

Annex A

TITLE 34. LABOR AND INDUSTRY

PART XII. BUREAU OF LABOR LAW COMPLIANCE

CHAPTER 231. MINIMUM WAGE

GENERAL PROVISIONS

§ 231.1. Definitions.

* * * * *

(b) In addition to the provisions of subsection (a), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Department—The Department of Labor and Industry of the Commonwealth.

Domestic services—Work in or about a private dwelling for an employer in ~~his~~ **THE** capacity as a householder, as distinguished from work in or about a private dwelling for such employer in the employer's pursuit of a trade, occupation, profession, enterprise or vocation.

~~*General operation*—Work in functional areas such as tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, computer network, Internet and database administration, legal and regulatory compliance, and similar activities.~~

~~*Handicapped worker*—An individual whose earning capacity for the work to be performed is impaired by physical or mental deficiency or injury~~

Hotel or motel—An establishment which as a whole or part of its business activities offers lodging accommodations for hire to the public, and services in connection therewith or incidental thereto.

* * * * *

Lodging—A housing facility available for the personal use of the employee at all hours.

~~*Management*—Activities such as interviewing, selecting and training of employees; setting and adjusting employees' rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising~~

~~employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used to perform work; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees and the property; planning and controlling the budget, and monitoring or implementing legal compliance measures; and similar activities.~~

MINIMUM WAGE ADVISORY BOARD—A BOARD CREATED IN THE DEPARTMENT OF LABOR AND INDUSTRY UNDER SECTION 6 OF THE ACT, 43 P.S. 333.106 (RELATING TO MINIMUM WAGE ADVISORY BOARD).

Nonprofit organization—A corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

* * * * *

Week—A period of 7 consecutive days starting on any day selected by the employer.

WORKER WITH A DISABILITY – AN INDIVIDUAL WHOSE EARNING CAPACITY FOR THE WORK TO BE PERFORMED IS IMPAIRED BY PHYSICAL OR MENTAL DEFICIENCY OR INJURY.

§ 231.71. Procedure.

- (a) An employer who wishes to employ **handicapped** workers **WITH A DISABILITY** at less than the prescribed minimum wage shall complete an application on forms furnished by the Secretary.
- (b) The application shall set forth the following information:
 - (1) The nature of the disability in detail.
 - (2) A description of the occupation at which the **handicapped** worker **WITH A DISABILITY** is to be employed.
 - (3) The wage the employer proposes to pay the **handicapped** worker **WITH A DISABILITY** per hour.
 - (4) Other information as may be required by the Secretary.

- (c) The application shall be signed jointly by the employer and the **handicapped** worker **WITH A DISABILITY** for whom such application is being made, except as otherwise authorized by the Secretary.

§ 231.72. Conditions for granting certificate.

A certificate may be issued if the application is in proper form and sets forth facts showing that:

- (1) The **handicap DISABILITY** impairs the earning capacity of the worker for the work the employee is to perform.
- (2) The proposed minimum wage is commensurate with the production capacity of the employee.

§ 231.73. Special certificate.

If the application and other available information indicate that the requirements of these §§ 231.71—231.76 (relating to employment of **handicapped** workers **WITH A DISABILITY**) are satisfied, the Secretary will issue a certificate. If issued, copies of the certificate will be mailed to the employer and the **handicapped** worker **WITH A DISABILITY**, and if the certificate is not issued, the employer and the **handicapped** worker **WITH A DISABILITY** will be given written notice of the denial.

§ 231.74. Specifications of the certificate.

- (a) A certificate will specify, among other things, the name of the **handicapped** worker **WITH A DISABILITY**, the name of the employer, the occupation in which the **handicapped** worker **WITH A DISABILITY** is to be employed, the authorized subminimum wage rate and the period of time during which such wage rate may be paid.
- (b) A certificate shall be effective for a period to be designated by the Secretary. The **handicapped** worker **WITH A DISABILITY** employed under the certificate may be paid subminimum wages only during the effective period of the certificate.
- (c) The wage rate set in the certificate will be fixed at a figure designated to reflect adequately the earning capacity of the **handicapped** worker **WITH A DISABILITY**.
- (d) A money received by a **handicapped** worker **WITH A DISABILITY** by reason of a state or Federal pension or compensation program for **handicapped** persons **WITH A DISABILITY** may not be considered as offsetting any part of the wage due the **handicapped** worker **WITH A DISABILITY** by the employer.
- (e) Except as otherwise provided in section 5(a)—(c) of the act (43 P. S. § 333.105(a)-(c)), the **handicapped** worker **WITH A DISABILITY** shall be paid not less than 1 ½ times the regular rate for hours worked in excess of 40 in the workweek.

- (f) The terms of a certificate, including the subminimum wage rate specified therein, may be amended by the Secretary upon written notice to the parties concerned if the facts justify the amendment.

* * * * *

SPECIAL DEFINITIONS

§ 231.82. Executive.

Employment in a bona fide executive capacity means work by an individual:

- (1) Whose primary duty [**consists of**] is the management of the enterprise in which he is employed or of a customarily recognized department or subdivision.
 - (i) **FOR THIS SECTION THE TERM "MANAGEMENT" IS DEFINED AS FOLLOWS: TO INCLUDE, BUT IS NOT LIMITED TO, ACTIVITIES SUCH AS INTERVIEWING, SELECTING, AND TRAINING OF EMPLOYEES; SETTING AND ADJUSTING EMPLOYEES' RATES OF PAY AND HOURS OF WORK; DIRECTING THE WORK OF EMPLOYEES; MAINTAINING PRODUCTION OR SALES RECORDS FOR USE IN SUPERVISION OR CONTROL; APPRAISING EMPLOYEES' PRODUCTIVITY AND EFFICIENCY FOR THE PURPOSE OF RECOMMENDING PROMOTIONS OR OTHER CHANGES IN STATUS; HANDLING EMPLOYEE COMPLAINTS AND GRIEVANCES; DISCIPLINING EMPLOYEES; PLANNING THE WORK; DETERMINING THE TECHNIQUES TO BE USED TO PERFORM WORK; APPORTIONING THE WORK AMONG THE EMPLOYEES; DETERMINING THE TYPE OF MATERIALS, SUPPLIES, MACHINERY, EQUIPMENT OR TOOLS TO BE USED OR MERCHANDISE TO BE BOUGHT, STOCKED AND SOLD; CONTROLLING THE FLOW AND DISTRIBUTION OF MATERIALS OR MERCHANDISE AND SUPPLIES; PROVIDING FOR THE SAFETY AND SECURITY OF THE EMPLOYEES OR THE PROPERTY; AND PLANNING AND CONTROLLING THE BUDGET, AND MONITORING OR IMPLEMENTING LEGAL COMPLIANCE MEASURES.**
- (2) Who customarily and regularly directs the work of two or more other employees.
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, ~~or firing, and as to the~~ advancement, ~~and~~ promotion or any other change of status of other employees ~~will be~~ **ARE** given particular weight.

~~(4) Who customarily and regularly exercises discretionary powers.~~

[(5) Who does not devote more than 20%, or, in the case of an employee of a retail or service establishment, who does not devote as much as 40% of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1)—(4), provided that this paragraph may not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment or who owns at least 20% interest in the enterprise in which he is employed.]

(6) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week, exclusive of board, lodging or other facilities, provided that an employee who is compensated on a salary basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein shall be deemed to meet all the requirements of this section.]

(5)-(4) Who is compensated for his services on a salary basis at a rate of not less than:

(i) \$610 \$684 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(ii) \$766 \$780 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 365 days ONE YEAR after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(iii) \$924 \$875 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 730 days TWO YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(iv) Effective _____ (Editor's Note: The blank refers to 1,095 days THREE YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN), and January 1 of each 3rd year thereafter, the 30th percentile of weekly earnings of full-time

nonhourly workers in the Northeast Census region in the second quarter of the prior year as published by the United States Department of Labor, Bureau of Labor Statistics, exclusive of board, lodging or other facilities. The Department will publish this figure on its web site and in the Pennsylvania Bulletin. AT A RATE EQUAL TO THE 10TH PERCENTILE OF PENNSYLVANIA WORKERS WHO WORK IN EXEMPT EXECUTIVE, ADMINISTRATIVE OR PROFESSIONAL CLASSIFICATIONS.

- (A) AT LEAST 90 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD IN SUBPARAGRAPH (iv), THE DEPARTMENT WILL SUBMIT TO THE MINIMUM WAGE ADVISORY BOARD, THE ADJUSTED WEEKLY SALARY RATE PURSUANT TO SUBPARAGRAPH (iv) AND THE INFORMATION SUPPORTING THE ADJUSTED SALARY RATE.
- (B) UPON REVIEW OF THE INFORMATION SUBMITTED BY THE DEPARTMENT AND AT A MEETING TO BE HELD NO LATER THAN 60 DAYS BEFORE THE EFFECTIVE DATE OF THE ADJUSTED WEEKLY SALARY RATE, THE MINIMUM WAGE ADVISORY BOARD MAY PROVIDE ADVICE AND CONSULTATION TO THE SECRETARY REGARDING THE ADJUSTED WEEKLY SALARY RATE.
- (C) AT LEAST 30 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD IN SUBPARAGRAPH (iv), THE DEPARTMENT WILL PUBLISH THE ADJUSTED WEEKLY SALARY RATE ON ITS WEB SITE AND IN THE *PENNSYLVANIA BULLETIN*.

(6) (5) Up to 10% of the salary amount required under paragraph (5) (4) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid quarterly ANNUALLY or more frequently. THE EMPLOYER MAY USE ANY 52-WEEK PERIOD AS THE YEAR, SUCH AS A CALENDAR YEAR, FISCAL YEAR, OR ANNIVERSARY OF HIRE YEAR. IF THE EMPLOYER DOES NOT IDENTIFY SOME OTHER YEAR PERIOD IN ADVANCE, THE CALENDAR YEAR WILL APPLY. If by the last pay period of the quarter YEAR the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal 13 52 times the weekly salary amount required under this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the quarter YEAR. A final payment made after the end of the 13-week-period YEAR may count only toward the prior quarter's YEAR'S salary amount and not toward the salary amount in the quarter YEAR it was paid.

§ 231.83. Administrative.

Employment in a bona fide administrative capacity means work by an individual:

- (1) Whose primary duty [**consists of**] **is** the performance of office or nonmanual work directly related to management ~~polieies~~ or general **BUSINESS operation OPERATIONS** of ~~his~~ **THE** employer or the customers of the employer.
 - (i) **FOR THE PURPOSE OF THIS SECTION THE TERM “DIRECTLY RELATED TO MANAGEMENT OR GENERAL BUSINESS OPERATIONS” IS DEFINED AS FOLLOWS: TO INCLUDE, BUT IS NOT LIMITED TO, WORK IN FUNCTIONAL AREAS SUCH AS TAX; FINANCE; ACCOUNTING; BUDGETING; AUDITING; INSURANCE; QUALITY CONTROL; PURCHASING; PROCUREMENT; ADVERTISING; MARKETING; RESEARCH; SAFETY AND HEALTH; PERSONNEL MANAGEMENT; HUMAN RESOURCES; EMPLOYEE BENEFITS; LABOR RELATIONS; PUBLIC RELATIONS, GOVERNMENT RELATIONS; COMPUTER NETWORK, INTERNET AND DATABASE ADMINISTRATION; LEGAL AND REGULATORY COMPLIANCE.**
- (2) ~~Who customarily and regularly exercises~~ **WHOSE PRIMARY DUTY INCLUDES THE EXERCISE OF** discretion and independent judgment **with respect to matters of significance.**
- [(3) **Who regularly and directly assists an employer or an employee employed in a bona fide executive or administrative capacity, who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge, or who executes under only general supervision special assignments and tasks.**
- (4) **Who does not devote more than 20% of time worked in a workweek, or, in the case of an employee of a retail or service establishment, who does not devote more than 40% of time worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1)—(3).**
- (5) **Who is paid for his services a salary of not less than \$155 per week, exclusive of board, lodging, or other facilities, provided that an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities and whose primary duty consists of the performance of work described in paragraph (1), which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.]**

(3) Who is compensated for his services on a salary basis at a rate of not less than:

(i) ~~\$610~~ \$684 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(ii) ~~\$766~~ \$780 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 365 days ONE YEAR after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(iii) ~~\$921~~ \$875 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 730 days TWO YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).

(iv) Effective _____ (Editor's Note: The blank refers to 1,095 days THREE YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN.), and January 1 of each 3rd year thereafter, the 30th percentile of weekly earnings of full-time nonhourly workers in the Northeast Census region in the second quarter of the prior year as published by the United States Department of Labor, Bureau of Labor Statistics, exclusive of board, lodging or other facilities. The Department will publish this figure on its web site and in the Pennsylvania Bulletin. AT A RATE EQUAL TO THE 10TH PERCENTILE OF PENNSYLVANIA WORKERS WHO WORK IN EXEMPT EXECUTIVE, ADMINISTRATIVE OR PROFESSIONAL CLASSIFICATIONS.

(A) AT LEAST 90 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD IN SUBPARAGRAPH (iv), THE DEPARTMENT WILL SUBMIT TO THE MINIMUM WAGE ADVISORY BOARD, THE ADJUSTED WEEKLY SALARY RATE PURSUANT TO SUBPARAGRAPH (iv) AND THE INFORMATION SUPPORTING THE ADJUSTED SALARY RATE.

(A) UPON REVIEW OF THE INFORMATION SUBMITTED BY THE DEPARTMENT AND A MEETING TO BE HELD NO LATER THAN 60 DAYS BEFORE THE EFFECTIVE DATE,

THE MINIMUM WAGE ADVISORY BOARD MAY PROVIDE ADVICE AND CONSULTATION TO THE SECRETARY REGARDING THE WEEKLY SALARY RATE.

(B) AT LEAST 30 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD, THE DEPARTMENT WILL PUBLISH THIS FIGURE ON ITS WEB SITE AND IN THE *PENNSYLVANIA BULLETIN*.

~~(4) Up to 10% of the salary amount required under paragraph (3) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid YEARLY or more frequently. THE EMPLOYER MAY USE ANY 52-WEEK PERIOD AS THE YEAR, SUCH AS A CALENDAR YEAR, FISCAL YEAR, OR ANNIVERSARY OF HIRE YEAR. IF THE EMPLOYER DOES NOT IDENTIFY SOME OTHER YEAR PERIOD IN ADVANCE, THE CALENDAR YEAR WILL APPLY. If by the last pay period of the quarter YEAR the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal ~~13~~ 52 times the weekly salary amount required by this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the quarter YEAR. A final payment made after the end of the 13-week period YEAR may count only toward the prior quarter's YEAR'S salary amount and not toward the salary amount in the quarter YEAR it was paid.~~

§ 231.84. Professional.

Employment in a bona fide professional capacity means work by an individual:

- (1) Whose primary duty [consists of] is the performance of work requiring [knowledge] either of the following:
 - (i) Knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study [or the].
 - (ii) ~~The performance of work that is original and creative in character in a recognized field of artistic endeavor~~ INVENTION, IMAGINATION, ORIGINALITY OR TALENT IN A RECOGNIZED FIELD OF ARTISTIC OR CREATIVE ENDEAVOR.
- ~~(2) Whose work requires the consistent exercise of discretion and judgment in its performance.~~
- ~~(3) Whose work is predominately intellectual and varied in character, as opposed to routine mental, manual, mechanical or physical work, and is of such a~~

~~character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.~~

- [(4) Who does not devote more than 20% of time worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (1)—(3).
- (5) Who is compensated for his services on a salary or fee basis at a rate of not less than \$170 per week, exclusive of board, lodging or other facilities, provided that an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (1), which includes work requiring the consistent exercise of discretion and judgment, or the performance of work requiring invention, imagination or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.]

(4) (2) Who is compensated for his services on a salary or fee basis at a rate of not less than:

- (i) \$610 \$684 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).
- (ii) \$766 \$780 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 365 days ONE YEAR after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).
- (iii) \$921 \$875 per week exclusive of board, lodging or other facilities, effective _____ (Editor's Note: The blank refers to 730 days TWO YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN).
- (iv) Effective _____ (Editor's Note: The blank refers to 1,095 days THREE YEARS after the effective date of adoption of this proposed rulemaking DATE OF PUBLICATION OF THE FINAL FORM RULEMAKING IN THE PENNSYLVANIA BULLETIN), and January 1 of each 3rd year thereafter, the 30th percentile of weekly earnings of full-time nonhourly workers in the Northeast Census region in the second quarter of the prior year as published by the United States Department of Labor, Bureau of Labor Statistics, exclusive of board, lodging or

other facilities. The Department will publish this figure on its web site and in the Pennsylvania Bulletin. AT A RATE EQUAL TO THE 10TH PERCENTILE OF PENNSYLVANIA WORKERS WHO WORK IN EXEMPT EXECUTIVE, ADMINISTRATIVE OR PROFESSIONAL CLASSIFICATIONS.

- (A) AT LEAST 90 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD IN SUBPARAGRAPH (iv), THE DEPARTMENT WILL SUBMIT TO THE MINIMUM WAGE ADVISORY BOARD, THE ADJUSTED WEEKLY SALARY RATE PURSUANT TO SUBPARAGRAPH (iv) AND THE INFORMATION SUPPORTING THE ADJUSTED SALARY RATE.
- (B) UPON REVIEW OF THE INFORMATION SUBMITTED BY THE DEPARTMENT AND A MEETING TO BE HELD NO LATER THAN 60 DAYS BEFORE THE EFFECTIVE DATE, THE MINIMUM WAGE ADVISORY BOARD MAY PROVIDE ADVICE AND CONSULTATION TO THE SECRETARY REGARDING THE WEEKLY SALARY RATE.
- (C) AT LEAST 30 DAYS PRIOR TO THE EFFECTIVE DATE OF EACH THREE-YEAR PERIOD, THE DEPARTMENT WILL PUBLISH THIS FIGURE ON ITS WEB SITE AND IN THE *PENNSYLVANIA BULLETIN*.

(5) (3) Up to 10% of the salary or fee amount required under paragraph (4) (3) may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions that are paid quarterly YEARLY or more frequently. THE EMPLOYER MAY USE ANY 52-WEEK PERIOD AS THE YEAR, SUCH AS A CALENDAR YEAR, FISCAL YEAR, OR ANNIVERSARY OF HIRE YEAR. IF THE EMPLOYER DOES NOT IDENTIFY SOME OTHER YEAR PERIOD IN ADVANCE, THE CALENDAR YEAR WILL APPLY. If by the last pay period of the quarter YEAR the sum of the employee's weekly salary plus nondiscretionary bonus, incentive and commission payments received does not equal 13 52 times the weekly salary amount required by this section, the employer may make 1 final payment sufficient to achieve the required level no later than the next pay period after the end of the quarter YEAR. A final payment made after the end of the 13-week period YEAR may count only toward the prior quarter's YEAR'S salary amount and not toward the salary amount in the quarter YEAR it was paid.