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**Authority**

The provisions of this Chapter 231 issued under The Minimum Wage Act of 1968 (43 P. S. §§ 333.101—333.115), unless otherwise noted.

**Source**

The provisions of this Chapter 231 adopted March 18, 1977, effective March 19, 1977, 7 Pa.B. 750, unless otherwise noted.

**GENERAL PROVISIONS****§ 231.1. Definitions.**

(a) Terms used in this chapter shall have the same meaning and be defined in the same manner as in the act.

(b) In addition to the provisions of subsection (a), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Minimum Wage Act of 1968 (43 P. S. §§ 333.101—333.115).

*Board*—Food furnished on an established schedule.

*Bona fide training program*—One which must involve either formal instruction or on-the-job training during a period when the learner is entrusted with limited responsibility and is under supervision or guidance.

*Bureau*—The Bureau of Labor Standards of the Department.

*Department*—The Department of Labor and Industry of the Commonwealth.

*Domestic services*—Work in or about a private dwelling for an employer in the capacity as a householder, as distinguished from work in or about a private dwelling for such employer in the employer's pursuit of a trade, occupation, profession, enterprise or vocation.

*Hotel or motel*—An establishment which as a whole or part of its business activities offers lodging accommodations for hire to the public, and services in connection therewith or incidental thereto.

*Hours worked*—The term includes time during which an employee is required by the employer to be on the premises of the employer, to be on duty or to be at the prescribed work place, time spent in traveling as part of the duties of the employee during normal working hours and time during which an

employee is employed or permitted to work; provided, however, that time allowed for meals shall be excluded unless the employee is required or permitted to work during that time, and provided further, that time spent on the premises of the employer for the convenience of the employee shall be excluded.

*Labor on a farm*—Labor on a farm shall include the following:

(i) The term farm includes stock, dairy, poultry, fur-bearing animal, fruit and truck farms, plantations, orchards, nurseries, greenhouses or other similar structures used primarily in the raising of agricultural or horticultural commodities.

(ii) The term labor on a farm includes the employment of a person on a farm in connection with one of the following:

(A) Cultivating the soil.

(B) Raising or harvesting an agricultural or horticultural commodity, including the raising or hatching of poultry and the raising, shearing, feeding, caring for, training and management of livestock, bees, fur-bearing animals and wildlife.

(C) Harvesting of maple sap.

(D) The operation, management, conservation, improvement or maintenance of a farm and its tools and equipment.

(E) The operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for removing, supplying and storing water for farming purposes.

*Learner*—A person who is participating in a bona fide training program for an occupation in which that person is employed, the required training period for which is recognized to be at least 2 weeks; provided however, that no person may be deemed a learner at an establishment in an occupation for which that person has completed the required training, and in no case may a person be deemed a learner in such an occupation at an establishment after 8 weeks of training, except that a person may be deemed a learner for a longer period if the Secretary finds after investigation that for the particular occupation a minimum of proficiency cannot be acquired in 8 weeks.

*Lodging*—A housing facility available for the personal use of the employee at all hours.

*Minimum Wage Advisory Board*—A Board created in the Department of Labor and Industry under section 6 of the act (43 P.S. § 333.106) regarding the Minimum Wage Advisory Board.

*Nonprofit organization*—A corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

*Public amusement or recreational establishment*—An establishment providing amusement, entertainment or recreation as its primary service to the public. The term also includes owners, lessees and concessionaires whose business is incidental to, connected to or a part of the business of the establishment. Amusement or recreational establishments shall be deemed public for the pur-

pose of the act except for those that require as a condition for the use of the establishment one of the following:

- (i) Individual membership.
- (ii) Satisfaction of criteria fixed by the establishment other than the payment of a nominal fee.

*Residential employee*—An employee who resides and works on the premises of the employer.

*Secretary*—The Secretary of Labor and Industry of the Commonwealth. The term Secretary includes the authorized representative of the Secretary.

*Student*—An individual who is enrolled in and regularly attends, on a full-time basis during the daytime, an institution of learning offering a course of instruction leading to a degree, certificate or diploma, or who is completing residence requirements for a degree. A person is deemed to be a student during the time that school is not in session if that person was a student during the preceding semester, trimester or similar term of instruction; provided however, that no person may be deemed a student for a period after the date of receipt of a degree, certificate or diploma.

*Taxicab driver*—An individual employed to drive an automobile equipped to carry no more than seven passengers which is used in the business of carrying or transporting passengers for hire on a zone or meter fare basis and which is not operated over fixed routes, between fixed terminals or under contract.

*Tipped employee*—An employee engaged in an operation in which the employee customarily and regularly receives more than \$30 a month in tips.

*Tips*—Voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered.

*Week*—A period of 7 consecutive days starting on any day selected by the employer.

*Worker with a disability*—An individual whose earning capacity for the work to be performed is impaired by physical or mental deficiency or injury.

#### Authority

The provisions of this § 231.1 amended under sections 5(a)(5) and 9 of The Minimum Wage Act of 1968 (43 P.S. §§ 333.105(a)(5) and 333.109).

#### Source

The provisions of this § 231.1 amended May 4, 1979, effective May 5, 1979, 9 Pa.B. 1467; corrected March 3, 1995, effective March 5, 1994, 25 Pa.B. 765; amended October 2, 2020, effective October 3, 2020, 50 Pa.B. 5459. Immediately preceding text appears at serial pages (368148) to (368151).

#### Notes of Decisions

##### *Domestic Services Exemption*

The minimum wage and overtime pay exemption in The Minimum Wage Act of 1968 (43 P.S. §§ 333.101—333.115) (MWA) applies only to domestic services provided by employees of a household employer and is not preempted by the Fair Labor Standards Act of 1938 (29 U.S.C.A. §§ 201—219) which exempts employees of third party employers. The regulatory definition tracks the MWA's meaning and does not violate legislative intent. *Bayada Nurses v. Commonwealth, Dep't of Labor*, 958 A.2d 1050 (Pa. Cmwlth. 2008).

*Overtime*

Determinations of what constitutes overtime must be decided under a collective bargaining agreement and not on the regulation alone. *Pennsylvania Federation of BMWs v. National RR Passenger Corp.*, 989 F.2d 112 (3rd Cir. Pa. 1993), cert. denied 114 S. Ct. 85 (U. S. 1993).

**§ 231.11. Scope.**

This chapter applies to employees and classes of employment not excluded, excepted or exempted from application of the act under section 3, 4 or 5 of the act (43 P. S. §§ 333.103—333.105).

**§ 231.12. Penalty.**

An employer or his agent or the officer or agent of a corporation who violates this chapter or who interferes with the Secretary in the enforcement of this chapter shall, upon conviction, be punished in accordance with section 12(c) of the act (43 P. S. § 333.112(c)).

**THE MINIMUM WAGE****§ 231.21. Rule.**

(a) Every employee shall pay the minimum wage rate specified in section 4(a) of the act (43 P. S. § 333.104(a)) subject to exclusions and exemptions as provided in the act and in this chapter.

(b) The minimum wage shall be paid for hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, or commissioned, piece rate, or any other basis. Where an employee works off the premises of the employer under circumstances which prevent adequate supervision by the employer, or in the case of a residential employee, the Secretary will approve any reasonable agreement between the employer and employee for determining hours worked.

**§ 231.22. Deductions and allowances.**

(a) Wages paid to an employee include the reasonable cost of board, lodging and other facilities if the board, lodging or other facilities are customarily furnished by the employer to the employee; provided however, that in no event shall the cost of the deductions and allowances exceed their actual cost, exclusive of profit, to the employer.

(b) An allowance or deduction for lodging shall be permitted as part payment of the minimum wage only when the facility affords the employee reasonable space, privacy, sanitation, heat, light and ventilation. Facilities shall be open to inspection by an authorized representative of the Secretary at any reasonable time.

(c) Deductions and allowances shall be made known to the employee and agreed to by the employee at the time of hiring. In addition, adjustments to the deductions and allowances shall be made known to the employee prior to the making of the adjustments.

**§ 231.23. Commission.**

When an employee is compensated solely on a commission basis, when an employee is paid in accordance with a plan providing for a base rate plus com-

mission, or when the earnings of an employee are derived in whole or in part on the basis of an incentive plan, the wage paid weekly to the employee shall for each hour worked at least equal the applicable minimum rate set forth in section 4(a) of the act (43 P. S. § 333.104(a)).

### EMPLOYER RECORDS

#### § 231.31. Contents of record.

(a) Every employer shall keep a true, accurate and legible record for each employee. The records shall be preserved for a period of 3 years from date of last entry and shall contain the following information:

- (1) Name in full, and on the same record, the identifying symbol of the employee or number, if such is used in place of name on time, work or payroll records.
- (2) Home address including zip code.
- (3) Regular hourly rate of pay.
- (4) Occupation.
- (5) Time and day that the workweek begins. If the employee is part of a work force or employed in or by an establishment where all workers have a work week beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for all workers shall suffice.
- (6) The number of hours worked daily and weekly.
- (7) Total daily or weekly straight time wages, that is, the total wages due for hours worked during the workweek, including all wages due during any overtime worked but exclusive of overtime excess compensation.
- (8) Total overtime excess compensation for the workweek, that is, the excess compensation for overtime worked, which amount is over and above all straight time earnings or wages also earned during overtime worked.
- (9) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain, in individual employee's accounts, a record of the dates, amounts and nature of the items which make up the total additions and deductions.
- (10) Allowances, if any, claimed as part of the minimum wage.
- (11) Total wages paid each pay period.
- (12) Date of payment and the pay period covered by payment.
- (13) Special certificates for students and learners as set forth in section 4(b) of the act (43 P. S. § 333.104(b)).

(b) Where microfilm or another method is used for recordkeeping purposes, employers who use the microfilm or another method shall make available to authorized representatives of the Department the equipment which is necessary to facilitate review of the record.

(c) Where records are maintained at a central recordkeeping office other than in the place of employment, the records shall be made available for inspection at the place of employment within 7 calendar days following verbal or written

notice from the Secretary or the authorized representative of the Secretary. The records shall be maintained for a period of 3 years from date of last entry.

**Cross References**

This section cited in 34 Pa. Code § 231.32 (relating to exception); 34 Pa. Code § 231.95 (relating to employee incentive account); and 34 Pa. Code § 231.96 (relating to writing required).

**§ 231.32. Exception.**

With respect to persons employed in a bona fide executive, administrative or professional capacity or in the capacity of outside salesman, as defined in this chapter, employers shall maintain and preserve records containing the information and data required by § 231.31 (relating to contents of records) except § 231.31(a)(3) and (5)—(8) and containing the basis on which wages are paid. This may be shown as “\$435 mos.,” “\$115 wk.,” or “on fee.”

**Cross References**

This section cited in 34 Pa. Code § 231.96 (relating to writing required).

**§ 231.33. Students.**

(a) For each individual for whom student status is claimed the records of an employer shall contain a statement from the school which the student attends indicating one of the following:

- (1) The student is a full-time day student and the course of instruction is one leading to a degree, diploma or certificate.
- (2) The student is completing residence requirements for a degree.

**Cross References**

This section cited in 34 Pa. Code § 231.96 (relating to writing required).

**§ 231.34. Tipped employees.**

Supplementary to the provisions of any section of this chapter pertaining to the payroll records to be kept with respect to employees, every employer shall also maintain and preserve payroll or other records containing the following additional information with respect to each tipped employee whose wages are determined under section 3(d) of the act (43 P. S. § 333.103(d)):

- (1) A symbol or letter placed on the pay records identifying each employee whose wage is determined in part by tips.
- (2) Weekly or monthly amount reported by the employee, to the employer, of tips received. This may consist of reports made by the employees to the employer on IRS Form 4070.
- (3) Amount by which the wages of each tipped employee have been deemed to be increased by tips, as determined by the employer, not in excess of 45% of the applicable statutory minimum wage until January 1, 1980 and thereafter 40% of the applicable statutory minimum wage. The amount per

hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week. An employee failing or refusing to report to the employer the amount of tips received in any workweek shall not be permitted to show that the tips received were less than the amount determined by the employer in the workweek.

(4) Hours worked each workday in any occupation in which the tipped employee does not receive tips and total daily or weekly straight-time payment made by the employer for such hours.

(5) Hours worked each workday in occupations in which the employee received tips and total daily or weekly straight-time earnings for the hours.

#### Source

The provisions of this § 231.34 amended May 4, 1979, effective May 5, 1979, 9 Pa.B. 1467. Immediately preceding text appears at serial page (32186).

#### Cross References

This section cited in 34 Pa. Code § 231.96 (relating to writing required).

### § 231.35. Inspection.

Payroll records of an employer shall be open to inspection by an authorized representative of the Secretary at a reasonable time. Employers shall permit an authorized representative of the Secretary to interrogate an employee in the place of employment and during work hours, with respect to the wages paid to and the hours worked by the employee or other employees.

#### Cross References

This section cited in 34 Pa. Code § 231.96 (relating to writing required).

### § 231.36. Statement to employee.

Every employer shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages.

### § 231.37. Posting.

Every employer covered by this chapter shall post, in a conspicuous place in the establishment of the employer, a summary of the act and this chapter.



**OVERTIME PAY****§ 231.41. Rate.**

Except as otherwise provided in section 5(a)—(c) of the act (43 P. S. § 333.105(a)—(c)), each employee shall be paid for overtime not less than 1-1/2 times the employee's regular rate of pay for all hours in excess of 40 hours in a workweek.

**Cross References**

This section cited in 34 Pa. Code § 231.43 (relating to regular rate).

**§ 231.42. Workweek.**

The term workweek shall mean a period of 7 consecutive days starting on any day selected by the employer. Overtime shall be compensated on a workweek basis regardless of whether the employee is compensated on an hourly wage, monthly salary, piece rate or other basis. Overtime hours worked in a workweek may not be offset by compensatory time off in any prior or subsequent workweek.

**Cross References**

This section cited in 34 Pa. Code § 231.43 (relating to regular rate).

**§ 231.43. Regular rate.**

For purposes of these §§ 231.41—231.43 (relating to overtime pay), the regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to or on behalf of the employee, but it shall not be deemed to include the following:

- (1) Sums paid as gifts, payments in the nature of gifts made at Christmas time or on other special occasions as a reward for service, the amounts of which are not measured by or dependent on hours worked, production or efficiency.
- (2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work or other similar cause, reasonable payments for traveling expenses or other expenses incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for the employee's hours of employment.
- (3) Sums paid in recognition of services performed during a given period if:
  - (i) Both the fact that payment is to be made and the amounts of the payment are determined at the sole discretion of the employer at or near the

end of the period and not pursuant to any prior contract, agreement or promise causing the employee to expect such payments regularly.

(ii) The payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan without regard to hours of work, production or efficiency.

(iii) The payments are talent fees paid to performers, including announcers on radio and television programs.

(4) Contributions irrevocably made by an employer to a trustee or third person under a bona fide plan for providing old-age, retirement, life, accident or health insurance or similar benefits for employees.

(5) Extra compensation provided by a premium rate for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of 8 in a day or in excess of the maximum workweek applicable to the employee under § 231.41 (relating to rate) or in excess of the normal working hours or regular working hours of the employee, as the case may be.

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than 1 1/2 times the rate established in good faith for like work performed in non-overtime hours on other days.

(7) Extra compensation provided by a premium rate paid to the employee in pursuance of an applicable employment contract or collective bargaining agreement for work outside of the hours established in good faith by the contract or agreement as the basic, normal or regular workday not exceeding 8 hours or workweek not exceeding the maximum workweek applicable to the employee under § 231.41 (relating to rate), where the premium rate is not less than 1 1/2 times the rate established in good faith by the contract or agreement for like work performed during the workday or workweek.

(b) If the employee is paid a flat sum for a day's work or for doing a particular job without regard to the number of hours worked in the day or at the job and if he receives no other form of compensation for services, his regular rate is determined by totaling all the sums received at the day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for hours worked in excess of 40 in the workweek.

(c) No employer may be deemed to have violated these §§ 231.41—231.43 (relating to overtime pay) by employing an employee for a workweek in excess of the maximum workweek applicable to the employee under § 231.41 (relating to rate) if the employee is employed under a bona fide individual contract or under an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate substantially irregular hours of work. For example, where neither the employee nor the employer can either control or anticipate with a degree of certainty the number of hours the

employee must work from week to week, where the duties of the employee necessitate significant variations in weekly hours of work both below and above the statutory weekly limit on nonovertime hours, or where the substantially irregular hours of work are not attributable to vacation periods, holidays, illness, failure of the employer to provide sufficient work, or other similar causes, and the contract or agreement:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate and compensation at not less than 1 1/2 times the rate for hours worked in excess of the maximum workweek.

(2) Provides a weekly guaranty of pay for not more than 60 hours based on the rates so specified.

(d) No employer may be deemed to have violated these §§ 231.41—231.43 by employing an employee for a workweek in excess of the maximum workweek applicable to the employee under § 231.41 if, under an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in the workweek in excess of the maximum workweek applicable to the employee under § 231.41:

(1) In the case of an employee employed at piece rates, is computed at piece rates not less than 1 1/2 times the bona fide piece rates applicable to the same work when performed during nonovertime hours.

(2) In the case of an employee's performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than 1 1/2 times the bona fide rate applicable to the same work when performed during nonovertime hours.

(3) Is computed at a rate not less than 1 1/2 times the rate established by the agreement or understanding as the basic rate to be used in computing overtime compensation thereunder; and if the average hourly earnings of the employee for the workweek, exclusive of payments described in subsection (a)(1)—(7), are not less than the minimum hourly rate required by applicable law and if extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(e) Extra compensation paid as described in subsection (a)(5)—(7) shall be creditable toward overtime compensation payable under these §§ 231.41—231.43 (relating to overtime pay).

(f) No employer may be deemed to have violated these §§ 231.41—231.43 by employing an employee of a retail or service establishment for a workweek in excess of 40 hours if:

(1) The regular rate of pay of the employee is in excess of 1 1/2 times the minimum hourly rate applicable.

(2) More than half of the employee's compensation for a representative period, not less than 1 month, represents commissions on goods or services. In determining the proportion of compensation representing commissions, all

earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

#### Notes of Decisions

##### *Daily Basis*

By its very terms, this regulation applies to those employees whose salaries are quoted on a daily basis. These plaintiffs received a salary computed on a biweekly basis, so the regulation does not apply to them. This regulation simply does not apply to all Pennsylvania employees who receive a fixed annual salary. *Friedrich v. U. S. Computer Systems, Inc.*, # 90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

##### *Flat Sum*

The placement of the disjunctives in subsection (b) of this regulation makes it applicable to two classes of employees. First, it applies to employees “paid a flat sum for a day’s work . . . without regard to the number of hours worked in the day . . .” Second, it applies to employees “paid a flat sum . . . for doing a particular job without regard to the number of hours worked . . . at the job.” *Friedrich v. U. S. Computer Systems, Inc.*, # 90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

##### *Hourly Wages*

The computer field engineers’ argument that they were hourly workers and entitled to overtime compensation failed when they were paid biweekly according to a 2-week pro rata proportion of their annual salaries and, therefore, this section was inapplicable. *Friedrich v. U. S. Computer Services, Inc.*, 833 F.Supp. 470 (E. D. PA 1993); affirmed 187 F.3d 625 (3d Cir. Pa. 1999).

##### *Particular Job*

The term “particular” in this regulation presumably encompasses employees who perform duties as independent contractors, working on specific, discrete projects such as painting, construction or other services. *Friedrich v. U. S. Computer Systems, Inc.*, # 90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

## EMPLOYMENT OF LEARNERS

### § 231.51. Procedure.

An employer who wishes to employ a learner at less than the prescribed minimum wage must complete an application on a form furnished by the Secretary containing the following information:

- (1) Occupation at which learners are to be employed.
- (2) Duration of learning period during which the employer proposes to pay a wage less than the prescribed minimum.
- (3) The nature and extent of the instruction and supervision.
- (4) The number of regular employees employed by the employer in the occupation involved.
- (5) Other information as may be required by the Secretary.

**§ 231.52. Special certificate.**

If the Secretary finds that the requested employment of learners in a given occupation at less than the minimum wage is necessary in order to prevent curtailment of opportunities for employment, the Secretary may issue a certificate to the employer authorizing employment at less than the prescribed minimum wage; provided however, that the wage may not be less than 85% of the otherwise applicable minimum wage established in section 4 of the act (43 P. S. § 333.104). The certificate may limit the number of learners and proportion of learners to nonlearners. The wage specified on the certificate shall constitute the minimum wage for learners in the particular occupation at the establishment named therein.

**§ 231.53. Posting of special certificate.**

A copy of the special certificate and evidence that the employee is a learner shall be retained at the place of employment and be made available for inspection by the Secretary for a period of not less than 3 years after termination of employment of learners.

**§ 231.54. Denial of an application for a special certificate.**

An application for a special certificate may be denied, or the special certificate may be revoked by the Secretary for misrepresentation of facts in the application, for violation of the act or for other good cause shown. In addition, the certificate may be modified because of changes in conditions or circumstances.

**EMPLOYMENT OF STUDENTS****§ 231.61. Procedure.**

(a) An employer who wishes to employ students at less than the prescribed minimum wage shall complete an application on a form furnished by the Secretary.

(b) If the Secretary finds that the requested employment of students at less than the minimum wage is necessary in order to prevent curtailment of opportunities for employment, the Secretary may issue a certificate to the employer authorizing employment at a wage less than the prescribed minimum rate; provided however, that the wage may not be less than 85% of the otherwise applicable minimum wage established in section 4 of the act (43 P. S. § 333.104).

(c) The following two types of special certificates for students may be issued:

(1) *Six or less students.* The employment of six or less students at less than the minimum hourly wage may not create a substantial probability of reducing the full-time employment opportunities for other workers nor shall it impair or depress the wage rates or working standards established for other workers engaged in work of the same or comparable nature.

(2) *Seven or more students.* If employment of students at subminimum wages increases to seven or more students, then the employer must file a new application for the appropriate certificate to hire seven or more students. To qualify for the certificate to hire seven or more students, the employer must maintain a ratio of at least three regular employees to each student employed.

(d) Students are permitted to work on a part-time basis, but not in excess of 20 hours in any workweek at the subminimum wage rate during the school term, except that when school is not in session the weekly limitation on the maximum number of hours which may be worked at the subminimum rate may be increased by 8 hours for each holiday, but in no event for more than 40 hours a week.

(e) A copy of the certificate permitting the employment of students at the student rate shall be retained at the place of employment and be made available for inspection by the Secretary for not less than 3 years after termination of employment of students.

**Source**

The provisions of this § 231.61 amended May 4, 1979, effective May 5, 1979, 9 Pa.B. 1467. Immediately preceding text appears at serial page (32192).

**§ 231.62. Denial of application for special certificate.**

An application for a special certificate may be denied or the special certificate may be revoked by the Secretary for misrepresentation of facts in the application, for violation of the act, or for other good cause shown. In addition, the certificate may be modified because of changes in conditions or circumstances.

**EMPLOYMENT OF  
WORKERS WITH A DISABILITY**

**§ 231.71. Procedure.**

(a) An employer who wishes to employ workers with a disability at less than the prescribed minimum wage shall complete an application on forms furnished by the Secretary.

(b) The application shall set forth the following information:

(1) The nature of the disability in detail.

(2) A description of the occupation at which the worker with a disability is to be employed.

(3) The wage the employer proposes to pay the worker with a disability per hour.

(4) Other information as may be required by the Secretary.

(c) The application shall be signed jointly by the employer and the worker with a disability for whom such application is being made, except as otherwise authorized by the Secretary.

**Authority**

The provisions of this § 231.71 amended under sections 5(a)(5) and 9 of The Minimum Wage Act of 1968 (43 P.S. §§ 333.105(a)(5) and 333.109).

**Source**

The provisions of this § 231.71 amended October 2, 2020, effective October 3, 2020, 50 Pa.B. 5459. Immediately preceding text appears at serial pages (368160) to (368161).

**Cross References**

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

**§ 231.72. Conditions for granting certificate.**

A certificate may be issued if the application is in proper form and sets forth facts showing that:

- (1) The disability impairs the earning capacity of the worker for the work the employee is to perform.
- (2) The proposed minimum wage is commensurate with the production capacity of the employee.

**Authority**

The provisions of this § 231.72 amended under sections 5(a)(5) and 9 of The Minimum Wage Act of 1968 (43 P.S. §§ 333.105(a)(5) and 333.109).

**Source**

The provisions of this § 231.72 amended October 2, 2020, effective October 3, 2020, 50 Pa.B. 5459. Immediately preceding text appears at serial page (368161).

**Cross References**

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

**§ 231.73. Special certificate.**

If the application and other available information indicate that the requirements of these §§ 231.71—231.76 (relating to employment of workers with a disability) are satisfied, the Secretary will issue a certificate. If issued, copies of the certificate will be mailed to the employer and the worker with a disability, and if the certificate is not issued, the employer and the worker with a disability will be given written notice of the denial.

**Authority**

The provisions of this § 231.73 amended under sections 5(a)(5) and 9 of The Minimum Wage Act of 1968 (43 P.S. §§ 333.105(a)(5) and 333.109).

**Source**

The provisions of this § 231.73 amended October 2, 2020, effective October 3, 2020, 50 Pa.B. 5459. Immediately preceding text appears at serial page (368161).

**§ 231.74. Specifications of the certificate.**

(a) A certificate will specify, among other things, the name of the worker with a disability, the name of the employer, the occupation in which the worker with a disability is to be employed, the authorized subminimum wage rate and the period of time during which such wage rate may be paid.

(b) A certificate shall be effective for a period to be designated by the Secretary. The worker with a disability employed under the certificate may be paid subminimum wages only during the effective period of the certificate.

(c) The wage rate set in the certificate will be fixed at a figure designated to reflect adequately the earning capacity of the worker with a disability.

(d) A money received by a worker with a disability by reason of a state or Federal pension or compensation program for persons with a disability may not be considered as offsetting any part of the wage due the worker with a disability by the employer.

(e) Except as otherwise provided in section 5(a)—(c) of the act (43 P.S. § 333.105(a)—(c)), the worker with a disability shall be paid not less than 1 1/2 times the regular rate for hours worked in excess of 40 in the workweek.

(f) The terms of a certificate, including the subminimum wage rate specified therein, may be amended by the Secretary upon written notice to the parties concerned if the facts justify the amendment.

#### Authority

The provisions of this § 231.74 amended under sections 5(a)(5) and 9 of The Minimum Wage Act of 1968 (43 P.S. §§ 333.105(a)(5) and 333.109).

#### Source

The provisions of this § 231.74 amended October 2, 2020, effective October 3, 2020, 50 Pa.B. 5459. Immediately preceding text appears at serial pages (368161) to (368162).

#### Cross References

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

### § 231.75. Renewal of certificate.

Application for renewal of a certificate shall be filed in the same manner as an original application. If the application has been filed prior to the expiration date of the certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

#### Cross References

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

### § 231.76. Denial of application for a special certificate.

An application for a special certificate may be denied, or the special certificate may be revoked by the Secretary, for misrepresentation of facts in the application, for violation of the act, or for other good cause shown. In addition, the certificate may be modified because of changes in conditions or circumstances.

#### Cross References

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

## SPECIAL DEFINITIONS

### § 231.81. Definitions.

The term outside salesmen, executive, administrative and professional capacity shall be defined in these §§ 231.81—231.85 (relating to special definitions), and employment in those classifications shall be exempt from both the minimum wage and overtime provisions of the act.



**§ 231.82. Executive.**

Employment in a bona fide executive capacity means work by an individual:

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

(i) For this section the term “management” is defined as follows: to include, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting employees’ rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees’ productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used to perform work; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget, and monitoring or implementing legal compliance measures.

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

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

(4) Who is compensated for services on a salary basis at a rate of not less than:

(i) \$684 per week exclusive of board, lodging or other facilities, effective October 3, 2020.

(ii) \$780 per week exclusive of board, lodging or other facilities, effective October 3, 2021.

(iii) \$875 per week exclusive of board, lodging or other facilities, effective October 3, 2022.

(iv) Effective October 3, 2023, and each 3rd year thereafter, and at a rate equal to the weighted average 10th percentile wages for Pennsylvania workers who work in exempt executive, administrative or professional classifications as determined by the Department with advice and consultation by the Minimum Wage Advisory Board and based on an annual wage survey of all worker classifications conducted by the Department.

(A) At least 90 days prior to the effective date of each 3-year period in subparagraph (iv), the Department will submit to the Minimum Wage Advisory Board, the adjusted weekly salary rate under subparagraph (iv) and the information supporting the adjusted salary rate.

(B) Upon review of the information submitted by the Department and at a meeting to be held no later than 60 days before the effective date of the adjusted weekly salary rate, the Minimum Wage Advisory Board may provide advice and consultation to the Secretary regarding the adjusted weekly salary rate.

(C) At least 30 days prior to the effective date of each 3-year period in subparagraph (iv), the Department will publish the adjusted weekly salary rate on its web site and in the *Pennsylvania Bulletin*.

(5) Up to 10% of the salary amount required under paragraph (4) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid annually or more frequently. The employer may use any 52-week period as the year, such as a calendar year, fiscal year or anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply. If by the last pay period of the year the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal 52 times the weekly salary amount required under this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the year. A final payment made after the end of the year may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid.

#### Authority

The provisions of this § 231.82 amended under sections 5(a)(5) and 9 of The Minimum Wage Act of 1968 (43 P.S. §§ 333.105(a)(5) and 333.109).

#### Source

The provisions of this § 231.82 amended October 2, 2020, effective October 3, 2020, 50 Pa.B. 5459. Immediately preceding text appears at serial pages (368162) to (368163).

#### Cross References

This section cited in 34 Pa. Code § 231.81 (relating to definitions).

### § 231.83. Administrative.

Employment in a bona fide administrative capacity means work by an individual:

(1) Whose primary duty is the performance of office or nonmanual work directly related to management or general business operations of the employer or the customers of the employer.

(i) For the purpose of this section the term "directly related to management or general business operations" is defined as follows: to include, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance.

(2) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

(3) Who is compensated for services on a salary basis at a rate of not less than:

(i) \$684 per week exclusive of board, lodging or other facilities, effective October 3, 2020.

(ii) \$780 per week exclusive of board, lodging or other facilities, effective October 3, 2021.

(iii) \$875 per week exclusive of board, lodging or other facilities, effective October 3, 2022.

(iv) Effective October 3, 2023, and each 3rd year thereafter, at a rate equal to the weighted average 10th percentile wages for Pennsylvania workers who work in exempt executive, administrative or professional classifications as determined by the Department with advice and consultation by the Minimum Wage Advisory Board and based on an annual wage survey of all worker classifications conducted by the Department.

(A) At least 90 days prior to the effective date of each 3-year period in subparagraph (iv), the Department will submit to the Minimum Wage Advisory Board, the adjusted weekly salary rate under subparagraph (iv) and the information supporting the adjusted salary rate.

(B) Upon review of the information submitted by the Department and a meeting to be held no later than 60 days before the effective date, the Minimum Wage Advisory Board may provide advice and consultation to the secretary regarding the weekly salary rate.

(C) At least 30 days prior to the effective date of each 3-year period, the Department will publish this figure on its web site and in the *Pennsylvania Bulletin*.

(4) Up to 10% of the salary amount required under paragraph (3) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid yearly or more frequently. The employer may use any 52-week period as the year, such as a calendar year, fiscal year or anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply. If by the last pay period of the year the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal 52 times the weekly salary amount required by this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the year. A final payment made after the end of the year may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid.

#### **Authority**

The provisions of this § 231.83 amended under sections 5(a)(5) and 9 of The Minimum Wage Act of 1968 (43 P.S. §§ 333.105(a)(5) and 333.109).

#### **Source**

The provisions of this § 231.83 amended October 2, 2020, effective October 3, 2020, 50 Pa.B. 5459. Immediately preceding text appears at serial pages (368163) to (368164).

#### **Cross References**

This section cited in 34 Pa. Code § 231.81 (relating to definitions).

**§ 231.84. Professional.**

Employment in a bona fide professional capacity means work by an individual:

(1) Whose primary duty is the performance of work requiring either of the following:

(i) Knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study.

(ii) Invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

(2) Who is compensated for services on a salary or fee basis at a rate of not less than:

(i) \$684 per week exclusive of board, lodging or other facilities, effective October 3, 2020.

(ii) \$780 per week exclusive of board, lodging or other facilities, effective October 3, 2021.

(iii) \$875 per week exclusive of board, lodging or other facilities, effective October 3, 2022.

(iv) Effective October 3, 2023 and each 3rd year thereafter, at a rate equal to the weighted average 10th percentile wages for Pennsylvania workers who work in exempt executive, administrative or professional classifications as determined by the Department with advice and consultation by the Minimum Wage Advisory Board and based on an annual wage survey of all worker classifications conducted by the Department.

(A) At least 90 days prior to the effective date of each 3-year period in subparagraph (iv), the Department will submit to the Minimum Wage Advisory Board, the adjusted weekly salary rate under subparagraph (iv) and the information supporting the adjusted salary rate.

(B) Upon review of the information submitted by the Department and a meeting to be held no later than 60 days before the effective date, the Minimum Wage Advisory Board may provide advice and consultation to the secretary regarding the weekly salary rate.

(C) At least 30 days prior to the effective date of each 3-year period, the Department will publish this figure on its web site and in the *Pennsylvania Bulletin*.

(3) Up to 10% of the salary or fee amount required under paragraph (2) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid yearly or more frequently. The employer may use any 52-week period as the year, such as a calendar year, fiscal year or anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply. If by the last pay period of the year the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal 52 times the weekly salary

amount required by this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the year. A final payment made after the end of the year may count only toward the prior year's salary amount and not toward the salary amount in the year it was paid.

**Authority**

The provisions of this § 231.84 amended under sections 5(a)(5) and 9 of The Minimum Wage Act of 1968 (43 P.S. §§ 333.105(a)(5) and 333.109).

**Source**

The provisions of this § 231.84 amended October 2, 2020, effective October 3, 2020, 50 Pa.B. 5459. Immediately preceding text appears at serial page (368164).

**Cross References**

This section cited in 34 Pa. Code § 231.81 (relating to definitions).

**§ 231.85. Outside salesman.**

Outside salesman means an employee who is employed for the purpose of and who is customarily and regularly engaged more than 80% of work time away from the employer's place or places of business in the following manner:

- (1) Making sales, including any sale, exchange, contract to sell, consignment for sale, or other disposition or selling, and delivering articles or goods.
- (2) Obtaining orders or contracts for the use of facilities for which a consideration will be paid by the client or customer. In addition, the employee may not spend more than 20% of the hours worked in any week in work of a nature not directly related to and in conjunction with the making of sales; provided however, that work performed incidental and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be not regarded as nonexempt work.

**Cross References**

This section cited in 34 Pa. Code § 231.81 (relating to definitions).

**§§ 231.91—231.99. [Reserved].**

**Authority**

The provisions of these §§ 231.91—231.99 issued under section 3 of the act of December 21, 1998 (P.L. 1290, No. 168) (43 P.S. § 333.105a note); rescinded under section 9 of The Minimum Wage Act of 1968 (43 P.S. § 333.109).

**Source**

The provisions of these §§ 231.91—231.99 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765; reserved April 27, 2012, effective April 28, 2012, 42 Pa.B. 2273. Immediately preceding text appears at serial pages (281101) to (281104) and (329237) to (329238).

**MINIMUM WAGE INCREASE AND TRAINING WAGE—  
STATEMENT OF POLICY**

**§ 231.101. Minimum wage increase.**

(a) Under section 4(a) of the act (43 P. S. § 104(a)), an employer shall pay the following wage rates to all employees for all hours worked subject to exclusions and exemptions contained in the act and this chapter:

- (1) Until December 31, 2006, \$5.15 an hour.
- (2) Beginning January 1, 2007, \$6.25 an hour.
- (3) Beginning July 1, 2007, \$7.15 an hour.
- (4) Beginning July 24, 2009, \$7.25 an hour.

(b) The minimum wage credit for tipped employees is \$2.83 per hour under section 3(d) of the act (43 P. S. § 333.103(d)) with all of the following conditions:

- (1) An employer shall pay the difference when the employee's tips plus the credit for tipped employees does not meet the Pennsylvania minimum wage contained in subsection (a).
- (2) The tip credit applies only if an employee received over \$30 in tips for a month.

**Source**

The provisions of this § 231.101 adopted October 27, 2006, effective October 28, 2006, 36 Pa.B. 6547; adopted September 7, 2007, effective September 8, 2007, 37 Pa.B. 4880. Immediately preceding text appears at serial page (323200).

**Cross References**

This section cited in 34 Pa. Code § 231.103 (relating to training wage).

**§ 231.102. Small business.**

(a) Under section 5(c) of the act (43 P. S. § 333.105(c)), an employer who has an employee complement comprised of the equivalent of ten or less full-time employees shall pay the following wage rates to all employees for all hours worked subject to exclusions and exemptions contained in the act and in this chapter:

- (1) Until December 31, 2006, \$5.15 an hour.
- (2) Beginning January 1, 2007, \$5.65 an hour.
- (3) Beginning July 1, 2007, \$6.65 an hour.
- (4) Beginning July 1, 2008, \$7.15 an hour.
- (5) Beginning July 24, 2009, \$7.25 an hour.

(b) The equivalent of ten or less full-time employees is calculated on a 40-hour workweek. A workweek is a period of 7 consecutive days starting on any day selected by the employer.

(c) If the total number of hours worked by all employees in a workweek exceeds 400 hours, the employer may not utilize the minimum wage contained in subsection (a). All of the following also applies:

(1) An employer may be ineligible for the minimum wage contained in subsection (a) if the total hours worked is less than 400 hours per workweek if the employer classifies employees as full-time and the employees work less than 40 hours per week according to the employer's customary and regular practices.

(2) An employer's customary and regular practice is the employer's normal practice over time for scheduling and payment of employees.

(d) An owner is not considered an employee under this section. An employee includes all of the following:

(1) A manager.

(2) A supervisor.

(3) An officer.

(4) An individual employed by the employer.

(e) An employer is any individual, partnership, association, corporation, business trust or any person or groups of persons acting, directly or indirectly, in the interest of an employer in relation to any employee.

#### Source

The provisions of this § 231.102 adopted October 27, 2006, effective October 28, 2006, 36 Pa.B. 6547; amended September 7, 2007, effective September 8, 2007, 37 Pa.B. 4880. Immediately preceding text appears at serial pages (323200) to (323201).

### § 231.103. Training wage.

(a) Under section 4(e) of the act (43 P. S. § 333.104(e)), an employer may pay a 60-day training wage to an employee under 20 years of age based upon the minimum wage required under section 6(a) of the Fair Labor Standards Act (29 U.S.C.A. § 206(a)).

(1) The training wage under section 4(e) of the act is as follows:

(i) Until July 23, 2007, \$5.15 an hour.

(ii) Beginning July 24, 2007, \$5.85 an hour.

(iii) Beginning July 24, 2008, \$6.55 an hour.

(2) The training wage may not be utilized after July 23, 2009. An employer shall pay the minimum wage of \$7.25 to all employees subject to exclusions contained in the act commencing on July 24, 2009.

(b) An employer may pay an employee the training wage up to the day before the employee's 20th birthday. On and after an employee's 20th birthday, the employer shall increase the employee's pay to the minimum wage required under § 231.101 (relating to minimum wage increase) even if the 60-day period has not expired.

(c) The 60-day period is calculated as follows:

- (1) The 60-day period starts on the first day of work.
- (2) The 60-day period is counted as consecutive calendar days and not as days worked or business days.
- (3) A break in employment does not affect the calculation of the 60-day period of eligibility and does not allow the employer to restart the 60-day period.
- (4) An employee under 20 years old may be paid the training wage for up to 60 consecutive calendar days after initial employment with any employer and not just the first employer who hired the employee.
- (5) An employee eligible for the training wage may be employed at the same time by more than one employer if the employers are separate and distinct.
- (6) An employee may be initially employed only once by any one employer even if there are breaks in employment.
- (d) An employer shall notify an employee at the time of hire of the training wage under this section and the right to receive the Pennsylvania minimum wage contained in § 231.101 after 60 calendar days or at the employee's 20th birthday if the employer utilizes this training wage.
- (e) An employer may not take any action to displace or partially displace an existing employee to allow hiring of persons eligible for the training wage under this section. This includes any of the following:
  - (1) Reducing an employee's hours.
  - (2) Reducing an employee's wages or employment benefits.
- (f) An employer may not do any of the following:
  - (1) Utilize the exclusions and exemptions contained in the act and this chapter if the employer is paying an employee the training wage under this section.
  - (2) Utilize the wage payment exclusions and exemptions of the act and this chapter for an employee when the 60-day training period has concluded or when the employee is ineligible for the training wage under this section. The employer shall pay the employee the minimum wage required under § 231.101 when the 60-day training period concludes or when the employee is ineligible for the training wage.
- (g) An employer is not required to provide training to an employee paid the training wage under this section.

#### Source

The provisions of this § 231.103 adopted October 27, 2006, effective October 28, 2006, 36 Pa.B. 6547; amended September 7, 2007, effective September 8, 2007, 37 Pa.B. 4880. Immediately preceding text appears at serial pages (323201) to (323202).

[Next page is 301-1.]