Senator Sarlo:

- Please provide to the committee a copy of the surveys, mentioned in your testimony, that rank New Jersey’s business climate as the worst among the 50 states.

**Response:** The following publications/web sites have published surveys:

- [http://www.cnbc.com/id/37642856/CNBC_s_Top_States_For_Business_2010_And_The_Winner_Is_Texas](http://www.cnbc.com/id/37642856/CNBC_s_Top_States_For_Business_2010_And_The_Winner_Is_Texas)
- [http://chiefexecutive.net/best-worst-states-for-business](http://chiefexecutive.net/best-worst-states-for-business)

Senator Greenstein:

- Please provide to the committee an estimate of the number of people who will lose overtime hours pursuant to the new regulation proposed by the department intended to ensure consistency between State and federal regulations concerning overtime.

**Response:** We are unable to estimate the number of people who would become exempt from premium overtime pay by virtue of the proposed amendment, repeals and new rules described in the notice of proposal which appeared in the March 21, 2011 issue of the New Jersey Register (43 N.J.R. 725(a)). As explained in the notice of proposal, the amendment, rules that are repealed and new rules would not alter the classes of employees who would be exempt from premium overtime pay. What would change are the tests used to determine when a given employee is a bona fide executive, administrative, professional or outside sales employee and thus exempt from overtime pay. There is the potential of a negative economic impact which the Department alluded to in the March 21, 2011 notice of proposal, when it stated: “The proposed amendment, repeals and new rules may have a negative economic impact on employees who will seek to recover overtime premium pay against employers under the New Jersey overtime law and rules in that the simplified post-2004 Federal overtime exemption regulations that would be adopted by reference contain short tests, which impose fewer requirements on employers to establish exemptions.”
- Please provide to the committee a list of the specific employment sectors that have seen increases in the numbers of persons employed in the last year.

**Response:** Employment by Industry Sector:
Over the past year, March 2010 – March 2011 (latest data available) five private industry sectors have recorded job gains while four have recorded losses. The industries that added workers were led by professional and business services, which gained 14,600 jobs. Other industries that showed growth included trade, transportation and utilities (+5,000), education and health services (+4,700), financial activities (+4,200) and leisure and hospitality (+3,200). Industries that showed lower employment over the period included manufacturing, down by 6,600 jobs, construction (-3,300), other services (-1,600) and information (-200).

**Senator Cunningham:**

- Please provide to the committee a list of all urban areas that have received funds from the State, either federal or State appropriations, for programs intended to address high unemployment in these areas.

**Response:** Camden, Jersey City and Newark received funds to address high unemployment. Other urban areas would have received funds from the local allocation of the federally funded Workforce Investment Act program that is made to the Workforce Investment Board (WIB) for that urban area. For example, Trenton received funds from the Mercer County WIB.

**Senator Pennacchio:**

- Please provide to the committee information on the treatment of overtime hours by New Jersey’s surrounding states. Are these states’ regulations consistent with federal regulations regarding overtime?

**Response:** Attached are the pertinent laws and rules from the States of New York, Pennsylvania, and Connecticut, regarding exemptions from overtime premium pay for bona fide executive, administrative, professional and outside sales employees. The State of Delaware has no law or rules on this subject. Consequently, those who work in Delaware are protected only by Federal overtime law and regulations.

**Senator Madden:**

- Please provide to the committee, detailed by geographic region, the increases in employment over the previous year.
**Response:** Employment by Labor Area

New Jersey current employment data is detailed by geographic labor market areas that are determined by the US Bureau of Labor Statistics Metropolitan Statistical Areas (MSAs). The state is broken out into eight MSAs that encompass 19 New Jersey counties. The MSA that added the most private sector jobs was the Edison MSA (Middlesex, Somerset, Monmouth, and Ocean counties) which gained 7,700 jobs over the March 2010 - March 2011 period (latest data available). Other MSAs that recorded private sector job gains included the Newark-Union MSA (Essex, Hunterdon, Morris, Sussex, and Union counties) which added 6,000 jobs, Bergen-Hudson-Passaic MSA (Bergen, Hudson, and Passaic counties) (+4,800), Ocean City MSA (Cape May County) (+1,000), Camden MSA (Burlington, Camden and Gloucester counties) (+900), and Vineland-Millville-Bridgeton MSA (Cumberland County) (+800). MSAs that showed a decrease in private sector employment were the Trenton-Ewing MSA (Mercer County) which was down by 600 jobs and the Atlantic City MSA (Atlantic County) which fell by 500. See table below.
<table>
<thead>
<tr>
<th>Area</th>
<th>Mar-10</th>
<th>Mar-11</th>
<th>Employment Change</th>
<th>Percentage Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATLANTIC-CITY LABOR AREA (ATLANTIC COUNTY)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Employment</td>
<td>134,700</td>
<td>133,200</td>
<td>-1,500</td>
<td>-1.1%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>111,000</td>
<td>110,500</td>
<td>-500</td>
<td>-0.5%</td>
</tr>
<tr>
<td>BERGEN - HUDSON - PASSAIC LABOR AREA (BERGEN, HUDSON &amp; PASSAIC COUNTIES)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Employment</td>
<td>856,300</td>
<td>856,500</td>
<td>2,200</td>
<td>0.3%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>731,900</td>
<td>736,700</td>
<td>4,800</td>
<td>0.7%</td>
</tr>
<tr>
<td>CAMDEN LABOR AREA (BURLINGTON, CAMDEN &amp; GLOUCESTER COUNTIES)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Employment</td>
<td>501,600</td>
<td>497,200</td>
<td>-4,400</td>
<td>-0.9%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>414,000</td>
<td>414,900</td>
<td>900</td>
<td>0.2%</td>
</tr>
<tr>
<td>EDISON LABOR AREA (MIDDLESEX, SOMERSET, MONMOUTH &amp; OCEAN COUNTIES)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Employment</td>
<td>964,900</td>
<td>966,300</td>
<td>1,400</td>
<td>0.1%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>815,100</td>
<td>822,800</td>
<td>7,700</td>
<td>0.9%</td>
</tr>
<tr>
<td>NEWARK-UNION, NJ-PA LABOR AREA (HUNTERDON, UNION, ESSEX, SUSSEX &amp; MORRIS COUNTIES)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Employment</td>
<td>955,700</td>
<td>954,400</td>
<td>-1,300</td>
<td>-0.1%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>791,100</td>
<td>797,100</td>
<td>6,000</td>
<td>0.8%</td>
</tr>
<tr>
<td>OCEAN CITY LABOR AREA (CAPE MAY COUNTY)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Employment</td>
<td>32,900</td>
<td>34,100</td>
<td>1,200</td>
<td>3.6%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>24,000</td>
<td>25,000</td>
<td>1,000</td>
<td>4.2%</td>
</tr>
<tr>
<td>TRENTON - EWING LABOR AREA (MERCER COUNTY)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Employment</td>
<td>237,300</td>
<td>233,400</td>
<td>-3,900</td>
<td>-1.6%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>167,800</td>
<td>167,200</td>
<td>-600</td>
<td>-0.4%</td>
</tr>
<tr>
<td>VINELAND - MILLVILLE - BRIDGETON LABOR AREA (CUMBERLAND COUNTY)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Employment</td>
<td>58,200</td>
<td>57,900</td>
<td>-300</td>
<td>-0.5%</td>
</tr>
<tr>
<td>Private Sector</td>
<td>43,100</td>
<td>43,900</td>
<td>800</td>
<td>1.9%</td>
</tr>
</tbody>
</table>

§ 142-2.2  Overtime rate

An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to the exemptions of Section 7 and Section 13 of 29 U.S.C. 201 et seq., the Fair Labor Standards Act of 1938, as Amended, provided, however that the exemptions set forth in Section 13(a)(2) and 13(a)(4) shall not apply. In addition, an employer shall pay employees subject to the exemptions of Section 13 of the Fair Labor Standards Act, as Amended, except employees subject to Section 13(a)(2) and 13(a)(4) of such Act, overtime at a wage rate of one and one-half times the basic minimum hourly rate. The Fair Labor Standards Act is published in the United States Code, the official compilation of federal statutes, by the Government Printing Office, Washington, D.C. Copies of the Fair Labor Standards Act are available at the following office:

   New York State Department of Labor
   Counsel's Office
   State Office Building Campus
   Building 12, Room 509
   Albany, N.Y. 12240-0005

   The applicable overtime rate shall be paid for each workweek:

<table>
<thead>
<tr>
<th></th>
<th>Employees</th>
<th>Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>For working time over 40 hours</td>
<td>Non-residential</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For working time over 44 hours</td>
</tr>
</tbody>
</table>

Statutory authority: Labor Law, § 21(11), art. 19

Repealed and added 142-2.2 on 1/01/75; amended 142-2.2 on 1/01/87; repealed and added 142-2.2 on 8/20/03.
§ 333.105. Exemptions

(a) Employment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act:

(1) Labor on a farm;

(2) Domestic services in or about the private home of the employer;

(3) Delivery of newspapers to the consumer;

(4) In connection with the publication of any weekly, semweekly, or daily newspaper with a circulation of less than four thousand, the major part of which circulation is within the county where published or counties contiguous thereto;

(5) In a bona fide executive, administrative, or professional capacity (including any employe employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the secretary, except that an employe of a retail or service establishment shall not be excluded from the definition of employe employed in a bona fide executive or administrative capacity because of the number of hours in his or her workweek which he or she devotes to activities not directly or closely related to the performance of executive administrative activities, if less than forty percent of his or her hours worked in the workweek are devoted to such activities);

(6) In the activities of an educational, charitable, religious or nonprofit organization where the employer-employe relationship does not
in fact exist or where the services are rendered to such organization gratuitously;

(7) In seasonal employment, if the employe is under eighteen years of age, or if a student under twenty-four years of age, by a nonprofit health or welfare agency engaged in activities dealing with handicapped or exceptional children or by a nonprofit day or resident seasonal recreational camp for campers under the age of eighteen years, which operates for a period of less than three months in any one year;


(9) In employment by an establishment which is a public amusement or recreational establishment, organized camp, or religious or nonprofit educational conference center, if (i) it does not operate for more than seven months in any calendar year, or (ii) during the preceding calendar year, its average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of such year;

(10) Golf caddy;

(11) In employment as a switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations;

(12) Employes not subject to civil service laws who hold elective office or are on the personal staff of such an officeholder, are immediate advisers to him or her, or are appointed by him or her to serve on a policy-making level.

(b) Employment in the following classifications shall be exempt from the overtime provisions of this act:

(1) Seaman;

(2) Any salesman, partsman, or mechanic primarily engaged in selling and servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers;

(3) Any driver employed by an employer engaged in the business of operating taxicabs;

(4) Any employe employed as an announcer, news editor, or chief engineer by a radio or television station, the major studio of which is located (i) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (ii) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least forty airline miles from the principal city in such
area;

(5) Any employee engaged in the processing of maple sap into sugar
(other than refined sugar) or syrup;

(6) Employment by an establishment which is a motion picture theatre;

(7) Any employee of a motor carrier with respect to whom the Federal
Secretary of Transportation has power to establish qualifications and
maximum hours of service under 49 U.S.C. § 3102(b)(1) and (2) (relating
to requirements for qualifications, hours of service, safety and
equipment standards).

(c) (1) Notwithstanding the provisions of section 4(a)(7) and (8),
an employer unless otherwise exempt from the minimum wage provisions of
section 4(a)(6) whose employee complement is composed of the equivalent
of ten or less full-time employees to be calculated on a forty-hour
workweek shall pay:

(i) Five dollars sixty-five cents ($ 5.65) an hour beginning January
1, 2007.

(ii) Six dollars sixty-five cents ($ 6.65) an hour beginning July 1,
2007.

(2) Such employer shall pay the full amount of the minimum wage under
section 4(a)(8) beginning July 1, 2008.

HISTORY: Act 1974-303 (S.B. 1749) P.L. 916, § 3, amended Dec. 10, 1974, eff. in 60 days; Act 1978-135 (H.B.
15, 1988, eff. Feb. 1, 1989; Act 1990-79 (S.B. 1458), P.L. 348, § 2, approved July 9, 1990, See section of this act for
effective date information.; Act 2006-112 (S.B. 1090), P.L. 1077, § 2, approved July 9, 2006, eff. immediately.

NOTES:
LexisNexis (R) Notes:

Amendment Notes.--The 2006 amendment added (c) and made stylistic changes.

CASE NOTES

1. Pennsylvania Department of Labor and Industry was entitled to preliminary objections in the nature of a demurrer
pursuant to Pa. R. Civ. P. 1028(a)(4) because an employer's allegations of material fact, accepted as true, failed to estab-
lish a cause of action entitling it to relief under any theory that the employer advanced; specifically, the Department's
regulation, 34 Pa. Code § 231.1(b), defining the domestic services exemption to the Minimum Wage Act of 1968 was
adopted by the Department pursuant to 43 P.S. § 333.109, was promulgated in accordance with proper procedures, was
reasonable, genuinely tracked the underlying meaning of 43 P.S. § 333.105(a)(2), and was not preempted by the the Fair


4. Pennsylvania Department of Labor and Industry was entitled to preliminary objections in the nature of a demurrer pursuant to Pa. R. Civ. P. 1028(a)(4) because an employer's allegations of material fact, accepted as true, failed to establish a cause of action entitling it to relief under any theory that the employer advanced; specifically, the Department's regulation, 34 Pa. Code § 231.1(b), defining the domestic services exemption to the Minimum Wage Act of 1968 was adopted by the Department pursuant to 43 P.S. § 333.109, was promulgated in accordance with proper procedures, was reasonable, genuinely tracked the underlying meaning of 43 P.S. § 333.105(a)(2), and was not preempted by the the Fair Labor Standards Act of 1938. Bayada Nurses, Inc. v. Dept of Labor & Indus., 958 A.2d 1050, 2008 Pa. Commw. LEXIS 394, 156 Lab. Cas. (CCH) P60663, 14 Wage & Hour Cas. 2d (BNA) 196 (Pa. Commw. Ct. 2008), affirmed by 8 A.3d 866, 2010 Pa. LEXIS 2585, 160 Lab. Cas. (CCH) P61082, 16 Wage & Hour Cas. 2d (BNA) 1657 (Pa. 2010).

5. Definition of "domestic services" set forth in 34 Pa. Code § 231.1, which distinguishes between household employer and third-party agency employers, is not in conflict with 43 P.S. § 333.105(a)(2) of the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101-333.115, as it closely tracks the domestic services exemption to the minimum wage and overtime requirements contained therein, and is reasonable as it is entirely consistent with the general assembly's intent regarding the scope of the domestic service exemption. Bayada Nurses, Inc. v. Commonwealth, 8 A.3d 866, 2010 Pa. LEXIS 2585, 160 Lab. Cas. (CCH) P61082, 16 Wage & Hour Cas. 2d (BNA) 1657 (Pa. 2010).

6. As a third-party agency employer of home health care aides was not a "householder employer" for purposes of 43 P.S. § 333.105(a)(2) and 34 Pa. Code § 231.1(b), it was not entitled to the domestic services exemption from overtime requirements, even if its household clients might otherwise qualify for the exemption. Bayada Nurses, Inc. v. Commonwealth, 8 A.3d 866, 2010 Pa. LEXIS 2585, 160 Lab. Cas. (CCH) P61082, 16 Wage & Hour Cas. 2d (BNA) 1657 (Pa. 2010).

7. For an individual to qualify for the limited domestic services exemption in 43 P.S. § 333.105(a)(2), and for an employer to be exempted from complying with the otherwise mandatory overtime provisions of the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101-333.115, the individual must be working about the private home of the employer, i.e., the employer must be the householder in whose house the individual works. Bayada Nurses, Inc. v. Commonwealth, 8 A.3d 866, 2010 Pa. LEXIS 2585, 160 Lab. Cas. (CCH) P61082, 16 Wage & Hour Cas. 2d (BNA) 1657 (Pa. 2010).


10. Definition of "domestic services" set forth in 34 Pa. Code § 231.1, which distinguishes between householder employers and third-party agency employers, is not in conflict with 43 P.S. § 333.105(a)(2) of the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101-333.115, as it closely tracks the domestic services exemption to the minimum wage and overtime requirements contained therein, and is reasonable as it is entirely consistent with the general assembly's intent regarding the scope of the domestic service exemption. Bayada Nurses, Inc. v. Commonwealth, 8 A.3d 866, 2010 Pa. LEXIS 2585, 160 Lab. Cas. (CCH) P61082, 16 Wage & Hour Cas. 2d (BNA) 1657 (Pa. 2010).

11. As a third-party agency employer of home health care aides was not a "householder employer" for purposes of 43 P.S. § 333.105(a)(2) and 34 Pa. Code § 231.1(b), it was not entitled to the domestic services exemption from overtime requirements, even if its household clients might otherwise qualify for the exemption. Bayada Nurses, Inc. v. Commonwealth, 8 A.3d 866, 2010 Pa. LEXIS 2585, 160 Lab. Cas. (CCH) P61082, 16 Wage & Hour Cas. 2d (BNA) 1657 (Pa. 2010).

12. For an individual to qualify for the limited domestic services exemption in 43 P.S. § 333.105(a)(2), and for an employer to be exempted by complying with the otherwise mandatory overtime provisions of the Pennsylvania Minimum Wage Act, 43 P.S. §§ 333.101-333.115, the individual must be working about the private home of the employer, i.e., the employer must be the householder in whose house the individual works. Bayada Nurses, Inc. v. Commonwealth, 8 A.3d 866, 2010 Pa. LEXIS 2585, 160 Lab. Cas. (CCH) P61082, 16 Wage & Hour Cas. 2d (BNA) 1657 (Pa. 2010).


15. Former employee who obtained certification under Fed. R. Civ. P. 23 of a class of retail store managers in a suit against an employer under federal and state law for failure to pay overtime rather than pursuing a collective action under 29 USCS § 216(b) of the Fair Labor Standards Act, 29 USCS § 207 et seq., was not entitled to judgment as a matter of law or a new trial following a jury verdict for the employer, as the employer was properly allowed to offer statistical evidence to prove that the managers were exempt; class certification precluded individual determinations as to the number of subordinate hours supervised by the managers. Goldman v. RadioShack Corp., 2006 U.S. Dist. LEXIS 2433, 152 Lab. Cas. (CCH) P35098, 12 Wage & Hour Cas. 2d (BNA) 735 (E.D. Pa. Jan. 23 2006).

16. As an alternative basis of a decision finding a pharmaceutical sales representative exempt from overtime under the outside salesman exemption, the representative would also be exempt from overtime under the administrative exemption of the Pennsylvania Minimum Wage Act (PMWA), 43 P.S. § 333.105(a)(5), because she met each prong of the relevant test. Importantly, the sales representative exercised substantial discretion and independent judgment in or-

17. Former employee who obtained certification under *Fed. R. Civ. P.* 23 of a class of retail store managers in a suit against an employer under federal and state law for failure to pay overtime rather than pursuing a collective action under 29 USCS § 216(b) of the Fair Labor Standards Act, 29 USCS § 201 et seq., was not entitled to judgment as a matter of law or a new trial following a jury verdict for the employer, as the employer was properly allowed to offer statistical evidence to prove that the managers were exempt; class certification precluded individual determinations as to the number of subordinate hours supervised by the managers. *Goldman v. RadioShack Corp.*, 2006 U.S. Dist. LEXIS 2433, 152 Lab. Cas. (CCH) P35098, 12 Wage & Hour Cas. 2d (BNA) 735 (E.D. Pa. Jan. 23 2006).

18. A district court granted supplemental jurisdiction over putative class claims for violations of state wage and hour laws, including the Pennsylvania Minimum Wage Act and conditional certification of federal labor law claims in a suit by a former store manager who argued he was wrongly classified as exempt from wage and hour laws, but it deferred ruling on whether the issue of predominance was met. *Goldman v. RadioShack Corp.*, 2003 U.S. Dist. LEXIS 7611 (E.D. Pa. Apr. 16 2003).


**OPINIONS OF ATTORNEY GENERAL**


**LAW REVIEWS**

1. *19 Widener L.J. 499*, ANNUAL SURVEY OF PENNSYLVANIA ADMINISTRATIVE LAW: LABOR LAW: ANALYZING WHEN "DOMESTIC SERVICES" EMPLOYERS SHOULD NOT BE EXEMPT FROM PROVIDING THEIR EMPLOYEES WITH REQUIRED MINIMUM WAGE RATES: AN EXAMINATION OF BAYADA NURSES, INC. V. COMMONWEALTH, DEPARTMENT OF LABOR & INDUSTRY.
LexisNexis 50 State Surveys, Legislation & Regulations

Minimum Wage
§ 231.41. Rate

Except as otherwise provided in section 5(a) -- (c) of the act (43 P. S. § 333.105(a) -- (c)), each employee shall be paid for overtime not less than 1 1/2 times the employee's regular rate of pay for all hours in excess of 40 hours in a workweek.

NOTES:

Cross References

This section cited in 34 Pa. Code § 231.43 (relating to regular rate).

LexisNexis 50 State Surveys, Legislation & Regulations

Minimum Wage

HIERARCHY NOTES:

Title Note
Part Note
Chapter Note
§ 231.42. Workweek

The term workweek shall mean a period of 7 consecutive days starting on any day selected by the employer. Overtime shall be compensated on a workweek basis regardless of whether the employee is compensated on an hourly wage, monthly salary, piece rate or other basis. Overtime hours worked in a workweek may not be offset by compensatory time off in any prior or subsequent workweek.

NOTES:

Cross References

This section cited in 34 Pa. Code § 231.43 (relating to regular rate).

LexisNexis 50 State Surveys, Legislation & Regulations

Minimum Wage

HIERARCHY NOTES:

Title Note
Part Note
Chapter Note
§ 231.43. Regular rate

For purposes of these §§ 231.41 -- 231.43 (relating to overtime pay), the regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to or on behalf of the employee, but it shall not be deemed to include the following:

(1) Sums paid as gifts, payments in the nature of gifts made at Christmas time or on other special occasions as a reward for service, the amounts of which are not measured by or dependent on hours worked, production or efficiency.

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work or other similar cause, reasonable payments for traveling expenses or other expenses incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for the employee's hours of employment.

(3) Sums paid in recognition of services performed during a given period if:

(i) Both the fact that payment is to be made and the amounts of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement or promise causing the employee to expect such payments regularly.

(ii) The payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan without regard to hours of work, production or efficiency.

(iii) The payments are talent fees paid to performers, including announcers on radio and television programs.

(4) Contributions irrevocably made by an employer to a trustee or third person under a bona fide plan for providing old-age, retirement, life, accident or health insurance or similar benefits for employees.

(5) Extra compensation provided by a premium rate for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of 8 in a day or in excess of the maximum workweek applicable to the employee under § 231.41 (relating to rate) or in excess of the normal working hours or regular working hours of the employee, as the case may be.
(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than 1 1/2 times the rate established in good faith for like work performed in nonovertime hours on other days.

(7) Extra compensation provided by a premium rate paid to the employee in pursuance of an applicable employment contract or collective bargaining agreement for work outside of the hours established in good faith by the contract or agreement as the basic, normal or regular workday not exceeding 8 hours or workweek not exceeding the maximum workweek applicable to the employee under § 231.41 (relating to rate), where the premium rate is not less than 1 1/2 times the rate established in good faith by the contract or agreement for like work performed during the workday or workweek.

(b) If the employee is paid a flat sum for a day's work or for doing a particular job without regard to the number of hours worked in the day or at the job and if he receives no other form of compensation for services, his regular rate is determined by totaling all the sums received at the day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for hours worked in excess of 40 in the workweek.

(c) No employer may be deemed to have violated these §§ 231.41 -- 231.43 (relating to overtime pay) by employing an employee for a workweek in excess of the maximum workweek applicable to the employee under § 231.41 (relating to rate) if the employee is employed under a bona fide individual contract or under an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate substantially irregular hours of work. For example, where neither the employee nor the employer can either control or anticipate with a degree of certainty the number of hours the employee must work from week to week, where the duties of the employee necessitate significant variations in weekly hours of work both below and above the statutory weekly limit on nonovertime hours, or where the substantially irregular hours of work are not attributable to vacation periods, holidays, illness, failure of the employer to provide sufficient work, or other similar causes, and the contract or agreement:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate and compensation at not less than 1 1/2 times the rate for hours worked in excess of the maximum workweek.

(2) Provides a weekly guaranty of pay for not more than 60 hours based on the rates so specified.

(d) No employer may be deemed to have violated these §§ 231.41 -- 231.43 by employing an employee for a workweek in excess of the maximum workweek applicable to the employee under § 231.41 if, under an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in the workweek in excess of the maximum workweek applicable to the employee under § 231.41:

(1) In the case of an employee employed at piece rates, is computed at piece rates not less than 1 1/2 times the bona fide piece rates applicable to the same work when performed during nonovertime hours.

(2) In the case of an employee's performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than 1 1/2 times the bona fide rate applicable to the same work when performed during nonovertime hours.

(3) Is computed at a rate not less than 1 1/2 times the rate established by the agreement or understanding as the basic rate to be used in computing overtime compensation thereunder; and if the average hourly earnings of the employee for the workweek, exclusive of payments described in subsection (a)(1) -- (7), are not less than the minimum hourly rate required by applicable law and if extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(e) Extra compensation paid as described in subsection (a)(5) -- (7) shall be creditable toward overtime compensation payable under these §§ 231.41 -- 231.43 (relating to overtime pay).

(f) No employer may be deemed to have violated these §§ 231.41 -- 231.43 by employing an employee of a retail or service establishment for a workweek in excess of 40 hours if:

(1) The regular rate of pay of the employee is in excess of 1 1/2 times the minimum hourly rate applicable.

(2) More than half of the employee's compensation for a representative period, not less than 1 month, represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earn-
ings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

NOTES:

Notes of Decisions

Daily Basis

By its very terms, this regulation applies to those employees whose salaries are quoted on a daily basis. These plaintiffs received a salary computed on a biweekly basis, so the regulation does not apply to them. This regulation simply does not apply to all Pennsylvania employees who receive a fixed annual salary. Friedrich v. U. S. Computer Systems, Inc., #90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

Flat Sum

The placement of the disjunctives in subsection (b) of this regulation makes it applicable to two classes of employees. First, it applies to employees "paid a flat sum for a day's work . . . without regard to the number of hours worked in the day . . ." Second, it applies to employees "paid a flat sum . . . for doing a particular job without regard to the number of hours worked . . . at the job." Friedrich v. U. S. Computer Systems, Inc., #90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

Hourly Wages

The computer field engineers' argument that they were hourly workers and entitled to overtime compensation failed when they were paid biweekly according to a 2-week pro rata proportion of their annual salaries and, therefore, this section was inapplicable. Friedrich v. U. S. Computer Services, Inc., 833 F.Supp. 470 (E. D. PA 1993); affirmed 187 F.3d 625 (3d Cir. Pa. 1999).

Particular Job

The term "particular" in this regulation presumably encompasses employees who perform duties as independent contractors, working on specific, discrete projects such as painting, construction or other services. Friedrich v. U. S. Computer Systems, Inc., #90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

LexisNexis 50 State Surveys, Legislation & Regulations

Minimum Wage

HIERARCHY NOTES:

Title Note
Part Note
Chapter Note
Sec. 31-60. Payment of less than minimum or overtime wage. Regulations.

(a) Any employer who pays or agrees to pay to an employee less than the minimum fair wage or overtime wage shall be deemed in violation of the provisions of this part.

(b) The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesperson; learners and apprentices, their number, proportion and length of service; and piece rates in relation to time rates; and shall recognize, as part of the minimum fair wage, gratuities in an amount (1) equal to twenty-nine and three-tenths per cent, and effective January 1, 2009, equal to thirty-one per cent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities, (2) equal to eight and two-tenths per cent, and effective January 1, 2009, equal to eleven per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities, and (3) not to exceed thirty-five cents per hour in any other industry, and shall also recognize deductions and allowances for the value of board, in the amount of eighty-five cents for a full meal and forty-five cents for a light meal, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. Regulations in effect on July 1, 1973, providing for a board deduction and allowance in an amount differing from that provided in this section shall be construed to be amended consistent with this section without the necessity of convening a wage board or amending such regulations.

(c) Regulations adopted by the commissioner pursuant to subsection (b) of this section which define executive, administrative and professional employees shall be updated not later than October 1, 2000, and every four years thereafter, to specify that such persons shall be compensated on a salary basis at a rate determined by the Labor Commissioner.

HISTORY: (1951, S. 2034d; 1957, P.A. 435, S. 5; 1959, P.A. 683, S. 3; 1961, P.A. 519, S. 3; 1967, P.A. 492, S. 2; 1971, P.A. 616, S. 2; P.A. 73-561, S. 1, 2; 73-616, S. 29, 64, 67; P.A. 80-64, S. 1, 7; P.A. 99-199; P.A. 00-144, S. 2; P.A. 01-42, S. 2, 3; P.A. 02-33, S. 2; P.A. 03-278, S. 91; P.A. 04-68, S. 1; P.A. 08-113, S. 1.)

NOTES:

History Notes:
1959 act extended regulatory authority to cover executive, administrative and professional employees, deleted bonuses and special pay from matters subject to regulation and established gratuity rates of $0.35 for restaurant employees and $0.30 for others; 1961 act increased gratuity rates and added "based on the actual cost of food and labor"; 1967 act raised maximum gratuities in Subsec. (b) from $0.40 per hour to $0.47 until July 1, 1968, and %0.50 thereafter for persons employed in hotel and restaurant industry; 1971 act increased gratuities limit to $0.60 per hour; Sec. 31-58(j) for definition of "minimum fair wage".

CASENOTES:

Cited. 140 Conn. 73. Constitutionality discussed. 142 Conn. 437. Cited. 219 Conn. 520. Cited. 223 Conn. 573.

Limited amount of gratuity allowed for minimum wage. 18 Conn. Supp. 452.

LexisNexis (R) Notes:

CASE NOTES

1. A trial court denied class certification under Conn. Gen. Prac. Book §§ 9-7 and 9-8 to a group of current and former food servers of a large restaurant chain where they failed to show that tip sharing with the restaurant was illegal. Further, predominantly individualized proof was required as to the service versus non-service issues raised by plaintiffs, therefore, making class certification inappropriate. Peruta v. Outback Steakhouse of Fla., Inc., 50 Conn. Supp. 51, 913 A.2d 1160, 2006 Conn. Super. LEXIS 2679 (Conn. Super. Ct. 2006).

2. In employees' suit alleging their employers violated the Connecticut Minimum Wage Act, Conn. Gen. Stat. § 31-58 et seq., by taking a "tip credit" of 29.3 percent of the minimum wage towards payment of their total wages, whether the employees' side work precluded the employers from taking the tip credit presented mixed questions of fact and law and therefore, the employers were not entitled to summary judgment. Buccere v. Brinker Int'l, Inc., 2006 Conn. Super. LEXIS 3338 (Conn. Super. Ct. Nov. 8 2006).

3. Where a non-profit corporation terminated a homeshare provider, who had lived with a mentally retarded client and had been paid a stipend by the corporation, summary judgment was inappropriate for deciding the provider's claim under Connecticut minimum wage and overtime laws because a factual dispute existed as to whether the provider was employed in domestic service employment to provide companionship services. Edwards v. Cnty. Enters., 251 F. Supp. 2d 1089, 2003 U.S. Dist. LEXIS 4052 (D. Conn. 2003).

4. Minimum wage and maximum hour provisions under Conn. Gen. Stat. § 31-60(a) apply only to "employees," and the issue of whether a homeshare provider was an employee as defined in Conn. Gen. Stat. § 31-58(j) turned on whether she was employed in domestic service employment to provide companionship services; because a reasonable jury could come down on either side of the question of whether the apartment shared by the homeshare provider and the handicapped individual was a private residence, summary judgment was not appropriate for either party. Edwards v. Cnty. Enters., 251 F. Supp. 2d 1089, 2003 U.S. Dist. LEXIS 4052 (D. Conn. 2003).

5. Regulation issued by the Connecticut Department of Labor pursuant to Conn. Gen. Stat. § 31-60(b), which allowed employers to recognize as part of the minimum wage gratuities received by service employees up to 23 percent of the fair minimum wage but did not allow a similar recognition with respect to gratuities received by non-service employees,

6. Regulation issued by the Connecticut Department of Labor pursuant to *Conn. Gen. Stat. § 31-60(b)*, which allowed employers to recognize as part of the minimum wage gratuities received by service employees up to 23 percent of the fair minimum wage but did not allow a similar recognition with respect to gratuities received by non-service employees, including bartenders, had statutory authority, passed the rational basis test, and was not an invalid distinction. *Back Bay Rest. Group v. State Dep't of Labor*, 2001 Conn. Super. LEXIS 2440 (Conn. Super. Ct. Aug. 14 2001).

7. In an action by food servers against their employer for violations of *Conn. Gen. Stat. § 31-60* and *Conn. Agencies Regs. §§ 31-62-E2(c), 31-62-E4*, as the employer's records were inadequate, the servers had burden of establishing a list of the duties they were asked to perform as well as time spent on duties by each server so that the court could determine if the duties were incidental to their server duties and if they were properly compensated for them; the burden would then shift to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. *Palmer v. Friendly Ice Cream Corp.*, 2010 Conn. Super. LEXIS 1337 (Conn. Super. Ct. May 25 2010).

8. In an action by food servers against their employer for violations of *Conn. Gen. Stat. § 31-60* and *Conn. Agencies Regs. §§ 31-62-E2(c), 31-62-E4*, as the employer's records were inadequate, the servers had burden of establishing a list of the duties they were asked to perform as well as time spent on duties by each server so that the court could determine if the duties were incidental to their server duties and if they were properly compensated for them; the burden would then shift to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. *Palmer v. Friendly Ice Cream Corp.*, 2010 Conn. Super. LEXIS 1337 (Conn. Super. Ct. May 25 2010).

9. Both state and federal law applied to the calculation of whether the employee's time spent driving a company vehicle to and from work sites, cleaning it and organizing the tools for the next day's work incurred to the company's benefit and constituted compensable overtime. The relevant parts of *Conn. Gen. Stat. §§ 31-60, 31-76b*, and *31-76c* regarding overtime compensation did not conflict with federal law by making it impossible for employers to comply with by hindering congressional objectives, but the highly fact-driven nature of the inquiry about whether the employee was entitled to overtime compensation for travel time barred summary judgment for the employer. *Sarrazin v. Coastal, Inc.*, 2009 Conn. Super. LEXIS 1435 (Conn. Super. Ct. May 22 2009).

10. Where a non-profit corporation terminated a homeshare provider, who had lived with a mentally retarded client and had been paid a stipend by the corporation, summary judgment was inappropriate for deciding the provider's claim under Connecticut minimum wage and overtime laws because a factual dispute existed as to whether the provider was employed in domestic service employment to provide companionship services. *Edwards v. Cnty. Enters.*, 251 F. Supp. 2d 1089, 2003 U.S. Dist. LEXIS 4052 (D. Conn. 2003).

11. Minimum wage and maximum hour provisions under *Conn. Gen. Stat. § 31-60(a)* apply only to "employees," and the issue of whether a homeshare provider was an employee as defined in *Conn. Gen. Stat. § 31-58(ff)* turned on whether she was employed in domestic service employment to provide companionship services; because a reasonable jury could come down on either side of the question of whether the apartment shared by the homeshare provider and the handicapped individual was a private residence, summary judgment was not appropriate for either party. *Edwards v. Cnty. Enters.*, 251 F. Supp. 2d 1089, 2003 U.S. Dist. LEXIS 4052 (D. Conn. 2003).

13. In employees' suit alleging their employers violated the Connecticut Minimum Wage Act, Conn. Gen. Stat. § 31-58 et seq., by taking a "tip credit" of 29.3 percent of the minimum wage towards payment of their total wages, whether the employees' side work precluded the employers from taking the tip credit presented mixed questions of fact and law and therefore, the employers were not entitled to summary judgment. Buccere v. Brinker Int'l, Inc., 2006 Conn. Super. LEXIS 3338 (Conn. Super. Ct. Nov. 8 2006).

14. Employee's motion for class certification was denied as to claims that a restaurant violated minimum wage laws under Conn. Gen. Stat. § 31-60 by unlawfully deducting tip credits from servers' wages, because the employees failed to meet the requirement of class-wide predominance of issues required by Conn. Prac. Book § 9-8, because the generalized proof concerning damages offered by the employees would not suffice to establish the restaurant's liability with respect to each particular employee. Palmer v. Friendly Ice Cream Corp., 2006 Conn. Super. LEXIS 311 (Conn. Super. Ct. Jan. 25 2006).

15. Motion for class certification pursuant to Conn. Gen. Prac. Book, R. Super. Ct. §§ 9-7 and 9-8 by restaurant servers claiming that a restaurant chain violated Conn. Gen. Stat. § 31-60 by paying the servers a reduced wage at times when tips were not available was denied; servers failed to show predominance of issues common to the class over individual issues, as each individual store in the chain had different policies as to duties performed by servers. Gallreuth v. Bridal Rest. Group, LLC, 2005 Conn. Super. LEXIS 3236 (Conn. Super. Ct. Nov. 28 2005).

16. Regulation issued by the Connecticut Department of Labor pursuant to Conn. Gen. Stat. § 31-60(b), which allowed employers to recognize as part of the minimum wage gratuities received by service employees up to 23 percent of the fair minimum wage but did not allow a similar recognition with respect to gratuities received by non-service employees, including bartenders, had statutory authority, passed the rational basis test, and was not an invalid distinction. Back Bay Rest. Group v. State Dep't of Labor, 2001 Conn. Super. LEXIS 2440 (Conn. Super. Ct. Aug. 14 2001).

17. Both state and federal law applied to the calculation of whether the employee's time spent driving a company vehicle to and from work sites, cleaning it and organizing the tools for the next day's work incurred to the company's benefit and constituted compensable overtime. The relevant parts of Conn. Gen. Stat. §§ 31-60, 31-76b, and 31-76c regarding overtime compensation did not conflict with federal law by making it impossible for employers to comply with by hindering congressional objectives, but the highly fact-driven nature of the inquiry about whether the employee was entitled to overtime compensation for travel time barred summary judgment for the employer. Sarrazin v. Coastal, Inc., 2009 Conn. Super. LEXIS 1435 (Conn. Super. Ct. May 22 2009).


19. Employee, who orally agreed to work for a family-owned landscaping business, was an exempt employee by virtue of his agreement to serve in a supervisory capacity and thus, he was not entitled to receive overtime wages in his action to recover overtime wages from the employer. Sigro v. Ingenito, Inc., 1998 Conn. Super. LEXIS 1342 (Conn. Super. Ct. May 7 1998).
20. The former employee's duties as field operations manager for the former employer were such that he could have been employed in a bona fide executive capacity within the meaning of Conn. Gen. Stat. § 31-60; therefore he was not owed overtime pay. *Cain v. J & K Elec. Co.*, 1996 Conn. Super. LEXIS 1963 (Conn. Super. Ct. July 24 1996).

21. Under state and federal law, lodging benefits were simply part of plaintiff's regular weekly salary, just as the cash and checks he received every week were part of that salary and plaintiff's wage was to be determined as the regular cash value he was paid in addition to the reasonable cost of lodging for that pay period; defendant was required to produce records in order to be able to substantiate its claim that deductions as to overtime wages due based on the value of the lodging were agreed to and taken at the time plaintiff was paid. *Estanislau v. Manchester Developers, LLC*, 316 F. Supp. 2d 104, 2004 U.S. Dist. LEXIS 8173 (D. Conn. 2004).

*LexisNexis 50 State Surveys, Legislation & Regulations*

Minimum Wage
Sec. 31-60-14. Employee in bona fide executive capacity.

(a) For the purposes of section 31-58 (f) of the general statutes, as amended, "employee employed in a bona fide executive capacity" means any employee (1) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and (2) who customarily and regularly directs the work of two or more other employees therein; and (3) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and (4) who customarily and regularly exercise discretionary powers; and (5) who does not devote more than twenty percent, or, in the case of an employee of a retail or service establishment who does not devote as much as forty percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in subdivisions (1) to (4), inclusive, of this section; provided this subdivision shall not apply in the case of an employee who owns at least twenty percent interest in the enterprise in which he is employed; and (6) who is compensated for his services on a salary basis at a rate of not less than four hundred dollars per week exclusive of board, lodging, or other facilities, except that this subdivision shall not apply in the case of an employee in training for a bona fide executive position as defined in this section if (A) the training period does not exceed six months; and (B) the employee is compensated for his services on a salary basis at a rate not less than three hundred seventy-five dollars per week exclusive of board, lodging, or other facilities during the training period; (C) a tentative outline of the training program has been approved by the labor commissioner; and (D) the employer shall pay tuition costs, and fees, if any, for such instruction and reimburse the employee for travel expenses to and from each destination other than local, where such instruction or training is provided. Any trainee program so approved may be terminated at any time by the labor commissioner upon proper notice, if he finds that the intent of the program as approved has not been carried out. An employee who is compensated on a salary basis at a rate of not less than four hundred seventy-five dollars per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

(b) "Salary basis" means a predetermined amount paid for each pay period on a weekly or less frequent basis, regardless of the number of days or hours worked, which amount is not subject to reduction because of variations in the quality or quantity of the work performed, and which amount has been the subject of an employer advisement as required by section 31-7lf of the Connecticut General Statutes.

(1) Although the employee need not be paid for any workweek in which he performed no work, deductions may only be made in the following five (5) instances:

(A) During the initial and terminal weeks of employment, an employer may pay a proportionate part of an employee's salary for the time actually worked;
(B) Deductions may be made for one or more full days if the employee is absent for personal reasons other than sickness or accident;

(C) Deductions may be made for one or more full days of sickness or disability provided the deduction is made pursuant to a bona fide plan, policy or practice of making deductions from an employee's salary after sickness or disability leave has been exhausted which has been disclosed to the employee in accordance with section 31-7lf of the Connecticut General Statutes;

(D) Deductions may be made for absences of less than one full day taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(E) Deductions may be made for one or more full days if the employee is absent as a result of a disciplinary suspension for violating a safety rule of major significance. Safety rules of major significance include only those relating to the prevention of serious danger to the employer's premises, or to other employees.

(2)(A) No deduction of any kind shall be made for any part of a workweek absence that is attributable to:

(i) Lack of work occasioned by the operating requirements of the employer;

(ii) Jury duty, or attendance at a judicial proceeding in the capacity of a witness; or

(iii) Temporary military leave.

(B) An employer is permitted to offset payments an employee receives for any of the services described in this subdivision against the employee's regular salary during the week of such absence.

(3) No deduction shall be made for an absence of less than one full day from work unless:

(A) The absence is taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(B) The absence is taken pursuant to a bona fide paid time off benefits plan that specifically authorizes the substitution or reduction from accrued benefits for the time that an employee is absent from work, provided the employee receives payment in an amount equal to his guaranteed salary.

(4) No deduction of any kind shall be made for an absence of less than one week which results from a disciplinary suspension for violating ordinary rules of employee conduct.


NOTES:

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Minimum Wage
Sec. 31-60-15. Employee in bona fide administrative capacity.

(a) For the purposes of said section 31-58 (f), "employee employed in a bona fide administrative capacity" means any employee: (1) whose primary duty consists of either: (A) The performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or (B) the performance of functions in the administration of a school system or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and (2) who customarily and regularly exercises discretion and independent judgment; and (3) (A) who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity, as such terms are defined in section 31-60-14 and 31-60-15, or (B) who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge, or (C) who executes under only general supervision special assignments and tasks; and (4) who does not devote more than twenty per cent, or, in the case of an employee of a retail or service establishment who does not devote as much as forty per cent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subdivisions (1) to (3), inclusive, of this section; and (5) (A) who is compensated for his services on a salary or fee basis at a rate of not less than four hundred dollars per week exclusive of board, lodging or other facilities, or (B) who, in the case of academic administrative personnel, is compensated for his services as required by subparagraph (A) of this subdivision or on a salary basis which is at least equal to the entrance salary for teachers in the school system or educational establishment or institution by which he is employed; provided an employee who is compensated on a salary or fee basis at a rate of not less than four hundred seventy-five dollars per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in subdivision (1) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

(b) "Salary basis" means a predetermined amount paid for each pay period on a weekly or less frequent basis, regardless of the number of days or hours worked, which amount is not subject to reduction because of variations in the quality or quantity of the work performed, and which amount has been the subject of an employer advisement as required by section 31-71 of the Connecticut General Statutes.

(1) Although the employee need not be paid for any workweek in which he performed no work, deductions may only be made in the following five (5) instances:

(A) During the initial and terminal weeks of employment, an employer may pay a proportionate part of an employee's salary for the time actually worked;

(B) Deductions may be made for one or more full days if the employee is absent for personal reasons other than sickness or accident;
(C) Deductions may be made for one or more full days of sickness or disability provided the deduction is made pursuant to a bona fide plan, policy or practice of making deductions from an employee's salary after sickness or disability leave has been exhausted which has been disclosed to the employee in accordance with section 31-71f of the Connecticut General Statutes;

(D) Deductions may be made for absences of less than one full day taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(E) Deductions may be made for one or more full days if the employee is absent as a result of a disciplinary suspension for violating a safety rule of major significance. Safety rules of major significance include only those relating to the prevention of serious danger to the employer's premises, or to other employees.

(2) (A) No deduction of any kind shall be made for any part of a workweek absence that is attributable to:

(i) Lack of work occasioned by the operating requirements of the employer;

(ii) Jury duty, or attendance at a judicial proceeding in the capacity of a witness; or

(iii) Temporary military leave.

(B) An employer is permitted to offset payments an employee receives for any of the services described in this subdivision against the employee's regular salary during the week of such absence.

(3) No deduction shall be made for an absence of less than one full day from work unless:

(A) The absence is taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(B) The absence is taken pursuant to a bona fide paid time off benefits plan that specifically authorizes the substitution or reduction from accrued benefits for the time that an employee is absent from work, provided the employee receives payment in an amount equal to his guaranteed salary.

(4) No deduction of any kind shall be made for an absence of less than one week which results from a disciplinary suspension for violating ordinary rules of employee conduct.

(c) "Fee basis" means the payment of an agreed sum for the accomplishment of a single task regardless of the time required for its completion. A fee basis payment shall be permitted only for jobs which are unique in nature rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payment on a fee basis shall amount to a rate of not less than the rate set forth in subsection (a) of this section.


NOTES:

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Minimum Wage
Sec. 31-60-16. Employee in bona fide professional capacity.

(a) For the purposes of said section 31-58 (f), "employee employed in a bona fide professional capacity" means any employee (1) whose primary duty consists of the performance of: (A) work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes or (B) work that is original and creative in character in a recognized field of artistic endeavor, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training, and the result of which depends primarily on the invention, imagination or talent of the employee or (C) teaching, tutoring, instructing or lecturing in the activity of imparting knowledge while employed and engaged in this activity as a teacher certified or recognized as such in the school system or educational establishment or institution by which he is employed; and (2) whose work requires the consistent exercise of discretion and judgment in its performance; and (3) whose work is predominantly intellectual and varied in character, as opposed to routine mental, manual, mechanical or physical work, and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (4) who does not devote more than twenty per cent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in subdivisions (1) to (3), inclusive, of this section; and (5) who is compensated for his services on a salary or fee basis at a rate of not less than four hundred dollars per week exclusive of board, lodging or other facilities; provided this subdivision shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, or in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, or in the case of an employee employed and engaged as a teacher as provided in subdivision (1)(C) of this section, and provided an employee who is compensated on salary or fee basis at a rate of not less than four hundred seventy-five dollars per week exclusive of board, lodging or other facilities, and whose primary duty consists of the performance either of work described in subdivision (1) (A) or (C) of this section which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

(b) "Salary basis" means a predetermined amount paid for each pay period on a weekly or less frequent basis, regardless of the number of days or hours worked, which amount is not subject to reduction because of variations in the quality or quantity of the work performed, and which amount has been the subject of an employer advisement as required by section 31-71 of the Connecticut General Statutes.

(1) Although the employee need not be paid for any workweek in which he performed no work, deductions may only be made in the following five (5) instances:
(A) During the initial and terminal weeks of employment, an employer may pay a proportionate part of an employee's salary for the time actually worked;

(B) Deductions may be made for one or more full days if the employee is absent for personal reasons other than sickness or accident;

(C) Deductions may be made for one or more full days of sickness or disability provided the deduction is made pursuant to a bona fide plan, policy or practice of making deductions from an employee's salary after sickness or disability leave has been exhausted which has been disclosed to the employee in accordance with section 31-71f of the Connecticut General Statutes;

(D) Deductions may be made for absences of less than one full day taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq. of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

(E) Deductions may be made for one or more full days if the employee is absent as a result of a disciplinary suspension for violating a safety rule of major significance. Safety rules of major significance include only those relating to the prevention of serious danger to the employer's premises, or to other employees.

2. No deduction of any kind shall be made for any part of a workweek absence that is attributable to:

   (i) Lack of work occasioned by the operating requirements of the employer;

   (ii) Jury duty, or attendance at a judicial proceeding in the capacity of a witness; or

   (iii) Temporary military leave.

(B) An employer is permitted to offset payments an employee receives for any of the services described in this subdivision against the employee's regular salary during the week of such absence.

3. No deduction shall be made for an absence of less than one full day from work unless:

   (A) The absence is taken pursuant to the Federal Family and Medical Leave Act, 29 USC 2601 et seq., or the Connecticut Family and Medical Leave Act, section 31-51kk et seq., of the Connecticut General Statutes, as permitted by 29 CFR 825.206 or by section 31-51qq-17 of the Regulations of Connecticut State Agencies; or

   (B) The absence is taken pursuant to a bona fide paid time off benefits plan that specifically authorizes the substitution or reduction from accrued benefits for the time that an employee is absent from work, provided the employee receives payment in an amount equal to his guaranteed salary.

4. No deduction of any kind shall be made for an absence of less than one week which results from a disciplinary suspension for violating ordinary rules of employee conduct.

   (c) "Fee basis" means the payment of an agreed sum for the accomplishment of a single task regardless of the time required for its completion. A fee basis payment shall be permitted only for jobs which are unique in nature rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payment on a fee basis shall amount to a rate of not less than the rate set forth in subsection (a) of this section.


NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Minimum Wage
Sec. 31-60-17. Outside salesman. [Repealed]


NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Minimum Wage