

EMPLOYMENT LAW SUMMARY

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 North Carolina Wage and Hour Act (WHA) follows federal guidelines and in some instances prescribes additional requirements that employers must follow.

The Wage and Hour Bureau of the [North Carolina Department of Labor](#) (NCDOL) enforces WHA provisions and investigates minimum wage violation claims.

MINIMUM WAGE RATE

The minimum wage rate in North Carolina is **\$7.25 per hour**. However some exceptions exist for students, learners, apprentices, messengers, impaired workers, disadvantaged workers, seasonal park employees and tipped employees.

Employee wages are defined as the entire amount of compensation the employee receives for his or her labor or services, whether determined on a time, task, piece, job, day, commission or other basis of calculation. Total compensation also includes:

- The reasonable cost of employee board, lodging or other facilities (as determined by the NCDOL);
- Sick, vacation and severance pay;
- Commissions and bonuses; and
- Other amounts promised when the employer has a policy or a practice of making these payments.

SUBMINIMUM WAGE RATES

The WHA allows employers to pay subminimum wage rates to students, learners, apprentices, messengers, impaired workers, disadvantaged and unemployed workers, seasonal park workers and tipped employees.

STUDENTS, LEARNERS, APPRENTICES AND MESSENGERS

Employers can pay students, learners, apprentices and messengers at a rate of **90 percent** of the current minimum wage rate (rounded to the lowest nickel) after obtaining a special certificate from the NCDOL. The current minimum wage rate for these employees is **\$6.50 per hour**.

IMPAIRED WORKERS

As an incentive for employers to hire impaired workers, the NCDOL can issue special certificates authorizing employers to pay subminimum wage rates to individuals whose earning capacity or productivity is impaired because of age, physical condition, mental deficiency or injury. This provision also applies to agricultural employers.

Subminimum wage rates under these special certificates may be lower than the current minimum wage but must be proportional to the wages earned by non-impaired employees in similar jobs. To receive a subminimum wage rate certificate, an employer must provide the NCDOL with written assurances that it will review an impaired worker's wage rate **every six months** and that it will adjust an impaired worker's wages at least once every year to reflect prevailing wages for non-impaired workers in similar jobs.

Employers that receive a subminimum wage rate certificate may not alter the terms of employment specified in the certificate without prior authorization from the NCDOL.

DISADVANTAGED AND UNEMPLOYED WORKERS

To motivate employers to hire economically disadvantaged individuals who have been unemployed for **at least 15 weeks**, the NCDOL may approve payment of special subminimum wage rates at **no less than 85 percent** of the current minimum rate. The NCDOL may also issue subminimum wage rate certificates to encourage employers to hire individuals who (or whose family) are receiving Work First Family Assistance or supplemental security benefits. To qualify, employers must receive certificates from the Division of Employment Security. These certificates are valid for **up to 52 weeks**.

SEASONAL PARK WORKERS

Employers can pay seasonal park employees at a rate as low as 85 percent of the minimum wage rate when authorized by the NCDOL. Seasonal park employees are individuals working for seasonal establishments. Restaurants, food stands, religious and nonprofit educational conference centers and amusement parks qualify as seasonal establishments when they operate for up to 180 days in a year or derive at least two thirds of their annual income during a six-month period.

TIPPED EMPLOYEES

The WHA allows employers to pay tipped employees a cash wage of **\$2.13 per hour**. The cash wage is the result of subtracting the permitted **tip credit of \$5.12** from the current minimum rate. Tipped employees are individuals engaged in occupations in which they customarily and regularly receive **at least \$20 per month in tips**.

The WHA allows employers to use the tip credit because it assumes the employee's tips will offset the difference between the cash wage and the minimum wage rate. However, when a tipped employee's cash wages and tips are insufficient to meet the minimum wage rate, his or her employer must subsidize the employee's wages up to at least the minimum wage rate. Employers who wish to use the tip credit must inform their employees upon hiring that their wages will be calculated using tips, a tip credit and cash wages. Employers must also commit to allow tipped employees to retain all their tips.

EMPLOYEES EXEMPT FROM MINIMUM WAGE LAWS

Minimum wage laws do not apply to:

- Bona fide executive, administrative and professional employees;
- Closely related employees (the employer's spouse, child, parent or an individual who qualifies as the employer's dependent under North Carolina's tax laws);
- Agricultural workers that are immediately related to their employer (spouse, son or daughter), are hand harvest laborers, work for small employers or work in the range production of livestock;
- Babysitters and companions for the elderly whose employment is casual and that provide services for individuals that are unable (because of age or infirmity) to care for themselves;
- Computer system analysts, programmers, engineers and similarly skilled workers with wages of at least \$27.63 per hour and whose primary duty is to apply system analysis techniques and procedures, consult with users or determine, design, develop, document, analyze, create, test or modify hardware, software or system functional specifications;
- Domestic service employees whose compensation does not qualify as wages under the Social Security Act or that work for less than eight hours in a workweek;
- Individuals participating in a ridesharing or carpooling arrangement;
- Inmates confined to and working for a North Carolina penal, correctional or mental institution;
- Models and performers;
- Outdoor Drama production employees working for an outdoor drama in a production role (including lighting, costume and special effects departments but not office workers, ticket takers, ushers and parking lot attendants);
- Pages working for the North Carolina General Assembly or the Governor's Office;
- Seafood processing employees (individuals employed in the canning, catching, cultivating, farming, harvesting, packing, processing, propagating or taking of any kind of fish, shellfish, crustaceans, sponges, seaweeds and other aquatic forms of animal and vegetable life);
- Seasonal camp employees working for youth summer camps or seasonal religious and nonprofit educational conference centers (including employment in state seasonal recreation programs); and
- Volunteers working for medical, educational, religious or nonprofit organizations where an employer-employee relationship does not exist (including volunteer firefighters and volunteer rescue and emergency medical personnel).

POSTING REQUIREMENT

Employers in North Carolina must display a poster with overtime provisions in their establishments. The NCDOL provides model posters with all required information to employers free of charge. In addition, the NCDOL has provided a temporary model poster that employers can download and use while waiting for the official NCDOL poster to arrive.

PROHIBITED ACTS

North Carolina laws prohibit employers and employees from hindering, delaying, interfering or refusing to cooperate with NCDOL personnel in minimum wage investigations. Employers and employees are also prohibited from making statements, filing reports they know to be false and withholding information relevant to an investigation.

RETALIATION

North Carolina prohibits employers from discriminating or retaliating against employees who file a complaint or initiate an inquiry, investigation, inspection, proceeding or another type of action against WHA violations. The prohibition extends to employees who threaten to take any of the measures previously mentioned or who testify or provide information regarding WHA violations.

PENALTIES

Employers and employees that violate WHA provisions commit a class 2 misdemeanor punishable by **a fine of up to \$1,000** and **imprisonment for up to 30 days**. These penalties increase for repeat offenders.

Employers that violate WHA provisions are also subject to criminal and civil proceedings. At these proceedings, employers may be found liable for unpaid wages plus interest calculated from the time when wages were due, liquidated damages in an amount equal to wages due, reasonable attorney fees and court costs. However, employees wishing to enforce minimum wage violations must first exhaust all NCDOL administrative remedies and bring claims within two years of the violation.

MORE INFORMATION

Contact Heffernan Insurance Brokers for more information on wage payment and work hour laws in North Carolina.

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