

## **MINIMUM WAGE/RATE OF PAY**

**Q.** What is the minimum wage in New Jersey?

**A.** Effective July 24, 2009, the minimum wage rate in New Jersey is \$7.25 per hour.

**Q.** Do all workers have to be paid the minimum wage?

**A.** Most employees have minimum wage protection under the law. There are exceptions such as automobile salespersons, outside salespersons and minors under the age of 18, except for minors working in retail, food service, the first processing of farm products, beauty culture occupations, laundry, cleaning and dyeing occupations, light manufacturing and apparel occupations and hotel and motel occupations.

**Q.** If I am a tipped employee, is my employer required to pay the minimum wage rate?

**A.** Your total earnings (hourly wage plus tips) must equal at least the minimum wage per hour. The hourly rate is up to your employer; however, the suggested rate is a minimum of \$2.13 per hour. If the hourly rate plus tips does not equal at least the minimum wage per hour, the employer is required to make up the difference.

**Q.** Is the employer allowed to reduce my rate of pay?

**A.** Yes. The employer can reduce your rate of pay as long as you are given advance notice of the reduction. The reduction cannot be made retroactively for any time worked. Also, the reduction cannot bring the rate of pay below minimum wage.

## **OVERTIME**

**Q.** When is overtime pay due?

**A.** Overtime is paid at the rate of time and one half after forty hours of actual work in a seven-day workweek, with the exception of certain salaried employees who meet the definition of an executive, administrative or professional.

**Q.** Does my employer have to pay me overtime or double time for working on a holiday, Saturday or Sunday?

**A.** No. Overtime must be paid at a rate of time and one-half times the employee's regular rate of pay for each hour actually worked in excess of 40 hours in the workweek.

**Q.** If I work 40 hours and get 8 hours of holiday pay for a total of 48 hours of pay for the week, does my employer have to pay overtime for the hours over 40?

**A.** No, not unless the employee physically worked over 40 hours in the workweek. Overtime must be paid at a rate of time and one-half times the employee's regular rate of pay for each hour actually worked in excess of 40 hours in the workweek.

**Q.** If an employee wants to work overtime (in excess of 40 hours in the workweek) and will accept straight time, can the employee waive his/her right to overtime pay?

**A.** No, the employee and the employer cannot mutually agree to violate the law.

**Q.** How does an employer compute the overtime rate for a worker who has two or more job titles with different hourly rates?

**A.** The overtime rate is calculated by using the weighted averaged method. The total gross wage is divided by the total number of hours worked to obtain the average hourly rate. The

average hourly rate is then divided in half to determine the additional premium (half-time) rate due the employee.

*Example:*

An employee does clerical work for \$10.00 per hour and is also a hostess for \$7.75 per hour. The employee works 30 hours at \$10.00 per hour and 16 hours at \$7.75 per hour for a total of 46 hours during the week. The overtime rate due the employee is calculated as follows:

30 hours x \$10.00 per hour = \$300.00  
16 hours x \$7.75 per hour = \$124.00  
Total gross = \$424.00

The total gross (\$424.00) is divided by the total hours (46) to obtain the average hourly rate. The average hourly rate is \$9.22 per hour.

The employee is still due the additional premium pay (half-time) for the 6 overtime hours. The average hourly rate (\$9.22) is divided in half. The half-time rate is \$4.61.

6 overtime hours x \$4.61 = \$27.66

The \$27.66 (premium pay) is added to the original gross amount of \$424.00. The new gross amount is \$451.66. This is the amount that must be paid to the employee for the week.

**Q.** Can my employer require me to work overtime?

**A.** Yes. An employer can require an employee to work overtime provided the employer pays the appropriate wages and does not violate any existing employer-employee collective bargaining agreement.

**Q.** Can my employer require me to work overtime if I am a health care worker?

**A.** There are special regulations involving health care workers and mandatory overtime. View the [Frequently Asked Questions for Healthcare Workers](#) for more information.

## **FILING A CLAIM**

**Q.** Are all employees working in New Jersey covered by the laws enforced by the Division of Wage and Hour Compliance?

**A.** The Division of Wage and Hour Compliance does not have jurisdiction over state, county or municipal government, or Board of Education employees, except under the Child Labor Law. These employees fall under the jurisdiction of the Federal Wage and Hour Division. If you are a state, county, municipal, or board of education employee, you must call the U.S. Department of Labor at (609) 538-8310.

**Q.** May I file an anonymous claim?

**A.** Yes. You may file an anonymous claim, but you will not receive any information about your claim unless a resolution is reached with your employer and wages due are sent as part of the resolution.

To file an anonymous claim, write "ANONYMOUS" in the name section of the claim form, and leave the address blank. You must file your claim by mail or fax; you cannot file your claim by email and remain anonymous.

**Q.** If I put my name on the complaint will the employer be given my name?

**A.** It depends. Staff in Wage and Hour Compliance will try not to reveal the complainant's identity to the employer; however, it may not be possible in some situations. In addition, once an investigation is closed the employer has the right, under the Open Public Records Act (OPRA), to request all of the information on the claim and at that time your identity would be revealed.

**Q.** What can I do to speed up the claim process?

**A.** Be sure to answer all questions on the claim form. Incomplete forms will be returned to you for completion. Attach copies of any documentation that supports your claim. Please DO NOT send originals.

**Q.** Can a group of employees jointly file a claim?

**A.** No. Only individuals may file a wage claim. Each individual must complete a separate form.

**Q.** If a case representing my claim has already been filed in a court of law, may I file a wage claim?

**A.** No. Wage and Hour Compliance will not be able to process your claim if a case representing your claim has already been filed in a court of law.

**Q.** Is there a statute of limitations on filing a wage claim?

**A.** Yes. There is a two (2) year statute of limitations on claims for unpaid minimum wage and overtime. All other claims have a six (6) year statute of limitations.

## **INDEPENDENT CONTRACTOR**

**Q.** If I am a bona fide independent contractor, may I file a wage claim?

**A.** Independent contractors are not covered by the Division of Wage and Hour Compliance. If you are a bona fide independent contractor, you must bring your claim to the small claims court in the county where the employer resides or conducts business. If you are unsure whether you are considered an independent contractor, it is advisable for you to file a claim with the Division so that a determination can be made as to whether the Division can assist you in pursuing your claim.

## **BANKRUPTCY**

**Q.** What should I do if my employer has filed for bankruptcy?

**A.** You need to contact the [United States Bankruptcy Court](#) and file a Proof of Claim.

## **OUT OF STATE EMPLOYER**

**Q.** May I file a claim if my employer is located out of state?

**A.** Yes, you may file a claim. If the employer has a New Jersey location or agent, then the case will be handled through the normal processes. If the employer does not have a New Jersey location or an agent the Division will informally attempt to resolve the claim. However, the

Division does not have jurisdiction over employers in other states so if the employer refuses to cooperate the Division cannot take any further action.

## **MISSING WAGES**

**Q.** What do I do if my employer did not pay me all the money I am owed?

**A.** You can file a Wage Complaint form (MW-31A) for monies due. [Click here](#) to obtain a copy of this form or contact the Division of Wage and Hour Compliance at (609) 292-2305. Once completed the form should be mailed to the address listed at the top of the form.

## **INVESTIGATION PROCESS**

**Q.** What happens after I file a claim?

**A.** Within 10 days of receiving your claim, Wage and Hour Compliance will mail you an acknowledgement letter listing your claim number. (Please be ready to provide your claim number whenever you contact Wage and Hour about your claim.)

We will review your claim to verify that Wage and Hour Compliance has jurisdiction. If your claim does not fall within our jurisdiction, we will return your claim to you, with an explanation.

Depending on the nature of the complaint, your claim will be assigned to a field investigator, handled by mail, or scheduled for a Wage Collection proceeding.

*Assigned to a field investigator* - If your claim is assigned to a field investigator, the field investigator will contact you for additional information. After the investigator has all the information, he/she will make an in-person visit to the employer.

*Handled by mail* - If your claim involves only you, (e.g. you did not receive your last paycheck), your claim will be handled by mail. The employer will be contacted by mail and given the opportunity to either pay the wages due or explain why the wages are not due.

*Scheduled for a Wage Collection proceeding* - If your claim involves any kind of benefit that arises from an employment contract (e.g. vacation, holiday, commission, severance, or bonus pay), you will be scheduled for a Wage Collection proceeding.

It will be necessary for you to participate in the proceeding, present evidence in support of your claim and waive any amount of your claim in excess of \$30,000. If you do not wish to waive the excess, you may wish to file a civil suit in a court of competent jurisdiction.

Wage Collection proceedings are conducted either in-person or by telephone. The type of proceeding scheduled is determined by the Wage Collection section. Most in-person proceedings are held in Trenton; however, other locations are available upon request.

**Q.** Will I be notified of the results of the investigation?

**A.** Yes. After we complete the investigation, you will be notified of the results. If the decision is favorable to you and your employer owes you money, we will notify your employer. The employer may issue the payment directly to you or send payment to us, which we will forward to you.

Most complaints are resolved within four to six weeks however some investigations are resolved more quickly and others take several weeks. There is no way to determine in advance how long it will take to complete the investigation into your complaint. If you are concerned about the status of your case, please call the Division at (609) 292-2305 and provide your claim or case number (from your acknowledgement letter) and the claims agent will advise you as to the status. Usually, when there is a field investigation, you will be contacted by the field investigator who will provide you with his or her telephone number so that you can make future contact about the status of your claim.

**Q.** What happens if the results of the investigation are not in my favor?

**A.** If the decision is unfavorable to you, we will notify you by mail, and you will have the option of pursuing your claim through a Wage Collection proceeding. If you chose this option, you must notify Wage and Hour Compliance in writing and we will then schedule you for a proceeding.

It will be necessary for you to attend the proceeding, present evidence in support of your complaint and waive any amount of your complaint in excess of \$30,000. If you do not wish to waive the excess, you may wish to file a civil suit in a court of competent jurisdiction. Most hearings are held in Trenton, however, other locations are available upon request.

## **DISCHARGE OR TERMINATION OF EMPLOYMENT**

**Q.** If I was unfairly terminated, can Wage and Hour help me?

**A.** Wage and Hour Compliance has jurisdiction in termination cases *only* when the termination results from a wage complaint. If you believe your employment was terminated because you complained about your wages, be sure to include this information on your [claim form](#).

If you believe your employment was terminated for reasons that constitute discrimination, call the Division on Civil Rights at (609) 292-4605 or visit their website at [www.nj.gov/oag/dcr](http://www.nj.gov/oag/dcr).

If your employment was terminated for any other reason, staff in Wage and Hour Compliance cannot assist you. New Jersey is an "employment-at-will" state, meaning that either an employer or employee may end employment at any time, without reason or notice. You may wish to contact an attorney for legal advice.

**Q.** Does my employer have to give me notice when he/she fires me? Do I have to give notice when I quit?

**A.** No. Notice is not required by either party based on the fact that New Jersey is an "employment at will" state, meaning that an employer or employee may terminate the relationship at any time, without a reason, without cause.

**Q.** When does an employer have to pay final wages to a terminated employee?

**A.** The employer may wait until the next regular payday designated for the pay period regardless of whether the employee quit or was fired.

## **MINORS/CHILD LABOR**

**Q.** At what age does a minor need an employment certificate?

**A.** An employment certificate or "working papers" are required for all minors under the age of 18.

**Q.** What is the procedure for obtaining the working paper?

**A.** After obtaining a promise of employment, the child obtains a blank working paper from the issuing officer of the local school district where the minor resides. If the minor is not a New Jersey resident, the paper can be obtained from the district in which the minor has obtained a promise of employment.

The child takes the form to the employer who is responsible for completing the promise of employment information. This information includes the employer's name and address, type of business, specific job title or duties, rate of pay, whether the business is licensed for liquor, etc.

The child is then responsible for having a physical or obtaining a doctor's note. (A single physical is acceptable for four years.) The working paper along with the medical documentation and proof of age are taken back to the school where the school district information is completed. A copy of the completed form is given to the child to provide to the employer. The issuing officer retains a copy and a copy is sent to the State for review.

**Q.** Does a minor need new working papers every time he/she changes a job?

**A.** Yes, working papers are only valid for the employment stated on the certificate.

**Q.** What kind of work can a minor perform?

**A.** The type of work and hours of work vary depending upon the age of the minor. View our [Child Labor Section](#) for more information.

## **PAYROLL DEDUCTIONS**

**Q.** Is my employer supposed to give me a statement of deductions?

**A.** Yes. Each time you are paid you must receive a statement of deductions listing the gross and net wages and all individually itemized deductions (such as taxes) from your wages. The statement can be provided electronically or in hard copy.

**Q.** Are employers allowed to deduct for shortages or breakage?

**A.** No. Nothing can be deducted from an employee's wages other than those items required and/or specifically permitted by federal law and/or state law.

**Q.** Can an employer deduct money from my paycheck if I damage company equipment?

**A.** No. The Law does not permit deductions for damages to company equipment.

**Q.** Can an employer deduct money from my last paycheck if I don't return company property such as an ID tag, cell phone, tools, etc?

**A.** No. The Law does not permit deductions for failure to return company property of any kind.

**Q.** Can an employer make a deduction from my paycheck or require me to pay for drug or other pre-employment testing?

**A.** No, unless you are applying for a security guard position. It is illegal for employers or prospective employers to make such a deduction from the wages of any employee or require that employee to pay any sum for drug or any other pre-employment testing. However, the 2004 Security Officer Registration Act (N.J.S.A. 45:19A-1 et seq.) states that applicants for security guard positions are responsible for the payment of any registration costs with the State Police, which includes drug testing, fingerprinting, criminal background checks, etc.

**Q.** Can an employer make a deduction for uniforms or uniform maintenance?

**A.** No. The Law states "No deduction from the pay of employees for uniforms shall be permitted. If the employee pays for uniforms in cash and the cash payment brings the employee below the minimum wage, the employer shall make up the difference for the minimum wage for that week." In addition, an employer may not require an employee to purchase a uniform that contains a company logo or cannot be worn as street wear. However, Section 34:11-4.4b(6) of the Wage Payment Law, NJSA 34:11-4.1 et seq., allows deductions including those for: "Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided the deductions for such payments are authorized by the employer."

**Q.** Can an employer make a deduction from my paycheck or require me to pay for a license, certificate or certification that is required in order for me to perform the job?

**A.** No. The Wage Payment Law states that an employer cannot make a payroll deduction for a license, certificate or certification that is required in order for an employee to be permitted to perform the job. However, if the license, certificate or certification is the property of the employee, not exclusive to one employer and is required to perform the job, the employee can be required to pay for it, although not by means of a payroll deduction.

## **FREQUENCY OF PAYMENT/METHOD OF PAYMENT**

**Q.** How often must an employee be paid?

**A.** Most employers are required to pay wages at least twice during each calendar month, on regular paydays designated in advance by the employer. However, for certain executive, supervisory or other special classes of workers, payment can be made once a month as long as there is a regularly established schedule.

**Q.** Can I have my paycheck directly deposited into a bank account?

**A.** Yes. Your paycheck can be directly deposited if your employer provides this option. You must personally be in agreement with this action although not all of the workers have to agree to direct deposit. Your employer must make arrangements with a financial institution. However, the option of direct deposit may not result in the employee incurring any additional fees as the immediate result of using direct deposit.

**Q.** Can an employer pay wages with a payroll debit card?

**A.** Yes. An employer can deposit an employee's wages in a payroll debit card account if the following conditions are met (refer to [N.J.A.C. 12:55-2.4](#) for the complete list of conditions):

- The employer must explain to the employee how the payroll debit card may be used at least one time per pay period to withdraw wages in full, without any fee and without difficulty.
- The employer must disclose the features of the payroll debit card (for example, withdrawal at any ATM or point-of-sale use), including any fee(s), which may be charged to the employee.
- The employee must consent in writing to being paid with a payroll debit card.
- The employer cannot intimidate or threaten an employee with discharge for refusal to accept a payroll debit card.
- The employer cannot make a payroll debit card a condition of hire or continued employment.
- The employer must furnish the employee with a statement of deductions for each pay period.

## **BENEFITS**

**Q.** Are employers required to pay benefits (vacation, sick, severance, holiday pay or any type of benefits)?

**A.** No. Fringe benefits are not required by New Jersey State law. If the employer chooses to provide these benefits, then must be administered uniformly in accordance with the established policy, employment agreement or union contract. An individual may have a basis for a claim if the employer fails to adhere to the policy, agreement or contract.

**Q.** If I am hired with medical benefits, is my employer allowed to stop this benefit?

**A.** Yes. An employer may discontinue medical benefits however, the employer is required to give notice if the medical benefits are being discontinued or the medical benefits are changing. If the medical benefits are being discontinued, the employer must provide 30 days advance notice in writing. If the medical benefit plan is changing the employer must notify the employees in writing immediately as soon as the employer is notified by the health insurer.

**Q.** If I have medical benefits and my employment ends, do the benefits continue?

**A.** Benefits may or may not end immediately, depending upon the employer's policy and the health insurer. It is not a violation of the law for benefit coverage to cease immediately. However, you may be eligible to COBRA benefits which are not regulated or under the jurisdiction of the New Jersey Department of Labor and Workforce Development. For information on COBRA, visit the United States Department of Labor's website at: [www.dol.gov/ebsa/faqs/faq\\_compliance\\_cobra.html](http://www.dol.gov/ebsa/faqs/faq_compliance_cobra.html)

## **BREAK PERIODS**

**Q.** Are breaks and lunches required by law?

**A.** The mandatory break law only applies to minors under the age of 18 and they must be given a thirty (30) minute meal period after five (5) consecutive hours of work. Company policy dictates break and lunch periods for anyone over the age of 18.



## **HOURS OF WORK**

**Q.** Does the employer have the right to change an employee's hours of work?

**A.** The scheduling of an employee's hours and/or days of work are up to the discretion of the employer; however, it is important to note if an employee's hours of work are diminished they may be eligible for unemployment insurance benefits. For more information on Unemployment Insurance benefits, visit their website at: <http://lwd.dol.state.nj.us/labor/ui/content/faq.html>

## **JURY DUTY**

**Q.** Is an employer required to pay for jury duty or allow time off for jury duty?

**A.** New Jersey law requires that employers allow their employees time off to attend court for jury duty, however, there is no requirement for the employer to compensate the employee for the time.

## **SNOW DAYS/STATE OF EMERGENCY**

**Q.** Are employers required to pay employees for "snow days" or other days when they are unable to work due to "State of Emergencies" declared by municipal, county or state officials?

**A.** No. New Jersey State law does not require employers to pay employees for time not actually worked.

## **UNDOCUMENTED WORKERS**

**Q.** If the investigation reveals that there are undocumented workers, what will happen?

**A.** The Division of Wage and Hour Compliance does not investigate or inquire into the legal status of any worker. The Division applies New Jersey's labor laws without regard to a worker's legal status. The Division does not share information with "Immigration".

## **LIE DETECTOR and DRUG TESTS**

**Q.** Can the employer require me to take a pre-employment lie detector test?

**A.** No, except in the following circumstances: 1. the employer is authorized to manufacture, distribute or dispense controlled dangerous substances; 2. the employee or prospective employee is or will be directly involved in the manufacture, or dispensing of, or has or will have access to, legally distributed controlled dangerous substances; and 3. the test, which shall cover a period of time no greater than 5 years preceding the test, shall be limited to the work of the employee or prospective employee and the individual's improper handling, use or illegal sale of legally distributed controlled dangerous substances.

**Q.** Can I be required to pay for the lie detector test?

**A.** No.

**Q.** Can an employer require me to take other types of pre-employment testing such as drug testing, medical examinations, vision exams, etc?

**A.** Yes, but unless you are applying for a security guard position, the employer or prospective employer cannot deduct the cost for this from the employee's pay or require the employee or prospective employee to pay for the cost of such drug testing, medical examinations, visual exams, etc. The 2004 Security Officer Registration Act (N.J.S.A. 45:19A-1 et seq.) states that applicants for security guard positions are responsible for the payment of any registration costs

with the State Police, which includes drug testing, fingerprinting, criminal background checks, etc.

## **FAMILY LEAVE**

**Q.** Am I eligible for Family Leave?

**A.** There are two family leave acts. There is a New Jersey Family Leave Act and a federal Family and Medical Leave Act. Eligibility for a leave under one or both of these laws depends on whether your employer is covered, the reason you are taking the leave, and the length of your employment. The NJ Division on Civil Rights is responsible for enforcing the New Jersey Family Leave Act. More information is available on the Civil Rights website at <http://www.state.nj.us/lps/dcr/index.html> or by calling (609) 292-4605.

**Q.** Can I file a complaint with the New Jersey Division of Wage and Hour Compliance because my employer refused to give me Family Leave?

**A.** The NJ Division of Wage and Hour Compliance does not have jurisdiction over complaints involving Family Leave. The NJ Division on Civil Rights is responsible for enforcing the New Jersey Family Leave Act. More information is available about the New Jersey Family Leave Act and the federal Family and Medical Leave Act is available on the Civil Rights web site at <http://www.state.nj.us/lps/dcr/index.html> or by calling (609) 292-4605.