

Oklahoma Department of Labor

# Wage Law

40 O.S. §§ 71, 72, 74-80, 88, 89,  
165, 172, 173, 191, 192, 198, 199

## Administrative Rules

OAC 380:15, 16, 30

2011 Edition



**Mark Costello**  
Commissioner of Labor



# Wage law in Oklahoma...

The Oklahoma Department of Labor is pleased to provide this updated guide with 2011 legislative session changes. Included are state statutes and administrative rules which govern

our workplaces. Also in this guide are answers to frequently asked questions concerning child labor and general employment standards in Oklahoma.

This guide is designed to be used as a resource for Oklahoma wage law. For specific questions, please contact one of our Labor Compliance Officers.

The Oklahoma Department of Labor is committed to working on behalf of both the employers and the employees of our state. Please do not hesitate to contact me whenever I can be of service.

*Mark Costello*

Mark Costello  
Commissioner of Labor



The *Safety Pays*<sup>®</sup> program can help you reduce injuries and lower workers' compensation costs without fines or penalties. Call us toll-free, statewide for more information at 888-269-5353.

# Safety PAYS

This publication is issued by the Oklahoma Department of Labor as authorized by Commissioner Mark Costello. Copies have not been printed but are available through the agency website. The publisher of this booklet does not warrant the correctness of the information contained in this booklet. The "official" version of the Oklahoma Statutes are available from the authorized publisher per Oklahoma state law and the "official" version of the Administrative Rules must be obtained from the Office of Administrative Rules, Oklahoma Secretary of State, 405-521-4911, [www.sos.state.ok.us](http://www.sos.state.ok.us).

"**Safety Pays**" is a registered service mark of the Oklahoma Department of Labor.

# Table of Contents

## Frequently Asked Questions

FAQ about General Labor Law in Oklahoma	iv
FAQ about Child Labor Law in Oklahoma	viii

## Title 40 — Child Labor Law

71	Restrictions on employment of children under sixteen	1
72.1	Certain occupations not permitted to be filled by children under 16	1
74	Educational qualifications required of child before employment	1
75	Hours of employment of children—Rest periods	2
76	Night work	2
77	Schooling certificates—Duties of employers	2
78	Evidence of age of child—Certificate of physical fitness	3
79	Age and schooling certificates—Proof of age	3
80	School attendance certificate to be presented—Duplicate of schooling certificate—Blank form—Form of certificate	4
88	Penalties for violating this chapter	5
89	Enforcement	5

## Administrative Rules — Child Labor

### CHAPTER 15. HAZARDOUS EMPLOYMENT OF CHILDREN

380:15-1-1	Purpose	7
380:15-1-2	Prohibited Sales-REVOKED	7
380:15-1-3	Non-profit organizations-REVOKED	7
380:15-1-4	Special hazards	7

### CHAPTER 16. CHILD LABOR VIOLATIONS

#### SUBCHAPTER 1. GENERAL PROVISIONS

380:16-1-1	Purpose	7
380:16-1-2	Definitions	7
380:16-1-3	Burden of compliance on parents and employer	8

#### SUBCHAPTER 5. HEARING PROCEDURES

380:16-5-1	Notices of violation	8
380:16-5-2	Warnings	8
380:16-5-3	Hearing procedures	8
380:16-5-4	Cease and desist orders	9

## Title 40 — General Wage Law

165.1	Definitions	10
165.2	Semimonthly payment of wages on regular paydays—Payment in money—Itemized statement of deductions—Prohibited payments	10

165.2a	Violations-Administrative Fines	11
165.3	Termination of employee–Payment–Failure to pay	11
165.3a	Wages and benefits upon employee’s death	11
165.4	Bona fide disagreements	12
165.5	Private agreements	12
165.6	Contractors as employers	12
165.7	Enforcement and administration–Administrative Proceedings–Orders–Appeals–Actions	12
165.8	Penalties	13
165.9	Actions to recover unpaid wages and damages–Parties–Costs and attorney’s fees	14
165.10	Invalidity clause	14
165.11	Failure to pay benefits or furnish wage supplements pursuant to agreements	14
172	Blacklisting	14
173	Penalty	15
191	Restrictions on requirement of physical examination–Report not basis of damages	15
192	Violations of act	15
198.1	Payment of discriminatory wages based on employee’s sex prohibited	15
198.2	Enforcement–Penalties	15
199	Certain actions against employees prohibited	16

## Administrative Rules — Protection of Labor

### SUBCHAPTER 1. GENERAL PROVISIONS

380:30-1-1	Purpose	17
380:30-1-2	Definitions	17
380:30-1-3	Wage and hour claims–generally–REVOKED	19
380:30-1-4	Wage and hour hearings–generally	19
380:30-1-5	Payment of accrued leave	19
380:30-1-6	Bonuses	19
380:30-1-7	Work without pay and deductions	20
380:30-1-8	Regular wages, overtime and benefits	21
380:30-1-9	Stock options and ownership interest as wages	21
380:30-1-10	Mileage reimbursement and expenses	21
380:30-1-11	Overpayment of wages	22
380:30-1-12	Payment for training required by employer	22
380:30-1-13	Written notice	23
380:30-1-14	Attorneys fees and costs	23

### SUBCHAPTER 3. WAGE CLAIM PROCEDURES

380:30-3-1	Jurisdiction of the Department–generally	23
380:30-3-2	Employee wage claim form	23
380:30-3-3	Employer response form	24
380:30-3-3.1	Orders of determination and notices of dismissal	24
380:30-3-3.2	Request for hearing	25

380:30-3-4	Procedures prior to hearing	25
380:30-3-5	Motions for stay of proceedings	26
380:30-3-6	Burdens of proof	26
380:30-3-7	Mediation–REVOKED	27
380:30-3-8	Pre-hearing conferences	27

**SUBCHAPTER 5. ADMINISTRATIVE HEARING PROCEDURES**

380:30-5-1	Administrative hearing	28
380:30-5-2	Contents and service of notice	28
380:30-5-3	Opportunity to be heard–REVOKED	28
380:30-5-4	Record of hearing–REVOKED	28
380:30-5-5	Hearing to be recorded–REVOKED	28
380:30-5-6	Procedures before the Department	28
380:30-5-7	Final orders	28
380:30-5-8	Subpoenas–Witnesses and documents–REVOKED	28
380:30-5-9	Rehearing, reopening or reconsideration of decision	29
380:30-5-10	Judicial review	29
380:30-5-11	Staying enforcement of agency decision pending review	29
380:30-5-12	Transmission of record to reviewing court	29

## For more information

Oklahoma Department of Labor (ODOL)	30
U.S. Department of Labor (USDOL)	30
Oklahoma Employment Security Commission (OESC)	31
U.S. Equal Employment Opportunity Commission (EEOC)	31
Oklahoma Human Rights Commission (OHRC)	31
National Labor Relations Board (NLRB)	31

# Frequently Asked Questions about General Labor Law in Oklahoma

## 1. What is the current minimum wage?

The Oklahoma minimum wage is equal to the federal minimum wage of \$7.25 per hour.

## 2. Must all employers pay minimum wage?

Unless otherwise covered by federal wage and hour laws, an Oklahoma employer must comply with the minimum wage<sup>1</sup> as long as the company has at least 10 full-time employees and/or grosses more than \$100,000 annually and/or is involved in interstate commerce.

## 3. Is overtime pay required?

Oklahoma has no state overtime laws. However, if a company is required to comply with federal wage and hour laws, time and one-half should be paid to cover employees for all hours worked over 40 hours in a seven-day work week. Contact the U.S. Department of Labor for more information.

## 4. Must an employer offer breaks and/or lunches?

Mandatory break laws apply only to children under the age of 16 years. Company policy dictates break and lunch periods for everyone age 16 years and older. Breaks and/or lunches are not addressed in either federal or state wage laws for persons above the age of 16.

**5. Is wage payment required at the time of termination?**

No. The employer may wait until the next regular payday designated for the pay period regardless of whether an employee quit or was fired.

**6. What is the rule on giving a notice?**

If a two-week notice is given and the employer opts to refuse the notice, discharging the employee immediately, no payment is required by law (except for time already worked). Giving or accepting notice is strictly a courtesy, unless otherwise covered by company policy.

**7. What is the penalty for failing to pay employees their earned wages?**

An employer can be assessed a penalty of two percent (2%) liquidated damages for each day the payment of wages is overdue, up to the amount of the wages due.

**8. Are mileage and expenses wages?**

Mileage and expenses are not considered wages if they are paid as reimbursements.

**9. Are benefits required by law?**

State law does not mandate that an employer must provide benefits to employees. State law does enforce the established benefits policy of the employer. If the employer has an established policy providing for benefits such as vacation pay, sick leave, holiday pay and severance pay, the employee may be eligible for benefits depending upon the employer's eligibility criteria.

**10. Can an employer deduct money from wages?**

Deductions can be legal, depending upon the circumstances. An employee must provide written<sup>2</sup> consent before an employer may deduct wages from a paycheck, except for mandatory deductions including tax withholdings, etc.

## 11. How often must an employee be paid?

Every employer shall pay all wages due employees, other than exempt employees, at least twice each calendar month on scheduled paydays. (Each payment of wages must include an itemized statement of deductions.) State, county and municipal employees and exempt employees must be paid a minimum of once each calendar month.

## 12. How does the minimum wage apply when tips, gratuities, meals or lodging is received by an employee?

For any employee falling under the jurisdiction of federal wage laws, the maximum tip credit against the minimum wage is \$5.12 per hour. Employers must pay tipped employees at least \$2.13 per hour and may apply tip earnings toward the balance of the minimum wage obligation.

## 13. Must employees pay for their uniforms when required to do so by the employer?

Business establishments that furnish uniforms to their employees may take credit against the employees' wages in an amount equal to the reasonable cost of furnishing the uniforms.

## 14. What should an employee do if he/she has wages past due from an employer?

If wages are refused after an employee asks the employer, the employee should contact the Oklahoma Department of Labor Wage & Hour Division, 405-521-6100, or toll-free, statewide 1-888-269-5353.

<sup>1</sup> For further detailed information on exempt employees regarding minimum wage, please contact the Oklahoma Department of Labor Employment Standards Division, 1-888-269-5353.

<sup>2</sup> The written consent/agreement must be in accordance with OAC 380:30-1-7; i.e., that the deductions are limited in scope.



# Frequently Asked Questions about Child Labor Law in Oklahoma

## 1. What is Oklahoma's minimum age for employment?

The minimum age to be employed in Oklahoma is 14 years. Children working either on farms or for parents or any entity in which a parent owns an equity interest are exempt. Children engaged in the sale or delivery of newspapers to consumers are also exempt. (See the federal Fair Labor Standards Act for more information.)

## 2. Who issues the work permit (also known as Employment Certificate of Age and Schooling)?

The work permit shall be approved by the principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending. The child's parents shall approve such certificate if the child is being schooled at home. The school's Issuing Officer verifies the minor's age and the compulsory school requirements in accordance with Title 70 Section 10 of the Oklahoma Statutes.

## 3. How many hours can a 14 or 15-year-old work while attending school?

A minor under the age of 16 years may work up to three (3) hours on school days (Monday to Friday), up to eight (8) hours on non-school days (days in which attendance is not compulsory), and up to 18 hours in a school week. A minor under the age of 16 years may work up to 40 hours in a non-school week if school is out for the entire week and attendance is not compulsory.

#### 4. How many hours can a 14 or 15-year-old work during summer break?

A minor under the age of 16 years may work up to eight (8) hours on non-school days (days in which attendance is not compulsory) and up to 40 hours in a non-school week if school is out for the entire week and attendance is not compulsory. A minor under the age of 16 years may not work overtime.

#### 5. What times can a minor 14 or 15 years of age work when school is in session?

From the Tuesday after Labor Day to May 31<sup>st</sup> of the following year, a minor under age 16 years may not work before 7:00 a.m. or after 7:00 p.m. If the employer is not subject to the Fair Labor Standards Act, a minor may be allowed to work until 9:00 p.m. throughout the year on days followed by a non-school day. Contact the U.S. Department of Labor to determine whether the employer is subject to the federal Fair Labor Standards Act.

#### 6. What times can a minor 14 or 15 years of age work when school is not in session?

From June 1<sup>st</sup> to Labor Day, a minor under age 16 years may not work before 7:00 a.m. or after 9:00 p.m.

#### 7. Are there any restrictions on the hours or times a 16 or 17-year-old can work during school session or summer break?

There are no restrictions on the hours or times once the minor reaches 16 years of age.

#### 8. How many occupations are considered hazardous for minors under the age of 18?

According to the federal Fair Labor Standards Act, there are 17 hazardous occupations in which the minor must be at least 18 years of age to be employed. (See the federal Fair Labor Standards Act for a listing; the FLSA may be accessed via the Internet at the U.S. Department of Labor, [www.dol.gov](http://www.dol.gov).)

Minors under the age of 16 years are prohibited from performing occupations related to: construction; cooking or baking; fryers or grills; hoisting devices; ladders or scaffolds; lawn mowers and weed eaters other than working for self; loading and unloading; manufacturing,

mining, or processing; motor vehicles or service as helpers on vehicles; power-driven machines or equipment; public messenger service; public utilities and communications; slicers or sharp knives; transportation of persons or property by rail, highway, air, water, pipeline or other means; warehousing or storage.

9. **How many injuries occur among minors under 18 years of age every year nationwide?**

There are approximately 200,000 workplace injuries among minors under 18 years of age in the United States every year. Of these injuries, approximately 70 resulted in workplace fatalities.

10. **What are the break requirements for 16 or 17-year-olds?**

There are break laws for minors under age 16 years. A minor under age 16 years must be permitted a one (1) hour cumulative rest period for eight (8) consecutive hours worked or a 30 minute rest period for five (5) consecutive hours worked. Once the minor reaches 16 years of age, there are no requirements for breaks or lunches.



# Title 40 — Child Labor Law

## **71. Restrictions on employment of children under sixteen**

No child under the age of sixteen (16) shall be permitted to work in any occupation or in any establishment other than those occupations permitted by the "Fair Labor Standards Act of 1938", as amended, 29 U.S.C., Sections 201 through 219, and any regulations related thereto.

It shall be the duty of the Commissioner of Labor upon investigation by himself or the agents of his department, or upon the complaint of the Board of Health, to determine what occupations are injurious to health or morals or especially hazardous to life or limb, and to notify employers in such occupations of his decision, which decision shall be final until such occupations shall be defined by law or by final judgment in a court of competent jurisdiction as safe for health, morals, life or limb.

## **72.1. Certain occupations not permitted to be filled by children under 16**

A. No child under sixteen (16) years of age shall be employed or permitted to work at any of the following occupations:

1. Manufacturing, mining, or processing occupations, including occupations requiring performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;
2. Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;
3. The operation of motor vehicles or service as helpers on such vehicles;
4. Public messenger service;
5. Occupations declared to be particularly hazardous to the health and well-being of minors under sixteen (16) years of age by federal laws and regulations or as declared by the Commissioner of Labor; and
6. Occupations, except office work or sales work, in connection with:
  - a. transportation of persons or property by rail, highway, air, water, pipeline or other means;
  - b. warehousing and storage;
  - c. communications and public utilities; and
  - d. construction including demolition and repair.

B. This section shall not apply to:

1. children working either on farms or for parents or any entity in which a parent owns an equity interest; or
2. children engaged in the sale or delivery of newspapers to consumers.

## **74. Educational qualifications required of child before employment**

No child under the age of sixteen (16) years shall be employed or permitted to work

in any of the occupations specified in Section 71 of this title unless such child is able to read and write, or shall have attended some school during the preceding year for the time that attendance is compulsory under the laws.

## **75. Hours of employment of children—Rest periods**

A. No child under the age of sixteen (16) years shall be employed or permitted to work in any gainful occupation, other than agriculture or domestic service, for more than:

1. Three (3) hours in any one (1) school day, except that if the employer is not covered by the Fair Labor Standards Act, a child may work eight (8) hours or less on a school day which precedes a nonschool day;
2. Eight (8) hours on a nonschool day;
3. Eighteen (18) hours in any one (1) week when school is in session; or
4. Forty (40) hours in any one (1) week when school is not in session, except that if the employer is not covered by the Fair Labor Standards Act, a child may work forty (40) hours in any one (1) week when school is in session if attendance is not compulsory.

B. As used in this section, "in session" means the period beginning on the first Tuesday after Labor Day through May 31 of the following year.

C. Children under the age of sixteen (16) years must be permitted a one (1) hour cumulative rest period for each eight (8) consecutive hours worked. However, no such child shall work more than five (5) consecutive hours unless permitted a one-half (1/2) hour cumulative rest period.

## **76. Night work**

No person under the age of sixteen (16) years shall be employed or permitted to work in any of the occupations set out in Section 71 of this title between the hours of seven o'clock p.m. and seven o'clock a.m.; except, during the summer (June 1 through Labor Day) and, if the employer is not covered by the Fair Labor Standards Act, during the remainder of the year on days followed by a nonschool day when the prohibited hours will be between the hours of nine o'clock p.m. and seven o'clock a.m.

## **77. Schooling certificates—Duties of employers**

Before any child under the age of sixteen (16) years shall be employed in any occupation specified in Section 71 of this title, it shall be the duty of the parent or guardian of such child to procure and furnish the employer of such child an age and schooling certificate as hereinafter provided in this article. It shall be the duty of every person, firm or corporation owning or operating any of the establishments specified in Section 71 of this title, or employers in such occupation, to keep on file for the inspection of the Commissioner or his designee, truant officers, or other persons charged with the administration of this article, such age and schooling certificate, for every child under sixteen (16) years of age employed in such occupation, and to keep on file where such children are employed a register with a complete list

of children under sixteen (16) years of age so employed, together with the age of each child as set forth in the age and schooling certificate opposite the name of such child, and also to keep on file in such place or establishment, in such form as the Commissioner or his designee may prescribe, the time of opening and closing of such factory or other establishment, the number of hours of labor required or permitted in such establishment, the hours of commencing and stopping work, and the time allowed for meals, and, if there be two or more shifts in such establishment, the number of hours in each shift during which the employees are required or permitted to work. On termination of the employment of a child so registered, and whose certificate is so filed, such certificate shall be forthwith surrendered by the employer to the child or its parent, guardian or custodian; provided that this section shall not apply to the employment of children who are not residents of the State of Oklahoma, to perform in any duly licensed theatre, motion picture theatre or other place of public amusement.

### **78. Evidence of age of child—Certificate of physical fitness**

The Commissioner or his designee, truant officer, or other person charged with the administration of this article, may make demand on an employer in whose factory or establishment a child apparently under the age of sixteen (16) years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this section, that such employer shall either furnish him, within ten (10) days, evidence satisfactory to him that such child is in fact over sixteen (16) years of age, or shall cease to employ or permit or suffer such child to work in such factory or establishment. Such officer may require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate; and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. In case such employer shall fail to produce and deliver to such officer, within ten (10) days after such demand, such evidence of age herein required by him, and shall thereafter continue to employ such child to work in such factory or establishment, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for violation of this provision of this article that such child is under sixteen (16) years of age and is unlawfully employed: Provided, that the Commissioner or his designee shall have the power to demand a certificate of physical fitness from some licensed physician in good standing in this state in case of children who may appear to him physically unable to perform the labor at which they may be engaged, and shall have power to prohibit the employment of any minor that cannot obtain such a certificate.

### **79. Age and schooling certificates—Proof of age**

The age and schooling certificate shall be approved by the principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending or by one of the child's parents if the child is being schooled at home, who shall, for the purpose of this article, be empowered to administer an oath. The

principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending or by one of the child's parents if the child is being schooled at home, shall approve such certificate only upon the application in person of the child desiring employment accompanied by its parents, guardian or custodian, and after having received, examined and approved documentary evidence of age, showing that the child is fourteen (14) years of age, or over, which evidence shall consist of one of the following named proofs of age, duly attested, and the proof accepted shall be specified in the certificate issued to the child; the proof specified in subdivision (a) shall be required first, but if this is not available then one of the proofs specified in the succeeding subdivisions shall be required and in the order designated until the age of the child be established, as follows:

(a) A birth certificate or transcript thereof issued by a registrar of vital statistics or other officer charged with the duty of recording births which certificate or transcript thereof shall be prima facie evidence of the age of the child.

(b) A certificate of baptism or transcript thereof, showing the date of birth and place of baptism of the child.

(c) A passport showing the age of the child; or a certificate of arrival in the United States, issued by the United States immigration officer and showing the age of the child; or a life insurance policy at least one (1) year old showing the age of the child or other credible evidence as may be approved by the Commissioner.

Every employment certificate shall be signed, in the presence of the officer issuing the same by the child in whose name it is issued.

### **80. School attendance certificate to be presented—Duplicate of schooling certificate—Blank form—Form of certificate**

The age and schooling certificate shall not be approved until the parent or guardian of such child shall present a school attendance certificate as hereinafter prescribed. A duplicate of such age and schooling certificate shall be filled out and sent by the school officer, before whom the same is made, to the Commissioner of Labor. The blank forms for school attendance certificate and for the age and schooling certificate shall be supplied to the principal, headmaster, or equivalent administrative officer of the school or to one of the child's parents if the child is being schooled at home by the State Superintendent of Public Instruction as hereinafter indicated.

#### **SCHOOL ATTENDANCE CERTIFICATE.**

(Name of School).

(City and County).

(Date).

This certifies that (name of child) can read and write and that according to the records of this school and in my belief is now (number of years and months) old, and has attended school during the full school term of the preceding year.

(Name of parent or guardian).

(Residence).

(Signature of teacher).

**AGE AND SCHOOLING CERTIFICATE.**

This certifies that I am (father, mother or guardian) of (name of child) s.s.#, and that he (or she) was born at (town or city), (county), (state or country), on the (day, month and year of birth), and is now (number of years and months old).

(Signature of parent or guardian).

(Date).

(City or town or county).

Personally appeared before me the above-mentioned (name of person signing), and made oath that the foregoing certificate is true to the best of his (or her) knowledge and belief.

I hereby approve the foregoing certificate of (name of child), height (feet and inches), weight (pounds), complexion (fair or dark), hair (color), eyes (color), having no sufficient reason to doubt that he (or she) is of the age therein certified.

**OWNER OF CERTIFICATE.**

This certificate belongs to (name of child), and is to be surrendered to him (or her) whenever he (or she) leaves the service of the employer holding the same, but if not claimed by said child within thirty days after leaving said service, shall be sent to the Commissioner of Labor.

(Signature of officer, with name of city, town or county, and date.)

**88. Penalties for violating this chapter**

Any person who is in willful violation of any of the provisions of Section 71 et. seq. of this title shall, upon conviction, be guilty of a misdemeanor and, for each offense, shall be subject to a fine of not more than Five Hundred Dollars (\$500.00), or imprisonment for not less than ten (10) nor more than thirty (30) days, or both such fine and imprisonment.

**89. Enforcement**

A. It shall be the duty of the Commissioner of Labor to enforce the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes.

B. 1. In addition to any other penalty prescribed by law, any person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes shall be liable for an administrative fine, to be assessed by the Commissioner of Labor, of not more than One Hundred Dollars (\$100.00) for each offense. The maximum administrative fine shall not exceed One Thousand Dollars (\$1,000.00) for all related violations. All administrative fines collected pursuant to this section shall be deposited in the Department of Labor Revolving Fund, created pursuant to Section 141.19 of Title 40 of the Oklahoma Statutes.

2. In lieu of the penalty provided for in paragraph 1 of this subsection, the Commissioner or a representative of the Commissioner may issue a warning for a first offense to a person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes. The warning shall cite the violation committed by the

person and, where appropriate, state the time period in which the violation must be remedied.

C. After a violator is cited or fined for two unrelated offenses of failure to comply with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the rules of the Department of Labor, against the violator until such time as compliance with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes is met. Any order to cease and desist issued by the Commissioner may be enforced in district court. Upon application of the Commissioner, the district court may issue an injunction without bond for the purpose of enforcing this section.

D. The Commissioner of Labor shall assess and collect administrative fines incurred under subsection B of this section and, at the Commissioner's discretion, may remit, mitigate, or negotiate the fines. In determining the fine to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of the fine in light of the gravity of the violation and the extent to which the person charged has attempted to remedy the consequences of the violation. Individual proceedings shall be conducted pursuant to the provisions of subsection E of this section.

E. For the purpose of determining if an administrative fine should be assessed, a hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, by a hearing officer designated by the Commissioner of Labor. A final order by the hearing officer may be appealed to the district court in the county in which the violation occurred pursuant to the provisions of the Administrative Procedures Act.



# Administrative Rules – Child Labor

## CHAPTER 15. HAZARDOUS EMPLOYMENT OF CHILDREN

### 380:15-1-1. Purpose

The purpose of the rules in Chapter 15 is to restrict children under the age of sixteen in engaging in certain occupations and to promulgate rules that the Commissioner of Labor shall use in determining what occupations are injurious to the health or morals or especially hazardous to life and limb to children.

### 380:15-1-2. Prohibited Sales-REVOKED

### 380:15-1-3. Non-profit organizations-REVOKED

### 380:15-1-4. Special hazards

In order to vitalize Section 71 of Title 40, Oklahoma Statutes, the Commissioner of Labor has determined that the following occupations are either or both injurious to health or morals or especially hazardous to life or limb of children under fifteen years of age:

- (1) Working in or around grease vats or deep-frying facilities; and/or
- (2) Working around any powered machine used in the slicing or preparing of foods.

## CHAPTER 16. CHILD LABOR VIOLATIONS SUBCHAPTER 1. GENERAL PROVISIONS

### 380:16-1-1. Purpose

The purpose of this Chapter is to set forth rules for the enforcement of 40 O.S. § 71 *et seq.*, relating to the employment of children.

### 380:16-1-2. Definitions

The following words or terms shall have the following meaning, unless the context clearly indicates otherwise:

“**The Act**” shall be defined as 40 O.S. §§ 71-89.

“**Age and Schooling Certificate**” may at various times be referred to as “employment certificate of age and schooling,” “employment certificate,” “work certificate,” and “work permit.”

“**Commissioner**” shall mean the Commissioner of Labor or her designee.

“**Equity interest**” means ownership interest.

“**Hearing officer**” shall mean the Commissioner of Labor or her designee sitting as Administrative Law Judge.

“**Inspecting officer**” means any employee of the Department of Labor who may be designated to inspect or investigate violations of the Act, or who personally observes a violation of the Act.

### **380:16-1-3. Burden of compliance on parents and employer**

The failure of a parent or guardian to comply with the provisions of the Act shall not absolve the employer from the requirements thereof. Lack of knowledge, either actual or constructive, as to an employee's age shall not be a valid defense to any violation of the Act.

## **SUBCHAPTER 5. HEARING PROCEDURES**

### **380:16-5-1. Notices of violation**

If upon inspection or investigation, an employer is found to be in violation of the Act, the inspecting officer may issue the employer a written citation describing the violations found and any corrective action which must be taken. Employers are to comply with such corrective action immediately, or as soon as possible, unless otherwise instructed by the Commissioner. Failure to comply with the Commissioner's lawful order shall be taken into account as an aggravating factor during any administrative hearing. In any administrative hearing, the hearing officer shall not be bound by the amount of any fine which may have been negotiated prior thereto. The hearing officer may set the fine at whatever amount he or she deems appropriate, up to the maximum allowed by the Act.

### **380:16-5-2. Warnings**

In lieu of a citation, the inspecting officer may issue a warning to the employer if such is warranted in the officer's opinion. The warning may require that corrective action be taken immediately; however, failure to comply with a warning will not result in a fine being imposed upon the employer, unless a subsequent citation is issued to the employer.

### **380:16-5-3. Hearing procedures**

(a) Employers cited for violations of the Act will be provided with notice of the date, time, and place where they may contest such violations. Employers may appear either in person or by counsel. Failure to appear may result in entry of a default order and assessment of the maximum fine allowable by law. Employers may file whatever pleadings or motions they deem appropriate.

(b) The Notice of Violation and the testimony of the inspecting officer shall establish a prima facie case that the violation occurred.

(c) If the employer wishes to contest any facts relating to the violation, or to present an affirmative defense, the employer shall provide the following documents to the agency's Legal Division at least 10 days prior to the scheduled hearing date:

- (1) A brief statement explaining the employer's defenses to the citation;
- (2) A list of any witnesses the employer intends to call on its behalf;
- (3) Two (2) copies of all documents the employer intends to introduce as exhibits at the hearing.

(d) Unless good cause is shown, no evidence shall be admissible at the hearing unless the same has been provided to the Legal Division as required above.

**380:16-5-4. Cease and desist orders**

Pursuant to the Act, the Commissioner may issue Cease and Desist Orders against employers who repeatedly violate child labor laws. If a Cease and Desist Order is issued against an employer, the matter will be set before a hearing officer on the next available Child Labor docket. The employer shall be commanded to appear and show cause why the Order should not remain in full force and effect. Failure to comply with the Order and/or appear at the show cause hearing may result in the Commissioner obtaining an injunction from the District Court to enforce the Order. Compliance with any Cease and Desist Order is mandatory unless and until the Commissioner rescinds the Order.



# Title 40 — General Wage Law

## **165.1. Definitions**

As used only in Sections 165.1 through 165.11 of this title:

1. “Employer” means every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or corporation, employing any person in this state;
2. “Employee” means any person permitted to work by an employer;
3. “Exempt employee” means those management level employees exempt under the provisions of Section 213 of the Fair Labor Standards Act, as amended, 29 U.S.C. Section 213, from the provisions of Sections 206 and 207 of said act;
4. “Wages” means compensation owed by an employer to an employee for labor or services rendered, including salaries, commissions, holiday and vacation pay, overtime pay, severance or dismissal pay, bonuses and other similar advantages agreed upon between the employer and the employee, which are earned and due, or provided by the employer to his employees in an established policy, whether the amount is determined on a time, task, piece, commission or other basis of calculation;
5. “Commissioner” means State Commissioner of Labor; and
6. “Bona fide disagreement” means an honest and sincere belief or assertion based on a dispute of a determinative fact or application of law under this title which is supported by relevant evidence.

## **165.2. Semimonthly payment of wages on regular paydays—Payment in money—Itemized statement of deductions—Prohibited payments**

Every employer in this state shall pay all wages due the employees, other than exempt employees and employees of nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and 26 U.S.C. 170(b)(1)(A)(vi), at least twice each calendar month on regular paydays designated in advance by the employer. State, county and municipal employees, exempt employees, and employees of nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and 26 U.S.C. 170(b)(1)(A)(vi) shall be paid a minimum of once each calendar month. The amount due such employees shall be paid in lawful money of the United States including payment by electronic means, and the employee shall not be deemed to have waived any right or rights mentioned in this section because of any contract to the contrary. With each payment of wages earned by such employee, the employer shall issue to such employee a brief itemized statement of any and all deductions therefrom. An interval of not more than eleven (11) days may elapse between the end of the pay period worked and the regular payday designated by the employer. The employer shall be allowed three (3) days after such payday in which to comply with this section.

No such employer shall issue, in payment of or as evidence of indebtedness due an employee any check, cashier's check, draft, time check, store order, scrip, or other acknowledgment of indebtedness unless the same is payable or redeemable upon demand without discount and for face value in lawful money of the United States. If an employer pays an employee with a check which is subsequently returned to the employee or an agent thereof by reason of the refusal of the bank upon which such check was drawn to honor the same due to insufficient funds or a stop payment notice, the employer shall reimburse the employee for any fees or costs incurred by the employee due to the refusal to honor the check within fourteen (14) days of the employer's notice of the bank's refusal to honor the check.

### **165.2a. Violations-Administrative Fines**

The Commissioner of Labor or designee is hereby authorized to assess an administrative fine of Five Hundred Dollars (\$500.00) against an employer operating in this state who is found to have violated Sections 165.1 through 165.11 of Title 40 of the Oklahoma Statutes if such violations occur on two or more occasions within any six-month period. All administrative fines collected pursuant to this section shall be deposited to the Department of Labor Revolving Fund.

### **165.3. Termination of Employee—Payment—Failure to pay**

A. Whenever an employee's employment terminates, the employer shall pay the employee's wages in full, less offsets and less any amount over which a bona fide disagreement exists, as defined by Section 165.1 of this title, at the next regular designated payday established for the pay period in which the work was performed either through the regular pay channels or by certified mail postmarked within the deadlines herein specified if requested by the employee, unless provided otherwise by a collective bargaining agreement that covers the employee.

B. If an employer fails to pay an employee wages as required under subsection A of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of two percent (2%) of the unpaid wages for each day upon which such failure shall continue after the day the wages were earned and due if the employer willfully withheld wages over which there was no bona fide disagreement; or in an amount equal to the unpaid wages, whichever is smaller; provided, however, that for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition.

### **165.3a. Wages and benefits upon employee's death**

Other than an employee provided with an option of beneficiary designation with respect to his wages and benefits by his employer, all wages earned by an employee, not exceeding Three Thousand Dollars (\$3,000.00), shall, upon the employee's death, become due and payable to the employee's surviving spouse, or if there is no surviving spouse, the dependent children, or their guardians or the conservators

of their estates, in equal shares, without the necessity of a probate court action.

#### **165.4. Bona fide disagreements**

A. In order to successfully allege a bona fide disagreement over the amount of wages, the employer shall:

1. Pay such amount as the employer concedes to be due, without condition, within the time required by Sections 165.2 and 165.3 of this title; and
2. Provide to the employee, within fifteen (15) days of either receipt of a wage claim form from the Department of Labor or certified mail receipt of written demand from an employee, written explanation of the relevant facts and/or evidence which supports the belief of the employer that the wages in dispute are not owed.

B. Acceptance by the employee of any payment made under this section shall not constitute a release as to the balance of the wage claim.

C. Payment in accordance with this section shall constitute payment for the purposes of complying with Sections 165.2 and 165.3 of this title only in those instances where there exists a bona fide disagreement over the amount of wages as defined by Section 165.1 of this title.

D. The Commissioner may set the contested amounts for administrative hearing pursuant to Section 165.7 of this title.

#### **165.5. Private agreements**

Except as hereinafter provided under Section 10, no provision of this act shall in any way be contravened or set aside by private agreement.

#### **165.6. Contractors as employers**

Whenever any person herein called the contractor shall contract with another for the performance of any work which the contractor has undertaken to perform, the contractor shall be deemed an employer and shall become civilly liable to employees engaged in performance of work under such contract for the payment of wages (but not for the payment of liquidated damages) as required by Sections 2 and 4 of this act whenever and to the extent that the employer of such employees fails to pay such wages; provided, however, that the employer of such employees shall be liable to the contractor for wages paid to such employees by the contractor under this section.

#### **165.7. Enforcement and administration—Administrative proceedings—Orders—Appeals—Actions**

A. The Commissioner of Labor shall enforce and administer the provisions of this act and in any case where a civil action may be brought for the collection of a wage claim, the Commissioner of Labor may provide for an administrative proceeding to determine the validity and enforce collection of the claim. The administrative proceeding shall be conducted according to the Administrative Procedures Act.

B. In any case when the Commissioner has received a wage complaint, the Com-

missioner may seek collection of such claim through administrative proceedings in a manner provided in this section. The Commissioner may join in a single administrative proceeding any number of wage claims against the same employer. The Commissioner shall serve upon the employer an order of determination directing the employer to pay to the Commissioner the amount of the wage claim and any penalty amounts. Service shall be made by regular mail to the employer's last-known address. The order of determination shall include:

1. A reference to the particular sections of the statutes or rules involved;
  2. A short and concise statement of the basis for the amounts determined to be owed to each wage claimant;
  3. A statement that the employer within twenty (20) days after receipt of the order of determination must pay in full the wage claim and any penalties assessed on appeal to district court; and
  4. A statement that unless a written request for reconsideration is received by the Commissioner or the order is appealed to district court within the time specified, the order of determination shall become final.
- C. Upon failure of the employer to pay the amount specified in the order of determination or to request reconsideration or appeal to district court, the order of determination shall become final.
- D. A hearing shall be held in accordance with the applicable provisions of the Administrative Procedures Act by the Commissioner or the Commissioner's designee. The Commissioner shall adopt rules for such hearing. In any hearing before the Commissioner's designee, the designee is authorized to issue the final order in the case.
- E. Final administrative orders issued in a wage claim proceeding are subject to appeal pursuant to the Administrative Procedures Act.
- F. When an order under this section becomes final by operation of law or an appeal, and the amount due is not paid within twenty (20) days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the county clerk's lien record. The order may be collected as any other money judgment.
- G. The remedies provided by Sections 165.1 through 165.11 of this title shall be additional to and not in substitution for and in no manner impair other remedies. Additionally, one or more individuals who are aggrieved by violation of any provision of Sections 165.1 through 165.11 of this title shall be entitled to bring an action in his or their own name to enforce the provisions of such sections.

## **165.8. Penalties**

It shall be a misdemeanor for any employer to violate any of the provisions of Sections 165.1 through 165.11 of this title.

### **165.9. Actions to recover unpaid wages and damages—Parties—Costs and attorney’s fees**

A. Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated for such wages. Any employee, or his representative, shall have the power to settle and adjust his claim for unpaid wages.

B. The court in any action brought under this section may, in addition to any judgment awarded to the plaintiff or plaintiffs, defendant or defendants, allow costs of the action, including costs or fees of any nature, and reasonable attorney’s fees.

### **165.10. Invalidity clause**

If any provisions of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances shall not be affected thereby.

### **165.11. Failure to pay benefits or furnish wage supplements pursuant to agreements—Terms defined**

A. In addition to any other penalty or punishment otherwise prescribed by law, any employer who is a voluntary party to or subject to a bona fide written agreement to pay or provide benefits or wage supplements to employees or to a third party or fund for the benefit of employees and who willfully fails, neglects or refuses to pay the amount or amounts necessary to provide such benefits or furnish such supplements within thirty (30) days after such payments are required to be made by law or by agreement, shall be guilty of a misdemeanor, and each such failure to make payment as required herein shall constitute a separate offense. Where such employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of a misdemeanor.

B. As used in this section, the term “benefits or wage supplements” includes, but is not limited to, reimbursement for expenses as agreed prior to contracting said expenses; health, welfare and retirement benefits; and vacation, separation or holiday pay.

### **172. Blacklisting**

No firm, corporation or individual shall blacklist or require a letter of relinquishment, or publish, or cause to be published, or blacklisted, any employee, mechanic or laborer, discharged from or voluntarily leaving the service of such company, corporation or individual, with intent and for the purpose of preventing such employee, mechanic or laborer, from engaging in or securing similar or other employment from

any other corporation, company or individual.

### **173. Penalty**

Any person, firm or corporation violating the preceding section shall be fined in any sum not less than One Hundred Dollars (\$100.00), nor more than Five Hundred Dollars (\$500.00), and any person so blacklisted shall have a right of action to recover damages.

### **191. Restrictions on requirement of physical examination—Report not basis of damages**

It shall be unlawful for any person, partnership, association, or corporation, either for himself, herself, or itself, or in a representative or fiduciary capacity, to require any employee or applicant for employment, as a condition of employment or continued employment, to submit to, or take, a physical or medical examination, without providing such examination at no cost therefor to such employee or applicant for employment, or without furnishing, upon the request of the employee or applicant for employment within thirty (30) days after such examination, free of charge, to such employee or applicant for employment, a true and correct copy, either original or duplicate original, of the examiner's report of such examination. It shall further be unlawful for any such person, partnership, association or corporation to require any employee or applicant for employment to pay, either directly or indirectly, any part of the cost of any such examination, report, or copy of report. Provided that the report of any physical examination furnished in accordance with this section shall not be made the basis or predicate for any action in damages against the physician and surgeon making and furnishing such report.

### **192. Violations of act**

Each and every violation of any provision of Section 1 of this act shall constitute a misdemeanor, punishable by a fine in any amount not exceeding One Hundred Dollars (\$100.00).

#### **198.1. Payment of discriminatory wages based on employee's sex prohibited**

It shall be unlawful for any employer within the State of Oklahoma to willfully pay wages to women employees at a rate less than the rate at which he pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility, except where such payment is made pursuant to a seniority system; a merit system; a system which measures earnings by quantity or quality of production; or a differential based on any factor other than sex.

#### **198.2. Enforcement—Penalties**

It shall be the duty of the Commissioner of Labor to enforce the provisions of this act. Whenever the Commissioner is informed of any violations thereof, it shall be

his duty to investigate same and, in his discretion, said Commissioner is hereby authorized to institute proceedings for the enforcement of penalties herein provided before any court of competent jurisdiction. Any employer who violates the provisions of this act shall be deemed guilty of a misdemeanor and shall upon conviction thereof, be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00).

### **199. Certain actions against employees prohibited**

A. It shall be a misdemeanor for any employer, as defined in Section 165.1 of this title, or his agent to discharge, penalize or in any other manner discriminate against any employee because:

1. The employee has filed a complaint with his employer, or the Commissioner of Labor or his authorized representative, to enforce any provision of Sections 71 through 198.2 of this title;
2. The employee has caused to be instituted a proceeding or investigation related to an alleged violation of any provision of Sections 71 through 198.2 of this title; or
3. The employee has testified or is about to testify in an investigation or proceeding under this title.

B. Every employer, as defined in Section 165.1 of this title, or his agent shall be guilty of a misdemeanor if:

1. The filing of a complaint with the employer, Commissioner of Labor or his authorized representative, or the taking of any action directly related to the complaint by any employee is a substantial and material factor in the discharge, penalization of or any other discrimination against the employee by the employer or his agent; or
2. The employer or his agent has acted in a manner which has the effect of discouraging, restraining, coercing or interfering with any employee in the exercise of the employee's rights contained in Sections 71 through 198.2 of this title.

C. Every person convicted of violating a prohibition of this section shall be fined not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) or imprisoned in the county jail for not less than five (5) days nor more than thirty (30) days, or both.

# Administrative Rules – Protection of Labor

## SUBCHAPTER 1. GENERAL PROVISIONS

### 380:30-1-1. Purpose

The purpose of the rules in Chapter 30 is to establish the definitions and procedures for enforcement by the Department of the provisions of Title 40, Oklahoma Statutes, Sections 165.1 through 165.11, and the Oklahoma Minimum Wage Act, 40 O.S. §§ 197.1 et seq. for agreed upon wages and benefits and for payment of minimum wages as mandated by State law.

### 380:30-1-2. Definitions

**“Commissioner”**, as used in these Rules, means the Commissioner of Labor or the Commissioner’s designee.

**“Bona fide disagreement”** means, as used in 40 O.S. 165.4, a dispute in which the employer holds an honest and sincere belief that the wages claimed are not owed so long as that belief is supported objectively by the facts and circumstances and the employer took reasonable steps to ascertain the facts and circumstances.

**“Claimant”** means the same as “employee” or someone claiming wages due on behalf of a deceased employee.

**“Department”** and **“Agency”** mean the Department of Labor and/or the Wage & Hour Division of the Department of Labor.

**“Earned and due”** means that wages derived from labor or professional services are presently and immediately matured and enforceable and the time for payment has arrived. The term “earned and due” necessitates that all conditions precedent to payment have happened, have been met or have been performed. If the employment agreement is based either in whole or in part on payment of commissions, the terms of the agreement will control the time when commissions are earned and due. The Department of Labor has jurisdiction over only those claims for wages that are earned and due at the time the wage claim is filed. Any claims for “future wages” will be summarily rejected by the compliance officer or dismissed by the administrative hearing officer.

**“Electronic means”** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, electronic debit cards, and transfers initiated by telephone.

**“Employee”** means any person permitted to work by an employer. Employee shall not include: Business owners, independent contractors, volunteers, co-partners, or joint venturers. For purposes of these rules, those persons who are permissibly exempt from the Workers’ Compensation statute, as defined in 85 O.S. § 3, shall be considered “business owners” and not employees. A person who, pursuant to

the terms of an employment agreement, has as their only form of compensation a potential interest in the proceeds or profits of a business (commonly called “working for sweat equity”), shall be considered a business owner and not an employee.

“**Employer**” means every individual, partnership, firm association, corporation, the legal representative of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or corporation, employing any person in this state. “Employer” shall also include county, city, and municipal corporations, and all other local government entities. “Employer” shall not include the State of Oklahoma or any entity or branch of the United States government operating in this State.

“**Established policy**” means a statement, written or oral, or a course of conduct from or by the employer, of general applicability to all similarly situated employees regarding the business affairs of the employer. An “established policy” includes a written employment contract, a written employee manual or employment policy, or a written promise by the employer. An “established policy” also includes a verbal or implied promise by the employer that is supported by evidence of a past course of conduct consistent with the promise.

“**Independent contractor**” means one who renders service in the course of independent employment or occupation according to his own methods and is subject to his employer’s control only as to the end product or final result of his work and not as to the means whereby it is to be accomplished. The following factors are considered significant in determining the employment relationship and whether a person is an employee or an independent contractor:

- (A) the nature of the contract between the parties, whether written or oral;
- (B) the degree of control which, by the agreement, the employer may exercise on the details of the work or the independence enjoyed by the contractor or agent;
- (C) whether or not the one employed is engaged in a distinct occupation or business for others;
- (D) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- (E) the skill required in the particular occupation;
- (F) whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;
- (G) the length of time for which the person is employed;
- (H) the method of payment, whether by the time or by the job;
- (I) whether or not the work is a part of the regular business of the employer;
- (J) whether or not the parties believe they are creating the relationship of master and servant; and
- (K) the right of either to terminate the relationship without liability.

No one factor is controlling, and the relationship must be based on the set of facts peculiar to the case.

“**Offsets**” means deductions (as defined in this Subchapter); the value of any of

the employer's money or property retained by the employee after termination; the amount of any prior overpayment of wages to the employee; and the amount of any prior valid final judgment obtained in a court of record or through an administrative agency, by the employer against the employee.

“Respondent” means the same as “Employer.”

### **380:30-1-3. Wage and hour claims—generally—REVOKED**

### **380:30-1-4. Wage and hour hearings—generally**

All hearings on claims conducted pursuant to the provisions of this chapter are considered individual proceedings and are governed by the requirements for such proceedings set out in the Oklahoma Administrative Procedures Act, Title 75 O.S. § 309 through § 323.

### **380:30-1-5. Payment of accrued leave**

For the purpose of clarification of § 165.1 (4) of Title 40 O.S., specifically, when accrued vacation pay, sick pay, severance pay or other similar advantages are payable as a wage upon termination of employment:

(1) Vacation pay, sick pay, severance pay or other similar advantage is considered “wages” only if the payment of such is:

(A) Agreed upon between the employer and the employee; or

(B) It is provided by the employer to his employees in an established policy.

(2) The Department will accept and process accrued leave claims only if:

(A) The claims arise by virtue of express language in a written employment contract or policy manual which provides for the payment of cash in lieu of time-off; or

(B) The claims arise by virtue of an “established policy” based upon a promise by the employer, either express or implied, and supported by a prior course of conduct by the employer where payment of cash in lieu of time-off was actually made to previous employees.

(3) If payment of cash in lieu of time-off is provided in a written employment contract or policy manual, the employee must meet all conditions precedent set out in the contract or the manual before entitlement to payment to accrued leave vests in that employee.

(4) The Department shall reject any claim if the written contract or policy manual or an established policy does not provide for the payment of cash in lieu of time-off or if the claimant has failed to meet all conditions precedent required for such payment.

### **380:30-1-6. Bonuses**

(a) A provision in a written employment contract or policy manual which requires the employee to be employed at the time the bonus is paid, is valid. Employees terminated, voluntarily or involuntarily, prior to the bonus payment date are not

entitled to receive the bonus payment.

(b) If there is no such provision requiring that the employee be employed at the time the bonus is paid and (i) the employer has declared its intention to pay a bonus and (ii) the amount of the bonus has been made definite prior to payment, then the employee is entitled to receive the bonus even if involuntarily terminated prior to payment. In such a case, the bonus will be deemed earned and due and will be part of wages due the terminated employee.

### **380:30-1-7. Work without pay and deductions**

(a) No employer shall require or permit an employee, as a condition of securing or retaining employment, to work without monetary compensation.

(b) The term "deductions," as used in 40 O.S., § 165.1 et seq., is defined as any and all sum(s) of money withheld by the employer from an employee's wages. The scope of the term includes, but is not limited to, amounts withheld for FICA, Federal and State income tax, Medicare and garnishments.

(c) No employer shall deduct any amount from an employee's wages, unless legislation or a court order mandates such, or unless such deduction is made pursuant to the provisions of this section.

(d) It is permissible for an employer and employee to voluntarily enter into a payroll deduction agreement, including deductions for the following purposes:

(1) To allow the employee to repay a loan or advance which the employer made to the employee during the course of and within the scope of employment, or to allow for recovery of payroll overpayment as provided in this subchapter;

(2) To compensate the employer for the value of the employer's merchandise or uniforms purchased by the employee;

(3) To provide payment for medical, accident, disability, or retirement benefits, or insurance premiums, not including worker's compensation or unemployment;

(4) To provide for contributions to a deferred compensation plan or other investment plan provided by the employer as a benefit to the employee;

(5) To compensate the employer for breakage or loss of merchandise, inventory shortage, or cash shortage caused by the employee; where the employee was the sole party responsible for the cash or items damaged or lost, at the time the damage or loss occurred.

(e) Any payroll deduction agreement made pursuant to subsection (d) must be in writing, and signed by the employee before any deduction authorized by such agreement is taken. For purposes of these rules, the words "loan" and "advance" mean a transfer of money with a provision for repayment.

(f) Pursuant to the authority granted in 40 O.S. § 1 and § 165.7, the Commissioner shall have the authority to investigate, hold hearings, subpoena witnesses, administer oaths, take testimony, and/or order production of any document or financial statement in relation to any violation of this rule. The Commissioner may issue Cease and Desist Orders to compel compliance with this rule.

**380:30-1-8. Regular wages, overtime and benefits**

(a) Regular wages are those payments that an employee receives for services rendered in the regular course and scope of employment. They must be paid either semi-monthly or monthly, according to 40 O.S. § 165.2. Payment must be made for all time worked, and may not be conditioned on job performance.

(b) Payment of premium overtime due to requirements of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, is a matter of Federal law. The Department adopts the regulations of the U.S. Department of Labor as published in the Code of Federal Regulations, and the Interpretive Bulletins relating thereto, in determining compliance issues on such claims.

(c) Payment of overtime premiums pursuant to the terms of an employment agreement is considered part of regular wages for purposes of these rules.

(d) Benefits are special wages that are paid at certain times under certain conditions, according to the terms of the employment agreement. These include vacation, sick pay, paid holidays, severance, bonuses, and other similar advantages; provided, benefits do not include mileage reimbursement, travel expenses, "sweat equity", or stock options as defined elsewhere in this Subchapter. Entitlement to benefits and/or the receipt thereof may be found upon proof of an established policy, or pursuant to the terms of a written agreement, and may be conditioned upon a certain level of job performance or any other criteria not otherwise unlawful.

(e) Any restrictions, criteria or conditions on benefits, including employer discretion and any limits thereon, must be contained in a written policy signed by the employee or they will not be held valid. The employer will be held to the terms of the benefit arrangement, and once the employee meets the criteria set forth therein, the benefit becomes part of wages earned and due and is thereupon payable as provided by statute in 40 O.S. § 165.1 *et seq.*

**380:30-1-9. Stock options and ownership interest as wages**

(a) An option to purchase stock in lieu of wages is enforceable as wages if provided in a written agreement signed by the employer and employee, and only if the purchase is required by the employer. If option to purchase is entirely the employee's decision, the option is not considered wages as defined in this chapter. If the employee may elect to receive wages or benefits instead of stock, the value of the stock is considered to be wages as defined in this chapter, once the employee has made the election to receive same.

(b) For non-corporate employers, an option to receive percentage ownership interest shall be treated the same as an option to purchase stock.

(c) If the percentage ownership interest is the claimant's only source of compensation for services rendered, the claimant shall be considered a business owner.

**380:30-1-10. Mileage reimbursement and expenses**

To the extent that mileage and expense amounts are paid as reimbursement for money expended by the employee, in the course and scope of employment, they are not considered to be wages. Any amount agreed upon, which is over and above

that actually expended by the employee, and which results in taxable income to the employee, is considered part of regular wages and is enforceable as such. This includes “vehicle allowances” and other types of flat-rate expense payments.

**380:30-1-11. Overpayment of wages**

(a) If an employer determines that an employee has been overpaid, the employer may recover the overpaid sum from the employee in one of two ways:

- (1) Lump sum cash repayment; or
- (2) Agreement for payroll deduction in a lump sum or in installments over a term not to exceed the length of the term in which the erroneous payments were made, provided that such agreement is made pursuant to the provisions of this subchapter regarding deductions.

(b) The election as to which method is used, and the terms thereof, shall be made by the employee in writing, and shall be subject to all other provisions of law and which may apply. The employee may elect to use a combination of the above two methods, if the employer agrees.

(c) Upon termination of the employment agreement, any remaining balance of overpayment shall be considered an offset to any final wages otherwise due the employee.

**380:30-1-12. Payment for training required by employer**

(a) If an employer requires an employee to undergo training and/or attend classes prior to employment or concurrent with job duties, and such training is provided by the employer or is held at the place of employment, the employer cannot charge the employee for the cost of the training, and must also pay the employee at least the current minimum wage for all hours of training required.

(b) If the employer contracts with a third party to provide training away from the workplace, or requires the employee to obtain outside training, the employer is not required to pay wages for the employee’s attendance, although the employer may elect to do so. The party whom the training benefits shall bear the cost thereof, as follows:

- (1) If the training is specific or proprietary to the current employer, and is not required by a third party for the employee to work in that particular occupation, then the training is considered to benefit the employer and the employer shall bear the cost thereof.
- (2) If completion of the training will result in procurement or renewal of a professional license or certification for the employee, which stays with the employee and is portable to other employers in the same field or business, then the training is considered to benefit the employee, and the employee shall bear the cost thereof; provided, the employer may choose to pay for the training if the employer so desires.

(c) This section shall not apply to any apprenticeship program registered with the U.S. Department of Labor’s Bureau of Apprenticeship and Training.

**380:30-1-13. Written notice**

“Written notice” for purposes of meeting the requirements of 40 O.S. 165.4 does not include notices printed on a paycheck or pay stub but shall be a separate notice conceding that either:

- (1) No further wages are due; or
- (2) A specified sum is due.

**380:30-1-14. Attorneys fees and costs**

Upon a finding of violation of any provision found within OAC 380:30-1-1, *et seq.*, the employer shall be additionally liable to the employee for attorneys fees, costs and any other remedy provided in 40 O.S. § 165.1 *et seq.*

**SUBCHAPTER 3. WAGE CLAIM PROCEDURES****380:30-3-1. Jurisdiction of the Department—generally**

(a) The Department will accept for filing a claim for wages against any employer employing any employee in this state. In all cases, the employee or person making the claim shall be called the “Claimant”, and the employer shall be called the “Respondent”.

(b) There are generally three types of claims to which these procedures apply:

- (1) Claims for wages earned and due or provided by an established policy, whether during the course of employment or upon termination, as provided by 40 O.S. §§ 165.1–165.3;
- (2) Claims for payment of wages to survivors, pursuant to 40 O.S. § 165.3a;
- (3) Claims under the Minimum Wage Act, 40 O.S. § 197.1 *et seq.*

**380:30-3-2. Employee wage claim form**

(a) An employee, or the survivor of an employee, who has not been paid wages due may file a claim on a form provided by the Department. The Department shall keep a record of each claim filed and the disposition of the claim.

(b) The wage claim form shall request information regarding the dates the work was performed, the rate of pay, the reasons the wages have not been paid in full and the amount of money due, the full name of the claimant, the full name of the employee if the claimant is the survivor of the employee, the street address of the claimant, the telephone number for the claimant, if any, the physical location where the work was performed, the name of the immediate supervisor of the employee, the name of the employer, the address of the employer, and any information regarding bonuses, sick leave, annual leave or other advantages due the claimant. The claimant shall provide evidence in support of the claim within the claimant’s possession, including time cards, personal time records, payroll check stubs, W-2 statements, written wage agreements, statements from witnesses who have direct knowledge regarding the hours worked and the wage agreement, and all other documents which substantiate the employment relationship.

(c) The Department shall notify the respondent of the filed claim.

### **380:30-3-3. Employer response form**

(a) If the respondent agrees the amount claimed is due, the respondent shall issue a check to the claimant and send it to the Department. Subject to collection of funds payable by check, this action closes the claim and the wages are forwarded to the claimant. If the respondent agrees that a portion of the amount claimed is due, that amount should be paid immediately as provided in this subsection. If all or part of the claimed wages are disputed by the respondent, the respondent must complete an Employer Response Form, which will be provided by the Department, and return the response form to the Department.

(b) The Employer Response Form shall request such information as the type of business entity of the respondent, the names and operators of the business, employment dates of the claimant, or the employee for which the survivor is making the claim, the rate of pay for the claimant, copies of any withholding statement for the claimant for the time period for which the claim is made and for the immediately prior pay period of the claimant, copies of any time cards or records for the time period for which the claim is made and for the immediately prior pay period, copies of any written employment policies or agreements and the respondent's reasons for not paying the wages alleged to be due by the claimant. The Department may issue subpoenas to require the employer to appear and/or to submit further written information or documentation. The Department may conduct an informal proceeding to resolve the claim prior to the issuance of the Order of Determination as provided in rule 380:30-3-3.1.

(c) Upon failure by the respondent to complete and return the Employer Response Form within fifteen (15) days from notice thereof, the Department may make a determination based upon the facts in evidence and documents on file regarding the issuance of the Order of Determination as provided in rule 380:30-3-3.1.

(d) Every employer subject to Title 40 of the Oklahoma Statutes or any order issued pursuant to Title 40 of the Oklahoma Statutes shall make, keep and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for the entire length of employment of all persons currently employed and no less than five (5) years from the end of employment for all former employees.

#### **380:30-3-3.1. Orders of determination and notices of dismissal**

(a) The Department shall issue an Order of Determination pursuant to 40 O.S. § 165.7 requiring the respondent to pay the claimant the wages due and unpaid, or liquidated damages, if any, or both, upon investigation of the facts contained in the complaint, the documents provided by the claimant, and the documents provided by the respondent, and upon determination of the facts necessary to prove the following:

- (1) Proof of notice of the claim to the respondent.
- (2) The existence of an employer-employee relationship between the claimant/employee and the respondent.
- (3) Date and time of employment of the claimant/employee, for the respondent.

(4) Non-payment of wages due the claimant, for the date and time of employment proved in subparagraph (3).

(5) Failure to pay wages due the claimant by the respondent for the period of time, as required by law, for assessment of liquidated damages against the respondent.

(b) The Department shall dismiss the claim upon determination that the agency lacks jurisdiction over the claim, that the claim is unjustified according to statute or rules, that the evidence obtained during the investigation is insufficient to support the claim, or that the agency is unable to obtain proper notice of the claim upon the respondent.

(c) The Department shall deliver the Order of Determination or Notice of the dismissal of the claim to the claimant at the last address provided in writing to the Department, and to the respondent at the address to which notice of the claim was delivered, or at the service address for respondent as shown on the records of the Secretary of State of the State of Oklahoma, or the last address provided in writing by the respondent to the Department. The Order of Determination shall be sent by certified U.S. Mail, return receipt requested. The Notice of Dismissal shall be sent by First Class U.S. Mail.

### **380:30-3-3.2. Request for hearing**

(a) Within twenty (20) calendar days after receiving the Order of Determination, if the respondent disputes any or all of the Order, the respondent may request a hearing before the Commissioner. The request for a hearing shall be in writing, specify the style and case number for the claim, and be signed by the party requesting the hearing or a representative of the party. The request shall be directed to the Legal Division of the Department.

(b) The Department's decision to dismiss or refuse to accept a claim shall not be subject to administrative hearing or review.

### **380:30-3-4. Procedures prior to hearing**

(a) Upon receipt of a request for hearing after issuance of an Order of Determination, the claim shall be transferred to the Legal Division of the Department, which shall set a date and time for the hearing and notify the parties as required by law, or as instructed by the parties. The parties may file whatever motions, pleadings, briefs, or other papers they deem appropriate, including but not limited to motions to dismiss and motions for summary judgment. Dispositive motions may be ruled upon either at hearing or prior thereto, with or without benefit of oral argument, by the Commissioner. Unless good cause is shown, motions and briefs shall be filed at least thirty (30) days prior to the hearing of the Claim; shall be served upon the opposing party, counsel, and the Department in a timely manner; and shall not exceed 25 pages in length, exclusive of exhibits or attachments. Any response to a motion or brief shall be filed within fifteen (15) days thereafter, unless good cause is shown. All pleadings and papers shall be styled in the following manner: "BEFORE THE DEPARTMENT OF LABOR, STATE OF OKLAHOMA, IN RE: (Respondent),

Claim No., (Name of Claimant).”

(b) Subpoenas will be issued by the Commissioner upon request of either party. The party requesting the subpoena shall be responsible for service in a timely manner, in accordance with the Administrative Procedures Act, 75 O.S. § 315, and the Oklahoma Pleading Code, 12 O.S. § 2004.1. All subpoenas issued by the Department shall allow at least ten (10) days for compliance. Subpoenas duces tecum shall set the date of compliance either at or before the pre-hearing conference, if any. Otherwise, the date for compliance shall be at least ten (10) days prior to the hearing.

(c) Subject to the provisions of the Administrative Procedures Act, parties may obtain discovery in any manner provided for under the Oklahoma Discovery Code, 12 O.S. § 3225 *et seq.*, and in accordance with the rules and provisions contained therein. Discovery shall be completed no later than the pre-hearing conference.

(d) The Commissioner reserves the authority to dismiss a claim set for hearing at any time for lack of jurisdiction over the parties or subject matter of the claim.

(e) Unless for good cause shown, no request for continuance of any hearing shall be considered unless the same is presented in writing to the Commissioner at least three (3) days prior to the scheduled docket date. Continued cases shall be placed on the next available hearing docket, but no earlier than 30 days after the original scheduled date without written consent of both parties. No case shall be continued more than twice unless good cause is shown.

### **380:30-3-5. Motions for stay of proceedings**

The Commissioner may grant a stay of the proceeding upon motion of either party, or upon the Commissioner’s own motion, if the outcome of a case currently pending in any court of record in this State would affect the rights of the parties or the result in a pending wage claim filed with the Department. Either party may move to stay the proceedings at any time after the filing of the affected Wage Claim. Any response to a motion for stay of proceedings shall be filed within twenty (20) days thereafter. The moving party shall have the burden of proof.

### **380:30-3-6. Burdens of proof**

(a) The Commissioner (or the Commissioner’s designee sitting as an Administrative Law Judge) shall conduct wage claim hearings which shall be informal, with the object of dispensing speedy justice between the parties to assure a full and complete hearing on the merits.

(b) The Department is entitled (by this rule which has the force and effect of law) to participate in all hearings.

(c) Department’s counsel, in defense of the earlier issued Order of Determination, shall proceed first at the hearing; thereafter, the Claimant may adduce additional evidence.

(d) At the conclusion of the presentation of evidence by Department’s counsel and Claimant, the Commissioner (or the Commissioner’s designee sitting as an Administrative Law Judge) may entertain a motion for judgment or dismissal (i.e., the equitable equivalent of a demurrer to the evidence) on the grounds that Department’s counsel or Claimant, or both, have failed to meet the primary burden of proof in the

wage claim hearing.

(e) The Department's right to appear and defend the Order of Determination is absolute; however, Department's counsel may waive appearance at the hearing solely at the discretion of Department's counsel. An election by the Department to waive appearance at the hearing does not preclude the Department's involvement in future litigation or any 75 O.S. 317, 318, or 319-323 proceedings.

(f) The Respondent shall have the burden of proof for all affirmative defenses to the claim. Any legal offset by the Respondent, as defined herein, shall be treated as an affirmative defense to the claim.

(g) The Claimant and the Respondent shall have the right to offer evidence in their behalf in accordance with Oklahoma Administrative Code 380:30-3-8 and the Commissioner (or Commissioner's designee sitting as an Administrative Law Judge) may call and question such witnesses and order the production of and admit into evidence such documents as deemed appropriate in the discretion of the Commissioner (or Commissioner's designee sitting as an Administrative Law Judge).

### **380:30-3-7. Mediation—REVOKED**

### **380:30-3-8. Pre-hearing conferences**

(a) The Commissioner, upon motion of either party or upon the Commissioner's own motion, may order a pre-hearing conference prior to hearing. Such conference will be held at least ten (10) days in advance of the scheduled hearing date, and the parties shall be notified at least ten (10) days prior to the conference of the time, place, and date thereof.

(b) When a pre-hearing conference is ordered, parties and/or their counsel shall appear and exchange the following:

- (1) A brief statement of the case, list of stipulations, and requested remedy;
- (2) A list of all witnesses who have direct knowledge of the facts surrounding the issues of the claim and who are expected to be called at the hearing;
- (3) A list of all documents and exhibits, and the original or a copy of each document or exhibit, to be offered into evidence at the hearing;
- (4) A list of all witnesses for whom a subpoena is required. The list shall include the name and address of each witness, and a brief statement of testimony to be offered by that witness. The Department will not issue subpoenas without this information.

(c) The parties shall provide two copies to the Department of all documents submitted, in addition to those exchanged between them. Unless good cause is shown, no witnesses, documents or other evidence will be admitted at hearing unless the same have been submitted at the pre-hearing conference.

(d) Failure to appear at the pre-hearing conference may result in dismissal, default judgment, or other sanction unless good cause is shown.

(e) The parties shall complete their discovery, if any, no later than the date of the pre-hearing conference. All motions and briefs shall be filed in accordance with the deadlines set forth in OAC 380:30-3-4.

## **SUBCHAPTER 5. ADMINISTRATIVE HEARING PROCEDURES**

### **380:30-5-1. Administrative hearing**

The Department shall set claims for administrative hearing upon request as provided in rule 380:30-3-3.2. This is a legal proceeding subject to the requirements for individual proceeding pursuant to the Oklahoma Administrative Procedures Act, Title 75 O.S. § 309 et seq., the provisions of which are incorporated herein by reference. Both the claimant and respondent will be provided with notice of the hearing. At the hearing, each party will be required to present evidence. The hearing will be conducted, and the final agency order issued, by the Commissioner or the Commissioner's designee sitting as Administrative Law Judge.

### **380:30-5-2. Contents and service of notice**

The Notice of Hearing shall meet the requirement of 75 O.S. § 309. The Order of Determination previously sent to the respondent, shall serve as a detailed statement of the issues involved. The Department shall deliver Notice of Hearing to the claimant at the last address provided in writing to the Department and to the respondent at the address to which notice of the claim was delivered, or at the service address for respondent as shown on the records of the Secretary of State of the State of Oklahoma, or the last address provided in writing by the respondent to the Department. The Notice of Hearing shall be sent by certified U. S. mail, return receipt requested. Failure of service of the Notice of Hearing upon the claimant shall result in dismissal of the earlier issued Order of Determination and closure of the case; failure of service upon the respondent shall result in dismissal of Respondent's challenge to the earlier issued Order of Determination.

### **380:30-5-3. Opportunity to be heard—REVOKED**

### **380:30-5-4. Record of hearing—REVOKED**

### **380:30-5-5. Hearing to be recorded—REVOKED**

### **380:30-5-6. Procedures before the Department**

The hearing shall be conducted pursuant to the provisions of 75 O.S. §§ 309 and 310.

### **380:30-5-7. Final orders**

A final agency order shall be issued by the Commissioner pursuant to the provisions of 75 O.S. § 312.

### **380:30-5-8. Subpoenas—Witnesses and documents—REVOKED**

**380:30-5-9. Rehearing, reopening or reconsideration of decision**

A final order issued by the Commissioner shall be subject to rehearing, reopening, or reconsideration pursuant to the provision of 75 O.S. § 317.

**380:30-5-10. Judicial review**

Any party aggrieved by a final order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof pursuant to the provisions of Title 75 O.S. § 318 through 323 of the Oklahoma Administrative Procedures Act.

**380:30-5-11. Staying enforcement of agency decision pending review**

Upon motion of either party, after filing of a proceeding for review with the district court, the Commissioner may stay the enforcement of the agency decision for good cause shown or when the interest of justice requires.

**380:30-5-12. Transmission of record to reviewing court**

Upon receipt by the Department of a copy of the petition for review stamped "filed" by the district court clerk, the Department shall transmit to the reviewing court a certified copy of the entire record of the proceeding under review pursuant to the provisions of 75 O.S. § 320. The Department shall notify the parties and counsel of record when the record has been completed and transmitted.



# For more information . . .

## Oklahoma Department of Labor

[www.labor.ok.gov](http://www.labor.ok.gov)

### Oklahoma City

3017 N. Stiles, Suite 100  
Oklahoma City, OK 73105  
Telephone 405-521-6100  
Toll Free 888-269-5353  
Fax 405-521-6018

### Tulsa

440 South Houston, Suite 300  
Tulsa, OK 74127  
Telephone 918-581-2400  
Fax 918-581- 2431

## U.S. Department of Labor

[www.dol.gov](http://www.dol.gov)

Toll-free, nation-wide 866-487-2365

### Oklahoma City

215 Dean A. McGee Boulevard  
Oklahoma City, OK 73102  
Telephone 405-231-4545

### Dallas

525 South Griffin, Suite 707  
Dallas, TX 75202  
Telephone 214-767-6831

## Oklahoma Employment Security Commission

2401 North Lincoln Boulevard  
Oklahoma City, OK 73152  
Toll Free Telephone 888-980-9675  
[www.oesc.ok.gov](http://www.oesc.ok.gov)

## U.S. Equal Employment Opportunity Commission

215 Dean A. McGee Ave., 5th Floor  
Oklahoma City, OK 73102  
Telephone 405-231-4911  
[www.eeoc.gov](http://www.eeoc.gov)

## Oklahoma Human Rights Commission

2101 North Lincoln Boulevard, Room 480  
Oklahoma City, OK 73105  
Toll Free Telephone 888-456-2885  
Fax 405-522-3635  
[www.ok.gov/ohrc](http://www.ok.gov/ohrc)

## National Labor Relations Board Region 17

224 South Boulder, Room 318  
Tulsa, OK 74103-3027  
Telephone 918-581-7951  
Fax 918-581-7970  
[www.nlr.gov](http://www.nlr.gov)