

**ALABAMA DEPARTMENT OF REVENUE  
ADMINISTRATIVE CODE**

**CHAPTER 810-3-72  
INCLUDED AND EXCLUDED WAGES**

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**810-3-72-.01      Included And Excluded Wages.**

(1) Class exemptions from Alabama withholding are the same as those under federal law. The chief classes of employees exempt from withholding are agricultural, domestic and merchant seamen. Alabama will not follow the federal requirement to withhold income tax on cash payments made after 1989 to agricultural employees where the payments are considered wages for social security purposes and FICA withholding is required.

(2) Where an employer establishes a deferred compensation plan under I.R.C. Sections 401(k) (2) or 403(b), the amounts properly deferred are not wages for withholding tax purposes.

(3) Amounts paid to or on behalf of an employee as reimbursement for moving expenses incurred relative to a new job location in Alabama, or advance payments of such expenses, are not wages for withholding tax purposes to the extent that there is reason to believe that the employee will have a corresponding deduction under Section 40-18-15(a) (18).

(4) Amounts paid to or on behalf of an employee for traveling or other bona fide ordinary and necessary expenses incurred, or advance payments of such expenses, to the extent that there is reason to believe that the employee will have a corresponding deduction under Section 40-18-15(a) (1).

(5) For tax years or periods beginning after December 31, 1990 - Where an employer participates in a cafeteria plan as described in I.R.C. Section 125, contributions made by an employer on behalf of an employee are not included in the employee's gross income and therefore are not subject to Alabama withholding tax.

(6) For tax years or periods beginning after December 31, 1990 - Where an employer incurs dependent care expenses on behalf of an employee, such amount is excluded from wages as defined in I.R.C. Section 129.

(7) For tax years or period beginning after December 31, 2023, and ending prior to June 30, 2025, wages paid to a full time hourly employee as compensation for work performed in excess of 40 hours in a workweek are not taxable wages subject to Alabama withholding tax. The exemption for wages in excess of 40 hours in a workweek will not apply to salaried or other alternate payment methods made to employees. See Rule 810-3-72-.02.

**Author:** Ewell Berry, Ann F. Winborne, Neal Hearn

**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-14, 40-18-72.

**History:** Adopted September 30, 1982. Amended June 17, 1988; filed July 27, 1988; May 15, 1992. **Amended:** Filed December 4, 2017; effective January 18, 2018. **Amended:** Published October 31, 2023; effective December 15, 2023.

#### 810-3-72-.02

#### **Overtime Pay Exemption Pursuant To Act 2023-421: Hours Worked Above Forty Exclusion.**

(1) Definitions The following terms have these meanings for the purposes of the rule:

(a) Hourly wage paid employee - An hourly employee that is paid a wage for each hour of work they complete

(b) Week - A workweek as defined by U.S. Fair Labor Standards Act (FLSA). An employee's work week is a fixed and regularly recurring period of 168 hours - seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day.

(c) Hours Worked - In general, hours worked include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.

(d) Overtime - Hours worked in excess of 40 hours in a work week.

(e) Paid Time off (PTO) - A benefit program offered by employers which allows an employee to take off for a specific number of days and still receive compensation. This generally includes absences related to vacation, illness, or personal circumstances.

(2) For period beginning January 1, 2024, and ending September 30, 2024, gross income does not include the amounts received by an hourly wage paid employee for hours worked in excess of 40 hours

in a week. This includes amounts received for hours worked in excess of 40 hours that are paid at the regular rate of pay.

(a) PTO and holiday pay are not hours worked and are not included in determining the hours worked in excess of 40 hours during a week. If an hourly wage paid employee has PTO during a week which, when combined with actual hours worked in a week exceed 40 hours, only the hours worked contribute to the calculation of "overtime".

Example 1: Employee A is paid for 48 hours in a week, 32 hours of paid time off plus 16 hours worked. Only the 16 hours count toward the 40 hours worked, the 8 hours the employee is paid over 40 hours is not exempt.

Example 2: Employee B is paid for 52 hours in a week, 8 hours of holiday pay plus 44 hours worked. Only the 44 hours worked count toward the 40 hours worked, only 4 of the 12 hours the employee is paid over 40 hours is exempt.

(3) The exemption does not apply to the following:

(a) Salaried employees.

(b) Compensation not based on an hourly wage, such as mileage, comp time, or other alternative methods of payment.

(c) Commissions and bonuses paid in addition to an hourly wage.

(4) Exempt overtime reporting requirements:

(a) Beginning with the January 2024 filing of withholding tax, the following must be reported with the employer's monthly (Form A-6) or quarterly (Form A-1) withholding tax return:

1. Total amount of exempt overtime wages for the period.

2. Total number of employees to which it was paid during that period.

(b) The total amount of exempt overtime wages to report is the actual overtime wages exempt from Alabama taxable income whether paid at the regular, time and a half, or other hourly wage.

(c) The exempt overtime wages included in Box 14 of the employee's annual Form W-2 should correspond to the total reported with the monthly/quarterly filings throughout the year.

**Author:** Kathleen Abrams, Neal Hearn

**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-14.

**History:** **New Rule:** Published October 31, 2023; effective December 15, 2023. **Amended:** Published October 31, 2024; effective December 15, 2024.

**810-3-72-.03      Overtime Pay Exemption Pursuant To Act 2024-437:**  
**U.S. Fair Labor Standards Act Alignment.**

(1) For periods beginning on October 1, 2024, and ending June 30, 2025, gross income does not include amounts paid as overtime in accordance with the U.S. Fair Labor Standards Act.

(2) For employers governed by the National Railway Labor Act, the exemption applies to hourly component overtime compensation as defined in applicable collective bargaining agreements.

(3) Exempt overtime reporting requirements beginning October 1, 2024, require the following to be reported on the employers monthly (Form A-6) or quarterly (Form A-1) withholding tax return:

(a) The total amount of exempt overtime paid for the period.

(b) The total number of employees to which it was paid during the period filed.

(4) The exempt overtime wages included in box 14 of the employees annual Forms W-2 should correspond to the total exempt overtime wages reported with the monthly/quarterly filings for the year.

**Author:** Kathleen Abrams, Neal Hearn

**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-14.

**History:** **Repealed:** Filed July 27, 1988. **New Rule:** Published October 31, 2024; effective December 15, 2024.