Minimum Wage and Overtime Requirements

Sarah E. Bouchard, Esquire
Morgan, Lewis & Bockius, LLP
Philadelphia

A chapter from *Getting Paid in Pennsylvania: Basic Wage and Hour Law*

To purchase this book:
- See the PBI Online Bookstore at [www.pbi.org](http://www.pbi.org)
- Email info@pbi.org, or
- Call 1-800-932-4637

© 2007 Pennsylvania Bar Institute. All rights reserved.
This file is licensed only to the person downloading this file from PBI’s website, for printing and for saving to his or her personal computer. No further use is permitted. This file may not be shared electronically with any other person without the express written permission of the Pennsylvania Bar Institute.

The Pennsylvania Bar Institute does not render any legal, accounting, or other professional services. The Institute’s programs and publications are designed solely to help attorneys maintain their professional competence. In dealing with specific legal matters, the attorney using PBI publications or orally conveyed information should also research original sources of authority.
# Table of Contents

## Minimum Wage and Overtime Requirements  
*By Sarah E. Bouchard, Esquire*

I. Background ...................................................................................................... 37  
II. Covered Employers......................................................................................... 37  
III. Covered Employees ........................................................................................ 38  
   A. Salary Basis Test......................................................................................... 39  
      1. How to Tell if an Employee is Paid on a “Salary Basis” ...... 39  
      2. Correcting Mistaken Deductions Without Jeopardizing  
         Exemption and “Salary Basis” Status .............................................. 39  
      3. Exceptions to the “Salary Basis” Rules ................................. 40  
         a. While executives must be paid salary, administrative,  
            professional and computer employees may be paid on a  
            “fee basis” or a “salary basis” ................................................... 40  
         b. Highly compensated employees .............................................. 40  
         c. Inside sales employees............................................................... 41  
   B. The Duties Tests.......................................................................................... 41  
      1. The Executive Duties Test ..................................................... 41  
      2. The Administrative Duties Test ............................................ 42  
      3. Professional Duties Test................................................. 43  
      4. Computer Employee Exemption ............................................ 43  
      5. Outside Sales Exemption ....................................................... 44  
IV. Minimum Wage ............................................................................................... 45  
V. Overtime ........................................................................................................... 46  
   A. Overview..................................................................................................... 46  
   B. “Regular Rate of Pay”................................................................................. 46  
      1. Calculating “Renumeration” for the Workweek .................... 46  
      2. Calculating Total “Hours Worked” ........................................ 47  
      3. Examples of how the regular rate of pay is computed .......... 48  
      4. Fluctuating Workweek Method ............................................. 49  
VI. Special Situations............................................................................................. 50  
   A. Intersection Between Minimum Wage, Overtime and Collective  
      Bargaining Agreements............................................................................... 50  
VII. Common Problems in Minimum Wage and Overtime.............................. 51  
   A. Determining Whether A Bonus Is Discretionary (Excludable) or  
      Nondiscretionary (Includable)............................................................... 51  
   B. Using improper rounding policies and systems at the beginning and  
      ending of work shifts and meal periods .............................................. 51
C. Failing to record and pay for work the employer knew or had reason to know was performed before or after the scheduled work day, or at home or at other remote locations.................................................................52
D. Failing to record and pay for all meal periods of less than 30 uninterrupted minutes ...........................................................................53
E. Compensating nonexempt employees for overtime in paid time off rather than premium wages ...................................................................54
F. In the restaurant and hotel businesses, failing to properly inform non-exempt tipped employees that the employers uses the tip credit when computing regular and overtime rates of pay........................................54

VIII. Conclusion ..............................................................................................55