

§603. Limits on mandatory overtime

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Employer" means all private and public employers, including the State and political subdivisions of the State.
- B. "Overtime" means the hours worked in excess of 40 hours in a calendar week.

2. Limits on mandatory overtime. An employer may not require an employee to work more than 80 hours of overtime in any consecutive 2-week period.

3. Exceptions. This section does not apply to:

- A. Work performed in response to an emergency declared by the Governor under the laws of the State;
- B. An employee who performs essential services for the public. For purposes of this paragraph, "essential services" means those services that are basic or indispensable and are provided to the public as a whole, including, but not limited to, utility service, snowplowing, road maintenance and telecommunications service;
- C. An employee whose work is necessary to protect the public health or safety, when the excess overtime is required outside the normal course of business;

D. An individual exempt from the definition of employee in section 663, subsection 3, paragraph A, C, F, G, I or J;

E. A salaried employee who works in a bona fide executive capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage;

~~F. An employee of a seasonal employer. For purposes of this paragraph, "seasonal employer" means an employer in an industry that operates in a regularly recurring period or periods of less than 26 weeks in a calendar year;~~

G. A medical intern or resident engaged in a graduate educational program approved by the Accreditation Council on Graduate Medical Education, the American Board of Medical Specialties or the American Osteopathic Association at a health care facility. For purposes of this paragraph, "health care facility" has the same meaning as in Title 22, section 8702, subsection 4; or

H. An employee who works for an employer who shuts down an operation for annual maintenance or work performed in the construction, rebuilding, maintenance or repair of production machinery and equipment, including machine start-ups and shutdowns related to such activity. This exception applies to contractors of the employer that are providing services related to the activities in this paragraph. It does not apply to other operations not involved in the work stated in this paragraph. Notwithstanding this paragraph, a worker may not be required to work beyond the limits prescribed in subsection 2 for more than 4 consecutive weeks.

4. Lower limit by agreement. Employers and employees may agree to limit mandatory overtime to fewer hours than provided for in this section.

5. Exception for nurse. Notwithstanding subsection 2, a nurse may not be disciplined for refusing to work more than 12 consecutive hours. A nurse may be disciplined for refusing mandatory overtime in the case of an unforeseen emergent circumstance when overtime is required as a last resort to ensure patient safety. Any nurse who is mandated to work more than 12 consecutive hours, as permitted by this section, must be allowed at least 10 consecutive hours of off-duty time immediately following the worked overtime.

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This subsection does not apply to overtime for performance of services described in subsection 3, paragraph A or C.

§663. Definitions

Terms used in this subchapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

1. **Director.** "Director," the Director of the Bureau of Labor Standards;
2. **Employ.** "Employ," to suffer or permit to work;
3. **Employee.** "Employee," any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter:

A. Any individual employed in agriculture as defined in the Maine Employment Security Law and the Federal Unemployment Insurance Tax Law, except when that individual performs services for or on a farm with over 300,000 laying birds;

B.

C. Those employees whose earnings are derived in whole or in part from sales commissions and whose hours and places of employment are not substantially controlled by the employer;

D. Any individual employed as a taxicab driver;

E.

F. Those employees who are counselors or junior counselors or counselors-in-training at organized camps licensed under Title 22, section 2495 and those employees of organized camps and similar seasonal recreation programs not requiring such licensure that are operated as or by nonprofit organizations who are under 18 years of age;

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G. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as incident to, or in conjunction with, such fishing operations, including the going to and returning from work and including employment in the loading and unloading when performed by any such employee;

H.

I. Any home worker who is not subject to any supervision or control by any person whomsoever, and who buys raw material and makes and completes any article and sells the same to any person, even though it is made according to specifications and the requirements of some single purchaser;

J. Members of the family of the employer who reside with and are dependent upon the employer;

K. A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher; and

L. A person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except a prisoner who is:

- (1) Employed by a private employer;
- (2) Participating in a work release program;

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(4) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761;

(5) Employed while in a supervised community confinement program pursuant to Title 34-A, section 3036-A; or

(6) Employed while in a community confinement monitoring program pursuant to Title 30-A, section 1659-A.

4. Occupation. "Occupation," an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;

5. Wages. "Wages" paid to any employee includes compensation paid to the employee in the form of legal tender of the United States and checks on banks convertible into cash on demand and includes the reasonable cost to the employer who furnishes the employee board or lodging. "Wages" also includes compensation paid through a direct deposit system, automated teller machine card or other means of electronic transfer as long as the employee either can make an initial withdrawal of the entire net pay without additional cost to the employee or the employee can choose another means of payment that involves no additional cost to the employee;

6. Resort establishment.

7. Minimum wage for firemen. Members of municipal fire fighting departments, other than volunteer or call-departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter. Firemen's wages may be paid by the municipality based upon the average number of hours worked during any one work cycle which is not to exceed 12 weeks in duration. However, 1 1/2 times the hourly rate shall not be paid for all work done over 48 hours under this subsection;

8. Service employee. "Service employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips.

9. Hotel.

10. Public employees. "Public employees" are considered employees within the meaning of this section and include any person whose wages are paid by a state or local public employer, including the State, a county, a municipality, the University of Maine System, a school administrative unit and any other political body or its political or administrative subdivision. "Public employee" does not include any officer or official elected by popular vote or appointed to office pursuant to law for a specified term or any person defined in subsection 7.

11. Automobile salesperson. "Automobile salesperson" means a person who is primarily engaged in selling automobiles or trucks as an employee of an establishment primarily engaged in the business of selling these vehicles to the ultimate purchaser. "Automobile salesperson" includes a person who is primarily engaged in assisting in the financing and providing of insurance products to the ultimate purchaser.

12. Automobile mechanic. "Automobile mechanic" means a person who is primarily engaged in the servicing of automobiles or trucks as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except when the employee is paid by the employer on an hourly basis.

13. Automobile parts clerk. "Automobile parts clerk" means a person employed for the purpose of and primarily engaged in requisitioning, stocking and dispensing automobile parts as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly

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wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except when the employee is paid by the employer on an hourly basis.

14. Automobile service writer. "Automobile service writer" means a person employed for the purpose of and primarily engaged in receiving, analyzing and referencing requests for service, repair or analysis of motor vehicles as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except that "automobile service writer" does not include an employee who is paid by the employer on a hourly basis.

15. Tip. "Tip" means a sum presented by a customer in recognition of services performed by one or more service employees, including a charge automatically included in the customer's bill. "Tip" does not include a service charge added to a customer's bill in a banquet or private club setting by agreement between the customer and employer.

§664. Minimum wage; overtime rate

Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section.

1. Minimum wage. The minimum hourly wage is \$7.50 per hour. Starting January 1, 2017, the minimum hourly wage is \$9.00 per hour; starting January 1, 2018, the minimum hourly wage is \$10.00 per hour; starting January 1, 2019, the minimum hourly wage is \$11.00 per hour; and starting January 1, 2020, the minimum hourly wage is \$12.00 per hour. On January 1, 2021 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, and must be increased in accordance with this section thereafter.

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section except that from January 1, 2017 to December 31, 2017, the minimum cash wage paid directly to a tipped service employee may not be less than \$5.00 per hour. An employer who elects to use the tip credit must inform the affected employee in advance, as provided for in this subsection, and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined within the established 7-day workweek. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. Tips that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company. The employer may not deduct

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any amount from employee tips charged to a credit card, including, but not limited to, service fees assessed to the employer in connection with the credit card transaction.

An employer who elects to use the tip credit must inform the affected employee in advance, either orally or in writing, of the following information:

- A. The amount of the direct wage to be paid by the employer to the tipped employee;
- B. The amount of tips to be credited as wages toward the minimum wage;
- C. That the amount of tips to be credited as wages may not exceed the value of the tips actually received by the employee;
- D. That all tips received by the affected employee must be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips in accordance with subsection 2-A;
- E. That the tip credit may not apply to any employee who has not been informed by the employer of the provisions for a tip credit; and
- F. If the employer uses a tip pooling arrangement, any required tip pool contribution amount from the employee.

2-A. Tip pooling. This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement only among service employees that does not violate the federal Fair Labor Standards Act and regulations made pursuant to that Act.

2-B. Service charges. An employer in a banquet or private club setting that adds a service charge shall notify the customer that the service charge does not represent a tip for service employees. The employer in a banquet or private club setting may use some or all of any service charge to meet its obligation to compensate all employees at the rate required by this section.

3. Overtime rate. An employer may not require an employee to work more than 40 hours in any one week unless 1 1/2 times the regular hourly rate is paid for all hours actually worked in excess of 40 hours in that week. The regular hourly rate includes all earnings, bonuses, commissions and other compensation that is paid or due based on actual work performed and does not include any sums excluded from the definition of "regular rate" under the Fair Labor Standards Act, 29 United States Code, Section 207(e).

The overtime provision of this section does not apply to:

- A. Automobile mechanics, automobile parts clerks, automobile service writers and automobile salespersons as defined in section 663. The interpretation of these terms must be consistent with the interpretation of the same terms under federal overtime law, 29 United States Code, Section 213;
- B.
- C. Mariners;
- D. Public employees, except those employed by the executive or judicial branch of the State;
- E.
- F. ~~The canning; processing; preserving; freezing; drying; marketing; storing; packing for shipment; or distributing of:~~
 - ~~(1) Agricultural produce;~~
 - ~~(2) Meat and fish products; and~~
 - ~~(3) Perishable foods.~~

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~~Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection;~~

G.

H.

I.

J.

K. A driver or driver's helper who is not paid hourly and is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section, who is governed by the applicable provisions of federal law with respect to payment of overtime.

Nothing in this paragraph may be construed to limit the rights of parties to negotiate rates of pay for drivers and driver's helpers who are represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board or who are employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid a driver or driver's helper; and

L. Public employees employed by the executive or judicial branch of the State engaged in fire protection activities, as defined in the federal Fair Labor Standards Act, 29 United States Code, Section 203(y), or in law enforcement activities, as defined in 29 Code of Federal Regulations, Section 553.211, and who are eligible to have overtime pay calculated and paid in accordance with 29 United States Code, Section 207(k).

This paragraph may not be construed to limit the rights of parties to negotiate an agreement that provides for payment of overtime that exceeds the requirements of 29 United States Code, Section 207(k).

4. Compensatory time. To the extent permitted under the federal Fair Labor Standards Act of 1938, as amended, 29 United States Code, Section 207(o), the overtime pay requirement applicable to executive or judicial employees as described in subsection 3, paragraph D may be met through compensatory time agreements.