

# West Virginia Division of Labor

## Minimum Wage & Overtime Requirements

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### West Virginia Division of Labor Wage & Hour Section

#### Minimum Wage & Overtime Fact Sheet 5 - West Virginia Code Chapter 21, Article 5C (July 2017)

### THE EXECUTIVE EMPLOYEE EXEMPTION

West Virginia's Minimum Wage and Maximum Hour Standards exempt certain categories of workers from minimum wage and maximum hour (overtime) coverage. One of those exemptions applies to executive employees. Any individual that meets all of the criteria necessary to qualify for the executive employee exemption would not be covered by state minimum wage or overtime requirements, regardless of the number of hours worked.

### EXECUTIVE EMPLOYEE DEFINED

For an employer to claim the "Executive Employee" exemption, the employee in question must meet ALL of the following conditions. If any one condition is not met, then the employer may not claim the exemption. §42CSR8-10

- The employee is compensated at a salary or fee basis at a rate of at least \$455.00 per workweek (§42CSR8-10.a), and
- The employee's primary duty is the management of the employer's organization, or the management of a customarily recognized department or subdivision of the organization (§42CSR8-10.b), and
- The employee has the authority to hire or fire other employees or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees is given particular weight. §42CSR8-10.c

### Federal Jurisdiction vs. State

Should 80 percent of a company's employees be covered under the federal minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), the requirements of state law will not apply. When an employer does not meet the 80 percent employee requirement or does not otherwise qualify for FLSA coverage, the requirements of state law will only apply to those locations or business establishments where at least six non-exempt (hourly) employees are working. See *Overtime Fact Sheet 1*.

*Any questions relating specifically to federal coverage should be addressed directly to the Wage & Hour Division of the United States Department of Labor (USDOL).*

*USDOL Contact Information is as follows: 1-866-4-USA-DOL (1-866-487-2365) or [www.dol.gov](http://www.dol.gov).*