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## Frequently Asked Questions

### **Does an employer have to give all of its employees rest breaks and meal breaks?**

**No.** A rest break (generally 10 or 15 minutes) and a meal break (usually 30 minutes or more) are **not** required by law for anyone who is 16 years of age or older. A 30 minute break after 5 hours is required for youths who are 14 or 15 years of age.

### **Is there a restriction on how many hours an employer can work an adult employee?**

**No.** Employees 18 years of age and older can be required to work as many hours as an employer wants. The employer has to make sure to pay the employee at least the minimum wage or promised wages (whichever is greater) and pay time and one-half overtime pay based on the employee's regular rate of pay for all hours worked in excess of 40 in a workweek unless the employee is exempt from overtime pay for a specific reason.

### **Can an employer pay someone a salary and not have to worry about overtime pay?**

**No,** not in all cases. Just putting an employee on a 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 as an outside salesperson.

### **Does an employer have to give its employees a check-stub?**

**Yes.** An employer must give an itemized statement of all deductions to its employees every time they get a paycheck. The employer does not have to list the rate of pay or the hours on the check-stub. The information can also be listed on the check.

### **I am a non-exempt employee and I am paid every two weeks. Does my employer figure my overtime pay after 80 hours in the pay period regardless of the number of hours I work a week?**

**No.** Overtime pay is based on how many hours an employee works each workweek and each workweek stands on its own regardless of the length of the pay period. Any hours worked in excess of 40 in a workweek have to be paid at time and one-half the employee's regular rate of pay.

## Does a part-time employee have to be paid overtime?

**Yes.** It does not matter if an employee is part-time or full-time for overtime pay to apply. Overtime pay is simply based on if an employee works more than 40 hours in a workweek.

## I'm over 18 years of age. Can my employer require that I work overtime?

**Yes.** The employer can require that you work overtime even if it was not scheduled. The employer can make the working of overtime as a condition of your employment with that employer.

## 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?

**No.** A business in the private sector **cannot** give comp time in lieu 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 government employers in the public sector who are allowed under federal labor law to give their employees time and one-half comp time hours for the hours worked in excess of 40 in a workweek in lieu of overtime pay with certain restrictions. A business in the private sector can give comp time to its bona fide exempt employees since these employees do not have to be paid time and one-half overtime pay. Such a comp time policy may be hour-for-hour but must be in writing as with any other wage benefit policy.

## Do the hours that I'm paid while I'm out on a holiday have to be counted when my employer figures overtime pay?

**No.** It does not matter if you worked or did not work on the holiday. If you did not work more than 40 hours during that workweek, then you are not due any overtime pay for that workweek. Only hours actually worked are counted when figuring overtime pay. Therefore, an employee could work 40 hours one week and also get an additional 8 hours in holiday pay that week and be paid 48 hours straight-time pay with no time and one-half overtime pay being due for that workweek. (This is the same answer for vacation pay, sick pay, and other wage benefits where the employee does not actually work to be paid.)

## But doesn't my employer have to pay me time and one-half if I work on a holiday or on the weekend?

**No.** Unless your employer has promised to pay you extra for working on a holiday or on the weekend, your employer only has to pay you for the total hours you actually worked in the workweek regardless of what day or days you worked. Your employer has to pay you at least the minimum wage or your promised rate of pay (whichever is greater) for all of the hours you work, and your employer must pay you time and one-half overtime pay based on your regular rate of pay for all hours worked in excess of 40 in a workweek unless you are exempt for a specific reason.

## What are the legal holidays that my employer has to observe?

**None.** There is no such thing as required legal holidays that employers have to observe. It is entirely up to your employer to give holiday time off with or without pay, or not to give any time off for holidays at all. However, once your employer does promise to give holiday pay, your employer must put its holiday policy in writing and make it available to its employees as it should with all wage benefit promises. Also, it is entirely up to your employer to decide which holidays it wants to observe if any at all.

## **Is there a certain amount of time someone has to work before they are considered a permanent full-time employee?**

**No.** This is entirely up to the employer. However; the employer cannot discriminate because of age, race, gender, religion, national origin, color, disability, or pregnancy.

## **Can an employer pay its employees by direct deposit and make this a condition of employment?**

**Yes.** Direct deposit is just another form of how an employer pays its employees. An employer can pay by cash, check, or direct deposit; the method is entirely up to the employer.

## **Can an employee be fired over the telephone?**

**Yes.** An employer can fire an employee in person, over the telephone, or by mail; the way an employer does this is up to the employer. However, the employer cannot discriminate because of age, race, gender, religion, national origin, color, disability, or pregnancy.

## **When I separate from a job, does my employer have to pay me within 24 hours?**

**No.** Your employer has to pay you on or before the next regular payday for the pay period in which you worked when your separation takes place. Your employer may pay you early before the payday, but this is up to the employer. Your employer is within its rights to wait until the regular payday to pay you your final wages.

## **Does an employer have to give its employees vacation time off with pay?**

**No.** Vacation is a wage benefit that may or may not be provided at the discretion of the employer. However, if the employer does promise vacation pay or vacation time off with pay, then the employer must have a written vacation policy which clearly explains how the vacation is earned and how it can be taken. Also, any earned vacation must be paid at termination unless the employer has a written forfeiture clause which clearly explains how the earned vacation can be taken away.

## **Does an employer have to provide the same wage benefits to full-time and part-time employees?**

**No.** The employer can decide who gets wage benefits and who doesn't so long as the employer does not discriminate because of age, race, gender, religion, national origin, color, or disability. The employer must have its policies in writing explaining who is eligible for wage benefits and how these benefits are earned. The employer can choose to give wage benefits only to full-time employees but the employer is then required to define in its written policies what constitutes full-time employment. The definition of full-time or part-time is entirely up to the employer.

## **I'm an hourly paid employee. Does my employer have to pay me for jury duty?**

**No.** There is no requirement that the employer pay you for jury duty unless the employer has promised to do so. Jury duty is just like any other wage benefit; the employer has to give it only if the employer has made a promise to do so. If the employer has made such a promise, then the employer must have written policies on all of its promised wage benefits which have to be made available to its employees.

### **Are employers required by North Carolina Law to conduct drug tests?**

**No.** North Carolina law allows employers to conduct controlled substance examinations (drug tests) within certain guidelines. However, such examinations are not required by law, but an employer is within its rights to conduct such examinations.

### **Can my employer require me to take a drug test?**

**Yes.** An employer can require that an applicant or employee submit to a drug test as a condition of hiring or of continued employment.

### **What happens if I refuse to take a drug test?**

A prospective employer may remove you from employment consideration. Your current employer may elect to terminate your employment.

### **I understand that my employer can require me take a drug test in order for me to continue my employment with them. But can my employer require me to pay for a drug test?**

**No,** unless you have requested a "retest" of a positive sample.

### **Can my employer conduct drug tests on the premises?**

It depends on whether you are a prospective employee (an applicant for employment) or a current employee. If you are a **prospective employee**, then your potential employer can both collect the sample and conduct the screening test on-site, provided that samples that demonstrate a positive drug test result are sent to an approved laboratory for confirmation. However, if you are a **current employee**, your employer can still collect the sample on-site, but it must then send the sample to an approved laboratory to perform the screening test.

Note: "On-site" means any location other than an approved laboratory, such as the employer's place of business, a hospital, physician's office, or a third-party commercial site operated for the purpose of collecting samples to be used in controlled substance examinations (drug tests).

### **How can I determine if the laboratory used for screening (testing) my sample is an approved lab?**

Approved labs must be certified by either the U. S. Department of Health and Human Services (301-443-6014) or the College of American Pathologists (toll-free 1-800-323-4040).

### **Is parental consent required prior to a drug test for employees who are less than 18 years of age?**

Parental consent is not required by the North Carolina drug testing law; however, employers may want to consult with a private attorney before conducting drug tests on minors.

**If the parents of a minor applicant or employee request the results of their child's drug test, are employers allowed to provide that information to the parents?**

Not without the consent of the minor applicant or employee.

**What can an applicant or employee do if he/she believes the positive result is based on the use of a legal or prescribed substance?**

The applicant or employee can request a retest of that sample and insure that the laboratory is aware of the use of the legal or prescribed drug/substance. The confirmation testing methodology required by the North Carolina drug testing law is sensitive enough to determine whether or not the tested sample actually contains the drug/substance that initially provided the positive result.

**Can my employer refuse to use the sample provided for controlled substance (drug) testing?**

If your employer has reason to believe that the sample has been adulterated (diluted or contaminated), the employer can refuse that sample for testing. Methods used to determine adulteration include: observation, temperature of the sample, pH of sample and specific gravity of the sample.

**Does the North Carolina drug testing law (Controlled Substance Examination Regulation Act) cover testing for alcohol?**

**No.** Alcohol is not listed in N.C.G.S. §90-87(5) as one of the drugs that can be tested under this law.

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