

A SUMMARY OF VERMONT WAGE AND HOUR LAWS



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Wage and Hour Program

Vermont's Wage and Hour program functions under Title 21, Vermont Statutes Annotated (VSA), Chapter 5 (Subchapters 1 through 4), in accordance with the Federal Fair Labor Standards Act (FLSA), as amended. Functions of the Wage and Hour Program include:

- investigation and attempted resolution of disputes involving wages, benefits and wage supplements;
- education and enforcement concerning minimum wage and overtime requirements;
- education and enforcement concerning child labor laws;
- providing employers with legally required posters and policies;
- ensuring correct form and timeliness of payments;
- responding to inquiries and providing information concerning employer/employee related issues including Vermont's family and parental leave act, fair employment practices act, sexual harassment act, and laws addressing military, legislative and juror duty leave. Information is also provided concerning Vermont's drug testing laws and the polygraph protection act.

Jurisdiction

There are both State and Federal laws (e.g. *the Federal Fair Labor Standards Act or FLSA*) governing wage and hour (*minimum wage rate, agreed upon rate, and overtime rate*); payroll record keeping practices; child labor; parental and family leave; medical leave; etc. which apply to employer/employee relationships in Vermont. **Where differences exist between the State and Federal law, the law providing greater employee protection is the law to which the employer must adhere.**

Employees falling under federal jurisdiction include:

- those working for enterprises which are engaged in interstate commerce;
- those working in businesses which do an annual gross volume of sales and services of at least \$500,000 (note: includes retail businesses which were in operation effective 3/31/89 and did an annual gross volume of \$362,500, or were in the service industry and did an annual gross volume of \$250,000);
- those working for laundry or construction businesses which were in operation effective 3/31/89, (*regardless of the business' dollar volume*);
- those working in retail and/or service businesses who are "individually" engaged in interstate commerce, to include credit card transactions (*regardless of the dollar volume of the enterprise*);
- those employed in the newspaper industry if the business does a circulation of at least 4,000 papers;
- those working in residential homes, hospitals, public or private schools (*including daycare*); those working in federal, state or local governments;

Minimum Wage

The Vermont minimum wage law covers employers who are employing two or more employees, unless exempted by statute.

Exemptions include, but are not limited to:

- full-time high school students
- agriculture workers

- taxi cab drivers
- outside salespersons
- newspaper or advertisement home delivery persons
- persons employed in the activities of a publicly supported non-profit organization (except laundry employees and nurses aides or practical nurses)
- a person employed in a domestic service in or about a private home
- a person employed by the United States federal government

Although full-time high school students are exempt from Vermont’s minimum wage requirement, federal law provides for a minimum compensation for these students. If you are a federally covered employer interested in the federal youth minimum wage, contact the U.S. Department of Labor at (802) 951-6283 for more information.

Individuals employed as a “**service or tipped**” employee may be paid a “**basic wage rate**”, with the employee also receiving a “**maximum tip credit**”. Relevant definitions are as follows:

“**Service or tipped**” employee: an employee who works in the hotel, motel, tourist place, or restaurant industry, who customarily and regularly receives more than \$120.00 per month in tips.

“**Basic wage rate**” is the minimum hourly rate a “service or tipped” employee can be paid. This amount will increase on January 1st of each year by 5% or the percentage increase of the CPI-U, U.S. city average, not seasonally adjusted, whichever is smaller.

“**Maximum tip credit**” is the difference between the “basic wage rate” and the current minimum wage. The payment of the maximum tip credit ensures all employees are paid an hourly wage equal to or exceeding the current minimum wage.

Annually the Vermont Department of Labor updates the current minimum wage poster, which provides information on the current minimum wage, basic wage rate, and maximum tip credit. This poster may be obtained from our website at www.labor.vermont.gov or calling 802-828-0267.

At any time when the federal minimum wage becomes higher than the Vermont minimum wage, the Vermont minimum wage will increase to the federal rate, effective the same day.

Overtime

Vermont’s overtime compensation law covers employers employing two or more employees, unless specifically exempted by statute. Exemptions from the Vermont overtime compensation law include:

- Employees of retail or service establishment
- Employees of an amusement or recreational establishment (with restrictions)
- Employees of a hotel, motel or restaurant establishment
- Employees of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residence and residential care homes (with restrictions)
- Employees of a business engaged in transportation of persons or property to whom FLSA overtime requirements do not apply
- Employees of a political subdivision of the state

When covered employees work in excess of 40 hours during a workweek, an employer shall compensate them with at least one and one-half times the regular wage rate.

Note: Even if exempt from overtime under state law, an employee covered by the FLSA may still be entitled to overtime. Contact the U.S. Department of Labor at (802) 951-6283 for more information.

Specific issues which often arise when addressing proper overtime compensation:

1. The standard for calculating overtime hours is based upon a single workweek. An employer is not permitted to average the hours worked by an employee over two or more weeks, regardless of the pay schedule utilized by the employer.
2. Bonuses, which are considered part of the regular rate as remuneration for employment (paid in lieu of wages) are included in determining the regular hourly rate of an employee for purposes of computing the proper overtime compensation. However, gifts, rewards for services, discretionary or special occasion bonus, reimbursement for expenses, employer benefit contributions and pay for foregoing holidays and vacations are not included when determining the regular rate of pay for overtime calculations.
3. When an employee works in two or more different jobs, with different rates of pay, in a single work week, the regular rate for that week is the average of the combined rates, i.e. the total earnings from all employment positions are combined and then divided by the total number of hours work in all jobs. This figure is then utilized to calculate overtime pay.

Compensatory Time

In Vermont, there is no legal provision pertaining to the use of compensatory time in lieu of overtime payments. As such, questions or issues arising under this topic should be directed to the U.S. Department of Labor. Generally, under the federal provisions, comp time may only be utilized in limited circumstances.

On Call Time

In Vermont, the statutes are also silent as to the compensation of employees for “on call” time. However, under federal law, for an employee to be compensated for their on call time, their liberty must be more than slightly restricted, meaning he/she cannot use his/her time effectively for their own purposes. Carrying a beeper or merely leaving a telephone number does not qualify for on call compensation.

Travel Time

As the Vermont statutes do not address compensation for travel time of employees, we defer to the federal regulations in this area. Generally, in determining whether travel time is working time, the kind of travel involved is evaluated. Ordinary home to work travel, which is a normal incident of employment, is not compensable. However, several instances of travel time are considered work time for which the employee is due proper compensation. For example, if an employee, after completing his/her day of work and returning home, is summoned and travels for a substantial distance to perform an emergency service for the employer, this travel time is compensable. In addition, in most circumstances, travel for a special one-day assignment in another city, travel all in a day’s work and travel away from home when it cuts into the employee’s workday are all considered working hours for the employee.

“Service and Tipped” Employees

A “service or tipped employee” means all those, in either hotels, motels, tourist places, and restaurants who customarily and regularly receives more than **\$120.00** a month in tips for direct and personal service. This means, if an employee who does not regularly receive more than \$120.00 a month in tips, the employee must be paid an hourly wage equal to or exceeding the minimum wage rate.

A service or tipped employee must submit a signed report to the EMPLOYER on a weekly basis indicating the total amount of tips received and retained by the employee during the previous seven day period. The employer is required to preserve all such reports submitted by the employee for a period of three (3) years.

Pursuant to Section 3(m) of the Fair Labor Standards Act (FLSA) the EMPLOYEE must retain all tips received, except to the extent that there is a valid tip pooling arrangement. Additionally, Section 3(m) prohibits any agreement between the employer and the employee reallocating any part of the employee’s tips to the employer. For more information on tip pooling, tips charged on credit cards, or time spent in non-tipped duties by a service or tipped employee, please call Vermont’s Wage and Hour Program.

Training

Unless **all** of these conditions are met, the employee must be paid for attendance at lectures, meetings, training programs and similar activities.

1. Attendance is outside of the employee’s regular working hours; AND
2. Attendance is in fact voluntary; AND
3. The course, lecture or meeting is not directly related to the employee’s job; AND
4. The employee does not perform any productive work during such attendance.

Commissions

When employees are paid by “commission” only, then those “commission” payments are considered “wages” and fall under the same protection from deductions as regular “wages” do.

If employees are paid with a combination of “wages” and “commission”, certain deductions are allowed. These deductions can only take an employee to the current minimum wages. Allowable wage deductions are provided for in Vermont’s Minimum Wage Rules.

REMEMBER it is an employer’s responsibility to ensure employees make AT LEAST the current minimum wage for all hours worked, whether payment is made with straight commission or a combination of wages and commission.

Wage Deductions

Allowable and prohibited Wage Deductions are provided for in Vermont’s Minimum Wage Rules. A chart related to wage deductions is provided as the last page of this document.

Allowed wage deductions include:

1. **Deductions for goods or services:** An employer may deduct for goods and services provided by the employer to the employee if the following conditions are met:
 - a. The deduction does not reduce an employee's wages below the hourly minimum wage.
 - b. The employee provides written authorization or the employer sufficiently documents the employee's intention to repay.
 - c. The deduction is not prohibited by state or federal law or these rules.
 - d. The deduction shall not exceed the amount the employee agreed to.
2. **Deductions authorized by law:** An employer may make deductions specifically authorized by state or federal law including deductions for state and federal taxes and child support. The employer may, with written authorization from the employee, make deductions for contributions for health insurance or retirement plans.
3. **Deductions for employer provided meals and lodging:** An employer is entitled to deduct from the wages earned an allowance for meals and lodging actually furnished and accepted, in the amounts indicated in the Vermont Minimum Wage Rules.

Prohibited Wage Deductions:

1. An employer may not deduct from an employee's wages any amount due to claimed damages, cash register shortages or to pay for a medical exam as a condition of employment.
2. An employer may not deduct from an employee's wage any amount for providing or maintaining required apparel, including a uniform, nor shall any other compensation pass to any employer from an employee for required apparel, including a uniform or the maintenance thereof, unless the employee voluntarily consents to such deduction or compensation in writing and such deduction does not:
 - a. Reduce the total remuneration received by an employee below the hourly minimum wage;
 - b. Include any administrative fees or charges;
 - c. Amend, nullify or violate the terms and conditions of any collective bargaining agreement.
3. An employer may neither deduct from an employee's wages, nor require an employee to pay, any amount for personal protective equipment required by occupational safety and health regulations, except as allowed by sections 1910.132(h) and 1926.95(d) of Title 29 of the Code of Federal Regulations.
4. An employer may not deduct from an employee's wages any amount to offset a state mandated Health Care Contribution as defined under 21 V.S.A. §2003 (Catamount Health).

A copy of Vermont's Minimum Wage Rules may be obtained from our website at www.labor.vermont.gov or calling 802-828-0267.

Pay Day Requirements

Employers must pay employees on a weekly basis. However, after providing written notice to its employees, an employer may issue paychecks on a bi-weekly or semi-monthly basis. Payday shall be within six (6) days of the last day of the pay period. If the employer discharges an employee, the employee must be paid within 72 hours from the time of discharge. An employee who voluntarily leaves an employment position, shall be paid on the last regular payday, or if there is no regular payday, on the following Friday.

Employers must provide a wage statement to its employees with each payment of wages. This statement must set forth, at a minimum, the total hours worked, the hourly rate, gross pay and each deduction fully itemized.

Electronic or Direct Deposits

With the **written authorization of an employee**, or unless otherwise required by law, an employer may pay wages due the employee by deposit through electronic funds transfer or other direct deposit systems to a checking, savings or other deposit account maintained by the employee in any financial institution within or without the state. See 21. V.S.A. §342(d).

Time Cards / Time Sheets

An employer may not withhold an employee's wages for lack of a completed time card or time sheet. As far as the proper amount of the compensation due the employee, unless an employer is made aware that an employee is absent from specific work hours, the wages paid must be paid for all scheduled hours. Adjustments may be made on future wages.

Moreover, if an employer utilizes time clocks, early or late clock punching, which results in minor discrepancies, can be disregarded. Furthermore, the general practice of rounding the employees' starting and finishing time to the nearest five minutes, nearest on-tenth or quarter of an hour will be accepted, unless such practice, over time, results in the failure to compensate employees properly for all the time they have actually worked.

Record Keeping

Under Vermont law, an employer is required to maintain, for two years, true and accurate records of the hours worked by each employee and of the wages paid to each employee. In addition, unemployment law requires an employer to maintain records for three (3) years. Federal wage and hour record keeping rules are defined in Section 516.2 of the Fair Labor Standards Act. Furthermore, upon demand, an employer is also required to furnish to the Commissioner of the Department of Labor a sworn statement of these records and allow the Commissioner, their deputy or authorized agent to conduct an inspection of the records at any reasonable time. An employer may be fined for failure to comply with the record keeping requirement.

Benefits and/or Wage Supplements

An employer is not required to provide its employees with paid or unpaid holidays (such as "Memorial Day" or Thanksgiving"), paid or unpaid sick leave (except under Parental and Family Leave Act), paid or unpaid vacation time or severance pay when an employee leaves the business.

However, employers who are parties to written agreements, which can be in the form of an employee handbook, memorandum, correspondence, etc., providing for vacation time, sick leave, holidays and/or severance pay are liable to their employees for these benefits.

In the case where benefits and/or wage supplements are offered by a collective bargaining agreement (union contract), an injured employee should contact his/her union representative for benefit information.

Employees injured over unpaid retirement or profit sharing plans should contact the ERISA Division of the U.S. Department of Labor at 617-565-9600.

Payment for Medical Examination

An employer may not require an employee or applicant for employment to pay the cost of a medical examination as a condition of employment.

Jury Duty / Witnesses

When an employee serves as juror or participates as a witness in a proceeding, his/her employer is not required to pay the employee's wages. However, for the purpose of determining seniority, fringe benefits, credit towards vacations and other rights, privileges and benefits of employment, employees shall be considered in the service of their employer during all times while serving as jurors or appearing as witnesses.

Breaks and Lunch Periods

Under Vermont law, an employer **must** provide its employees with "reasonable opportunity" to eat and use toilet facilities in order to protect the health and hygiene of the employee.

Federal law mandates that if an employer provides a lunch period, it is counted as "hours worked" and must be paid UNLESS the lunch period lasts at least thirty minutes and the employee is completely uninterrupted and free from work.

Nursing Mothers in the Workplace

Effective July 1, 2008 Vermont's Nursing mothers legislation passed into law. This law provides the following protection for nursing mothers in the workplace:

1. For an employee who is a nursing mother, the employer shall for three years after the birth of a child;
 - a. Provide reasonable time, compensated or uncompensated, throughout the day for the employee to express breast milk for her nursing child. The decision to provide compensation shall be in the sole discretion of the employer, unless modified by a collective bargaining agreement; and
 - b. Make reasonable accommodation to provide appropriate private space that is not a bathroom stall.
2. An employer may be exempted from the provisions of the subsection (a) of this section if providing time or an appropriate private space for expressing breast milk would substantially disrupt the employer's operations.
3. An employer shall not retaliate or discriminate against an employee who exercises the right provided under this section.

Drug Testing

The Vermont Drug Testing Act restricts an employer's ability to require job applicants and employees to submit to drug testing as a condition of employment.

Drug Testing of Applicants is permissible provided:

1. Applicant given offer of employment conditioned on negative test result;
2. Applicant given a written notice listing drugs to be tested, testing procedures, and stating that therapeutic levels prescription drugs are not reported; and
3. Drug test administered as required by statute.

Random drug testing of employees is prohibited, except where required under federal law. Exception to the general prohibition include:

1. Employer has probable cause to believe employee is using or is under the influence of a drug on the job;
2. Employer provides or makes available to the employee a bona fide rehabilitation program;
3. Employee is not terminated while in the rehabilitation program or after successful completion of the program (*However, employee may be suspended for up to three months while participating in the program and may be terminated if after completing the program the employee fails a subsequent drug test*);
4. Drug test administered as required by law;
5. Employee shall be provided with opportunity to explain the results as well as provide opportunity to retest a portion of the sample; and
6. All information shall be kept confidential.

If an employer administers a drug test, it must first comply with the following requirements:

1. Employer must establish a written policy;
2. Employer may not request or require a blood sample;
3. Employer shall utilize a laboratory designated by the Department of Health;
4. Employer shall establish a chain of custody procedure;
5. If urinalysis is employed, the employer shall require confirmation tests for positive results and provide the tested employee with the opportunity to have a blood sample drawn; and
6. Employer shall insure that a positive sample is preserved for accurate retesting for not less than 90 days after the employee receives the result.

Resource Listing

Vermont Department of Labor	802-828-4000
Wage and Hour Division General Information	802-828-0267
Employer Services	802-828-4344
Report Fraud.....	802-828-4333
Employer Assistance Claim Line (toll free)	1-877-214-3331
Labor Market Information.....	802-828-4202
Employee Displacement Unit.....	802-828-4177
Vermont Apprenticeship Division	802-828-4356
Workers' Compensation Program	802-828-2286
Vermont Occupational Safety and Health Administration (VOSHA)	802-828-2765
Vermont Agency of Human Services.....	802-241-2194 or 1-800-786-3214
Civil Rights Unit, Office of the Vermont Attorney General	802-828-3657
Division of Vocational Rehabilitation.....	802-241-3180
Vermont Department of Taxes	802-828-2865
Internal Revenue Service (IRS).....	1-800-829-1040
Social Security Administration	802-223-3476
Immigration & Naturalization	1-800-755-0777
Vermont Attorney General's Office, Civil Rights Division.....	802-828-3657
Vermont Labor Relations Board	802-828-2700
Vermont Department of Taxes	
Employers - Business Tax.....	802-828-2551
Employees - Taxpayer Services	802-828-2865
Vermont Department of Banking, Insurance, Securities and Health Care Administration (VIPER information).....	1-800-631-7788
U.S. Department of Labor, Pension and Welfare Benefits Administration (ERISA information)	617-565-9600
U.S. Department of Labor, Wage & Hour Division.....	802-951-6283

Websites

Vermont Department of Labor	www.labor.vermont.gov
U.S. Department of Labor.....	www.dol.gov

IS THE WAGE DEDUCTION.....

PERMITTED?

