
Minimum Wage

The minimum wage is \$6.55 per hour (effective July 24, 2008). Certain full-time students may be paid 90 percent of the minimum wage rounded to the lowest nickel.

An employer may pay as little as \$2.13 per hour to tipped employees so long as each employee receives enough in tips to make up the difference between the wages paid and the minimum wage. Employees must be allowed to keep all tips, except that pooling is permitted if no employee's tips are reduced more than 15 percent. **The employer must keep an accurate and complete record of tips as certified by each employee for each pay period. Without these records, the employer may not be allowed the tip credit.**

Overtime

The N.C. Wage and Hour Act, N.C. General Statute §95-25.4, and the comparable federal law, the Fair Labor Standards Act (FLSA), regulate wage rates for overtime pay.

Unless specifically exempted, employees who work more than 40 hours during any workweek must be paid time and one-half based on an employee's regular rate of pay, except after 45 hours at seasonal recreational and amusement establishments.

The overtime rate applies to each hour, or fraction of an hour, worked after more than 40 in any workweek. Certain salaried employees may also be eligible for overtime for all hours worked in excess of 40 or 45 hours, unless otherwise exempted.

The state overtime provision does not apply to some employers and employees who are exempt.

Youth Employment

Rules for all youths under 18 include: Employment certificates are required. Hazardous, detrimental and prohibited work is not permitted.

Additional rules for 16- and 17-year-olds include: No work between 11 p.m. and 5 a.m. when there is school the next day. **Exception:** When the employer gets written permission from the youth's parents and principal.

Additional rules for 14- and 15-year-olds include: Work can be performed at retail businesses, food service establishments, service stations and offices of other businesses.

Work is not permitted in manufacturing or mining, on construction sites, with power-driven machinery, or on the premises of a business holding an ABC permit for the on-premises sale and consumption of alcoholic beverages.

- ◆ **Maximum hours per day:** Three on school days; eight if a nonschool day.
- ◆ **Maximum hours per week:** 18 when school is in session; 40 when school is not in session.
- ◆ **Hours of the day:** May work only between 7 a.m. and 7 p.m. (except to 9 p.m. from June 1 to Labor Day).
- ◆ **Breaks:** 30-minute breaks are required after any period of five consecutive hours of work.

Additional rules for youths under 14 include: Work is generally not permitted except when working for the youth's parents, in newspaper delivery to the consumer, modeling, or acting in a movie, television, radio or theatrical production.

These state youth employment provisions do not apply to farm, domestic or government work.

Wage Payment

Wages are due on the regular payday. If requested, final paychecks must be mailed. When the total of wages due is in dispute, the employer's payment of the undisputed portion cannot restrict the right of the employee to continue his or her claim for the rest of the wages.

Employees must be notified of paydays, pay rates, policies on vacation pay plans, sick leave, and of commission, bonus and other pay matters.

Deductions From Pay

- ◆ Deductions from paychecks are limited to those required by law and those agreed to in writing on or before payday.
- ◆ When the deduction is known and agreed upon in advance, the employee's written authorization must be signed on or before the payday from which the deduction is made and must indicate the reason for the deduction. Before deductions are made, the employee must receive advanced written notice of the total to be deducted, must receive written notice of his or her right to withdraw the authorizations, and must be given a reasonable opportunity to withdraw the authorization in writing.
- ◆ Deductions for the benefit of the employer must comply with the following: In non-overtime workweeks, wages may be reduced to the minimum wage level; in overtime workweeks, wages may be reduced to the minimum wage level for non-overtime hours; and no reductions may be made to overtime wages owed.

- ◆ In addition to complying with the requirements above, deductions for cash or inventory shortages or for loss or damage to an employer's property may not be taken unless the employee receives seven days advance notice. This seven-day rule does not apply to these deductions made at termination.
- ◆ Recoupment of an overpayment of wages resulting from a miscalculation or other bona fide error, advances of wages to employee or to a third party at the employee's request, or the principal of a loan from the employer to the employee does not require an authorization from the employee. Deductions for interest and other charges related to loans require a written authorization as described above.
- ◆ When the deduction is for the employer's benefit and the deduction total is not known and agreed upon in advance, the written authorization must be signed on or before the payday from which the deduction is made, must state the reason for the deduction, and must state the dollar total or percentage of wages to be deducted from one or more paychecks.
- ◆ When criminal process has been issued, the employee has been indicted or arrested for a charge incident to a cash shortage, inventory shortage or damage to an employer's property, the employer may withhold or divert without written authorization any portion of wages owed to recoup the total owed by the employee for such shortages or damage. The limits established for overtime and non-overtime workweek still apply. If the employee is not found guilty, the deduction shall be reimbursed to the employee.
- ◆ A written authorization or written notice required of this section may be in the form of an electronic record in compliance with the Uniform Electronic Transactions Act.
- ◆ Nothing in this section shall preclude an employer from bringing a civil action to collect any money due the employer from the employee.

Any employer who provides vacation pay plans to employees shall give vacation time off or payment in lieu of time off in accordance with the company policy or practice. Employees must be notified in writing, or through a posted notice, of any company policy or practice that results in the loss or forfeiture of vacation time or pay. Employees not so notified are not subject to such loss or forfeiture.

The wage payment provisions apply to all employers doing business in North Carolina except federal, state and local governments.

Recordkeeping Requirements

General Employee Time and Pay Records: Every employer covered by the N.C. Wage and Hour Act must keep certain records for each non-exempt employee. The records maintained shall be complete, accurate and show all hours worked by each employee in each workweek. No particular form is required.

The records must contain the following information for each employee:

- Full name of the employee
- Home address and phone number
- Occupation or job title
- Time of day and day of week the employee's workweek begins
- Regular rate of pay (hourly or salary)
- Hours worked each workday
- Total hours worked each workweek
- Total straight-time earnings each workweek
- Total overtime earnings each workweek
- Total additions to or deductions from wages
- Total gross wages paid each pay period
- Date of each payment
- All other records required by statute or rule for enforcement of any provision of the Wage and Hour Act

These records must be retained by employers for three years.

Youth Employment Certificate: An employer may not employ any youth under 18 until the youth has obtained a youth employment certificate (YEC). Certificates may be obtained online at www.nclabor.com/wh/youth_instructions.htm. **The employer shall maintain a copy of the youth employment certificate as long as the youth is employed and for two years after employment ends.**

Posting: Employers must display an official poster outlining North Carolina's workplace laws. A free copy of the poster may be obtained from the N.C. Department of Labor, at 1-800-NC-LABOR (625-2267).

Additional Records to Be Maintained: Besides the records outlined above, the N.C. Wage and Hour Act requires the following records be retained: **tip credits, wage deductions, vacation and sick leave policies, and wages based on bonuses, commissions or other forms of calculations.**

This sheet provides a general summary of the basic recordkeeping requirements of the N.C. Wage and

Hour Act, Sections 25.1-25.25, and Administrative Rules, Title 13 N.C. Administrative Code Chapter 12.

Frequently Asked Questions

Q: Where do I get a work permit for a minor under 18?

A: Youth employment certificates may be obtained on-line at www.nclabor.com/wh/youth.htm.

Q: I am an adult and my employer does not allow her employees to take a 15-minute break every four hours. Is this legal?

A: Yes. Employers are not required to give employees 16 or older a 15-minute break or meal break.

Q: My child is 17 and a senior in high school. Her employer is requiring her to work until midnight when there is school the next day. Is this legal?

A: No. This is not legal unless approved in writing by the youth's principal and parent or guardian.

Q: Is it legal for an employer to pay a waitress less than the minimum hourly wage? My employer counts my tip money when he computes my earnings and figures my paycheck.

A: Yes. If the employer pays at least \$2.13 per hour in wages, the waitress certifies the tips received and the waitress receives enough in tips to equal the minimum wage, the employer may count the tip money when computing wages owed.

Q: Can an employer pay someone a salary and not have to worry about overtime?

A: Not in all cases. Just putting an employee on salary does not necessarily exempt that employee from overtime pay. The employee still has to meet certain tests to be exempt as a manager, supervisor, administrative employee, professional employee or an outside salesperson.

Q: I own a business in the private sector. Can I give comp time to my employees instead of paying them time and one-half overtime pay?

A: No. A business in the private sector **cannot** give comp time in place of paying the time and one-half overtime pay for the hours its non-exempt employees work in excess of 40 in a workweek. You may be thinking of public sector employers who are allowed by law to give their employees time and one-half comp time hours for the hours worked in excess of 40 in a workweek. A business in the private sector can give comp time to its bona fide exempt employees since these employees are not required to be paid for overtime hours worked. Such a comp time policy can be hour-for-hour but must be in writing as with any other wage benefit policy.

Quick Reference Guide to the North Carolina Wage and Hour Act



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