



**TOPICAL OUTLINE OF
MASSACHUSETTS MINIMUM WAGE
AND OVERTIME LAW
AND RELATED REGULATION
(Regulation now at 454 CMR 27.00)**

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August 10, 2016

TABLE OF CONTENTS

MINIMUM WAGE, M.G.L. CHAPTER 151	4
24-hour shifts and working time	4
Agriculture and farming	4
Bus drivers for chartered trips	4
Co-op students.....	4
Commissions	4
Commissioned employees and recoverable draws	5
Commuting time	5
Deductions.....	5
Lodging, meals, and other deductions.....	5
Service charges.....	5
Home health aides and wages	6
Internship programs	6
Meal breaks and unauthorized working time	6
Meal breaks on premises and working time.....	6
On-call time	6
Patients Working for Hospital During Treatment	7
Physical Exams and Working Time	7
Piece Work	7
Pre-employment screening and training programs	7
Recordkeeping for exempt employees.....	8
Recordkeeping for fixed schedule employees	8
Residential property	8
Residing at place of employment and working time	8
Service charges	8
Social events and working time	9
Summer camps and the minimum wage.....	9
Three-hour rule	9
Employees regularly scheduled for under 3 hours per day.....	9
Meetings on regular day off.....	9
On-call time and the three-hour rule.....	10
Pay rates and the three-hour rule.....	10
Salaried, non-exempt employees, and the three-hour rule.....	10
Tip Counting and distribution and working Time	10
“Tipped rate”	11
“Tipped rate” during wait staff training.....	11
Training and vocational programs	11
Travel time	12
Commuting to work site	12
Commuting in employer-supplied vehicles.....	12
Split shifts – taiting and travel time	12
Travel in company vehicles – mandatory transportation.....	13
Out of state travel time.....	13
Travel and alternative rates of pay.....	13
Travel to alternate work site.....	14
Uniform deposit waivers	14
Vacation and holiday pay.....	14
Voluntary time off and reporting pay.....	14
Volunteer work	14
Wait staff.....	15

OVERTIME, M.G.L. CHAPTER 151, §1A.....	16
24-hour employees and overtime	16
Agriculture and farming	16
Bid specifications	16
Blended wage overtime calculation	16
Commission-based pay.....	16
Delivery drivers	17
Dock workers	17
Dual rate structure for same work in overtime hours	17
Exemptions	17
Administrative exemption	18
Executive exemption.....	18
Highly-compensated employees and overtime exemptions	18
Professional persons.....	19
Executive exemption.....	19
Holiday pay for unworked time	19
Home health aides	19
Hospital and other facilities	19
Hotel overtime exemption.....	19
Mechanics.....	20
Municipal employees.....	20
Outside sales exemption.....	20
Prevailing wage and overtime calculations.....	20
Professional persons.....	20
See exemptions	20
Respiratory therapists and overtime exemptions	20
Restaurant workers	21
Seasonal business overtime waivers	21
State Employees, overtime, and private lawsuits.....	21
Sunday premium pay and overtime for retail establishments	21
Summer camps	22
Teachers and the salary-basis test for exemption from overtime	22
Truck definition and passenger vehicles	22
Truck loaders	22
Vocational training programs	23
Waivers – seasonal businesses.....	23
Work week definition	23

MINIMUM WAGE, M.G.L. Chapter 151

24-hour shifts and working time

Under the express language of [454 CMR § 27.04\(3\)\(b\)](#), employees who are required to be on duty at the work site for twenty-four hours or more must be paid for both meal time and sleeping time in the absence of a prior **written** agreement that provides for a *bona fide* meal period(s) or *bona fide* scheduled sleeping period. The employer and employee may agree to a maximum of eight hours of sleep time for each twenty-four hour period. The employee must be completely relieved from duty.

See Opinion Letter [MW-2010-03-09.13.10](#), September 13, 2010

Agriculture and Farming

[M.G.L. c. 151, § 2A](#) provides that persons employed in agriculture and farming must be paid a minimum wage of no less than \$8.00 per hour. Virtually all employees engaged in agriculture are also covered by the federal FLSA.

Bus drivers for chartered trips

School Bus Drivers carrying persons (adults or students) on charter trips not subject to the school's jurisdiction, or who work for bus companies who are donating such transportation services, are not engaged in "transportation of pupils" as described in [M.G.L. c. 71, §7A](#). The minimum wage under [M.G.L. c. 151, §1](#) applies to drivers on such trips.

See Opinion Letter [MW-2002-011](#), April 23, 2002

{Public school bus drivers engaged in "transportation of pupils" are subject to the prevailing wage law.}

Co-op students

Employment by private employers through the Northeastern University Co-Operative Education Program is work under a training program in an educational institution; therefore, it is not an "occupation" covered by the Massachusetts Minimum Fair Wage Law.

See Opinion Letter [MW-2001-017](#), November 19, 2001

Commissions

Employees may be paid on a 100% commission basis, provided they are paid not less than the applicable minimum wage per hour worked.

See Opinion Letter [MW-2003-004](#), March 14, 2003

Commissioned employees and recoverable draws

Compensation paid as a recoverable draw may reduce future commissions provided the employee always receives at least minimum wage for all hours worked and overtime compensation when their hours exceed 40 in a given work week.

See Opinion Letter [MW-2003-004](#), March 14, 2003

Commuting time

See “

[Travel](#) time” below

Deductions

Deductions or withholding from wages is generally not allowed without a valid attachment, assignment or setoff as set forth in [M.G.L. c. 149, §150](#). [M.G.L. c. 149, §148](#) provides, in pertinent part: No person shall by a special contract with an employee or by any other means exempt himself from this section or from section one hundred and fifty ... Such a “special contract” is invalid even if an employee voluntarily assents to the terms. Such an interpretation furthers the Wage Act’s overarching policy of protecting employees’ rights to wages.

See [Camara v. Attorney General](#), 458 Mass. 756, 941 N.E.2d 1118 (2011)

Lodging, meals, and other deductions

[454 C.M.R. 27.05\(2\) and \(3\)](#) outline the maximum allowable deductions for lodging and meals. The reasonable costs of such expenses are only deductible up to the amounts specified in those sections.

See Opinion Letter [MW-2003-007](#), August 1, 2003 (*regulation number has changed*)

Service charges

A service charge is a fee charged by an employer to a patron in lieu of or in addition to a tip to any wait staff employee, service employee, or service bartender. Service charges may not be paid in lieu of the service rate or full minimum wage. Therefore, an employer charging a service charge may either 1) pay a service rate and credit the imposed service charge towards the balance of the minimum wage due, assuming the employees are eligible for the service rate; or 2) pay at least the full minimum wage. In either event, the full service charge must be remitted to the servers and bartenders.

See Opinion Letter [MW-2008-001](#), January 8, 2008

- *Effective January 1, 2016: minimum wage is \$10.00 per hour and service rate is \$3.35 per hour*

- *Effective January 1, 2017: Service Rate shall be \$3.75 per hour (provided service employee receives tips of more than \$20 per month and if his/her average hourly tips, when added to the service rate, equals \$11.00 per hour)*

Home health aides and wages

Under Massachusetts minimum wage and overtime laws, a live-in home health aide working in a private residence must be paid at least the statutory minimum wage and time-and-one-half for any hours worked in excess of forty hours in a given work week.

See Opinion Letter [MW-2002-020](#), July 19, 2002

See Opinion Letter [MW-2008-005](#), July 21, 2008

Internship programs

See "[Training and vocational programs](#)" and "[Volunteer work](#)" below

Meal breaks and unauthorized working time

Unauthorized work during a mandatory meal break is "working time" if done with the actual or constructive knowledge of the employer and must be compensated. However, where an employer has no knowledge that an employee is working, and the employee fails to notify the employer or deliberately prevents the employer from discovering the work, such time is not considered "working time."

See Opinion Letter [MW-2005-002](#), April 27, 2005

Meal breaks on premises and working time

A half-hour meal break where an employee is required to remain on the employer's premises, even though no work is performed during that break, is nonetheless working time and must be compensated. Conversely, if an employee is permitted to leave the work site for a half-hour meal break, and is relieved of all work during that break, such time is not "working time" and the employer need not compensate the employee even if the employee remains on the premises.

See Opinion Letter [MW-2003-008](#), August 5, 2003

For meal breaks during a 24-hour or more shift, see "[24-hour shifts and working time](#)" above.

On-call time

When an on-call employee is free to leave the worksite and is effectively free to use his or her time for his or her own purposes, such on-call time is not compensable time. However, each situation must be evaluated on a case-by-case basis. Factors such as particularly onerous restrictions on movement, frequency of calls, required response time of very short duration,

actual use of on-call time for personal pursuits, and whether calls can be refused or if disciplinary action is taken for lack of response may affect a determination of whether an employee is free to use the on-call time for his or her own purposes in any given situation..

See Opinion Letter [MW-2002-023](#), August 12, 2002

See also Three-hour rule

Patients working for hospital during treatment

Work by persons being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions is generally excluded from the minimum wage. However, where the hospital receives an economic benefit from the work, and the work displaces others who would otherwise be employed to perform it, the program may not fall within the criteria for the exclusion. See also [Tip counting and distribution](#) and working time

If the employer requires employees to remain on the employer's premises beyond the end of a shift in order to count and distribute tips, the time spent doing those tasks is compensable time.

See Opinion Letter MW-2010-02-03.11.10, March 11, 2010

“Tipped employees” who also engage in non-tipped work, such as kitchen work or cleaning before or after shifts, must be paid at least minimum wage for those hours worked. Amounts received for “tipped” work do not count towards the minimum wage obligation for non-tipped work.

“Tipped rate”

The minimum wage for tipped employees (employees who receive at least \$20.00 per month in tips) is \$3.35 per hour effective January 1, 2016, and will increase each of the next two years. If a tipped employee's weekly earnings, including service rate and tips, do not add up to at least the basic minimum wage, currently \$10.00 per hour, for each hour worked, the employer must pay the difference.

(Note effective January 1, 2017: Minimum Wage shall be \$11.00 per hour and Service Rate shall be \$3.75 per hour provided service employee receives tips of more than \$20 per month and if his/her average hourly tips, when added to the service rate, equals \$11.00 per hour).

“Tipped rate” during wait staff training

Newly-hired employees who do not receive tips during their initial training period are not “tipped employees,” i.e. they do not customarily and regularly receive more than \$20 per month in tips. Therefore, these employees must be paid at least the basic minimum wage during their training and any subsequent time in which they are not regularly and customarily receiving more than \$20 per month in tips.

See Opinion Letter MW-2003-012, November 24, 2003

Training and vocational programs. The hospital would have to request a Minimum Wage Waiver from DLS to pay sub-minimum wages.

See Opinion Letter [MW-2003-011](#), November 10, 2003

Physical exams and working time

Generally, employees are entitled to be compensated for required initial and periodic physical examinations. In some instances, examinations may occur prior to the establishment of an employment relationship. In these situations, which must be evaluated on a case-by-case basis, such time may not require compensation.

See Opinion Letter [MW-2008-002](#), January 18, 2008

Piece work

An employee may be paid at a rate per “piece” of work, but the total pay for the week must equal at least the minimum wage for each hour worked regardless of the number of pieces completed.

Pre-employment screening and training programs

Massachusetts utilizes the six factor test of the Federal FLSA when determining whether a “trainee” is an “employee” for the purposes of the Minimum Wage. See “[Tip counting and distribution](#)” and working time

If the employer requires employees to remain on the employer’s premises beyond the end of a shift in order to count and distribute tips, the time spent doing those tasks is compensable time.

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per month and if his/her average hourly tips, when added to the service rate, equals \$11.00 per hour).

“Tipped rate” during wait staff training

Newly-hired employees who do not receive tips during their initial training period are not “tipped employees,” i.e. they do not customarily and regularly receive more than \$20 per month in tips. Therefore, these employees must be paid at least the basic minimum wage during their training and any subsequent time in which they are not regularly and customarily receiving more than \$20 per month in tips.

See Opinion Letter [MW-2003-012](#), November 24, 2003

Training and vocational programs.” Such factors would apply to multi-day pre-employment screening as well, so long as the potential employee may “opt out” of the training if he or she already possesses the skills required for the position, by, for example, taking a test prior to the training.

See Opinion Letter [MW-2009-03-12.10.09](#), December 10, 2009

Recordkeeping for exempt employees

[G.L. c. 151, §15](#) and [454 CMR 27.07\(2\)](#) require employers to keep true and accurate payroll records for all employees for three-years, regardless of their exempt status.

See Opinion Letter [MW-2008-003](#), April 26, 2008

Recordkeeping for fixed schedule employees

Massachusetts does not specifically follow the Federal “fixed schedule exception” to employer recordkeeping requirements codified at [29 C.F.R. §516.2\(c\)](#). However, it would appear that this method would provide an accurate record of hours worked each day and each week as required under [M.G.L. c. 151, §15](#). Therefore, this method of recordkeeping for employees working on fixed schedules is permissible under state law, provided employers accurately document any deviations from an employee’s fixed schedule.

See Opinion Letter [MW-2003-001](#), February 6, 2003

Residential property

Janitors and caretakers are entitled to at least the basic minimum wage, whether or not they work in a residential property, and even if they are furnished with living quarters.

See Opinion Letter [MW-2015-02-02.27.15](#)

Residing at place of employment and working time

If an employee resides on the employer's premises on a permanent basis or for extended periods of time, not all time spent on the premises is considered working time. [454 CMR 27.04\(3\)\(c\)](#) provides that the employer and the employee may make a reasonable **written** agreement as to hours worked.

See Opinion Letter [MW-2003-007](#), August 1, 2003

Service charges

A service charge is a fee charged to a customer in lieu of a tip or gratuity, and must be remitted in its entirety to the wait staff, service employee, or service bartender who worked during that time. Service charges may not be paid in lieu of an employee's wage — either the statutory minimum wage or the service rate. Thus, an employer who charges customers a service charge may do either of the following:

1. pay the service rate and credit the imposed service charge towards the balance of the minimum wage due, assuming the employees are eligible to receive the service rate; or
2. pay the full minimum wage of \$10.00 per hour (effective 1/1/16).
(Note effective January 1, 2017 minimum wage shall be \$11.00 per hour)

In either case the full service charge must be remitted to the servers and bartenders.

See Opinion Letter [MW-2008-001](#), January 8, 2008

Social events and working time

If an employee is required by an employer to attend a social event, presumably for the benefit of the employer, then that employee is required to be "on duty" and must be compensated for his/her time. This is the case regardless of the fact that this requirement may coincide with a meal time if the employee is not free to leave and is not relieved of all work-related duties.

See Opinion Letter [MW-2002-012](#), April 17, 2002

Summer camps and the minimum wage

Chapter 144 of the Acts of 2014 amended [M.G.L. c. 151, §7](#), by inserting the phrase "except for seasonal camp counselors and counselor trainees," to the list of occupations for whom the Director of DLS may establish a sub-minimum wage rate. The expressed legislative intent is a complete exemption from the minimum wage for seasonal camp counselors and counselor trainees. Seasonal camps must obtain a *Seasonal Camp Counselor Minimum Wage Waiver* from DLS by providing information that they are seasonal in nature. In Massachusetts, a business may be considered seasonal if it operates for 120 days or fewer in a year.

Regardless of whether or not a camp obtains a waiver, they must adhere to the minimum wage Regulations, including (but not limited to) sleeping time, meals and lodging, payroll, and uniform provisions. Camps are also bound by the youth employment laws.

See Opinion Letter, [MW-2015-01-01.07.15](#)

Three-hour rule

Employees who report for scheduled work but for whom no work is available that day must be paid for at least three hours at the Massachusetts minimum wage.

Employees regularly scheduled for under 3 hours per day

Employees who wish to work for less than three (3) hours a day on a regular basis can reach an agreement with their employers to do so, with the understanding that the employer will only pay for the hours worked. Such an agreement will not violate Reporting Pay regulations under [454 C.M.R. 27.04\(1\)](#).

See Opinion Letter [MW-2000-006](#), October 13, 2000

Meetings on regular day off

Assuming the employee believes a meeting will last less than three hours, employees required to report on their day off for meetings must be compensated only for those hours worked. If the employee is told or believes the meetings will take longer than three hours, and is sent home in hour one or two, the employee must be paid for at least three hours at no less than the minimum wage.

See Opinion Letter [MW-2002-017](#), June 4, 2002

On-call time and the three-hour rule

An employer and employee may reach an agreement that an employee's regular hours will consist of fewer than three hours, compensated on an hour-for-hour basis, without running afoul of the Reporting Pay regulations under [454 C.M.R. §27.04\(1\)](#). Where the employee's regular schedule includes an agreement to work on an on-call basis, once every six weeks, which entails coming in for shorter, on-call jobs that may be less than three hours, an employer may pay only the hours actually worked.

See Opinion Letter [MW-2002-015](#), May 6, 2002

Pay rates and the three-hour rule

If an employee of a for-profit entity is told that a meeting will take four hours, and the employee is sent home after two hours, the employee must be paid for two hours at his/her regular rate of pay, and at least minimum wage for the third hour.

See Opinion Letter [MW-2007-002](#), July 9, 2007

Salaried, non-exempt employees and the three-hour rule

The Reporting Pay regulation does not provide an exception for salaried employees who are exempt from overtime, except for those employed by charitable organizations. Thus, exempt employees who are required to report for meetings more than three hours long, who are sent home after two hours, must be paid for the third hour at no less than the minimum wage.

See Opinion Letter [MW-2002-017](#), June 4, 2002

See Opinion Letter [MW-2010-01-02.03.10](#), February 3, 2010

Tip counting and distribution and working time

If the employer requires employees to remain on the employer's premises beyond the end of a shift in order to count and distribute tips, the time spent doing those tasks is compensable time.

See Opinion Letter [MW-2010-02-03.11.10](#), March 11, 2010

"Tipped employees" who also engage in non-tipped work, such as kitchen work or cleaning before or after shifts, must be paid at least minimum wage for those hours worked. Amounts received for "tipped" work do not count towards the minimum wage obligation for non-tipped work.

"Tipped rate"

The minimum wage for tipped employees (employees who receive at least \$20.00 per month in tips) is \$3.35 per hour effective January 1, 2016, and will increase each of the next two years. If a tipped employee's weekly earnings, including service rate and tips, do not add up to at least the basic minimum wage, currently \$10.00 per hour, for each hour worked, the employer must pay the difference.

(Note effective January 1, 2017: Minimum Wage shall be \$11.00 per hour and Service Rate shall be \$3.75 per hour provided service employee receives tips of more than \$20 per month and if his/her average hourly tips, when added to the service rate, equals \$11.00 per hour).

"Tipped rate" during wait staff training

Newly-hired employees who do not receive tips during their initial training period are not "tipped employees," i.e. they do not customarily and regularly receive more than \$20 per month in tips. Therefore, these employees must be paid at least the basic minimum wage during their training and any subsequent time in which they are not regularly and customarily receiving more than \$20 per month in tips.

See Opinion Letter [MW-2003-012](#), November 24, 2003

Training and vocational programs

The Massachusetts Minimum Wage Law does not apply to trainees enrolled in training programs at charitable, educational or religious institutions. To determine whether a program is considered a “training program,” DOS utilizes the Federal Fair Labor Standards Act’s six criteria for “trainee” under a totality of the circumstances analysis. It considers whether the training:

1. is similar to that which would be given in a vocational school,
2. is for the benefit of the trainees,
3. does not displace regular employees, and trainees work under close supervision,
4. provides the employer with no immediate advantage from the activities of the trainees, and on occasion his/her operations may actually be impeded,
5. does not necessary lead to a job to which the trainee is entitled, and
6. is based on a mutual understanding between the employer and trainee that the trainee is not entitled to wages for the time spent in training.

No single criterion is dispositive.

See Opinion Letter [MW-2002-013](#), May 9, 2002

See Opinion Letter [MW-2003-002](#), February 10, 2003

See Opinion Letter [MW 2011-02-05.09.11](#), May 09, 2011

Travel time

Commuting to work site

Travel to an employee’s regular work site at the beginning of the workday and travel from the same at the end of the work day is not “working time,” and therefore is not compensable time. If an employee is required to report to a location other than his or her regular fixed location, compensation for the travel time in excess of the ordinary travel time is required.

See Opinion Letter [MW-2002-007](#), March 7, 2002

See Opinion Letter [MW-2001-012](#), October 9, 2001

Commuting in employer-supplied vehicles

Ordinary travel between home and work is not compensable working time. When an employee uses an employer-provided vehicle for travel to and from work, DLS determines the start of the work day using the Federal standard under the Fair Labor Standards Act. An employee’s home to work travel does not constitute compensable working time if:

1. the vehicle is of the type that does not impose a greater difficulty to operate than a vehicle normally used for commuting;

2. the employee incurs no out-of-pocket expenses for driving, parking, or otherwise maintaining the employer's vehicle;
3. travel is within the normal commuting area for the employer's business; and
4. use of the employer's vehicle is subject to an agreement on the part of the employer and the employee, or his or her representative.

See Opinion Letter [MW-2003-006](#), May 16, 2003

Otherwise non-compensable commuting time is not made compensable merely because the employee uses an employer-provided vehicle. If employees are merely traveling between their home and the job site, and vice-versa, and performing no activity that is integral and indispensable to the principal work activity, then the travel time is not compensable. Of course, employers may provide travel stipends over and above what is required by law.

See Opinion Letter [MW-2007-001](#), June 19, 2007

Split shifts – waiting and travel time

Employees must be paid for time spent “on duty.” Employees with split schedules, where they work certain hours, are released for a number of hours, and then return to complete their shifts, may not be considered “on duty” in some situations. Generally, if:

1. the employee is completely relieved of all work-related duties;
2. the employee knows in advance that she or he will have time off between shifts;
3. the time off is long enough for the employee to effectively use the time as she or he wishes; and
4. the employee does not have to return to work until a definite, specified time

the employee can be considered off duty and the time is not compensable working time. If the above criteria are met, travel to and from the work site during the gap period is also not compensable working time.

See Opinion Letter [MW-2002-019](#), June 28, 2002

Travel in company vehicles – mandatory transportation

If transportation from one location to another is not optional, i.e. the employee is required to use it, the employee must be compensated for the travel time as it is travel during the employee's workday.

If travel on company trucks back to the main office from the worksite is offered on an optional basis — i.e. the employee is not required to use it — and the transportation is offered at the end of the workday, the employer need not pay for the travel time.

All travel time “after the beginning of or before the close of the workday;” is compensable time regardless of whether the employees ride in company or private vehicles.

Compensable travel time is treated as hours worked and must be counted in computing whether an employee has worked in excess of 40 hours in a given workweek

See Opinion Letter [MW-2002-016](#), May 6, 2002

Out of state travel time

An employee who is required to travel from one place to another after the beginning of or before the close of the workday shall be compensated for all of the time spent traveling at the same rate as for working time, and shall be reimbursed for all transportation expenses. Additionally, travel time outside of an employee's normal work schedule would also be compensable as "working time." If an employee's travel involves an overnight stay and extends an employee's workday, then all time spent traveling during the workday is compensable time. However, travel alone on a non-work day is not covered by Massachusetts state law.

See Opinion Letter [MW-2002-012](#), April 17, 2002

Travel and alternative rates of pay

An employer may establish, prior to performance of the work, multiple "working time" rates, one for the work done on the job and the other for travel time, and still comply with Massachusetts Fair Labor Laws.

See Opinion Letter [MW-2002-019](#), June 28, 2002

Travel to alternate work Site

In accordance with [454 C.M.R. 27.04\(4\)\(b\)](#), an employer has an obligation to compensate their employee(s) for the additional time it takes them to travel to and from an alternate site, assuming the travel time is in excess of their normal commuting time. The length of the reassignment is irrelevant.

See Opinion Letter [MW-2001-012](#), October 09, 2001

Uniform deposit waivers

Generally, [454 CMR 27.05\(4\)](#) does not permit an employer to require a deposit from an employer for a uniform purchased by the employer. However, employers may request a waiver from this provision from DLS. See the advisory below for the criteria by which the Director of DLS will authorize a deposit waiver.

See DLS Notice [Uniform Deposit Waiver Application Policy](#)

Vacation and holiday pay

The Minimum Fair Wage Law does not require employers to pay employees for vacations when an employee is not at work or extra pay for weekend or holiday work. However, the

Massachusetts Blue Laws do require some retail employers to pay premium pay for work on Sundays and certain holidays.

See Opinion Letter [MW-2010-01-02.03.10](#), February 3, 2010

Voluntary time off and reporting pay

Where an employer establishes a policy to allow exempt employees who report to work to choose *voluntarily* not to work on that particular day when presented with the option by their employer, and then go home, such employees likely have been “provided with the expected hours of work” but have chosen to deny the offering, and thus may not be bound by the “three-hour rule” of the Reporting Pay regulation.

See Opinion Letter [MW-2009-01-01.26.09](#), January 26, 2009

Volunteer work

For the purposes of determining whether volunteers must be paid minimum wage under the Massachusetts Minimum Wage Law, DLS uses the same factors as the U.S. Department of Labor in determining whether workers are volunteers under the Fair Labor Standards Act. Such factors include:

1. the nature of the entity receiving the services;
2. the receipt by the worker of any benefits, or expectation of any benefits, from their work;
3. whether the activity is less than a full-time occupation;
4. whether regular employees are displaced by the “volunteer;”
5. whether the services are offered freely without pressure or coercion; and
6. whether the services are of the kind typically associated with volunteer work.

See Opinion Letter [MW-2002-021](#), August 09, 2002

Wait staff

A “wait staff employee” is one who (1) serves beverages or prepared food directly to patrons, or clears tables; (2) works in a restaurant, banquet facility, or other place where prepared food or beverages are served; and (3) has no managerial responsibility. An employer may not require wait staff, service employees, or service bartenders to share or pool tips with employees who do not perform such work.

In [Matamoros v. Starbucks Corp.](#), the U.S. Court of Appeals, emphasized that in order to be considered “wait staff” that may pool tips, the employee must have no managerial responsibility. 699 F.3d 129 (1st Cir. 2012). Thus, shift supervisors are not “wait staff” as defined by the law and may not share in the tip pool.

OVERTIME, M.G.L. Chapter 151, §1A

24-hour employees and overtime

Unless otherwise exempted under the law, employees such as home health aides scheduled for 24-hour shifts must be paid overtime for hours worked in excess of 40 each week. Under the express language of the overtime regulation, employees who are required to be on duty at the work site for twenty-four hour (or more) shifts are required to be paid for both meal time and sleeping time in the absence of a prior written agreement which provides for a scheduled sleeping period and meal period(s).

See Opinion Letter [MW-2010-03-09.13.10](#), September 13, 2010.

See Opinion Letter [MW-2002-020](#), July 19, 2002

Agriculture and farming

[M.G.L. c. 151, §1A\(19\)](#) exempts from overtime laborers engaged in agriculture and farming.

Bid specifications

Under state law, employers are only required to pay overtime for hours worked in excess of forty hours in a given workweek. Inquiries related to public bids that exceed this requirement should be directed to the awarding authority.

See Opinion Letter [MW-2002-010](#), April 2, 2002

Blended wage overtime calculation

All hours in the work week shall be included in the weighted average before determining the “blended” rate for overtime pay for employees working two or more jobs for one employer. Where an employee works at two or more different types of work in a single work week, for a single employer, for which different straight-time rates of pay (not less than minimum wage) have been established, his/her regular hourly rate of pay for that week is the weighted average of all such rates. The regular hourly rate for that employee is determined by adding together all earnings for the week and dividing this total by the number of hours worked at all jobs.

See Opinion Letter [MW-2001-014](#), November 27, 2001

Commission-based pay

Massachusetts does not recognize the Federal exemption from overtime for inside salespersons. Thus, unless the employee qualifies for another exemption, 100% commissioned employees must be paid at least the equivalent of minimum wage for the first 40 hours, and time-and-one-half minimum wage for all hours worked over 40 in a given workweek.

Massachusetts Minimum Wage regulations specifically exempt commissions from the calculation of a “regular rate of pay” for purposes of determining the overtime rate. However, the “regular rate of pay” may not be lower than the state Minimum Wage.

See Opinion Letter [MW-2003-004](#), March 14, 2003

See Opinion Letter [MW-2009-04-12.21.09](#), December 21, 2009

Delivery drivers

The state overtime exemption for “a driver or helper on a truck” applies only to such employees to whom the Secretary of Transportation has the power to establish qualifications and maximum hours of service, regardless of whether or not the Secretary has exercised that power.

See Opinion Letter [MW-2002-025](#), December 16, 2002

Dock workers

Dock workers and loaders are not exempt from overtime under Massachusetts overtime law.

See Opinion Letter [MW-2002-022](#), August 6, 2002

A loader whose job duties require them to ride on a truck and assess the load for safety purposes may fall under the definition of a “driver’s helper,” regardless of the proportion of his job devoted to “safety-affecting” driver’s helper activities. Thus, an employee required to ride on the motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act may be exempt from overtime.

See Opinion Letter [MW-2003-005](#), March 17, 2003

Dual rate structure for same work in overtime hours

Employers and Employees may not contract to set a different rate for overtime that is less than one and one-half times the regular rate of pay. The regular hourly rate for identical work performed in overtime hours cannot be lower than the rate paid for the non-overtime hours.

See Opinion Letter [MW-2002-003](#), January 25, 2002

Exemptions

[M.G.L. c. 151, §1A](#) sets forth professions or categories of employees that are exempt from overtime. Job titles are not controlling; rather, the duties performed on the particular job must be considered to determine if the employee is exempt from overtime. The exemptions have some overlap with the federal Fair Labor Standards Act exemptions, but are not identical. The employer has the burden of proving the exemption.

Some, but not all, of the exemptions are addressed below. Definitions, where provided, are general in nature, as each job requires consideration of its particular duties.

With respect to the commonly cited exception listed in paragraph (3) of the statute, Massachusetts Minimum Wage Regulations provides that “[t]he terms ‘bona fide executive, or administrative or professional person’ in [M.G.L. c. 151, §1A\(3\)](#), shall have the same meaning as set forth in Part 541 of Title 29 of the U.S. Code of Federal Regulations [the EAP Regulations].” [454 C.M.R. §27.03\(3\)](#). Under that Federal Regulation “To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than \$455 per week” [29 CFR 541.600](#). This federally mandated minimum weekly salary amount is increasing to \$913 dollars per week on December 1st, 2016. Because the Federal minimum is higher than the amount listed in the Massachusetts Law (\$80 per week) the Federal standard applies.

see [Final Rule: Overtime DOL Wage and Hour Division](#)

Administrative exemption

[M.G.L. c. 151, §1A\(3\)](#) specifically exempts “administrative person” from overtime. Employees must earn at least \$80.00 per week to come under the exemption. Otherwise, Massachusetts follows the definition of “administrative” under the federal Fair Labor Standards Act. In general, “administrative persons” are those who perform office or non-manual work directly related to the management or business operations of the employer, and who exercise discretion and independent judgment with respect to matters of significance.

Executive exemption

[M.G.L. c. 151, §1A\(3\)](#) specifically exempts “executives” from overtime. Employees must earn at least \$80.00 per week to come under the exemption. Otherwise, Massachusetts follows the definition of “executive” under the federal Fair Labor Standards Act. In general, an executive employee’s primary duty is management of all or part of the enterprise, with authority to take personnel actions or effectively recommend such actions.

Highly compensated employees and overtime exemptions

Massachusetts has incorporated by reference the Federal FLSA salary, salary basis, and duties tests related to bona fide executive, administrative and professional exemptions from overtime, including the provisions for “highly compensated employees.” A highly compensated employee who meets all the requirements as an executive, administrative or professional employee may be exempt from overtime under state law.

See Opinion Letter [MW-2008-004](#), July 14, 2008

Professional persons

[M.G.L. c. 151, §1A\(3\)](#) specifically exempts “professional persons” from overtime. Employees must earn at least \$80.00 per week to come under the exemption. Otherwise, Massachusetts follows the definition of “professional” under the federal Fair Labor Standards Act. At a minimum, “professional persons” are employees whose work requires “advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from general academic education.”

Executive exemption

See Exemptions.

Holiday pay for unworked time

Most employees are entitled to overtime pay at one and one-half times their regular hourly rate of pay after 40 hours of work in a given workweek. Holiday pay for a day where the employee is not at work, is not considered “hours worked” under the Massachusetts Fair Wage Law and should not be included in calculating the number of hours worked in that week for determining overtime eligibility.

See Opinion Letter [MW-2002-018](#), June 5, 2002

Home health aides

For health aides who are scheduled for 24 or more hour shifts, see “[24-hour employees and overtime](#)” above.

Hospital and other facilities

All employees “in a hospital, sanatorium, convalescent or nursing home, infirmary, rest home or charitable home for the aged” are also exempt from overtime. If the alcohol/drug treatment center in question meets the narrow definition of sanatorium, its employees may be exempt from the requirement to pay overtime. The employer has the burden of establishing its entitlement to the exemption.

See Opinion Letter [MW-2001-016](#), November 19, 2001

Hotel overtime exemption

The state hotel exemption to overtime includes all workers who work in some aspect of hotel operations, including banquet services, within the physical confines of a hotel property. It does not extend to banquet services performed on other property, such as banquets on a rented boat. The federal FLSA may require payment of overtime for hotel workers.

See Opinion Letter [MW-2006-001](#), March 10, 2006

Mechanics

Any worker performing repair work on automobiles—in a stand-alone repair shop or one that is part of a larger establishment such as a car dealership—is exempt from overtime pursuant to [M.G.L. c. 151, §1A\(15\)](#).

See Opinion Letter [MW-2002-014](#), April 30, 2002

Municipal employees

Overtime compensation for municipal employees is governed by M.G.L. c. 149, §§[33A](#), [33B](#) and [33C](#). These statutes evidence the Legislature’s clear intent to establish different wage and hour rules for municipal employees and to exclude them from coverage under [M.G.L. c. 151](#). Municipal employees are covered under the federal FLSA.

See Opinion Letter [MW-2002-004](#), February 13, 2002

Outside sales exemption

The Outside Sales Professional exemption from overtime does not apply to employees who make “daily report[s]” to the office or plant of their employer. DLS interprets this to mean the salesperson physically going to the employer’s office on a daily basis. Thus, daily electronic transmissions of sales orders does not constitute a “daily report” that would require the classification of the employee as non-exempt from overtime. Likewise, one weekly sales meeting would be incidental to the salesperson’s position, and would not affect the otherwise proper classification of the employee as an “outside salesman.”

See Opinion Letter [MW-2002-025](#), December 16, 2002

Prevailing wage and overtime calculations

Prevailing Wage workers also must be paid time and one half their regular rate of pay for each hour worked in excess of 40 in a given workweek under the Massachusetts Overtime Law. The calculation of “regular rate of pay” would be the hourly wage rate on the applicable prevailing wage sheet, minus any allowable deductions actually taken (health insurance contributions, for example).

See Opinion Letter [MW-2006-002](#), June 12, 2006, for an example

Professional persons

See Exemptions

Respiratory therapists and overtime exemptions

Respiratory Therapists who work in a hospital, sanatorium, convalescent or nursing home, infirmary, rest home or charitable home for the aged are exempt from overtime. Respiratory

Therapists working elsewhere, such as a private company, must be paid at least time and one half for each hour in excess of 40 per week. This is in line with a US Department of Labor Advisory determining such therapists are not “learned professionals” as defined under the Fair Labor Standards Act.

See Opinion Letter [MW-2011-01.03.14.11](#), March 14, 2011

Restaurant workers

Restaurant workers are exempt from overtime under [M.G.L. c. 151, §1A\(14\)](#), but may be covered under the federal FLSA, which does not provide an exemption.

Seasonal business overtime waivers

For the purposes of the seasonal business exemption from overtime, the phrase “carried on” means open for business (for 120 days or less). Once a business has been granted a seasonal overtime waiver, that waiver will cover those employees who perform work that is a routine, normal incident to the seasonal operation.

See Opinion Letter [MW-2005-001](#), February 3, 2005

State overtime law does not prohibit a single business from having portions of its operations or workforce subject to different, applicable overtime exemptions. For example, businesses may apply for a seasonal business overtime waiver for its winter holiday attraction without affecting the exempt status of its summer amusement park operations.

See Opinion Letter [MW-2007-003](#), September 24, 2007

State employees, overtime, and private lawsuits

[M.G.L. c. 149 §30B](#), not [M.G.L. c. 151 §1A](#), governs overtime pay for state employees. [M.G.L. c. 149, §150](#), does not appear to permit private suit for a violation of [M.G.L. c. 149, §30B](#).

See Opinion Letter [MW-2002-001](#), January 11, 2002

Sunday premium pay and overtime for retail establishments

Mandatory premium pay paid to a covered retail sales employee who works on a Sunday may be credited towards any overtime payments required by state law for that work week.

See *Swift v. Autozone, Inc.*, 441 Mass. 443 (2004)

Rescinded: Opinion Letter [MW-2001-015](#), November 19, 2001

Summer camps

Summer camps operated by non-profit charitable corporations are not required to pay overtime compensation to their employees. No waiver application is necessary.

For-profit summer camps must pay overtime compensation for hours worked in excess of 40 hours in a given work week unless they obtain a waiver by means of a seasonal business determination. Such waivers are given by DLS to for-profit camps that operate during a period or accumulated periods of not more than 120 days per year.

See Opinion Letter, [MW-2015-01-01.07.15](#)

Teachers and the salary-basis test for exemption from overtime

“Teaching Professionals” employed by an “educational establishment” are exempt from overtime under the “professional person” exemption of the Federal Fair Labor Standards Act. Massachusetts utilizes the same definition for state law purposes, and thus teachers meeting the requirements of the Federal exemption may be paid on an hourly basis and retain their exempt status under state overtime law.

See Opinion Letter [MW-2004-001](#), December 16, 2004

Truck definition and passenger vehicles

The Massachusetts overtime exemption for “a driver or helper on a truck” is narrower than the Motor Carrier exemption under Federal law and only applies to those employees on motor vehicles that can fairly be defined as a truck: either an automotive vehicle built for the transportation of goods on its own chassis or a motorized vehicle equipped with a swivel for hauling a trailer. This definition would exclude most passenger vehicles.

See Opinion Letter [MW-2009-02-09.09.09](#), September 09, 2009

Truck loaders

Generally, “a driver or helper on a truck” is exempt from overtime requirements under Massachusetts Law. To qualify for this exemption, two factors must be satisfied:

1. the driver or helper on a truck must be an employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to [49 U.S.C. 31502](#); and
2. the employee must be a “driver” as defined by [29 C.F.R. §782.3](#) or a “drivers’ helper” as defined by [29 C.F.R. §782.4](#).

Note that Massachusetts law does not recognize the Federal exemption for dock loaders and mechanics for state law purposes.

See Opinion Letter [MW-2002-008](#), February 26, 2002

Vocational training programs

The Massachusetts Minimum Fair Wage Law applies to persons employed in an “occupation,” defined in [M.G.L. c. 151, §2](#), as “an industry trade or business or branch thereof or class of work therein . . . but shall not include . . . work by persons being . . . trained under . . . training programs in charitable, educational or religious institutions.” Therefore, students working in an on-campus “training program” are excluded from the minimum wages laws because the program is genuinely designed to ready the student for the workplace.

See Opinion Letter [MW-2002-005](#), February 20, 2002

Waivers – seasonal businesses

See individual types of waivers

Work week definition

The Massachusetts law does not distinguish between full-time and part-time employment, and both types of employment are covered under the law. An employee must be paid overtime for each hour worked per week in excess of forty (40), unless he or she qualifies for an exemption.

Overtime is calculated on a single work week basis, regardless of pay period. A work week is a fixed and regularly recurring period of 168 hours — seven consecutive 24-hour periods.

See Opinion Letter [MW-2010-01-02.03.10](#), February 3, 2010

See Opinion Letter [MW-2008-005](#), July 21, 2008