

ALABAMA DEPARTMENT OF REVENUE  
ADMINISTRATIVE CODE

CHAPTER 810-3-72  
INCLUDED AND EXCLUDED WAGES

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.

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

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