

APA-1

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control: 810
Department or Agency: Alabama Department of Revenue
Rule No.: 810-3-72-.02
Rule Title: Overtime Pay Exemption
Intended Action: Amend

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer

Cameran Clark
Cameran Clark

Date

Monday, August 19, 2024

REC'D & FILED
AUG 19, 2024
LEGISLATIVE SVC AGENCY

ALABAMA DEPARTMENT OF REVENUE

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Revenue

RULE NO. & TITLE: 810-3-72-.02 Overtime Pay Exemption

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

Pursuant to Act 2024-437, the rule is being amended to provide the sunset date of September 30, 2024, for the 40 hour exclusion on the overtime exemption. This rule is being amended in conjunction with the promulgation of proposed rule 810-3-72-.03 which will provide the updated definition for the overtime exemption beginning October 1, 2024.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

A public hearing will be held at 1:30 P.M. on Tuesday, October 08, 2024, via web-conference. To participate in the upcoming web-conference public hearing please contact the Tax Policy and Governmental Affairs Division at Taxpolicy@revenue.alabama.gov or 334-242-1380 to obtain the appropriate sign-in information for a specific public hearing date. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy>.

All interested parties may present their views in writing to the Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132 at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also present their views during the web-conference.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, October 8, 2024

CONTACT PERSON AT AGENCY:

Nicci Adams
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380

Cameran Clark

Cameran Clark

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

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

~~(1)~~

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

~~(a)~~

(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 ~~before June 30, 2025~~ 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 _____ ; effective _____ .