

# Wage and Hour Guide for Employers

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## 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: GEORGIA WAGE & HOUR LAWS

### Minimum Age

#### Hourly Amount

» With very limited exceptions for small employers (e.g., less than \$40,000 in annual sales, fewer than six employees) and certain types of employees (including students, newspaper carriers, and workers whose compensation consists wholly or partially of gratuities) an employer who is not subject to the minimum wage provisions of any act of Congress must pay employees not less than \$5.15 per hour. If the employer is subject to the minimum wage provisions of any act of Congress, the employer must pay the minimum wage provided by that act.

O.C.G.A. § 34-4-3.

### Tipped Employees

» Exempted from coverage under Georgia's minimum wage law.

O.C.G.A. § 34-4-3(b)(5).

### Payment

#### Timing

» Wage and salary payments may be made on whatever dates during the month that the employer chooses. However, the dates selected shall be such that the month will be divided into at least two equal periods. Additionally, the payments made on each such date must correspond to the full amount of wages or earnings due the employees for the period for which the payment is made.

O.C.G.A. § 34-7-2.

### Child Labor

#### Prohibited Employment

##### Dangerous Workplace

» No minor under 16 can be employed to work in any mill, factory, laundry, manufacturing establishment, or workshop, or in an occupation which has been designated as hazardous by the Commissioner of Labor.

O.C.G.A. §§ 39-2-1, 39-2-2.

##### Circus Work

» Any person who provides a minor under 12 to another for rope or wire walking, begging, or as a gymnast, contortionist, circus rider, acrobat, or clown, or for any indecent, obscene, or immoral exhibition, practice, or purpose shall be guilty of a misdemeanor. The person who receives and uses the minor shall also be guilty of a misdemeanor.

O.C.G.A. § 39-2-17.

#### Hours of Employment

Except as otherwise provided in this chapter, no minor under 16 can work between the hours of 9:00 P.M. and 6:00 A.M.

O.C.G.A. § 39-2-3.

#### Total Hours

» No minor under 16 can be employed or work for more than four hours on any day in which school is in session, more than eight hours on any non-school day, or more than 40 hours in any week.

O.C.G.A. § 39-2-7.

## School Hours

- » No minor under 16 can be employed to work during school hours unless said minor has completed senior high school or has been excused from attending school by a board of education.

§ 39-2-4.

## Newspaper Delivery

- » Minors under 16 can be employed to sell or deliver newspapers between the hours of 5:00 A.M. and 9:00 P.M., but not between 9:00 P.M. and 5:00 A.M., provided that such employment is not for longer than is allowed under O.C.G.A. § 39-2-7, and not performed during school hours.

O.C.G.A. § 39-2-6.

## Minimum Age

- » Minors under 12 can be employed or work in agriculture, in domestic service in private homes, in those jobs specified by this chapter. Minors can be employed by a parent or a by person standing in the place of a parent.

O.C.G.A. § 39-2-9

## Employment Certificate

Employment certificates -- Required; requirements for issuance

- a. No minor between 12 and 16 can be employed or permitted to work unless a certificate issued by the school superintendent/principal administrative officer or his authorized designee: shows the true age of such minor, shows that such minor is not less than 12, and shows that such minor is physically fit to engage in the employment sought to be obtained. A certificate is also required for employment of minors between the ages of 16 and 18.
- b. The certificate must show that the minor is 16 in order to qualify such minor to work between 9:00 P.M. and 6:00 A.M. and to work in any of the occupations covered by O.C.G.A. § 39-2-2.
- c. No employment certificate shall be issued to any minor until he submits to the issuing officer:
  1. A certified copy of a birth certificate or birth registration card; and
  2. A statement from the prospective employer which both indicates that if he were furnished with the employment certificate from the school superintendent, he could employ the minor immediately; and describes the type of employment offered.

- d. A like certificate, a copy of which shall be made a part of the minor's school file, shall be issued in cases of all minors between the ages of 16 and 18. The certificate must show that the minor is 16 in order to qualify them minor to work between 9:00 P.M. and 6:00 A.M. and to be employed in any of the occupations covered by O.C.G.A. § 39-2-2. In addition to the certificate, the superintendent of schools or his designee shall issue an identification card to each minor in this category of employment which certifies that the minor is eligible for employment. Unless his certificate is revoked by the Commissioner of Labor, the minor shall be exempt from future filings of employment certificates.

- e. (1) The certificate provided for in subsection (a) shall be accompanied by a letter from the minor's school administrator that the minor is enrolled in school full-time and has an attendance record in good standing for the current academic year. The employer shall maintain a copy of such certificate and letter in the minor's employment file. Such letter shall be updated in January of each subsequent academic year during which the minor maintains employment until such minor reaches the age of 18 or receives a high school diploma, a general educational development (GED) diploma, a special education diploma, or a certificate of high school completion, or has terminated his or her secondary education and is enrolled in a postsecondary school. Any employer failing to comply with this subsection shall be guilty of a misdemeanor and subject to a fine of up to \$1,000, up to 12 months' imprisonment, or both, for each violation.  
(2) If a minor petitions and there is clear and convincing evidence that the enforcement of the provisions of this subsection upon such minor would create an undue hardship upon the minor or the minor's family or if there is clear and convincing evidence that the enforcement of the provisions of this subsection would act as a detriment to the health or welfare of the minor, the State Board of Education shall promulgate rules and regulations to provide for the issuance of a waiver or exemption from the provisions of this subsection.

O.C.G.A. § 39-2-11

## Certificate Requirements

- » Employment certificates shall state the full name, date, and place of birth of the minor; the name and address of the parents, guardian, or other person having custody of such minor; and that the minor has appeared before the issuing officer and presented the evidence of age required by O.C.G.A. § 39-2-11. A duplicate copy of each employment certificate shall be filed with the Commissioner of Labor within 30 days from its issuance.

O.C.G.A. § 39-2-12

## Certificate Revocation

- » The Commissioner of Labor may revoke any employment certificate if in his judgment the employment certificate was improperly issued. If the employment certificate is revoked, the employer of the minor shall be notified and the minor cannot be employed or permitted to work until a new and valid employment certificate is obtained.

O.C.G.A. § 39-2-14

## Certificate Return

- » Within five days of the termination of the employment of a minor between 12 and 16, the employer shall return the employment certificate to the issuing officer. When such a minor fails to appear for work for 30 days, the employer shall return the employment certificate to the issuing officer before the 35th day after the minor fails to appear.

O.C.G.A. § 39-2-13

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## Summer Work

- » A minor 14 or over may work during the months of vacation from school in maintaining lawns, gardens, and shrubbery owned or leased by the employer so long as the minor is covered by an accident and sickness insurance plan or a workers' compensation insurance policy or plan provided by the employer. The minor must also present the certificate required by O.C.G.A. § 39-2-11.

O.C.G.A. § 39-2-11.1

## Child Performers

- » Nothing in this chapter shall apply to any minor employed as an actor or performer in motion pictures or theatrical productions, in radio or television productions, in any other performance, concert, or entertainment, or to any minor employed in the making of phonographic records or as an advertising or photographic model, provided that the written consent of the Commissioner of Labor is first obtained.

O.C.G.A. § 39-2-18.

## Penalty

- » Any person or firm that violates any of the provisions of this chapter will be guilty of a misdemeanor.

O.C.G.A. § 39-2-20.

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