours in seasonal amusement or recreation businesses.

Minimum wage is to be increased or decreased by a cost of living factor starting January 1, 2008 and every January 1 thereafter.

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Montana Minimum Wage Rates

MONTANA	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
State Law		\$6.90		
<i>Except businesses with gross annual sales of \$110,000 or less</i>		\$4.00		40
	07/24/2009	\$7.25		

Minimum wage is subject to a cost of living adjustment done by September 30 of each year and effective on January 1 of the following year.

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Nebraska Minimum Wage Rates

NEBRASKA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of 4 or more employees)</i>	07/24/2009	\$6.55 \$7.25		

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Nevada Minimum Wage Rates

NEVADA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.55	8	40

The premium overtime pay requirement on either a daily or weekly basis is not applicable to employees who are compensated at not less than one and one-half times the minimum rate or to employees of enterprises having a gross annual sales volume of less than \$250,000.

The basic hourly rate is increased to \$6.55 when the employer offers the employee a qualified health plan.

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New Hampshire Minimum Wage Rates

NEW HAMPSHIRE	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.25		40

The New Hampshire minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum.

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New Jersey Minimum Wage Rates

NEW	Future Effective	Basic Minimum Rate(per	Premium Pay After Designated Hours ²	

JERSEY	Date	hour)	Daily	Weekly
	07/24/2009	\$7.15 \$7.25		40

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New Mexico Minimum Wage Rates

NEW MEXICO	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.50		40

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New York Minimum Wage Rates

NEW YORK	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
	07/24/2009	\$7.15 \$7.25		40

The New York minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum.

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North Carolina Minimum Wage Rates

NORTH CAROLINA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
	07/24/2009	\$6.55 \$7.25		40

Premium pay is required after 45 hours a week in seasonal amusements or recreational establishments.

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North Dakota Minimum Wage Rates

NORTH DAKOTA	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
	07/24/2009	\$6.55 \$7.25		40

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Ohio Minimum Wage Rates

OHIO	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
State Law		\$7.30		40

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Oklahoma Minimum Wage Rates

OKLAHOMA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>Employers of ten or more full time employees at any one location and employers with annual gross sales over \$100,000 irrespective of number of full time employees.</i>	07/24/2009	\$6.55 \$7.25		
All other employers.		\$2.00		

The Oklahoma state minimum wage law does not contain current dollar minimums. Instead the state adopts the Federal minimum wage rate by reference.

The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act.

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Oregon Minimum Wage Rates

OREGON	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$8.40		40

Premium pay required after 10 hours a day in nonfarm canneries, driers, or packing plants and in mills, factories or manufacturing establishments (excluding sawmills, planing mills, shingle mills, and logging camps).

Beginning January 1, 2004, and annually thereafter, the rate will be adjusted for inflation by a calculation using the U.S. City Average Consumer Price Index for All Urban Consumers for All Items. The wage amount established will be rounded to the nearest five cents.

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Pennsylvania Minimum Wage Rates

PENNSYLVANIA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
	July 2009	\$7.15 \$7.25		40

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Puerto Rico Minimum Wage Rates

PUERTO RICO	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$4.10	8 <i>And on statutory rest day (double time)</i>	40 <i>(double time)</i>

Employers covered by the Federal Fair Labor Standards Act (FLSA) are subject only to the Federal minimum wage and all applicable regulations. Employers not covered by the FLSA will be subject to a minimum wage that is at least 70 percent of the Federal minimum wage or the applicable mandatory decree rate, whichever is higher. The Secretary of Labor and Human Resources may authorize a rate based on a lower percentage for any employer who can show that implementation of the 70 percent rate would substantially curtail employment in that business.

Puerto Rico also has minimum wage rates that vary according to the industry. These rates range from a minimum of \$4.25 to \$7.25 per hour.

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Rhode Island Minimum Wage Rates

RHODE ISLAND	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$7.40		40

Time and one-half premium pay for work on Sundays and holidays in retail and certain other businesses is required under two laws that are separate from the minimum wage law.

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South Carolina Minimum Wage Rates

SOUTH CAROLINA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly

No state minimum wage law.		N/A	N/A
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South Dakota Minimum Wage Rates

SOUTH DAKOTA	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
	07/24/2009	\$6.55 \$7.25		

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Tennessee Minimum Wage Rates

TENNESSEE	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
No state minimum wage law.		N/A		N/A

The state does have a promised wage law whereby the employers are responsible for paying to the employees the wages promised by the employer.

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Texas Minimum Wage Rates

TEXAS	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
	07/24/2009	\$6.55 \$7.25		

The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act.

The Texas State minimum wage law does not contain current dollar minimums. Instead the State adopts the Federal minimum wage rate by reference.

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Utah Minimum Wage Rates

UTAH	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
	07/24/2009	\$6.55 \$7.25		

The Utah state minimum wage law does not contain current dollar minimums. Instead the state law authorizes the adoption of the Federal minimum wage rate via administrative action.

The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act.

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Vermont Minimum Wage Rates

VERMONT	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of two or more employees)</i>		\$8.06		40

The State overtime pay provision has very limited application because it exempts numerous types of establishments, such as retail and service; seasonal amusement/recreation; hotels, motels, restaurants; and transportation employees to whom the Federal (FLSA) overtime provision does not apply.

The Vermont minimum wage is automatically replaced with the Federal minimum wage rate if it is higher than the State minimum.

Beginning January 1, 2007, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, or city average, not seasonally adjusted.

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Virginia Minimum Wage Rates

VIRGINIA	Future Effective Date	Basic Minimum Rate (per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of 4 or more employees)</i>	07/24/2009	\$6.55 \$7.25		

The Virginia state minimum wage law does not contain current dollar minimums. Instead the state adopts the Federal minimum wage rate by reference.

The State law excludes from coverage any employment that is subject to the Federal Fair Labor Standards Act.

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Virgin Islands Minimum Wage Rates

VIRGIN ISLANDS	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
State law		\$6.15	8	40 <i>On 6th and 7th consecutive days.</i>
<i>Except businesses with gross annual receipts of less than \$150,000.</i>		\$4.30		

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Washington Minimum Wage Rates

WASHINGTON	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$8.55		40

Premium pay not applicable to employees who request compensating time off in lieu of premium pay.

Beginning January 1, 2001, and annually thereafter, the rate will be adjusted for inflation by a calculation using the consumer price index for urban wage earners and clerical workers for the prior year.

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West Virginia Minimum Wage Rates

WEST VIRGINIA	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
<i>(Applicable to employers of 6 or more employees at one location)</i>		\$7.25		40

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Wisconsin Minimum Wage Rates

WISCONSIN	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$6.50		40

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Wyoming Minimum Wage Rates

WYOMING	Future Effective Date	Basic Minimum Rate(per hour)	Premium Pay After Designated Hours ²	
			Daily	Weekly
		\$5.15		

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¹Like the Federal wage and hour law, State law often exempts particular occupations or industries from the minimum labor standard generally applied to covered employment. Particular exemptions are not identified in this table. Users are encouraged to consult the laws of particular States in determining whether the State's minimum wage applies to a particular employment. This information often may be found at the websites maintained by State labor departments. Links to these websites are available at www.dol.gov/esa/contacts/state_of.htm.

²The overtime premium rate is one and one-half times the employee's regular rate, unless otherwise specified.

This document was last revised in June 2009.

Consolidated State Minimum Wage Update Table (Effective Date: 07/01/2009)

> Federal MW	Equals Federal MW of \$6.55	< Federal MW	No MW Required
AK - \$7.15	ID	AR - \$6.25	AL
AZ - 7.25	IN	GA - 5.15	LA
CA - 8.00	KY	KS - 2.65	MS
CO - 7.28	MD	MN - 6.15	SC
CT - 8.00	NE	WI - 6.50	TN
DE - 7.15	NC	WY - 5.15	
DC - 7.55	ND		5 States
FL - 7.21	OK	6 States	
HI - 7.25	SD		
IL - 8.00	TX		
IA - 7.25	UT		
ME - 7.25	VA		
MA - 8.00			
MI - 7.40			
MO - 7.05	12 States		
MT - 6.90			
NV - 6.85			
NH - 7.25			
NJ - 7.15			
NM - 7.50			
NY - 7.15			
OH - 7.30			

OR - 8.40			
PA - 7.15			
RI - 7.40			
VT - 8.06			
WA - 8.55			
WV - 7.25			
27 States + DC			

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Employment Law Update:
Compensation Issues Under FLSA/Wage and Hour

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APPENDIX B

Missouri Department of Labor and Industrial Relations, Division of Labor Standards,
Minimum Wage and Overtime Rules (accessed July 14, 2009)
<<http://www.sos.mo.gov/adrules/csr/current/8csr/8c30-4.pdf>>



Rules of Department of Labor and Industrial Relations

Division 30—Division of Labor Standards Chapter 4—Minimum Wage and Overtime Rules

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Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Division 30—Division of Labor

Standards

Chapter 4—Minimum Wage and Overtime Rules

8 CSR 30-4.010 Applicability and Definitions

PURPOSE: This rule sets forth the applicability of the Missouri Minimum Wage Law and certain definitions of terms used in this chapter.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability—Except as provided in sections 290.500 to 290.530, RSMo, and any rules promulgated thereunder, the department, in interpreting and enforcing the Missouri Minimum Wage Law, will follow the written regulations established by the United States Department of Labor pertaining to the Fair Labor Standards Act, which are incorporated by reference. This rule incorporates the regulations published in the Federal Register, 29 CFR Chapter V, as last amended on December 16, 2004, and does not include any subsequent amendments or additions. A copy of the regulations is available at the United States Department of Labor, Frances Perkins Building, 200 Constitution Ave. NW, Washington, DC 20210, or at the Division of Labor Standards, 3315 W. Truman Blvd., Jefferson City, MO 65109.

(2) As used in 8 CSR 30-4.010–8 CSR 30-4.-060, unless the context clearly indicates otherwise, the following terms shall mean:

(A) Complainant—an individual filing an administrative complaint with the director under the Missouri Minimum Wage Law; and

(B) Tipped employee—any employee who regularly and customarily receives and retains compensation in the form of gratuities in addition to wages.

AUTHORITY: sections 290.512, 290.515, 290.517, and 290.523, RSMo Supp. 2008.*

Original rule filed July 22, 1992, effective Feb. 26, 1993. Amended: Filed Oct. 8, 2003, effective April 30, 2004. Rescinded and readopted: Filed Aug. 15, 2008, effective March 30, 2009.

*Original authority: 290.512, RSMo 1990, amended 2006; 290.515, RSMo 1990, amended 2006; 290.517, RSMo 1990, amended 2006; and 290.523, RSMo 2008.

8 CSR 30-4.020 Minimum Wage Rates

PURPOSE: This rule describes the minimum wage rates to be paid to certain qualifying employees, describes generally the allowance of gratuities as a credit toward payment of the minimum wage, and describes how a workweek is calculated.

(1) Tipped employees shall receive at least the applicable minimum wages as set forth in this rule, except that the employer may claim gratuities as a credit toward the payment of the required minimum wage. The maximum amount of gratuities that the employer can claim as a credit is fifty percent (50%) of the applicable minimum wage rate. In no event shall the amount of wages and gratuities equal less than the applicable minimum wage, with the difference between the gratuities and the minimum wage being paid by the employer.

(2) Subject to the requirements of sections 290.500 to 290.530, RSMo, at least the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, or any other basis. If, in any workweek, the total wages earned by an employee is less than the applicable minimum wage rate for the total hours worked, the employer shall pay the difference between the total wages earned and the amount required to equal the minimum wage for the total hours worked in the workweek as required under the minimum wage law.

(3) The workweek is the seven (7)-day period that is the basis for determining an employee's hourly earnings. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Missouri Minimum Wage Law.

(4) Hourly wages, tips, gratuities, and commissions shall be counted in the workweek in which the hourly wage, tip, gratuity, or commission is earned to determine if an employee earned at least the minimum wage rate.

AUTHORITY: sections 290.512, 290.515, and 290.523, RSMo Supp. 2008.* *Original rule filed July 22, 1992, effective Feb. 26, 1993. Amended: Filed Oct. 8, 2003, effective April 30, 2004. Rescinded and readopted: Filed Aug. 15, 2008, effective March 30, 2009.*

*Original authority: 290.512, RSMo 1990, amended 2006; 290.515, RSMo 1990, amended 2006; and 290.523, RSMo 2008.

8 CSR 30-4.030 Training Wage for Learners and Apprentices (Rescinded March 30, 2009)

AUTHORITY: sections 290.512, 290.515, and 290.517, RSMo Supp. 1994. *Original rule filed July 22, 1992, effective Feb. 26, 1993. Amended: Filed March 27, 2000, effective Oct. 30, 2000. Rescinded: Filed Aug. 15, 2008, effective March 30, 2009.*

8 CSR 30-4.040 Subminimum Wage Rates for the Physically or Mentally Impaired

PURPOSE: This rule provides for the establishment of subminimum wages to be paid to persons whose earning capacity is reduced due to a physical or mental impairment.

(1) The director may provide for employment at a subminimum wage rate if it is deemed necessary to prevent curtailment of opportunities for employment of the physically or mentally impaired.

(2) A public hearing for the purpose of establishing a subminimum wage rate for any occupation may be held by the director on his/her own motion, or at the request of an interested person.

(3) Employees affected by a proposed subminimum wage shall be given reasonable notice of the public hearing and shall be given the opportunity to submit oral or prepared written testimony concerning, but not limited to, the following:

(A) The need for a subminimum wage rate; and

(B) Recommendations as to the appropriate level of wages to be set as the subminimum wage for the occupation(s) being considered.

(4) Subminimum wage rates that are to be considered by the director shall be duly approved by filing a Notice of Proposed Rulemaking and a subsequent Order of Rulemaking with the secretary of state as provided for state agencies under Chapter 536, RSMo.



AUTHORITY: sections 290.515 and 290.523, RSMo Supp. 2008. Original rule filed July 22, 1992, effective Feb. 26, 1993. Amended: Filed Aug. 15, 2008, effective March 30, 2009.*

**Original authority: 290.515, RSMo 1990, amended 2006 and 290.523, RSMo 2008.*

8 CSR 30-4.050 Valuation of Goods and Services

PURPOSE: This rule provides for the valuation of those types of goods and services which may be received by the employee and credited by the employer in payment of the minimum wage.

(1) The fair market value of meals, lodging, and other goods and services may be deducted by the employer as a credit toward the payment of the minimum wage to the employee so long as the meals, lodging and other goods and services are voluntarily received by the employee for the private benefit of the employee.

(2) The term fair market value as used in this rule means the price which the goods or services in question would bring when offered for sale by one willing but not obliged to sell it, and when bought by one willing or desirous to purchase it but who is not compelled to do so. The fair market value of the goods and services which are accepted by the employee as wages shall be computed on a weekly basis. Once an accounting has been made of the fair market value of the goods and services accepted by the employee in each workweek, full settlement of the amount owed to the employee shall be made by the employer on each regular payday. The employer shall be required to pay only the difference between the fair market value of the goods and services accepted during the pay period, and the minimum wage otherwise required to be paid.

(3) The following is an illustrative, but not exhaustive, listing of goods and services which are not considered to be for the private benefit of the employee and whose fair market value may not be deducted by the employer as a credit toward the payment of the minimum wage to the employee:

- (A) Tools;
- (B) Equipment;
- (C) Uniforms, including, but not limited to, garments such as suits, dresses, aprons and all other garments whatsoever as worn by the employees as a condition of employment. This apparel of a similar design, color or

material, or forming part of the decorative pattern of the establishment or distinguishing the employee as an employee of the concern is presumed to be worn as a condition of employment;

- (D) Laundry or cleaning of uniforms;
- (E) Maintenance of tools, equipment or uniforms;
- (F) Breakage or loss of tools, equipment or uniforms;
- (G) Any other item required by the employer to be worn or used by the employee as a condition of employment; and
- (H) Transportation furnished to the employee where that transportation is an incident of and necessary to the employment, such as travel costs of railroad maintenance-of-way workers.

(4) The following is an illustrative, but not exhaustive, listing of goods and services which are considered to be for the private benefit of the employee and whose fair market value may be deducted by the employer as a credit toward the payment of the minimum wage to the employee:

- (A) Meals;
- (B) Lodging;
- (C) Tuition furnished by a college to its student employees;
- (D) Merchandise furnished at company stores and commissaries;
- (E) Fuel (including coal, kerosene, firewood and lumber slabs);
- (F) Electricity, water and gas furnished for the noncommercial personal use of the employee; and
- (G) Transportation furnished to employees between their homes and work, where the transportation is not necessary to the employment.

AUTHORITY: sections 290.512, 290.515 and 290.517, RSMo Supp. 1990. Original rule filed July 22, 1992, effective Feb. 26, 1993.*

**Original authority: 290.512, RSMo 1990; 290.515, RSMo 1990; and 290.517, RSMo 1990.*

8 CSR 30-4.060 Administrative Complaints; Notices Issued by the Director

PURPOSE: This rule establishes requirements for the filing of administrative minimum wage complaints.

(1) An individual who believes that he or she has not been paid the required minimum wage may file a complaint on a form prescribed by the department. The department will not accept anonymous or third-party complaints. A complaint form can be

obtained by accessing the department's website at www.dolir.mo.gov or by contacting the Division of Labor Standards by phone at (573) 751-3403.

(2) The department shall have authority to investigate and ascertain the wages of persons employed in any occupation included within the meaning of sections 290.500 to 290.530, RSMo. Employees that are not covered and not required to be paid the minimum wage rate are listed in section 290.500(3), RSMo.

(3) A complainant shall provide and keep the department advised of the complainant's current mailing address and telephone number.

(4) An employer under investigation shall provide the department with a copy of the first page of its most recent income and sales tax returns to determine the applicability of the minimum wage law. The employer shall also keep the department advised of the employer's current mailing address and telephone number.

(5) Upon completion of the department's investigation, the parties shall be notified of the department's findings.

(6) Any employer wishing to establish a training rate for learners and apprentices as permitted by section 290.517, RSMo, shall provide a written request to the director stating the classification of workers it desires to be designated as learners or apprentices. Upon such notice and in the discretion of the director, a hearing will be held consistent with section 290.517, RSMo.

AUTHORITY: sections 290.517 and 290.523, RSMo Supp. 2008. Original rule filed Aug. 15, 2008, effective March 30, 2009.*

**Original authority: 290.517, RSMo 1990, amended 2006 and 290.523, RSMo 2008.*