

# Wage and Hour Guide for Employers

Prepared by the Wage and Hour Sub-Practice Group of EBG  
Collective Action Litigation – Advice and Counsel – Employer Audits

## PART 1: FAIR LABOR STANDARDS ACT (FLSA) OVERTIME EXEMPTIONS

### Executive

1. Primary duty is management of enterprise department or subdivision
2. Customarily and regularly directs the work of two or more employees
3. Must have power to hire and fire, or recommendations must be given “particular weight”

*The employee must also be paid on a salary basis of at least \$455 per week.*

- » Can manage a mix of full time and part time employees, if equals 2 full time employees
- » To determine primary duty, look at amount of time spent, job description, hiring criteria, how paid
- » To analyze “particular weight,” determine whether recommendation is part of job duties, frequently made, or frequently relied upon

29 C.F.R. §§ 541.100 – 541.106

### Administrative

1. Primary duty is performance of office or non-manual work directly related to management or general business operations of employer
2. Must exercise discretion and independent judgment with respect to matters of significance

*The employee must also be paid on a salary basis of at least \$455 per week*

- » “Production workers” (those producing core product or service) may not be eligible
- » Specific exempt job titles: team project leader (lead major projects); administrative assistant (if delegated authority re: matters of significance); human resource managers (must make or interpret employment policies); purchasing agents (w/ authority to bind company on significant purchases)
- » Internet, database and computer network administrators now meet administrative exemption

29 C.F.R. §§ 541.200 – 541.203

### Professional

#### Performance of work:

1. Requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, or
2. Requiring invention, imagination, originality or talent in recognized field of artistic or creative endeavor

*The employee must also be paid on a salary basis of at least \$455 per week.*

- » Examples: doctors, lawyers, nurses, engineers, scientists
- » College or advanced degrees are standard, but a combination of work experience and training will suffice in some cases
- » Accountants usually meet this exemption, but accounting clerks and bookkeepers do not
- » Graphic artists may qualify, but must exercise a high level of invention, imagination, originality and talent

29 C.F.R. §§ 541.300 – 541.304

## Outside Sales

1. Primary duty is making sales
2. Must customarily and regularly be engaged away from the employer's place of business in performing this duty

- » Work done in furtherance of sales is considered part of making sales
- » Inside duties such as writing sales reports, updating catalogues, planning itineraries and attending sales conferences are considered part of making sales
- » Inside salespeople not eligible: no telephone, mail or internet sales
- » Former rule – no more than 20% non-exempt duties; new rule – outside sales need only be “primary duty”

29 C.F.R. §§ 541.500 – 541.504

## Computer Professional

1. Application of systems analysis techniques and procedures to determine hardware, software or system functional specifications;
2. The design, development, documentation, analysis, creation, testing or modification of:
  - a) computer systems or programs; or
  - b) computer programs related to machine operating systems; or
3. A combination of these duties

- » Does not apply to computer operation, manufacture or repair
- » Does not apply to employees whose work is highly dependent upon the use of computers and computer software programs (i.e., auto cad)
- » Must be paid on a salary basis of at least \$455 per week, or can pay on hourly basis if at least \$27.63/hr

29 C.F.R. §§ 541.400 – 541.401

## Highly Compensated Employee Exemption

1. An employee with a total annual compensation of at least \$100,000 is deemed exempt if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee

2. “Total annual compensation” must include at least \$455 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period
3. If the employee's total annual compensation does not meet the required amount, the employer may, during the last pay period or a one month period after the end of the year, make a payment sufficient to achieve the required level
4. For employees who work less than one year, the employer may calculate exemption on a pro rata basis
5. The exemption only applies to employees performing office or non-manual work

29 C.F.R. § 541.601

## Permissible Deductions From Exempt Employee Salary

The following is a list of permissible deductions from an exempt employee's salary, which will not violate the “salary basis” requirement:

1. When an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability
2. For absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder
3. For unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules, or for infractions of safety rules of major significance
4. An employer is not required to pay the full salary in the initial or terminal week of employment
5. An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act

29 C.F.R. § 541.602

## PART 2:

# FAIR LABOR STANDARDS ACT (FLSA) NON-EXEMPT EMPLOYEES

### Minimum Wage

1. Non-exempt employees must be paid at least the federal minimum wage for all hours worked

Federal Minimum Wage:

- » July 24, 2009: \$7.25 per hour

29 U.S.C. § 206

### Overtime

1. Non-exempt employees must be paid overtime for all hours worked over 40 hours in a workweek

#### a) Overtime:

- » 1 ½ times an employee's regular rate of pay
- » Regular rate of pay must be determined for non-exempt employees paid on a piece-rate, salary, or commission basis by dividing their earnings by the number of hours actually worked

29 C.F.R. §§ 778.100 – 778.115

- » Non-discretionary bonuses (i.e., performance incentives) are to be included in an employee's regular rate of pay to determine overtime payment obligations

#### ▪ Bonuses are considered to be discretionary if:

1. The fact that the payment is to be made and the amount are determined at the sole discretion of the employer; and
2. The bonuses are not paid under a prior contract, agreement, announcement, or promise that would cause the payments to be considered "regular"

29 C.F.R. § 778.211

#### b) Workweek

- » Regularly recurring period of 168 hours (7 consecutive 24-hour periods)
- » May begin on any predetermined day and hour of day

29 C.F.R. § 778.105

### Tipped Employees

1. "Tipped Employee": Employee who typically receives over \$30 of tips per month
2. Employees must receive at least the federal minimum wage

- » Tips actually received by tipped employees may be counted as wages; but
- » Employers must pay tipped employees at least \$2.13 per hour in direct wages

29 C.F.R. § 531.50

### Hours Worked

#### 1. On-call Time:

- » On Employer's Property: Generally, on-call time is compensable (unless living on property)
- » Off Employer's Property: Generally, on-call time is not compensable (unless activities are restricted)

#### Example:

A paramedic is scheduled to work a 12-hour "on-call" shift, which requires her to remain at the dispatching center to respond to emergencies. All time spent at the dispatching center is compensable time.

#### Compare:

Maintenance employees at a large manufacturing facility are scheduled to be "on-call" one weekend each month. During such time, the employees may do as they please, including staying at home, but must "check-in" with their supervisor by telephone at the beginning and end of each day. The maintenance employee's "on-call" time is not compensable.

29 C.F.R. § 785.17

#### 2. Sleeping Time:

If employee is required to be on duty:

- » 24 Hours or Less: All time is compensable, even if permitted to sleep
- » 24 Hours or More: Employer and employee may agree to exclude sleep time from hours worked, however, sleeping facilities must be provided

29 C.F.R. §§ 785.21 – 785.22

#### 3. Lectures, Meetings, & Training Programs:

Compensable unless all the following elements are met: time spent is (1) outside normal working hours;

(2) voluntary; (3) not job related; and (4) no other work is concurrently performed

29 C.F.R. § 785.27

#### 4. Travel Time:

a) Home to Work:

» Not compensable

b) One-Day Special Assignment in Another City:

» If employee ordinarily works at a fixed location, all time spent traveling to and returning from another city on the same day is compensable. However, time the employee normally spends traveling to/from work can be deducted from the otherwise compensable time

c) Overnight Travel:

» Time spent away from home on overnight travel that coincides with the employee's normal work hours is compensable. In addition, time spent on non-work days that coincides with the employee's normal work hours is also compensable

29 C.F.R. §§ 785.34 – 785.40

## PART 3: CONNECTICUT WAGE & HOUR LAWS

### Child Labor

#### Minimum Age

» Persons under the age of 18 years who are not enrolled in and have not graduated from a secondary educational institution must not be employed in any manufacturing or mechanical establishment more than nine hours in any day or 48 hours in any calendar week.

C.G.S. § 31-12 (a).

» Persons under the age of 18 years who are not enrolled in and have not graduated from a secondary educational institution must not be employed in any mercantile establishment more than eight hours in any one day, or more than six days in any one calendar week, or more than 48 hours in any one calendar week.

C.G.S. § 31-13 (a).

#### Hours of Employment

» No person under 18 years of age will be employed in any manufacturing or mechanical establishment more than (1) six hours in any regularly scheduled school day unless the regularly scheduled school day immediately precedes a non-school day or eight hours in any other day, and (2) 32 hours in any calendar week during which the school in which such person is enrolled is in session, or 48 hours in any calendar week during which the school in which such person is enrolled is not in session.

C.G.S. § 31-12 (e).

» No person under 18 years of age will be employed in any mercantile establishment more than (1) six hours in any regularly scheduled school day unless the regularly scheduled school day immediately precedes a non-school day or eight hours in any other day, and (2) 32 hours in any calendar week during which the school in which such person is enrolled is in session, or 48 hours in any other calendar week during which the school in which such person is enrolled is not is session.

C.G.S. § 31-13 (c).

» No person under 18 years of age will be employed in any manufacturing, mechanical, or mercantile establishment between the hours of 10 p.m. and 6 a.m., except that such persons may be employed in any manufacturing, mechanical, or mercantile establishment until 11 p.m. or any supermarket until midnight on any night other than a night preceding a regularly scheduled school day.

C.G.S. § 31-14 (a).

» No public restaurant, cafe, dining room, barber shop, hairdressing or manicuring establishment, amusement or recreational establishment, bowling alley, shoe-shining establishment, billiard or pool room, or photograph gallery will employ or permit to work any person under 18 years of age (1) between the hours of 10 p.m. and 6 a.m., provided that any such person may be permitted to work in any such establishment one day in a week for not more than 10 hours on such day, but not more than six days or 48 hours in any one week, and provided further that persons between 16 and 18 years of age may be employed in any amusement or recreational establishment, restaurant, café, or dining room, or employed in any theater until midnight unless such persons are regularly

attending school in which case such minors may be employed until 11 p.m. on days that precede a regularly scheduled school day and until midnight during any regular school vacation season and on days that do not precede a regularly scheduled school day, and (2) more than (A) six hours in any regularly scheduled school day unless the regularly scheduled school day immediately precedes a non-school day or eight hours in any other day, and (B) 32 hours in any calendar week during which the school in which such person is enrolled is in session or 48 hours in any other calendar week during which the school in which such person is enrolled is not in session.

C.G.S. § 31-18 (a).

### Prohibited Employment

- » No minor under 16 years of age will be employed or permitted to work in any manufacturing, mechanical, mercantile, or theatrical industry; restaurant or public dining room; or in any bowling alley, shoe-shining establishment, or barber shop.

C.G.S. § 31-23 (a).

- » Notwithstanding the provisions of subsection (a), a minor who has reached the age of 14 may be employed or permitted to work as a caddie or in a pro shop at any municipal or private golf course, and a minor who has reached the age of 15 may be employed or permitted to work in any mercantile establishment, as a bagger, cashier, or stock clerk, provided that such employment is (A) limited to periods of school vacation during which school is not in session for five consecutive days or more, except that such minor employed in a retail food store may work on any Saturday during the year; (B) for not more than 40 hours in any week; (C) for not more than eight hours in any day; and (D) between the hours of 7 a.m. and 7 p.m., except that from July first to the first Monday in September in any year, any such minor may be employed until 9 p.m..

C.G.S. § 31-23 (b) (1).

- » No minor under the age of 18 years will be employed or permitted to work in any occupation that has been or will be pronounced hazardous to health by the Department of Public Health or pronounced hazardous in other respects by the Labor Department.

Conn. Regs. § 31-23-1.

### Specific Provisions

- » Each person who employs a minor under the age of 18 years must obtain a certificate stating the age of such minor. Such certificates must be kept on file at the place of employment and must be available at all times during business hours to the inspectors of the Labor Department.

C.G.S. § 31-23 (d).

- » With each wage payment, each employer must furnish to each employee, in writing, a record of hours worked, the gross earnings showing straight time and overtime as separate entries, itemized deductions, and net earnings, except that the furnishing of a record of hours worked and the separation of straight time and overtime earnings will not apply in the case of any employee with respect to whom the employer is specifically exempt from the keeping of time records and the payment of overtime under the Connecticut Minimum Wage Act or the Fair Labor Standards Act.

C.G.S. § 31-13a.

- » (A) Each person who employs a 14-year-old minor as a caddie or in a pro shop at any municipal or private golf course pursuant to this section must obtain a certificate stating that such minor is 14 years of age or older, and (B) each person who employs a 15-year-old minor in any mercantile establishment pursuant to this subsection must obtain a certificate stating that such minor is 15 years of age or older. Such certificate must be kept on file at the place of employment and must be available at all times during business hours to the inspectors of the Labor Department.

C.G.S. § 31-23 (b) (2).

### Minimum Wage

#### Hourly Amount

- » The minimum fair wage in any industry or occupation is a wage of not less than \$8.25 per hour. Employees between the ages of 16 and 18 may be paid 85 percent of the current minimum wage of \$8.25 per hour (\$7.01) if working in agriculture or government, or if working in other industries and have worked less than 200 hours and less than 90 days.

C.G.S. § 31-58 (j).



## Wages for Tipped Employees

- » Gratuities in an amount equal to 31 percent of the minimum fair wage per hour will count towards the minimum fair wage for persons, other than bartenders, employed in the hotel and restaurant industry who customarily and regularly receive gratuities; for bartenders, the amount is equal to 11 percent of the minimum fair wage. In any other industry, gratuities in an amount not to exceed \$0.35 per hour will count towards the minimum fair wage.

C.G.S. § 31-60 (b).

## Posting

- » Employers are required to post, in a conspicuous place, the Connecticut Regulations governing minimum wages.

C.G.S. § 31-66.

## Payment of Wages

### General

- » Each employer must pay weekly all moneys due each employee on a regular pay day, designated in advance by the employer, in cash, by negotiable checks, or, upon an employee's written request, by credit to such employee's account in any bank that has agreed with the employer to accept such wage deposits.

C.G.S. § 31-71b (a).

- » The Labor Commissioner may, upon application, waive the weekly wage payment requirement with respect to any particular week or weeks, and may also, upon application, permit any employer to establish regular pay days less frequently than weekly, provided that each employee affected must be paid, in full, at least once in each calendar month on a regularly established schedule.

C.G.S. § 31-71i.

### Deductions

- » No employer may withhold or divert any portion of an employee's wages unless (1) the employer is required or empowered to do so by state or federal law, (2) the employer has written authorization from the employee for deductions on a form approved by the commissioner, or (3) the deductions are authorized by the employee, in writing, for medical, surgical, or hospital care or service, without financial benefit to the employer and recorded in the employer's wage record book.

C.G.S. § 31-71e.

## Notice

- » Each employer must: (1) advise his employees, in writing, at the time of hiring, of the rate of remuneration, hours of employment, and wage payment schedules, and (2) make available to his employees, either in writing or through a posted notice maintained in a place accessible to his employees, any employment practices and policies or change therein with regard to wages, vacation pay, sick leave, health and welfare benefits, and comparable matters.

C.G.S. § 31-71f.

## Timing

- » The end of the pay period for which payment is made on a regular pay day must not be more than eight days before such regular pay day, provided that, if such regular pay day falls on a non-work day, payment will be made on the preceding work day.

C.G.S. § 31-71b (b).

## Overtime

### General

- » A non-exempt employee is to be paid one and one-half times the employee's regular rate of pay for work performed in excess of 40 hours in any workweek.

C.G.S. § 31-76c.

### Exceptions

- » Employees are exempt from the overtime requirements if they are employed in a bona fide executive, administrative, or professional capacity, or if they are employed in the capacity of an "outside salesman," as defined in the regulations promulgated pursuant to the Federal Fair Labor Standards Act.

C.G.S. § 31-76i (e) and (f).

- » A person employed as an inside salesperson whose sole duty is to sell a product or service is also exempt if the person's regular rate of pay is in excess of two times the minimum fair rate, more than half of the person's compensation is from commissions, and the salesperson does not work more than 54 hours in a workweek of seven consecutive days.

C.G.S. § 31-76i (g).

## Specific Provisions

### 1. Executive Exemption

- The employee's primary duty must consist of the management of the enterprise or department in which employed.
- The employment must customarily and regularly direct the work of two or more other employees.
- The employee must be paid a salary basis of \$475.00 per week (\$455.00 under FLSA).

If an employee does not meet these requirements then the following criteria must be met:

- All the above and a salary of \$400.00 per week.
- The employee either must have the authority to hire or fire employees or make recommendation regarding hiring, firing, promotion, or other changes in the status of employees.
- The employee must customarily and regularly exercise discretionary powers.
- The employee must not devote more than 20 percent (or 40 percent in the case of a retail or service employee) of his hours in the workweek to activities that are not directly and closely related to the performance of the work described above.

### 2. Administrative Exemption

- The employee must be compensated on a salary basis of \$475.00 per week.
- The employee's primary duty must be the performance of office or non-manual work directly related to management policies or general business operations, or the performance of administrative functions in an educational setting in work directly related to academic instruction or training.
- The employee must customarily and regularly exercise discretion and independent judgment:
  - a. An employee under the constant direction of supervisors is not likely to be exercising the degree of discretion contemplated by the exemption.
  - b. The key question in determining the amount of discretion exercised by the employee is whether the employee is making the decisions independently or whether he is simply following an established procedure.
  - c. Even though an employee has significant discretion in judgment, if the discretion applies to the production process, the employee will not qualify under the administrative exemption. The employee must exercise discretion in respect to the company's policies or operations to qualify for this exemption.

- The employee must:
  - a. regularly and directly assist a proprietor, or an employee employed in a bona fide executive or administrative capacity; or
  - b. perform under only general supervision along specialized or technical lines requiring special training, experience, or knowledge; or
  - c. execute under only general supervision special assignments or tasks; or
  - d. not devote more than 20 percent (40 percent for retail or service establishment employees) of his hours worked in a week to activities not directly and closely related to the performance of the work described above;

provided that an employee who is compensated on a salary or fee basis at a rate of not less than \$475 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described above, which includes work requiring the exercise of discretion and independent judgment, will be deemed to meet all of the requirements of this section.

### 3. Professional Exemption

- The employee must be compensated on a salary basis of \$475 per week, except lawyers, doctors, and teachers.
- The employee's primary duty must be:
  - a. work requiring knowledge of an advanced type in a field of science or learning customarily acquired by the prolonged course of specialized intellectual instruction and study as distinguished from a general academic education or apprenticeship; or
  - b. original and creative work in an artistic field; or
  - c. teaching, tutoring, instructing, or lecturing as a teacher certified in the school system or educational establishment by which he is employed.
- The employee's work must require the consistent exercise of discretion and judgment.
- The employee's work must be:
  - a. predominantly intellectual and varied in character as opposed to routine, mental, mechanical, or physical work; and
  - b. of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

## Breaks and Meal Periods

### General

- » No person will be required to work for seven and one-half or more consecutive hours without a period of at least 30 consecutive minutes for a meal. Such period will be given at some time after the first two hours of work and before the last two hours. [C.G.S. § 31-51i \(a\)](#).
- » The provisions will not apply to any employer who provides 30 or more total minutes of paid rest or meal periods to employees within each seven and one-half hour work period. [C.G.S. § 31-51ii \(g\)](#).
- » Any employee may, at her discretion, express breast milk or breastfeed on site at her workplace during her meal or break period. [C.G.S. § 31-40w \(a\)](#).

## Payment on Separation

### Voluntary Resignation

- » Whenever an employee voluntarily terminates his employment, the employer must pay the employee's wages, in full, not later than the next regular pay day, either through the regular payment channels or by mail. [C.G.S. § 31-71c \(a\)](#).

### Involuntary Termination

- » Whenever an employer discharges an employee, the employer must pay the employee's wages, in full, not later than the business day next succeeding the date of such discharge. [C.G.S. § 31-71c \(a\)](#).

## Payment for Vacation and Sick Leave

- » If an employer policy or collective bargaining agreement provides for the payment of accrued fringe benefits upon termination, including, but not limited to, paid vacations, holidays, sick days, and earned leave, and an employee is terminated without having received such accrued fringe benefits, the employee must be compensated for the accrued fringe benefits. [C.G.S. § 31-76k](#).

## Penalty

### General

- » Any employer, or any individual authorized by an employer to pay wages, which violates any provision of the Connecticut Wage and Hour Laws may be: (1) fined not less than \$2,000 nor more than \$5,000 or imprisoned not more than five years or both for each offense if the total amount of all unpaid wages owed is more than

\$2,000; (2) fined not less than \$1,000 nor more than \$2,000 or imprisoned not more than one year or both for each offense if the total amount of all unpaid wages owed is more than \$1,000 but not more than \$2,000; (3) fined not less than \$500 nor more than \$1,000 or imprisoned not more than six months or both for each offense if the total amount of all unpaid wages owed is more than \$500 but not more than \$1,000; or (4) fined not less than \$200 nor more than \$500 or imprisoned not more than three months or both for each offense if the total amount of all unpaid wages owed is \$500 or less. [C.G.S. § 31-71g](#).

- » Any employer, officer, agent, or other person who violates any provision of the Connecticut Wage and Hour Laws will be liable to the Labor Department for a civil penalty of \$300 for each violation. [C.G.S. § 31-69a](#).

### Note

- » When an employer fails to pay an employee wages in accordance with the provisions of the Connecticut Wage and Hour Laws, the employee may recover, in a civil action, twice the full amount of such wages, with costs and such reasonable attorney's fees as may be allowed by the court. In the alternative, the Labor Commissioner may collect the full amount of any such unpaid wages, as well as interest, and may bring legal action to recover twice the full amount of unpaid wages, and the employer will be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [C.G.S. § 31-72](#).

### Other

- » The statute of limitations for claims brought pursuant to the Connecticut Wage and Hour Laws is two years, except that the limitation period is tolled upon the filing of a wage claim with the Labor Commissioner. [C.G.S. § 52-596](#).

This Guide reflects the law only as of the date of publication. You should consult with an attorney before relying on any information contained herein, as the law may have changed, and outcomes may vary depending on individual circumstances.