

# **SUMMARY OF IMPORTANT ISSUES UNDER PENNSYLVANIA WAGE AND HOUR LAW**

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For information on the dates and topics contained in the 2012 Labor & Employment Executive Breakfast Series, please visit [www.offitkurman.com](http://www.offitkurman.com) and click on the 'events' section. If you have any questions about how the issues contained in this document affect your company, I invite you to contact me at (267) 338-1314, or [jsteiner@offitkurman.com](mailto:jsteiner@offitkurman.com).

Pennsylvania has several statutes regulating issues such as minimum wage, maximum hours and overtime, and record keeping.

Pennsylvania's wage and hour law applies to all individuals who are employees of an employer. Independent contractors are not covered. Under the common law "right of control" test, a worker is an employee if the person for whom she works has the right to direct and control the worker in the way she performs her duties. The employer need not actually exercise control. It is sufficient that it has the right to do so. The Pennsylvania Minimum Wage Act of 1968 ("Minimum Wage Act") broadly defines *employ* as "permitted to work." Thus, the provisions governing minimum wage and overtime pay generally apply to all employees unless specifically exempted or excluded under the statute.

## **MINIMUM WAGE**

Pennsylvania employers must pay all covered employees at least \$7.25 per hour. In complying with the minimum wage requirement for hourly employees, employers may credit any commissions earned by the employee. Additionally, Pennsylvania allows the cost of meals, lodging or other facilities customarily furnished by employers as credits. The amount of those credits must be based on reasonable cost.

## **TIPPED EMPLOYEES**

Employers are required to pay tipped employees a minimum of \$2.83 per hour, since the Minimum Wage Act provides a tip credit of up to 60% of the minimum wage for tipped employees. A *tipped employee* is one who regularly receives more than \$30 per month in tips. Use of the tip credit requires that the employer inform the employee of the law allowing for such credit and further requires that the employees either retain all of their own tips or voluntarily pool the tips among themselves.

## LEARNERS & STUDENTS

Employers may be allowed to pay below minimum wage to learners and students. Upon approval by the Secretary of Labor & Industry, employers are allowed to pay 85% of the minimum wage to *learners* (trainees) and students. In such cases, the Secretary will issue a certificate authorizing employment at less than the minimum wage. A trainee may be employed for a maximum of eight weeks and work no more than 40 hours per week. A high school or college student may work up to 20 hours per week or up to 40 hours during school vacation periods.

## OVERTIME PAY

There are several laws relating to maximum hours and overtime in Pennsylvania. Generally, under Pennsylvania law, employers must pay all employees not less than one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek. *Workweek* is usually defined as a period of seven consecutive days starting on any day selected by the employer. Overtime must be compensated on a workweek basis regardless of whether the employee is paid on an hourly, salary, piece rate or other basis. For all practical purposes, overtime hours may not be offset by compensatory time.

For the purpose of determining overtime *hours worked*, generally includes:

- time during which an employee is required to be on the premises of the employer, to be on duty, or to be at the prescribed work place;
- time spent in traveling as part of the duties of the employee during normal working hours; and
- time during which an employee is employed or permitted to work.

Time provided for meals is also excluded unless the employee is required or permitted to work during that time. Also, time spent at the workplace for the employee's convenience during which the employee is not doing any work is excluded.

The regular rate to be used for purposes of calculating overtime must include all remuneration paid to an employee, but does not include the following:

- contributions under a plan for providing old-age, retirement, life, accident or health insurance;
- premium pay under an employment contract or collective bargaining agreement for work outside of the hours established by the contract or agreement as the basic, normal or regular workday not exceeding eight hours or workweek not exceeding the maximum workweek applicable to the employee, where the

premium rate is not less than  $\frac{1}{2}$  times the rate established by the contract or agreement for similar work performed during the workday or workweek.

- profit-sharing or similar payments that are purely discretionary, do not depend on hours of work, production or efficiency, and are not paid pursuant to any contract or promise to tender such payments regularly;
- payments made for occasional periods when no work is performed (vacation, holiday, illness, etc.) and reasonable, reimbursable business expenses;
- sums paid as gifts (e.g., holiday bonuses, length—of-service awards);
- premium pay for weekend or holiday work (where such premium rate is not less than  $1\frac{1}{4}$  times the rate established for similar work performed in non-overtime hours on other days); and
- premium pay for certain hours worked by the employee in excess of eight per day, or in excess of the employee's maximum workweek, or in excess of the employee's normal or regular working hours;

All premium pay may be credited towards the overtime pay due to the employee.

## **EXEMPTIONS FROM PENNSYLVANIA MINIMUM WAGE & OVERTIME LAWS**

There are numerous categories of employees who are exempt from Pennsylvania's minimum wage and overtime laws. If an employee is not covered under the Pennsylvania Minimum Wage Act, the employee may still be entitled to protection under the Federal Fair Labor Standards Act. The following information presents a brief summary.

### **Minimum Wage Exemptions**

The following categories of employees are exempt from the Pennsylvania minimum wage:

- farm laborers;
- employees not subject to civil service laws who are elected office holders, and their personal staff, advisers, and appointed policymakers;
- outside sales personnel;
- employees of weekly, semiweekly or daily publications with local circulations under 4,000;
- golf caddies;

- those in bona fide executive, administrative, or professional capacities, including academic administrative personnel and elementary and secondary school teachers;
- employees of public amusement or recreational establishments, organized camps, or religious or nonprofit educational conference centers, under certain conditions;
- certain retail and service establishment personnel;
- newspaper deliverers to consumers;
- voluntary workers for educational, charitable, religious, or nonprofit organizations;
- domestic workers in the private home of the employer;
- certain seasonal workers; and

### **Overtime Exemptions**

Pennsylvania's overtime provisions do not apply to the employees listed above and the following additional employees:

- movie theater employees;
- taxicab drivers;
- seafarers;
- partspersons, salespersons, and mechanics primarily selling or servicing automobiles, trucks, trailers, farm implements or aircrafts for retail dealers;
- announcers, news editors, or chief engineers for certain radio/TV stations;
- employees of motor carriers with respect to whom the federal Secretary of Transportation has power to establish qualifications and maximum hours of service; and

### **Exemptions Defined By Regulation**

Exemptions for executive, administrative, professional and outside sales employees are defined by regulation.

An executive is an employee;

1. who is compensated on a salary basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities;

2. whose primary duty consists of the management of the enterprise in which she is employed or of a customarily recognized department or subdivision; and
3. who customarily and regularly directs the work of two or more other employees.

Employment in an exempt administrative capacity means work by an individual:

1. who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities;
2. whose primary duty consists of the performance of office or non-manual work directly related to management policies or general operation of the employer or the customers of the employer; and
3. whose work requires the exercise of discretion and independent judgment.

An exempt professional means an individual:

1. who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities;
2. whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study or the performance of work that is original and creative in character in a recognized field of artistic endeavor; and
3. whose work requires either the consistent exercise of discretion and judgment, or invention, imagination or talent in a recognized field of artistic endeavor.

An *outside salesman* is exempt if she is an employee who is employed for the purpose of and who is regularly engaged more than 80% of her worktime away from the employer's place of business:

1. Making sales, including any sale, exchange, contract to sell, consignment for sale, or other disposition or selling, and delivering articles or goods.
2. Obtaining orders or contracts for the use of facilities for which a consideration will be paid by the client or customer. In addition, the employee may not spend more than 20% of the hours worked in any week in work of a nature not directly related to and in conjunction with the making of sales; provided, however, that work performed incidental and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

## **PENNSYLVANIA WAGE PAYMENTS & COLLECTION LAW**

### **Notification**

The Pennsylvania Wage Payment and Collection Law provides that employers must notify employees at the time of hiring of:

1. rate of pay;
2. time and place of payment; and
3. amount of any fringe benefits or wage supplements to be paid to the employee, a third party or a fund for the benefit of the employee.

Any change to these payment terms must be communicated to the employee in advance of the effective date of such change.

### **Time for Payment**

Employers must pay their non-salaried employees semimonthly or more frequently than semimonthly, unless otherwise stipulated in an employment contract at the time of hire.

Employers must pay wages on regular paydays designated in advance by the employer. The Pennsylvania Wage Payment and Collection Law defines wages as "all earnings of an employee, regardless of whether determined on time, task, piece, commission or other method of calculation. The term 'wages' also includes fringe benefits or wage supplements whether payable by the employer from its funds or from amounts withheld from the employees' pay by the employer. All wages earned in any pay period must be paid within 15 days of the end of the period. Overtime wages may be paid in the next succeeding pay period.

Different rules apply to "fringe benefits or wage supplements," which are defined as:

all monetary employer payments to provide benefits under any employee benefit plan, as defined in [ERISA]; as well as separation, vacation, holiday, or guaranteed pay; reimbursement for expenses; union dues withheld from the employee's pay by the employer; and any other amount to be paid pursuant to an agreement to the employee, a third party or fund for the benefit of employees.

Fringe benefits and wage supplements must be paid no later than ten days after such payments are required to be made by agreement or otherwise. If no due date is specified, such payments are due within 60 days of a proper claim filed by the employee.

### **Payment upon Termination**

Upon termination, all wages earned by the employee shall become due and payable not later than the next regular payday on which such wages would have otherwise been due.

If an employer requires employees to give advance notice of intent to quit, the employer must give similar notice of intent to discharge or must pay the same amount, except where an employee goes on strike or an employer discharges an employee for misconduct or incapacity.

## **Enforcement**

The Secretary of Labor is charged with enforcement of the Pennsylvania Wage Payment and Collection Law, which includes the power to conduct investigations, inspect employer records, commence civil proceedings, and prosecute criminal violations.

Violation of the Pennsylvania Wage Payment and Collection Law is punishable by a fine of up to \$300 and/or imprisonment for up to 90 days. Nonpayment of wages to each individual employee constitutes a separate offense. Corporate officers may be criminally liable under the statute.

## **Civil Remedies**

An employee is authorized to bring a civil action to recover unpaid wages under the Pennsylvania Wage Payment and Collection Law, and class actions are specifically permitted. The statute of limitations under the Pennsylvania Wage Payment and Collection Law is three years. Individual agents or officers of an employer may be individually liable for failure to pay wages under the statute.

## **RECORD-KEEPING & POSTING REQUIREMENTS**

Employers are responsible for keeping accurate records of hours worked and the wages paid to each employee. Records are required to be preserved for three years from the date of last entry. Also, a summary of the Minimum Wage Act and its regulations must be placed in a conspicuous place where employees can read it.

Records required include: the employee's name, address, regular hourly rate of pay, occupation, beginning time and day of workweek, number of daily and weekly hours worked, total daily or weekly straight-time wages, overtime, total deductions from or additions to wages, allowances claimed as part of minimum wage, total wages per pay period, date of payment and pay period covered.

For executive, administrative, professional and outside sales employees, employers are required to maintain records containing the information listed in the previous paragraph, except regular hourly rate of pay, beginning time and day of workweek, number of daily and weekly hours worked, total daily or weekly straight-time wages, and overtime. Additionally, employers must show the basis for the wages paid; for example, the amount and the payment period—weekly, monthly, or on a fee basis.

Records should be readily accessible for review, and if the records are maintained off-site, employers must make its records available for inspection within seven days of any notice from the State.

## **DEDUCTION FROM WAGES**

Certain deductions from an employee's wages are permitted. These are authorized by regulation, "for the convenience of the employee." The following deductions are authorized:

1. contributions to and recovery of overpayments under employee welfare and pension plans subject to ERISA;
2. contributions authorized in writing by employees or under a collective bargaining agreement to employee welfare and pension plans not subject to ERISA (e.g., group health, life and disability plans);
3. deductions authorized in writing for the recovery of overpayments to employee welfare and pension plans not subject to ERISA;
4. deductions authorized in writing by employees or under a collective bargaining agreement for payments into company-operated thrift plans or employee stock option/purchase plans;
5. deductions authorized in writing by employees for payment into employee personal savings accounts (e.g., credit union, savings account, or to purchase U.S. government bonds);
6. charitable contributions authorized in writing by the employee;
7. contributions authorized in writing by the employee for local-area development activities;
8. deductions provided by law (including but not limited to, Social Security taxes, federal, state and local taxes, and deductions based on court orders);
9. union dues, assessments and initiation fees, and such other union charges as are authorized by law;
10. deductions for repayment to the employer of loans provided the employee authorizes such deductions in writing either at the time of the loan or subsequent to such loan;
11. deductions for purchases or replacements by the employee of goods, wares, merchandise, services, facilities, rent or similar items, provided such deductions are authorized by the employee in writing or are authorized in a collective bargaining agreement;
12. deductions for purchases by the employee for her convenience of goods, wares, merchandise, services, facilities, rent or similar items from third parties not



owned, affiliated or controlled directly or indirectly by the employer if the employee authorizes such deductions in writing; and

13. such other deductions authorized in writing by employees as in the discretion of the Department is proper and in conformity with the intent and purpose of the Pennsylvania Wage Payment and Collection Law.

Deductions not specifically listed above are not permitted and may not reduce an employee's pay below the minimum wage.

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