

PART 1:

OVERTIME EXEMPTIONS UNDER THE FAIR LABOR STANDARDS ACT (FLSA) AND PENNSYLVANIA LAW

EXECUTIVE

1. Primary duty is management of enterprise department or subdivision
2. Customarily and regularly directs the work of two or more employees
3. Must have power to hire and fire, or recommendations must be given "particular weight"

*The employee must also be paid on a salary basis of at least \$455 per week.**

- Can manage a mix of full time and part-time employees, if equals 2 full time employees
- To determine primary duty, look at amount of time spent, job description, hiring criteria, how paid
- To analyze "particular weight," determine whether recommendation is part of job duties, frequently made, or frequently relied upon

ADMINISTRATIVE

1. Primary duty is performance of office of non-manual work directly related to management or general business operations of the employer or employer's customers
2. Must exercise discretion and independent judgment with respect to matters of significance

*The employee must also be paid on a salary basis of at least \$455 per week.**

- "Production workers" (those producing core product or service) may not be eligible
- Specific exempt job titles: team project leader (lead major projects); administrative assistant (if delegated authority re: matters of significance); human resource managers (must make or interpret employment policies); purchasing agents (w/ authority to bind company on significant purchases)
- Internet, database and computer network administrators may meet administrative exemption

PROFESSIONAL

Performance of work:

1. Requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, or
2. Requiring invention, imagination, originality or talent in recognized field of artistic or creative endeavor
3. Requires the consistent exercise of discretion and judgement in its performance

*The employee must also be paid on a salary basis of at least \$455 per week.**

- Examples: doctors, lawyers, nurses, engineers, scientists
- College or advanced degrees are standard, but a combination of work experience and training will suffice in some cases
- Accountants usually meet this exemption, but accounting clerks and bookkeepers do not
- Graphic artists may qualify, but must exercise a high level of invention, imagination, originality and talent

OUTSIDE SALES

1. Primary duty is making sales
2. Must be customarily and regularly engaged (more than 80% of work time) away from the employer's place of business in performing this duty
 - Work done in furtherance of sales is considered part of making sales, but no more than 20% of time may be spent at employer's place of business
 - Inside salespeople not eligible: no telephone, mail or internet sales

INSIDE SALES

1. Must be employed at a retail or service establishment, which can include business to business sales so long as the goods or services are not for resale
2. Regular rate of pay exceeds one and one-half times the minimum wage

3. More than half the employee's compensation in a representative period (of at least one month) consists of commissions
 - In determining the proportion of compensation representing commissions, all earnings resulting from application of commission formula shall be deemed commissions on goods or services regardless of whether computed commissions exceed a draw or guarantee

DIFFERENCES BETWEEN PA LAW AND FLSA

Pennsylvania does not recognize a separate "computer professional" exemption, however technology – focused employees may still qualify for exemption under one of the other "white-collar" exemptions.

Pennsylvania does not have a "highly compensated" employee exemption as does the FLSA.

PERMISSIBLE DEDUCTIONS FROM EXEMPT EMPLOYEE SALARY

The following is a list of permissible deductions from an exempt employee's salary, which will not violate the "salary basis" requirement:

1. When an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability
2. For absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder
3. For unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules, or for infractions of safety rules of major significance
4. An employer is not required to pay the full salary in the initial or terminal week of employment
5. An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act

PART 2: NON-EXEMPT EMPLOYEES

MINIMUM WAGE

1. Non-exempt employees must be paid at least the federal and Pennsylvania minimum wage for all hours worked. It is currently \$7.25 per hour. Higher minimum wage rates apply to employees of certain state contractors.

OVERTIME

1. Non-exempt employees must be paid overtime for all hours worked in excess of 40 in a work week

a) Overtime:

- 1 ½ times an employee's regular rate of pay
- Regular rate of pay must be determined for nonexempt employees paid on a piece-rate, salary, or commission basis by dividing their earnings by the number of hours actually worked
- Pennsylvania does not allow the "fluctuating work week" method of overtime compensations.
- Nondiscretionary bonuses (i.e., performance incentives) must be included in an employee's regular rate of pay to determine overtime payment obligations
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*In June 2018, Pennsylvania Governor Wolf proposed a series of annual increases to the salary level for Pennsylvania's white collar exemptions. Under the proposal, which has not yet been finalized by the PA Department of Labor and Industry, the salary threshold would increase over the next three (3) years to \$921 per week, or \$47,892 a year, and thereafter would be adjusted based on the rate of inflation.

Bonuses are considered to be discretionary if:

1. The fact that the payment is to be made and the amount are determined at the sole discretion of the employer; and
2. The bonuses are not paid under a prior contract, agreement, announcement, or promise that would cause the payments to be considered “regular”

b) Workweek

- Regularly recurring period of 168 hours (7 consecutive 24-hour periods)
- May begin on any predetermined day and hour of day

TIPPED EMPLOYEES

1. “Tipped Employee”: Employee who typically receives over \$30 of tips per month
2. Employees must receive at least the federal and state minimum wage
 - Tips actually received by tipped employees may be counted as wages; but
 - Employers must pay tipped employees at least \$2.83 per hour in direct wages (note this is higher than federal tip credit rate of \$2.13 per hour)

HOURS WORKED

1. On-call Time:

- On Employer’s Property: Generally, on-call time is compensable (unless living on property)
- Off Employer’s Property: Generally, on-call time is not compensable (unless activities are restricted)

Example:

A paramedic is scheduled to work a 12-hour “on-call” shift, which requires her to remain at the dispatching center to respond to emergencies. All time spent at the dispatching center is compensable time.

Compare:

Maintenance employees at a large manufacturing facility are scheduled to be “on-call” one weekend each month. During such time, the employees may do as they please, including staying at home, but must “check-in” with their supervisor by telephone at the beginning and end of each day. The maintenance employee’s “on-call” time is not compensable.

2. Sleeping Time:

If employee is required to be on duty:

- 24 Hours or Less: All time is compensable, even if permitted to sleep
- 24 Hours or More: Employer and employee may agree to exclude sleep time from hours worked, however, sleeping facilities must be provided

3. Lectures, Meetings, & Training Programs:

Compensable unless all the following elements are met: time spent is (1) outside normal working hours; (2) voluntary; (3) not job related; and (4) no other work is concurrently performed

4. Travel Time:

a) Home to Work:

- Not compensable

b) One-Day Special Assignment in Another City:

- If employee ordinarily works at a fixed location, all time spent traveling to and returning from another city on the same day is compensable. However, time the employee normally spends traveling to/from work can be deducted from the otherwise compensable time.

c) Overnight Travel:

- Time spent away from home on overnight travel that coincides with the employee’s normal work hours is compensable. In addition, time spent on non-work days that coincides with the employee’s normal work hours is also compensable.

5. Break Time for Nursing Mothers:

Under federal law employers are required to provide “reasonable break time for a non-exempt employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.” Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”

PART 3: OTHER PENNSYLVANIA WAGE & HOUR LAWS

PAYMENT UPON SEPARATION

- Due on next regular pay day

PAYMENT OF WAGES

Deductions:

- All deductions must be authorized in writing or otherwise allowed by law (i.e., child support or taxes)

Timing:

- All non-exempt employees must be paid at least twice monthly; exempt employees must be paid at least monthly

MINIMUM WAGE

Hourly Amount:

- Same as federal minimum wage

Breaks:

- None required

Meal Periods:

- None required

Payment:

- Must compensate employees for breaks or meal periods less than 30 minutes

VACATION

Accrual:

- Employees can lawfully limit accrual (“use it or lose it” is permissible)

Payment on Termination:

- Employers are not required to pay accrued vacation or sick time unless there is an agreement to pay (i.e., policy)

CHILD LABOR

Minimum Age:

- Cannot employ children under 14 years, except as a golf caddy or delivering newspapers

Hours of Employment (14 & 15 yrs):

- When school is out, cannot employ more than 8 hours per day, or 40 hours per week. When school is in session, cannot work more than 3 hours a day or 18 hours a week.
- Cannot employ between 7 p.m. and 7 a.m. on a school day, or after 9 pm during vacation.

Hours of Employment (16 and 17 yrs)

- When school is out, cannot work more than 10 hours per day, or 48 hours per week. When school is in session, cannot work more than 8 hours per day or 28 hours a week.
- Cannot work between 12 midnight and 6am on a school day, or after 1 a.m. during vacation.

There are other unique Pennsylvania Child labor laws applicable to various jobs such as camp counselors and attendants at sporting events.

This Guide reflects the law only as of the date of publication. You should consult with an attorney before relying on any information contained herein, as the law may have changed, and outcomes may vary depending on individual circumstances.