



TEXAS BUSINESS CONFERENCES

EMPLOYMENT LAW UPDATE

Texas and Federal Wage and Hour Laws

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What Wage and Hour Laws Do – U.S.

The FLSA covers:

- minimum wage (\$7.25/hour)
- Overtime (time and a half)
- child labor
- equal pay



What Wage and Hour Laws Do - Texas

The Texas Payday Law covers:

- timely payment of wages in full at least twice each month for non-exempt employees
- enforcement of the wage agreement
- wage deductions
- final pay
- wage claims



What Wage and Hour Laws Do Not Do

Neither law requires:

- breaks
- premium pay
- shift differentials
- raises
- vacation or sick leave*
- holiday pay*
- severance pay*
- pension benefits
- expense reimbursements**

* unless such benefits are promised in a written policy or agreement

** unless business expenses take an employee below minimum wage



Minimum Wage – Allowable Deductions

- payroll taxes and other legally-required deductions
- court-ordered garnishments (child support)
- meals, lodging, and other facilities
- voluntary wage assignments, loans, and advances
- vacation pay advances
- uniforms and uniform cleaning costs *
- tip credits
- union dues
- cash losses due to misappropriation *
- Keep the Texas Payday Law in mind (written authorization needed for everything but the first two categories)!



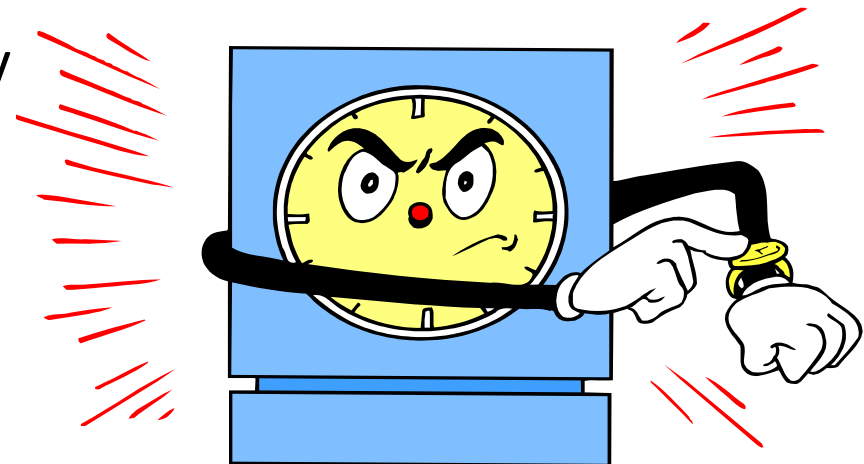
Hours of Work

- Includes all time during which the employee is at the disposal of the employer, i.e., “suffered or permitted to work”
- Waiting or on-call time
- Breaks
 - Sleeping time
- Preparatory and concluding activities
- Time spent in meetings and training programs
- Travel time
- Time worked does not include paid leave
- Hours worked and the FMLA – goes by FLSA rules



Voluntary or Unauthorized Overtime

- If overtime is worked, employer must pay for it
- Whether it was authorized or wanted is irrelevant
- Employer may handle unauthorized overtime as a disciplinary matter
- Employees may not voluntarily give up the right to overtime pay – agreements to contrary are **void**
- No working “off the clock” allowed





Calculating Overtime Pay

- Hourly: time and a half over 40 hours
- Salary: $\text{salary} \div \text{number of hours the salary is intended to compensate} = \text{regular rate}$
 - Regular hours < 40: add regular rate for each hour up to 40, then pay time and a half for hours over 40
 - Regular hours = 40: time and a half
 - Regular hours > 40: pay hours from 40 up to regular schedule at half-time, then time and a half past that
 - Irregular hours: regular rate = $\text{salary} \div \text{total hours}$, then pay half-time for all hours over 40
- Other pay methods: regular rate = $\text{total pay} \div \text{total hours}$; add half the regular rate for each overtime hour



Exempt White-Collar Employees

- Executive, administrative, professional, outside sales representative, computer professional
- Both salary and duties tests must be satisfied
- Minimum salary - \$455/week
- Duties test – focus is on “primary duty” of exempt work – exempt employees customarily and regularly perform an exempt duty as their primary duty
- Discretion and independent judgment as to the details of the work



Easiest Ways to Tell If An Employee is Exempt

- They're your boss
- They sign your paychecks
- They design workplace policies
- They decide rates of pay
- They decide on promotions
- They're the ones the subordinate employees criticize behind their backs
- They do the work only a licensed professional can do



Exempt Salaried Employees

- the company is buying results, not specific amounts of time
- no way to tell how long specific projects or tasks will last
- discretion and independent judgment are major criteria
- other employees look to exempt employees for leadership
- their decisions affect other employees' jobs and the company as a whole



Salary Basis Test

- True salary
- No partial-day deductions
- Partial-week deductions only if specifically allowed (absences due to personal business, medical reasons, unpaid suspensions)
- Special exception for FMLA
- Special rules apply for governmental employers
- Extra pay for extra work is OK



Executive Exemption

- Primary duty is management of the enterprise or a recognized department or division
- Customarily and regularly supervises two or more employees
- Authority to hire and fire, or else has substantial power to recommend such actions
- Examples: president, CEO, department head, COO, CFO, general manager



Administrative Exemption

- Primary duty is office or non-manual work directly related to management or general business operations of employer or employer's customers
- Exercises discretion and independent judgment as to matters of significance
- Not "line employees"
- Examples: department head, personnel director, CFO, VP for Administration, marketing manager, database administration



Professional Exemption

- Primary duty is work requiring advanced knowledge in a field of science or learning that is customarily acquired by a prolonged course of specialized intellectual instruction
- At least a four-year college degree in employee's field of work
- Not skilled trades, but rather established professions, generally involving state licensure or certification
- Examples: physician, attorney, teacher, engineer, architect, CPA, scientist, pharmacist, registered nurse



Creative Professionals

- Primary duty is work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor
- Does not include work that primarily depends upon intelligence, diligence, and accuracy, or that can be done with general manual ability or training
- Examples: musician, novelist, playwright, actor, painter, photographer, cartoonist, editorial writer, investigative journalist



Outside Salespeople

- Customarily and regularly engaged in the primary duty of making sales outside of the employer's principal place of business
- Paid by commission – no salary or minimum wage necessary
- Overtime exemption as well



Computer Software Professional / Computer Employee Exemption

- Top computer programmers, systems analysts, or network administrators
- Webmasters arguably included as well, depending upon scope of job
- Straight-time hourly pay of at least \$27.63 per hour, or salary of at least \$455/week



Coverage of the Texas Payday Law

- all private employees in Texas
- all private employers in Texas
- governmental employers and employees are not covered
- independent contractors and volunteers are not covered



Purposes of the Texas Payday Law

- Enforces the wage agreement in effect when the work was performed
- Prohibits illegal wage deductions – only legal if:
 - ordered by a court
 - required or specifically authorized by a law
 - made for a lawful purpose and authorized in writing by the employee
- Requires timely payment of wages due, at least twice/month for non-exempt employees and once/month for exempt employees
- Provides a deadline for final pay
- Provides a claim and appeal process for wage claims



Deductions Under The Texas Payday Law

- deductions do not have to be authorized in writing by the employee if they are ordered by a court (child support), or else are required or specifically authorized by law (payroll taxes, etc.)
- deductions made for any other reason must be authorized in writing by the employee
- have all employees sign wage deduction authorization forms listing all reasons you are likely to ever need to deduct pay (sample form is on page 308 of the book and on the CD)



Pay Agreements

- verbal or written – enforceable either way
- any pay method is allowed
- the more complicated the arrangement is, the more important it is to put it in writing
- methods and rates of pay may be changed, but never in such a way that a retroactive pay cut results
- pay whatever the agreement promises



Methods of Pay

- hand-delivery to employee at work
- hand-delivery at other place agreed to by employee
- registered mail, to arrive no later than payday
- delivery to another person designated by the employee in writing by a method similar to first three methods
- any reasonable method agreed to by employee in writing
- direct deposit if employee has bank account



Direct Deposit

- Permitted under both FLSA and TPL
- Must be voluntary on employee's part, according to DOL (minimum wage issue)
- EEOC issues as well (minimum wage and disparate impact)
- Texas law doesn't cover issue of forcing employee to have a bank account - FDIC prohibits employers from requiring employees to have a specific bank
- 60 days' advance written notice to employees
- Payment by debit card needs written authorization



Texas Payday Law – Miscellaneous Rules

- wage payments in kind must be authorized in writing by the employee (meals, lodging, and other facilities - keep exact records as required by DOL regulation 531.27!)
- fringe benefits are payable only if promised in a written policy or agreement - payable as promised - if policy is silent, benefit is not enforceable under the Payday Law



Paying on Time

- No specific penalty for paying late
- Employer cannot hold paycheck pending return of items or repayment of loans
- Employer cannot hold paycheck pending submission of timesheets, unless there is no way to calculate pay otherwise
- Excessive late payments may lead to bonding requirement



Final Pay

- Must include all components of final pay
- Layoff or discharge: within six calendar days of discharge
- Voluntary quit: by next regularly-scheduled payday
- Exception: commissions, bonuses, and fringe benefit payments covered by written contract, policy, or agreement – simply follow the agreement and the timeline in it
- Nature of work separation is determined by TWC's rules on unemployment claims



Property Return Security Deposit

- Method for encouraging return of property
- Small deduction each pay period for PRSD
- 100% return to employee upon work separation if everything is returned in decent shape; offset against PRSD for replacement cost if some items are not returned
- TPL compliance: written authorization for deduction; written policy; the two can be combined into one form for ease of use
- Sample form is in the book (page 296) and on the CD



Minimum Wage for Final Pay Period

- Two ways to do this legally – otherwise, it looks like a retroactive pay cut, which violates the law
 - as part of a written wage agreement (more difficult and risky)
 - in conjunction with a "resignation notice security deposit" agreement (easier to enforce)



Thanks for your attendance!

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Especially for Texas Employers book:
www.twc.state.tx.us/news/efte/tocmain2.html

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