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# Rules of Department of Labor and Industrial Relations

## Division 30—Division of Labor Standards Chapter 4—Minimum Wage and Overtime Rules

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## Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

### Division 30—Division of Labor

#### Standards

### Chapter 4—Minimum Wage and Overtime Rules

#### 8 CSR 30-4.010 Definitions

*PURPOSE:* This rule sets forth certain definitions of terms used in this chapter.

*Editor's Note:* The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the rule has been filed with the secretary of state. The entire text of the rule may be found at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) As used in 8 CSR 30-4.010—8 CSR 30-4.050, unless the context clearly indicates otherwise, the following terms shall mean:

(A) Director—the director of the Department of Labor and Industrial Relations or his/her authorized representative;

(B) Employee—an individual employed by an employer, except that the term employee shall not include:

1. Any individual employed in a bona fide executive, administrative or professional capacity;

2. Any individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship in fact, does not, exist or where the services rendered to the organizations are on a voluntary basis;

3. Any individual standing in *loco parentis* to foster children in his/her care;

4. Any individual who receives a minimum wage pursuant to the Fair Labor Standards Act of 1938, as amended as of February 26, 1993, including individuals employed by an employer covered by 29 USC 203 or other applicable federal law;

5. Any individual employed for less than four (4) months in any year in a resident or day camp for children or youth, or any individual employed by an educational conference center operated by an educational, charitable or not-for-profit organization;

6. Any individual engaged in the activities of an educational organization where employment by the organization is in lieu of the requirement that the individual pay the cost of tuition, housing or other educational fees of the organization or where earnings of the individual employed by the organization are credited toward the payment of the cost of

tuition, housing or other educational fees of the organization;

7. Any individual employed on or about a private residence on an occasional basis for six (6) hours or less on each occasion;

8. Any disabled person employed in a sheltered workshop, certified by the Department of Elementary and Secondary Education;

9. Any person employed on a casual basis in domestic service employment to provide baby-sitting services, any person employed in the domestic service of any family or person at his/her home and any employee employed in domestic service employment to provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves;

10. Any individual employed by an employer subject to the provisions of Part I of the Interstate Commerce Act;

11. Any individual employed on a casual or intermittent basis as a golf caddy, newsboy or in a similar occupation;

12. Any individual 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;

13. Any individual subject to the minimum wage provisions of applicable federal law or any individual who is employed in any government position defined in 29 USC 203(2)(c)(i) and (ii);

14. Any individual employed by a retail or service business whose annual gross volume sales made or business done is less than five hundred thousand dollars (\$500,000);

15. Any individual who is an offender, as defined in section 217.010, RSMo, who is incarcerated at any correctional facility operated by the Department of Corrections, including offenders who provide labor or services on the grounds of that correctional facility pursuant to section 217.550, RSMo; and

16. Any individual described by the provisions of section 29 USC 213(a)(8);

(C) Employer—any individual, partnership, association, corporation, business, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to an employee;

(D) Learner and apprentice—any person who has not completed the required training for a particular job in which the director believes it necessary to establish a subminimum training wage so as to prevent curtailment of opportunities for employment;

(E) Occupation—any occupation, service, trade, business, industry, or branch or group

of industries or employment or class of employment in which individuals are gainfully employed; and

(F) Wage—compensation due to an employee by reason of his/her employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value.

*AUTHORITY:* sections 290.512, 290.515 and 290.517, RSMo. Supp. 1990.\* Original rule filed July 22, 1992, effective Feb. 26, 1993.

\*Original authority 1990.

#### 8 CSR 30-4.020 Minimum and Subminimum Wage Rates

*PURPOSE:* This rule establishes the minimum wage rates to be paid to certain qualifying employees and describes generally the allowance of gratuities as a credit toward payment of the minimum wage.

(1) Effective August 28, 1990 employers who employ individuals who are covered under the Missouri minimum wage law are required to pay to each such individual wages at the same rate as established as the federal minimum wage under the Fair Labor Standards Act (FLSA). The Missouri minimum wage shall be as follows:

(A) Effective August 28, 1990 the minimum wage shall be not less than three dollars and eighty cents (\$3.80) an hour; and

(B) Effective April 1, 1991 the minimum wage shall be not less than four dollars and twenty-five cents (\$4.25) an hour.

(2) Learners and apprentices shall be paid the same rate as established under the provisions of federal law as the federal subminimum wage applicable to new workers. The Fair Labor Standards Amendments of 1989 to the FLSA established training wages for certain eligible workers. These rates, which shall be the subminimum wage rates applicable to learners and apprentices, are as follows:

(A) Effective August 28, 1990 the learner and apprentice rate shall be not less than three dollars and thirty-five cents (\$3.35) an hour; and

(B) Effective April 1, 1991 the learner and apprentice rate shall be not less than eighty-five percent (85%) of the federal minimum wage of four dollars and twenty-five cents (\$4.25) per hour, which shall be \$3.6125 per hour (if rounded, must be rounded up to three dollars and sixty-two cents (\$3.62) per hour).

(3) An individual whose earning capacity is impaired by physical or mental deficiency,

and who is unable to maintain a production level within the limits required of those employees who are receiving minimum or subminimum wages set forth in section (1) or (2) of this rule, may be paid at a minimum wage as established by the director which may be lower than the minimum and subminimum wage rates set forth in this rule. Employment of individuals at these lower wage rates shall be permitted as provided under 8 CSR 30-4.040.

(4) Tipped employees shall receive at least the applicable minimum wages as set forth in this rule, except that the employer may claim gratuities as a credit toward the payment of the required minimum wage. The maximum amount of gratuities that the employer can claim as a credit is fifty percent (50%) of the applicable minimum wage rate. For example, if after April 1, 1991 a tipped employee is entitled to a minimum wage of three dollars and sixty-two cents (\$3.62) an hour and receives in one (1) day the equivalent of two dollars (\$2) per hour in tips, the employer can claim up to fifty percent (50%) of the minimum wage one dollar and eighty-one cents (\$1.81) as a tip credit, and shall only be required to pay the employee one dollar and eighty-one cents (\$1.81) per hour in wages for that day. In no event shall the amount of wages and gratuities equal less than the applicable minimum wage, with the difference between the gratuities and the minimum wage being paid by the employer.

*AUTHORITY: sections 290.512, 290.515 and 290.517, RSMo. Supp. 1990.\* Original rule filed July 22, 1992, effective Feb. 26, 1993.*

*\*Original authority 1990.*

**8 CSR 30-4.030 Training Wage for Learners and Apprentices**

*PURPOSE: This rule establishes a training wage for certain learners and apprentices at a rate less than the current minimum wage rate.*

(1) The director is empowered by law to provide by rule for the employment of learners and apprentices in any occupation, at the wage rate established under 8 CSR 30-4.020(2).

(2) An individual who would otherwise qualify as a covered employee under the minimum wage law may be deemed to be a learner and apprentice and may be paid the applicable subminimum training wage for a period

of three (3) calendar months. However, the director is empowered to establish a training period of up to six (6) calendar months for learners and apprentices in occupations where the director finds that a minimum of proficiency cannot be acquired in three (3) months.

(3) An individual who would otherwise qualify as a covered employee under the minimum wage law and who is an employee of any amusement or recreation business that is exempted from the provisions of the federal minimum wage law by operation of the provisions of 29 U.S.C. 213(a)(3) may be deemed by the employer to be a learner and apprentice for up to ninety (90) working days.

(4) An employee is initially eligible to be paid the learner and apprentice rate established under 8 CSR 30-4.020(2) until the employee has been employed by the employer a cumulative total of the number of days authorized pursuant to sections (2) and (3) of this rule.

(5) Individuals who, as of February 26, 1993, have been employed by their current employer for at least three (3) calendar months are ineligible for employment at the learner and apprentice rate by that employer.

(6) An individual is eligible to be paid the learner and apprentice rate irrespective of the age of the individual, except that individuals shall not be eligible to be paid the learner and apprentice rate in any workweek in which they are employed in industries or occupations in which they cannot be employed legally because of their age as a result of any federal, state or local child labor law or ordinance.

(7) An employer who believes that a minimum of proficiency cannot be acquired by a learner and apprentice within three (3) months may file an application with the director to have the training period extended for up to six (6) months. The application shall be submitted on a form provided by the director and shall contain the following:

- (A) The name and business address of the employer;
- (B) A description of the goods and services produced by the employer;
- (C) A description of the occupation for which the learner and apprentice is being trained;
- (D) A description of the training program; and
- (E) A statement of the proposed duration of the training program, not to exceed six (6) months.

(8) If an application under section (7) is approved by the director, a letter of approval shall be issued to the applicant. The letter of approval shall state the number of months that it shall be permissible to pay the learner and apprentice rate to individuals enrolled in the training program.

(9) The director may deny an application to extend the training program beyond the initial three (3) months if it is determined that a minimum of proficiency can be acquired in three (3) months, or that the application was filed solely for the purpose of evading the spirit and intent of the minimum wage law.

*AUTHORITY: sections 290.512, 290.515 and 290.517, RSMo. Supp. 1994.\* Original rule filed July 22, 1992, effective Feb. 26, 1993. Amended: Filed March 27, 2000, effective Oct. 30, 2000.*

*\*Original authority: 290.512, RSMo 1990; 290.515, RSMo 1990; 290.517, RSMo 1990.*

**8 CSR 30-4.040 Subminimum Wage Rates for the Physically or Mentally Impaired**

*PURPOSE: This rule provides for the establishment of subminimum wages to be paid to persons whose earning capacity is reduced due to a physical or mental impairment.*

(1) The director is empowered, after a public hearing, to provide by rule for the employment in any occupation of individuals whose earning capacity is impaired by a physical or mental disability. The director may provide for this employment at a subminimum wage rate that is deemed necessary to prevent curtailment of opportunities for employment of the physically or mentally impaired.

(2) A public hearing for the purpose of establishing a subminimum wage rate for any occupation may be held by the director on his/her own motion, or at the request of an interested employer, employee, employer or employee association, service organization, public agency or other interested business or service group.

(3) Employees affected by a proposed subminimum wage shall be given reasonable notice of the public hearing and shall be given the opportunity to submit oral or prepared written testimony concerning, but not limited to, the following:

- (A) The need for a subminimum wage rate; and

(B) Recommendations as to the appropriate level of wages to be set as the subminimum wage for the occupation(s) being considered.

(4) Subminimum wage rates that are to be considered by the director shall be duly approved by filing a Notice of Proposed Rulemaking and a subsequent Order of Rulemaking with the secretary of state as provided for state agencies under Chapter 536, RSMo.

*AUTHORITY: sections 290.512, 290.515 and 290.517, RSMo Supp. 1990.\* Original rule filed July 22, 1992, effective Feb. 26, 1993.*

*\*Original authority 1990.*

#### 8 CSR 30-4.050 Valuation of Goods and Services

*PURPOSE: This rule provides for the valuation of those types of goods and services which may be received by the employee and credited by the employer in payment of the minimum wage.*

(1) The fair market value of meals, lodging, and other goods and services may be deducted by the employer as a credit toward the payment of the minimum wage to the employee so long as the meals, lodging and other goods and services are voluntarily received by the employee for the private benefit of the employee.

(2) The term fair market value as used in this rule means the price which the goods or services in question would bring when offered for sale by one willing but not obliged to sell it, and when bought by one willing or desirous to purchase it but who is not compelled to do so. The fair market value of the goods and services which are accepted by the employee as wages shall be computed on a weekly basis. Once an accounting has been made of the fair market value of the goods and services accepted by the employee in each workweek, full settlement of the amount owed to the employee shall be made by the employer on each regular payday. The employer shall be required to pay only the difference between the fair market value of the goods and services accepted during the pay period, and the minimum wage otherwise required to be paid.

(3) The following is an illustrative, but not exhaustive, listing of goods and services which are not considered to be for the private benefit of the employee and whose fair market value may not be deducted by the employ-

er as a credit toward the payment of the minimum wage to the employee:

- (A) Tools;
- (B) Equipment;
- (C) Uniforms, including, but not limited to, garments such as suits, dresses, aprons and all other garments whatsoever as worn by the employees as a condition of employment. This apparel of a similar design, color or material, or forming part of the decorative pattern of the establishment or distinguishing the employee as an employee of the concern is presumed to be worn as a condition of employment;
- (D) Laundry or cleaning of uniforms;
- (E) Maintenance of tools, equipment or uniforms;
- (F) Breakage or loss of tools, equipment or uniforms;
- (G) Any other item required by the employer to be worn or used by the employee as a condition of employment; and
- (H) Transportation furnished to the employee where that transportation is an incident of and necessary to the employment, such as travel costs of railroad maintenance-of-way workers.

(4) The following is an illustrative, but not exhaustive, listing of goods and services which are considered to be for the private benefit of the employee and whose fair market value may be deducted by the employer as a credit toward the payment of the minimum wage to the employee:

- (A) Meals;
- (B) Lodging;
- (C) Tuition furnished by a college to its student employees;
- (D) Merchandise furnished at company stores and commissaries;
- (E) Fuel (including coal, kerosene, firewood and lumber slabs);
- (F) Electricity, water and gas furnished for the noncommercial personal use of the employee; and
- (G) Transportation furnished to employees between their homes and work, where the transportation is not necessary to the employment.

*AUTHORITY: sections 290.512, 290.515 and 290.517, RSMo Supp. 1990.\* Original rule filed July 22, 1992, effective Feb. 26, 1993.*

*\*Original authority 1990.*