

Handy Reference Guide to the North Carolina Wage and Hour Act



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I. Introduction

The N.C. Department of Labor administers and enforces the 1979 North Carolina Wage and Hour Act through its Labor Standards and Training Division, Wage and Hour Bureau. The state's Wage and Hour Act consolidates four previously separate state laws covering minimum wage, maximum hours, wage payment and child labor. The minimum wage, overtime and youth employment provisions generally apply to all North Carolina businesses that are not subject to the Fair Labor Standards Act, which is enforced by the U.S. Department of Labor, Wage and Hour Division. The wage payment provisions, which regulate the payment of promised wages including vacation, sick pay or other promised benefits, cover all employees in North Carolina except those employed in federal, state and local government.

The NCDOL's Wage and Hour Bureau investigates complaints and attempts collection of back wages plus interest due as a result of investigative actions. Civil or criminal actions may be brought against employers by the state; employees may elect to bring their own legal actions against employers to attempt collection of wages owed. Courts may award attorneys' fees, costs, liquidated damages and interest, in addition to wages owed, as a part of legal actions taken by the state or the employee. Employers cannot discharge or discriminate against employees because they ask questions about their wages, file complaints or participate in proceedings against the employer. If such occurs, the employee must file a complaint with the commissioner of labor within 180 days.

This publication provides a general summary of the N.C. Wage and Hour Act (Sections 95.25.1 through 25 and Administrative Rules, Title 13 North Carolina Administrative Code, Chapter 12). It is intended for use by employees and employers to inform them of their rights and responsibilities in wage and hour matters. It is not to be considered in the same light as official statements of position contained in the regulations.

We hope the use of this publication will help build the spirit of cooperation and fairness, which currently characterizes most workplaces in North Carolina. We encourage and solicit public comments concerning this *Handy Reference Guide* and the Wage and Hour Act. Please direct your comments to the Wage and Hour Bureau, N.C. Department of Labor, 1101 Mail Service Center, Raleigh, NC 27699-1101.

II. Requirements of the Wage and Hour Act

The Wage and Hour Act's basic requirements are:

- Payment of the minimum wage,
- Overtime pay for time worked over 40 hours in a workweek,
- Youth employment guidelines for employees under age 18,
- Wage payment provisions, and
- Record Keeping.

Minimum Wage

The Wage and Hour Act establishes the current minimum wage rate at \$6.55* per hour. Unless otherwise exempted from this requirement, employers must insure that all employees receive the equivalent of the minimum wage for all hours worked in any workweek.

- Full-time Students: may be paid a subminimum wage of 90 percent of the applicable state minimum wage rate rounded to the lowest nickel, which is currently \$5.85 per hour. A record of the student's school must be maintained. Employees subject to the Fair Labor Standards Act must consult with the U.S. Department of Labor.
- Disabled Workers: employers may apply to the N.C. Department of Labor for approval to pay a subminimum wage to disabled workers.
- Tip Credit: an employer may pay its tipped employees (those who receive more than \$20.00 a month in tips) as little as \$2.13 per hour in wages, as long as:
 1. The employer maintains accurate and complete records of tips received by each employee.
 2. Each employee certifies tips weekly, monthly or each pay period and the employee receives enough in tips to equal the minimum wage rate.
 3. The employee is permitted to retain all tips. In order for "tip pooling" arrangements to be allowed, the tipped employee must keep at least 85 percent of all tips.
 4. Employees are notified in advance of the method of payment.

• **Exemptions:** Refer to Section V, pp. 9-10, for exemptions from minimum wage.

* The state minimum wage will change as the federal minimum wage rate changes. The next scheduled change is an increase to \$7.25 an hour on July 24, 2009.

Overtime

The Wage and Hour Act regulates wage rates for overtime pay. Unless specifically exempted, employees who work more than 40 hours during any workweek must be paid time and one-half based on an employee's regular rate of pay, except that overtime begins after 45 hours during any workweek for employees of seasonal amusement or recreational establishments.

In computing overtime pay, the employer must use the regular rate of pay, not the minimum wage rate. When computing overtime pay for tipped employees for whom the employer is taking the tip credit, the regular rate of pay is the current minimum wage. The regular rate of pay cannot be less than the current minimum wage.

- **Hourly Employees:** When an employee is paid by the hour, the regular rate of pay and the hourly rate are the same.

EXAMPLE

An employee who is paid \$10.00 an hour and works 51 hours in one week. The employee's overtime may be computed in two ways:

1.	51 hours X \$10.00 = \$ 510.00	or 2.	40 hours X \$10.00 =	\$ 400.00
	11 hours X \$ 5.00 = \$ 55.00		11 hours X \$15.00 =	\$ 165.00
				<u>\$ 565.00</u>
				\$ 565.00

- **Salary/Commission Employees:** When an employee is paid a salary or commission, the employee's pay must be converted to an hourly rate to compute overtime. The hourly rate is obtained by dividing the employee's pay for week by the number of hours worked in a workweek. **This rate must be equal to or greater than minimum wage; if not, the employer must bring the rate of pay to minimum wage.** Additionally, the salary compensates for all hours worked and therefore only the half-time premium is due on the overtime hours.

EXAMPLE

An employee who is paid \$350.00 a week as a standard salary for any workweek, including one of 40 hours. The employee works 45 hours in a workweek.

The employee's overtime is computed as follows:

1. \$ 350.00 divided by 45 hours = \$7.78 (regular rate of pay)
2. \$ 7.78 divided by 2 = \$ 3.89 (overtime half-time rate)
3. \$ 3.89 X 5 hours = \$19.45 (additional overtime due)

4. Gross pay to employee

a.	Regular Rate Earnings	\$ 350.00
b.	Overtime Rate	<u>\$ 19.45</u>
	\$ 369.45 Total Gross Earnings	

- The time and one-half overtime pay requirement of the Wage and Hour Act applies on a workweek basis. Each workweek stands alone.
- Averaging hours for two or more weeks is not permitted regardless of the length of the pay period.
- The overtime requirement may not be waived by agreement between the employer and employees.
- Exemptions: Refer to Section V, pp. 10, for exemptions from overtime pay.

Youth Employment

The youth employment provisions of the Wage and Hour Act are designed to protect minors by restricting the types of jobs and the number of hours they may work. North Carolina law adopts the federal employment standards for 14-17-year-old youths employed in non-farm jobs, as well as the exceptions to those limitations; however, the Wage and Hour Act establishes some additional, more stringent requirements that must be followed by all non-farm employers. Farm work is completely exempt from any of the provisions of the North Carolina Wage and Hour Act. Employment in hazardous or detrimental occupations is not permitted for youth under the age of 18.

Youth Employment Certificate (YEC) Requirement:

- An employer may not employ any youth under 18 years of age until that youth has obtained a YEC, commonly called a youth work permit.
- YECs may be obtained online at www.nclabor.com/wh/youth_instructions.htm.
- The employer shall maintain a copy of the YEC where it is readily accessible to any person authorized to investigate youth employment.
- The employer shall maintain the certificate as long as the youth is employed and for two years after employment terminates.

Hour Limitations:

Rules for 14- and 15-year-olds: These youth may be employed:

- No more than three hours a day when school is in session for the youth and no more than eight hours a day if school is not in session.
- Only between 7:00 am and 7:00 pm (9:00 pm from June 1 thru Labor Day when school is not in session).
- A maximum of 18 hours per week when school is in session or 40 hours per week when school is not in session.
- Only outside school hours.
- A 30-minute break is required after any period of five consecutive hours of work.

Rules for 16- and 17-year-olds: During the school term, youth who are enrolled in grades 12 or lower cannot be employed between 11:00 pm and 5:00 am when there is school for the youth the next day. **Exception:** When the employer gets written permission from the youth's parents **and** principal.

Job Limitations:

- **Youths less than 14 years of age:** Work is generally not permitted for youths under 14 years of age except when working for the youth's parents, in home delivery of newspapers, or in modeling or acting in a movie or theater production.
- **Youth 14-15 years of age: Work may be performed** in retail businesses, food service establishments, service stations and offices of other businesses. **Work is not permitted** in manufacturing, mining, on construction sites, with power-driven machinery, on the premises of a business holding an ABC permit for the on-premises sale or consumption of alcoholic beverages, or in hazardous or detrimental occupations.
- **Youth 16-17 years of age:** Work in hazardous/detrimental occupations (listed below) is not permitted.

Hazardous and Detrimental Occupation Limitations:

Seventeen Hazardous Orders: The Wage and Hour Act and the Fair Labor Standards Act have seventeen hazardous occupations in which no youth under the age of 18 may be employed. These limitations apply to all youths under the age of 18, even those employed by their parent or legal guardian.

01.	Manufacturing and storing explosives.	10.	*Slaughtering, meat-packing processing or rendering
02.	**Motor-vehicle driving and outside helper	11.	Power-driven bakery machines
03.	Coal mining	12.	*Power-driven paper-products machines
04.	Logging and sawmilling	13.	Manufacturing brick, tile and kindred products
05.	*Power-driven woodworking machines	14.	*Power-driven circular saws, band saws and guillotine shears
06.	Exposure to radioactive substances	15.	Wrecking, demolition and ship-breaking operations
07.	Power-driven hoisting apparatus	16.	*Roofing operations
08.	*Power-driven metal-forming, punching and shearing machines	17.	*Excavation operations
09.	Mining, other than coal mining		

* Limited apprenticeship or student-learner program exemptions may apply.

** The Wage and Hour Act has a limited exemption for businesses covered by N.C. law only. The youth must be 16 or 17 years of age with a valid N.C. drivers license. The youth may drive an automobile not more than 6,000 pounds gross vehicle weight. Employers subject to the FLSA are subject to more limited driving exemptions.

Nine Detrimental Occupations: In addition to the seventeen hazardous occupations prohibited to youths under 18 years of age by federal law, the N.C. commissioner of labor has adopted regulations identifying nine detrimental occupations in which youths under 18 may not be employed:

1. Welding, brazing and torch cutting
2. Any processes where quartz or any other form of silicon dioxide or asbestos silicate is present in powdered form.
3. Any work involving exposure to lead or any of its compounds in any form.
4. At any work involving exposure to benzene or any benzene compound that is volatile or can penetrate the skin.
5. Occupations in canneries, seafood and poultry processing that involve cutting or slicing machines, or freezing or packaging activities.
6. Any work which involves the risk of falling a distance of 10 feet or more, including ladders and scaffolds.
7. Any work as an electrician or electrician's helper.
8. Any work in confined spaces.
9. Occupations requiring the use of respirators.

Exception: Youths and employers working under the supervision of *bona fide* apprenticeship or student-learner programs, as defined the FLSA, are exempt from the prohibition against employment of youths in detrimental occupations; special work guidelines still apply to these exemptions.

ABC Limitations: No person who holds an ABC permit for the on-premises sale or consumption of alcoholic beverages, including any mixed beverages, shall employ a youth:

- Under 16 years of age on the premises for **any** purpose, unless the youth is at least 14 years of age and each of the following conditions is met:
 1. The person obtains the written consent of a parent or guardian of the youth.
 2. The youth is employed to work on the outside grounds of the premises for a purpose that does not involve the preparation, serving, dispensing or sale of alcoholic beverages.
- Under 18 years of age to prepare, serve, dispense or sell any alcoholic beverages, including mixed beverages.
- **Exception:** Youth under the age of 16 employed by their parents may work in an establishment with an on-premise ABC permit provided:
- The parent(s) is (are) the sole owners of the business;
- An employee who is at least 21 years of age is in charge of and present at the licensed premises; **and,**
- The youth does not prepare, serve, dispense or sell any alcoholic beverages. (*Refer to pages 15-16 for definitions.*)

These state youth employment provisions do not apply to agricultural, domestic or government work. Refer to Section V, pp. 9, for other exemptions.

Wage Payment

The Wage and Hour Act provides wage payment requirements and collection procedures for an employee's promised wages. These requirements include the following:

- Wages are due on the regular payday as set by the employer. Paydays may be daily, weekly, biweekly, semimonthly or monthly.
- If requested, final paychecks must be mailed

- When the amount of wages is in dispute, the employer must pay the undisputed amount on the regular payday and payment of the undisputed portion cannot restrict the right of the employee to continue his or her claim for the rest of the wages.
- Employees must be notified at time of hiring of paydays, pay rates and all policies/practices with regard to promised wages including vacation, sick leave, commissions, bonuses and other pay matters.
- Employers must make available to their employees, either in writing or through a posted notice accessible to employees on a continuing basis, employment policies or practices with regard to promised wages.
- Employers must notify employees in writing or through a posted notice accessible to employees of any changes in promised wages prior to the effective date of the change. Changes, which result in retroactive increases in wages, do not require prior notification.
- A statement of deductions from pay must be given each time payment is received.

Deductions From Pay:

- Deductions from paychecks are limited to those required by law and those agreed to in writing on or before payday.
- When the amount or rate of the deduction is known and agreed upon in advance, the employer must obtain the employee's written authorization on or before the payday from which the deduction is made, and the written authorization must indicate the reason for the deduction and state the actual amount to be deducted.
- When the amount of the deduction is not known and agreed upon in advance, then before deductions are made, the employee must receive advanced written notice of the actual amount to be deducted and the reason for the deduction, must receive written notice of his or her right to withdraw the authorization, and must be given a reasonable opportunity to withdraw the authorization in writing.
- Deductions for the benefit of the employer must comply with the following: In non-overtime workweeks, wages may be reduced to the minimum wage level; in overtime workweeks, wages may be reduced to the minimum wage level for non-overtime hours; and no reductions may be made to overtime wages owed.
- In addition to complying with the requirements above, deductions for cash and inventory shortages or for loss or damage to an employer's property may not be taken unless the employee receives seven days advance notice. This seven-day rule does not apply to these deductions made at termination.
- Recoupment of an overpayment of wages resulting from a miscalculation or other bona fide error, advance of wages to employee or to a third party at the employee's request, or the principal of a loan from the employer to the employee does not require an authorization from the employee. Deductions for interest or other charges related to loans require a written authorization as described above.
- When criminal process has been issued, the employee has been indicted or arrested for a charge incident to a cash shortage, inventory shortage or damage to an employer's property, the employer may withhold or divert without written authorization any portion of wages owed to recoup the total owed by the employee for such shortages or damage. The limits established for non-overtime and overtime workweeks still apply. If the employee is not found guilty, the deduction shall be reimbursed to the employee.
- A written authorization or written notice required by this section may be in the form of an electronic record in compliance with the Uniform Electronic Transactions Act.
- Nothing in the Wage and Hour Act shall preclude an employer from bringing a civil action to collect any money due the employer from an employee.

Payment of Promised Wages:

- Under the Wage and Hour Act's wage payment provisions, wages, in addition to hourly pay, piece-rate pay and salary, may include sick pay, vacation pay, holiday pay, severance pay, commissions, bonuses and other amounts promised when the employer has a policy or a practice of making such payments.
- If an employer provides such wages to employees, the employer shall pay (on the regular payday) such wages as required by company policy or practice.
- Employees must be notified in writing or through a posted notice of any company policy or practice that results in the loss or forfeiture of promised wages in the form of commissions, bonuses or other forms of calculation. Sick leave pay is excluded from this requirement.
- Employees not notified are not subject to such loss or forfeiture.

Vacation Pay:

The Wage and Hour Act does not require vacation pay; however, if the employer provides vacation benefits to employees, the employer shall give vacation time off or payment in lieu of time off as required by company policy or practice. Employees must be notified in writing or through a posted notice of any company policy or practice that results in the loss or forfeiture of vacation time or pay. Such policies must address the following:

- How and when vacation is earned so that the employees know the number of days of vacation to which they are entitled.
- Whether or not vacation days may be carried forward from one year to another.
- When vacation days must be taken.
- When, and if, vacation days may be paid in lieu of time off.
- Under what conditions and in what amount vacation will be paid upon discontinuance of employment.
- Conditions that would result in the loss or forfeiture of vacation time and pay.

Ambiguous policies and practices will be construed against the employer and in favor of the employee.

Record Keeping

- **General Employee Records:** Each employer covered by the Wage and Hour Act must keep certain records; no particular form is required. The records maintained shall be complete and accurate and show all hours worked by each employee in each workweek. These records must be retained by employers for three years. The records must contain the following information for each person employed:

01.	Full name of the employee	08.	Total hours worked each workweek
02.	Home address, including phone number	09.	Total straight-time earnings each work week
03.	Date of birth if employee is under 20	10.	Total overtime earnings each workweek
04.	Occupation or job title	11.	Total additions to or deductions from wages
05.	Time of day and day of week the employee's workweek begins	12.	Total gross wages paid each pay period
06.	Regular rate of pay (hourly or salary)	13.	Date of each payment
07.	Hours worked each workday		

- **Additional Records to Be Maintained:** All other records required by statute or rule for enforcement of any provision of the Wage and Hour Act. Such records include, but are not limited to, the following: tip credits; costs of meals, lodging or other facilities; start and end times for youth under 18; youth employment certificates; wage deductions; calculation of commissions; vacation and sick leave policies; policies and procedures relating to promised wages; and, records required to compute wages as defined by N.C.G.S. 95-25.16.
- **Poster:** Employers must display an official poster outlining North Carolina's Workplace Laws. These posters may be obtained free of charge by calling **1-800-NC-LABOR** (1-800- 625-2267).

III. Who Is Covered by the Wage and Hour Act?

Minimum Wage and Overtime: When the North Carolina minimum wage and the federal minimum wage are the same or when the North Carolina minimum wage is higher than the federal minimum wage, then employers doing business in North Carolina must comply with the higher standard of the two labor laws.

Youth Employment: Unless specifically exempted, all private-sector employers in North Carolina are subject to the following provisions of the Wage and Hour Act:

- The requirement of a youth employment certificate for all youths under 18 years of age.
- Late night restrictions for youth enrolled in school, grade 12 or lower.
- Detrimental occupation limitations
- ABC permit restrictions

Wage payment: All private-sector employers doing business in North Carolina are subject to the wage payment provisions of the Wage and Hour Act.

IV. Employment Practices Not Regulated by the Wage and Hour Act

While the Wage and Hour Act does set basic wage payment standards and regulates the employment of youth under 18 years of age, there are a number of employment practices that the Wage and Hour Act does not regulate.

Listed below are a few items the Wage and Hour Act does not require:

- A discharge notice or reason for discharge.
- Immediate payment of final wages upon discontinuance of employment.
- Work breaks or meal periods for employees age 16 or older.

The Wage and Hour Act does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is 16 years of age or older.

V. Exemptions From the Wage and Hour Act

Some employees are excluded from all or some of the Wage and Hour Act's provisions under specific exemptions provided in the act. Because these exemptions are generally narrowly defined, employers should carefully check the exact terms and conditions for each by contacting the Wage and Hour Bureau.

The following are examples of employees exempt from the minimum wage, overtime pay, youth employment and related record keeping requirements of the Wage and Hour Act:

- Any person employed in an enterprise covered by the Fair Labor Standards Act. These exempt enterprises include those whose gross annual dollar volume is greater than \$500,000 and those enterprises, regardless of dollar volume, that are engaged in the operation of a hospital, school or preschool (including most daycare facilities), or residential care facility for the aged or physically or mentally infirmed. (*Some Wage and Hour Act youth employment provisions apply.*)
- Any person employed in agriculture (as defined by the Fair Labor Standards Act).
- Any person employed as a domestic service worker, including baby sitters and companions (as defined by the Fair Labor Standards Act).
- Any person employed as a page in the N.C. General Assembly or in the Governor's Office.
- Bona fide volunteers in medical, educational, religious or nonprofit organizations where an employer-employee relationship does not exist.
- Persons confined in and working for any penal, correctional or mental institution of the state or local governments.
- Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects, except that a youth employment certificate is still required. (This exemption does not include office workers, ticket takers, ushers and parking lot attendants.)
- Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio, or television productions, except that a youth employment certificate is still required.

The following are examples of employees exempt from the minimum wage, overtime pay and related recordkeeping requirements of the Wage and Hour Act:

- Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and certain skilled computer professionals (as defined by the Fair Labor Standards Act).
- Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center.
- The spouse, child or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina.

The following are examples of employees exempt from the Wage and Hour Act's overtime pay and related recordkeeping requirements only:

- Drivers, drivers' helper, loaders and mechanics (as defined by the Fair Labor Standards Act).
- Announcers, news editors and chief engineers of certain non-metropolitan broadcasting stations.
- Taxicab drivers.
- Seamen, employees of railroads and employees of air carriers (as defined by the Fair Labor Standards Act).

- Salespersons employed by trailer, boat and aircraft dealers (as defined by the Fair Labor Standards Act).
- Live-in child care workers and other live-in employees in homes for dependent children.

The overtime pay, wage payment and youth employment provisions of the N.C. Wage and Hour Act do not apply to the State of North Carolina, any city, town, county or municipality. These governmental employees and employers are covered by the overtime pay and child labor provisions of the Fair Labor Standards Act. The wage payment provisions do not apply to any governmental employee or employer.

VI. Hours Worked Under the Wage and Hour Act

By statutory definition, the term “employ” means “to suffer or permit to work.” The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed workplace.

Work not requested but permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors; the hours are work time and must be paid. The reason is immaterial.

- **Waiting Time:** Whether waiting time is time worked under the act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time).
- **On-Call Time:** An employee who is required to remain on call on the employer’s premises is working while “on call.” An employee who is required to remain on call at home, or who is allowed to leave a message where he or she can be reached, is not working (in most cases) while on call. Additional constraints on the employee’s freedom could require this time to be compensated.
- **Rest and Meal Periods:** Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he or she is required to perform any duties, whether active or inactive, while eating.
- **Sleeping Time and Certain Other Activities:** An employee who is required to be on duty for less than 24 hours is working even though he or she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night’s sleep. No reduction is permitted unless at least 5 hours of sleep is taken.
- **Lectures, Meetings and Training Programs:** Attendance at lectures, meetings, training programs and similar activities must be counted as work time unless all four of the following criteria are met: (1) it occurs outside normal scheduled hours of work; (2) it is completely voluntary; (3) it is not job-related (unless the employee attends an independent school or college on his/her own initiative outside work hours); and, (4) no other work is performed during the period.

Travel Time: The principles that apply in determining whether time spent in travel is compensable time depend upon the kind of travel involved.

- **Home to Work Travel:** An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.
- **Home to Work on a Special One Day Assignment in Another City:** An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.
- **Travel That Is All in the Day's Work:** Time spent by an employee in travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.
- **Travel Away From Home Community:** Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. Travel time (outside the normal work hours) spent as a passenger on an airplane, train, boat, bus or automobile is not considered work time unless the employee is required to work while traveling. Clearly, an employee who drives a truck, bus, automobile, boat or train or an employee who is required to ride as an assistant or helper is working while riding and the hours must be counted as work time.

VII. Frequently Asked Questions

1. *Doesn't an employer have to give its employees rest and meal breaks?*

No. A rest break (generally 10 or 15 minutes) and a meal break (usually 30 minutes to an hour and including lunch) are **not** required by law for anyone who is 16 years of age or older. A 30 minute break after 5 hours is required for 14-15 year old youths.

2. *Is there a restriction on how many hours an employer can work an adult employee?*

No. Employees 18 years of age and older can be required to work as many hours as an employer wants. The employer has to make sure the employee is paid the minimum wage/promised wages and paid overtime pay (time and a half) after 40 hours a week unless the employee is otherwise exempt from overtime pay.

3. *Can an employer just pay someone a salary and not have to worry about overtime pay?*

No. Just paying a salary is not enough. The salary test is just one of the criteria to determine if an employee meets the requirements for an overtime exemption. Otherwise, non-exempt employees who are paid on a salary basis must still receive time and one-half overtime pay.

4. *Does an employer have to give its employees a check-stub?*

Yes. An employer must give an itemized statement of deductions to its employees every time they get a paycheck. The employer does not have to list the rate of pay or the hours on the check-stub. The information can also be listed on the check.

5. ***If I am paid every two weeks, does my employer figure overtime after 80 hours in the pay period regardless of the number of hours I work a week?***

No. Overtime is based on how many hours an employee works each workweek; each workweek stands on its own regardless of the pay period. Any hours worked in excess of 40 per workweek have to be paid at time and one-half based on an employee's regular rate of pay.

6. ***Does a part-time employee have to be paid overtime?***

Yes. It does not matter if an employee is part-time or full-time for overtime to apply. Overtime is simply based on if an employee works more than 40 hours in a workweek.

7. ***I'm over 18 years of age; can my employer require that I work overtime?***

Yes. The employer can require that you work overtime even if it was not scheduled. The employer can make working overtime as a condition of your employment.

8. ***I work for a movie theater here in North Carolina that is a nationwide company. My supervisor told me that they did not have to pay me overtime pay since they are under the federal labor laws, which exempts employees of movie theaters from overtime. Is this true?***

No. While your supervisor is correct that employees of movie theaters are exempt from the requirements of overtime pay under federal labor law, he is not aware of the requirements of the state of North Carolina labor law. The movie theater you work for is also under the North Carolina Wage and Hour Act since it does business in North Carolina. The North Carolina Wage and Hour Act does not exempt employees of movie theaters from the requirements of overtime pay. This is one of those rare instances where the state overtime requirements take precedence over the federal overtime requirements as the federal law in this instance does not preempt state law. Therefore, the movie theater you work for here in North Carolina must pay you time and a half overtime pay based on your regular rate of pay for all hours worked in excess of 40 in a workweek as required by the North Carolina Wage and Hour Act.

9. ***I own a business in the private sector. Can I give comp time to my employees instead of paying them time and a half overtime pay?***

No. A business in the private sector **cannot** give comp time in place of paying the time and a half overtime pay for the hours its non-exempt employees work in excess of 40 in a workweek. You may be thinking of government employers in the public sector, who are allowed under federal labor law to give their employees time and a half comp time hours for the hours worked in excess of 40 in a workweek. A business in the private sector can give comp time to its bona fide exempt employees since these employees don't have to be paid time and a half overtime pay. Such a comp time policy can be hour-for-hour but must be in writing as with any other wage benefit policy.

10. ***Do the hours that I'm paid while I'm out on a holiday have to be counted when my employer figures overtime pay?***

No. It does not matter if you worked or did not work on the holiday. If you did not work more than 40 hours during that workweek, then you are not due any overtime pay for that workweek. Only hours actually worked are counted when figuring overtime pay. Therefore, an employee could work 40 hours one week and also get an additional 8 hours in holiday pay that week and be paid 48 hours straight-time pay with no time and a half pay being due for that workweek. [This is the same answer for vacation pay, sick pay, and other wage benefits where the employee does not actually work to be paid].

11. *Doesn't my employer have to pay me time and a half if I work on a holiday or on Sunday?*

No. Unless your employer has promised to pay you extra for working on a holiday or on Sunday, your employer only has to pay you for the total hours you worked in the workweek regardless on what day or days you worked. Your employer has to pay you at least the minimum wage or your promised rate of pay, whichever is greater, for all of the hours you work, and your employer must pay you time and a half overtime pay based on your regular rate of pay for all hours worked in excess of 40 in a workweek unless you are exempt for a specific reason.

12. *What are the legal holidays that my employer has to observe?*

None. There is no requirement for legal holidays that employers have to observe. It is entirely up to your employer to give holiday time off with or without pay, or not to give any time off for holidays at all. However, once your employer does promise holiday pay, your employer must put its holiday policy in writing and make it available to its employees, as it should with all wage benefit promises. Also, it is entirely up to your employer to decide which holidays it wants to observe if any at all.

13. *Is there a certain amount of time someone has to work before they are considered a permanent full-time employee?*

No. This is entirely up to the employer. However, the employer cannot discriminate because of age, race, sex, religion, national origin, color, disability or pregnancy.

14. *Can an employer pay its employees by direct deposit and make this a condition of employment?*

Yes. Direct deposit is just another form of how an employer pays its employees. An employer can pay by cash, check or direct deposit; the method is entirely up to the employer.

15. *Can an employee be fired over the telephone?*

Yes. An employer can fire an employee in person, over the telephone or by mail; the way an employer does this is up to the employer. However, the employer cannot discriminate because of age, race, sex, religion, national origin, color, disability or pregnancy.

16. *When I separate from a job, does my employer have to pay me within 24 hours?*

No. The employer has to pay you on or before the next regular payday for the pay period you worked in when you separate. The employer can pay you before the payday, but this would be up to the employer. The employer can also wait until the regular payday to pay you your final wages.

17. *Does an employer have to give its employees vacation with pay?*

No. Vacation is a wage benefit that may or may not be provided at the discretion of the employer. However, if the employer does promise vacation pay or vacation time off with pay, then the employer must have a written vacation policy which clearly explains how the vacation is earned and how it can be taken. Also, any earned vacation must be paid at termination unless the employer has a written forfeiture clause that clearly explains how the earned vacation can be taken away.

18. *Does an employer have to provide the same wage benefits to full-time and part-time employees?*

No. The employer can decide who gets wage benefits and who doesn't so long as the employer does not discriminate because of age, race, sex, religion, national origin, color or disability. The employer must have its policies in writing explaining who is eligible for

wage benefits. The employer can choose to give wage benefits only to full-time employees. The employer then has to define in its written policies what constitutes full-time employment. This definition is entirely up to the employer.

19. Does my employer have to pay me for jury duty?

No. There is no requirement that the employer pay you for jury duty unless the employer has promised to do so or unless you are a salary-exempt employee such as a bona fide supervisor. In most cases, jury duty is just like any other wage benefit; the employer has to give it only if the employer has made a promise to do so. If the employer has made such a promise, then the employer must have written policies on all of its promised wage benefits, which have to be made available to its employees.

VIII. Wage and Hour Definitions

Workweek	Any period of 168 consecutive hours, or seven consecutive days.
Employ	Means to suffer or permit to work. If an employer has knowledge that work is being performed, the employee is employed.
Employee	Includes any individual employed by an employer.
Employer	Any person acting directly or indirectly in the interest of an employer in relation to an employee.
Hours Worked	All time an employee is employed (as defined above).
Payday	The day designated by the employer for payment of wages due by virtue of the employment relationship.
Pay Periods	May be daily, weekly, biweekly, semimonthly or monthly.
Tip	Any money or part thereof over and above the actual amount due a business for goods, food, drink, services or articles sold that is paid in cash or by credit card, or is given to or left for an employee by a patron or patrons of the business where the employee is employed.
Tipped Employee	Any employee who customarily receives more than \$20.00 a month in tips (more than \$30.00 a month in tips under federal wage and hour law).
Wage	Compensation for labor or services rendered by an employee whether determined on a time, task, piece, job, day commission or other basis of calculation. Under the N.C. Wage and Hour Act's wage payment provisions, wages may include sick pay, vacation pay, severance pay, commissions, bonuses and other amounts promised when the employer has a policy or a practice of making such payments.

Definitions Relative to ABC Restrictions

ABC Permit for On-Premises Sale or Consumption	Permit which allows the consumption of alcoholic beverages on the premises where the sale occurred.
Dispense	To pour; or to draw from a tap.
Premises	The land, building, or combination of these as described in the permit issued for the sale or consumption of alcoholic beverages.
Prepare	To make ready; or to put together by combining various elements or ingredients.
Sell	To offer; to accept the order for; to exchange or deliver for money or equivalent; or to handle payment.

Serve	To supply; or to place before the customer
Outside Grounds	The land immediately adjacent to the building or area of a building that forms a component or integral part of the business for which the permit was issued.

IX. Resources

For further information, details, policies, or procedures in reference to the Wage and Hour Act or to request copies of the Wage and Hour Act and Workplace Law Poster write or call the:

**Wage and Hour Bureau
N.C. Department of Labor
1101 Mail Service Center
Raleigh, NC 27699-1101
(919) 807-2796 or 1-800-NC-LABOR (1-800-625-2267)**

N.C. Department of Labor Home Page: www.nclabor.com

For information concerning the Fair Labor Standards Act (FLSA) contact:

**U.S. Department of Labor
Wage and Hour Division
3800 Arco Corp. Drive, Suite 460
Charlotte, NC 28205
(704) 749-3360**

**U.S. Department of Labor
Wage and Hour Division
4407 Bland Road Suite 260
Raleigh, NC 27609
(919) 790-2741**

U.S. Department of Labor Home Page: www.dol.gov