ADMINISTRATIVE RULES REGARDING THE ARKANSAS MINIMUM WAGE ACT

LABOR STANDARDS SECTION
DIVISION OF LABOR
ARKANSAS DEPARTMENT OF LABOR AND LICENSING

Rules effective as of
July 2, 2020

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010.14-100 Minimum Wage and Overtime

A. The Minimum Wage Act of the State of Arkansas is codified at Ark. Code Ann. §§ 11-4-201 *et seq.* The Director of the Division of Labor is authorized to promulgate administrative rules for the administration and enforcement of the law. Ark. Code Ann. § 11-4-209.

B. Definitions

1. "Act" means the Minimum Wage Act of the State of Arkansas, Ark. Code Ann. §§ 11-4-201 *et seq.*;

2. "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. "Agriculture" also includes the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal and vegetable life. "Agriculture" includes cotton ginning and work performed as necessary and incidental to cotton ginning in an establishment primarily engaged in the ginning of cotton, including all work exempt from overtime pursuant to the provisions of 29 U.S.C. 213(h) and (i);

3. "Director" means the Director of the Division of Labor, Department of Labor and Licensing;

4. "Employ" means to suffer or permit to work;

5. "Employee" means any individual employed by an employer, but does not include those individuals specifically excluded by Ark. Code Ann. § 11-4-203(3) and Rule 010.14-106;

6. "Employer" means any individual, partnership, association, corporation, business trust, the State, any political subdivision of the State, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee. The term "employer" shall not

include any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee for any work week in which fewer than four (4) employees are employed.;

7. "Manager" means the Manager of the Labor Standards Section, Division of Labor, Department of Labor and Licensing; and

8. "Section" means the Labor Standards Section, Division of Labor, Department of Labor and Licensing.

010.14-101 Rules Incorporated By Reference

Throughout these rules for minimum wage and overtime, Rule 010.14-100 *et seq.,* the Division of Labor has adopted by reference and incorporated herein certain sections or parts of the Code of Federal Regulations (C.F.R.) or the United States Code (U.S.C.). In all cases, references to volume 29 of the Code of Federal Regulations shall mean the July 2018 edition, specifically 29 C.F.R., Parts 500-899 (July 1, 2018). References to the United States Code in relation to overtime exemptions contained in Ark. Code Ann. §11-4-211(d) and (e) mean 29 U.S.C. §§ 207(k) and 213(b)(1) through (b)(24) and (b)(28) through (b)(30)(July 1, 2005). In all other cases, references to the United States Code means the U.S.C. as it existed on July 1, 2018. These Rules do not include any later editions or amendments to the United States Code or the Code of Federal Regulations. Copies of the incorporated matter may be obtained at cost from the Division of Labor, Labor Standards Section or may be purchased directly from the U. S. Government Printing Office. Copies of the incorporated matter may be viewed on the website of the U. S. Department of Labor as follows:

The federal Fair Labor Standards Act
https://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf

Federal regulations:
https://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

010.14-102 Records To Be Kept By Employer

A. General requirements

1. Every employer shall maintain and preserve payroll or other records which are true and accurate, and which contain the following

information and data for each employee:

a. Name in full, as used for Social Security recordkeeping purposes, and on the same record, any identifying symbol or number used in place of name on any time, work, or payroll records;

b. Home address, including zip code;

c. Date of birth, if under 19;

d. Sex and occupation;

e. Time of day and day of week on which the employee's workweek begins. A single notation will suffice if the entire workforce in an establishment have the same workweek and workday beginning;

f. Regular hourly rate of pay for any workweek in which overtime compensation is due, as well as the basis on which wages are paid, such as per hour, per day, per week, per piece or rate of commission;

g. Hours worked each workday and total hours worked each workweek;

h. Total daily or weekly straight time earnings or wages due for hours worked during the workday or workweek, exclusive of overtime compensation;

i. Total overtime compensation. This amount excludes the straight-time earnings for overtime hours recorded under 010.14-102(A)(1)(h) above;

j. Total additions or deductions from wages paid each pay period, as well as the nature of the items which make up the additions or deductions;

k. Total wages paid each pay period; and

l. Date of payment and the pay period covered by payment.

2. For employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each

work week, the schedule of daily and weekly hours and a statement or other method or recordkeeping that indicates that such hours were in fact actually worked. In weeks in which more or less than the scheduled hours are worked, the exact number of hours worked each day and each week must be recorded.

3. Each employer shall maintain and preserve the records required by this Rule for a period of at least three (3) years.

4. No particular or form of records is prescribed. The records must be accessible and clear and identifiable. In the event records are maintained in format other than paper, such as electronically or on microfilm, adequate projection, viewing, or copying equipment must be available.

5. Each employer shall keep the records required by this Rule safe and accessible at the place or places of employment or in a central recordkeeping office in Arkansas. In unusual circumstances, an employer may petition the director to maintain the records outside the state. Such approval must be obtained in advance. In the event the director approves such records to be maintained outside the state, the employer shall make such records available for inspection, transcription or copying by the division in Arkansas within 72 hours following notice from the division.

6. Posting of notices. Every employer employing an employee subject to the Act shall post and keep posted a notice approved by the director explaining and summarizing the requirements of the Act and the rules. Such notice shall be posted in a conspicuous and accessible place in every establishment where such employees are employed.

7. All records shall be available for inspection, transcription or copying by the division.

B. Special circumstances

1. Exempt from minimum wage and overtime. With respect to employees exempt from both the minimum wage and overtime provisions of the Act, an employer shall maintain and preserve those records listed in Rule 010.14-101(A)(1)(a) through (e).

2. Exempt from overtime. With respect to employees exempt from the overtime provisions of the Act pursuant to Ark. Code Ann. § 11-

4-211(e), an employer shall maintain and preserve all those records listed in Rule 010.14-102(A)(1), except those outlined in paragraphs (f) and (i).

3. Tipped employees. With respect to each tipped employee whose wages are determined pursuant to Ark. Code Ann. § 11-4-212, the employer shall maintain and preserve payroll or other records containing all the information and data required in Rule 010.14-102(A)(1) and, in addition, the following:

a. A symbol, letter or other notation placed on the pay records identifying each employee whose wage is determined in part by tips.

b. Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070).

c. Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer. The tip credit may vary, provided that at least $2.63 per hour is paid in wages other than gratuities to the employee. *See* Rule 010.14-107(E). The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.

d. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours.

e. Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.

4. Employees receiving board, lodging or other facilities. In addition to other records required by this Rule, an employer who makes a deduction from the wages of employees for board, lodging, or other facilities pursuant to Ark. Code Ann. § 11-4-213 shall maintain and preserve records substantiating the cost of furnishing the board, lodging or other facilities. Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the costs.

5. In addition to other records required by this Rule, an employer shall maintain and preserve the following records as applicable:

a. any certificate of eligibility to pay a sub-minimum wage to a full-time student pursuant to Ark. Code Ann. § 11-4-210(b) and Rule 010.14-103;

b. any permit or authorization to pay a student-learner a sub-minimum wage pursuant to Ark. Code Ann. § 11-4-215 and Rule 010.14-104; and

c. any permit or authorization to employ disabled persons at wages less that the applicable minimum wage pursuant to Ark. Code Ann. § 11-4-214 and Rule 010.14-105.

6. Additional record-keeping requirements are contained in Rule 010.14-106(B) for bona fide executive, administrative and professional employees, and in Rule 010.14-106(D) for employees of state and local government, including employees engaged in fire protection or law enforcement activities.

C. Recording working time

1. Differences between clock records and actual hours worked. Time clocks are not required. In those cases where time clocks are used, employees who voluntarily come in before their regular starting time or remain after their closing time, do not have to be paid for such periods provided, of course, that they do not engage in any work. Their early or late clock punching may be disregarded. Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

2. "Rounding" practices. It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour. Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work.

For enforcement purposes this practice of computing working time will be accepted, provided that it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

010.14-103 Employment of Full Time Students at Sub-Minimum Wages

A. Conditions of employment

1. An employer may pay a full-time student a sub-minimum wage of not less than eight-five percent (85%) of the applicable minimum wage rate, provided the following conditions are met:

a. The employer has, in advance of employment at less than the applicable minimum wage rate, a full-time student certificate issued by the department;

b. The full-time student attends an accredited institution of education within the State of Arkansas on a full-time basis in accordance with the institution's definitions;

c. The employer does not employ the student more than twenty (20) hours per week during times school is in session and not more than forty (40) hours per week during times school is not in session; and

d. Notwithstanding paragraph (c) above, the employer does not employ the student in violation of any applicable child labor laws.

2. A full-time student retains that status during the student's Christmas, summer and other vacations.

3. Notwithstanding paragraph 1(b) above, a full-time student residing in a border town may attend an accredited institution of education within the border sister state on a full-time basis and qualify for the sub-minimum wage allowed by this rule provided the student is otherwise qualified.

B. Full-time student certificates

1. An application for a full-time student certificate shall be made on a form approved by the division and shall require submission of verification from an accredited institution of education within the State of Arkansas that the student is a full-time student in accordance with the institution's definition of same.

2. A full-time student certificate will be issued for a period of

one year and shall not be valid upon its expiration.

3. A full-time student certificate issued by the U. S. Department of Labor pursuant to 29 C.F.R. 519 is acceptable in lieu of one issued by the Division of Labor, however the employer is responsible for complying with the other conditions of employing full-time students at a sub-minimum wage rate provided in Rule 010.14-103(A) above, including payment of wages at not less than eighty-five percent (85%) of the minimum wage established by Ark. Code Ann. § 11-4-210.

010.14-104 Student Learners, Learners and Apprentices

An employer may employ a learner, a student learner, or an apprentice at a sub-minimum wage, provided:

A. For learners and apprentices, the employer has current and valid certification from the U. S. Department of Labor to employ learners and apprentices at a sub-minimum wage pursuant to 29 C.F.R. 520.400 through 520.412 and pays wages to such learners and apprentices at a rate of not less than eighty-five percent (85%) of the minimum wage rate established by Ark. Code Ann. § 11-4-210(a); and

B. For student learners, the employer has current and valid certification from the U. S. Department of Labor to employ student learners at a sub-minimum wage pursuant to 29 C.F.R. 520.500 through 520.508 and pays wages to such learners and apprentices at a rate of not less than eighty-five percent (85%) of the minimum wage rate established by Ark. Code Ann. § 11-4-210(a).

010.14-105 Employment of Workers With Disabilities

A worker with a disability may be employed at a special minimum wage rate pursuant to Ark. Code Ann. § 11-4-214, by obtaining either certification and authorization for such employment from the U. S. Department of Labor or from the Division of Labor.

A. Federal certification

A worker with a disability may be employed at a special minimum wage rate pursuant to a special certificate issued for workers with disabilities by the U. S. Department of Labor pursuant to 29 C.F.R. Part 525, provided the worker with a disability is actually paid as authorized by the U. S. Department

of Labor.

B. State certification

The division will issue a state certificate of authorization to employ a worker with a disability at a special minimum wage rate under the same terms and conditions as the U. S. Department of Labor and for such purpose the provisions of 29 C.F.R., Part 525 (July 2018) are adopted by reference and incorporated herein.

010.14-106 Coverage and Exemptions

A. Employer coverage and exemption from minimum wage and overtime

1. The Act defines "employer" to include "any individual, partnership, association, corporation, business trust, the State, any political subdivision of the State, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee". Ark. Code Ann. § 11-4-203(4)(A).

a. An entity, including an individual, partnership, association, corporation, business trust, governmental agency, or any person or group of persons, acts indirectly in the interest of an employer in relation to an employee when such entity or entities conduct related activities, either through unified operations or common control.

b. Such related activities need not occur in the same establishment or facility.

2. The Act defines "employer" to exclude any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee for any workweek in which fewer than four (4) employees are employed. Ark. Code Ann. § 11-4-203(4)(B).

a. Employees who are exempt from the Act pursuant to Ark. Code Ann. § 11-4-203(3) or Rule 010.14- 106(B) shall be counted as employees for the purpose of determining whether an employer employs fewer than four (4) employees.

A. Employee exemptions from minimum wage and overtime

1. The Act does not apply to any individual employed in a bona fide executive, administrative or professional capacity or as an outside commission-paid salesperson who customarily performs his or her services away from his or her employer's premises taking orders for goods or services. Ark. Code Ann. § 11-4-203(3)(A).

a. For the purpose of defining and delimiting this exemption, the director adopts by reference and incorporates herein 29 C.F.R. Part 541 (July 1, 2005).

b. For the purposes of this exemption, computer employees covered by 29 C.F.R. 541.400 through .402 are hereby defined as "professional employees".

c. For the purposes of this exemption, highly compensated employees covered by 29 C.F.R. 541.601 are hereby defined as an executive, administrative or professional employee if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee.

d. For the purposes of this exemption, executive or administrative employee includes any individual who:

(i) holds public elective office in this state; or

(ii) is selected by the elected official to be a member of his personal staff and is directly supervised by the elected official; or

(iii) is appointed by the elected official to serve on a policymaking level; or

(iv) is an immediate adviser to the elected official with respect to the constitutional or legal powers of his office;

e. Notwithstanding the provisions of Rule 010.14-106(B)(1)(a) above, the salary level test of 29 C.F.R. 541.100(a)(1) (executive employees); 29 C.F.R. 541.200(a)(1) (administrative employees); 29 C.F.R. 541.300(a)(1) (professional employees); and 29 C.F.R.

541.400(b) (computer employees) as it applies to charitable and religious organizations, and employers who have gross annual sales of less than $500,000 per year, shall be at a rate of at least $360 per week on a salary or fee basis.

f. It is recognized that the primary duties of the following legislative employees require the employees to customarily and regularly perform tasks or work involving the exercise of discretion and independent judgment with respect to matters of significance in the course of assisting members of the General Assembly, and they are professional, executive, or administrative employees for the purpose of this exemption: legislative attorneys, legislative auditors, legislative editors, and legislative analysts. Nothing in this provision limits the application of other exemptions to legislative employees. "Legislative employee" has the same meaning as defined by Ark. Code Ann. § 10-2-129.

2. The Act does not apply to students performing services for any school, college, or university in which they are enrolled and are regularly attending classes. Ark. Code Ann. § 11-4-203(3)(B).

3. The Act does not apply to any individual employed by the United States government. Ark. Code Ann. § 11-4-203(3)(C).

4. The Act does not apply to any individual engaged in the activities of any educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to the organizations gratuitously. Ark. Code Ann. § 11-4-203(3)(D).

a. This exemption does not apply to an individual performing services for an employer engaged in a for-profit enterprise in return, exchange or in anticipation of a donation or compensation to the educational, charitable, religious, or nonprofit organization.

5. The Act does not apply to any bona fide independent contractor. Ark. Code Ann. § 11-4-203(3)(E). The test for determining the status of an individual as an employee or an independent contractor involves consideration of twenty (20) factors, specifically:

a. A person for whom a service is performed has the right to require compliance with instructions, including without limitation when, where, and how a worker is to work;

b. A worker is required to receive training, including without limitation through:

(i) Working with an experienced employee;

(ii) Corresponding with the person for whom a service is performed;

(iii) Attending meetings; or

(iv) Other training methods;

c. A worker's services are integrated into the business operation of the person for whom a service is performed and are provided in a way that shows the worker's services are subject to the direction and control of the person for whom a service is performed;

d. A worker's services are required to be performed personally, indicating an interest in the methods used and the results;

e. A person for who a service is performed hires, supervises, or pays assistants;

f. A continuing relationship exists between a worker performing services and a person for whom a service is performed;

g. A worker performing a service has hours set by the person for whom a service is performed;

h. A worker is required to devote substantially full time to the business of the person for whom a service is performed, indicating the person for whom a service is performed has control over the amount of time the worker spends working and by implication restricts the worker from obtaining other gainful work;

i.(A) The work is performed on the premises of the person for whom a service is performed, or the person for whom a service is performed has control over where the work takes place.

(B) A person for whom a service is performed has control over where the work takes place if the person as the right to:

(1) Compel the worker to travel a designated route;

(2) Compel the worker to canvass a territory within a certain time; or

(3) Require that the work be done at a specific place, especially if the work could be performed elsewhere;

j. A worker is required to perform service in the order or sequence set by the person for whom a service is performed or the person for whom a service is performed retains the right to set the order or sequence;

k. A worker is required to submit regular oral or written reports to the person for whom a service is performed;

l. A worker is paid by the hour, week, or month except when he or she is paid by the hour, week, or month only as a convenient way of paying a lump sum agreed upon as the cost of a job;

m. A person for whom a service is performed pays the worker's business or traveling expenses;

n. A person for whom a service is performed provides significant tools and materials to the worker performing services;

o. A worker invests in the facilities used in performing the services;

p. A worker realizes a profit or suffers a loss as a result of the services performed that is in addition to the profit or loss ordinarily realized by an employee;

q. A worker performs more than de minimis services for more than one (1) person or firm at the same time, unless the persons or firms are part of the same service arrangement;

r. A worker makes his or her services available to the general public on a regular and consistent basis;

s. A person for whom a service is performed retains the right to discharge the worker; and

t. A worker has the right to terminate the relationship with the person for whom a service is performed at any time he or she wishes without incurring liability.

6. The Act does not apply to any individual employed by an agricultural employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year. Ark. Code Ann. § 11-4-203(3)(F).

7. The Act does not apply to the parent, spouse, child or other member of an agricultural employer's immediate family. Ark. Code Ann. § 11-4-203(3)(G).

8. The Act does not apply to an individual who:

a. is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

b. commutes daily from his or her permanent residence to the farm on which he or she is so employed; and

c. has been employed in agriculture fewer than thirteen (13) weeks during the preceding calendar year. Ark. Code Ann. § 11-4-203(3)(H).

9. The Act does not apply to a migrant worker who:

a. is sixteen (16) years of age or under and is employed as a hand-harvest laborer;

b. is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

c. is employed on the same farm as his or her parent(s); and

d. is paid the same piece-rate as employees over age sixteen (16) years are paid on the same farm. Ark. Code Ann. § 11-4-203(3)(I).

10. The Act does not apply to any employee principally engaged in the range production of livestock. Ark. Code Ann. § 11-4-203(3)(J).

11. The Act does not apply to any employee employed in planting or tending trees, cruising, surveying or felling timber or in preparing or transporting logs or other forestry products to the mill, processing plants or railroad or other transportation terminal if the number of employees employed by his or her employer in the forestry or lumbering operations does not exceed eight (8). Ark. Code Ann. § 11-4-203(3)(K).

12. The Act does not apply to any employee employed by a non-profit recreational or educational camp that does not operate for more than seven (7) months in any calendar year. Ark. Code Ann. § 11-4-203(3)(L).

13. The Act does not apply to an employee of a nonprofit child welfare agency who serves as a houseparent who is:

a. directly involved in caring for children who reside in residential facilities of the nonprofit child welfare agency and who are orphans, in foster care, abused, neglected, abandoned, homeless, in need of supervision or otherwise in crisis situations that lead to out-of-home placements; and

b. compensated at an annual rate of not less than thirteen thousand dollars ($13,000) or at an annual rate of not less than ten thousand dollars ($10,000) if the employee resides in the residential facility and receives board and lodging at no cost. Ark. Code Ann. § 11-4-203(3)(M).

14. The Act shall not apply to any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto. Ark. Code Ann. § 11-4-203(3)(N). *See also* 29 U.S.C. 213(a)(8).

15. The Act shall not apply to any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves. Ark. Code Ann. § 11-4-203(3)(O). *See also* 29 U.S.C. 213(a)(15). For the purposes of defining these terms and in order to implement, administer and enforce this exemption, the director adopts by

reference and incorporates herein 29 C.F.R. Part 552 ~~(July 1, 2005)~~.

16. The Act shall not apply to any employee engaged in the delivery of newspapers to the consumer. Ark. Code Ann. § 11-4-203(3)(P). *See also* 29 U.S.C. 213(d).

17. The Act shall not apply to any home worker engaged in the making of wreaths composed principally of natural holly, pine, cedar or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths). Ark. Code Ann. § 11-4-203(3)(Q). *See also* 29 U.S.C. 213(d).

18. An individual employed by an establishment that is an organized camp or a religious or nonprofit educational conference center if:

a. The organized camp or a religious or nonprofit education conference center does not operate for more than seven (7) months in a calendar year; or

b. During the preceding calendar year, the average receipts of the organized camp or a religious or nonprofit educational conference center for any six (6) months of the preceding calendar year were not more than thirty-three and one-third percent (33 1/3%) of the average receipts of the organized camp or a religious or nonprofit educational conference center for the other six (6) months of the preceding calendar year.

Ark. Code Ann. § 11-4-203(3)(R).

C. Employee exemptions from overtime only

1. The following employees are exempt from the overtime provisions of Ark. Code Ann. § 11-4-211(a):

a. any employee of an agricultural employer;

b. any employee with respect to who the U.S. Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to 49 U.S.C. 31502;

c. any employee of an employer engaged in the operation of a rail carrier subject to 49 U.S.C. part A of subtitle IV;

d. any employee of a carrier by air subject to the provisions of title II of the federal Railway Labor Act;

e. any individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

f. any employee employed as a seaman;

g. any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located

(i) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as ~~compiles~~ compiled by the U. S. Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the U. S. Office of Management and Budget which has a total population in excess of one hundred thousand, or

(ii) in a city or town of twenty-five thousand population or less which is part of such an area but is at least 40 airline miles from the principal city in such an area;

h. any salesman:

(i) partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles or implements to the ultimate purchaser; or

(ii) primarily engaged in selling trailers, boats, or aircraft, if he is employed by a non-manufacturing establishment primarily engaged in the business of selling, trailers, boats, or aircraft to the ultimate purchaser;

i. any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan;

j. any employee employed in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which

are used exclusively for supply and storing of water at least ninety percent (90%) of which was ultimately delivered for agricultural purposes during the preceding calendar year;

k. any employee employed in connection with livestock auction operations, provided such employee is primarily employed during the week by the same employer in agriculture and is paid for his employment in connection with such livestock auction operations at a rate not less than the minimum wage rate prescribed by Ark. Code Ann. § 11-4-210(a);

l. any employee employed within the area of production by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm if no more than five employees are employed in the establishment in such operations;

m. any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup;

n. any employee engaged:

(i) in the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the state; or

(ii) in transportation, whether or not performed by the farmer, between the farm and any point within the state of persons employed or to be employed in the harvesting of fruits or vegetables;

o. any driver employed by an employer engaged in the business of operating taxicabs;

p. any employee of a public agency who in any work week is employed in fire protection activities or any employee who in any workweek is employed in law enforcement activities (including security personnel in correction institutions or jails), if the public agency employs during the workweek less than five (5) employees in fire protection or law enforcement activities, as the case may be;

q. any employee who is employed in domestic service in a

household and who resides in such household;

r. any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife System if such employee:

(i) is an employee of a private entity engaged in providing services or facilities in such location, and

(ii) receives compensation for employment in excess of 56 hours in any workweek at a rate not less than one and one-half (1 ½) times the regular rate at which he is employed; and

s. a criminal investigator who is paid availability pay under 5 U.S.C. 5545a.

D. Partial overtime exemptions—public agencies

1. In lieu of overtime compensation, Ark. Code Ann. § 11-4-211 (f) provides that the State or any political subdivision of the State may award compensatory time off at a rate of not less than one and one-half (1½) hours for each hour of employment for which overtime compensation would otherwise be required. The compensatory time off may be provided only:

a.(i) Pursuant to applicable provisions of a collective bargaining agreement, memorandum of understanding or other agreement between the public agency and representatives of such employees; or

(ii) In the case of an employee not covered by Rule 010.14-106(D)(1)(a)(i) above, an agreement or understanding arrived at between the employer and the employee before the performance of the work; and

b. If the employee has not terminated employment and has not accrued compensatory time in excess of the following:

(i) Four hundred eighty (480) hours for police, firefighters, emergency response personnel and employees engaged in seasonal active ties; or

(ii) Two hundred forty (240) hours for any public employee not otherwise exempt or covered by Rule 010.14-106(D)(1)(b)(i) above.

2. Ark. Code Ann. § 11-4-211~~(f)~~(e) provides that no public agency shall be deemed to have violated the overtime provisions of the Act with respect to the employment of any employee in fire protection activities or in law enforcement activities, including security personnel in correctional institutions, provided that the public agency pays overtime pay in compliance with 29 U.S.C. 207(k).

3. In order to implement, administer and enforce the provisions of Ark. Code Ann. § 11-4-211(f) and(g), as well as Rule 010.14-106(D)(1) and (2) above, the director adopts by reference and incorporates herein 29 C.F.R. Part 553 (July 1, 2018).

010.14-107 Wage Payments

A. Generally

1. Payment of wages for minimum wage or overtime shall be made in currency, check drawn on an account with sufficient funds or by electronic deposit into an employee's account in compliance with Ark. Code Ann. §11-4-402. Payment may also be made by providing a debit card preloaded with the wage payment in compliance with Ark. Code Ann. § 11-4-403(f). If wages are paid by providing a preloaded debit card, at least one (1) free withdrawal shall be available for the funds for each deposit of wages loaded onto the debit card.

2. Payment of wages shall be made free and clear and must be paid finally and unconditionally.

3. Special rules apply for tipped employees whose employer takes a credit against the minimum wage; employees who receive board, lodging or other facilities for which an employer takes credit against the minimum wage; and for public employees who receive compensatory time off in lieu of overtime pursuant to these Rules and the Act.

B. Deductions from minimum wage

1. An employer may not make deductions from the minimum wage and overtime wages required by Ark. Code Ann. §§ 11-4-210 and -211 except those authorized by the Rules, deductions authorized or required by law, and deductions not otherwise prohibited which are for the employee's benefit and authorized by the employee in writing.

2. An employer may not make deductions from the applicable minimum wage rate for such items, including but not limited to the following: spoilage or breakage; cash or inventory shortages or losses; and fines or penalties for lateness, misconduct, or quitting by an employee without notice.

C. Payments to third persons

1. Taxes. Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency are included as wages paid to the employee. No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

2. Court order. Where an employer is legally obliged by order of a court of competent jurisdiction to pay a sum for the benefit or credit of the employee to a creditor, trustee, or other third party, such as a wage garnishment, wage attachment, income withholding order for child support, or bankruptcy proceeding, payment to the third person is equivalent to payment to the employee, provided that neither the employer nor any person acting in his behalf or in his interest derives any profit or benefit from the transaction.

3. Wage assignments. Where an employer is directed by a voluntary wage assignment or order of the employee to pay a sum for the benefit of the employee to a third party, payment to the third person is equivalent to payment to the employee, provided that neither the employer nor any person acting in his behalf or in his interest derives any profit or benefit from the transaction. This includes sums authorized by the employee in writing for such items as U.S. savings bonds, charitable contributions, insurance premiums (paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it), and union dues.

D. Allowance for board, lodging, apparel, or other items and services

1. An employer of an employee engaged in an occupation in which board, lodging, apparel or other items and services are customarily and regularly furnished to the employee for his or her benefit is entitled to an allowance against the minimum wage for the reasonable value of board, lodging, apparel or other items and services in an amount not to exceed the

fair and reasonable cost of the board, lodging, apparel, or other items and services. This allowance shall not be included in the wages for hours worked in excess of forty (40) hours per workweek.

2. Board, lodging, apparel or other items and services are not "furnished" to the employee unless the employee receives the benefit and his acceptance is voluntary and uncoerced. For example, an allowance cannot be taken for meals not actually eaten.

3. It does not matter whether the employer calculates the allowance as additions to or deductions from wages.

4. The determination of reasonable cost shall be based on 29 U.S.C. § 203(m) as it existed on January 1, 2019, and 29 C.F.R. 531. "Reasonable cost" does not include a profit to the employer and is not more than the actual cost to the employer of the board, lodging, apparel or other item or service.

5. The employer is not entitled to an allowance for the cost of board, lodging, apparel or other items and services furnished to the employee, but primarily for the benefit of the employer. Apparel that has a company or business logo shall be considered primarily for the benefit of the employer.

6. The employer is not entitled to an allowance for the cost of board, lodging apparel or other items and services that are required by the employer as a condition of employment. For example, if an employer requires as a condition of employment, that the employee reside on the employer's premises, a lodging allowance is unavailable to the employer.

E. Tipped employees

1. Every employer of an employee engaged in an occupation in which gratuities have been customarily and usually constituted and have been recognized as a part of remuneration for hiring purposes shall be entitled to an allowance for gratuities as part of the hourly wage rate provided in Ark. Code Ann. § 11-4-210 in an amount of no less than three dollars and sixty-two cents ($3.62) per hour, provided that the employee actually received that amount in gratuities and that the application of the gratuity allowance results in payment of wages other than gratuities to tipped employees, including full-time students subject to the provisions Ark. Code Ann. §11-4-210(b), of no less than two dollars and sixty-three cents ($2.63) per

hour. For example, if the minimum wage rate is $10.00 per hour, then the tip credit may be up to $7.37 per hour and the minimum cash wage is $2.63 per hour.

2. Conditions for taking the tip credit.

a. The tip credit is only available for those occupation in which tips have been "customarily and usually" recognized as part of the remuneration for hiring purposes. This includes waiters, waitresses, bellhops, beauty operators, and barbers, provided they actually receive and retain tips. For any other occupation, it will be "customarily and usually" recognized as part of the remuneration for hiring purposes if the employee actually receives tips in excess of $20 per month.

b. The tip credit may be taken only for hours worked by the employee in an occupation in which he qualifies as a "tipped employee".

(i) Under employment agreements or practices requiring tips to be turned over or credited to the employer to be treated by him as part of his gross receipts, the employer must pay the employee the full minimum hourly wage rate because the employee is not a "tipped employee."

(ii) Dual jobs. Whenever an employee is required to work twenty minutes or more in any occupation in which gratuities have not been recognized as part of the remuneration for hiring purposes, the rate for the entire hour shall be at least the applicable minimum wage rate without a tip credit.

3. Payments which constitute tips.

a. A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed. It is to be distinguished from payment of a charge, if any, made for the service. A compulsory charge for service, such as 10% of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to his employees, cannot be counted as a tip.

b. In addition to cash, sums presented by customer which an employee keeps as his own, tips received by an employee include, within the meaning of the Act, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the

employee pursuant to direction from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described, such as tickets, passes or merchandise, are not counted as tips.

c. Tip pooling. Where employees practice tip splitting, as where waiters give a portion of their tips to the busboys, both the amounts retained by the waiters and those given the busboys are considered tips of the individual employees who retain them. Similarly, where an accounting is made to an employer for his information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as his own are counted as his tips.

4. The tip credit is in addition to any credit for board, lodging, apparel or other items or services pursuant to Ark. Code Ann. § 11-4-213 and Rule 010.14-107(D).

5. Overtime payments. When overtime is worked by a tipped employee, his regular rate of pay is determined by dividing his total remuneration for employment in any workweek by the total number of hours actually worked by him in that workweek. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer; any allowance taken by the employer for board, lodging, apparel or other items and services as authorized by Ark. Code Ann. § 11-4- 213 and Rule 010.14-107(D); and the cash wages paid including commissions and certain bonuses or other payments paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate of pay for determining overtime payments.

6. Failure to maintain tip records. It is the employer's obligation to maintain tip records as required by Rule 010.14-102(B)(3) if the employer utilizes a tip credit or allowance. If the employer fails to maintain such records, the employer is not entitled to a tip credit or allowance against the minimum wage unless the employer can prove that the employee against who a tip credit or allowance is sought actually received and retained each workweek tips in an amount equal to or greater than the tip credit or allowance claimed.

F. Effect of collective bargaining agreements

Allowances as part payment of the applicable minimum wage for gratuities, board, lodging, apparel or other items and services shall not be permitted to the extent such deductions from cash wages are not permitted under the terms of a collective bargaining agreement applicable to an employee.

010.14-108 Hours Worked

A. Employees "suffered or permitted" to work

1. Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time.

2. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

3. In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

B. Waiting Time

1. Generally. Whether waiting time is time worked under the Act depends upon particular circumstances. The determination involves a scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait or they may show that he waited to be engaged.

2. On duty. A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for

machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait.

3. Off duty. Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

4. On-call time. An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while “on call”. An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.

C. Rest and meal periods

1. Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

2. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough

under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

D. Sleeping time and certain other activities

1. Under certain conditions an employee is considered to be working even though some of his time is spent in sleeping or in certain other activities.

2. Less than 24-hour duty. An employee who is required to be on duty for less than 24 hours is working even though he is permitted to sleep or engage in other personal activities when not busy. A telephone operator, for example, who is required to be on duty for specified hours is working even though she is permitted to sleep when not busy answering calls. It makes no difference that she is furnished facilities for sleeping. Her time is given to her employer. She is required to be on duty and the time is worktime.

3. Duty of 24 hours or more.

a. Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than 8 hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted nights sleep. If sleeping period is of more than 8 hours, only 8 hours will be credited. Where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked.

b. Interruptions of sleep. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted. If the employee cannot get at least 5 hours sleep during the scheduled period the entire time is working time.

4. Residing on the employer’s premises or working at home.

An employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home.

E. Lectures, meetings and training programs

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

1. Attendance is outside of the employee's regular working hours;

2. Attendance is in fact voluntary;

3. The course, lecture, or meeting is not directly related to the employee's job; and

4. The employee does not perform any productive work during such attendance.

F. Travel time

1. Home to work; ordinary situation.

An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

2. Home to work in emergency situations.

There may be instances when travel from home to work is overtime. For example, if an employee who has gone home after completing his day's work

is subsequently called out at night to travel a substantial distance to perform an emergency job for one of his employer's customers all time spent on such travel is working time. The division is taking no position on whether travel to the job and back home by an employee who receives an emergency call outside of his regular hours to report back to his regular place of business to do a job is working time.

3. Home to work on special one-day assignment in another city.

A problem arises when an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city. For example, an employee who works in Washington, DC, with regular working hours from 9 a.m. to 5 p.m. may be given a special assignment in New York City, with instructions to leave Washington at 8 a.m. He arrives in New York at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington at 7 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it is like travel involved in an emergency call (described in Rule 010.14-108(F)(2)), or like travel that is all in the day's work (see Rule 010.14-108(F)(4)). All the time involved, however, need not be counted. Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

4. Travel that is all in the day's work.

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked.

5. Travel away from home community.

Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy the ~~Divisions~~ division will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

6. When private automobile is used in travel away from home community.

If an employee is offered public transportation but requests permission to drive his car instead, the employer may count as hours worked either the time spent driving the car or the time he would have had to count as hours worked during working hours if the employee had used the public conveyance.

7. Work performed while traveling.

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, auto- mobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

010.14-109 Overtime Compensation

A. For the purposes of determining and calculating overtime pay requirements and what constitutes an employee's "regular rate" of pay, the agency adopts and incorporates herein the provisions of 29 C.F.R. 778 as applicable.

B. Hospitals and residential care facilities

Hospitals and residential care facilities shall be deemed in compliance with Ark. Code Ann. § 11-4-211 provided they comply with the provisions for computing overtime pursuant to 29 U.S.C. § 207 (j) and 29 C.F.R. 778.601, which are adopted and incorporated herein.

C. Local enterprise engaged in the wholesale or bulk distribution of petroleum products.

An independently owned and controlled local enterprise engaged in the wholesale or bulk distribution of petroleum products shall be deemed in compliance with Ark. Code Ann. § 11-4-211 provided it complies with the provisions of determining overtime pursuant to 29 U.S.C. § 207(b) and 29 C.F.R. 794.101 through 794.144, which are adopted and incorporated herein.

D. Employers subject to collective bargaining agreement covered by 29 U.S.C. § 207(b).

Employers subject to collective bargaining agreement covered by 29 U.S.C. § 207(b) shall be deemed in compliance with Ark. Code Ann. § 11-4-211 provided they comply with the provisions of determining overtime pursuant to 29 U.S.C.§ 207(b) and 29 C.F.R. 778.602, which are adopted and incorporated herein.

E. Employment necessitating irregular hours of work.

Employers who pay overtime for work covered by the provisions of 29 U.S.C. § 207(f) shall be deemed in compliance with Ark. Code Ann. § 11-4-211 provided they comply with the provisions of 29 U.S.C. § 207(f) and 29 C.F.R. 778.402 through 778.421 which are adopted and incorporated herein.

F. Employment at piece rates.

Employers who pay on a piece rate basis for overtime pursuant to the provisions of 29 U.S.C. § 207(g) shall be deemed in compliance with Ark. Code Ann. § 11-4-211 provided they comply with the provisions of 29 U.S.C. § 207(g) and 29 C.F.R. Part 548, which are adopted and incorporated herein.

G. Retail or service establishment whose employees are compensated principally by commissions.

Retail or service establishments shall be deemed in compliance with Ark. Code Ann. § 11-4-211 provided they comply with the provisions of 29 U.S.C. § 207 (i) and 29 C.F.R. 779.410 through 779.421, which are adopted and incorporated herein.

010.14.110 Joint Employment

A. A single individual may stand in the relation of an employee to two or more employers at the same time since there is nothing in the Act which prevents an individual employed by one employer from also entering into an employment relationship with a different employer. A determination of whether the employment by the employers is to be considered joint employment or separate and distinct employment for purposes of the Act depends upon all the facts in the particular case. If all the relevant facts establish that two or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer (or employers) in determining his own responsibilities under the Act. On the other hand, if the facts establish that the employee is employed jointly by two or more employers, *i.e*., that employment by one employer is not completely disassociated from employment by the other employer(s), all of the employee's work for all of the joint employers during the work-week is considered as one employment for purposes of the Act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the Act, including the overtime provisions, with respect to the entire employment for the particular workweek. In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers.

B. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

1. Where there is an arrangement between the employers to share

the employee's services, as, for example, to interchange employees; or

2. Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

3. Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

010.14-111 Enforcement

A. Employee Claims

1. An employee may file a claim with the director charging that an employer has violated Ark. Code Ann. §§ 11-4-210 or -211 with respect to minimum wage and overtime as to the complaining employee or other person. Such claim shall be on a form or process approved by the division.

2. The division shall promptly investigate each claim and at the conclusion of such investigation shall issue a "Notice of Assessment" pursuant to Rule 010.14.111(B) or a letter advising the employer and the employee that no violation was found.

3. The name of any employee identified in a claim shall be kept confidential until the director issues a Notice of Assessment. The Notice of Assessment is an "administrative complaint" within the meaning of Ark. Code Ann. § 11-4-220.

B. Notice of Assessment

1. Whenever the manager determines that there has been a violation of the Act or these Rules, 010.14-100 *et seq*., the manager shall issue a Notice of Assessment, which shall include the following:

a. the dates of any violations;

b. the statute or Rule violated;

c. the amount of any back wages assessed;

d. the amount of any civil money penalty assessed and the reasons for such a penalty;

e. the amount of any liquidated damages assessed and the reasons for such an assessment;

f. the name(s) of any employees on whose behalf back wages are assessed;

g. a statement of how to contest the assessment and obtain an administrative hearing; and

h. a statement that the failure to contest the assessment will result in the manager's decision becoming the final administrative determination.

2. A Notice of Assessment may be issued as a result of investigations initiated by a claim filed by an employee, as well as a result of investigations initiated by the division.

3. A Notice of Assessment shall be delivered to the employer by certified mail. Where service by certified mail is not accepted or unclaimed by the party, notice shall be deemed received on the date of attempted delivery. Where service is not accepted or unclaimed, the manager may exercise discretion to serve the Notice of Assessment by regular mail.

C. Civil Money Penalties

1. The manager may issue a civil money penalty for the following:

a. willfully hindering or delaying an investigation under the Act or these Rules or willfully hindering or delaying any representative of the director in the performance of his duties in the enforcement of the Act or these Rules;

b. willfully failing to make, keep, or preserve any record required by the Act or these Rules or willfully falsifying such records;

c. willfully refusing to make any record accessible to the division upon demand or willfully refusing to furnish a sworn statement

of the record or any other information required for the proper enforcement of the Act and these Rules;

d. willfully failing to post a summary of the law as required by Ark. Code Ann. § 11-4-216;

e. paying or agreeing to pay wages at a rate less than required by the Act;

f. otherwise willfully violating any provision of the act or any Rule issued thereunder; and

g. willfully discharging or in any other manner willfully discriminating against any employee because the employee has:

(i) made a complaint to his or her employer or to the director or his authorized representative regarding compliance with the Act or these Rules;

(ii) instituted or is about to institute any proceeding under or related to this Act; or

(iii) testified or is about to testify in any proceeding under or related to this Act.

2. The amount of any civil money penalty shall be between $50 and $1000 for each violation. Each violation shall constitute a separate offense. For the purposes of Rule 010.14-111(C)(1)(g), each day the violation continues shall constitute a separate offense.

3. In determining the amount of a civil penalty, the manager shall consider the appropriateness of the penalty to the size of the business and the gravity of the violation.

a. Matters which indicate that the gravity of the matter justifies maximum civil penalty assessments are:

(i) multiplicity of violations;

(ii) recurring violations;

(iii) falsification and/or concealment of information

or records; and

(iv) failure to assure future compliance.

b. The size of the business includes the number of employees and the gross volume of sales.

4. Assessment of a civil money penalty shall be made no later than two (2) years from the date of the occurrence of the violation.

D. Liquidated damages

The manager may assess liquidated damages to be paid an employee in an amount up to but not greater than the back wages assessed on behalf of the employee. Liquidated damages shall be assessed only for willful violations of the Act or these Rules.

E. Contesting an assessment

1. An employer may contest an assessment made by the manager by filing a written request for a hearing with the Director of Labor, 900 West Capitol, Suite 400, Little Rock, AR 72201. The written request must be made within fifteen (15) days after the employer's receipt of the Notice of Assessment or the assessment will become final.

2. A written request for a hearing shall be referred to a hearing officer designated by the director and shall be handled as an adjudicative matter pursuant to Rule 010.14-007.

010.14-112 Interpretation And Application of Rules

The division may rely on the interpretations of the U. S. Department of Labor and federal precedent established under the Fair Labor Standards Act in interpreting and applying the provisions of the Act and Rule 010.14-100 through -113, except to the extent a different interpretation is clearly required.

010.14-113 Repealer, Severability, Effective Date and History

A. All previous rules of the Arkansas Department of Labor regarding the

Arkansas Minimum Wage Act, Ark. Code Ann. §§ 11-4-201 *et seq.* are hereby repealed.

B. If any provision of these Rules or their application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications which can be given affect without the invalid provision or application, and to this end the provisions of these Rules are declared to be severable.

C. The effective date of these Rules is January 26, 2007.

D. History.

1. The Arkansas Minimum Wage Act, Ark. Code Ann. §§ 11-4-201 *et seq.* was initially passed in 1968. 25 Ark. Acts 1968 (1st Ex. Session). The Labor Board of the State of Arkansas promulgated administrative rules effective September 1979. These rules were repealed and emergency rules were adopted effective October 1, 2006. The emergency rules were replaced by these rules effective January 26, 2007

Note: The Labor Board was abolished and all its functions, powers, and duties transferred to the Director of the Department of Labor by Act 536 of 1989.

2. Effective July 2, 2020 these rules were amended to change references of "regulation" to "rule" and to change the name of the "Department of Labor" to the "Department of Labor and Licensing," as well as the names of other organizational designations within the department. The amendments incorporated a statutory exemption and updated the language on the tip credit. The amendments also conformed to statutory changes including the test for independent contractor (2019 Ark. Acts 1055); the allowance for board, lodging, apparel and other facilities; the statute of limitations; payment of wages by preloaded debit card (2019 Ark. Acts 853). References to federal law were updated and grammatical and stylistic changes made.