

## The Truth About Minimum Wage And More

**MYTH:** I know the deadlines for distributing final paychecks, but my soon-to-be ex-employee says not to worry about it; that we can just pay him on the next payday like everyone else. Is it okay to wait until payday now that the employee has given the green light?

**REALITY:** An employer's failure to pay an employee according to final paycheck time limits set by statute is a violation of Oregon's Wage Collection law, even if an employee acquiesces (or even, as here, suggests) to suspending the timelines set by law. These legal protections, comparable to many other employment laws, may not be waived by an employee.

Employers should always pay employees according to the final paycheck rules, even if an employee expressly gives the employer permission not to do so.

**MYTH:** If 16- and 17-year-olds have a driver's license, they may be employed to drive for the employer.

**REALITY:** Although minors with valid driver's licenses may drive to and from work, minors less than 17 years old employed in non-agricultural employment may not drive on public roads while on the job.

As for 17-year olds, they may only drive on public roadways if they meet **all of the** following criteria: The driving is limited to daylight hours; the 17-year-old holds a State license valid for the type of driving involved in the job performed; the 17-year-old has successfully completed a State approved driver education course and has no record of any moving violation at the time of hire; the automobile or truck is equipped with a seat belt for the driver and any passengers and the employer has instructed the youth that the seat belts must be used when driving the vehicle; and the automobile or truck does not exceed 6,000 pounds gross vehicle weight.

In addition, such driving must only be occasional and incidental to the 17-year-old's employment. This means that the youth may spend no more than one-third of the work time in any workday and no more than 20 percent of the work time in any workweek driving.

Finally, a 17-year-old employee's driving may not involve towing vehicles; route deliveries or route sales; transportation for hire of property, goods, or passengers; urgent, time-sensitive deliveries; transporting more than three passengers, including employees of the employer; driving beyond a 30 mile radius from the youth's place of employment; more than two trips away from the primary place of employment in any single day to deliver the employer's goods to a customer (other than urgent, time-sensitive deliveries which are prohibited); or more than two trips away from the primary place of employment in any single day

to transport passengers, other than employees of the employer.

**MYTH:** Employees must take home, or “net,” at least minimum wage.

**REALITY:** Most employees must be paid at least minimum wage, which is currently \$7.50 per hour under Oregon law. This minimum wage is the gross amount an employee must be paid, and legal deductions such as employer taxes may be subtracted from the gross amount which results in a minimum-wage-paid-employee’s take home pay averaging less than \$7.50 per hour.

**MYTH:** Employers may not include the value of any employee benefits when calculating the minimum wage.

**REALITY:** An employer may count the fair market value of meals and lodging towards the minimum wage obligation only if the meals and lodging are provided for the private benefit of the employee. However, if an employer requires an employee to live on the work site, or derives a mutual benefit from the employee living on the premises, the employer must pay minimum wage in addition to the value of meals and lodging.

**MYTH:** An employee may not be forced into taking FMLA/OFLA.

**REALITY:** Under federal and state family leave laws (FMLA and OFLA); employees are generally entitled to take up to twelve weeks of unpaid leave for qualifying events. What if an employee prefers using paid sick leave and insists that the leave not count as FMLA or OFLA leave?

An employer has a right to designate an absence as family leave as soon as there’s a qualifying event. Family leave laws provide only for unpaid leave, but family leave often runs concurrently with various types of paid leave. Whether an employee may use paid leave during the family leave depends on the kind of leave and, to some extent, on an employer’s company policies.

Though family leave isn’t - by itself - paid leave, the laws in some cases permit an employee to access accrued paid leave during a family leave. If an employee has accrued paid vacation leave, the employee is entitled to utilize that paid leave during a family leave period. Also, the employer’s policy could require the employee to exhaust the paid leave during a qualifying family leave absence.

Employees are also entitled to utilize accrued paid sick leave during family leave, so long as it is consistent with the employer’s regular sick leave policy (for example, when an employer’s policy allows employees to take sick leave to care for a sick family member). The only exception to this is that an employee taking OFLA parental leave has an absolute right to use any available sick leave for this purpose, even if it’s otherwise against the employer’s policy.

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