

North Carolina Department of Labor

Non-exempt Status Details for Administrative Employee

North Carolina Labor and Wage Determinations

The following labor code is based on the North Carolina Department of Labor “Hours Worked and Mandatory Overtime” policy statements as of July 2011.

Payment Policy

How an employee is paid depends on if the employee is non-exempt or exempt from minimum wage and/or overtime pay. An employer must pay an employee at least the minimum wage (currently \$7.25 an hour under both North Carolina and federal labor laws) or pay the employee their promised rate of pay, whichever is greater, and pay time and one-half overtime pay based on the employee's regular rate of pay for all hours worked in excess of 40 in a workweek unless the employee is exempt for some reason. The minimum wage and overtime pay are based on the hours worked each workweek and not by the number of hours worked each day or the number of days worked regardless of the length of the pay period. **Each workweek stands on its own.**

Determinations for Salaried – Exempt Status

Being a salaried employee does not exempt an employee from the minimum wage and/or overtime pay requirements. If an employee is paid a salary and is not paid time and one-half overtime pay for hours worked in excess of 40 in a workweek, then a determination must be made as to if the employee is a salaried-exempt employee or not.

The main categories to be a salaried-exempt employee are for:

- executive (supervisory) employees
- administrative employees
- professional employees who meet certain requirements (see below)

One of the general requirements is that the salaried-exempt employee must be paid **a guaranteed salary of at least \$455.00 a workweek** (no salary test for Outside Sales), which would also be the promised rate of pay for the employee. When this requirement is taken into account, it does not matter how many hours the salaried-exempt employee works in a workweek as the guaranteed salary is pay for all hours worked in a workweek regardless of the number of hours worked.

North Carolina General Statutes

To better understand Exemption Status in North Carolina, the Wage and Hour Act from the North Carolina General Statutes (Chapter 95, Section 25.14) gives a detailed listing of what jobs qualify as exemptions.

§ 95-25.14. Exemptions.

(a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and G.S. 95-25.5 (Youth Employment), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not apply to:

(1) Any person employed in an enterprise engaged in commerce or in the production of goods for commerce as defined in the Fair Labor Standards Act:

- a. Except as otherwise specifically provided in G.S. 95-25.5;
- b. Notwithstanding the above, any employee other than a learner, apprentice, student, or handicapped worker as defined in the Fair Labor Standards Act who is not otherwise exempt under the other provisions of this section, and for whom the applicable minimum wage under the Fair Labor Standards Act is less than the minimum wage provided in G.S. 95-25.3, is not exempt from the provisions of G.S. 95-25.3 or G.S. 95-25.4;

c. Notwithstanding the above, any employer or employee exempt from the minimum wage, overtime, or child labor requirements of the Fair Labor Standards Act for whom there is no comparable exemption under this Article shall not be exempt under this subsection except that where an exemption in the Fair Labor Standards Act provides a method of computing overtime which is an alternative to the method required in 29 U.S.C.S. § 207(a), the employer or employee subject to that alternate method shall be exempt from the provisions of G.S. 95-25.4(a); provided that, persons not employed at an enterprise described in subdivision (1) of this subsection shall also be subject to-9-the same alternative methods of overtime calculation in the circumstances described in the Fair Labor Standards Act exemptions providing those alternative methods;

(2) Any person employed in agriculture, as defined under the Fair Labor Standards Act;

(3) Any person employed as a domestic, including baby sitters and companions, as defined under the Fair Labor Standards Act;

(4) Any person employed as a page in the North Carolina General Assembly or in the Governor's Office;

(5) Bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;

(6) Persons confined in and working for any penal, correctional or mental institution of the State or local government;

(7) Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions, as defined under the Fair Labor Standards Act, except as otherwise specifically provided in G.S. 95-25.5;

(8) Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects, except as otherwise specifically provided in G.S. 95-25.5; but this exemption does not include such positions as office workers, ticket takers, ushers and parking lot attendants.

(b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and

the provisions apply to:

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)

of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not

Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center; Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;

The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina; Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act; Repealed by Session Laws 1989, c. 687, s. 2.

Any person while participating in a ridesharing arrangement as defined in G.S. 136-44.21; Any person who is employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, as defined in the Fair Labor Standards Act.

(b1) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to the exemptions provided for in this subsection, do not apply to any of the following:

- (1) Hours worked as a bona fide volunteer firefighter in an incorporated, nonprofit volunteer or community fire department.
- (2) Hours worked as a bona fide volunteer rescue and emergency medical services personnel in an incorporated, nonprofit volunteer or community fire department, or an incorporated, nonprofit rescue squad.

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Hours worked in accordance with this subsection shall not be considered hours worked for purposes of G.S. 95-25.3 or G.S. 95-25.4.

(c) The provisions of G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to this exemption, do not apply to:

(1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair Labor Standards Act;

(2) Taxicab drivers;

(3) Seamen, employees of railroads, and employees of air carriers, as defined

under the Fair Labor Standards Act;

(4) Salespersons, mechanics and partsmen employed by automotive, truck, and

farm implement dealers, as defined under the Fair Labor Standards Act;

(5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under

the Fair Labor Standards Act;

(6) Live-in child care workers or other live-in employees in homes for dependent

children;

(7) Radio and television announcers, news editors, and chief engineers, as defined

under the Fair Labor Standards Act. (d) The provisions of this Article do

not apply to the State of North Carolina, any city,

town, county, or municipality, or any State or local agency or

instrumentality of government, except for the following provisions, which do apply:

(1) The minimum wage provisions of G.S. 95-25.3;

(2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable

provisions;

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- (3) The exemptions of subsections (a) and (b) of this section;
 - (4) The complainant protection provisions of G.S. 95-25.20.
 - (e) Employment in a seasonal recreation program by the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage). (1937, c. 406; c. 409, s. 3; 1939, c. 312, s. 1; 1943, c. 59; 1947, c. 825; 1949, c. 1057; 1959, cc. 475, 629; 1961, cc. 602, 1070; 1963, c. 1123; 1965, c. 724; 1967, c. 998; 1973, c. 600, s. 1; 1975, c. 19, s. 26; c. 413, s. 2; 1977, c. 146; 1979, c. 839, s. 1; 1981, c. 493, s. 2; c. 606, s. 2; c. 663, s. 7; 1983, c. 708, s. 2; 1989, c. 687, s. 2; 1991, c. 330, s. 3; 1993, c. 214, s. 2; 1995, c. 509, s. 47; 1997-146, s. 2; 2002-113, s. 2.)