

# State Laws Regulating MINIMUM WAGE *and the* PAYMENT OF WAGES

ALL employers must comply with state laws regulating minimum wage, overtime, general working conditions and the payment of wages, including those covered under the Fair Labor Standards Act (FLSA)

## MINIMUM WAGE

**\$7.95 per hour from January 1, 2008 through December 31, 2008\***

\*Oregon law requires the minimum wage rate to be adjusted annually for inflation by September 30th of each year for the following calendar year.

Almost all workers must be paid the minimum wage as required by state law. There are no sub-minimum rates for trainees or minors, although there are some special provisions for student-learners and disabled workers.

**Exemptions:** The following workers are not subject to the state minimum wage and overtime requirements.

- Some agricultural workers
- Workers engaged in the range-production of livestock
- Individuals who perform child care services in their home or the home of the child
- Domestic workers employed on a casual basis in a family home
- Administrative, executive or professional workers
- Persons employed by the United States Government
- Students enrolled in and employed by an institution of primary or secondary education
- Outside salespersons
- Taxicab operators
- Workers living at a place of employment for the purpose of being available for emergency or occasional duties
- Workers paid for specified hours who are to be available for recall to duty
- Managers, assistant managers and maintenance workers employed and lodged in multi-unit accommodations, including mobile home parks or manufactured dwelling parks
- Workers employed on a seasonal basis at educational or organized camps having an annual income of less than \$500,000 and workers employed on a seasonal basis at non-profit camps
- Workers employed at a non-profit conference ground or center operated for educational, charitable or religious purposes
- Volunteer firefighters
- Workers providing companionship services to elderly, infirm or disabled persons in a family home
- Resident managers of licensed adult foster care homes

- Inmate labor
- Certain individuals volunteering as campground hosts who reside in publicly owned campgrounds
- Referees of youth or adult recreational soccer matches

### Hours Worked and Record Keeping

Employees must receive at least minimum wage for all hours worked, including preparation time, opening and closing times and required meetings. State minimum wage laws define the term "employ" as "to suffer or permit to work".

By this definition, any time spent by an employee in the performance of any duties must be recorded as time worked.

Under state law, it is permissible to pay wages by the hour, as a salary, in commissions, or at a piece-rate. Whichever method is used, employers must keep accurate time records and the employee's total earnings must equal or exceed minimum wage for the hours worked.

Employers are responsible for maintaining accurate time records of all hours worked. The records must be kept for at least two years.

### Tip Credit

State law prohibits using tips to calculate the amount of Oregon's minimum wage. This means that all employers in Oregon must pay the full amount of minimum wage without the benefit of a tip credit.

### Other Pay

Vacation pay, holiday pay, bonuses, sick leave and severance pay are examples of wage agreements which may be made between employers and employees as a part of the employee's total compensation. There is no requirement in the minimum wage law to offer these benefits.

### Overtime

Any hours worked over 40 in a work week must be paid at one and one-half times the employee's regular rate of pay.

The payment of overtime is required by state statute and may not be waived by agreements with employees. Compensatory time off (comp time) may not be exchanged for overtime earned unless it is taken in the same workweek.

A PARTIAL list of employees who are exempt from overtime regulations, but not from the minimum wage law includes:

- Salespersons, parts persons, and mechanics in automotive or farm machinery dealerships
- Most truck drivers or drivers' helpers
- Seamen
- Some agricultural workers
- Motion picture theater workers

(See page 1 for a list of employees who are exempt from both the minimum wage and overtime provisions of the law.)

Some salaried employees are exempt from the payment of minimum wage and overtime. In establishments regulated by the state minimum wage law, administrators, executives, and professionals are exempt as long as these tests are met:

- The work is predominantly intellectual, managerial or creative,
- The employee exercises discretion and independent judgment, and
- The employee is paid on a salary basis and earns a monthly salary of no less than \$1,378.00.

**Other special circumstances include:**

- Hospitals and nursing homes may elect to pay overtime for work over 8 hours per day and 80 hours per two-week period.
- Employees paid other than on an hourly rate and who are required to be paid overtime must have their rate(s) reduced to an hourly rate of pay. Overtime is then calculated on this hourly rate. (Note: Each week requires a separate calculation.)

## Hours of Work

**Adults**

State law sets 10 hours as a maximum that employees may work in one day in mills, factories, or manufacturing establishments. The law, however, does allow for an additional three hours of work per day to be paid at one and one-half times the regular rate of pay. The maximum daily number of hours of work allowed may not exceed 13. Logging camps, sawmills, planing mills and shingle mills are excluded from this requirement.

Adults working in canneries must be paid at one and one-half times their regular rate of pay whenever they work more than 10 hours per day or 40 hours in one seven-day work week. Whenever overtime is being calculated on a daily basis, it also must be calculated on a weekly basis. The greater of the two amounts is the one to be paid.

## Working Conditions

**Adults**

The state minimum wage law gives the Commissioner of the Bureau of Labor and Industries authority to regulate working conditions for employees who are subject to the law. Some of the rules provide for rest and meal periods, weight lifting restrictions, and adequate lighting and ventilation. There are special rules for agricultural employees. Contact the nearest office of the Bureau of Labor and Industries for detailed information.

## Meal Periods

Meal periods of 30 minutes must be provided if the workday is six hours or longer. The employee must be relieved of all duty during this time. If the employee cannot be relieved due to the nature or circumstances of the work, then the meal period must be paid. The scheduling of meal periods is flexible and depends on the length of the workday.

## Rest Periods

Paid rest periods of at least 10 minutes must be provided during each four-hour work period or major part thereof. The rest period is to be taken approximately in the middle of each work segment. There are narrow exemptions to the rest period requirements for part-time adult employees working alone in retail/service businesses. Rest periods may not be added to the meal period or deducted from the beginning or end of the work period in order to reduce the length of the work period.

Meal and rest periods may not be waived or used to adjust working hours.

Certain employers are required to provide additional unpaid rest periods to employees to express milk for a child.

LENGTH OF WORK PERIOD	NUMBER OF REST BREAKS REQUIRED	NUMBER OF MEAL PERIODS REQUIRED
2hrs or less	0	0
2hrs, 1min-5hrs, 59min	1	0
6hrs, (six)	1	1
6hrs, 1min-10hrs	2	1
10hrs, 1min-13hrs, 59min	3	1
14hrs	3	2
14hrs, 1min- 18hrs	4	2
18hrs, 1min-21hrs, 59min	5	2
22 hrs	5	3
22hrs, 1min-24hrs	6	3

Rest Breaks: 10 minutes, paid (15 minutes for minors)  
Meal Period: 30 minutes, unpaid

## Paychecks

### Pay Periods and Paydays

Regular paydays must be established and maintained by every employer. Payment to new employees must be made no later than 35 days from the time their work was begun. Pay periods may be established more frequently, but may not exceed 35 days.

An employee's wages may be paid through a direct deposit system, automated teller machine card, payroll card or other means of electronic transfer, if this is mutually agreeable to the employer and employee, and the employee is able to make an initial withdrawal of the entire amount of net pay due without cost to the employee.

When an employer has notice that an employee has not been paid the full amount the employee is owed on a regular payday and there is no dispute between the employer and the employee regarding the amount of the unpaid wages, if the unpaid amount is five percent or more of the employee's gross wages due on the regular payday, the employer must pay the employee the unpaid amount within three days after

the employer has notice of the unpaid amount, excluding Saturdays, Sundays and holidays.

### **Proper Deductions from Wages**

In general, deductions from wages are lawful only when one of the following four conditions is present, but there are exceptions under the minimum wage law:

- The employer is required to do so by law (example: federal and state taxes, social security, workers' compensation, or a garnishment order)
- The employee has authorized the deduction in writing, the deduction is for the employee's benefit and is recorded in the employer's books
- The deduction is provided for in a collective bargaining agreement.

Employers MAY make deductions for the fair market value of meals or lodging provided for the private benefit of the employee. If the employee does not want the meals, no deductions may be made.

Employers MAY NOT make deductions for the cost of breakage or loss.

Additionally, employers MAY NOT make deductions from employees earning the minimum wage for uniforms or tools or their maintenance.

An itemized statement of deductions made from wages must be furnished to employees on their regular paydays at the time payment is made. The statement must show the amount and purpose of each deduction. It may be a part of the paycheck, attached to it, or may be a separate document.

If the employee agrees, the statement may be provided in an electronic format, provided the employee has the ability to print or store the statement.

### **Final Paychecks**

When an employee is fired, all wages earned by that person are due no later than the end of the first business day after discharge. If an employee quits with at least 48 hours of notice, wages are due the last working day (excluding Saturdays, Sundays and holidays). If an employee quits without 48 hours of notice, wages are due in five days (excluding Saturdays, Sundays and holidays) or on the next payday, whichever occurs first. There are some exceptions and other requirements for final paychecks for contract employees, seasonal farm workers, employees of fairs and those covered by a collective bargaining agreement. Contact any Bureau of Labor and Industries office for information.

Final paychecks may not be held pending return of a uniform or tool or for any other similar reason.

### **Final Paycheck Delivery**

If an employee requests that the final paycheck be mailed, the employer must mail it to any address designated by the employee.

### **Withholding Wages**

Any employer who willfully withholds any portion of an employee's wages may be subject to a penalty of the employee's hourly rate for eight hours per day for each day the employee remains unpaid up to a maximum of 30 days.

The penalty may not exceed 100% of the unpaid wages if the employer pays the wages due within twelve days after written notice of nonpayment is sent to the employer and the employer has not willfully violated the final pay provisions of the law in the preceding year. Different provisions may apply to certain employees paid on a commission basis.

### **Layoff**

When an employee is laid off, but is kept on the payroll and is subject to being recalled to work, the employee's wages may be paid on the next regular payday.

## **Wage Claims**

### **Collection of Past Due Wages**

A wage-earner who has not been paid in full and who has worked at least partly in the state of Oregon may file a claim with the Bureau of Labor and Industries.

### **Statute of Limitations**

Employers are liable for unpaid wages for a period of six years from the date the wages were earned and two years for claims of unpaid overtime. Employees may lose their right to their wages if they fail to pursue claims promptly.

### **Retaliation Prohibited**

Discharging or otherwise retaliating against an employee because the employee has discussed, inquired about or filed a wage claim is prohibited.

### **Personnel Records**

If an employee requests to view his or her personnel records, the employer is required to provide reasonable opportunity within 45 days for the employee to inspect those records of the employee which have been used to determine the employee's qualifications for hiring, promotion, pay increases, employment termination or other disciplinary action. The employer must also furnish a certified copy of such records to the employee upon request within 45 days. Records relating to arrest or conviction or the investigation of criminal conduct, confidential reports from previous employers, or personnel records maintained by the State Board of Higher Education are excluded from this law.

## **Employment of Minors**

Oregon's child labor laws give the Wage and Hour Commission authority to regulate working conditions for ALL minors under age 18 working in ALL establishments in Oregon. All employers in Oregon are subject to the state rules providing for minors' working conditions (meal periods, rest periods, adequate work, weight lifting, etc.). Contact the nearest Bureau of Labor and Industries office for a copy of the "Employment of Minors" brochure.

**NOTE: This brochure is not a complete statement of the laws discussed, nor is it intended to convey legal advice.**



## For additional information:

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### Contact the nearest office of the Bureau of Labor and Industries Wage and Hour Division:

**Portland** 800 NE Oregon Suite 1045  
Portland, OR 97232-2180  
(971) 673-0761  
TTY Portland (971) 673-0766  
Technical Assistance for Employers (971) 673-0824

**Eugene** 1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 686-7623

**Medford** 119 N. Oakdale Ave.  
Medford, OR 97501-2629  
(541) 776-6270

**Salem** 3865 Wolverine St NE; E-1  
Salem, OR 97305-1268  
(503) 378-3292

Or visit the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli)  
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**Bureau of Labor and Industries**  
Wage and Hour Division  
800 NE Oregon #1045  
Portland, Oregon 97232-2180

