

EMPLOYMENT LAW SUMMARY

Oklahoma: Minimum Wage 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 Oklahoma Minimum Wage Act (OMWA) complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. When both state and federal laws apply, employers must follow the law that provides the greater protection or benefit to their employees.

The [Wage and Hour Unit](#), part of the Oklahoma Department of Labor (OKDOL), enforces and investigates minimum wage violation claims.

MINIMUM WAGE RATE

The current minimum wage rate in Oklahoma is \$7.25 per hour. Under the OMWA, the state minimum wage rate must be equal to the current federal rate. "Employee wages" are defined as the entire amount of compensation the employee receives for his or her labor or services. When calculating an employee's wages, an employer can include the reasonable cost of furnishing uniforms.

In addition, the employer can include any amount of mileage compensation, vehicle allowances and other types of flat-rate expense payments that exceed the actual cost incurred by the employee.

The OMWA also allows employers to include a credit to recoup the cost of meals or lodging they provide for their employees. The credit can be for up to 50% of the minimum wage rate.

TIPPED EMPLOYEES

In Oklahoma, the hourly minimum wage rate for tipped employees—also known as a cash wage—is \$3.62 per hour.

The OMWA allows employers to use a tip credit of \$3.63 per hour (50% of the minimum wage rate) to reduce a tipped employee's wage rate requirements. This is because the OMWA assumes that the employee's tips will offset the difference between the cash wage and the minimum wage rate, enabling the employee to receive wages at or above the minimum wage rate.

The OMWA requires employers to subsidize their tipped employees' wages each time the employees' tips are insufficient to meet minimum wage rate requirements.

SPECIAL SUBMINIMUM WAGE CERTIFICATES

Employers that wish to pay learners, apprentices, messengers, students and disabled individuals wages below the minimum wage rate must first obtain a special certificate from the OKDOL. The OKDOL will set the wage rate and other conditions of employment (such as time, number, proportion and length of service) for these employees.

MINIMUM WAGE EXEMPTIONS

Oklahoma minimum wage requirements do not apply to:

- Individuals covered by the FLSA or any other federal wage and hour law;
- Independent contractors;
- Individuals working for an employer with fewer than 10 full-time employees (or equivalent) or has more than \$100,000 in gross annual income;
- Business owners, co-partners or joint venturers;
- Bona fide administrative, executive and professional employees;
- Outside sales personnel;
- Domestic employees performing services in or about private homes;
- Agricultural employees (including individuals working in connection to the raising or harvesting of any agricultural commodity or the raising, shearing, feeding, caring for, training and managing livestock, bees, poultry and furbearing animals and wildlife);
- Individuals employed by the state or federal government;
- Bona fide volunteers working for charitable, religious or other nonprofit organization;
- Newspaper vendors and carriers;
- Individuals working for a carrier subject to the Interstate Commerce Act;
- Part-time employees (individuals working fewer than 25 hours per week);
- Minors (individuals under the age of 18 who have not graduated from high school or a vocational training program);
- Individuals under the age of 22 who are regularly enrolled in a high school, college, university or vocational training program;
- Feedstore employees working for a facility operated mainly for the benefit and use of farmers and ranchers; or
- Reserve force deputy sheriffs.

OVERTIME PAY

Oklahoma law has adopted federal standards regarding the payment of overtime wages. This means that, in Oklahoma, employers must compensate their employees with one and one-half times their regular wage rate for all overtime hours worked. "Overtime hours" are hours worked in excess of 40 hours in a workweek. The hours an employee works during one workweek cannot be averaged with the hours worked on any other workweek.

An employee's regular rate is the actual rate of pay he or she receives for a standard, non-overtime workweek. Employers must calculate their employees' regular rate before they can determine applicable overtime wages. An employee's regular rate can vary from week to week and may be different from the employee's contractual rate of pay.

To calculate an employee's regular rate for a specific work period, employers must divide the employee's entire compensation for a workweek by the number of hours the employee worked during that period.

An employee's entire compensation is all compensation paid to the employee. Usually, "entire compensation" includes the employee's hourly rate, shift differential, minimum wage tip credit, non-discretionary bonuses, production bonuses and commissions, but does not include:

- Reimbursements for business expenses;
- Bona fide gifts;
- Discretionary bonuses;
- Employer investment contributions; and
- Payment for non-working hours (for example: pay for vacation, sick leave or jury duty).

A workweek in Oklahoma is a fixed period of 168 hours, or seven consecutive 24-hour days. The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week.

To determine the number of hours an employee works during a workweek, the employer must consider any time during which the employee was subject to the employer's control. This includes any time the employee is:

- Allowed to work (regardless of whether he or she is required to work);
- Waiting for a job assignment;
- Waiting to begin work;

- Cleaning or performing other “off the clock” duties; and
- Traveling under the request, control or direction of the employer (excluding normal commuting time to and from work).

Contact Heffernan Insurance Brokers for more information on federal guidelines on overtime wage payment requirements and exceptions.

NOTICE AND POSTINGS

The OMWA requires employers to post a notice of pertinent wage and hour provisions at the workplace. The notice must be accessible to all employees in every establishment under employer control. The OMWA authorizes OKDOL representatives to enter the employer’s premises during business hours to certify compliance with notice and posting requirements. The OKDOL has provided a [model notice](#) that employers can use to satisfy this requirement.

Employers that fail to post a notice, as required by the OMWA, will be required to pay a fine of up to \$25. Each week of violation is a separate punishable offense.

PROHIBITED PRACTICES

Oklahoma law prohibits employers from participating in wage discrimination and retaliation practices.

Wage Discrimination

Employers engage in wage discrimination when they pay female employees wage rates lower than the wage rates paid to their male counterparts, solely based on sex. Female employees must receive equal pay when they perform work comparable to the work performed by their male counterparts on jobs of similar requirements relating to skill, effort and responsibility. However, Oklahoma law allows employers to pay different wage rates to their employees if the difference is driven by a system based on seniority, merit, quality or quantity of production, or any factor other than sex.

The OKDOL is authorized to investigate wage discrimination claims and bring a lawsuit against violating employers. Employers that engage in wage discrimination commit a misdemeanor, punishable by a fine of between \$25 and \$100.

Retaliation

Under Oklahoma law, it is unlawful for employers to retaliate against an employee that files a complaint with the OKDOL regarding a violation of his or her rights. The same is true for employees that:

- Cause the OKDOL to conduct a wage and hour investigation;
- Testify or are about to testify against their employer in an investigation or proceeding; or
- In any way assist the OKDOL in a wage and hour investigation.

Retaliation includes discharging, penalizing or in any other manner discriminating against an employee. Retaliation also includes taking actions that have the effect of discouraging, restraining, coercing or interfering with any employee in the exercise of his or her rights under Oklahoma’s labor laws.

Employers that retaliate against their employees commit a misdemeanor, punishable by a fine of between \$50 and \$200, imprisonment between five and 30 days or both.

ENFORCEMENT

The OMWA allows employees to initiate lawsuits against their employers whenever employers fail to pay their wages at a rate equal or higher than the state minimum wage rate. In these lawsuits, employees can recover unpaid wages plus the actual costs of litigation, including court costs and reasonable attorneys’ fees.

In addition, the OMWA allows the OKDOL to initiate wage and hour investigations to determine whether an employer has failed to pay wages at or above the minimum wage rate. When conducting an investigation, the OKDOL has the authority to administer oaths and affirmations, require sworn statements, issue subpoenas to compel attendance of witnesses and the production of books, papers, correspondence and other records it deems necessary to establish evidence for the investigation. Any information obtained by the OKDOL during an investigation will remain confidential (except for any finding of unpaid wages).

PENALTIES

Employers that violate the OMWA face the possible following penalties:

- **Criminal penalties:** Employers that fail to pay their employees at a rate lower than the minimum wage rate commit a misdemeanor punishable by a fine of at least \$500, imprisonment for up to six months or both.
- **Civil penalties:** In addition to criminal penalties, employers that violate minimum wage requirements may be required to pay up to twice the amount of unpaid wages, court costs and reasonable attorneys' fees (must be at least \$100). Any agreement between an employer and its employees for wages at a rate lower than the minimum wage rate is invalid and cannot be used as a defense.
- **Administrative penalties:** Minimum wage violation claims may be reviewed in administrative proceedings by the OKDOL. In these proceedings, employers that pay wages at a rate lower than the minimum wage rate to their employees may be required to pay an additional 10% of unpaid wages to all affected employees. The payment and acceptance of this penalty absolves employers from any further liability regarding the unpaid wages reviewed in the proceeding.

MORE INFORMATION

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

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