

Labor Laws Frequently Asked Questions

The frequently asked questions section addresses topics and specific questions that are often asked of the Department of Labor. Many additional answers to questions not addressed here may be obtained from other materials on this website or by calling the Department at 207-623-7900. Depending on the nature of your inquiry, you may need to seek legal guidance from private counsel on questions of your obligations under the law.

The following questions and answers are for general guidance and are not to be considered an official statement in place of legal positions. Please be sure to see the list of laws under Employment Practice statutes MRSA Title 26 Chapter 7 for the law as written.

What is the minimum wage?

- Effective January 1, 2018 \$10.00 per hour.
- Effective January 1, 2019 \$11.00 per hour.

What is a tipped employee's minimum wage?

- A service employee is someone who regularly receives more than \$30 a month in tips. If the employee's wages combined with tips for the week do not average at least minimum wage, the employer must pay the difference in wages.
- As of January 1, 2018, employers must pay wages of at least 50% of the State Minimum Wage per hour.
- Tips belong to the employee providing the service to the customer. Valid tip pooling arrangements among servers is permissible.
- Overtime is due on all hours worked over 40 in a work week in most employment situations.

How many hours is full-time employment? How many hours is part-time?

- Full-time and part-time employment is not generally defined. These are determined by the employer and are commonly used to define how company benefits are earned.

I feel that I have been unfairly discharged. What can I do?

- Most employment is "at-will," which means an employer may hire or fire at will and an employee may decide to work or not work for a company at will. This means an employer may legally fire an employee without notice and without cause.
- The employer may not discriminate against an employee because of race, color, sex, sexual orientation, age, physical or mental disability, genetic predisposition, religion, ancestry or national origin. For any such potential

discrimination issues, you should contact the Maine Human Rights Commission at 624-6290.

- If you would like to file for unemployment benefits because you believe that you lost your job through no fault of your own, a good place to start is the Department's Unemployment Benefits website.

My employer has changed my work schedule and pay -- is this legal?

- Maine labor laws do not prohibit an employer from changing work hours or schedules. The rate of pay can be lowered when the employer gives at least a one day notice to the affected employee. At no time, can the rate be lowered below the established minimum wage.

My final paycheck is being held by the employer. What can I do?

- All earned wages are due on the next regularly scheduled payday after termination. The employee must make the demand in person at the business. An employee who is denied payment can call 623-7900 to talk with a Wage and Hour representative.

Who can be placed on salary?

- There are two salary types. One is for those who have agreed to a 40-hour workweek for an established amount and overtime would apply for any hours worked over 40 in a work week.
- The second type of salary agreement exempts employees from overtime in agreements that qualify with the minimum salary amount of \$576.93 per week for 2018 and \$634.62 per week for 2019 and the primary job duties are in an executive, administrative or professional capacity.
- Teachers and highly skilled computer staff may also be paid as exempt-salaried employees. Please check the Maine Wage and Hour Division Rules for specific guidance.

Is there a new minimum amount exempt-salaried workers must be paid?

- As of January 1, 2018, the new minimum salary requirement is \$576.93 per week. As of January 1, 2019, the new minimum salary requirement is \$634.62 per week. State law requires that overtime-exempt employees be paid an annual salary that "exceeds 3,000 times the State's minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal FLSA, whichever is higher" (26 MRS Sec. 663(3)(K)).

Does my employer have to pay my earned paid-vacation, paid-holidays, or paid-sick leave?

- Employers are not required to offer paid vacations, holidays, or paid sick leave, which are also commonly called "PTO," "EBT," or "ETO," These are benefits established by company policies specifying how they are earned as well as how or when they are paid.

- Under Maine law, only the accrued vacation time is required to be paid upon termination in cases where the employer's policy specifically states that benefit will be paid upon termination.

Does my employer have to provide me with rest breaks?

- Employers must offer employees the opportunity to take a consecutive 30-minute unpaid or paid rest break after 6 hours worked. An employee may waive his or her right to a rest break (preferably in writing). When the employer allows the employee to work through a rest break period, that time must be included as hours worked. Shorter breaks are common but not required by law. Such breaks or pauses away from performing duties may not be used to reduce the employee's time worked.

Can my employer require me to take the consecutive 30-minute rest break?

- Yes.

At what age can a child work?

- The minimum age is 14 for most jobs as directed under Federal Youth Labor Law. At ages 14 and 15, an approved work permit is required. Agricultural labor does not have a minimum age or work permit requirement.

How does a minor obtain a work permit?

- A work permit is required for minors age 14 and 15. The permit can be filled in online and printed. The minor submits the form to their area superintendent with the job offer and parental signature sections completed. The superintendent submits the application to the Bureau of Labor Standards for approval. The minor cannot work until the permit is approved.
- Minors can have one active permit during the school year and can have two during the summer. This process is described in more detail in our Guide to Maine Laws Governing the Employment of Minors.

My employer has told me that any cash mistakes I make must be paid back. Can they do that?

- No. An employer cannot require or allow an employee to pay back for cash shortages, damages, customer walkouts or credit card errors.

My employer is verbally abusing/harassing me. Whom should I contact?

- For assistance with workplace sexual harassment or illegal discrimination, contact the Maine Human Rights Commission at 624-6290.

I work as an independent contractor. What do I need to know about labor laws?

- The Department of Labor website includes information regarding the criteria used to determine Independent Contractors in Maine. It includes questions and answers as well as phone numbers to call for more information. The IRS also establishes guidelines on the issues in determining employee or independent contractor status.

What posters must be displayed at work?

- A list of required State and Federal labor law posters can be found on the Maine Department of Labor's website; see the List of Required Posters. They are printable or provided at no cost.

How does a fluctuating hours with a fixed salary pay arrangement work?

- Fluctuating workweek overtime pay agreements are a way to comply with overtime requirements. This amount is meant to cover all hours worked in the week at straight time.

For example

- \$450 for 45 hours worked would equal \$10 an hour. One half of the average hourly rate times the number of hours actually worked over 40 in that week would be paid to cover overtime; therefore, \$10 divided by two equals \$5 and then multiply \$5 by the 5 overtime hours (45 hours = 40 straight-time hours and 5 overtime hours) is the additional overtime due of \$25. The results would be $\$450 + \$25 = \$475$ gross wages for that pay week. However, when the hours worked are below 40, for example, 38 hours, the employee is still paid the guaranteed \$450 for the week, and no overtime would be due.
- In a fluctuating workweek overtime pay agreement, an employer will pay the guaranteed salary to the employee in weeks where the employee works fewer than 40 hours. In this agreement, the average hourly rate cannot go below the current minimum wage rate established.
- More detail can be found in Federal Law under 29 CFR 778.114 or a call to Maine's Wage & Hour Division by leaving a message for assistance at 207-623-7933.
- Each workweek stands alone, so true and accurate time records must be maintained and a clear agreement with the employee(s) should be in place.