

VIRGINIA WAGE AND HOUR LAW



WHAT IS THE MINIMUM WAGE IN VIRGINIA?

The **minimum wage** is the smallest amount that an employer can pay a worker per hour.

- If you work for the federal government, you are entitled to the federal minimum wage, which is currently \$7.25 per hour.
- If you work for a private company in Virginia, the minimum wage is currently \$7.25 per hour.
- If you work for a company holding a service contract with **Alexandria City** in Virginia that was performed for city-owned or city-controlled property you may be entitled to receive a living wage rate of \$13.13 per hour. Workers on some state or federal government contracts for construction or services may also be entitled to receive a **prevailing wage**, which is generally higher than the minimum wage.

Am I Entitled to the Minimum Wage For My Work?

- **All workers**, including day laborers, immigrants -- regardless of immigration status -- and house cleaners, have a right to be paid the minimum wage.

What if I am Paid Less than the Minimum Wage or Not at All?

- You have a right to be paid for every hour that you are on the job. If you are not paid for hours that you work, or you are paid less than the minimum wage, you can recover the amount of money you are owed for at least two years, up to three years in some circumstances. It is important that you keep track of how much you are paid and how many hours you work to ensure that you are being paid the minimum wage.
- In **Virginia**, you may recover the amount owed plus interest at 8% per annum from the date the wages were due, plus attorney's fees of one-third of the amount of the judgment.

WHAT IS OVERTIME PAY AND HOW DO I KNOW IF I AM OWED OVERTIME?

- If you work more than **40** hours in one week, under federal law your employer should pay you an overtime premium for every hour worked over 40. Your employer is required by law to pay you one and a half times your regular rate of pay for every hour worked in excess of forty hours in a week. For example, if your regular rate of pay is \$8.50 per hour, overtime pay would be \$12.75 per hour ($\$8.50 \times 1.5 = \12.75). Even if you are paid a salary rather than hourly wage, you are still entitled to overtime pay for any hours over 40 that you work in a week. However, some types of workers are not entitled to overtime pay, such as professionals, and salesmen.

How Often is My Employer Required to Pay Me?

- In **Virginia**, all employees, except executive personnel, must be paid by established regular pay periods. Employees on an hourly rate must be paid at least once every 2 weeks or twice a month. An employer must pay salaried employees at least once a month. Finally, regardless of whether you are fired or quit, you must be paid by the next regular payday.

What if My Employer Deducts the Cost of My Uniform, Tools, or Meals from My Pay?

- If you are paid exactly the minimum wage and your company requires you to wear a uniform, your employer must give you the uniform or reimburse you for the cost of the uniform and pay the cost of cleaning your uniform. Your employer is also required to pay for any tools or other expenses you incurred to do your job. In VA employers may subtract the "reasonable cost" of meals provided to an employee from the employee's paycheck which usually means the employer cannot subtract more than what it actually cost them to produce the meal.

What Do I Do if I Am Owed Wages?

The Virginia Department of Labor and Industry is no longer administering Virginia's Payment of Wage Act. If you believe your employer has violated any of these laws or that you may be owed unpaid wages, you can file a complaint in small claims court (as long as your claim does not exceed \$5000). For a list of all the General District Courts and their contact information, go to <http://www.courts.state.va.us/courts/gd.html>. If you believe you have a claim for unpaid wages that is: (1) more than \$2,500 dollars and (2) you have documentary evidence to support your allegation, you may be able to receive legal assistance by calling special counsel at 1-877-829-2434. A claim form should also be filled out and can be obtained online at www.vawageclaim.com. The special counsel may charge a fee for its services. Another option is to file a claim with the Federal Department of Labor's Wage and Hour Division (call 1-866-487-9243). Complaints for overtime pay may only be filed in federal district court or with the U.S. Department of Labor.

- **If you are in a union, you should file a grievance with your union for unpaid wages.** The time for filing grievances is usually very short so consult your shop steward right away.
- It is against the law for your employer to retaliate against you for filing a claim for unpaid wages. For example, it is illegal for an employer to fire you, demote you, or subject you to worse working conditions than your co-workers just because you filed a claim for unpaid overtime. You should report any and all suspected acts of retaliation by your employer to your jurisdiction's corresponding office.

Is There a Deadline by Which I Have to File My Claim?

- You have 3 years to file a lawsuit for unpaid wages and 5 years if there was a written contract signed by your employer. For unpaid overtime claims in Virginia, you have 2 years to file a lawsuit or 3 years if the violation is willful.

What Information Do I Need to Pursue My Claim?

- To successfully pursue a wage claim, you should have the employer's name, address, and contact information; a record of the hours you worked and weren't paid; and a pay stub or other proof that establishes your rate of pay.

Can I Receive Overtime if I Am an Independent Contractor?

- Independent contractors are workers who are treated differently than employees. The law does not protect independent contractors like it protects employees; for example, independent contractors are not entitled under the law to receive time and one half pay for the hours worked over 40 hours in a week. Generally **you are not an independent contractor if**: 1) your boss tells you when to come to work and how many hours to work; 2) your boss controls the "conditions" of your employment – e.g., what you do at work, how you do it, where you do it, what you wear, when and if you can take a break, etc.; 3) your boss provides all the tools and equipment you need to perform your job; and 4) your boss determines your rate and method of payment for the work. If you believe your employer has misclassified you as an independent contractor, you should consult legal counsel.

For more information about your workplace rights come to EJC's Workers' Rights Clinic from 6:00 p.m. – 9:00 p.m. on Wednesdays at Bread for the City, NW (1525 7th Street, NW, between P and Q Streets, NW; list starts at 5 p.m.) or, from 11:00 a.m. – 2:00 p.m. the first and third Fridays of each month at Bread for the City, SE (1640 Good Hope Road, SE). The clinic is first-come, first served, and no appointment is necessary. For more information, visit the D.C. Employment Justice Center website at www.dcejc.org.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in Washington, D.C. Because laws and procedures frequently change, the D.C. Employment Justice Center cannot ensure that the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights.

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