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BUREAU OF SAFETY AND REGULATION
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OVERTIME COMPENSATION RULES

Act No. 154 of the Public Acts of 1964.

The following rules became effective on December 2, 1981

R 408.721 Determining workweek for overtime compensation.

Rule 21. (1) An employer shall establish an employee's workweek and shall indicate the beginning time and day of the workweek in the employment record for the employee.

(2) Once the beginning time of an employee's workweek is established, it remains fixed and may be changed only if the change is intended to be permanent and is not designed to evade the overtime requirements of the act.

(3) Each workweek stands alone. Averaging of hours over 2 or more weeks is prohibited, regardless of whether the employee works on a standard or swing shift schedule and regardless of whether the employee is paid on an hourly, daily, weekly, biweekly, monthly, piecework, commission or other basis, except as otherwise provided by law.

R 408.722 Work period.

Rule 22. (1) An employer shall establish an employee's work period and shall indicate the beginning and ending time and date of the work period in the employment record for the employee.

(2) The work period need not coincide with the pay period.

(3) The beginning and ending date of a work period shall not be changed, regardless of the number of hours worked within the period, unless the change is intended to be permanent and is not designed to evade the overtime requirements of the act.

(4) An employer may have different work periods for different employees.

R 408.723 Computing regular rate of pay for overtime compensation.

Rule 23. (1) If an employee is paid on an hourly rate plus commission or salary plus commission, the salary and commission shall be considered as gross earnings for the workweek, and the regular rate is obtained by dividing the sum by the number of hours for which the salary was paid.

(2) If an employee is paid on a piece-rate basis, the regular rate of pay is computed by adding together the total earnings of the workweek from piece rates and all other earnings and any sums paid for waiting time or other hours worked. This sum total is divided by the number of hours worked in that week to yield the pieceworker's regular rate for that week.

R 408.724 Omitted

R 408.725 Employment in a bona fide executive capacity explained.

Rule 25. An employee employed in a bona fide executive capacity is any employee to whom all of the following provisions apply:

(a) Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof.

(b) Who customarily and regularly directs the work of 2 or more other employees therein.

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight.

(d) Who customarily and regularly exercises discretionary powers.

(e) Who does not devote more than 20%, or, in the case of an employee of a retail or service establishment, who does not devote as much as 40%, of his or her hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in subdivisions (a) to (d) of this rule. However, this subdivision shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separate branch establishment or who owns not less than a 20% interest in the enterprise in which he or she is employed.

(f) Who is compensated for his or her services on a salary basis at a rate of not less than \$155.00 per week, exclusive of board, lodging, or other facilities. However, an employee who is compensated on a salary basis at a rate of not less than \$250.00 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of 2 or more other

employees therein shall be deemed to meet all the requirements of this rule.

R 408.726 Employment in a bona fide administrative capacity explained.

Rule 26. An employee employed in a bona fide administrative capacity is any employee to whom all of the following provisions apply:

- (a) Whose primary duty consists of either of the following:
 - (i) The performance of office or nonmanual work directly related to management policies or general business operations of his or her employer or his or her employer's customers.
 - (ii) The performance of functions in the administration of a school system or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein.
- (b) Who customarily and regularly exercises discretion and independent judgment.
- (c) Who regularly and directly assists a proprietor or an employee employed in a bona fide executive or administrative capacity or who does either of the following:
 - (i) Performs, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge.
 - (ii) Executes, under only general supervision, special assignments and tasks.
- (d) Who does not devote more than 20%, or, in the case of an employee of a retail or service establishment, who does not devote as much as 40%, of his or her hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subdivisions (a) to (c) of this rule.
- (e) Who is compensated for his or her services on a salary or fee basis at a rate of not less than \$155.00 per week, exclusive of board, lodging, or other facilities or who, in the case of academic, administrative personnel, is compensated for services as required by this subdivision or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which employed. However, an employee who is compensated on a salary or fee basis at a rate of not less than \$250.00 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in subdivision (a) of this rule, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this rule.

R 408.727 Employment in a bona fide professional capacity explained.

Rule 27. An employee employed in a bona fide professional capacity is any employee to whom all of the following provisions apply:

- (a) Whose primary duty consists of the performance of any of the following:
 - (i) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.
 - (ii) Work that is original and creative in character in a recognized field of artistic endeavor, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training, and the result of which depends primarily on the invention, imagination, or talent of the employee.
 - (iii) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge. Such person shall be employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which he or she is employed.
- (b) Whose work requires the consistent exercise of discretion and judgment in its performance.
- (c) Whose work is predominantly intellectual and varied in character, as opposed to routine mental, manual, mechanical, or physical work, and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.
- (d) Who does not devote more than 20% of his or her hours worked in the workweek to activities which are not an essential part of, and necessarily incidental to, the work described in subdivisions (a) to (c) of this rule.
- (e) Who is compensated for services on a salary or fee basis at a rate of not less than \$170.00 per week, exclusive of board, lodging, or other facilities. However, this subdivision shall not apply to an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, an employee who is the holder of the requisite academic degree for the general practice of medicine and who is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, or an employee employed and engaged as a teacher as provided in subdivision (a) (iii) of this rule. Further, an employee who is compensated at a rate of not less than \$250.00 based on a 40-hour workweek, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in subdivision (a) (i) or (iii) of this rule, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination or talent in a recognized field of artistic endeavor shall be deemed to meet all of the requirements of this rule.

R 408.728 Amusement and recreational establishments exempt from overtime provisions.

Rule 28. (1) An employer's business shall be considered an amusement or recreational establishment if it complies with all of the following provisions:

- (a) It is open for the general public at a fixed site.
 - (b) It is open primarily to provide leisure activities for those who attend.
 - (c) It does not operate for more than 7 months in a calendar year.
- (2) A grocery store, restaurant, motel, curio, souvenir shop, or any other retail and service establishment is not considered an amusement or recreational establishment unless it is so related to an amusement or recreational establishment that it could not, in a reasonable manner,

offer its services to the general public independently, and is not open to the general public beyond the months the amusement or recreational establishment to which it is related is open.

(3) The exempt status of an amusement or recreational establishment and a grocery store, restaurant, motel, curio, souvenir shop, or other retail and service establishment operated under the same ownership shall be determined separately for each establishment.

(4) If an amusement or recreational establishment operates at widely separated fixed locations, the exempt status of each fixed location shall be determined separately.

R 408.729 Employees of an amusement or recreational establishment.

Rule 29. (1) Employees of a central office or warehouse or office which services an amusement or recreational establishment shall not be considered employed by the amusement or recreational establishment.

(2) An employee whose duties are divided between working for an amusement or recreational establishment and a nonexempt business owned by the same employer shall not be exempt from the overtime provisions of the act for any workweek in which work performed at the nonexempt business exceeds 20% of the hours worked.

R 408.730 Employment in agriculture.

Rule 30. (1) An employee shall be considered to be employed in agriculture if employed in any of the following:

(a) The cultivation and tillage of soil.

(b) Dairying.

(c) The production, cultivation, growing, or harvesting of agricultural or horticultural commodities.

(d) The raising of livestock, bees, fur-bearing animals, or poultry.

(e) A practice, including forestry and lumbering operations, performed on a farm as an incident to, or in conjunction with, farming operations, except that employment in separately organized, independently productive activities is not considered employment in agriculture. Included are the preparation of goods produced for market, delivery to storage, delivery to market or to a carrier for transportation to market or the processing or preserving of perishable farm products which includes canning, freezing, drying, preserving, or other operations which change the form of agricultural commodities from their raw or natural state.

(2) An employee shall not be considered employed in agriculture for any workweek in which nonagricultural work exceeds 20% of the hours worked in the workweek.

(3) An employee of an establishment which produces agricultural commodities and sells such commodities to the general public shall not be considered employed in agriculture, regardless of his or her duties, if more than 50% of the gross income of the establishment results from sales to the general public.

R 408.731, R 408.732 Rescinded.

R 408.733, R 408.734, R 408.735 Omitted

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Obsolete/Inapplicable/Duplicative Provisions Omitted

TO BE POSTED