

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

STATE-BY-STATE WAGE AND HOUR LAW SUMMARY

www.wagehourdefense.org



ABOUT THE WAGE & HOUR DEFENSE INSTITUTE

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

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

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

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

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

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

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Alabama	◆						Yes	
Alaska	◆			◆ ¹⁸	Over 8 (A.S. 23.10.060); No tip credit permitted	\$7.75 (A.S. 23.10.065)	No	None for employees age 18+
Arizona	◆				\$4.80 for tipped employees	\$7.80 (adj. ea. Jan. 1) (A.R.S. 23-264(A))	Not resolved	
Arkansas	◆	◆			\$2.63 for tipped employees		Yes	
California				◆ ⁶	1.5x after 8 and for 1st 8 on 7th day; 2x over 12 and over 8 on 7th day; No tip credit permitted	\$8.00 \$10.55 in San Francisco (adj. ea. Jan. 1)	No	10 min. rest/4 hours and near middle; 30 min. meal after 5 hours, by 6 th hour and a second meal break after 10 hours ²²
Colorado				◆ ¹³	Over 12 per workday or over 12 consecutive; \$4.76 for tipped employees	\$7.78	Yes (Division of Labor Advisory Bulletin, section 39(I))	10 min. rest/4 hours; 30 min. meal after 5 hours ²⁰
Connecticut		◆ ⁴			Holidays and weekends \$5.69 for tipped employees (bartenders may be higher)	\$8.25	Not resolved	30 min. meal if over 7.5 hours, but not w/in first and last 2 hours of shift

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Delaware	◆ (19 Del. Code § 901(3))				\$2.23 for tipped employees		An unsettled question; state law has provided no specific endorsement or rejection	30 min. meal if over 7.5 hours, but not w/in first and last 2 hours of shift
District of Columbia	◆ ¹				\$2.77 for tipped employees	Minimum wage set by the FLSA plus \$1 (DC Minimum Wage Act, 32-1003)	Not resolved	
Florida	◆				Over 10 (for manual laborers) unless a written contract provides otherwise (Fla. Stat. § 448.01(1), (2)) \$4.77 for tipped employees	\$7.79 (Fla. Const. art. 10, § 24; Fla. Stat. § 448.110(3), (4))	Yes	

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Georgia	◆						Yes	
Hawaii			◆ (FLSA covered employers must comply with higher \$455/week salary) <i>(Haw. Admin. Code. § 12-20-2 - 5)</i>	◆ ^{7.9} No state computer exemption; non-FLSA covered employers have state supervisory exemption based on \$210/week salary <i>(Haw. Admin. Code § 12-20-4)</i>	\$7.00 for tipped employees		Not resolved	None for employees age 16 & over
Idaho	◆ <i>(Id. Code Ann. § 44-1504)</i>				\$3.35 for tipped employees		Not resolved	

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Illinois	◆ ¹⁵ (820 ILCS 105/4a)				Day of rest required each week (820 ILCS 140/2); \$4.95 for tipped employees	For employers with 4+ employees \$8.25	Yes (56 Ill. Adm. Code 210.430(f))	20 min. meal break required after 5 hours if work day is at least 7.5 hours (820 ILCS 140/3)
Indiana	◆ (Burns Ind. Code. Ann. § 22-2-2-3(n))				Various exceptions for statutorily prescribed wage and hour terms that can be included in CBAs or employment contracts (Burns Ind. Code. Ann. § 22-2-2-4(m)-(w))		Not resolved	
Iowa	◆				\$4.35 for tipped employees		Yes	
Kansas	◆				Over 46 and on holidays		Yes	

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Kentucky	◆ (803 KAR 1:070; KRS 337.275, 337.285)				All hours worked on 7 th consecutive day (KRS 337.050)		Yes (803 KAR 1:060(4)(c))	10 min. rest/4 hours; reasonable meal break (30 mins.), btwn. 3 rd and 5 th hour (KRS 337.365, 337.355; 803 KAR 1:065)
Louisiana	◆						Yes	
Maine	◆ ^{1,2}				\$3.75 for tipped employees	\$7.50	Not resolved	30 min. rest/6 hours, except during emergencies
Maryland	◆				48 hour workweek applies to employees of bowling alleys and residential care facilities. Most nurses may not be required to work overtime (R. 3-420,421); \$3.63 for tipped employees		Not resolved	Retail employees must receive break based on shift length ²³

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Massachusetts	◆ ¹				\$2.63 for tipped employees	\$8.00	Not resolved	30 min. meal in workday of at least 6 hours
Michigan		◆ ¹⁴ (MCL § 408.384a)			\$2.65 for tipped employees	\$7.40 if there are two or more employees (MCL § 408.384)	Yes (<i>Fakouri v. Pizza Hut</i> , 824 F.2d 470 (6th Cir. 1987))	Under 18 must receive 20 min. break after 5 hours
Minnesota		◆		MSA 177.23 Rules 5200	Over 48 (MSA 177.25); No tip credit permitted		Yes	Sufficient time to use restroom within each consecutive 4 hours; unpaid meal break for shifts of at least 8 hours. (Minn. Stat. 177.253, 177.254)
Mississippi	◆						Yes	

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Missouri	◆ (R.S. Mo. Stat. 290.505(3))				Seasonal & amusement / recreational employees receive overtime over 52 hours/week (R.S. Mo Stat. §290.505(6)) \$3.68 for tipped employees	\$7.35	Yes (R.S. Mo. Stat. § 290.505(3))	
Montana		◆ (Mont. Code Ann. § 39-3-406(1)(j); Mont Adm. R. 24.16.201-206)			No tip credit permitted	\$7.80	Yes (Mont. Adm. R. § 24.16.2512)	
Nebraska	◆ (Neb. Rev. Stat. § 48-1202)						Yes	30 min. meal, off premises, during normal lunch hour for certain industries (assembly plant, workshop, mechanical establishment) (Neb. Rev. Stat. § 48-212)

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Nevada				◆ ¹⁰	Over 8 if employee earns less than 1.5 times minimum wage (<i>N.R.S. 608.018</i>); No tip credit permitted	\$8.25 ¹⁷ (<i>Nev. Const. art. 15, sec. 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 hour shift
New Hampshire	◆				45% of minimum wage for tipped employees		Not resolved	30 min. meal after 5 hours unless allowed to eat while working
New Jersey	As of September 2011, New Jersey adopted FLSA "white collar" exemption rules		◆ (<i>N.J.A.C. 12:56-7.1</i>) (pre September 2011)				Not resolved	
New Mexico				◆ ¹¹	Holidays	\$7.50	No	

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New York	◆ ¹⁹				NY tip credit rules vary depending on the industry and type of employee. For Hospitality Industry see 12 NYCRR Part 146, for other industries see 12 NYCRR Part 142		An unsettled question; but authority exists which suggests that practice is accepted	1 hour meal at normal meal time for factory workers; most other workers – 30 mins. if shift is in excess of 6 hours and meals are at designated times depending on shift worked (See NYSDOL FAQ w/details)
North Carolina	◆ (N.C. Gen. Stat. 95-25.14)				Seasonal amusement or recreational establishment employees are entitled to overtime only for hours in excess of 45 per workweek (N.C. Gen. Stat. 95-25.4)		Yes	None for employees age 16+

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North Dakota				◆ ¹² (ND Admin Code 46-02-07-01)	\$4.86 for tipped employees		Not resolved	30 min. meal/shift greater than 5 hours when 2 or more employees on duty (ND Admin Code 46-02-07-02)
Ohio	◆ (ORC Ann. § 4111.03(3)(d))				\$7.25 for employees under age 16 \$3.93 for tipped employees	\$7.85 (ORC Ann. § 4111.02)	Yes (ORC Ann. § 4111.03(A))	Under age 18 must receive 30 min. break after 5 hours
Oklahoma	◆				\$3.63 for tipped employees (O.S. 5197.16)		Yes	None for employees age 16+
Oregon				◆ ⁹	In mfg., over 10 hours, not more than 13 hours/day; No tip credit permitted	\$8.95 (adj. ea. Jan. 1)	Yes	10 min. rest/4 hours, near middle; 30 min. meal for each 6-8 hr period, taken between 2nd and 5th hour for work period of 7 hours or less and between 3rd and 6th if over 7 hours

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Pennsylvania		◆ (34 Pa. Code § 231)		No state computer exemption	\$2.83 for tipped employees		Not fully resolved but W.D. Pa. case (<i>Foster v. Kraft Foods Global</i>) says it's contrary to state law	
Rhode Island	◆ ¹				\$2.89 for tipped employees	\$7.40	Not resolved	20 min. meal every 6 hours, or a 30 min. meal every 8 hours
South Carolina	◆						Yes	
South Dakota	◆						Yes	
Tennessee	◆						Yes	30 min. meal/6 hours (<i>TCA § 50-2-103</i>)
Texas	◆						Yes	None for employees age 18+
Utah	◆						Yes	

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Vermont	◆ ¹				\$4.17 for tipped employees 85% of minimum wage for part time (< 20 hours) college and high school students	\$8.46 (adj. ea. Jan. 1) (if there are 2 or more employees) (21 V.S.A. § 383(2))	Not resolved	Reasonable meal and rest-room breaks required.
Virginia	◆						Not resolved	None for employees age 16+
Washington		◆ (RCW 49.46.030(2)(a))	◆ (RCW 49.46.010(5)(c))	◆ FLSA covered employers must pay \$455/week & meet the more favorable test as applicable (RCW 49.46.010(5)(c), 49.46.030(2)(a), and Wa. Admin. Code 296-128-500 through 540))	Hourly nurses generally can't be req. to work OT (RCW 49.28.130 through .150); No tip credit permitted	\$9.19 (adj. ea. Jan. 1) (RCW 49.46.020)	Yes, under Wa. Min. Wage Act, but open question re: use as remedy in misclassification cases	10 min. paid rest/4 hours near middle; 30 min. meal for more than 5 hour period between 2nd and 5th hour; add'l 30 min meal if work at least 3 hours longer than "normal" work day (Wa. Admin. Code 296-126-092)

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West Virginia				◆ ⁹	<p>Various forms of premium rate compensation are not included in the regular rate as long as premium rate is at least 1 1/2 times the regular rate; such as work in excess of 8 hours/day or 40 hours/week; work on Saturday, Sunday, or holidays; work on a regular day of rest; work on 6th or 7th days of work week. Generally employees cannot be forced to work overtime. (W. Va. Code § 21-5C-3-7); \$5.80 for tipped employees</p>		Not resolved	<p>20 min. meal/ 6 hour shift (20 min break counts as hours worked) (W. Va. Code § 21-3-10(a)); for 24 hour shifts employer and employee can agree to unpaid meal/rest periods of up to 8 hours</p>

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Wisconsin			◆ ¹⁸ (DWD 274.04)		\$2.33 for tipped employees		Not resolved	Recommended 30 min. break near normal meal time (mandatory for minors), and employee must be able to leave premises if unpaid (DWD 274.02(2))
Wyoming	◆						Not resolved	

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

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

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

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

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

⁶ Salary must be at least \$2,773.33/month (\$33,280/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 \$39.90 per hour, or a salary of \$6,927.75 per month or \$83,132.93 per year. Physicians may be paid on an hourly basis if paid at least \$72.70 per hour. The minimum rates for computer employees and physicians are adjusted each January 1.

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

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