



*This article presents general guidelines for Georgia nonprofit organizations as of 6/26/2012 and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

## **The Nuts and Bolts of Paying Employees in Georgia**

This article provides some general information on the requirements for paying employees in the state of Georgia. Since Georgia does not have a wage hour law, Georgia employers must follow the Federal Fair Labor Standards Act (“FLSA”). The FLSA, administered by the U.S. Department of Labor’s Wage-and-Hour Division, sets out standards regarding minimum wages, equal pay, which employees are exempt and not exempt from payment of minimum wage or overtime pay, record-keeping requirements and child labor laws.

### **Who is Covered?**

Any person who works with or otherwise handles goods that are moving in interstate commerce is individually subject to the minimum wage and overtime requirements of the FLSA. An employer is covered under the FLSA if it engages in interstate commerce and has greater than \$500,000 in annual gross sales or business. Hospitals, in-patient care facilities and schools are covered as well.

It is up to the employer to prove that it or its employees are not covered by the FLSA. Therefore, we generally recommend that all non-profits operate with the assumption that they must comply with the law and pay minimum wage and overtime to eligible employees.

### **When should I pay my employees?**

Georgia law requires that employers divide each month into at least two equal payment periods. Direct deposit may be used with the permission of the employee.

### **Do I have to pay my employees when they are terminated?**

On termination, employers must pay their employees for all time worked up until termination. Georgia does not have a special provision for the timing of payment upon termination, so it is acceptable for employers to pay last wages on the next regular payroll cycle. Georgia also has no law requiring payment of any unused vacation pay to a terminated employee. However, provisions of an employee handbook may be considered part of an employee’s contract and may govern whether the employee is entitled to pay for unused vacation upon termination.

Similarly, Georgia has no law guaranteeing severance pay to terminated employees. Employee handbook provisions providing severance pay may be enforced, however, through a breach of contract action.

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## **What is the minimum wage?**

Employers covered by the FLSA must pay their “non-exempt” employees a minimum wage rate of \$7.25 per hour. In Georgia, most employers not covered by the FLSA must pay their employees a minimum wage of \$5.15 per hour. It is up to the employer to prove that it or its employees are not covered by the FLSA. Therefore, we generally recommend that all non-profits operate with the assumption that they must comply with the FLSA and pay \$7.25 minimum wage. Some employees, such as managers or outside sales employees, may be “exempt” from the minimum wage requirement under the FLSA.

## **What is the difference between “exempt” and “non-exempt” employees?**

Under the FLSA, most employees are guaranteed a certain minimum wage and overtime pay for any hours worked over 40 hours in a seven day period. Some categories of employees are “exempt” from minimum wage and overtime protection, but most employees do not fit into such categories and are therefore considered “non-exempt”. Many employers improperly classify employees as either “salaried” or “hourly” and make decisions related to overtime based on these classifications. The important distinction is whether an employee is exempt or non-exempt, and not how he or she is paid or what their job title is. There are five common exemptions under the FLSA: executive, administrative, professional, computer professional, and outside sales. Each exemption has specific requirements that must be met before the exemption applies. For more information, see <http://www.pbpatl.org/wp-content/uploads/2011/12/FLSA1.pdf>

## **When do I pay my employees overtime?**

When a non-exempt employee works more than 40 hours in a week, the employer must pay the employee one and one half times their regular rate of pay for every hour over 40 worked that week. Only hours actually worked are counted; break periods over 20 minutes such as lunch, break periods, and other time off is not included in the overtime calculation. Exempt employees are not subject to the overtime pay requirement.

## **Do I pay my employees when they are on-call?**

Generally, non-exempt employees who are required to remain "on-call," or who are required to remain near the employer's premises so they cannot use the time effectively for their own personal purposes, must be compensated for the entire period spent on call.

## **Do I pay my employees for travel time?**

Employers are not required to compensate non-exempt employees for time spent traveling between the employee's home and the worksite at the beginning and end of the workday. However, time spent by a non-exempt employee for business purposes, such as traveling out of town and back the same day for a work assignment or training, is compensable as hours worked. When an employee travels overnight, the employer is required to compensate the employee for travel time that falls within the employee's regular work hours, even if the travel takes place on a weekend.

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### **How do I pay my employees when they serve on jury duty?**

Employees in the state of Georgia who are called and/or selected for jury duty are entitled to pay for the entire period of service. Employees whose wages are paid in part based upon tips earned, are to be compensated at the applicable minimum wage rate for the first three days of service. The Attorney General of Georgia has stated that an employee's total compensation may not be reduced by jury service, thereby requiring Georgia employers to make up the difference between the employee's usual salary and any payment received for jury duty service. Any time spent at jury duty does not have to be considered hours worked for purposes of overtime calculations.

### **Do I pay my employees for break periods and/or meal periods?**

Employers are not required to give employees breaks or meal periods under the FLSA or Georgia law. Employers who do provide breaks must compensate employees for short break periods but not for meal periods of thirty minutes or more. Such meal periods can be uncompensated as long as the employees are free to use the meal period time as they wish and are not required to perform work or stay at their work station during that time.

### **Are there any payroll recordkeeping requirements?**

The FLSA requires that employers keep records indicating an employee's full name, social security number, address, gender, occupation, time and day that the regular workweek begins, regular rate of pay, hours worked in each day and each week, compensation, deductions and pay day for all employees subject to the FLSA. If the worker is under 19 years of age, the records must include date of birth. These records are to be retained for at least three years. Underlying records, such as time cards, must be kept for two years.

### **What are the penalties if I do not comply?**

Penalties for violating the FLSA include payments for the amount of the unpaid minimum wages or overtime and an equal amount in liquidated damages. Successful plaintiffs may also recover attorneys' fees and costs. In addition to civil suits brought by the Department of Labor or private individuals, the Department of Justice may bring criminal actions for willful violations of the statute which can result in fines up to \$10,000 and, for a second conviction, a prison sentence of up to six months.

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