

Massachusetts Wage & Hour Laws

MINIMUM WAGE \$8.00

Effective January 1, 2008

M.G.L. chapter 151, sections 1 and 2

The minimum wage law applies to all employees except those being rehabilitated or trained in charitable, educational, or religious institutions; members of religious orders; agricultural, floricultural, and horticultural workers; those in professional service; and outside salespersons not reporting to or visiting their office daily. For further information regarding the Massachusetts state minimum wage, contact the Massachusetts Division of Occupational Safety at (617) 626-6975 or visit www.mass.gov/dos.

Wait staff, service employees and service bartenders may be paid the service rate of \$2.63 per hour if they regularly receive tips of more than \$20 a month, and if their average hourly tips, when added to the service rate, are equal to or exceed the basic minimum wage. M.G.L. chapter 151, section 7.

Agricultural employees may be paid \$1.60 per hour. M.G.L. chapter 151, section 2A. A higher rate may apply under Federal law. For more information, contact the U.S. Department of Labor at (617) 624-6700 or visit www.dol.gov/esa/whd.

PAYMENT OF WAGES

M.G.L. chapter 149, section 148

Wages (payment for all hours worked, including tips, earned vacation pay, holiday pay, and definitely determined and due commissions) must be paid within the following time periods:

- If employed for five or six days in a calendar week, within six days of the end of the pay period during which the wages were earned;
- If employed seven days in a calendar week, within seven days of the end of the pay period during which the wages were earned;
- An employee who has worked for a period of less than five days (also known as a casual employee), within seven days of the end of the period.

An employee who resigns his or her employment must be paid in full on the following regular pay day, or in the absence of a regular pay day, no later than the following Saturday. An employee involuntarily terminated from employment or laid off must be paid in full on the day of discharge.

Employees who are paid on an hourly basis must be paid weekly or bi-weekly. Employers may not make agreements with employees to be paid in another manner.

Employers must give each employee a pay statement setting forth the name of employer, name of employee, date of check (including the day, month and year), number of hours worked during the pay period, hourly rate, and all deductions or increases made during the pay period. This statement must be provided with each payment of wages.

Deductions: No deduction, other than those required or allowed by law and those listed in 455 CMR 2.04(1)(a) and (b), shall be made from the basic minimum wage.

TIPS

M.G.L. chapter 149, section 152A

Tip pooling in which tips are distributed to any person not a wait staff, service employee or service bartender is prohibited.

Total proceeds of a tip or service charge contained in a bill must be remitted only to wait staff employees, service employees or service bartenders in proportion to the service provided by those employees.

Under no circumstances may management employees or owners receive any portion of their employees' tips.

MEAL BREAKS

M.G.L. chapter 149, sections 100 and 101

Employees who work a period of more than six hours are entitled to a 30-minute meal break. Employees must be relieved of all duties during the meal break.

Compensation for the 30-minute meal break must be paid if the employee has voluntarily agreed to waive his or her meal break by (1) working through his or her meal break, or (2) agreeing to remain on premises during the meal break.

This law does not apply to: iron works, glass works, paper mills, letterpress establishments, print works, bleaching works or dyeing works. Exemptions may be granted for other continuous processes in factories, workshops or mechanical establishments, or under other special circumstances.

TRAVEL TIME

455 CMR 2.03(4)

Ordinary travel between home and work is not compensable working time. However, if an employee who regularly works at a fixed location is required, for the convenience of the employer, to report to a location other than his or her regular work site, the employee shall be compensated for all travel time in excess of his or her ordinary travel time between home and work. An employee required or directed to travel from one place to another after the beginning of or before the close of the work day shall be compensated for all travel time.

REPORTING PAY

455 CMR 2.03(1)

When an employee who is scheduled to work three or more hours reports for duty at the time set by the employer, and that employee is not provided with the expected hours of work, the employee shall be paid for at least three hours on such day at no less than the basic minimum wage. This provision shall not apply to organizations granted status as charitable organizations under the Internal Revenue Code.

FAIR LABOR HOTLINES

Monday through Friday, 9:00 a.m. to 5:00 p.m.

Boston: (617) 727-3465

New Bedford: (508) 990-9700

Springfield: (413) 784-1240

Worcester: (508) 792-7600

Fair Labor Division • One Ashburton Place • Boston, MA 02108

(617) 727-2200 • (617) 727-4765 TTY

www.mass.gov/ago • www.laborlowdown.com • www.mass.gov/ago/youthemployment

CHILD LABOR

Employment permits are required for minors under age 18. Employment permits must be issued for and maintained at the site where the minor is working. Employment permits are issued by the superintendent of schools in the city or town where the minor attends school or lives. For information on obtaining an employment permit, please contact the Division of Occupational Safety at (617) 626-6975 and or visit www.mass.gov/dos.

14-15-Year-Old Minors

14-15-Year-Old minors may NOT be employed:

- during school hours EXCEPT as provided in approved work experience and career exploration programs;
- between 7:00 p.m. and 7:00 a.m. EXCEPT from July 1 through Labor Day, when they may work until 9:00 p.m.;
- more than 3 hours per day during school weeks, or more than 8 hours per day during weeks when school is not in session;
- more than 18 hours per week EXCEPT in approved work experience and career exploration programs, in which case, they may work 23 hours per week;
- more than 40 hours per week when school is not in session; more than 6 days per week.

**The Federal Fair Labor Standards Act, enforced by the U.S. Department of Labor, also restricts the employment of minors. This list combines the most restrictive of state and federal time and hour requirements.*

HAZARDOUS OCCUPATION RESTRICTIONS**

Minors 14-15 years of age are prohibited from certain occupations, industries, and tasks. For example, 14-15 year old minors may not work in or around manufacturing facilities or factories, mechanical establishments where machinery is used, on construction sites, in garages or tunnels. Minors 16-17 years of age are prohibited from certain occupations, industries and tasks. For example, they may not drive a motor vehicle or forklift on the job or work 30 feet or more off the ground. All minors are prohibited from working any job requiring the possession or use of a firearm.

***This is not an exhaustive list. For a complete list of prohibited occupations for minors 14-15 and 16-17 years of age, please contact the Fair Labor Division of the Attorney General's Office at (617) 727-3465 or visit www.mass.gov/ago/youthemployment, or the U.S. Department of Labor at (617) 624-6700 or visit www.dol.gov.*

SUPERVISION REQUIREMENTS

After 8:00 p.m., all minors must have the direct and immediate supervision of an adult supervisor who is located in the workplace and is reasonably accessible to the minor, unless the minor works at a kiosk, cart or stand in the common area of an enclosed shopping mall that has security from 8:00 p.m. until the mall is closed to the public.

OVERTIME

Employees must be paid at least one and one-half times their regular hourly rate of pay for all hours worked in excess of 40 per week. The overtime rate for employees who receive the service rate must be calculated based upon the basic minimum wage. Certain categories of employment and workplaces are exempt from the state overtime requirement[†], including:

- as a janitor or caretaker of residential property, who when furnished with living quarters is paid a wage of not less than \$30 per week
- as a golf caddy, newsboy or child actor or performer
- as a bona fide executive, administrator, professional person or a qualified trainee for such position earning more than \$80 per week
- as an outside salesman or outside buyer
- as a learner, apprentice or handicapped person under a special license as provided in section nine
- as a fisherman or as a person employed in the catching or taking of any kind of fish, shellfish or other aquatic forms of animal and vegetable life
- as a switchboard operator in a public telephone exchange
- as a driver or helper on a truck with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service
- by a common carrier of passengers by motor-vehicle
- in a business which is operated during a period or accumulated periods not in excess of 120 days in a year, and determined by the Director of the Department of Labor to be seasonal in nature
- as a seaman
- in a hotel, motel, motor court or like establishment
- in a gasoline station
- in a restaurant
- as a garageman, which term shall not include a parking lot attendant
- in a hospital, sanatorium, convalescent or nursing home, infirmary, rest home or charitable home for the aged
- in a nonprofit school or college
- in a summer camp operated by a nonprofit charitable corporation
- as a laborer engaged in agriculture and farming on a farm
- in an amusement park containing a permanent aggregation of amusement devices, games, shows, and other attractions operated during a period or accumulated periods not in excess of 150 days in any one year

[†]*Note that some of these occupations may not be exempt under federal law.*

EMPLOYEE'S RIGHT TO SUE

Employees have the right to bring private lawsuits against their employers on behalf of themselves and other similarly situated employees under the following wage and hour laws: M.G.L. chapter 149, sections 27, 27F, 27G, 27H, 33E, 52D, 148, 148A, 148B, 150, 150C, 152, 152A, 159C; and chapter 151, sections 1B, 19 and 20.

Employees who prevail in their lawsuits are entitled to back pay, triple damages, attorneys' fees and litigation costs.

For violations of chapter 149 and chapter 151, section 19, employees must first file a complaint with the Attorney General's Office (and wait 90 days or obtain permission from the Attorney General to proceed with a private lawsuit before the 90-day period has passed) before filing in court. Any lawsuit under these provisions must be filed in court within three years after the violation(s).

For violations of chapter 151, sections 1B and 20, employees do not need to file with Attorney General's Office, but must file in court within two years after the violation(s).

INSPECTION OF PAYROLL RECORDS

Employees have a right to inspect their own payroll records at reasonable times and places. Such records must be kept for two years and must include: a true and accurate record of the name, address and occupation of the employee, of the amount paid each pay period and of the daily and weekly hours worked by the employee.

SMALL NECESSITIES LEAVE ACT

Certain employees are permitted to take a total of 24 hours of unpaid leave during any 12-month period in order to: (1) participate in school activities directly related to the educational advancement of a son or daughter of the employee; (2) accompany the son or daughter of the employee to routine medical or dental appointments; (3) accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services related to the elder's care. Employees are eligible for the 24 hours of leave if: (1) their employer has 50 or more employees; (2) they have been employed for at least 12 months by the employer; and (3) the employee has worked for at least 1,250 hours for the employer during the previous 12-month period. For more information, visit the Attorney General's Office website at www.mass.gov/ago.

NO RETALIATION

No employee shall be penalized by an employer or in any way discriminated against because he or she has made a complaint or otherwise sought to enforce rights under the wage and hour provisions of chapters 149 and 151.

WORKPLACE NOTICE: This workplace notice is issued in accordance with the provisions of Massachusetts General Laws M.G.L. c. 151, s. 16 and the Code of Massachusetts Regulations 455 CMR 2.06(1), which require that employers post it in a conspicuous location.



June 2008