

District of Columbia Wage-Hour Rules

7 DCMR § 900 *et seq.*

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900 GENERAL PROVISIONS

900.1. The provisions of this Chapter are promulgated pursuant to authority set forth in Reorganization Plans No. 1 of 1978 and 1980 and the District of Columbia Minimum Wage Act Revision Act of 1992, D.C. Law 9-248, effective March 25, 1993.

900.2. The Office of Wage-Hour, District of Columbia Department of Employment Services, is vested with the authority to require employers to pay minimum wages, overtime compensation and related benefits to persons employed by employers other than the United States or District of Columbia governments.

900.3. The Office of Wage-Hour, District of Columbia Department of Employment Services, plans and administers a program to ensure compliance with the District of Columbia Minimum Wage Act Revision Act, Wage Payment and Wage Collection Law, Seats Law and the Wage Garnishment Law.

900.4. Effective October 1, 1993, the minimum wage in the District of Columbia shall be determined based on the minimum wage rate set from time to time by the United States Government, plus \$1.00.

901 [RESERVED]**902 PAYMENT OF MINIMUM WAGE**

902.1. Commencing October 1, 1993, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be the minimum wage set by the United States Government, plus \$1.00, except that this requirement shall not apply to Wage Order Number 5, "Laundry and Dry Cleaning Occupations," issued by the former Wage-Hour Board.

902.2. Irrespective of the basis of payment, whether time rate, piece rate, balms or commission, employers shall unconditionally pay employees all earned wages at least twice during each calendar month, on regular pay days, designated in advance by the employer, at not less than the minimum wage rate required.

902.3. The minimum wage provision shall not apply with respect to an individual:

- (a) Employed in a bona fide executive, administrative or professional capacity;
- (b) Employed as an outside salesperson; or
- (c) Engaged in the delivery of newspapers to the home of the consumer.

902.4. The minimum wage provision does not apply in instances where other laws or regulations establish minimum rates for the following:

(a) Handicapped: All handicapped workers shall be paid at a rate not less than the minimum wage, except in those instances where a certificate has been issued by the United States Department of Labor that authorizes the payment of less to handicapped workers under section 214(c) of the Fair Labor Standards Act.

(b) Job Training Partnership Act (JTPA): Individuals employed under provisions of the Job Training Partnership Act shall be paid wages pursuant to that Act.

(c) Older Americans Act (OAA): Individuals employed under provisions of the Older Americans Act shall be paid pursuant to that Act.

(d) Youth Employment Act (YEA): Individuals employed under provisions of the Youth Employment Act shall be paid wages pursuant to that Act

(e) Adult Learners: Newly hired persons 18 years of age or older may be paid the minimum wage established by the United States Government for a period not to exceed 90 calendar days.

(f) Students: Students employed by institutions of higher education may be paid the minimum wage established by the United States Government,

(g) Minors: Individuals under the age of 18 years old may be paid the minimum wage established by the United States Government.

902.5. The overtime provision shall not apply with respect to an individual:

- (a) Employed as a private household worker who lives on the premises of the employer.
- (b) Employed as a companion for the aged or infirm.

902.6. Overtime compensation under the Act shall be paid in accordance with Title 29 Code of Federal Regulations, Part 778, Overtime Compensation Under -the Fair Labor Standards Act of 1938, as amended, except that Subpart A (General Considerations), Subpart E (Exceptions From the Regular Rate Principles), Subpart G (Miscellaneous), and Section 778.101 (Maximum Non-overtime Hours) shall have no force and effect.

903 GRATUITIES

903.1. The employer shall advise the employee of provisions as they relate to determining wages based on gratuities and an employer taking a gratuity allowance from the wage of an employee shall have the burden of proving the employee received gratuities at least as much as the gratuity allowance taken.

904 LODGING AND MEALS

904.1. When the employer furnishes lodging to the employee, allowances may be taken at a level which does not exceed more than 80 percent of the rental value as determined by a comparison with the value of similar accommodations in the vicinity of those furnished.

904.2. Allowances for meals may be taken at a rate not to exceed \$2.12 for each meal made available to the employee by the employer. An allowance for not more than one meal shall be taken for four or less hours of work; over four hours of work, an allowance of not more than two meals shall be taken. Allowances may be taken for meals at a rate not to exceed \$6.36 per day for an employee who lives at the place of employment.

905 COMMISSIONS

905.1. No employer shall be deemed to have violated the provisions, as outlined in Section 4(c) of the Act, by employing any employee of a retail or service establishment in excess of 40 hours per work week provided that:

(a) The regular rate of pay of such employee is in excess of one and one-half times the minimum wage; and

(b) More than half of the employee's compensation for a representative period (not less than one month) represents commissions on goods or services.

905.2. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

906 SPLIT SHIFTS

906.1. In addition to the wages required by this Chapter, the employer shall pay the employee for one additional hour at the minimum wage for each day during which the employee works a split shift. This provision is not applicable to an employee who lives on the premises of the employer.

907 MINIMUM DAILY WAGE

907.1. The employer shall pay the employee for at least four (4) hours for each day on which the employee reports for work under general or specific instructions but is given no work or is given less than four hours of work, except that if the employee is regularly scheduled for less than four hours a day, such employee shall be paid for the hours regularly scheduled. The minimum daily wage shall be calculated as follows:

payment at the employee's regular rate for the hours worked, plus payment at the minimum wage for the hours not worked, as described above.

908 UNIFORMS AND PROTECTIVE CLOTHING

908.1. In addition to the wages required by this Chapter, the employer shall pay the cost of purchase, maintenance and cleaning of uniforms and protective clothing (including hats and shoes) required by the employer or by law, except that in lieu of purchasing, maintaining and cleaning plain and washable uniforms the employer may pay 15 cents (\$0.15) per hour in addition to the wages required by this Chapter, with the weekly maximum payment required being six dollars (\$6.00). Such payment of 15 cents (\$0.15) per hour shall not apply in the case of protective clothing.

908.2. When the employer purchases but the employee maintains and cleans plain and washable uniforms, the payment shall be 10 cents (\$0.10) per hour in addition to the wages required by this Chapter.

908.3. When the employer cleans and maintains but the employee purchases plain and washable uniforms, the payment shall be 8 cents (\$0.08) per hour in addition to the wages required by this Chapter.

909 TRAVEL EXPENSES

909.1. In addition to the wages required by this Chapter, the employer shall pay the cost of travel expenses incurred by the employee in performance of the business of the employer.

910 TOOLS

910.1. In addition to the wages required by this Chapter, the employer shall pay the cost of purchasing and maintaining any tools required of the employee in the performance of the business of the employer.

911 MAINTENANCE OF PAYROLL RECORDS

911.1. Every employer shall make, keep and preserve for a period of not less than three (3) years an accurate record for each employee containing the following information:

- (a) Full name of employee, including last, first and middle initial;
- (b) Social Security Number;
- (c) Occupation of the employee;
- (d) Address of the employee, including ZIP Code;
- (e) Date of birth;
- (f) Regular hourly rate of pay, total number of hours worked each work day and each workweek and time of day and day of week on which employee's workweek begins;
- (g) Basis on which wages are paid;
- (h) A daily record of the hours of beginning and stopping work and the hours of beginning and ending the meal recess if the employee works a split shift;

(i) Total daily or weekly straight-time earnings and excess overtime earnings for the workweek, or total earnings for non-overtime hours worked during the workweek and total earnings for overtime hours worked during the workweek;

(j) Total gross and net wages paid each pay period and deductions from and/or additions to wages;

(k) Date of payment and the pay period covered by the payment.

(l) In addition to the information required in Section 903, if the employee is a tipped employee, the application of tips to the minimum wage rate must be accurately documented and retained by the employer.

(m) In addition to the information required in Section 905, if the employee is paid by commission, the following information shall also be retained by the employer:

(1) Notation on the payroll record to readily identify each employee receiving wages based on commission;

(2) An indication for each workweek during which the employee's regular rate of pay is in excess of one and one-half (1 1/2) times the applicable minimum hourly rate;

(3) A copy of an Agreement or a written summary of the terms under which the employee and employer have formally understood the Commission basis of compensation. The Agreement or written summary must show the applicable representative period, the date it was entered into and the period in which it remains in effect; and

(4) Total compensation paid each pay period showing separately the amount of commission and the amount of non-commission straight-time earnings.

911.2. Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid (showing separately the earnings for overtime and non-overtime hours worked), an itemization of allowances and deductions from and additions to wages, net wages paid and hours worked during the pay period. For an employee who is paid commissions, the itemized statement shall also show separately the amount of commissions and the amount of noncommission straight-time earnings.

912 POSTINGS

912.1. Every employer who is subject to any provision of this Chapter shall keep a copy or summary of this Chapter and any applicable postings or literature in a form prescribed or approved by the Department of Employment Services, posted in a conspicuous and accessible place in or about the premises at which any employee covered is employed.

913 INVESTIGATION

913.1. The Department of Employment Services shall have the authority to:

(a) Investigate and ascertain the wages of persons employed in any occupation in the District of Columbia;

(b) Enter and inspect the place of business or employment of any employer in the District of Columbia in order to:

(1) Examine and inspect any books, registers, payrolls and other records as may be deemed necessary or appropriate;

(2) Copy books, registers, payrolls and other records as may be deemed necessary or appropriate;
and

(3) Question an employee for the purpose of ascertaining whether the provisions of this Chapter have been and are being complied with, and

(c) Require from any employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses and any other information that pertains to the employment of the employees as may be deemed appropriate or necessary to carry out the purposes of this Chapter.

914 COLLECTION OF UNPAID WAGES

914.1. Any employer who fails to pay the wages required by this Chapter shall pay to the Office of Wage-Hour, Department of Employment Services, an amount equal to the unpaid wages, which amount shall be distributed by the Office of Wage-Hour to employees due said unpaid wages.

914.2. Unpaid wages which cannot be paid due to the inability to locate employees or refusal of employees to accept said unpaid wages shall escheat to the District of Columbia Government in accordance with D.C. Code, Sections 42-201-242.

915 PROHIBITED ACTS

No employer shall charge an employee or require or permit an employee to pay directly or indirectly to the employer for breakages, walkouts, mistakes on customer checks and similar charges, or to pay fines, assessments or charges if the payment reduces the wages below the minimum wage.

916 PRESERVATION OF EXISTING RIGHTS AND LIABILITIES

Rights accrued and liabilities incurred prior to October 1, 1993, under Wage Orders issued by the Wage-Hour Board, shall be governed by provisions of the respective Wage Order issued by the Wage-Hour Board.

917 SEPARABILITY

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of the Chapter and the application thereof to other persons or circumstances shall not be affected thereby.

977 AMOUNT OF WAGES OF EMPLOYEES WHICH MAY BE SUBJECTED TO GARNISHMENT PROCEEDINGS FOR PAY PERIODS OTHER THAN WEEKLY

977.1. The maximum part of the disposable wages of any individual for pay periods other than weekly pay periods which may be subjected to garnishment are established as follows:

(a) Where the pay period is for less than one (1) workweek, the exemption from garnishment shall be the same as that for a weekly pay period. Thus, so long as the Federal minimum wage prescribed by §6(a)(1) of the Fair Labor Standards Act of 1938 is three dollars and thirty-five cents (\$3.35) an hour, the following formula shall apply:

(1) If an individual's disposable wages paid or payable for a pay period of less than one (1) workweek are one hundred dollars and fifty cents (\$100.50), thirty times three dollars and thirty-five cents ($30 \times \$3.35$) or less, wages may not be garnished in any amount;

(2) If an individual's disposable wages paid or payable for a pay period of less than one (1) workweek are more than one hundred dollars and fifty cents (\$100.50), but less than one hundred thirty-four dollars (\$134), only the amount above one hundred dollars and fifty cents (\$100.50) of disposable wages shall be subject to garnishment; or

(3) If an individual's disposable wages paid or payable for a pay period of less than one (1) workweek are one hundred thirty-four dollars (\$134) or more, not more than twenty-five percent (25%) of disposable wages shall be subject to garnishment.

(b) Where the pay period is longer than one (1) workweek, the weekly statutory exemption formula shall be transformed to a formula, providing equivalent restrictions on wage garnishment as follows:

(1) The twenty-five percent (25%) part of the formula shall apply to the aggregate disposable wages for all the work-weeks or fractions thereof compensated by the pay for the pay period;

(2) The "multiple" of the Federal minimum hourly wage equivalent to that applicable to the disposable wages for one (1) week shall be represented by the following formula: the number of workweeks, or fractions thereof times (x) thirty (30) times three dollars and thirty-five cents ($(x) \times 30 \times \$3.35$) (the applicable Federal minimum wage). For the purpose of this formula, a calendar month is considered to consist of four and one-third ($4 \frac{1}{3}$) workweeks. Thus, so long as the Federal minimum wage is three dollars and thirty five cents (\$3.35) an hour, the "multiple" applicable to the disposable wages shall be computed as follows:

(i) For a two week period, two hundred and one dollars (\$201, two times thirty times three dollars and thirty-five cents ($2 \times 30 \times \$3.35$));

(ii) For a monthly period, four hundred thirty-five dollars and fifty cents (\$435.50), four and one-third times thirty times three dollars and thirty-five cents ($4 \frac{1}{3} \times 30 \times \3.35); and

(iii) For a semimonthly period, two hundred and seventeen dollars and seventy-five cents (\$217.75), two and one-sixth times thirty times three dollars and thirty-five cents ($2 \frac{1}{6} \times 30 \times \3.35).

(3) The "multiple" for any other pay period longer than one (1) week shall be computed in a manner consistent with this paragraph.

999 DEFINITIONS

999.1. The following words and phrases used in these sections applicable to the District of Columbia Wage Payment and Wage Collection Law shall have the following meanings ascribed:

Administrative Capacity - A person employed in a bona fide administrative capacity shall mean an employee who meets all of these tests:

(1) Primary duty must be either (a) responsible office or nonmanual work (in other words, "white collar" work) directly related to management policies or general business operations or (b) responsible work that is directly related to academic instructions or training carried on in the administration of a school system or educational establishment; and

(2) Customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures. He or she must have authority to make important decisions; and

(3) Must (a) regularly assist a proprietor or a bona fide executive or administrative employee or (b) perform work under only general supervision along specialized or technical lines requiring special training, experience or knowledge or (c) execute special assignments under general supervision; and

(4) Must not spend more than 20 percent of his or her workweek (less than 40 percent if employed by a retail or service establishment) on nonexempt work, that is, work not directly and closely related to his or her administrative duties; and

(5) Must be paid on a salary or fee basis at a rate of not less than \$155 a week.

Special proviso for high salaried administrative employees: an administrative employee who is paid on a salary or fee basis at a rate of at least \$250 a week is exempt if (a) his or her primary duty consists of responsible office or non manual work directly related to management policies or general business operations or (b) responsible work in the administration of a school system or educational establishment or institution or department or subdivision thereof that is directly related to the academic instruction or training; and such primary duty includes work requiring the exercise of discretion and independent judgment.

Interpretations of the term "administrative capacity" shall be made in accordance with Title 29 Code of Federal Regulations, Part 541, Defining the Terms "Executive," "Administrative," "Professional" and "Outside Salesman."

Executive Capacity - A person employed in a bona fide executive capacity shall mean an employee who meets all of these tests:

(1) Primary duty must be management of the enterprise, or of a recognized department or subdivision; and

(2) Regularly direct the work of at least two full-time employees; and

(3) Have authority to hire and fire, or recommend hiring and firing; or whose recommendation on these and other actions affecting employees is given weight; and

(4) Regularly exercise discretionary powers; and

(5) Devote no more than 20 percent of his or her workweek (less than 40 percent if he or she is employed by a retail or service establishment) to nonexempt work, that is, not directly and closely related to his or her executive duties; and

(6) Paid on a salary basis at a rate of at least \$155 a week.

Two exceptions to the percentage tests on nonexempt work: (1) the employee is in sole charge of an independent or physically separated branch establishment; (2) owns a 20 percent interest in the enterprise or a recognized department or subdivision. The percentage tests on nonexempt work do not apply to such an executive.

Special proviso for high salaried executives: an executive who is paid at least \$250 a week on a salary basis is exempt if he or she regularly directs the work of at least two full-time employees and his or her primary duty is management of the enterprise or a recognized department or subdivision. The percentage tests on nonexempt work do not apply to such an executive.

Interpretations of the term "executive capacity" shall be made in accordance with Title 29 Code of Federal Regulations, Part 541, Defining the Terms "Executive," "Administrative," "Professional" and "Outside Salesman."

Professional Capacity - A person employed in a bona fide professional capacity shall mean an employee who meets all of these tests:

(1) Primary duty must be either (a) work requiring knowledge of an advanced type in a field of science or learning. Usually obtained by a prolonged course of specialized instruction and study or (b) work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on his or her invention, imagination, or talent or (c) work as a teacher certified or recognized as such in the school system or educational institution by which he or she is employed; and

(2) Consistently exercise discretion and judgment; and

(3) Do work that is mainly intellectual and varied, as distinguished from routine or mechanical duties; and

(4) Must not spend more than 20 percent of his or her workweek on activities not essentially a part of and necessarily incident to professional duties; and

(5) Paid on a salary or fee basis at a rate of not less than \$170 a week. This requirement does not apply to (a) an employee who is the holder of a valid license and is engaged in the practice of law or medicine; or (b) an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program; or (c) an employee employed and engaged as a teacher.

Special proviso for high salaried professional employees: a professional employee who is paid on a salary or fee basis at a rate of at least \$250 a week is exempt if (a) his or her primary duty consists of work in the learned field or work as a teacher in the activity of imparting knowledge which requires consistent exercise of discretion and judgment or (b) primary duty is artistic work that requires invention, imagination or talent. The 20 percent test on nonexempt work does not apply to such a professional employee.

Interpretations of the term "professional capacity" shall be made in accordance with Title 29 Code of Federal Regulations, Part 541, Defining the Terms "Executive," "Administrative," "Professional" and "Outside Salesman."

999.2. The terms defined in the Act shall have the meaning set forth in the Act. In addition, when used in this Chapter, the following words shall have the meaning ascribed:

Act - means the District of Columbia Minimum Wage Act Revision Act of 1992.

Babysitter - means a person employed to care for children under the age of 18 in or about the private home in which the children reside. Persons who spend more than 20 percent of their time on household work not directly related to caring for children shall not be deemed a babysitter. Interpretations of the term "babysitter" shall be made in accordance with Title 29 Code of Federal Regulations, Part 552, "Application of the Fair Labor Standards Act to Domestic Service."

Casual Babysitter - means an individual who is employed as a babysitter on an irregular or intermittent basis and whose vocation is not babysitting. Interpretations of who is a "casual babysitter" shall be made in accordance with Title 29 Code of Federal Regulations, Part 552.5 "Casual Basis" and Part 552.104 "Babysitting Services Performed on a Casual Basis."

Companion for the Aged or Infirm - includes a person employed to provide fellowship, care and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Included in the services performed by a companion is household work directly related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes and other similar services. Persons who spend more than 20 percent of their time on household work not directly related to caring for the aged or infirm shall not be deemed a companion for the aged or infirm.

Institution of Higher Education - is an institution above the secondary level, such as a college or university, a junior college or a professional school of engineering, law, library science, social work, etc. It is one that is recognized by a national accrediting agency or association as determined by the Secretary of Education. Any further interpretations of the term shall be made in accordance with Title 29 Code of Federal Regulations, Chapter V, Section 519.12(b).

Minimum wage - means the District of Columbia minimum wage.

Private household worker - means an occupation performed by an individual in or about the private home of the person by whom he/she is employed (including temporary dwelling places and separate and distinct dwellings maintained by individuals or families in apartment houses or hotels) including, but not limited to cooks, maids, butlers, personal attendants, housekeepers, homemakers, child mentors, child monitors, day workers, nurses, home attendants, launderers, caretakers, gardeners, yard workers, chauffeurs of automobiles for family use, personal secretaries and babysitters other than casual babysitters.

Parking Lot Attendant/Parking Garage Attendant - means any person who is employed to park or supervise the parking of automobiles at a parking lot or parking garage. A person employed as a cashier, guard or maintenance person shall not be deemed as an "attendant at a parking lot or parking garage."

Outside Salesperson - means an employee who meets the following tests:

(1) Employed for the purpose of and customarily and regularly works away from the employer's place of business in (a) selling tangible or intangible items such as goods, insurance, stocks, bonds, or real estate or (b) obtaining orders or contracts for services or use of facilities, such as radio time, advertising, typewriter repairs; and

(2) Hours of work not related to his or her outside sales do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer.

Interpretations of the term "outside salesperson" shall be made in accordance with Title 29 Code of Federal Regulations, Part 541, Defining the Terms "Executive," "Administrative," "Professional" and "Outside Salesman."

Split Shift - means a schedule of daily hours in which the hours worked are not consecutive, except that a schedule in which the total time out for meals does not exceed one hour shall not be deemed a "split shift."

Tipped Employees - are those who engage in occupations in which tips are customarily and regularly received from patrons. Tipped employees include, but are not limited to, waiters, waitresses, counter personnel who serve customers, bus persons, server helpers, service bartenders, car wash attendants, parking lot attendants, parking garage attendants, bootblacks, hotel doorkeepers, bellhops, hat checkers, cosmetologists, manicurists, pedicurists, shampooers and aestheticians.