

Employment Law Summary

Arkansas Minimum Wage and Overtime Laws



Because You're Different

Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is \$7.25 per hour for nonexempt employees. The Minimum Wage Act of the State of Arkansas (MWA) complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. Whenever state and federal laws conflict, the law that is more favorable to the employee applies.

The [Arkansas Department of Labor and Licensing \(ADLL\)](#) enforces and investigates minimum wage violation claims throughout the state.

Minimum Wage Rate

The current minimum wage rate in Arkansas is \$11 per hour. This rate became effective on Jan. 1, 2021. Lower minimum wage rates are authorized for certain employees, as described below.

Employers must comply with the MWA if they employ four or more employees. The MWA defines an employer as any individual, partnership, association, corporation or business trust as well as public employers, including the State of Arkansas and any political subdivision of the state.

FLSA Incorporated by Reference

The MWA has specifically adopted by reference multiple FLSA minimum wage provisions. This means that unless a specific state provision applies, employers must comply with FLSA minimum wage requirements.

The ADLL may rely on U.S. Department of Labor (DOL) interpretations and federal precedent established under the FLSA when applying and enforcing minimum wage laws.

Tipped Employees

Under the MWA, tipped employees must earn wages that are at least equal to the state's minimum wage. Tipped employee wages are calculated by adding a cash wage to the tips and gratuities tipped employees earn. The cash wage in Arkansas is \$2.63 per hour.

Employers must add to a tipped employee's wages when the employee's tips—when added to the cash wage—are insufficient to allow the employee to earn wages that are at least equal to the minimum wage rate. The ADLL advises employers to maintain accurate wage records to prove compliance with tipped employee minimum wage requirements.

Tipped employee provisions under the MWA apply only for the hours an employee works in an occupation where tips and gratuities are "customarily and usually" recognized as part of the remuneration for hiring purposes. Tipped occupations include waiters, waitresses, bellhops, beauty operators and barbers, provided they actually receive and retain tips. For any other occupation, tips are customarily and usually recognized as part of the remuneration for hiring purposes if the employee actually receives more than \$20 per month in tips.

Employers must use the state minimum wage rate (not the tipped employee rate) to compensate employees whenever they are required to work 20 minutes or more in any occupation where gratuities have not been recognized as part of the remuneration for hiring purposes.

“Gratuities” means “voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered.”

Board, Lodging and Apparel Allowances

Employers may claim a board, lodging or apparel allowance for employees who are engaged in an occupation where these allowances are customarily and regularly furnished for the employee’s benefit. Employers cannot claim this allowance if the services are primarily for their benefit. For example, apparel that has a company or business logo will be considered primarily for the benefit of the employer.

Similarly, employers cannot claim an allowance for the cost of board, lodging apparel or other items and services if they require the use of these benefits as a condition of employment. For example, if an employer requires that the employee resides on the employer’s premises as a condition of employment, a lodging allowance is unavailable to the employer.

The allowance is equal to the reasonable value of the board, lodging or apparel provided. The determination of the “reasonable cost” of these benefits is based on FLSA provisions as they existed on Jan. 1, 2019. Reasonable cost does not include a profit to the employer and is not more than the actual cost the employer incurs for providing the benefit.

The MWA indicates that board, lodging, apparel or other items and services are not “furnished” to the employee unless the employee receives the benefit and their acceptance is voluntary and uncoerced. For example, an allowance cannot be taken for meals not actually eaten.

Employees With Disabilities

Employers may receive temporary special exemption licenses or permits to pay a lower minimum wage rate to certain employees with disabilities. Under the MWA, employees are considered to have a disability if they are “handicapped by lack of skill, age, or physical or mental deficiency or injury in any way that [their] earning capacity is impaired.”

Permits for employees with disabilities may be obtained from the ADLL or the DOL. The ADLL may issue permits for individuals or for work activities centers, defined as “centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical and mental impairment is so severe as to make their productivity capacities inconsequential.”

Employers that pay their employees a lower minimum wage as authorized by a special permit must comply with all the terms and requirements specified by the permit.

Learners, Apprentices and Full-time Students

The MWA allows employers to pay a lower minimum wage rate to learners, apprentices and full-time students. This lower minimum wage rate must be authorized by a special license issued by the ADLL.

Learners and apprentices must have a current and valid subminimum wage DOL certification and must receive wages that are at least equal to 85% of the state’s minimum wage rate.

Similarly, employers may pay full-time students a subminimum wage if:

- The subminimum wage is at least equal to 85% of the applicable minimum wage rate;
- The employer obtains, prior to employing full-time students at a subminimum wage, a full-time student subminimum wage certificate (issued by the ADLL or the DOL);
- The full-time student attends an accredited institution of education within the state of Arkansas on a full-time basis in accordance with the institution’s definitions;
- The employer does not employ the student more than 20 hours per week during times school is in session and not more than 40 hours per week during times school is not in session; and
- The employer does not employ the student in violation of any applicable child labor laws.

For purposes of the MWA, a full-time student retains that status during the student's winter, summer and other vacations. Finally, employers should note that a full-time student residing in a border town may attend an accredited institution of education within the border sister state on a full-time basis and qualify for the sub-minimum wage if all other qualifications are met.

Minimum Wage Exemptions

MWA requirements do not apply to:

- Individuals employed in a bona fide executive, administrative or professional capacity, or as outside commission-paid salespersons who customarily perform their services away from their employers' premises taking orders for goods or services (as defined under the FLSA);
- Students performing services for any school, college or university in which they are enrolled and regularly attend classes;
- Individuals employed by the United States;
- Individuals engaged in the activities of any educational, charitable, religious or nonprofit organization in which the employer-employee relationship does not in fact exist or in which the services are rendered to the organizations gratuitously;
- Bona fide independent contractors;
- Individuals employed by an agricultural employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year;
- The parent, spouse, child, or other members of an agricultural employer's immediate family;
- Hand-harvest laborers who:
 - Are paid on a piece-rate basis in an operation that has been and is customarily and generally recognized as having been paid on a piece-rate basis in the region of employment;
 - Commute daily from their permanent residence to the farm on which they are employed; and
 - Have been employed in agriculture for less than 13 weeks during the preceding calendar year;
- Migrants who are:
 - Sixteen years of age or under and are employed as hand-harvest laborers;
 - Paid on a piece-rate basis in an operation that has been and is customarily and generally recognized as having been paid on a piece-rate basis in the region of employment;
 - Employed on the same farm as their parents; and
 - Paid the same piece rate as employees over 16 years of age are paid on the same farm;
- Employees principally engaged in the range production of livestock;
- Individuals employed in planting or tending trees, cruising, surveying, or felling timber or in the preparation or transportation of logs or other forestry products to the mill, processing plants, or railroad or another transportation terminal if their employer does not employ more than eight individuals in the forestry or lumbering operations;
- Individuals employed by a nonprofit recreational or educational camp that does not operate for more than seven months in any calendar year;
- Nonprofit child welfare agency employees who serve as a houseparent who is:
 - Directly involved in caring for children who reside in residential facilities of the nonprofit child welfare agency and who are orphans, in foster care, abused, neglected, abandoned, homeless, in need of supervision, or otherwise in crisis situations that lead to out-of-home placements; and
 - Compensated at an annual rate of not less than \$13,000 or compensated at an annual rate of not less than \$10,000 if the employee resides in the residential facility and receives board and lodging at no cost;
- Individuals employed in connection with the publication of a weekly, semiweekly or daily newspaper with a circulation of less than 4,000 (the major part of the publication must be within the county in which the newspaper is published or counties contiguous to the county in which the newspaper is published);
- Individuals employed on a casual basis in domestic service employment to provide babysitting services or companionship services for individuals who are unable to care for themselves because of age or infirmity;
- Individuals engaged in the delivery of newspapers to retail subscribers;
- Home workers engaged in making wreaths composed principally of natural holly, pine, cedar or other evergreens and harvesting natural holly, pine, cedar and other evergreens used in making such wreaths;
- Individuals employed by certain organized camps or religious or nonprofit educational conference centers; or
- Direct sellers as defined under [federal tax law](#), as it existed on Jan. 1, 2021.

Overtime Pay

State law requires employers to compensate their employees for overtime hours of work at one and one-half their regular rate of pay for hours worked over 40 during a workweek.

Overtime Exemptions

Overtime payment requirements do not apply to:

- Agricultural employees;
- Employees exempt from overtime pay under the FLSA;
- Firefighters and law enforcement personnel employed by a public agency (must comply with applicable federal overtime pay requirements);
- Public employees who receive compensatory time off in lieu of overtime pay;

Alternative Overtime Computation Options

The ADLL may authorize additional overtime exemptions or parameters, or calculating overtime pay on a basis other than the regular rate of pay for:

- Irregular hours of work;
- Piece-rate compensation;
- Employees who are paid on a commission basis in a retail or service establishment;
- Hospitals or enterprises engaged in the care of the sick, the aged or individuals with mental illness;
- Independently-owned-and-controlled local enterprises engaged in the wholesale or bulk distribution of petroleum products; and
- Compensation controlled by a collective bargaining agreement.

Required Posters

Employers subject to the MWA must display a summary of the state's minimum wage requirements in a conspicuous and accessible place in or about the premises where employees work. The ADD has published a poster employers may use to satisfy this requirement.

Recordkeeping

Arkansas requires employers subject to the MWA to make and keep wage records for at least three years in or about the premises where employees work. For each employee, wage records must include:

- A full name, as used for Social Security recordkeeping purposes, and any identifying symbol or number used in place of name on any time, work or payroll records;
- A home address, including zip code;
- A date of birth if under 19;
- Sex and occupation;
- Time of day and day of the week on which the employee's workweek begins (a single notation will suffice if the entire workforce in an establishment has the same workweek and workday beginning);
- Regular hourly rate of pay for any workweek in which overtime compensation is due, as well as the basis on which wages are paid (per hour, per day, per week, per piece or rate of commission);
- Hours worked each workday and total hours worked each workweek;
- Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of overtime compensation;
- Total overtime compensation (excluding the straight-time earnings for overtime hours recorded as described above);
- Total additions or deductions from wages paid each pay period, as well as the nature of the items which make up the additions or deductions;
- Total wages paid each pay period;
- The date of and period covered by payment; and
- Any other information required by the ADLL.

Wage records must be open for ADLL inspection or transcription at any reasonable time. The ADLL may require employers to provide, on demand, a sworn statement of the records and information upon forms prescribed or approved by the agency.

For employees working on fixed schedules, employers may maintain records showing the schedule of daily and weekly hours and a statement instead of the hours worked each day and each work week or other method or recordkeeping that indicates that such hours actually worked. However, in weeks in which more or less than the scheduled hours are worked, the exact number of hours worked each day and each week must be recorded.

Usually, employers must keep these records at the place or places of employment or in a central recordkeeping office in Arkansas. However, in unusual circumstances, employers may petition the ADLL to maintain the records outside the state. This approval must be obtained in advance. In the event the director approves such records to be maintained outside the state, employers must ensure these records are available for inspection, transcription or copy by the ADLL in Arkansas within 72 hours of a request.

Special recordkeeping rules apply to employees exempt from minimum or overtime wage requirements and tipped employees.

Enforcement

The ADLL has the authority to enter and inspect places of business or employment of any employer in the state for the purpose of:

- Examining and inspecting any or all books, registers, payrolls and other records of any employer that in any way relate to or have a bearing upon the question of wages, hours and other conditions of employment of any employees;
- Copying any or all of the books, registers, payrolls and other records the agency deems necessary or appropriate; and
- Questioning employees to determine whether employers are complying with the MWA.

Employee Remedies

Under the MWA, employers that pay employees less than the state minimum wage may be required to pay:

- Civil penalties;
- Any unpaid wages to affected employees;
- Reasonable attorney's fees as allowed by a court; and
- Liquidated damages (if the violation was willful).

The ADLL has the authority to enforce compliance with the MWA by suing noncompliant employers. Any agreement between employers and employees to work for less than minimum wage is invalid and may not be used as a defense against wage claims.

Civil Money Penalties

The ADLL may issue a civil money penalty for:

- Willfully hindering or delaying an investigation under the MWA or willfully hindering or delaying the ADLL in the performance of its duties;
- Willfully failing to make, keep, or preserve any record required by the MW or willfully falsifying these records;
- Willfully refusing to make any record accessible to the division upon demand or willfully refusing to furnish a sworn statement of the record or any other information required for proper enforcement;
- Willfully failing to post a summary of the law;
- Paying or agreeing to pay wages at a rate less than required by the MWA;
- Willfully discharging or in any other manner willfully discriminating against any employee because the employee has:
 - Made a complaint to the employer or the ADLL regarding compliance with the MWA;
 - Instituted or is about to institute any proceeding under or related to the MWA; or
 - Testified or is about to testify in any proceeding under or related to the MWA; and
- Other willful violations.

Civil money penalties for the violations mentioned above are between \$50 and \$1,000 for each violation. Each violation constitutes a separate offense; in some instances, each day the violation continues may be considered a separate offense. The amount of the fine is usually set to reflect the gravity of the violation. Matters that are usually considered severe violations include multiple violations, recurring violations, falsification or concealment of records, and failure to assure future compliance. The size of the business and the number of employees may also have a bearing on the amount of the penalty.

Liquidated Damages

If awarded to an employee, liquidated damages may be as much as the same amount as unpaid or back wages. Liquidated damages are imposed only for willful violations.

More Information

Contact Heffernan Insurance Brokers for more information on labor and employment laws in Arkansas.

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