

# **OVERVIEW OF WAGE PAYMENT LAWS**

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## I. FAIR LABOR STANDARDS ACT (“FLSA”)

### 1. Exempt/Non-Exempt Employees

- The FLSA (and Connecticut’s wage payment laws) require that all employees must be paid for all hours worked. Hours worked are those hours during which the employee is working or is on duty, or during which the employee is “on-call” and required to be at a location designated by the employer, or is required to travel on behalf of the employer during the workday.
- The two primary approaches to paying wages are the hourly and salary payment methods. Under both federal and state law, an employer must pay an employee at least the minimum wage for every hour worked, and overtime (e.g., time and one-half) for all hours over 40 in a workweek if the employee is “non-exempt.” Generally speaking, entry to mid-level workers paid hourly are “non-exempt” employees. Mid to higher-level workers who meet specific requirements regarding their duties, and who are paid on a salary basis, are referred to as “exempt” employees. An employer is not required to pay overtime to such “exempt” workers.
- The primary categories of exempt employees are “executive,” “administrative” and “professional” employees. In order to demonstrate that an individual employee is exempt under one of these categories, the employer must apply both a salary test and a duties test to the employee’s position. The salary test simply means that the employee must receive the same amount of pay each pay period, regardless of the number of hours they work. The duties test simply means that the employee’s job responsibilities meet certain criteria for the applicable exempt category, such as performing tasks that require the exercise of independent judgment and discretion.
- Overtime exemptions are narrowly construed. Start with presumption of non-exempt status. Burden of proof is on employer to demonstrate that exemption is available. Job titles not controlling; actual job duties are the key. Salaried pay status is not enough to qualify for exemption.
- Payment of a Salary (The Salary Basis Test)
  - a. In order to be exempt, the employee must be paid on a salary basis.
  - b. Subject to limited exceptions, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked.
  - c. Exempt employees need not be paid for any workweek in which they perform no work.
  - d. Pay deductions in full day increments for exempt employees are permissible in certain circumstances.

- e. Pay deductions in less than full day increments are allowed in certain circumstances.
  - f. An employer loses exempt status if it has an actual practice of making improper deductions from salary.
  - g. Isolated/inadvertent deductions will not result in loss of the exemption if the employer reimburses the employee for the improper deductions.
- Executive Employees (Duties Test)
    - a. An employee will qualify as an exempt executive if:
      - i. Employee receives salary of at least \$475.00<sup>1</sup> per week;
      - ii. Primary duty is management of the enterprise or a customarily recognized department or subdivision thereof;
      - iii. Employee customarily and regularly directs the work of at least two employees or equivalent (i.e., four half-time employees, or four full-time employees supervised in part by two different employees); and
      - iv. Employee has the authority to hire and fire other employees, or the employee's suggestions and recommendations as to hiring, firing or any other change of employee status (e.g., promotion, demotion, etc.) are given particular weight.
    - b. Key phrases for job descriptions of exempt executive employees:
      - manages or supervises (more than 2; multiple) employees
      - performs tasks without supervision/works independently
      - uses initiative
      - interviews, selects and trains employees
      - sets/adjusts rates of pay and work schedules
      - maintains production/sales records
      - appraises productivity or issues performance evaluations
      - recommends raises/promotions
      - disciplines subordinates
      - handles subordinates' complaints
      - assigns/directs work of subordinates
      - determines materials/supplies to be used or purchased
      - provides for safety of subordinates
      - plans work or projects
      - forecasts needs/determines requirements
      - analyzes work requirements/alternative course of action
      - coordinates or prioritizes work

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<sup>1</sup> The United States Department of Labor has issued proposed regulations that, if they become effective, would increase the amount of salary required to maintain this exemption to \$679 per week.

- Administrative Employees (Duties Test)
  - a. An individual will qualify as an exempt administrative employee if:
    - i. Employee receives salary of at least \$475.00<sup>2</sup> per week;
    - ii. Primary duty is performance of office or non-manual work directly related to management or general business operations of the employer or the employer's customers; and
    - iii. Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance;
  - b. Key phrases for job descriptions of exempt administrative employees:
    - exercises independent discretion/judgment or initiative in . . .
    - primary duty/key responsibility is making decisions or recommendations affecting the following management policies/business operations . . .
    - advises management
    - investigates and resolves the following significant matters
    - forecasts needs and plans requirements or projects
    - recommends purchases, strategies, programs
    - recommends/formulates policies and procedures
    - develops programs, policies, methods or procedures
    - analyzes alternative courses of action, alternative proposals
    - represents the employer in handling complaints, arbitrating disputes or resolving grievances
    - works independently or without immediate supervision
- Professional Employees (Duties Test)
  - a. An individual will qualify as an exempt learned professional employee if:
    - i. Employee receives salary of at least \$475.00<sup>3</sup> per week;
    - ii. Primary duty is the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; and
    - iii. Primary duty must be the performance of work requiring the consistent exercise of judgment and discretion.

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b. Key phrases for job descriptions of exempt professional employees:

- applies professional training/experience to . . .
- uses independent judgment or discretion
- analyzes information, data, alternatives
- makes recommendations
- draws conclusions
- interprets information, data
- plans projects, work requirements

2. Unpaid Overtime/Pre-Work

- The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.
- Hours worked include all the time during which an employee is required or allowed to perform work for an employer, regardless of where the work is done, whether on the employer's premises, at a designated work place, at home or at some other location.
- Time which an employee is required to be at work or allowed to work for his or her employer is hours worked. A person hired to do nothing or to do nothing but wait for something to do or something to happen is still working. The Supreme Court has stated that employees subject to the FLSA must be paid for all the time spent in "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer of his business."
- Whether "waiting time" is hours worked under the FLSA depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) (i.e., compensable if employee reports to work on time but must wait for work to be provided) or the facts may show that the employee was waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."
- "Waiting Time" is not compensable if:
  - a. Employee simply arrives early to work and waits before starting duties; or

- b. Employee is completely relieved from duty and allowed to leave the job; or
  - c. Employee is relieved until a definite, specified time; and the relief period is long enough for the employee to use the time as he/she sees fit.
- “On Call Time” is compensable if such time is spent “predominantly for the employer’s benefit.”
- The general rule is that an employee who is “on-call” is not working while “on-call” unless there are significant restrictions on his/her use of time. An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Courts look at whether there are excessive geographic restrictions on the employee’s movements (i.e., must be at home to answer phone); whether the frequency of calls is unduly restrictive; whether there is a fixed time limit for response; whether the on-call employee can easily trade his or her on-call responsibilities with another employee; and whether and to what extent the employee engages in personal activities during on-call periods. Additional constraints on the employee's freedom could require this time to be compensated.
- An employee who is required to remain on call on the employer's premises is working while "on call."
- Sleeping Time and Certain Other Activities: An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

### 3. Calculating the “Regular Rate”

- Non-exempt employees must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay.
- An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.
- The regular rate of pay cannot be less than the minimum wage. Effective October 1, 2019, Connecticut's minimum wage is \$11 per hour (scheduled to increase to \$12 per hour effective September 1, 2020; \$13 per hour effective August 1, 2021; \$14 per hour effective July 1, 2022; and \$15 per hour effective June 1, 2023).
- The regular rate includes an employee's hourly rate *plus* the value of some other types of compensation such as bonuses and shift differentials. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness (even if the employee receives these days as paid days off).
- A common error in calculating overtime pay involves the failure to include non-discretionary bonuses in the regular rate of pay. Non-discretionary bonuses must be included in the regular rate of pay. Non-discretionary bonuses include those that are announced to employees to encourage them to work more steadily, rapidly or efficiently, and bonuses designed to encourage employees to remain with a facility. Very few bonuses are discretionary under the FLSA, allowing exclusion from the regular rate.
- Incentive or Production Bonuses (paid only if certain goals are met) are typically non-discretionary and must be included in the regular rate of pay, even if not immediately determinable.
- Under many bonus plans, calculations of the bonus may necessarily be deferred over a period of time longer than a workweek (i.e., such as a bonus plan based on monthly goals). In such a case the employer may disregard the bonus in computing the regular hourly rate until such time as the amount of the bonus can be ascertained. Until that is done the employer may pay

compensation for overtime at one and one-half times the hourly rate paid to the employee, exclusive of the bonus.

- When the amount of the bonus can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each workweek that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of statutory overtime hours worked during the week (i.e., once the employer knows the bonus amount at the end of each month, the employer needs to spread that bonus amount as if it were earned equally in each of the weeks of that month. If an employee worked overtime hours in any week in that month, then the employer needs to add the portion of the bonus ultimately paid for that week to the amount of the other wages paid for that week to create a new “regular rate” for that week and pay any half-time overtime premium due once that calculation has been made in the first pay period when the employer has made that calculation).
- Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions noted above) in any workweek by the total number of hours actually worked.
- Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.
- Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.
- Fixed Sum for Varying Amounts of Overtime: A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of \$180 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is \$12.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at \$13.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire \$78.00 must be included in determining the employees' regular rate.



- Salary for Workweek Exceeding 40 Hours: A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of \$405. In this instance the regular rate is obtained by dividing the \$405 straight-time salary by 45 hours, resulting in a regular rate of \$9.00. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ( $\$4.50 \times 5 = \$22.50$ ).

#### 4. Meal and Rest Breaks

- Rest breaks of short duration, usually 15 minutes or less, are common and are customarily paid for as working time (though an employer is not required to provide such breaks or to pay for such breaks).
- Rest breaks (if paid) must be counted as hours worked.
- Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished.
- Meal breaks (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.
- Connecticut law requires employers to give a meal break of at least 30 consecutive minutes to any non-exempt employee who works seven and one-half or more consecutive hours (with limited exceptions including when there are less than five employees working a particular shift or function, or when only one non-exempt employee can perform certain duties during a work shift).
  - a. The meal break must occur after the first two hours of work and before the last two. Employees and employers may also enter into a written agreement providing a different schedule for the break period than the statute provides.
  - b. The meal break does not need to be paid unless work is performed.
  - c. The employee must be free to leave the work area for break period not to be counted as hours worked.

## 5. Fluctuating Workweek Pay and Tip Credit

### Fluctuating Workweek

- Under the FLSA, employers may use a fluctuating workweek pay plan to pay employees whose hours of work fluctuate from week to week if the following requirements are satisfied:
  - a. The employee's hours must, in fact, fluctuate from week to week;
  - b. The employee must be paid on a salary basis (i.e., receive a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed).
  - c. The employee must receive a fixed weekly salary that remains the same regardless of the number of hours that the employee works during the week (apart from overtime premiums);
  - d. There must be a clear mutual understanding between the employee and employer that the employee will be paid a fixed salary as straight time pay (apart from overtime premiums) regardless of the number of hours worked;
  - e. The amount of the fixed salary must be sufficient to provide compensation to the employee at a rate not less than the applicable minimum wage rate for every hour worked in those workweeks in which the hours the employee works is greatest; and
  - f. The employee must receive extra compensation in addition to his/her fixed salary for all overtime hours worked (hours worked in excess of forty during a week) at a rate not less than one-half his/her regular rate of pay.
- Under the fluctuating workweek method, the regular rate of pay is determined by dividing the number of hours worked in the workweek into the amount of the fixed salary to obtain the applicable hourly rate for the week. Keep in mind that an employer will be in violation of the overtime provisions of the FLSA, notwithstanding its assertion that it is applying the fluctuating workweek overtime formula, if an employee is being paid for his/her overtime hours at a rate no greater than that which s/he receives for non-overtime hours.
- Before implementing a fluctuating workweek plan, the employer must make sure that the fixed salary of the employee will be sufficiently large so that no

workweek will be worked in which the employee's average hourly earnings from the salary fall below the minimum hourly wage rate applicable under the FLSA or state law. Additionally, the employee must clearly understand that the fixed 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. Therefore, the fluctuating workweek plan, including overtime calculations, must be clearly explained to employees. Although the FLSA does not require that employees sign an acknowledgment indicating that the employer's pay plan has been explained to them, best practice for employer to take this additional step to demonstrate that the employees had a clear understanding of the fluctuating workweek plan.

### Tip Credit

- Connecticut law requires employers to pay at least minimum wage to employees. However, under certain conditions, restaurants may take a credit toward the minimum wage for some service employees who receive gratuities (i.e., tips).
- A "service employee" is defined as any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. This means that a tip credit (toward the minimum wage) can be taken only for **waiters and waitresses**, and only during the time for which they are actually serving patrons at tables or booths, or performing closely related duties, and when they are receiving gratuities.
- In order for an employee to be eligible for a tip credit, he or she must be engaged in performing service duties such as:
  - a. Taking food and beverage orders from patrons.
  - b. Bringing the orders to the table or booth.
  - c. Cleaning up the immediate area of service.
  - d. Filling condiment containers at their tables.
  - e. Vacuuming his/her own immediate service area.
  - f. Replacing the table setting at their own area.
- Pending further clarification from the state legislature of regulations of the Connecticut Department of Labor, an employer in the restaurant business may not take a tip credit during the time which any employee is performing non-service duties such as the following:
  - a. Cleaning the rest rooms.
  - b. Preparing food.

- c. Washing dishes.
  - d. Host or Hostess work. (**Note:** each waiter or waitress may show patrons to their seats within their own service area without losing their "service" classification, but if a waiter or waitress shows all patrons to their seats, there can be no tip credit taken on that employee and the full minimum wage must be paid)
  - e. General set-up work before the restaurant opens.
  - f. Kitchen clean-up.
  - g. General cleaning work.
  - h. Waiting on take-out customers.
- A restaurant employer may take a tip credit of 31% of the minimum wage on those employees who are performing service duties as defined above if they are receiving gratuities. If an employee is at times performing service duties and receiving gratuities, and at other times is working in the kitchen (for instance), the employer must segregate the times on the timecard and pay for each differently. The kitchen work must be paid for at the full minimum wage, but if the times are properly separated on the timecard, a tip credit can be taken on the "service time" portion of work.
  - In order for a payment from a customer to be considered as a tip, the employer cannot exert any control over it. This means that if a restaurant employer chooses to require customers to pay an added "service charge" directly to the restaurant (not the employee), it is not a tip, even if the employer chooses to pass it along intact to the employee. Under this scenario, the employer could not take any tip credit.
  - The employer may take a tip credit on banquet service people only if they receive their tips directly from the customers. Otherwise, the employee must receive the full minimum wage for every hour worked.
  - If the employer chooses to impose a "service charge", "gratuity charge", or any other such surcharge on a customer, that payment belongs to the employer, not the employee(s), regardless of its designation. However, if the employer in fact distributes that payment to the banquet employees, it becomes part of the hiring agreement and the employee(s) have earned a right to it on future banquets. Further, when an employer makes a payment of this nature (passing a "service charge" or "gratuity charge" on to an employee), the payment is considered as a wage under the wage payment laws. The employer can use this additional payment to cover minimum wage requirements, but is also responsible for paying time and one-half on the payment if the employee works over 40 hours in a week.
6. Unauthorized Work and "Working Off-the-Clock:

- The FLSA defines the term "employ" to include the words "suffer or permit to work". Suffer or permit to work means that if an employer requires or allows employees to work, the time spent is generally hours worked.
  - Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.
  - Time spent doing work not requested by the employer, but still allowed, is generally hours worked, since the employer knows or has reason to believe that the employees are continuing to work and the employer is benefiting from the work being done. This time is commonly referred to as "working off the clock."
  - When an employee must correct mistakes in his or her work, the time must be treated as hours worked. The correction of errors, or "rework", is hours worked, even when the employee voluntarily does the rework.
  - Employees generally may not volunteer to perform work without the employer having to count the time as hours worked.
  - It is the duty of management to exercise control and see that work is not performed if the employer does not want it to be performed. An employer cannot sit back and accept the benefits of an employee's work without considering the time spent to be hours worked. Merely making a rule against such work is not enough. The employer has the power to enforce the rule and must make every effort to do so.
  - Overtime Pay May Not Be Waived: The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.
  - Employers may discipline employees (warning, suspension, termination) for unauthorized work or working "off-the-clock."
7. Travel Time as Hours Worked (For Non-Exempt Employees)

Under both the FLSA and Connecticut's wage and hour laws, employers are required to compensate **non-exempt (i.e., hourly) employees** for travel time under certain circumstances.

- Travel Between Home And Work
  - a. Normal commuting time to and from an employee's regular worksite is not treated as compensable hours worked, so an employer is generally not required to pay an employee for commuting between home and work (unless otherwise required by an employment contract, industry custom or an employer's practice provide for compensation for such travel time).
  - b. It does not matter whether the length of the commute is short or long, or whether the employee works at a fixed location, or travels to a different job site each day within the normal commuting area for the employer's business (i.e., if in the particular business the different sites were the actual place of performance of the employee's principal activities, then the drive time is still considered the employee's normal commute and not compensable).
  - c. An employee seeking compensation for commuting time must demonstrate that the requirements and restrictions that the employer has placed on that time have imposed more than a minimal burden on him, transforming that time to an integral and indispensable part of the principal activity for which the worker is employed, undertaken predominantly for the benefit of the employer. The balancing of benefits and burdens is on a continuum, and the more that the employer's requirements burden the employee, preventing the employee from using that commuting time as he otherwise would have, the more likely a court will conclude that the time is for the predominant benefit of the employer. Even if some or all of the travel time is for the predominant benefit of the employer, that activity will still be non-compensable if the amount of time involved is de minimis.
  - d. Time spent in home-to-work travel by an employee in an employer-provided vehicle, or in activities performed by an employee that are incidental to the use of the vehicle for commuting, generally is not "hours worked" and, therefore, does not have to be paid. This is so even if the employer vehicle also transports some of the employer's materials, as long as using the vehicle is voluntary, and transporting its

contents is simply incidental to the use of the vehicle for commuting to and from work. This provision applies only if the travel is within the normal commuting area for the employer's business and the use of the vehicle is subject to an agreement (in writing or based on a mutual understanding of practices between the employer and the employee).

- e. If an employee drives a vehicle as part of an employer-sponsored carpool, the employee must be paid for the time spent driving. In this situation, the employee is caring for the vehicle and storing it, and so the employee is working. However, if driving the carpool vehicle is for the convenience of the employee and the vehicle is driven to work sites near the employer's normal commuting area, then the employer does not have to pay the employee for travel time, as long as the employee agrees to this arrangement.
- f. If an employee is required to report to a meeting place where he or she is to pick up materials, equipment or other employees, or to receive instructions before traveling to the worksite, then compensable time starts at the meeting place (i.e., any stops on his way to or from work on his employer's behalf, such as stopping at their warehouse to load extra materials on the truck, would create compensable time).
- g. If an employee is otherwise performing work, which by coincidence occurs during his regular commute, he would then be on compensable time (i.e., if an employer is calling/texting an employee during the employee's regular commute to work and engaging the employee in a discussion concerning work-related issues, the time spent commuting is considered hours worked and compensable).
- h. If an employee has a regular place of business but is asked on a particular day to travel directly from home to another site that is further away (or to leave that alternative site at the end of the day to go home), compensable time starts at the point at which the employee passes the length of time of his ordinary commute, and is then continuing travel for the benefit of his employer.

- Travel During Workday
  - a. The general rule is that time spent by an employee in travel as part of the employee's regular workday must be considered hours worked. The key is whether the employee is engaged in travel as part of the employer's principal activity.
  - b. Time spent traveling to and from different worksites during the day is work time and must be paid.
  - c. An employee who reports to a meeting place to receive instructions or to perform other work, including obtaining tools, must be paid for the time spent traveling.
- Out Of Town Travel (One-Day Assignment in Another City)
  - a. When an employee must travel out of town for work but returns home the same day, all the time spent traveling during the day is compensable, regardless of the employee's regular work hours. However, an employer may deduct the time the employee would have spent commuting to his or her regular work location and/or for time traveling between home and any transportation center (i.e., when an employee travels by limousine, train or airline, the time traveling to the transportation center is treated as commuting).
- Out Of Town Travel (Overnight)
  - a. When travel requires an overnight stay, all travel time that occurs during the employee's regular working hours is considered compensable working time, regardless of what day of the week the travel takes place (i.e., if the travel occurs during normal working hours on non-workdays, the time is compensable).
  - b. Time spent traveling to an airport terminal or train station is considered commute time and is not treated as hours worked, but the time spent waiting at the terminal until arrival at the destination is compensable when it falls during normal work hours.
  - c. Any time spent for overnight travel that occurs outside of an employee's regular working hours as a passenger on an airplane, train, or other method of public transportation where the employee is free to use the time as he or she chooses and



he/she performs no work, it is not considered hours worked, and therefore, it is not compensable.

- d. An employee must be paid for any time he or she is performing work while traveling. This includes time spent working during travel as a passenger that would otherwise be non-compensable (such as work performed outside of regular work hours).
  - e. When an employee is traveling to an overnight stay and has the option to use public transportation (i.e., airplane, train, bus, etc.) but chooses to drive his or her own vehicle instead, the employer can either choose to pay for all time spent traveling or pay only the travel time that occurs during normal work hours, regardless of what day of the week the employee travels.
  - f. If an employee volunteers to drive others in his or her own vehicle to the overnight stay, an employee's time could be unpaid for those travel hours outside the normal work hours.
- Emergency Callbacks
    - a. Regular home-to-work travel on callbacks is not considered compensable time. Therefore, an employer is not required to pay travel time to employees who, after completing a full day's work, are called back to perform an emergency job at their normal workplace.
    - b. Home-to-work travel is compensable if an employee is called at home after completing a day's work and required to travel elsewhere to perform the emergency job. (i.e., when an employee, after completing a normal day's work, is required to travel from home to perform an emergency job for a customer of the employer, the employer must compensate the employee for all of the employee's travel time).

## 8. Lectures, Meetings and Training Programs

- Employees are entitled to be paid for time in training (at pay rate of at least minimum wage) unless the training: is conducted outside of regular work hours; is completely voluntary; results in no productive work being performed; and is not directly related to the employee's job.

## 9. Connecticut Wage and Hour Laws

- Requires at time of hiring that employer provide, in writing, employee's rate of pay, hours of employment, and wage payment schedule and make available to employee, either in writing or through a posted notice, any employment practices and policies regarding wages, vacation pay, sick leave, health and welfare benefits, and other comparable matters.
- Requires that wages be paid on a weekly or bi-weekly basis unless a waiver to pay on another basis (e.g., bi-monthly or monthly) is approved by Commissioner of Labor.
- Requires that wages be paid in cash or by check, or, if the employee requests it in writing, by direct deposit to his or her bank account or by paycard (new employees can be required to be paid by direct deposit).
  - a. Payments must be accompanied by a pay stub indicating hours worked, regular, overtime and total wages, itemized deductions, and net earnings.
  - b. Deductions and withholdings must be computed separately for vacation pay and regular wages.
  - c. Deductions and withholdings may not be made from employees' wages, except as follows:
    - i. Employer is required or empowered to do so by state or federal law; or
    - ii. An employee has provided written authorization for a deduction on a form pre-approved by the Commissioner of Labor; or
    - iii. An employee authorizes, in writing, a deduction for medical surgical or hospital care without financial benefit to the employer that is recorded in the employer's wage records.
- If employer pays the employee by paycard (with the employee's written consent):
  - a. The paycard must be associated with an ATM network that has a "substantial number" of in-network ATMs;
  - b. Employees must be permitted to make at least three withdrawals without fees per pay period;
  - c. None of the employer's costs for using paycards assessed to employees; and

- d. The employer must provide employees with the ability to check, free of charge, payroll account balances 24 hours a day, 7 days a week by automated telephone system, teller machine or electronically.
  - Requires employers to allow employees one day off each calendar week.
  - Does not require premium pay for employees who work on weekend days unless it constitutes overtime work for non-exempt employees.
  - Does not require employers to grant paid holidays, to close on holidays, or to pay employees extra for working on holidays.
  - Requires payment of wages in certain time periods for terminations.
    - a. For voluntary terminations, final wages are due not later than the next regular pay day either through regular payment channels or by mail.
    - b. For involuntary terminations, final wages are due no later than the business day next succeeding the date of the discharge.
10. Part-Time Employees and Temps: Wage and Benefit Obligations
- Employers must comply with all FLSA and Connecticut wage and hour obligations for part-time and temporary employees, unless employees are provided by staffing agency and are employees of staffing agency.
  - Employers are generally able to establish terms and conditions of employee benefits (such as vacation, health insurance etc.) and to exclude categories of workers (such as part-time or temporary employees) from receiving benefits or insurance coverage, unless otherwise required by law (such as workers' compensation laws, 401(k) law, affordable care act, etc.) or as required under company's insurance policies.
11. Interns
- Under the FLSA, to determine whether an intern must be considered a paid employee, the proper question is whether the intern or the employer is the primary beneficiary of the relationship.
  - The primary beneficiary test has two salient features. First, it focuses on what the intern receives in exchange for his work. Second, it also accords courts the flexibility to examine the economic reality as it exists between the intern and the employer.
  - The following (non-exhaustive) set of factors are considered:

- a. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
  - b. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
  - c. The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
  - d. The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
  - e. The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
  - f. The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
  - g. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship. NOTE: Employer should have a written agreement with the intern outlining the parameters of the internship and specifically stating that the internship is unpaid and that the intern is not guaranteed employment at the conclusion of the internship.
- Under Connecticut law, an unpaid internship must be affiliated with a high school or college program in which the intern is receiving school credit for his or her participation. So in Connecticut, an employer must meet both the factors considered by courts for purposes of the FLSA and the additional Connecticut requirements that a school provide credit for an unpaid internship.
  - While school credit is not required under the FLSA, it is required under Connecticut law, and therefore, a Connecticut employer needs to establish a relationship with a high school/college to exercise oversight of the unpaid internship. An intern is considered to be someone who performs work for an employer for the purpose of training and the work performed should meet the following conditions: supplements training given in an educational environment that may enhance the employability of the person; provides

experience for the benefit of the person; does not displace any employee of the employer; is performed under the supervision of the employer or an employee of the employer; and provides no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer.

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