

FACT SHEET



Overtime Premium Rate Required for Many Workers

New Virginia Law: Virginia law requires employers to pay “non-exempt” workers an overtime premium of 1.5 times the regular rate of pay for hours worked above 40 hours per week. Most hourly workers and many salaried workers are covered by the law. Virginia’s overtime minimum wage is \$18.00 per hour.

Are all workers covered? Virginia’s overtime law applies to most workers, but not all. Virginia’s law has limited exemptions for executives, officers, and administrators, as well as certain bona fide professionals, seasonal recreational workers, certain farm workers, and certain domestic service workers (such as nannies). For a complete list of exemptions, please review the exemptions listed under U.S.C.213(a) located [here](#). If you earn less than \$684 per week (\$35,568 per year), even if your job would normally meet the executive, administrative or professional exemptions, you are automatically covered for the overtime premium. Executive, administrative, and professional workers paid \$107,432 per year or more are usually exempt from (not covered by) the overtime premium. Government employees are covered by the law.

How is the rate calculated? For hourly workers, hours worked in excess of 40 hours in any one workweek must be paid at the overtime premium rate of not less than 1.5 times the employee’s regular rate. The regular rate is generally your hourly rate. For salaried employees, the weekly salary is divided by 40 to determine the regular rate upon which to base the premium rate. A workweek is defined as 168 hours or seven consecutive 24-hour periods. It does not need to coincide with a

calendar week if it does not fluctuate to avoid overtime. Hours taken as vacation or sick time do not count toward overtime.

Can comp time be given instead of the overtime premium? No.

Are tipped workers covered? Tipped employees are assumed to have a wage rate of the state minimum wage unless there is an agreement that they should receive more. For overtime, they must be paid at least 1.5 times the minimum wage. Tips earned are credited toward that rate.

What does this mean for me? If you believe you should be paid the overtime premium and are not being paid it, you can talk with your employer (and share this factsheet). Some employers may not understand the law and will comply once the issue is brought to their attention. On the other hand, you may be fearful of talking directly to your employer. You can file a complaint with the VA Department of Labor and Industries by downloading the complaint from the website www.doli.virginia.gov or call 804-786-2706 to obtain a form. The overtime rate applies to time worked starting July 1, 2021. Claims for overtime worked before then cannot be accepted. You also have the right to recover your unpaid wages through the court and the help of an attorney. Visit www.wagetheftva.org to find attorneys who handle these cases. The attorney’s fees are not taken from your unpaid wages but are paid for by the employer, if the employer is found to have cheated you of unpaid overtime wages.

Sources of information: Virginia Department of Labor and Industries and the federal Department of Labor.