

WAGE & HOUR DEFENSE
I N S T I T U T E

STATE-BY-STATE WAGE AND HOUR LAW SUMMARY

www.wagehourdefense.org



ABOUT THE WAGE & HOUR DEFENSE INSTITUTE

The Wage & Hour Defense Institute (WHDI) of the Litigation Counsel of America is comprised of highly talented and experienced wage and hour defense attorneys from across the United States.

Wage and hour litigation, and in particular class and collective actions brought under the Fair Labor Standards Act (FLSA) and companion state laws, has increased significantly in recent years. With increased frequency, litigation has been brought challenging an employee's status as exempt from the FLSA's requirements to pay overtime and minimum wage. Jury verdicts and settlements have fueled the trend, as employees have recovered large amounts of money – often millions of dollars – based on allegations that employers misclassified them as exempt from the FLSA's overtime and minimum wage requirements. So too, in recent years, there has been increased litigation by employees claiming that they were forced to work “off the clock” and to miss meal and rest breaks, engage in pre-shift or post-shift work, or even work at home without regular rate of pay for the purpose of paying overtime compensation. Employees whose pay includes tips or commissions bring a special set of problems as well. As employees often attempt to band together in class and collective actions, the exposure in these cases can be extremely significant.

The new wave of wage and hour litigation has also seen an increase in lawsuits brought alleging misclassification as independent contractors, a complex issue given to the interwoven state and federal employment and tax laws. Here too, misclassification could result in class actions with individuals seeking unpaid wages, overtime, and benefits.

The WHDI serves as a nationwide network and meeting ground for top-tier practitioners to engage in professional development in what has become a highly nuanced area of the law, and also to become an established resource for employers on wage and hour matters. Each member was selected for membership in the WHDI based on his or her individual skills and experience representing management in the defense of wage and hour litigation. WHDI members also actively counsel employers on classification determinations and payroll practices so as to proactively avoid litigation, using tools such as “audits” to examine an employees' classification as exempt or non-exempt or whether certain activities are compensable or non-compensable and whether overtime has been properly calculated.

The Institute holds periodic conferences, meetings and colloquia for purposes of advancing defense techniques, methods and approaches, and broadening its members' role and influence in wage and hour law and policy.

The WHDI is a part of the Litigation Counsel of America, and all WHDI Members are Fellows of the LCA.

For more information regarding the WHDI Members, News and Publications, and its Blog, go to www.wagehourdefense.org.

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Alabama	◆						Yes	
Alaska	◆			◆ ¹⁸	Over 8 (A.S. 23.10.060)	\$7.75 (A.S. 23.10.065)	No	None for employees age 18+
Arizona	◆					\$7.35 (adj. ea. Jan. 1) (A.R.S. 23-264(A))	Not resolved	
Arkansas	◆	◆					Yes	
California				◆ ⁶	1.5x after 8 and for 1 st 8 on 7 th day; 2x over 12 and over 8 on 7 th day	\$8.00 \$9.92 in San Francisco (adj. ea. Jan. 1)	No	10 min. rest/4 hours and near middle; 30 min. meal after 5 hours, by 6 th hour and a second meal break after 10 hours ²²
Colorado				◆ ¹³	Over 12 per workday or over 12 consecutive	\$7.36 (adj. ea. Jan. 1) (7 CCR 1103-1)	Yes <i>(Division of Labor Advisory Bulletin, section 39(I))</i>	10 min. rest/4 hours; 30 min. meal after 5 hours ²⁰
Connecticut		◆ ⁴			Holidays and weekends	\$8.25	Not resolved	30 min. meal if over 7.5 hours, but not w/in first and last 2 hours of shift

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Delaware	◆ (19 Del. Code § 901(3))						An unsettled question; state law has provided no specific endorsement or rejection	
District of Columbia	◆ ¹					Minimum wage set by the FLSA plus \$1 (DC Minimum Wage Act, 32-1003)	Not resolved	
Florida	◆				Over 10 (for manual laborers) (Fla. Stat. § 448.01(1), (2))	\$7.31 (Fla. Const. art 10, § 24)	Yes	
Georgia	◆						Yes	

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Hawaii			<p style="text-align: center;">◆</p> <p>(FLSA covered employers must comply with higher \$455/week salary) <i>(Haw. Admin. Code. § 12-20-2 - 5)</i></p>	<p style="text-align: center;">◆^{7,9}</p> <p>No state computer exemption; non-FLSA covered employers have state supervisory exemption based on \$210/week salary <i>(Haw. Admin. Code § 12-20-4)</i></p>			Not resolved	None for employees age 16 & over
Idaho	<p style="text-align: center;">◆</p> <p><i>(Id. Code Ann. § 44-1504)</i></p>						Not resolved	
Illinois	<p style="text-align: center;">◆¹⁵</p> <p><i>(820 ILCS 105/4a)</i></p>				Day of rest required each week <i>(820 ILCS 140/2)</i>	<p>For employers with 4+ employees</p> <p>\$8.00 (eff. 7/1/09) <i>(820 ILCS 105/4)</i></p> <p>\$8.25 (eff. 7/1/10)</p>	Yes <i>(56 Ill. Adm. Code 210.430(f))</i>	20 min. meal break required after 5 hours if work day is at least 7.5 hours <i>(820 ILCS 140/3)</i>

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Indiana	◆ <i>(Burns Ind. Code. Ann. § 22-2-2-3(n))</i>				Various exceptions for statutorily prescribed wage and hour terms that can be included in CBAs or employment contracts <i>(Burns Ind. Code. Ann. § 22-2-2-4(m)-(w))</i>		Not resolved	
Iowa	◆						Yes	
Kansas	◆				Over 46 and on holidays		Yes	
Kentucky	◆ <i>(803 KAR 1:070; KRS 337.275, 337.285)</i>				All hours worked on 7 th consecutive day <i>(KRS 337.050)</i>		Yes <i>(803 KAR 1:060(4)(c))</i>	10 min. rest/4 hours; reasonable meal break (30 mins.), btwn. 3 rd and 5 th hour <i>(KRS 337.365, 337.355; 803 KAR 1:065)</i>
Louisiana	◆						Yes	

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Maine	◆ ^{1,2}					\$7.50	Not resolved	30 min. rest/6 hours, unless nature or work allows frequent breaks
Maryland	◆				48 hour workweek applies to employees of bowling alleys and residential care facilities. Most nurses may not be required to work overtime (R. 3-420,421)		Not resolved	Retail employees must receive break based on shift length ²³
Massachusetts	◆ ¹					\$8.00	Not resolved	30 min. meal in workday of at least 6 hours
Michigan		◆ ¹⁴ (MCL § 408.384a)				\$7.40 (MCL § 408.384) \$2.65 for tipped employees	Yes (<i>Fakouri v. Pizza Hut</i> , 824 F.2d 470 (6th Cir. 1987))	Under 18 must receive 20 min. break after 5 hours
Minnesota		◆		MSA 177.23 Rules 5200	Over 48 (MSA 177.25)		Yes	Paid break after 4 hours; meal if work 8 hours

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Mississippi	◆						Yes	
Missouri	◆ (R.S. Mo. Stat 290.505(3))				Seasonal & amusement / recreational employees receive overtime over 52 hours/week (R.S. Mo Stat. §290.505(6))		Yes (R.S. Mo. Stat. § 290.505(3))	
Montana		◆ (Mont. Code Ann. § 39-3-406(1)(j); Mont Adm. R. 24.16.201-206)				\$7.35	Yes (Mont. Adm. R. 24.16.2512)	
Nebraska	◆ (Neb. Rev. Stat. § 48-1202)						Yes	30 min. meal, off premises, during normal lunch hour for certain industries (Neb. Rev. Stat. § 48-212)

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Nevada				◆ ¹⁰	Over 8 if employee earns less than 1.5 times minimum wage (N.R.S. 608.018)	\$8.25 ¹⁷ (Nev. Const. art. 15, sec. 16)	Not resolved	10 min rest/ 4 hours, near middle; 30 min. meal/ 8 hour shift
New Hampshire	◆						Not resolved	30 min. meal after 5 hours
New Jersey			◆ (N.J.A.C. 12:56-7.1)				Not resolved	
New Mexico				◆ ¹¹	Holidays	\$7.50	No	
New York	◆ ¹⁹						An unsettled question; but authority exists which suggests that practice is accepted	1 hour meal at normal meal time for factory workers; most other workers – 30 mins. if shift is in excess of 6 hours and meals are at designated times depending on shift worked

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North Carolina	◆ (N.C. Gen. Stat. 95-25.14)				Seasonal amusement or recreational establishment employees are entitled to overtime only for hours in excess of 45 per workweek (N.C. Gen. Stat. 95-25.4)		Yes	None for employees age 16+
North Dakota				◆ ¹² (ND Admin Code 46-02-07-01)			Not resolved	30 min. meal/ shift greater than 5 hours when employee on duty (ND Admin Code 46-02-07-02)
Ohio	◆ (ORC Ann. § 4111.03(3)(d))					\$7.40 \$3.70 for tipped employees (ORC Ann. § 4111.02)	Yes (ORC Ann. § 4111.03(A))	Under age 18 must receive 30 min. break after 5 hours
Oklahoma	◆						Yes	None for employees age 16+

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Oregon				◆ ⁹	In mfg., over 10 hours, not more than 13 hours/day	\$8.50 (adj. ea. Jan. 1)	Yes	10 min. rest/4 hours, near middle; 30 min. meal in first 5 hours, taken between 2 nd and 6 th hour
Pennsylvania		◆ (34 Pa. Code § 231)		No state computer exemption			Not resolved	
Rhode Island	◆ ¹					\$7.40	Not resolved	20 min. meal every 6 hours, or a 30 min. meal every 8 hours
South Carolina	◆						Yes	
South Dakota	◆						Yes	
Tennessee	◆						Yes	30 min. meal/6 hours (TCA § 50-2-103)

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Texas	◆						Yes	None for employees age 18+
Utah	◆						Yes	
Vermont	◆ ¹					\$8.15 (adj. ea. Jan. 1) and on holidays	Not resolved	Reasonable breaks required.
Virginia	◆						Not resolved	None for employees age 16+
Washington		◆ (RCW 49.46.030(2)(a))	◆ (RCW 49.46.010(5)(c))	◆ FLSA covered employers must pay \$455/week & meet the more favorable test as applicable (RCW 49.46.010(5)(c), 49.46.030(2)(a), and Wa. Admin. Code 296-128-500 through 540))	Hourly nurses generally can't be req. to work OT (RCW 49.28.130 through .150)	\$8.67 (adj. ea. Jan. 1) (RCW 49.46.020)	Yes, under Wa. Min. Wage Act, but open question re: use as remedy in misclassification cases	10 min. rest/4 hours near middle; 30 min. meal between 2 nd and 5 th hour (Wa. Admin. Code 296-126-092)

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West Virginia				◆ ⁹	Various forms of premium rate compensation are not included in the regular rate as long as premium rate is at least 1 1/2 times the regular rate; such as work in excess of 8 hours/day or 40 hours/week; work on Saturday, Sunday, or holidays; work on a regular day of rest; work on 6 th or 7 th days of work week. Generally employees cannot be forced to work overtime. (<i>W. Va. Code § 21-5C-3-7</i>)		Not resolved	20 min. meal/ 6 hour shift (<i>W. Va. Code § 21-3-10(a)</i>); for 24 hour shifts employer and employee can agree to unpaid meal/rest periods of up to 8 hours

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Wisconsin			◆ ¹⁸ (DWD 274.04)				Not resolved	recommended 30 min. break near normal meal time, and employee must be able to leave premises if unpaid (DWD 274.02(2))
Wyoming	◆						Not resolved	

¹ These states generally follow the duties and salary basis tests under the FLSA's rules, but they have not adopted the new highly compensated method for being deemed exempt.

² In Maine, all exempt employees must be paid on a salary basis. Also, Maine has a separate exemption test applicable to sales employees.

³ These jurisdictions generally apply the old federal short tests for determining exempt status. While the new standard test under the FLSA and the old short test are very similar, some employees gained exempt status under the new rules. In these jurisdictions, those employees exempt statuses should be carefully reviewed since the local rule still will control. Employees reclassified as nonexempt under the new federal rules should be treated as nonexempt.

⁴ Connecticut's minimum salary level requirement is \$475.00. Also, the state does not permit exempt employees to be subject to disciplinary deductions for violations of workplace conduct rules.

⁵ These jurisdictions have overtime rules that follow the old federal long tests for the executive, administrative, professional and outside sales exemptions. Because the new federal regulations, like the old federal short tests, may classify some employees as exempt who would not be exempt under the old federal long tests, employees in these jurisdictions must satisfy the exemptions under both state and federal laws to be treated as exempt.

⁶ Salary must be at least \$2,752/month (\$33,024/year), and exempt duties must constitute more than 50% of the employee's time. Highly skilled computer employees paid on an hourly basis must be paid, as of January 2010, at least \$37.94 per hour, or a salary of \$6,587.50 per month or 79,050.00 per year. The minimum rates for computer employees are adjusted each January 1. Physicians may be paid on an hourly basis if paid at least \$69.13 per hour (a rate which adjusted each January 1). Half-time premium under a "fluctuating workweek" arrangement is not permissible.

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- ⁷ Under state law, executives and creative professionals must exercise independent judgment and discretion in order to be exempt. Employees who are guaranteed at least \$2,000 per month, though, are not subject to the state law.
- ⁸ Disciplinary deductions from salaried exempt employees are prohibited in Montana.
- ⁹ State rules are similar to the old federal “long test”, but the percentage of time the employee may perform non-exempt work varies from the old federal rule (as well as from state-to-state).
- ¹⁰ State follows the tests in the new federal rules as to all white collar classifications other than professionals.
- ¹¹ State follows the tests in the new federal rules as to all white collar classifications other than executives and outside sales employees.
- ¹² North Dakota follows the new federal rules as to the executive and administrative exemption only. Otherwise, it has specialized state tests for exemptions.
- ¹³ Colorado has very specialized state tests for exemptions. See <http://www.coworkforce.com/lab>. Employees must satisfy both state and federal test in order to be treated as exempt.
- ¹⁴ Michigan’s duties tests for executive, administrative and professional employees are similar to the old federal short tests, but they are not identical. Further, as under the FLSA, these exempt employees are required to be paid on a salary basis to be exempt, but the state rules do not allow for any deductions or other exceptions. Also, Michigan law does not exempt outside sales employees. Michigan’s overtime pay and minimum wage requirements, however, do not apply to employees subject to the FLSA and who are exempt under the FLSA (other than some domestic service employees and childcare providers).
- ¹⁵ Illinois applies the old federal duties tests, but the current federal salary level tests.
- ¹⁶ The federal minimum wage is \$7.25 per hour.
- ¹⁷ Nevada allows employers to pay a lower minimum wage (but no less than the federal minimum wage) if the employer provides and pays for 90% of the premium required for health care coverage. The lower minimum wage is currently \$7.25.
- ¹⁸ Alaska also provides a unique list of approximately 40 occupations that qualify for exempt status.
- ¹⁹ In New York, an employee must be paid at least \$543.75 per week in order to qualify for the executive and administrative exemptions.
- ²⁰ Colorado’s Wage Order applies only to the following covered industries: (1) Retail and Service; (2) Commercial Support Service; (3) Food and Beverage; and (4) Health and Medical.
- ²¹ The “Fluctuating Work Week Method for Calculating Overtime” involves payment of a fixed weekly salary for all hours worked in a work week; if the employee works more than 40 hours in the work week, the employee receives an overtime premium that is calculated by multiplying half of the effective hourly rate for that work week by the number of hours over 40 worked.
- ²² The California meal period requirements do not apply to security and public utility workers if pursuant to a collective bargaining agreement.
- ²³ Retail employees in Maryland receive breaks based on shift length: 4-6 hours - 15 min.; 6-8 hours - 30 min.; 8+ hours - 30 min., plus 15 min. for every additional 4 hours.

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