



ASSISTANCE *for*  
**BUSINESS CLINIC**

## **SECTION 5 WAGE & HOUR**



Montana Department of  
**LABOR & INDUSTRY**

For More Information:

**[MTWAGEHOURBOPA.COM](http://MTWAGEHOURBOPA.COM)**

**(406) 444-5600**

PO Box 201503  
Helena, MT 59620-1503

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## **WAGE AND HOUR LAWS ADMINISTERED BY THE MONTANA WAGE & HOUR UNIT**

- WAGE PAYMENT ACT
- MINIMUM WAGE AND OVERTIME LAWS
- CHILD LABOR / YOUTH EMPLOYMENT
- PREVAILING WAGE LAW

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### **WAGE & HOUR UNIT LABOR STANDARDS BUREAU EMPLOYMENT RELATIONS DIVISION**

PO Box 201503  
Helena, MT 59620-1503  
(406) 444-5600  
[mtwagehourbopa.com](http://mtwagehourbopa.com)

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### **U.S. DEPARTMENT OF LABOR SALT LAKE CITY DISTRICT OFFICE WAGE & HOUR DIVISION**

60 E South Temple St, Suite 575  
Salt Lake City, UT 84111-1016  
(801) 524-5706  
[www.dol.gov/whd](http://www.dol.gov/whd)

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### **MONTANA CITIZENS' ADVOCATE GOVERNOR'S OFFICE**

1-800-332-2272  
(406) 444-3468  
[citizensadvocate.mt.gov](http://citizensadvocate.mt.gov)

# WAGE PAYMENT ACT

- 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*
  
- 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, semi-monthly or yearly and shall include bonus, piece work, tips and gratuities of any kind.*
  
- Establishes when wages are due and payable — (§ 39-3-204 & § 39-3-205, 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 due 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 pre-existing, 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.*
  
  - *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:*
    1. *the employee agrees in writing to the withholding, or;*
    2. *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)

## RECORDS REQUIRED TO BE KEPT

(ARM, 24.16.6102)

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

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 years.

- Statute of Limitations -- (§ 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.*

## NOTES

# FEDERAL AND STATE MINIMUM WAGE LAWS

## FEDERAL MINIMUM WAGE

**\$7.25**

**Companies automatically covered by the federal Fair Labor Standards Act (FLSA):**

- 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

**\$8.05\***

\* 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 1<sup>st</sup>.

- 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.**

## METHODS OF PAYMENT

\$ Hourly	\$ Salary Plus Bonus
\$ Commission Basis	\$ Salary Plus Commission
\$ Piece Rate	\$ Flat Book Rate
\$ Salary	\$ 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.

## 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:**  $\$650 \times 26 \text{ pay periods/year} \div 52 \text{ weeks/year} \div 40 \text{ hrs/week} = \$8.13$

**Semi-Monthly:**  $\$725 \times 24 \text{ pay periods/year} \div 52 \text{ weeks/year} \div 40 \text{ hrs/week} = \$8.37$   
(twice per month)

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

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

## 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)

**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 so the regular rate equals \$7.00. The employer must make up the \$1.05 per hour difference between \$7.00 and \$8.05 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 so the regular rate is \$9.00 per hour. **The weeks are not averaged together.***

## NOTES

## OVERTIME

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)

## 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 rate for hours over 40 within a workweek\*\*

**Private Sector** (Non-government employers)

Banking of overtime hours is not allowed.

## OVERTIME CALCULATIONS

**DIFFERENT RATES OF PAY:** Employees who perform different types of work for which they receive varying rates of pay must be paid overtime at a weighted average hourly rate.

**EXAMPLE:** *One week an employee works in a housekeeping position for 36 hours for which \$8.05 per hour is paid. The employee then spends 10 hours in a front desk position for which \$8.25 per hour is paid. The wages are computed as follows:*

36 hours x \$8.05 per hour	= \$289.80
10 hours x \$8.25 per hour	= \$ 82.50
<u>46 hours worked</u>	<u>\$372.30</u> regular earnings

$\$372.30 \div 46 \text{ hours} = \text{regular rate} = \$8.09 \text{ per hour}$   
 $\$8.09 \div 2 = \frac{1}{2} \text{ time rate} = \$4.05 \text{ per hour}$   
 $\$4.05 \times 6 \text{ overtime hours} = \$24.30 \text{ overtime earnings}$

\$372.30
<u>\$ 24.30</u>
\$396.60 total due

## NOTES



**COMMISSION/PIECE RATE:** The regular rate of an employee paid on a commission, piece rate, or flat book rate basis is arrived at 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:** Ann works 45½ hours and earns \$375. Her regular rate is \$8.24 per hour ( $\$375 \div 45\frac{1}{2}$  hours). She is entitled to her regular earnings (\$375) plus an additional half of her regular rate ( $\$8.24 \div 2$ ) or \$4.12 for each hour worked over 40. In this case, she is due an additional \$22.66 or a total of \$397.66 ( $\$375.00 + \$22.66$ ) 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**

$\$1800 \times 12 \text{ months} \div 52 \text{ weeks} \div 40 \text{ hours} = \$10.38$  (regular rate)  
 $\$10.38 \times 1.5 = \$15.57$  (overtime rate)

**EXAMPLE: 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.

1st week -  $\$2000 \times 12 \text{ months} \div 52 \text{ weeks} \div 55 \text{ hours} = \$8.39$  (regular rate)  
2nd week -  $\$2000 \times 12 \text{ months} \div 52 \text{ weeks} \div 46 \text{ hours} = \$10.03$  (regular rate)  
3rd week -  $\$2000 \times 12 \text{ months} \div 52 \text{ weeks} \div 36 \text{ hours} = \$12.82$  (regular rate)  
Regular rate/week  $\div 2 =$  half time overtime rate for hours worked over 40

\* *We recommend the pay agreement be in writing.*

## NOTES

## “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 at a rate of not less than \$455 per week...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 at a rate of not less than \$455 per week...exclusive of board, lodging or other facilities;*
- (2) Whose primary duty is the performance of office of 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.”*

### 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 at a rate of not less than \$455 per week...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;
- (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.”

## 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)

- On call time — (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
- 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.

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.

- 6.) 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.
- 7.) 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.

- 8.) 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.
- 9.) 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.

- 10.) 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

- Vacation pay (private sector)  
If promised, earned, and usable, vacation time is due and payable as wages - Langager vs. Crazy Creek Products, Inc., (Mont 1998)
- Sick pay (private sector)
- Holiday pay/holidays off (private sector)
- Rest breaks and 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))

**The Wage and Hour Unit does not have jurisdiction over scheduling, disciplinary actions or terminations.**

## NOTES

## ADMINISTRATIVE PROCESS

- Assigns the responsibility of administering wage and hour laws to the Commissioner and gives investigative powers to the Department 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)

## WAGE CLAIM PROCEDURES

- 1.) When a wage claim is filed with the Wage and Hour Unit of the Montana Department of Labor and Industry it is assigned to a compliance specialist. In the first step of this process a letter is sent to the employer asking for payment of the claim, records, or a statement as to the validity of the claim. **It is vital the employer respond to the claim by 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 claimant 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 that is less than the amount claimed, the claimant will be notified. If they accept the payment, the case will be dismissed and the check mailed to the claimant. 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 the employer fails to respond to the letter sent by Wage and Hour, a Determination will be issued finding the wages claimed are owed, and a penalty equal to 110% of the amount claimed is owed.
- 5.) If the employer provides information as requested, the compliance specialist will review the information with the claimant and the employer. Based on the information obtained, a Determination will be issued. **If wages are determined due, applicable penalties will be assessed.**
- 6.) The Determination will be made in writing and served on the parties by mail. Either party may submit a timely written notice of appeal or request for redetermination. The determination will provide the information you need to file an appeal. **The written notice of appeal or redetermination may not be received electronically.** If it is determined wages are owed and a request for redetermination or an appeal is not received, an Order on Default in the amount of the determination plus any applicable penalties will be issued. Appealed determinations 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.) If, after reviewing information provided, the compliance specialist finds the claim is not valid, a Dismissal will be served by mail to parties stating when and with whom an appeal or request for redetermination must be filed. The appeal date is set by law and an extension cannot be granted.
- 8.) Determinations are subject to settlement discussion. Upon request, or if the facts merit, the compliance specialist may assist the parties in compromise settlements.

**REMEMBER - IT IS IMPORTANT THAT YOU RESPOND TO THE ENCLOSED LETTER OR PAY THE CLAIM BY THE DATE SPECIFIED.**



# 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.

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The Department of Labor 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.dol.gov](http://www.youthrules.dol.gov).

# MONTANA PREVAILING WAGE LAW A/K/A 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.

- 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

## NOTES

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

## 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
- 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
- Hour Restrictions

## NOTES

## 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 (in the private sector - non government) 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 pager, 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 \$8.50 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							FEBRUARY						
S	M	Tu	W	Th	F	S	S	M	Tu	W	Th	F	S
	1	2	3	4	5	6					1	2	3
7	8	9	10	11	12	13	4	5 7.5hr	6 8hr	7 8hr	8 8hr	9 8hr	10
14	15 8hr	16 8hr	17 8hr	18 8hr	19 8hr	20 5hr	11	12 8hr	13 8hr	14 8hr	15 8hr	16 8hr	17 4hr
21	22 8hr	23 8hr	24 8hr	25 8hr	26 8hr	27 3.5 hr	18	19	20	21	22	23	24
28	29 8hr	30 8hr	31 8hr				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 \$8.05 per hour in a waitressing position, \$8.50 in a cook position and \$8.25 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 flatbook 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 \$8.50 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) **\$924.38 January, \$743.75 February**

16th - 20th: 32 hours + 5 hours OT (14th - 20th)  
 21st - 27th: 40 hours + 3½ hours OT  
 28th - 31st: 24 hours

96 regular hours x \$8.50	=	\$816.00
8½ OT hours x \$12.75	=	\$108.38
		<u>\$924.38</u> Total Due for end of January

1st - 3rd: 16 hours (28th - 3rd no overtime worked)  
 4th - 10th: 39½ hours  
 11th - 15th: 32 hours

87½ regular hours x \$8.50	=	\$743.75
0 overtime hours	=	0.00
		<u>\$743.75</u> Total due for 1st part of February

- 2) **10 hours**

- 3) **\$398.22**

36 hours x \$8.05	=	\$289.80
6 hours x \$8.50	=	\$ 51.00
4 hours x \$8.25	=	\$ 33.00
46 hours		<u>\$373.80</u> total wages

$\$373.80 \div 46 = \$8.13$

$\$8.13 \div 2 = \$4.07$

$\$4.07 \times 6 \text{ overtime hours} = \$24.42$

$\$373.80 + \$24.42 = \$398.22$  total weekly earnings

- 4) **\$16.36, Yes, \$122.70**

$\$200 + \$200 + \$150 + \$350 = \$900$  wages earned

$24 + 10 + 3 + 13 + 5 = 55$  hours worked

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

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

- 5) **No, \$0.00, \$408** (48 hrs x \$8.50 per hour)