



ASSISTANCE *for*
BUSINESS CLINIC

Employment Relations Division



Montana Department of
LABOR & INDUSTRY

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LAWS ADMINISTERED BY THE Employment Relations Division

EMPLOYMENT RELATIONSHIP / INDEPENDENT CONTRACTOR STATUS

MINIMUM WAGE AND OVERTIME LAWS

WAGES & WAGE PROTECTION

CHILD LABOR / YOUTH EMPLOYMENT

PREVAILING WAGE LAW

WORKERS COMPENSATION COMPLIANCE

EMPLOYMENT RELATIONS DIVISION

PO Box 8011
Helena, MT 59604
(406) 444-6543
erd.dli.mt.gov

U.S. DEPARTMENT OF LABOR
SALT LAKE CITY DISTRICT OFFICE

Wage & Hour Division
Eagle Gate Plaza & Tower
60 E South Temple St, Suite 575
Salt Lake City, UT 84111-1016
(801) 524-5706
www.dol.gov/whd

CITIZENS' ADVOCATE/GOVERNOR'S OFFICE

1-800-332-2272
(406) 444-3468
www.citizensadvocate.mt.gov

APPRENTICESHIP & TRAINING PROGRAM

Workforce Services Division
PO Box 1728
Helena MT 59624-1728
(406) 444-2645
www.apprenticeship.mt.gov/

Defines Employment — (§ 39-3-201, MCA)

- Employ means to permit or suffer to work
 - Employee includes any person who works for another for hire, except that the term does not include a person who is an independent contractor
 - Employer includes any individual, partnership, association, corporation, business trust, legal representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee
- If a dispute arises regarding employment status of an individual for purposes of a wage claim, ARM 24.16.7520 may apply.

Defines Independent Contractor — (§ 39-71-417, MCA)

- A person who regularly and customarily performs services at a location other than the person’s own fixed business location shall apply to the Department for an Independent Contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.
- If a dispute arises regarding the requirement of a worker mandated to hold an exemption certificate, ARM 24.35.203 may apply.

Who needs the Independent Contractor Exemption Certificate (ICEC)?

- Sole proprietor, working member of a partnership; working member of a limited liability company, or a manager of a manager-managed limited liability company in the construction industry as defined in 39-71116, MCA, corporate officers in the trucking industry.
- An officer or manager who is exempt under **39-71-401(2)(r)(iii)** or **(2)(r)(iv)** may apply, but is not required to apply, to the department for an independent contractor exemption certificate

A-B Test

- Common Law Definition of an Independent Contractor is referred as.
- **A** – Must be free from control and direction, and
- **B** – Must have their own independently established trade, business, occupation, or profession listed on their ICEC.

Four Factors of Control:

1. Direct evidence of control or direction, or the right to control a worker,
2. Furnishing of substantial equipment,
3. Method of payment, and
4. The right to fire without liability.

Montana Code Annotated (MCA)
Administrative Rules of Montana (ARM)
Fair Labor Standards Act (FLSA)
Code of Federal Regulations (CFR)

ATTENTION CERTIFICATE HOLDER AND HIRING AGENTS:

Montana law provides that this certificate creates a conclusive presumption of the person's status as an Independent contractor. This certificate only applies to the named person for the listed occupation(s) and does not include any employees or subcontractors the person may hire.

Any certificate holder, hiring agent, employer, or any other person who violates the independent contractor provisions of Title 39, Chapter 71, MCA may be subject to a \$1000 fine and other penalties provided by law.

HIRING AGENTS:

It is advisable to verify that this certificate is valid and in good standing. Please visit our website at www.mtcontractor.com or call (406) 444-7734

NOTICE REGARDING UNEMPLOYMENT INSURANCE:

Corporate officers of corporations and managers of manager-managed LLC's are not exempt from Montana's Unemployment Insurance Laws and must report wages to the Unemployment Insurance Division of the Department of Labor and Industry.



Montana Department of
LABOR & INDUSTRY



MINIMUM WAGE LAWS

Federal Minimum Wage

\$7.25 (Effective July 24, 2009)

Companies automatically covered by the federal Fair Labor Standards Act:

- Any enterprise engaged in interstate commerce or the production of goods through such commerce
- Private hospitals
- Private schools
- Preschools and daycares
- Fraternal organizations
- Sheltered workshops
- Federal employees
- State/public sector employees and employees of the political subdivisions
- Domestic service workers such as maids, chauffeurs, cooks, or full-time babysitters
- Retail and service establishments whose gross annual sales exceeds \$500,000

Any employee individually engaged in interstate commerce – examples:

- Communication and transportation workers
- Employees who handle, ship or receive goods moving in interstate commerce
- Clerical or other workers who regularly use the mail or telephone for interstate communication or who keep records on interstate transactions
- Employees who regularly cross state lines in the course of their work

State Minimum Wage

\$8.65 (Effective January 1, 2020)

This minimum wage rate is subject to a cost-of-living adjustment based on the Consumer Price Index no later than September 30th of each year and the new rate takes effect on January 1st.

- Businesses NOT engaged in interstate commerce with gross annual sales of \$110,000 or less per year may pay \$4.00 per hour if the employee is not covered under the FLSA. (§ 39-3-409, MCA)
- Any employee who is exempt or not covered by the FLSA is covered by Montana state law as is any employee for whom state law establishes a higher standard for payment than does federal law.
- Agricultural employees covered by state law may be paid the applicable minimum hourly wage as provided above or a monthly salary of at least \$635 per month.

If more than 500-man days** are worked for the employer in a quarter year, the FLSA applies and the employee must earn at least minimum wage for all hours worked.

If less than 500-man days** are worked for the employer in a quarter year, state law applies.

** Language used in federal regulations. A man day is when one employee performs at least one hour of work on a day.

Note: Montana laws do not allow a tip credit, meal credit, or training wage.

Is Our Organization Covered by the Federal Fair Labor Standards Act (FLSA)?

Question 1:
Does ENTERPRISE COVERAGE apply?

Question 1(A): Are we a NAMED ENTERPRISE?

FLSA:

- Hospitals
- Residential centers caring for older adults and people with disabilities
- Schools – preschools, elementary and secondary schools, and institutions of higher education
- Schools for children who are mentally or physically disabled or gifted
- Governments – federal, state, and local

Yes

No

ENTERPRISE COVERAGE applies to your organization making all of your workers subject to the FLSA and Montana law, unless an exemption applies. You need to apply the higher standard between the two laws.

Question 1(B): Does our organization have gross annual sales over \$500,000/year and have at least two (2) workers?

Yes

No

ENTERPRISE COVERAGE applies to your organization making all of your workers subject to the FLSA and Montana law, unless an exemption applies. You will need to apply the higher standard between the two laws.

Question 2: Does INDIVIDUAL COVERAGE apply to any of our workers?

Yes, if the worker is regularly “engaged in commerce or in the production of goods for commerce.” *Examples:*

- Produce goods, such as a worker assembling components in a sheltered workshop/factory to be sent out of state
- Regularly make phone calls to persons located in other states
- Process credit card transactions, or performing the accounting or bookkeeping activities for such activities
- Handle records of interstate transactions
- Travel to other states for job
- Perform janitorial work in buildings where goods are produced for shipment outside Montana

Yes

No

INDIVIDUAL COVERAGE applies to the worker and making the worker subject to the FLSA and Montana law. You will need to apply the higher standard between the two laws.

FLSA does not apply to the employee and only Montana law applies, unless there is a Montana exemption for the business or worker.

For further clarification in determining federal jurisdiction (enterprise or individual coverage), please contact the U.S. Department of Labor at (801) 524-5706 or visit their website: www.dol.gov.

OVERTIME LAWS

A **non-exempt employee** must be paid at a rate of one and one-half times the regular rate for all hours worked over 40 in a workweek. (§ 39-3-405, MCA)

Holiday pay, sick leave, and vacation hours do not count toward the 40 hours. (ARM, 24.16.2503)

Workweeks cannot be averaged together. (ARM, 24.16.501)

An **exempt employee** must meet certain criteria to be exempt or excluded from overtime. (§ 39-3-406, MCA)

Joint employment is where an employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist. (ARM, 24.16.2101)

Multiple Exclusions from Minimum Wage and Overtime – (§ 39-3-406, MCA)

COMPENSATORY TIME

Public Sector (state, county, city government or any political subdivision and school districts):

- Permissible in public sector for exempt and nonexempt employees following rules and regulations established under the federal Fair Labor Standards Act (FLSA).
- Non-exempt public employees accumulate comp time at 1½ hours for every hour over 40 within a workweek

Private Sector (Non-government employers):

- Banking of overtime hours is not allowed.

WORKWEEK

Basis for determining if minimum wage is met and overtime due.

The workweek is a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods. Each workweek stands alone and cannot be averaged together. (ARM, 24.16.501)

A pay period and a workweek do not necessarily need to be the same.

An employer can have an employee flex time in a workweek to avoid going into overtime.

Example of semi-monthly pay period:

SUN	MON	TUE	WED	THURS	FRI	SAT
(29	30	31	1	2	3	4)
(5	6	7	8	9	10	11)
(12	13	14	15	16	17	18)
(19	20	21	22	23	24	25)
(26	27	28	29	30	31	1)

REGULAR RATE

The regular rate is determined by dividing the total wages for employment in any workweek by the total number of hours actually worked in that workweek for which such compensation was paid.

CALCULATIONS:

Weekly: $\$350 \div 40 \text{ hrs/week} = \8.75

Bi-Weekly: $\$725 \times 26 \text{ pay periods/yr} \div 52 \text{ weeks/yr} \div 40 \text{ hrs/week} = \9.06

Semi-Monthly: $\$750 \times 24 \text{ pay periods/yr} \div 52 \text{ weeks/yr} \div 40 \text{ hrs/week} = \8.65 (twice per month)

Monthly: $\$1500 \times 12 \text{ months/yr} \div 52 \text{ weeks/yr} \div 40 \text{ hrs/week} = \8.65

Regular rate may not be less than the applicable minimum wage.

Regular Rate Example:

An employee is paid on a commission or piece rate basis and is paid biweekly. The first week in the pay period the employee works 50 hours and earns \$350.00 so the regular rate equals \$7.00. The employer must make up the \$1.65 per hour difference between \$7.00 and \$8.65 per hour to ensure minimum wage is paid that week. The employee would then be entitled to overtime compensation at time and one-half minimum wage. The second week the employee works 30 hours and earns \$270.00 so the regular rate is \$9.00 per hour. The weeks are not averaged together.

OVERTIME CALCULATIONS

Hourly: An employee paid at an hourly rate is entitled to overtime pay at time and one-half.

Example: An employee is paid on a weekly basis at the rate of \$8.65 per hour. His workweek is Sunday through Saturday. The employee worked 42 hours during this pay period.

$40 \text{ hours} \times \$8.65/\text{hr} = \$346.00$ regular wages

$\$8.65 \times 1.5 = \12.98 overtime rate

$\$12.98 \times 2 = \25.96 overtime wages

$\$346.00$ regular wages + $\$25.96$ overtime wages = $\$371.96$ total due

Commission/Piece Rate: The regular rate of an employee paid on a commission, piece rate, or flat book rate basis is determined by dividing the total weekly earnings by the total number of hours actually worked in the week. The employee is entitled to payment of one-half this regular rate for each hour worked over 40 - in addition to the full commission or piecework earnings.

Example: Bernadette works 45½ hours and earns \$400.00. Her regular rate is \$8.79 per hour ($\$400 \div 45\frac{1}{2}$ hours). She is entitled to her regular earnings (\$400.00) plus an additional half of her regular rate ($\$8.79 \div 2$) or \$4.39 for each hour worked over 40. In this case, she is due an additional \$24.14 or a total of \$424.14 ($\$400.00 + \24.14) for that workweek.

Salary: An employee paid on a salary basis is entitled to overtime pay at a rate that is based in part on the terms of employment.

Example: 40 Hour Workweek Basis

$$\begin{aligned} \$1800 \times 12 \div 52 \div 40 &= \$10.38 \text{ (regular rate)} \\ \$10.38 \times 1.5 &= \$15.57 \text{ (overtime rate)} \end{aligned}$$

Fluctuating Workweek: This method may not be used unless the salary is sufficiently large to assure no workweek's regular rate is less than the minimum wage and employee clearly understands the salary covers whatever hours the job may demand in a particular workweek and the employer pays the salary even though the workweek is one in which a full schedule of hours is not worked.

Example:

$$\begin{aligned} \text{1st week} &- \$2100 \times 12 \div 52 \div 55 = \$8.81 \text{ (regular rate)} \\ \text{2nd week} &- \$2100 \times 12 \div 52 \div 46 = \$10.53 \text{ (regular rate)} \\ \text{3rd week} &- \$2100 \times 12 \div 52 \div 36 = \$13.46 \text{ (regular rate)} \\ \text{Regular rate/week} \div 2 &= \text{half time overtime rate for hours worked over 40} \end{aligned}$$

*We recommend the pay agreement be in writing.

Different Rates of Pay: An employer who pays an employee at two different rates, has a choice to pay the overtime using the highest rate or determine the weighted average.

Weighted average: Determining the weighted average for multiple rates of pay.

Example: One week an employee works in a housekeeping position for 36 hours for which \$8.65 per hour is paid. The employee then spends 10 hours in a front desk position for which \$9.50 per hour is paid. The wages are computed as follows:

$$\begin{array}{r} 36 \text{ hours} \times \$8.65 \text{ per hour} = \$311.40 \\ \underline{10 \text{ hours} \times \$9.50 \text{ per hour} = \$95.00} \\ 46 \text{ hours worked} \qquad \qquad \$406.40 \text{ regular earnings} \end{array}$$

$$\begin{aligned} \$406.40 \div 46 \text{ hours} &= \text{regular rate} = \$8.83 \text{ per hour} \\ \$8.83 \div 2 &= \frac{1}{2} \text{ time rate} = \$4.42 \text{ per hour} \\ \$4.42 \times 6 \text{ overtime hours} &= \$26.52 \text{ overtime earnings} \end{aligned}$$

$$\begin{array}{r} \$406.40 \\ \underline{\$26.52} \\ \$432.92 \text{ total due} \end{array}$$

NOTES

MULTIPLE EXCLUSIONS FROM MINIMUM WAGE AND OVERTIME – (§ 39-3-406, MCA)

Exempt from minimum wage/overtime:

- a) Students participating in a distributive education program established under the auspices of an accredited educational agency. (Prior approval required.)
- b) Persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks.
- c) Persons employed directly by the head of a household to care for children dependent upon the head of the household.
- d) Immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent.
- e) Persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis.
- f) Persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment. (Prior approval required.)
- g) Apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment. (Prior approval required.)
- h) Learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part.
- i) Retired or semi-retired persons performing part-time incidental work as a condition of their residence on a farm or ranch.
- j) An individual employed in a bona-fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, a computer systems analyst, computer programmer, software engineer, network administrator, or other similarly computer employee who earns not less than \$27.63 an hour pursuant to 29 CFR 541.400 or 541.402, or an individual employed in an outside sales capacity as defined in 29 CFR 541.500.
- k) An individual employed by the United States of America.
- l) Resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility.
- m) A direct seller as defined in 26 U.S.C. 3508.
- n) A person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.
- o) A person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.
- p) An employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is legal guardian.
- q) An employee of a seasonal nonprofit establishment that is an organized camp or religious or educational conference center.

The following employees are exempt from the overtime provisions of Montana statute:

- a) An employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502.
- b) An employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act.
- c) An individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state.
- d) A salesperson, part person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers.
- e) A salesperson engaged primarily in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers.
- f) A salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer.
- g) An employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum work week applicable to them under 39-3-405.
- h) An employee employed in agriculture in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes.
- i) An employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is: i) primarily employed during the workweek in agriculture by a farmer; and ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404.
- j) An employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment.
- k) A driver employed by an employer engaged in the business of operating taxicabs.
- l) An employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institutions so long as the children are in residence at the institution and so long as the employee and employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000.
- m) An employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight.
- n) An employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1).
- o) An employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1½ times the hourly wage rate for the employee.

- p) An employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1½ times the hourly wage rate for the employee.
- q) A firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.
- r) An officer or other employee of a police department in a city of first or second class who is working a work period established by the chief of police under 7-32-4118.
- s) An employee of a department of public safety working under a work period established pursuant to 7-32-115.
- t) An employee of a retail establishment if the employee's regular rate of pay exceeds 1½ times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services.
- u) A person employed as a guide, cook, camp tender, outfitter's assistant, or livestock handler by a licensed outfitter as defined in 37-47-101.
- v) An employee employed as a radio announcer, news editor, or chief engineer by an employer in a second-or-third class city or town.
- w) An employee of the consolidated legislative branch as provided in 5-2-503.
- x) An employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation.
- y) An employee of an air carrier subject to the provisions of 45 U.S.C. 181, et seq., whose hours worked in excess of 40 hours in a workweek were not required by the air carrier but were arranged through a voluntary agreement among employees to trade scheduled work hours.

NOTES

“PART 541” EXEMPTIONS

Executive Employee

When applying the executive exemption under state jurisdiction, ARM, 24.16.211, provides:

“(3) The following federal regulations are adopted by reference...(b) 29 CFR part 541, subpart B, as in effect on July 1, 2009.”

Title 29 of the Code of Federal Regulations (CFR) Part 541.100 (Subpart B - Executive Employees) states:

“(a) The term “employee employed in a bona fide executive capacity” in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary basis pursuant to §541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities;

(2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(3) Who customarily and regularly directs the work of two or more other employees; and

(4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.”

Administrative Employee

When applying the administrative exemption under state jurisdiction, ARM, 24.16.211, provides:

“(3) The following federal regulations are adopted by reference...(c) 29 CFR part 541, subpart C, as in effect on July 1, 2009.”

Title 29 of the CFR Part 541.200 (Subpart C - Administrative Employees) states:

“(a) The term “employee employed in a bona fide administrative capacity” in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis pursuant to §541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities;

(2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

(3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.”

“PART 541” EXEMPTIONS (continued)

Professional Employee

When applying the professional exemption under state jurisdiction, ARM, 24.16.211, provides:

“(3) The following federal regulations are adopted by reference...(d) 29 CFR part 541, subpart D, as in effect on July 1, 2009.”

Title 29 of the CFR Part 541.300 (Subpart D - Professional Employees) states:

“(a) The term “employee employed in a bona fide professional capacity” in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis pursuant to §541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities; and

(2) Whose primary duty is the performance of work:

(i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or

(ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor”

Other important factors to consider when applying Administrative, Executive, and Professional exemptions:

- Title 29 CFR Part 541, Subpart G – Salary Requirements
- Title 29 CFR Part 541, Subpart H – Definitions and Miscellaneous Provisions

Computer Employee

On October 1, 2013, Montana enacted a new minimum wage and overtime exemption which applies to computer related occupations. As Montana did not recognize the computer exemption until October 1, 2013, no exemption of this nature may be applied prior to October 1, 2013.

Section 39-3-406(1)(j), MCA states “...a computer systems analyst, computer programmer, software engineer, network administrator, or other similarly skilled computer employee who earns not less than \$27.63 an hour pursuant to 29 CFR 541.400 or 541.402...”

29 CFR Part 541.400 states, in pertinent part:

“...job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption...”

(1) The application of systems analysis techniques and procedures, including consult

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

“PART 541” EXEMPTIONS (continued)

- (3) *The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or*
- (4) *A combination of the aforementioned duties, the performance of which requires the same level of skills...*”

The federal law allows for an exemption when the employee meets either a salary or the hourly criteria. However, when the state and federal law are not the same, the law with the higher standard would apply. Since Montana law specifically refers to the hourly rate or its equivalent, in order to meet the exemption, the employee must be paid \$27.63 per hour or a salary which would, if divided by the total number of hours worked in the workweek, equate to \$27.63 per hour.

Outside Salesman

Under 29 CFR, Part 541.500, the term employee employed in the capacity of outside salesman in section 13(a)(1) of the Act shall mean any employee:

- (1) Whose primary duty is:
 - (i) making sales within the meaning of section 3(k) of the Act, or
 - (ii) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- (2) Who is customarily and regularly engaged away from the employer’s place or places of business in performing such primary duty.
 - (b) The term “primary duty” is defined at §541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee’s own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee’s sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee’s sales or display catalogue, planning itineraries and attending sales conferences.
 - (c) The requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees described in this section.

**Section 3(k) states: “‘Sale’ or ‘sell’ includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.”

NOTES

WAGES & WAGE PROTECTION

Defines Wages --- (§ 39-3-201(6)(a), MCA)

Any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly or yearly and shall include bonus, piece work, tips and gratuities of any kind.

Establishes when wages are due and payable --- (§§ 39-3-204 & 205, MCA)

- Within ten (10) business days after they are due and payable while the employee is still employed. If, an employee does not submit their timesheet by the employer's established deadline for processing timesheets, the employer may opt to not pay the employee until the next scheduled pay period.
- If the employee quits, wages are on the next pay day for the period in which the employee was separated, or 15 days, whichever occurs first. This applies to public sector, private sector, and employers from within the state of Montana or employers whose payroll originates outside Montana.
- If an employee is laid off, or discharged, all wages are due immediately unless the employer has a preexisting, written policy that extends the time for payment. The wages cannot be delayed beyond the next pay day for the period in which the separation occurred, or 15 days, whichever occurs first. (ARM 24.16.7511)
- Employee may be paid by electronic funds transfer or similar means of direct deposit if employee has consented in writing or electronically but cannot be required to be paid in this manner.
- In the case of an employee discharged for allegations of theft connected to the employee's work, an employer may withhold the value of the theft provided:
 - a) the employee agrees in writing to the withholding, or;
 - b) charges have been filed with law enforcement within seven (7) business days of separation. If no charges are filed with a court of competent jurisdiction within 30 days of the filing of the report with law enforcement, the wages are due within the 30-day period. If the employee is found not guilty of the charges or the employer withholds in excess of the value of the theft, the court may order the employer to pay the withheld amount plus interest.

Limits withholdings of wages to room, board and other incidentals furnished by the employer as part of the employment agreement. --- (§ 39-3-204, MCA)

Wages cannot be withheld for shortages, damages or mistakes (Attorney General Opinions #17, Volume 36 and #25, Volume 11)

voids any contract between an employer and employee that does not comply with the wage and hour laws. --- (§ 39-3-208, MCA)

NOTES

RECORDS REQUIRED TO BE KEPT

(ARM, 24.16.6102)

Records required for exempt employees differ from those for nonexempt workers. Also, special information is required on employees under uncommon pay arrangements or to whom board, lodging or other facilities are furnished. Records of the required information must be preserved for at least three (3) years.

- Name in full
- Home address
- Time of day and day of week employee's workweek begins
- Regular hourly rate of pay and length of pay period
- Hours worked each work day and total hours worked each workweek
- Date of payment and pay period covered by payment
- Social Security Number
- Date of birth
- Total daily or weekly straight time earnings or wages
- Total weekly overtime compensation
- Total additions to or deductions from wages
- Total wages paid each pay period

Statute of Limitations under Montana jurisdiction – (§ 39-3-207, MCA)

- *An employee has 180 days from the default of the payment to file a wage claim.*
- *An employee may recover wages and penalties for a period of 2 years, 3 years if willful violation*

METHODS OF PAYMENT

- Hourly
- Commission Basis
- Piece Rate
- Salary
- Salary Plus Bonus
- Salary Plus Commission
- Flat Book Rate
- Combination of any of the above

All are wages and must at least equal the applicable minimum wage for each hour of work unless a specific exemption applies.

NOTES

HOURS WORKED

Includes all the time an employee is required to be on duty or on the employer's premises or at a prescribed work place and all the time during which he is suffered or permitted to work for the employer. --- (ARM, 24.16.1005)

Time spent waiting -- Waiting to be engaged/Engaged to Wait (ARM, 24.16.1005)

Preparatory and concluding activities -- (ARM, 24.16.1008)

Staff/Business meetings and training are not work time if: -- (ARM, 24.16.1009)

- *Attendance is outside of employee's regular working hours,*
- *Attendance is voluntary,*
- *Not directly related to employee's job, **and***
- *Employee does not perform any productive work during attendance*

On call time --- (ARM, 24.16.1005)

Sleeping time --- (ARM, 24.16.1007)

- 24 hours or more
- Less than 24 hours

Rest breaks -- (ARM, 24.16.1006(1))

There is **not** a federal or Montana state law that requires an employer to furnish a rest break (coffee break); however, if provided the time spent on the break is work time.

Meal periods -- (ARM, 24.16.1006(2))

There is **not** a federal or Montana state law that requires an employer to furnish a meal break; however, if provided the following criteria would need to be met for it to be a bona fide period in which the time is not work time:

- employee completely relieved of duty
- at least 30 minutes in duration

NOTES

TRAVEL TIME

General Rule for Travel Time (ARM, 24.16.1010): For those individuals and enterprises NOT exempt from overtime and/or minimum wage or for employees whose travel time is NOT covered by a collective bargaining agreement:

- Time spent in a travel status may be considered work time for wage payment purposes and for purposes of minimum wage and overtime calculation.
- Time spent in travel to special events, such as training or conferences, whether for a day or for periods of overnight duration, may also be work time.

Not all circumstances can be addressed, for instance the applicability of collective bargaining agreements, but the applications contained herein are intended to address common travel situations.

Realize, the following are only examples and each travel situation needs to be weighed based on its own merits to determine whether it is work time or not.

How is the general rule applied?

1. Normal travel from the home of the employee to the place of business of the employer is not work time. For instance, if the work starts at 8:00 and the employee leaves home at 7:30, time spent in travel to the place of business where the principal activity is performed is not work time.
2. If the employer requires the employee to report to a shop or the employer's principal office either at the beginning of the day, or at the conclusion of the day, any time spent traveling from the shop to the first location or from the last location to the shop is work time.
3. Time spent traveling between job sites is all in a day's work and is considered work time. For instance, a plumber who arrives at the shop and travels to the different worksites throughout the day is working while traveling from the worksite to worksite.
4. Time spent traveling to other sites during the day is work time, as is time spent returning to the shop from the last work location. If the employee is relieved from duty after working at the last location and it is not required to report back to the shop, travel to home from that location is not work time, unless there is an agreement to the contrary.
5. A work crew is given the option of meeting at the employer's premises at 7:30 a.m. to ride to the job site in the company vehicle or reporting to the job site at 8:00 a.m. However, the crew leader is required to drive the company truck from the employer's premises to the job site to transport tools and employees.
6. The travel time from 7:30 to 8:00 a.m. for the crew choosing to ride in the company's vehicle is home to work travel and does not need to be counted as hours worked, provided the employees do not perform any work prior to traveling to the job site, i.e. loading the truck with tools and supplies. However, travel time for the crew leader required to drive the company vehicle is work time, as it is work for the employer's benefit at the employer's request.
7. A mechanic's normal workday is 8:00 a.m. to 5:00 p.m. However, the mechanic receives a phone call at 9:00 p.m. requesting he go to a customer's shop to repair a malfunctioning machine. Travel time from the worker's home to the customer's shop and back is work time.
8. An asbestos removal company contracts jobs throughout the state. Employees report to the various job sites at 8:00 a.m. each day for the duration of each project. This work on various job sites is a normal part of this type of employment and would not be considered special assignments. Employees travel to and from the distant locations on a daily basis or may choose to temporarily reside in the area. Travel time is home to work travel and does not need to be counted as hours worked.

9. An employee who normally finishes the day's work on the employer's premises at 5:00 p.m. is sent to a job site completing work at 8:00 p.m. The employee is allowed to return home from the job site instead of returning to the employer's premises. The travel from the job site to the employee's home is home-to-work travel and not hours worked, except for any time spent in travel which exceeds the employee's normal home to-work travel time. The difference is then compensable.
10. An employee who regularly works at a fixed site is given a special one-day assignment in another city. The employee's usual workday ends at 5:00 p.m. The special assignment is completed at 4:00 p.m.; the employee arrives at the airport in his home community at 7:00 p.m., and arrives home at 7:30 p.m. In this case, the travel time between the assignment and airport (between 4:00 and 7:00 p.m.) is work time since the travel was performed for the employer's benefit, at the employer's request. The half-hour travel time between the employee's home and the airport may be considered home-to-work travel time, and does not need to be counted as hours worked.

If the employee in this example had been unable to get a flight home the same day, and had to take an 8:00 a.m. flight the next morning, the time between 4:00 p.m. and 8:00 a.m. the following morning is not work time, if the employee is completely relieved of all duties.

11. Employees of a janitorial company meet at the employer's premises at 6:00 p.m. Employees are assigned to clean several businesses each evening. Employees travel to the various work locations and may return to the employer's premises during the workday for supplies. This travel time between work locations and between the employer's and work location is during the course of a normal workday and is work time.

Exceptions to the General Travel Time Rule:

Emergency or call out situations: For instance, if an employee is subject to call out and is called to duty at a location other than their normal work site, the time spent traveling to that work site from their home is work time as is time spent traveling from that work site to their home.

The call to duty and associated travel time is all in the day's work as this is a special circumstance.

NOTES

WAGE AND HOUR LAWS DO NOT REQUIRE

Private Sector:

- Vacation pay
 - If promised, earned, and usable, vacation time is due and payable as wages - Langager vs. Crazy Creek Products, Inc., (Mont 1998)
- Paid Time Off (PTO)
 - Look to employer's policy to enforce – McConkey vs. Flathead Electric Co-Op (Mont. 2005)
- Sick pay
- Holiday pay/holidays off
- Rest breaks
- Meal periods
- Pay raises or fringe benefits
- Time clocks to be used

If using a time clock, rounding practices to the nearest one-tenth or quarter of an hour is acceptable. (ARM, 24.16.1012(3)(b))

Public Sector:

- § 2-18-601 et seq., MCA – provides statutory benefits for vacation, sick, and holiday pay

The Compliance and Investigation Bureau does not have jurisdiction over scheduling, disciplinary actions, hiring, or terminations.

ADMINISTRATIVE PROCESS

- Assigns the responsibility of administering wage and hour laws to the Commissioner and gives investigative powers to the department's representatives. – (§§ 39-3-210 & 211, MCA)
- Provides a penalty for failure to pay wages when due and payable in an amount up to 110% on wages not paid as specified above. – (§ 39-3-206, MCA)
- Lesser penalties under certain circumstances – (ARM, 24.16.7556 – 24.16.7569)
- Provides for required mediation of labor law disputes. – (§ 39-3-216, MCA)
- Provides for an administrative hearing in cases that are not resolved informally. – (§ 39-3-216, MCA)

NOTES

WAGE CLAIM PROCEDURES

(ARM 24.16.7501 et. seq.)

1. When a wage claim is filed, it is assigned to a compliance specialist. They will review the claim to determine if a violation of law has been identified. They will contact the parties involved to clarify the nature of the claim, seek additional documentation, and provide general administrative processes. The Compliance Specialist will attempt to educate and assist in resolving the claim at the earliest possible stages. They will communicate with a letter by mail or email with the claim and documentation provided by the worker asking for either payment of the claim or a statement as to the validity of the claim with additional documentation, if needed. **It is very important to respond no later than the date specified in the letter.** Requests for extension may be granted. Failure to respond may result in increased penalties.
2. In most cases, if the claim is paid in full, the compliance specialist will forward payment to the worker and close the case. Exceptions exist for special circumstances such as insufficient fund checks and previous history of failure to pay wages.
3. If a payment is made for less than the amount claimed, the worker will be notified. If they accept the payment in writing, the case will be dismissed, and the check mailed to the worker. If they do not accept the amount as satisfying the wage claim, the check will be held until the claim is resolved. Any payments submitted before a decision is issued are not subject to penalties.
4. If no response is received, a determination will be issued finding the wages claimed are owed along with a penalty equal to 110% of the amount claimed will be owed.
5. If a response is received that disputes the claim, the matter will be turned over to an investigator for review. The investigator will continue with the fact-finding process by following up with the parties, discussing facts, obtaining witness statements, collecting evidence, etc. Based on the information obtained, the investigator will issue a decision determining whether a violation of law has occurred and will determine wages and penalty, if any, are due. **If wages are determined due, the applicable penalties will be assessed.**
6. The decision will be made in writing and served on the parties. Either party may submit a timely written notice of appeal or request for redetermination. **The decision will provide the information needed to file an appeal. The written notice of appeal or redetermination may be received electronically.** If it is determined wages are owed and a request for redetermination or an appeal is not received, a judgement will be sought in the amount of the determination plus any applicable penalties. Appealed decisions will go through mandatory mediation prior to transfer to the administrative hearing process. Appeal dates are set by law and an extension cannot be granted.
7. Throughout the administrative process and all decisions are subject to settlement discussion. Upon request, or if the facts merit, the Investigator may assist the parties in settlement.

Remember: It is important the parties respond to the letter or pay the claim no later than the date specified.

COMMON ERRORS

- Misclassifying Independent Contractors
- Assuming all employees paid a salary are not due overtime
- Improperly applying an exemption
- Failing to pay for all hours an employee is “suffered or permitted” to work
- Limiting the number of hours employees are allowed to record
- Changing timeclock without documentation
- Failing to include all pay required to be included in calculating the regular rate for overtime
- Making improper deductions from wages.
Examples: shortages, drive-offs, damage, tools, and uniforms
- Confusing Federal and State law

CHILD LABOR/YOUTH EMPLOYMENT

(Title 41, Chapter 2, Part 1 MCA) (29 CFR Part 570)

The Montana Child Labor Standards Act - “Declaration of Policy. It is declared to be the policy of this Act to protect young workers from employment that might interfere with their educational opportunities or be detrimental to their health or well-being.”

The Montana Child Labor Standards Act of 1993 establishes the hours children may work and hazardous occupations in which they may not work — unless specifically exempted.

The Montana Child Labor Laws apply to all children, migrant as well as resident children. These laws parallel, but do not supersede the federal child labor laws. The federal law is similar to the Montana law but is more restrictive in certain areas, thus, would have the higher applicable standard.

Common Terms

Agriculture, includes all aspects of farming including the cultivation and tillage of the soil; dairy; growing, harvesting and production of agricultural and horticultural commodities; raising of livestock, bees, fur bearing animals or poultry; and, any practices, including forestry or lumbering operations performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

Minor, an individual under 18 years of age, except for an individual who:

- (a) - has received a high school diploma or has received a passing score on the general education development examinations; or
- (b) - is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

Employed or employment, means an occupation engaged in, permitted, or suffered with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor. It does not include casual, community service, non-revenue raising, uncompensated activities.

Occupation, means an occupation, service, trade, business, or industry in which employees are employed; any branch or group of industries in which employees are employed; or any employment or class of employment in which employees are employed.

Domestic services, means an occasional, irregular, or incidental non-hazardous occupational activity related to and conducted in or around a private residence, including but not limited to baby-sitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

Hazardous occupations, nonagricultural occupations which have been declared to be particularly hazardous, involving risk, or detrimental to the health and well-being of individuals under 18 years of age. The following are considered **hazardous occupations**:

1. Manufacturing and storing explosives.
2. Riding outside a motor vehicle to assist in transporting or delivering goods.
3. Coal mining.
4. Logging and saw milling.
5. Power-driven woodworking machines.
6. Exposure to radioactive substances.
7. Power-driven hoisting apparatus, such as non-automatic elevators, fork lifts, and cranes.
8. Power-driven metal-forming, punching, and shearing machines.
9. Mining, other than coal mining.
10. Slaughtering, meat-packing, processing, or rendering.
11. Power-driven bakery machines.
12. Power-driven paper-products machines.
13. Manufacturing of brick, tile, and similar products.
14. Power-driven circular saws, band saws, and guillotine shears.
15. Wrecking, demolition, and ship-breaking operations.
16. Roofing operations.
17. Excavation operations.

Exemptions:

All Minors, regardless of age, may be employed:

- By their parents or guardians (except in manufacturing, mining and hazardous occupations).
- In agriculture or farming with written consent of their parents or guardians or on a farm or in a home owned by their parents or guardians or on a farm where the parent or guardian is also employed.
- In the delivery or collection of newspapers, periodicals or circulars.
- In casual, community, non-revenue raising, uncompensated activity, (such as religious and charitable volunteer work).
- As an actor, model or performer.
- As a legislative aide.
- In casual domestic work at a person's home.
- As an official or referee for a nonprofit athletic organization. A minor who is under the age of 14 may not officiate at adult events or activities.

Additional exceptions are provided for student-learners and apprenticeship programs.

Prohibited Employment of Minors Under 14 Years of Age

Except as provided above, a minor who is under 14 years of age may not be employed in, or in connection with, an occupation.

Prohibited Employment of Minors Who Are 14 or 15 Years of Age...

Minors who are 14 and 15 years old may not work in the following:

- **NONAGRICULTURAL JOBS**

- manufacturing, mining, most processing work, and all hazardous occupations; operating or tending most power-driven machinery; public messenger service; and work connected with warehousing, storage, transportation, communications, public utilities, and construction (except office and sales jobs when not performed on transportation vehicles or on construction sites).

- **AGRICULTURAL JOBS**

- felling, bucking, skidding, loading or unloading timber with a butt diameter of more than nine inches; repairing a building from a ladder or scaffold at a height of more than twenty feet; working inside a fruit, forage or grain storage structure designed to retain an oxygen deficient or toxic atmosphere; working inside a silo within two weeks after silage has been added or when a top loading device is in operating position; handling or using a blasting agent including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps or primer cord; or transferring or applying anhydrous ammonia.

- **EXEMPTIONS FROM PROHIBITED OCCUPATIONS IN AGRICULTURE**

Exemptions from some of the hazardous occupations apply for 14 and 15-year-old student learners enrolled in vocational agriculture programs when certain requirements are met.

Minors aged 14 and 15 who hold certificates of completion of training under a 4-H or vocational agriculture program may work outside school hours on equipment for which they have been trained.

Prohibited Employment of Minors Who Are 16 or 17 Years of Age...

Unless working as an apprentice or student-learner under 41-2-110 MCA, a minor 16 or 17 years of age may not be employed in or in connection with hazardous occupations.

Working Hours for Minors age 14 and 15 year old:

Unless otherwise exempt, a minor who is 14 or 15 years of age may not be employed:

- During school hours, except as provided for in Work Experience and Career Exploration Programs approved by the department or the office of public instruction.
- Before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during the periods outside the school year (June 1 through Labor Day, depending on local standards); or
- Employed more than 3 hours on a school day;
- 18 hours in a school week;
- 8 hours on a non-school day; or
- 40 hours in a week in a non-school week.

There are no hour restrictions for a minors age 16 or 17.

The Montana Department of Labor & Industry is committed to helping young workers find those positive and early employment experiences that can be so important to their development, but the work must be safe. The youth employment provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being or educational opportunities. Employers are subject to the youth employment provisions generally under the same coverage criteria as established for the other provisions of the FLSA.

YouthRules! is an initiative to promote positive and safe work experiences for teens by distributing information about young workers to youth, parents, employers and educators. Components of the initiative include a website, printed materials, outreach events, training seminars and partnering activities. The website for more information is **WWW.YOUTHRULES.GOV.**

MONTANA PREVAILING WAGE LAW aka LITTLE DAVIS BACON ACT

(ARM, 24.17.101)

The purpose of the Montana Prevailing Wage Law is to protect local labor markets, to maintain the general welfare of Montana workers on public works projects, to eliminate wage cutting as a method of competing for public contracts, to maintain wages and rates paid on public works at a level sufficient to attract highly skilled laborers performing quality workmanship and to prevent the rate of wages from adversely affecting the equal opportunity of Montana contractors to bid on public works. The following explains who is covered and what prevailing wage compliance specialists do:

- Contracts for construction or non-construction services in excess of \$25,000 let by the state, county, municipality, school district, or political subdivision
- Minimum wage amount that workers must be paid on public works contracts (basic hourly rate and fringe benefits)
- Conduct yearly surveys to determine wage rate schedules
- Establish wage rates for use on public works contracts
- Inspect and audit payroll records
- Investigate wage complaints
- Conduct on-site visits on projects
- Educate employers and employees

Prevailing Wage website for more information: erd.dli.mt.gov/labor-standards/public-contracts-prevailing-wage-law

Prevailing Wage Rates:

erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates

WAGE & HOUR REVIEW

1.	Montana's minimum wage is the same as the federal minimum wage, which is \$7.25 per hour.	<input type="checkbox"/> True <input type="checkbox"/> False
2.	Employers can pay below minimum wage for a certain period of time for training.	<input type="checkbox"/> True <input type="checkbox"/> False
3.	Holiday pay does not have to be included in the calculation of overtime.	<input type="checkbox"/> True <input type="checkbox"/> False
4.	In a retail establishment (motel, bar or restaurant), an employer can use the employees' tips to make up part of their wage.	<input type="checkbox"/> True <input type="checkbox"/> False
5.	An employee is paid on a piece rate basis, which varies based on the sewing projects. This employer does not need to record the hours the employee works as this employee is not entitled to receive minimum wage or overtime pay based on the employment agreement.	<input type="checkbox"/> True <input type="checkbox"/> False
6.	An employee is paid biweekly (every two weeks). The overtime is figured for all hours worked over 80 in the pay period.	<input type="checkbox"/> True <input type="checkbox"/> False
7.	An employer conducts a mandatory staff meeting after regular work hours. The time spent at the meeting is not during their scheduled work time, so the employees need not be paid for that time.	<input type="checkbox"/> True <input type="checkbox"/> False
8.	An employee lives in Helena and is traveling to Bozeman to attend a training seminar. The employee will leave at 7:00 a.m. and return to Helena at 6:30 p.m. on the same day. The employee normally works an 8-hour day. This employee only needs to be compensated for a regular 8-hour day.	<input type="checkbox"/> True <input type="checkbox"/> False
9.	An employee works for an employer and earns two different rates of pay. This employee needs to be paid overtime at the last rate worked.	<input type="checkbox"/> True <input type="checkbox"/> False
10.	Compensatory time can be provided to employees instead of receiving overtime in the private sector.	<input type="checkbox"/> True <input type="checkbox"/> False
11.	If an employee is terminated or laid off by an employer, that employee would need to be paid their final check immediately unless the employer has a written personnel policy which extends the time of final paycheck to the next pay period or within 15 days after separation, whichever occurs first.	<input type="checkbox"/> True <input type="checkbox"/> False
12.	An employee is replacing a windshield in a car when it slips and breaks. The employer has a company policy to withhold breakages from the employee's paycheck. The employee signed the handbook acknowledging they are aware of the policy, so the employer can withhold the breakage from their paycheck.	<input type="checkbox"/> True <input type="checkbox"/> False
13.	Employees arrive at work and the employer finds they do not have the business they were anticipating so are unsure how many employees to keep on for the night. Some employees work at the onset and others are asked to wait in the break room until they have a better idea on what may take place for the night. Wages must be paid for the time spent waiting.	<input type="checkbox"/> True <input type="checkbox"/> False

14.	The employer's policy (written in a handbook) indicates till shortages will be withheld from the employees' paychecks (whether it is from the person in charge of the till or split amongst employees on duty). Employees have signed the handbook acknowledging they are aware of the policy, so the employer can withhold the shortages from their paychecks.	<input type="checkbox"/> True <input type="checkbox"/> False
15.	When an employee quits their job, their final paycheck is due within 15 days after separation or the next scheduled pay period, whichever occurs first.	<input type="checkbox"/> True <input type="checkbox"/> False
16.	If a person is hired as office manager and paid on a salary basis with main duties consisting of scheduling employees, bookkeeping and answering the phone, they do not need to be paid overtime.	<input type="checkbox"/> True <input type="checkbox"/> False
17.	The employer's policy handbook indicates work hours are from 8:00 a.m. to 5:00 p.m. and they will not pay for any unauthorized overtime. An employee works till 5:30 p.m. (without approval) to finish a project in order to be ready to begin a new project in the morning. Based on the fact the policy indicates approval of overtime before being compensated, the employee does not need to be paid for the extra ½ hour worked.	<input type="checkbox"/> True <input type="checkbox"/> False
18.	It is required by both federal and state law that employees are to receive a 15-minute break for every four hours worked and a lunch break of at least 30 minutes for every six hours of work.	<input type="checkbox"/> True <input type="checkbox"/> False
19.	Employees are required to arrive each morning at the business location and from there receive instructions for the day, load up necessary equipment and head out to the work site. The travel time from shop to work site is paid time.	<input type="checkbox"/> True <input type="checkbox"/> False
20.	A workweek is defined as a period of 168 hours during seven consecutive 24-hour periods. The work week can begin any day of the week at any hour of the day as established by the employer.	<input type="checkbox"/> True <input type="checkbox"/> False
21.	If an employee travels from jobsite to jobsite, the time spent in travel is counted as hours worked and for which the employee needs to be paid.	<input type="checkbox"/> True <input type="checkbox"/> False
22.	The workweek and pay period are one and the same.	<input type="checkbox"/> True <input type="checkbox"/> False
23.	It is the employee's responsibility to keep track of all hours worked and to provide that information to the employer.	<input type="checkbox"/> True <input type="checkbox"/> False
24.	An employee turns in their resignation and gives the employer a two-week notice. The employer wants to fill the position immediately and terminates the employee upon receiving the resignation. The employer is not signatory to a union contract. Since the employee gave the employer notice, the employer is obligated to provide two weeks of severance pay even though the employee was terminated upon this resignation.	<input type="checkbox"/> True <input type="checkbox"/> False
25.	An employer requires the employees to be on call one weekend every month. The employee is given a cell phone, free to do what they please and will be called in only in the case of an emergency. The employee need not be paid for the hours that they are on call. (a) In the above situation, the employee must be paid if they are called in.	<input type="checkbox"/> True <input type="checkbox"/> False

1. An employee's work schedule is Monday - Friday (8:00 a.m. - 5:00 p.m.) Rate of pay is \$8.65 per hour. Workweek is Sunday through Saturday. Pay periods end on the 15th and end of the month.

Working with the following calendars, you need to calculate the pay for the end of January and for the 15th of February. How much is the employee due?

_____ on January 31 _____ on February 15

JANUARY						
S	M	Tu	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15 8hr	16 8hr	17 8hr	18 8hr	19 8hr	20 5hr
21	22 8hr	23 8hr	24 8hr	25 8hr	26 8hr	27 3.5hr
28	29 8hr	30 8hr	31 8hr			

FEBRUARY						
S	M	Tu	W	Th	F	S
				1 8hr	2 8hr	3
4	5 7.5hr	6 8hr	7 8hr	8 8hr	9 8hr	10
11	12 8hr	13 8hr	14 8hr	15 8hr	16 4hr	17 4hr
18	19	20	21	22	23	24
25	26	27	28			

2. An employee works and lives in Helena. He attends a training in Butte which begins at 8:00 a.m. and ends at 4:30 p.m. The employee will leave Helena at 6:30 a.m. and return at 5:30 p.m. The employee had an hour lunch break. How many hours are considered compensable?
3. An employee works in three different positions for her employer. She's paid at \$9.00 per hour in a waitressing position, \$11.00 in a cook position and \$9.50 in a hostess position. In one week she waited tables for 36 hours, cooked for 6 hours and hosted for 4 hours. Working on a weighted average rate, what are the total wages due her?
4. An employee works as a mechanic in a repair shop (not with a car dealership). He is paid based on the flat book rate. In one workweek, he performed the following:
- 4 transmission rebuilds earning \$200 based on 4 hrs/ job – actually worked 24 hrs
 - 40 oil changes earning \$200 based on 10 min./job – actually worked 10 hrs
 - 2 A/C recharging earning \$150 based on 1 hr/job – actually worked 3 hrs
 - 3 Fuel pump replacements earning \$350 based on 4 hrs/job – actually worked 13 hrs
 - Chargebacks (rework on vehicles returned by customers) – 5 hours
- a) What is the employee's regular rate?
- b) Is the employee entitled to overtime? If so, how much?
5. An employer provides specific holidays off with pay – 8 hours holiday for full-time employees. The established workweek is Sunday through Saturday. In one particular workweek, the employee received Monday off as a holiday. This employee worked 10-hour days Tuesday through Friday. The employee's rate of pay is \$8.65 per hour.
- a) Is there any overtime due per state or federal law requirements? If so, how much?
- b) What is the employee's total earning for the week?

ANSWER KEY

- | | | | |
|----------|-----------|-----------|----------------|
| 1. False | 8. False | 15. True | 22. False |
| 2. False | 9. False | 16. False | 23. False |
| 3. True | 10. False | 17. False | 24. False |
| 4. False | 11. True | 18. False | 25. True, True |
| 5. False | 12. False | 19. True | |
| 6. False | 13. True | 20. True | |
| 7. False | 14. False | 21. True | |

Problem Solving

1. \$940.73 January, \$756.88 February

16th – 20th: 32 hours + 5 hours OT (14th – 20th)

21st – 27th: 40 hours + 3½ hours OT

28th – 31st: 24 hours

$$96 \text{ regular hours} \times \$8.65 = \$830.40$$

$$8\frac{1}{2} \text{ OT hours} \times \$12.98 = \underline{\$110.33}$$

\$940.73 Total Due for end of January

1st – 3rd: 16 hours (28th – 3rd no overtime worked)

4th – 10th: 39½ hours

11th – 15th: 32 hours

$$87\frac{1}{2} \text{ regular hours} \times \$8.65 = \$756.88$$

$$0 \text{ overtime hours} = \underline{0.00}$$

\$756.88 Total due for 1st part of February

2. 10 hours

3. \$455.90

$$36 \text{ hours} \times \$9.00 = \$324.00$$

$$6 \text{ hours} \times \$11.00 = \$ 66.00$$

$$\underline{4} \text{ hours} \times \$9.50 = \underline{\$ 38.00}$$

$$46 \text{ hours} \quad \$428.00 \text{ total wages}$$

$$\$428.00 \div 46 = \$9.30$$

$$\$9.30 \div 2 = \$4.65$$

$$\$4.65 \times 6 \text{ overtime hours} = \$27.90$$

$$\$428.00 + \$27.90 = \$455.90 \text{ total weekly earnings}$$

4. \$16.36, Yes, \$122.70

$$\$200 + \$200 + \$150 + \$350 = \$900 \text{ wages earned}$$

$$24 + 10 + 3 + 13 + 5 = 55 \text{ hours worked}$$

$$\$900 \div 55 = \$16.36/\text{hr} \div 2 = \$8.18 \text{ (half time rate)} \times 15 \text{ overtime hrs.} = \$122.70 \text{ OT wages}$$

$$\text{Total paid for the week} = \$900 \text{ straight time earnings} + \$122.70 \text{ OT wages} = \$1,022.70$$

5. No, \$0.00, \$415.20 (48 hrs x \$8.65 per hour)