

## Frequently Asked Questions (FAQs) – Wages & Work Hours

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**Question:** When is overtime due?

**Answer:** For covered, nonexempt employees, state law requires overtime pay at a rate of not less than one and one-half times an employee's regular rate of pay after 40 hours of work in a week of seven days. Some exceptions to the 40 hours per week standard apply under special circumstances to police officers and firefighters employed by public agencies and to employees of hospitals and nursing homes.

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**Question:** What are the new overtime laws?

**Answer:** Under the new Fair Pay rules, workers earning less than \$23,660 per year, or \$455 per week, are guaranteed overtime protection. To learn more about the new regulations that take effect on August 23, 2004 visit the Federal Department of Labor's website at:

[www.dol.gov/whd/regs/compliance/fairpay/main.htm](http://www.dol.gov/whd/regs/compliance/fairpay/main.htm)

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**Question:** Does an employer have to give lunch breaks, coffee breaks or rest periods?

**Answer:** No. There is no statute that requires an employer to provide such breaks; however, deductions cannot be made from wages if less than 30 minutes is allowed for the breaks.

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**Question:** What is the Fair Labor Standards Act?

**Answer:** The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Overtime pay, at a rate of not less than one and one-half times their regular rates of pay, is required after 40 hours of work in a workweek.

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**Question:** What notices must be given before an employee is terminated or laid off?

**Answer:** New Mexico is an "at-will" work state, and an employee may be discharged at any time without reason or notice, in the same way an employee may quit without reason or notice. There are no requirements for notice to an employee prior to termination or lay-off. In certain cases, employers must give the workers advanced notice of mass layoffs or plant closure. The WARN Act provides specific information on advance notice, employer responsibility and workers' rights during mass layoffs or plant closure. For more information about the WARN Act, visit: [www.doleta.gov/layoff/warn.cfm](http://www.doleta.gov/layoff/warn.cfm) and for information about Rapid Response, visit: [www.dws.state.nm.us/dws-RapidR.html](http://www.dws.state.nm.us/dws-RapidR.html).

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**Question:** Can an employer require an employee to work more than 8 hours a day or more than 40 hours a week?

**Answer:** Yes. An employer can require an employee to work overtime but must pay the rate of time-and-a-half the regular rate of the employee's pay for over 40 hours in a seven-day period. An employer can require an employee to work up to 16 hours in a 24-hour day except in emergency situations. Firemen, law enforcement officers, or farm or ranch hands whose duties require them to work longer hours or employees primarily in a stand-by position are exempt from these overtime laws.

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**Question:** Does an employer have to pay holiday, sick, or severance pay?

**Answer:** No. There is no statute that requires an employer to pay such wages.

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**Question:** What is the minimum wage in New Mexico?

**Answer:** The state minimum wage is \$7.50 per hour, effective January 1, 2009.

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**Question:** I didn't get my last paycheck what can I do?

**Answer:** You may file a "Statement of Wage Claim" with NMDWS Wage & Hour. The claim form can be found at: [www.dws.state.nm.us/new/Labor\\_Relations/wage&hour.html](http://www.dws.state.nm.us/new/Labor_Relations/wage&hour.html).

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**Question:** How many hours is full-time employment? How many hours is part-time employment?

**Answer:** State statute and The Fair Labor Standards Act (FLSA) do not define full-time employment or part-time employment. This is a matter generally to be determined by the employer. Whether an employee is considered full-time or part-time does not change the application of state statute or the FLSA.

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**Question:** I am having a baby and want to take some time off from work after the baby's birth. How much time am I entitled to take?

**Answer:** The Family and Medical Leave Act (FMLA) of 1993 entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave each year with continued group health insurance coverage during the leave for specified family and medical reasons, including the birth or adoption of a child, or placement of foster children.

The first step is to determine if your employer is covered under the Act. The Act covers private employers who employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Public agencies, as well as public elementary and secondary schools, are covered employers regardless of the number of employees.

The next step is to determine your eligibility under the Act. To be eligible, you must have worked for your employer for at least 12 months, have worked at least 1,250 hours during the past 12 months, and work at a location where your employer employs at least 50 employees at the site or within 75 miles of the site. The 12 months you are required to have worked for your employer do not have to be consecutive. FMLA is enforced by the Wage and Hour Division in the Employment Standards Administration of the U.S. Department of Labor.

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**Question:** What is a Wage Determination?

**Answer:** A Wage Determination is a set of wages issued by the NMDWS Labor & Industrial Bureau for Public Works projects in the state of New Mexico, as required by the Public Works Minimum Wage Act for construction, demolition, or renovation purposes. Public Works projects costing \$60,000 or more and funded in part by state or local money require a wage decision.

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**Question:** When are pay raises required?

**Answer:** Pay raises are generally a matter of agreement between an employer and employee.

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**Question:** Who is responsible for paying the worker's salary and benefits, if any, during the pregnancy leave time?

**Answer:** Issues concerning pregnancy leave time are covered under the Family and Medical Leave Act (FMLA). FMLA leave is generally unpaid leave. However, an employee may elect, or an employer may require an employee, to substitute the employee's accrued paid leave (if available) for some or all of the FMLA leave period.

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**Question:** Is extra pay required for weekend or night work?

**Answer:** Extra pay for working weekends or nights is a matter of agreement between the employer and the employee (or the employee's representative). State statute does not require extra pay for weekend or night work. However, state statute does require that covered, nonexempt workers be paid not less than time and one-half the employee's regular rate for time worked over 40 hours in a week of seven days.

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**Question:** Can an employee be required to perform work outside of the employee's job description?

**Answer:** Yes. State and federal law do not limit the types of work employees age 18 and older may be required to perform. However, there are restrictions on what type of work employees under the age of 18 can do (Please see child labor information at:

[www.dws.state.nm.us/new/Labor\\_Relations/childlabor.html](http://www.dws.state.nm.us/new/Labor_Relations/childlabor.html)).

This is true whether or not the work asked of the employee is listed in the employee's job description.

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**Question:** What hours can youth work?

**Answer:**

Students 14 and 15 years of age may not be employed:

- During school hours, except as provided for in work experience and career exploration programs.
- Before 7:00 a.m. or after 7:00 p.m. except from June 1 through Labor Day when evening hours are extended to 9:00 p.m.
- More than 3 hours a day on a school day.
- More than 18 hours a week in a school week.
- More than 8 hours a day on a non-school day.

There are no hour or time restrictions for students 16 years of age or over.

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**Question:** When can an employee's scheduled hours of work be changed?

**Answer:** According to state statute, it is the duty of management to inform an employee of such change on the day prior during the working day.

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**Question:** I just found out that I am pregnant. Can my employer fire me or reassign me?

**Answer:** The New Mexico Human Rights Act, which covers employers with four or more employees, prevents an employer from firing you because you are pregnant. You can file a complaint with the New Mexico Human Rights Bureau if you feel that this has happened to you. For more information, please visit: [www.dws.state.nm.us/new/Labor\\_Relations/humanrights.html](http://www.dws.state.nm.us/new/Labor_Relations/humanrights.html).

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**Question:** What is the New Mexico state minimum wage for workers who receive tips?

**Answer:** If the employee regularly and customarily receives \$30.00 or more a month in tips, an employer's cash payment to that employee must be at least \$2.13 per hour. The employer may consider tips as part of wages making up the difference of the \$7.50 per hour, but the tips combined with the employer's cash wage shall not equal less than the state minimum wage.

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**Question:** How can I file a complaint if I believe my Family and Medical Leave Act (FMLA) rights have been violated?

**Answer:** The Family and Medical Leave Act (FMLA) is an act issued by the U.S. Department of Labor. To file a complaint contact the U.S. Department of Labor at:

Albuquerque District Office  
US Department of Labor  
ESA Wage & Hour Division  
500 Fourth Street, Suite 403  
Albuquerque, NM 87102  
(505) 245-2142

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**Question:** Can an employer pay young people, under the age of 18, less than minimum wage?

**Answer:** Yes. This includes: students regularly enrolled in a primary or secondary school working after school hours or on vacation; persons 18 or younger who are not students in a primary, secondary, vocational, or training school; and persons 18 or younger who are not graduates of a secondary school.

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**Question:** Must a youth have a work permit to work?

**Answer:** Work permit certificates are required for students under 16 years of age at all times. School superintendents, principals, designated issuing school officers and representatives of the NMDWS Labor Industrial Bureau issue work permit certificates. For more information, please visit: [www.dws.state.nm.us/careersolutions/CSS-WorkP.html](http://www.dws.state.nm.us/careersolutions/CSS-WorkP.html)

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**Question:** Do I get paid while attending a funeral?

**Answer:** State statute does not require payment for time not worked, including attending a funeral. This type of benefit is generally a matter of agreement between an employer and an employee.

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**Question:** Must employers grant leave to employees called up by the National Guard or Reserve?

**Answer:** Yes, an employee must be granted leave of absence to perform military service.

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**Question:** Are pay stubs required?

**Answer:** Yes, an employer shall provide the employee with a written receipt that identifies the employer, employee's gross pay, the number of hours worked by the employee, the total wages and benefits earned by the employee and an itemized listing of all deductions withheld from the employee's gross pay.

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**Question:** Are periodic performance evaluations required?

**Answer:** State statute does not require performance evaluations. Performance evaluations are generally a matter of agreement between an employer and employee.

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**Question:** Does the Uniformed Services Employment and Reemployment Rights Act (USERRA) apply to part-time employees?

**Answer:** Yes, both part-time and probationary employees are covered by USERRA.

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**Question:** Do I get paid while on jury duty?

**Answer:** State statute does not require payment for time not worked, including jury duty. This type of benefit is generally a matter of agreement between an employer and an employee.

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**Question:** How do workers on a construction site know that a project is covered by prevailing wage? How do they know the prevailing wage rate to which they are entitled?

**Answer:** The wage rate poster must be posted at all times by the general contractor at the site of the work in a prominent and accessible place where it can be easily seen.

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**Question:** When does an employee have to receive health insurance?

**Answer:** State statute does not have stipulations for health insurance or other insurance benefits. However, the Family and Medical Leave Act (FMLA), enforced by the U.S. Department of Labor, Wage and Hour Bureau, does have provisions concerning health insurance when an employee is on qualifying family and medical leave.

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**Question:** What if New Mexico's minimum wage law is greater than the federal minimum wage?

**Answer:** As is the case in New Mexico, where state law requires a higher minimum wage, the higher standard applies.

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**Question:** Can an employer give compensatory time off rather than pay overtime?

**Answer:** No.

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**Question:** How long do employers have to keep their records?

**Answer:** Every employer must keep true and accurate records of hours worked and wages paid for each employee. These records must be kept on file for at least one year after the entry has been made.

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**Question:** Can my employer cut my wage or salary?

**Answer:** Yes. The employer must advise the employee of the new lower rate before the hours are worked.

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**Question:** If an employee wants to work overtime and will accept straight time pay, can he/she waive his/her right to time-and-a-half?

**Answer:** No.

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