454 CMR 27.00: MINIMUM WAGE

Section

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27.01: Purpose and Scope

(1) Purpose. To clarify practices and policies in the administration and enforcement of the Minimum Fair Wages Act.

(2) Scope. 454 CMR 27.00 applies to any employer who employs any person in an occupation in accordance with M.G.L. c. 151.

27.02: Definitions

Basic Minimum Wage. The minimum wage rate in effect under M.G.L. c. 151, § 1 to be paid to an employee in an occupation as defined in M.G.L. c. 151, § 2.

Bona Fide Educational Institution. A secondary school system or an institution of higher education that has received accreditation from a recognized source.

Director. The Director of the Department of Labor Standards.

Employ. To suffer or permit to work.

Employer. An individual, corporation, partnership or other entity, including any agent thereof, that employs an employee or employees for wages, remuneration or other compensation.

Minor. A person younger than 18 years old.

Regular Hourly Rate. The amount that an employee is regularly paid for each hour of work. When an employee is paid on a piece work basis, salary, or any basis other than an hourly rate, the regularly hourly rate shall be determined by dividing the employee's total weekly earnings by the total hours worked during the week. Regardless of the basis used, an employee shall be paid not less than the applicable minimum wage each week.

The regular hourly rate shall include all remuneration for employment paid to, or on behalf of, the employee, but shall not include:

(a) sums paid as commissions, drawing accounts, bonuses, or other incentive pay based on sales or production; or

(b) sums excluded under 29 U.S.C. § 207(e).

Service Rate. The hourly rate an employer pays to a tipped employee, which may not be less than the cash wage set forth in M.G.L. c. 151, § 7.

Tipped Employee. An employee who regularly receives gratuities of more than $20 a month.

Uniform. All special apparel, including footwear, which is worn by an employee as a condition of employment. It shall be presumed that a uniform worn by an employee of any establishment is worn as a condition of employment if the uniform is of similar design, color, or material, or it forms part of the decorative pattern of the establishment to distinguish a person as an employee of the place of work. Where an employer requires a general type of basic street clothing, permits variation in details of dress, and the employee chooses the specific type and style of clothing, this clothing shall not be considered a uniform.

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Working Time. Includes all time during which an employee is required to be on the employer's premises or to be on duty, or to be at the prescribed work site or at any other location, and any time worked before or after the end of the normal shift to complete the work. Working time does not include meal times during which an employee is relieved of all work-related duties. Working time includes rest periods of short duration, usually 20 minutes or less.

27.03: Minimum Wage and Overtime Rates

(1) Basic Minimum Wage. At least the basic minimum wage in effect under M.G.L. c. 151, § 1 must be paid to an employee in an occupation as defined in M.G.L. c. 151, § 2, unless a lesser wage is expressly permitted by law or a waiver of the basic minimum wage is granted in writing by the Director in accordance with M.G.L. c. 151, § 7 or 9.

(2) Minimum Wage for Tipped Employees. The minimum wage rate for a tipped employee may be comprised of both:

(a) the service rate paid by the employer; and

(b) tips actually received and retained by the employee. The sum of the service rate and the tips received by the employee must equal or exceed the basic minimum wage. The service rate shall be not less than the cash wage required to be paid to a tipped employee in M.G.L. c. 151, § 7. An employer may pay the service rate to the employee only if:

1. the employer informs such employee in writing of the provisions of M.G.L. c. 151, § 7, paragraph three;
2. the employee actually receives tips in an amount which, when added to the service rate, equals or exceeds the basic minimum wage; and
3. all tips received by the employee are either retained by him or her or are distributed to him or her through a tip-pooling arrangement. If the employee is engaged in the serving of food or beverages, a tip-pooling arrangement must conform with the requirements of M.G.L. c. 149, § 152A. Unless all three of the foregoing requirements are met, the employer must pay a tipped employee at least the full basic minimum wage.

(3) Overtime Rate. One and one half times an employee's regular hourly rate, such regular hourly rate not to be less than the basic minimum wage, for work in excess of 40 hours in a work week, except as set forth in M.G.L. c. 151, § 1A. The terms "*bona fide* executive, or administrative or professional person" in M.G.L. c. 151, § 1A(3), and "professional service" in M.G.L. c. 151, § 2, shall have the same meaning as set forth in 29 CFR Part 541.

Whether a nonexempt employee is paid on an hourly, piece work, salary, or any other basis, such payments shall not serve to compensate the employee for any portion of the overtime rate for hours worked over 40 in a work week, except that this limitation only applies to the "one-half" portion of the overtime rate (one and "one-half" times an employee's regular hourly rate) when overtime is determined on a *bona fide* fluctuating workweek basis.

The overtime rate for a tipped employee receiving the service rate shall be computed at one and one half times the basic minimum wage, except where exempted by M.G.L. c. 151, § 1A.

27.04: Hours Worked

(1) Reporting Pay. When an employee who is scheduled to work three or more hours reports for duty at the time set by the employer, and that employee is not provided with the expected hours of work, the employee shall be paid for at least three hours on such day at no less than the basic minimum wage. 454 CMR 27.04 shall not apply to organizations granted status as charitable organizations under the Internal Revenue Code.

(2) On-call Time. All on-call time is compensable working time unless the employee is not required to be at the work site or another location, and is effectively free to use his or her time for his or her own purposes.

(3) Sleeping Time and Working Shifts.

(a) An employee required to be on duty at the work site for less than 24 hours is working even if the employee is permitted to sleep or engage in other personal activities when not busy.

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(b) Where an employee is required to be on duty at the worksite for 24 hours or more, the employer and employee may agree in writing prior to performance of the work to exclude *bona fide* meal periods and a *bona fide* regularly scheduled sleeping period of not more than eight hours from working time, provided the employer provides adequate sleeping quarters and the employee can enjoy an uninterrupted period of sleep. If no prior written agreement is made, sleeping time and meal time will constitute compensable working time. If the sleeping period is interrupted by a call to duty, all time on duty must be counted as working time. If the sleeping period is interrupted to such an extent that the employee cannot get a reasonable period of sleep, the entire period must be counted as working time.

(c) If an employee resides on an employer's premises on a permanent basis or for extended periods of time, not all time spent on the premises is considered working time. The employer and the employee may make any reasonable written agreement as to hours worked which takes into consideration all of the pertinent facts; provided, however, that the employee shall be compensated for all time in which job-related duties are actually performed, and on-call time shall be compensated in accordance with 454 CMR 27.04(2).

(4) Travel Time.

(a) Ordinary travel between home and work is not compensable working time.

(b) If an employee who regularly works at a fixed location is required to report to a location other than his or her regular work site, the employee shall be compensated for all travel time in excess of his or her ordinary travel time between home and work and shall be reimbursed for associated transportation expenses.

(c) If an employer requires an employee to report to a location other than the work site or to report to a specified location to take transportation, compensable work time begins at the reporting time and includes subsequent travel to and from the work site.

(d) An employee required or directed to travel from one place to another after the beginning of or before the close of the work day shall be compensated for all travel time and shall be reimbursed for all transportation expenses.

(e) Travel that keeps an employee away from home overnight shall be compensated in a manner consistent with 29 C.F.R. § 785.39.

27.05: Wage Payments and Deductions From Wages

(1) Deductions from Basic Minimum Wage. No deduction, other than those required or expressly allowed by law, and those allowed for lodging and meals listed in 454 CMR 27.05(2) and (3), shall be made from the basic minimum wage.

(2) Deductions for Lodging. An employer may deduct from the basic minimum wage of an employee a sum per week as set forth in 454 CMR 27.05(2)(a) through (c) for lodging that is safe and sanitary, and meets the standards for housing established by 105 CMR 410.000: *Minimum Standards of Fitness for Human Habitation (State Sanitary Code, Chapter II)*, including heat, potable water, and light. If an employee is paid less than the basic minimum wage for hours worked in a week in accordance with a waiver under M.G.L. c. 151, § 7 or 9, a deduction for lodging is not permitted.

A deduction for lodging is not permitted unless the employee voluntarily accepts and actually uses the room. Deductions for lodging shall not be made by the employer unless the employer has given the employee prior written notice describing the lodging, setting forth the amount to be charged to the employee for the lodging, and providing notice that the employee's acceptance of the lodging is voluntary, and the employee has provided voluntary written acceptance of the lodging and deductions.

Deductions for lodging shall not exceed the following rates.

(a) A sum not exceeding $35.00 per week for a room occupied by one person.

(b) A sum not exceeding $30.00 per week for a room occupied by two persons.

(c) A sum not exceeding $25.00 per week for a room occupied by three or more persons.

(3) Deductions for Meals. An employer may deduct from the basic minimum wage of an employee the cost of meals, but not to exceed the amount per day set forth in 454 CMR 27.05(3). If an employee is paid less than the basic minimum wage for hours worked in a week in accordance with a waiver under M.G.L. c. 151, § 7 or 9, a deduction for meals is not permitted.

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A deduction for meals is not permitted unless the employee voluntarily accepts and actually receives the meal. Deductions for meals shall not be made by the employer unless the employer has given the employee prior written notice describing the meal plan, setting forth the amount to be charged to the employee for the meals, and providing notice that the employee's acceptance of the meals is voluntary, and the employee has provided voluntary written acceptance of the meals and deductions.

The maximum deduction for meals per day shall be as follows: Breakfast, $1.50, Lunch, $2.25; Dinner, $2.25.

(a) A deduction for one meal may be made from the wages of an employee working three hours or more.

(b) A deduction for two meals may be made from the wages of an employee whose work entirely covers two meal periods, or eight hours of work.

(c) A deduction for three meals may be made from the wages of an employee if lodging is provided, or if special permission is granted by the Director.

(4) Uniforms. For employers requiring uniforms, the following shall apply:

(a) Where uniforms require dry-cleaning, commercial laundering, or other special treatment, the employee shall be reimbursed for the actual costs of such service. Where uniforms are made of "wash and wear" materials, that do not require special treatment, and that are routinely washed and dried with other personal garments, the employer need not reimburse the employee for uniform maintenance costs.

(b) No deposit shall be required by the employer from an employee for a uniform, except by application granted by the Director.

(c) An employee or prospective employee who is required to purchase or rent a uniform shall be reimbursed for the actual purchase or rental cost of the uniform.

(5) Indirect Deductions. An employer may not separately charge or bill an employee for fees or amounts not allowed as deductions.

(6) Deductions and the Calculation of Overtime. Where deductions are made from an employee's wages for meals or lodging, the employee's regular hourly rate used to calculate overtime compensation shall be the employee's hourly rate before any deductions are made.

(7) Student Housing/Household Services. Notwithstanding any provision of 454 CMR 27.00 to the contrary, an employer may provide lodging and meals in the employer's home to an employee who is a full-time student at a *bona fide* educational institution in exchange for household services, provided that such household services do not exceed 16 hours of working time per week in exchange for occupancy of a single room.

27.06: Employer Minimum Wage Waivers

(1) Student Workers.

(a) The Director may issue to any hospital or laboratory a waiver permitting payment of not less than 80% of the basic minimum wage to students whose employment for wages is part of a formal training program for such period of time as shall be fixed by the Director and stated in the waiver.

(b) The Director may issue to any *bona fide* educational institution, a waiver permitting payment of not less than 80% of the basic minimum wage, to students enrolled in and employed by said institutions for such period of time as shall be fixed by the Director and stated in the waiver.

(c) The Director may issue to any establishment which has been granted non-profit status under the Internal Revenue Code a waiver permitting payment of not less than 80% of the basic minimum wage to minors attending secondary school who work part-time in hospital wards, school and college dining rooms and dormitories, where the ratio of one minor to five adult persons working in these areas is maintained, for such period of time as shall be fixed by the Director and stated in the waiver.

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(2) Special Certificate.

(a) No person whose earning capacity has been impaired may be paid less than the basic minimum wage unless and until the employer obtains from the Director a special certificate in accordance with the provisions of M.G.L. c. 151, § 9.

(b) The special certificate may be granted for a period not to exceed 24 months. The employer must obtain a special certificate for each work site where the employer will assign workers.

(c) The Director shall prescribe the application form and supporting documentation required to obtain a special certificate permitting the employer to pay an employee with a disability less than the minimum wage. A special certificate will not be issued unless the employer submits a current Certificate Authorizing Special Minimum Wage Rates under the Fair Labor Standard Act, § 214(c) issued by the U.S. Department of Labor, and all other documentation the Director may require.

27.07: Notice and Recordkeeping

(1) Workplace Notice. Every employer shall post, in a place conspicuous to employees, a workplace notice issued by the Commonwealth containing the basic minimum wage rates and such other provisions of M.G.L. c. 151 and 454 CMR 27.00 as the law or the Director may require. The workplace notice shall be posted in English, and in any other language that is spoken by 5% or more of the employer's workforce and for which a translated notice in that language is available from the Commonwealth.

(2) Records. For each employee, the employer shall keep a true and accurate record of the employee's name, complete address, social security number, occupation, amount paid each pay period, hours worked each day, rate of pay, vacation pay, any deductions made from wages, any fees or amounts charged by the employer to the employee, dates worked each week, and such other information as the Director or the Attorney General in their discretion shall deem material and necessary. Such records shall be kept on file for at least three years after the entry date of the record. Such records shall be maintained at the place of employment, at an office of the employer, or with a bank, accountant or other central location within the Commonwealth. All reports, schedules, books, records, and additional information that are filed or made available to the Department or the Attorney General shall be certified under pains and penalties of perjury as true, correct and accurate by the owner, chief financial officers, general counsel or chief executive officer of the employer.

All such records must be kept and furnished to the Director or Attorney General upon demand, in accordance with M.G.L. c. 151, §§ 3, 15 and 19(3). The term transcript, as used in M.G.L. c. 151, §§ 3, 15 and 19(3), shall include photocopies, printouts of electronic information and any reproduction of records, entries, or documents.

An employee who requests such records as they pertain to himself or herself shall be provided with a copy within ten business days, and, if the employee so requests, shall be allowed to inspect the original paper or electronic records at a reasonable time and place.

(3) Recording of Working Time. An employer may round an employee's starting and stopping time to the nearest five minutes, one-tenth, or quarter of an hour provided that this manner of computing working time averages out over a reasonable period of time so that an employee is fully compensated for all the time he or she actually worked.

27.08: Penalties for Violations

Violation of any provision of 454 CMR 27.00 shall be subject to the penalties provided in M.G.L. c. 151.

27.09: Severability

If any provision of 454 CMR 27.00 shall be held inconsistent with M.G.L. c. 151, or held unconstitutional, either on its face or as applied, the inconsistency or unconstitutionality shall not affect the remaining provisions of 454 CMR 27.00.

REGULATORY AUTHORITY

454 CMR 27.00: M.G.L. c. 23, § 1; M.G.L. c. 151.