



STATE-BY-STATE WAGE AND HOUR LAW SUMMARY

www.wagehourdefense.org



WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

ABOUT THE WAGE & HOUR DEFENSE INSTITUTE

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

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

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

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

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

The WHDI is a part of the Litigation Counsel of America, and all WHDI Members are Fellows of the LCA. For more information about the Litigation Counsel of America, go to www.litcounsel.org.

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

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|--|---|---|---|----------------------------|
| Alabama | Follows current federal rules | | | Yes | |
| Alaska | Follows current federal rules; and state-specific list of occupations qualifying for exempt-status ¹ (A.S. § 23.10.060(d); A.S. § 23.10.095) | Over 8 hrs./day, though there can be a voluntary written agreement for 4-10 hr. day plans must be approved by the DOL unless part of CBA; or over 40 hours per week (A.S. § 23.10.060) No tip credit permitted (A.S. § 23.10.065) | \$9.75 (A.S. § 23.10.065) (Beginning Jan. 2017, hourly minimum wage shall be adjusted annually for inflation per Consumer Price Index; must remain at least \$1 above fed. min. wage) | No | None for employees age 18+ |
| Arizona | Except for certain public employees follows current federal rules. (A.R.S. § 23-391, 392) | \$5.05 for tipped employees (i.e., up to \$3.00 less than the minimum wage); If employees' tips plus direct wages do not equal \$8.05, employer must cover difference. Compliance with this provision will be determined typically by averaging tips received by the employee over the course of the employer's payroll period. (A.R.S. § 23-363(c)) | \$8.05 (adj. ea. Jan. 1) (A.R.S. § 23-363) | No law prohibits its use. May not be applied retroactively only proactively with employee knowledge <i>Blotzer v. L-3 Communications Corp.</i> 2012 WL 6086931, (D.Ariz. 2012) | None |

DISCLAIMER: This summary is provided for reference only and is updated as of January 1, 2016. Any use should include independent research to verify the information contained in this summary.

Updated 1/1/2016
(c) 2016 Wage & Hour Defense Institute

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|---|--|--|--|---|
| Arkansas | Follows federal rules as they existed on March 1, 2006 (A.C.A. §§ 11-4-203(3); 11-4-211) | \$2.63 for tipped employees (i.e., tip credit up to \$4.87; \$5.37 eff. 1/1/16; \$5.87 eff. 1/1/17) (A.C.A. § 11-4-212) | \$8.00 (\$8.50 eff. 1/1/17) ²¹ (A.C.A. § 11-4-210, as amended by 2014 Issue No. 5) | Yes | |
| California | Applies special state tests ² (See e.g., IWC Order No. 2-2001(1)(A)-(E)) | 1.5x after 8 hrs. and for 1st 8 hrs. on 7th day; 2x over 12 hrs. and over 8 hrs. on 7th day (Cal. Lab. Code §§ 510, 513) No tip credit permitted (Cal. Lab. Code § 1182.13) | \$10.00 (Cal. Lab. Code § 1182.12) (See Cal. Lab. Code § 226.2 for rules regarding piece-rate-paid employees, recordkeeping, and pay stub requirements) \$11.00 in Berkeley (\$12.53 eff. 10/1/16); \$12.25 for businesses with 55 or fewer employees in Emeryville (\$13.00 eff. 7/1/2016); \$14.44 for businesses with more than 55 employees in Emeryville (\$14.82 eff. 7/1/2016); \$13.80 in Long Beach; \$15.37 for hotel workers in Los Angeles (\$10.50 for businesses with 26 or more employees in Los Angeles eff. 7/1/2016) (\$10.50 for businesses with 25 or fewer employees in Los Angeles eff. 7/1/2017); \$11.00 in Mountain View; \$12.55 in Oakland; \$11.00 in Palo Alto; \$11.52 in Richmond; \$12.25 in San Francisco (\$13.00 eff. 7/1/2016); \$10.30 in San Jose; \$11.00 in Santa Clara; \$10.30 in Sunnyvale | No | 10 min. rest/4 hrs., near middle; 30 min. meal > 5 hrs., by end of 5th hr.; 2 nd meal for shifts > 10 hrs.. by end of 10 th hr. ²⁸ |

DISCLAIMER: This summary is provided for reference only and is updated as of January 1, 2016. Any use should include independent research to verify the information contained in this summary.

Updated 1/1/2016
(c) 2016 Wage & Hour Defense Institute

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|--|--|--|--|--|
| Colorado | Applies special state tests ³ (7 C.C.R. § 1103-1(4)-(6)) | Over 12/workday or over 12 consecutive (7 CCR § 1103-1(4)) \$5.29 for tipped employees (adj. annually) (Colo. Const. art. XVIII, § 15) | \$8.31 (adj. annually) (Colo. Const. art. XVIII, § 15) | Yes (Division of Labor Advisory Bulletin, § 39(I)) | 10 min. rest/4 hrs.; 30 min. meal after 5 hrs. ²⁹ |
| Connecticut | Applies old short-test (pre-2004 federal exemption rules) ⁴ (C.S.G. §§ 31-76b, 34-76i) | Holidays and weekends if required by agreement (C.G.S. § 31-76e) Tip credit varies depending on industry/occupation (i.e., tip credit up to 36.8% of minimum wage for hotel and restaurant workers; 18.5% for bartenders; and \$0.35 for all others) (C.G.S. § 31-60) | \$9.60 (\$10.10 eff. 1/1/17) (C.G.S. § 31-58(i)) | Not resolved | 30 min. meal if over 7.5 hrs., but not w/in first and last 2 hrs. of shift |
| Delaware | Follows current federal rules (19 Del. Code § 901(3)) | \$2.23 for tipped employees (19 Del. Code § 902) | \$8.25 (19 Del. C. § 902) | An unsettled question; state law has provided no specific endorsement or rejection | 30 min. meal if over 7.5 hrs., but not w/in first and last 2 hrs. of shift |

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|----------------------|---|--|---|--|----------------------------|
| District of Columbia | Follows current federal rules ⁵ <i>(D.C. Code § 32-1004)</i> | \$2.77 for tipped employees <i>(D.C. Code § 32-1003(f))</i> | \$10.50 (\$11.50 eff. 7/1/2016) (adj. annually starting 7/1/2017) <i>(DC Minimum Wage Act, § 32-1001 et seq.)</i> Hourly living wage for contractors = \$13.85 | Not resolved | |
| Florida | Follows current federal rules | Over 10 (for manual laborers) unless a written contract provides otherwise <i>(Fla. Stat. § 448.01(1), (2))</i> \$3.02 for tipped employees <i>(Fla. Const. art. X, § 24(c))</i> | \$8.05 (adj. annually) <i>(Fla. Const. art. 10, § 24; Fla. Stat. § 448.110(3), (4))</i> | Yes | |
| Georgia | Follows current federal rules | | | Yes | |
| Hawaii | Applies old long-test (pre-2004 federal rules) ^{6,7} FLSA covered employees must comply with higher \$455/week salary ⁸ <i>(Haw. Admin. Code. § 12-20-2 - 5)</i> Exemption for “outside collectors” <i>(Haw. Admin. R. 12-20-7)</i> | \$7.75 for tipped employees (who receive more than \$20 a month in tips), based on a max. tip credit of \$0.75, provided tips plus wages are at least \$7.00 more than what would be rec'd via the minimum wage <i>(HRS § 387-2(b))</i> | \$8.50 (\$9.25 eff. 1/1/17; \$10.10 eff. 1/1/18) <i>(HRS § 387-2)</i> | Not resolved | None for employees age 16+ |

DISCLAIMER: This summary is provided for reference only and is updated as of January 1, 2016. Any use should include independent research to verify the information contained in this summary.

Updated 1/1/2016
(c) 2016 Wage & Hour Defense Institute

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|---|--|--|--|--|
| Idaho | Follows current federal rules <i>(Id. Code Ann. § 44-1504)</i> | \$3.35 for tipped employees; Tips plus wages must equal or exceed min. wage <i>(Id. Code Ann. § 44-1502(2))</i> | | Not resolved | |
| Illinois | Follows current federal rules <i>(820 ILCS 105/4a)^{5, 8, 9}</i> | \$4.95 for tipped employees (i.e., tip credit up to 40% of minimum wage) <i>(820 ILCS 105/4(c))</i> | \$8.25 <i>(820 ILCS 105/4)</i> \$10.00 in Chicago (\$10.50 eff. 7/1/16; \$11.00 eff. 7/1/17; \$12.00 eff. 7/1/18; \$13.00 eff. 7/1/19) | Yes <i>(56 Ill. Adm. Code 210.430(f))</i> | 20 min. meal break required beginning no later than 5 hrs. after start of work period, if work period is at least 7.5 continuous hrs. <i>(820 ILCS 140/3)</i> |
| Indiana | Follows current federal rules <i>(I.C. § 22-2-2-3(n))</i> | Various exceptions for statutorily prescribed wage and hour terms that can be included in CBAs or employment contracts <i>(I.C. § 22-2-2-4(m)-(w))</i> Tip credit same as federal law <i>(I.C. § 22-2-2-4(c))</i> | | Not resolved | |

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|---|---|---|--|---|
| Iowa | Follows current federal rules <i>(Iowa Admin. Code r. 875-215.4)</i> | \$4.35 for tipped employees <i>(Iowa Admin. Code r. 875-217.50)</i> | | Yes | |
| Kansas | Follows current federal rules <i>(K.S.A. § 44-1204(c))</i> | Over 46 hrs. and on holidays <i>(K.S.A. § 44-1204)</i> \$5.15 for tipped employees <i>(K.S.A. § 44-1203)</i> | | Yes | |
| Kentucky | Follows current federal rules <i>(803 KAR § 1:070; KRS §§ 337.275, 337.285; KRS § 337.010)</i> | All hrs. worked on 7 th consecutive day <i>(KRS § 337.050)</i> Tip credit same as federal law <i>(KRS § 337.275(2))</i> | \$7.25 for employees covered by state's min. wage law <i>(KRS § 337.275)</i> | Yes <i>(803 KAR § 1:060(7)(4)(c))</i> | 10 min. rest for every 4 hrs.; 30 min. meal break btwn. 3 rd and 5 th hr. <i>(KRS §§ 337.365, 337.355; 803 KAR § 1:065)</i> |
| Louisiana | Follows current federal rules | | | Yes | |
| Maine | Follows current federal rules ^{5, 10} <i>(26 M.R.S. § 664(3))</i> | \$3.75 for tipped employees (i.e., tip credit up to 50% of minimum wage) <i>(26 M.R.S. § 664(2))</i> | \$7.50 <i>(26 MRS § 664)</i> | Not resolved | 30 min. rest/6 hrs., except during emergencies |

DISCLAIMER: This summary is provided for reference only and is updated as of January 1, 2016. Any use should include independent research to verify the information contained in this summary.

Updated 1/1/2016
(c) 2016 Wage & Hour Defense Institute

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|---------------|---|--|---|--|--|
| Maryland | Follows current federal rules <i>(Md. Code. Lab & Empl. § 3-420)</i> | 48 hr. workweek applies to employees of bowling alleys and residential care facilities; 60 hr. workweek applies to employees engaged in agriculture and exempt from the OT provisions of the FLSA. Most nurses may not be required to work overtime <i>(Md. Code. Lab & Empl. §§ 3-420.3 through 421)</i> \$3.63 for tipped employees <i>(Md. Code, Lab. & Empl. § 3-419)</i> | \$8.25 (\$8.75 eff. 7/1/16; \$9.25 eff. 7/1/17; \$10.10 eff. 7/1/18) <i>(Md. Code, Lab & Empl. § 3-413)</i> \$9.55 in Prince George's County and Montgomery County (\$10.75 eff. 10/1/16; \$11.50 eff. 10/1/17) | Not resolved | Retail employees must receive break(s) based on shift length ³⁰ |
| Massachusetts | Follows current federal rules ⁵ <i>(M.G.L. ch. 151, § 1A)</i> | The hrs. of an employee of a retail business who performs work on a Sunday or holiday and receives 1.5x regular rate are excluded from OT calculation <i>(M.G.L. ch. 151, § 1A)</i> \$3.35 (\$3.75 eff. 1/1/17) <i>(M.G.L. ch. 151, § 7)</i> | \$10.00 (\$11.00 eff. 1/1/17) Min. wage for agricultural workers = \$8.00 <i>(M.G.L. ch. 151, § 1, as amended by 2014 Mass. Acts 144)</i> | Yes | 30 min. meal in workday of at least 6 hrs. |

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|---|--|---|--|--|
| Michigan | Applies old short-test (pre-2004 federal rules) ¹¹ (MCL § 408.414a(4)) | \$3.10 for tipped employees (i.e., tip credit up to 62% of minimum wage) (MCL § 408.414d) | \$8.50 (\$8.90 eff. 1/1/17; \$9.25 eff. 1/1/18; indexed annually each 1/1 thereafter by no more than 3.5%; training wage of \$4.25 permitted for first 90 days) (MCL § 408.414) | Yes (<i>Fakouri v. Pizza Hut</i> , 824 F.2d 470 (6th Cir. 1987)) | Under 18 must receive 20 min. break after 5 hrs. |
| Minnesota | Applies old short test (pre-2004 federal rules); and special state tests ¹² (MSA 177.23; Minn. R. 5200.0180 et. seq.) | 48 hr. workweek. Employees of healthcare facilities may agree in writing to a “workweek” of 14 consecutive days for OT calculation purposes and must be paid OT rate after 8 hrs./day and 80 hrs./14-day period (Minn. Stat. § 177.25) No tip credit permitted (MSA § 177.24) | \$9.00 (\$9.50 eff. 8/1/16) for large employers ²³ ; \$7.25 for small employers (small employer minimum wage will exceed federal minimum (\$7.75) eff. 8/1/16) (MSA § 177.24) | Yes | Sufficient time to use restroom within each consecutive 4 hrs.; unpaid meal break for shifts of at least 8 hrs. ³¹ (MSA §§ 177.253, 177.254) |
| Mississippi | Follows current federal rules | | | Yes | |

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|--|--|--|--|----------------------------|
| Missouri | Follows current federal rules <i>(Mo. Rev. Stat. § 290.505(3))</i> | 52 hr. workweek for seasonal & amusement/recreational employees <i>(Mo. Rev. Stat. §290.505(2))</i> \$3.83 for tipped employees, but special rules apply to tips given to gaming employees (i.e., tip credit up to 50% of minimum wage) <i>(Mo. Rev. Stat. § 290.512; 8 CSR § 30-4.020)</i> | \$7.65 (adj. ea. Jan. 1 for COLA) <i>(Mo. Rev. Stat. § 290.502)</i> | Yes <i>(Mo. Rev. Stat. § 290.505(3))</i> | |
| Montana | Applies old short test (pre-2004 federal rules) ¹³ <i>(MCA § 39-3-406)</i> | 48 hr. workweek for students employed in an amusement/recreational area operating on a seasonal basis; OT requirements not applicable to farm workers <i>(MCA § 39-3-405)</i> No tip credit permitted <i>(MCA § 39-3-402)</i> | \$8.05 for businesses with gross annual sales > \$110,000 (adj. ea. Jan 1) ²³ <i>(MCA § 38-3-404; MCA § 39-3-409)</i> | Yes <i>(Mont. Adm. R. 24.16.2512)</i> | |

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|---------------|---|---|--|--|--|
| Nebraska | Follows current federal rules <i>(Neb. Rev. Stat. § 48-1202)</i> | \$2.13 for tipped employees <i>(Neb. Rev. Stat. § 48-1203(2))</i> | \$9.00 ²¹ <i>(Neb. Rev. Stat. § 48-1203(1))</i> | Yes | 30 min. meal, off premises, during normal lunch hr. for certain industries (assembly plant, workshop, mechanical establishment) <i>(Neb. Rev. Stat. § 48-212)</i> |
| Nevada | Applies special state tests ¹⁴ <i>(NRS § 608.018(3))</i> | Over 8 hrs./day if employee earns less than 1.5 times minimum wage; employee can agree to work 4-10 hr. days <i>(NRS 608.018)</i> No tip credit permitted <i>(NRS § 608.160)</i> | \$7.25 if employer provides qualifying health benefits; \$8.25 for other employees ²⁴ (adj. annually) <i>(Nev. Const. art. 15, § 16)</i> | Not resolved | 10-min break for 3.5 to 7 hrs.; 2 10-min. breaks for 7-11 hrs.; 3 for 11-15 hrs.; 4 for 15-19 hrs.; 30 min. meal/8 hr. shift |
| New Hampshire | Follows current federal rules and applies state-specific rules <i>(N.H. RSA §§ 279:21, 279:26-a)</i> | Nurses may not be required to work more than 12 hrs./day, unless voluntary written agreement permits OT <i>(RSA §§ 257:67, 257:68)</i> \$3.26 for tipped employees of a restaurant, hotel, motel, inn or cabin or employees of certain ballrooms <i>(N.H. RSA § 279:21; N.H. Admin. Rules. Lab § 802.14)</i> | | Not resolved | 30 min. meal after 5 hrs. unless allowed to eat while working |

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|--|---|---|---|---|
| New Jersey | Follows current federal rules with specific state exceptions (primarily excluding government employees); and state specific exemptions (NJAC §§ 12:56-7.1 - 7.3) | No requirement that employee be paid premium OT for hrs. worked in excess of 8 hrs./day, weekends or holidays (NJAC § 12:56-6.4) \$2.13 for tipped hotel and motel employees and tipped food service employees (NJAC § 12:56-13.4, 14.4) | \$8.38 (adj. annually) (NJAC § 12:56-3.1) | Not resolved | |
| New Mexico | Applies special state tests ¹⁵ (NMSA 1978 § 50-4-24) | | \$7.50 (NMSA § 50-4-22) | No | |
| New York | Follows current federal rules ¹⁶ | Maximum hrs. of work/day or week vary depending on the industry and type of employee (NY Labor Law §§ 160-170) Tip credit rules vary depending on the industry and type of employee. Hospitality Industry (12 NYCRR Part 146) Other industries (12 NYCRR Part 142) | \$9.00 “Fast-food” workers as defined by law: \$10.50 for NYC; \$9.75 for rest of state (adj. annually until reaches \$15.00) (NY Labor Law § 652) | Not expressly recognized in NY Labor Law or Wage Orders but authority exists accepting practice | 1 hr. meal at normal meal time for factory workers; most other workers – 30 min. if shift is in excess of 6 hrs. and meals are at designated times depending on shift worked (See NYSDOL FAQ w/details) |

DISCLAIMER: This summary is provided for reference only and is updated as of January 1, 2016. Any use should include independent research to verify the information contained in this summary.

Updated 1/1/2016
(c) 2016 Wage & Hour Defense Institute

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|----------------|---|--|--|--|---|
| North Carolina | Follows current federal rules <i>(N.C. Gen. Stat. § 95-25.14)</i> | 45 hr. workweek for seasonal amusement or recreational establishment employees <i>(N.C. Gen. Stat. § 95-25.4)</i> Tip credit same as federal law <i>(N.C. Gen. Stat. §§ 95-25.2; 25.3(f))</i> | | Yes | None for employees age 16+ |
| North Dakota | Applies special state tests ¹⁷ <i>(NDAC § 46-02-07-01, et seq.)</i> | \$4.86 for tipped employees <i>(NDAC § 46-02-07-03)</i> | | Not resolved | 30 min. meal/ shift greater than 5 hrs. when 2 or more employees on duty <i>(NDAC § 46-02-07-01)</i> |
| Ohio | Follows current federal rules <i>(ORC Ann. § 4111.03(3)(d))</i> | \$4.05 for tipped employees (i.e., tip credit up to 50% of minimum wage) <i>(Ohio Const. art. II, § 34a)</i> | \$8.10 for employers with annual gross receipts > or equal to \$297,000 ²⁵ (adj. annually) \$7.25 (for employers with annual gross receipts < \$297,000 after 1/1/2016) \$7.25 for employees under age 16 (i.e., fed. min. wage) <i>(ORC Ann. § 4111.02; Ohio Cons., art. II, § 34a)</i> | Yes <i>(ORC Ann. § 4111.03(A))</i> | Under age 18 must receive 30 min. break after 5 hrs. |

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|----------------|---|--|--|--|---|
| Oklahoma | Follows current federal rules <i>(40 O.S. § 195)</i> | \$3.63 for tipped employees <i>(40 O.S. § 197.16)</i> | | Yes | None for employees age 16+ |
| Oregon | Applies special state tests ⁶ <i>(ORS § 653.020)</i> | In mills, factories, or mfg., over 10 hrs./day, and not more than 13 hrs./day and other exclusions <i>(ORS § 652.020)</i> No tip credit permitted <i>(ORS § 653.035(3))</i> | \$9.25 (adj. ea. Jan. 1) <i>(ORS § 653.025)</i> | Yes | 10 min. rest/4 hrs. (entitlement kicks in at 2:01 into shift), near middle; 30 min. meal for each 6-8 hr. period, taken between 2nd and 5th hr. for work period of 7 hrs. or less and between 3rd and 6th if over 7 hrs |
| Pennsylvania | Applies old short test (pre-2004 federal rules) ⁸ <i>(34 Pa. Code § 231.81 to 231.85)</i> | \$2.83 for tipped employees <i>(43 PS § 333.103(d))</i> | | Not fully resolved but state court and two W.D. Pa. cases say it's contrary to state law | |
| Rhode Island | Follows current federal rules ⁵ | \$3.39 for tipped employees, based on max. tip credit of \$6.21 <i>(G.L. 1956 § 28-12-5)</i> | \$9.60 <i>(G.L. 1956 § 28-12-3)</i> | Not resolved | 20 min. meal every 6 hrs., or a 30 min. meal every 8 hrs. |
| South Carolina | Follows current federal rules | | | Yes | |

DISCLAIMER: This summary is provided for reference only and is updated as of January 1, 2016. Any use should include independent research to verify the information contained in this summary.

Updated 1/1/2016
(c) 2016 Wage & Hour Defense Institute

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|---|--|--|--|--|
| South Dakota | Follows current federal rules | \$4.25 for tipped employee (i.e., minimum cash wage for tipped employee must be at least one-half the minimum wage) <i>(SDCL 60-11-3.1)</i> | \$8.55 (adj. ea. Jan. 1) <i>(SDCL 60-11-3)</i> | Yes | |
| Tennessee | Follows current federal rules | | | Yes | 30 min. meal/6hrs. <i>(TCA § 50-2-103)</i> |
| Texas | Follows current federal rules <i>(Tex. Lab. Code § 62.151)</i> | Tip credit same as federal law <i>(Tex. Lab. Code § 62.052)</i> | | Yes | None for employees age 18+ |
| Utah | Follows current federal rules | \$2.13 for tipped employees <i>(Utah Code § 34-40-104)</i> | | Yes | None for employees age 18+ |
| Vermont | Follows current federal rules ⁵ | \$4.80 for tipped employees who customarily receive more than \$120/month in tips in the hotel, motel, tourist and restaurant industries (i.e., minimum cash wage for tipped employees must be at least one-half the minimum wage) <i>(21 V.S.A. § 384)</i> | \$9.60 (\$10.00 eff. 1/1/17; \$10.50 eff. 1/1/18) (adj. ea. Jan. 1) ²⁶ <i>(21 V.S.A. § 384)</i> Specific minimum wage exemptions in certain industries <i>(21 V.S.A. § 382)</i> | Not resolved | Reasonable meal and rest-room breaks required. |

DISCLAIMER: This summary is provided for reference only and is updated as of January 1, 2016. Any use should include independent research to verify the information contained in this summary.

Updated 1/1/2016
(c) 2016 Wage & Hour Defense Institute

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|---------------|--|---|---|--|---|
| Virginia | Follows current federal rules <i>(Va. Code § 40.1-28.9(B))</i> | Employer determines tip credit unless employee shows actual tips are less than minimum wage, unless wages are covered by federal law <i>(Va. Code § 40.1-28.9(D))</i> | | Not resolved | None for employees age 16+ |
| Washington | Applies versions of both the old short test and old long test (pre-2004 federal rules) ¹⁸ <i>(RCW §§ 49.46.030(2)(a); 49.46.010(5)(c))</i> | Hourly nurses generally can't be required to work OT <i>(RCW §§ 49.28.130 – 49.28.150)</i> No tip credit permitted <i>(WAC § 296-126-022)</i> | \$9.47 (adj. ea. Jan. 1) <i>(RCW § 49.46.020)</i> 85% of state minimum wage rate for employees age 14 or 15 (\$8.05) <i>(WAC § 296-125-043)</i> | Yes, under Wa. Min. Wage Act, but open question re: use as remedy in misclassification cases | 10 min. paid rest/4 hrs. near middle; 30 min. meal for > 5 hr. pd. be-tween 2 nd and 5 th hr.; add'l 30 min. meal if work at least 3 hrs. longer than "normal" work day <i>(WAC § 296-126-092)</i> |
| West Virginia | Applies special state tests ⁶ <i>(W. Va. C.S.R. § 42-8-8)</i> | Various forms of premium rate compensation are not included in the regular rate as long as premium rate is at least 1.5 times the regular rate. Generally employees cannot be forced to work overtime. <i>(W. Va. Code § 21-5c-3)</i> \$2.62 for tipped employees <i>(W. Va. Code § 21-5c-4)</i> | \$8.75 <i>(W. Va. C.S.R. § 42-8-8, as amended by 2014 W. Va. Acts 124)</i> | Not resolved | 20 min. meal/6 hr. shift (20 min break counts as hrs. worked) <i>(W. Va. Code § 21-3-10a)</i> |

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

| Jurisdiction | Exemption Rules/Tests | Special Overtime Rules and Tip Credit Information ¹⁹ | Minimum Wage Higher than Federal Minimum ²⁰ | Acceptability of Fluctuating Work Week Method for Calculating Overtime ²⁷ | Meal and Rest Period Rules |
|--------------|--|--|--|---|--|
| Wisconsin | Applies old long test (pre-2004 federal rules) (DWD § 274.04) | \$2.33 for tipped employees (DWD § 272.03(2)) | | Authority exists that FWW practice is permissible (<i>Kuhnert v. Advanced Laser Machining, Inc.</i> , 794 N.W.2d 805 (Wis. Ct. App. 2011)) | Recommended 30 min. break near normal meal time (mandatory for minors), and employee must be completely relieved of duty and able to leave premises if unpaid (DWD § 272.12(2)(c), 274.02(2)) |
| Wyoming | Follows current federal rules | \$2.13 for tipped employees (WS § 27-4-202(b)) Minimum wage \$5.15 (WS § 27-4-202(a)) | | Not resolved | |

General Note: With the various movements across the country to increase the minimum wage, there are numerous local and municipal ordinances that have set minimum wage rates that may differ from both the state and federal laws. All such ordinances may not be reflected in this chart. As a result, independent consideration and investigation should be done to ensure compliance with any such local/municipal ordinances.

¹ Alaska also provides a unique list of approximately 40 occupations that qualify for exempt status.

² For California: the salary must be at least \$3,466.67/month (\$41,600.00/year) and exempt duties must constitute more than 50% of the employee's time. Highly skilled computer employees paid on an hourly basis must be paid at least \$41.85 per hour, or a salary of \$7,265.43/month or \$87,185.14/year. Physicians may be paid on an hourly basis if paid at least \$76.24 per hour. The minimum rates for computer employees and physicians are adjusted each January 1.

³ Colorado has very specialized state tests for exemptions. See <http://www.coworkforce.com/lab>. Employees must satisfy both state and federal test in order to be treated as exempt.

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

⁵ These states generally follow the duties and salary basis tests under the FLSA's rules, but they have not adopted the new highly compensated method for being deemed exempt.

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

- ⁶ State rules are similar to the old federal “long test,” but the percentage of time the employee may perform non-exempt work varies from the old federal rule (as well as from state-to-state).
- ⁷ Under state law, executives and creative professionals must exercise independent judgment and discretion in order to be exempt. Employees who are guaranteed at least \$2,000 per month, though, are not subject to the state law.
- ⁸ No state computer exemption.
- ⁹ Illinois applies the old federal duties tests, but the current federal salary level tests.
- ¹⁰ In Maine, all exempt employees must be paid on a salary basis. Also, Maine has a separate exemption test applicable to sales employees.
- ¹¹ Michigan’s duties tests for executive, administrative and professional employees are similar to the old federal short tests, but they are not identical. Further, as under the FLSA, these exempt employees are required to be paid on a salary basis to be exempt, but the state rules do not allow for any deductions or other exceptions. Also, Michigan law does not exempt outside sales employees. Michigan’s overtime pay and minimum wage requirements, however, do not apply to employees subject to the FLSA and who are exempt under the FLSA (other than some domestic service employees and childcare providers). Michigan law also does not apply to employers subject to the FLSA should the federal minimum wage match or exceed the state minimum wage.
- ¹² The Supreme Court of Minnesota recently held that employees cannot be required or coerced to reimburse their employer from their tips for cash register shortages, customer walk-outs, or unsigned credit card receipts. The Court held that tips are “wages” under Minnesota Statute Section 181.79, and deductions from wages for claimed indebtedness to the employer are unlawful, regardless of whether such deductions result in an employee receiving less than minimum wage for the relevant workweek. *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14 (Minn. 2013).
- ¹³ Disciplinary deductions from salaried exempt employees are prohibited in Montana.
- ¹⁴ State follows the tests in the new federal rules as to all white collar classifications other than professionals.
- ¹⁵ State follows the tests in the new federal rules as to all white collar classifications other than executives and outside sales employees.
- ¹⁶ In New York, an employee must be paid at least \$656.25 per week in order to qualify for the executive and administrative exemptions. In addition, New York requires that exempt executives customarily and regularly exercise discretion.
- ¹⁷ North Dakota follows the new federal rules as to the executive and administrative exemption only. Otherwise, it has specialized state tests for exemptions.
- ¹⁸ FLSA covered employers must pay \$455/week and meet the more favorable test as applicable (*RCW §§ 49.46.010(5)(c), 49.46.030(2)(a); Wa. Admin. Code § 296-128-500 through 540*)).
- ¹⁹ The tip credit information reflects the minimum cash wage for tipped employees.
- ²⁰ The federal minimum wage is \$7.25 per hour. Note: Certain localities (cities, municipalities) have implemented minimum wage rates that exceed state and federal laws which may not be listed in the chart.
- ²¹ State’s minimum wage law is applicable to employers of four or more employees.
- ²² Large employers are enterprises with annual receipts of \$500,000.00 or more.

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

- ²³ Montana's minimum wage law is applicable to employers whose annual gross sales are \$110,000 or more.
- ²⁴ Nevada allows employers to pay the lower tier minimum wage if the employer provides health insurance and the employee's cost for employee and employee's dependents does not exceed 10% of the employee's gross taxable income from the employer.
- ²⁵ Ohio's minimum wage law is applicable to employers with annual gross receipts of more than \$292,000.00 per year.
- ²⁶ State's minimum wage law is applicable to employers of two or more employees.
- ²⁷ The "Fluctuating Work Week Method for Calculating Overtime" involves payment of a fixed weekly salary for all hours worked in a work week; if the employee works more than 40 hours in the work week, the employee receives an overtime premium that is calculated by multiplying half of the effective hourly rate for that work week by the number of hours over 40 worked.
- ²⁸ California's meal period requirements do not apply to security and public utility workers if pursuant to a collective bargaining agreement.
- ²⁹ Colorado's Wage Order applies only to the following covered industries: (1) Retail and Service; (2) Commercial Support Service; (3) Food and Beverage; and (4) Health and Medical.
- ³⁰ Retail employees in Maryland receive breaks based on shift length: 4-6 hours - 15 min.; 6-8 hours - 30 min.; 8+ hours - 30 min., plus 15 min. for every additional 4 hours.
- ³¹ The Supreme Court of Minnesota recently held that employees cannot be required or coerced to reimburse their employer from their tips for cash register shortages, customer walk-outs or unsigned credit card receipts. The Court held that tips are "wages" under Minnesota Statute Section 181.79, and deductions from wages for claimed indebtedness to the employer are unlawful, regardless of whether such deductions result in an employee receiving less than minimum wage for the relevant workweek. *Karl v. Uptown Drink, LLC*, 835 N.W.2d 14 (Minn. 2013).

WHDI STATE BY STATE WAGE HOUR LAW SUMMARY

(Updated as of January 2016)

MEMBERS OF THE WHDI

1ST CIRCUIT

Foley Hoag
Boston, MA
(617) 832-1000

Jonathan Keselenko
jkeselenko@foleyhoag.com

2ND CIRCUIT

Wiggin and Dana
Stamford, CT
(203) 363-7600

Lawrence Peikes
lpeikes@wiggin.com

Mary Gambardella
mgambardella@wiggin.com

Bond, Schoenck & King
New York, NY
(646) 253-2320

John Ho
hoj@bsk.com

3RD CIRCUIT

Blank Rome LLP
Philadelphia, PA
(215) 569-5500

Jason E. Reisman
JReisman@BlankRome.com

4TH and DC CIRCUITS

Fortney & Scott
Washington D.C.
(202) 689-1200

David S. Fortney
dfortney@fortneyscott.com

Jacqueline R. Scott
jscott@fortneyscott.com

Shawe Rosenthal
Baltimore, MD
(410) 843-3457

Eric Hemmendinger
eh@shawe.com

Moore & Van Allen
Charlotte, NC
(704) 331-1000

Paul Peralta
paulperalta@mvalaw.com

5TH CIRCUIT

Gardere Wynne Sewell
Dallas, TX
(214) 999-3000

Carrie Hoffman
choffman@gardere.com

Neel Hooper & Barnes
Houston, TX
(713) 629-1800

Bryant Baner
bbaner@nhblaw.com

6TH CIRCUIT

Dykema
Detroit, MI
(313) 568-6800

Robert A. Boonin
rboonin@dykema.com

James F. Hermon
jhermon@dykema.com

Ice Miller
Columbus, OH
(614) 452-2700

Paul L. Bittner
paul.bittner@icemiller.com

Waller Lansden Dortch & Davis
Nashville, TN
(615) 244-6380

Andrew Naylor
andy.naylor@wallerlaw.com

7TH CIRCUIT

Cozen O'Connor
Chicago, IL
(312) 832-3100

Joseph E. Tilson
jtilson@cozen.com

Jeremy J. Glenn
jglenn@cozen.com

8TH CIRCUIT

Stinson Leonard Street
Minneapolis, MN
(612) 335-1500

Tracey Holmes Donesky
Tracey.donesky@stinson.com

Spencer Fane Britt & Browne
Kansas City, MO
(816) 474-8100

Michael Delaney
mdelaney@spencerfane.com

Eric P. Kelly
ekelly@spencerfane.com

St. Louis, MO
(314) 333-3909
Frank Neuner
fneuner@spencerfane.com

9TH CIRCUIT

Davis Wright Tremaine
Seattle, WA
(206) 622-3150

Michael Killeen
mikekilleen@dwt.com

Portland, OR
(503) 778-5305
Jenna Mooney
jennamooney@dwt.com

Paul Pelvin Sullivan & Connaughton
San Diego, CA
(619) 237-5200

Fred Plevin
fplevin@paulplevin.com

Aaron Buckley
abuckley@paulplevin.com

Carothers DiSante & Freudenberger
San Francisco Bay Area, CA
(916) 361-0991

Mark S. Spring
mspring@cdfllaborlaw.com

Hejmanowski & McCrea
Las Vegas, NV
(702) 383-8888

Malani Kotchka
mlk@lhmlawlv.com

10TH CIRCUIT

Sherman & Howard
Denver, CO
(303) 297-2900

W.V. Bernie Siebert
bsiebert@shermanhoward.com

Andrew Volin
avolin@shermanhoward.com

11TH CIRCUIT

Cozen O'Connor
Miami, FL
(305) 704-5940

Susan Eisenberg
seisenberg@cozen.com

Jennifer Williams
jwilliams@cozen.com

Phelps Dunbar
Tampa, FL
(813) 472-7550

Dennis M. McClelland
dennis.mcclelland@phelps.com

Reed L. Russell
reed.russell@phelps.com

Lehr Middlebrooks & Vreeland
Birmingham, AL
(205) 326-3002

Albert Vreeland II
avreeland@lehrmiddlebrooks.com

Parker Hudson Rainer & Dobbs
Atlanta, GA
(404) 523-5300

Trishanda Treadwell
ttreadwell@phrd.com

Paul Barsness
pbarsness@phrd.com