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#### Authority

The provisions of this Chapter 231 issued under The Minimum Wage Act of 1968 (43 P. S. §§ 333.101—333.115), unless otherwise noted.

#### Source

The provisions of this Chapter 231 adopted March 18, 1977, effective March 19, 1977, 7 Pa.B. 750, unless otherwise noted.

### GENERAL PROVISIONS

#### § 231.1. Definitions.

(a) Terms used in this chapter shall have the same meaning and be defined in the same manner as in the act.

(b) In addition to the provisions of subsection (a), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Minimum Wage Act of 1968 (43 P. S. §§ 333.101—333.115).

*Board*—Food furnished on an established schedule.

*Bona fide training program*—One which must involve either formal instruction or on-the-job training during a period when the learner is entrusted with limited responsibility and is under supervision or guidance.

*Bureau*—The Bureau of Labor Standards of the Department.

*Department*—The Department of Labor and Industry of the Commonwealth.

*Domestic services*—Work in or about a private dwelling for an employer in his capacity as a householder, as distinguished from work in or about a private dwelling for such employer in the employer's pursuit of a trade, occupation, profession, enterprise or vocation.

*Handicapped worker*—An individual whose earning capacity for the work to be performed is impaired by physical or mental deficiency or injury.

*Hotel or motel*—An establishment which as a whole or part of its business activities offers lodging accommodations for hire to the public, and services in connection therewith or incidental thereto.

*Hours worked*—The term includes time during which an employee is required by the employer to be on the premises of the employer, to be on duty or to be at the prescribed work place, time spent in traveling as part of the duties of the employee during normal working hours and time during which an employee is employed or permitted to work; provided, however, that time allowed for meals shall be excluded unless the employee is required or permitted to work during that time, and provided further, that time spent on the premises of the employer for the convenience of the employee shall be excluded.

*Labor on a farm*—Labor on a farm shall include the following:

(i) The term farm includes stock, dairy, poultry, fur-bearing animal, fruit and truck farms, plantations, orchards, nurseries, greenhouses or other similar structures used primarily in the raising of agricultural or horticultural commodities.

(ii) The term labor on a farm includes the employment of a person on a farm in connection with one of the following:

(A) Cultivating the soil.

(B) Raising or harvesting an agricultural or horticultural commodity, including the raising or hatching of poultry and the raising, shearing, feeding, caring for, training and management of livestock, bees, fur-bearing animals and wildlife.

(C) Harvesting of maple sap.

(D) The operation, management, conservation, improvement or maintenance of a farm and its tools and equipment.

(E) The operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for removing, supplying and storing water for farming purposes.

*Learner*—A person who is participating in a bona fide training program for an occupation in which that person is employed, the required training period for which is recognized to be at least 2 weeks; provided however, that no person may be deemed a learner at an establishment in an occupation for which that person has completed the required training, and in no case may a person be deemed a learner in such an occupation at an establishment after 8 weeks of training, except that a person may be deemed a learner for a longer period if

the Secretary finds after investigation that for the particular occupation a minimum of proficiency cannot be acquired in 8 weeks.

*Lodging*—A housing facility available for the personal use of the employee at all hours.

*Nonprofit organization*—A corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

*Public amusement or recreational establishment*—An establishment providing amusement, entertainment or recreation as its primary service to the public. The term also includes owners, lessees and concessionaires whose business is incidental to, connected to or a part of the business of the establishment. Amusement or recreational establishments shall be deemed public for the purpose of the act except for those that require as a condition for the use of the establishment one of the following:

- (i) Individual membership.
- (ii) Satisfaction of criteria fixed by the establishment other than the payment of a nominal fee.

*Residential employee*—An employee who resides and works on the premises of the employer.

*Secretary*—The Secretary of Labor and Industry of the Commonwealth. The term Secretary includes the authorized representative of the Secretary.

*Student*—An individual who is enrolled in and regularly attends, on a full-time basis during the daytime, an institution of learning offering a course of instruction leading to a degree, certificate or diploma, or who is completing residence requirements for a degree. A person is deemed to be a student during the time that school is not in session if that person was a student during the preceding semester, trimester or similar term of instruction; provided however, that no person may be deemed a student for a period after the date of receipt of a degree, certificate or diploma.

*Taxicab driver*—An individual employed to drive an automobile equipped to carry no more than seven passengers which is used in the business of carrying or transporting passengers for hire on a zone or meter fare basis and which is not operated over fixed routes, between fixed terminals or under contract.

*Tipped employee*—An employee engaged in an operation in which the employee customarily and regularly receives more than \$30 a month in tips.

*Tips*—Voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered.

*Week*—A period of 7 consecutive days starting on any day selected by the employer.

**Source**

The provisions of this § 231.1 amended May 4, 1979, effective May 5, 1979, 9 Pa.B. 1467; corrected March 3, 1995, effective March 5, 1994, 25 Pa.B. 765. Immediately preceding text appears at serial pages (184537) to (184541).

**Notes of Decisions***Overtime*

Determinations of what constitutes overtime must be decided under a collective bargaining agreement and not on the regulation alone. *Pennsylvania Federation of BMWs v. National RR Passenger Corp.*, 989 F.2d 112 (1993).

**§ 231.11. Scope.**

This chapter applies to employees and classes of employment not excluded, excepted or exempted from application of the act under section 3, 4 or 5 of the act (43 P. S. §§ 333.103—333.105).

**§ 231.12. Penalty.**

An employer or his agent or the officer or agent of a corporation who violates this chapter or who interferes with the Secretary in the enforcement of this chapter shall, upon conviction, be punished in accordance with section 12(c) of the act (43 P. S. § 333.112(c)).

**THE MINIMUM WAGE****§ 231.21. Rule.**

(a) Every employee shall pay the minimum wage rate specified in section 4(a) of the act (43 P. S. § 333.104(a)) subject to exclusions and exemptions as provided in the act and in this chapter.

(b) The minimum wage shall be paid for hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, or commissioned, piece rate, or any other basis. Where an employee works off the premises of the employer under circumstances which prevent adequate supervision by the employer, or in the case of a residential employee, the Secretary will approve any reasonable agreement between the employer and employee for determining hours worked.

**§ 231.22. Deductions and allowances.**

(a) Wages paid to an employee include the reasonable cost of board, lodging and other facilities if the board, lodging or other facilities are customarily furnished by the employer to the employee; provided however, that in no event shall the cost of the deductions and allowances exceed their actual cost, exclusive of profit, to the employer.

(b) An allowance or deduction for lodging shall be permitted as part payment of the minimum wage only when the facility affords the employee reasonable space, privacy, sanitation, heat, light and ventilation. Facilities shall be open to inspection by an authorized representative of the Secretary at any reasonable time.

(c) Deductions and allowances shall be made known to the employee and agreed to by the employee at the time of hiring. In addition, adjustments to the deductions and allowances shall be made known to the employee prior to the making of the adjustments.

### § 231.23. Commission.

When an employee is compensated solely on a commission basis, when an employee is paid in accordance with a plan providing for a base rate plus commission, or when the earnings of an employee are derived in whole or in part on the basis of an incentive plan, the wage paid weekly to the employee shall for each hour worked at least equal the applicable minimum rate set forth in section 4(a) of the act (43 P. S. § 333.104(a)).

## EMPLOYER RECORDS

### § 231.31. Contents of record.

(a) Every employer shall keep a true, accurate and legible record for each employee. The records shall be preserved for a period of 3 years from date of last entry and shall contain the following information:

- (1) Name in full, and on the same record, the identifying symbol of the employee or number, if such is used in place of name on time, work or payroll records.
- (2) Home address including zip code.
- (3) Regular hourly rate of pay.
- (4) Occupation.
- (5) Time and day that the workweek begins. If the employee is part of a work force or employed in or by an establishment where all workers have a work week beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for all workers shall suffice.
- (6) The number of hours worked daily and weekly.
- (7) Total daily or weekly straight time wages, that is, the total wages due for hours worked during the workweek, including all wages due during any overtime worked but exclusive of overtime excess compensation.
- (8) Total overtime excess compensation for the workweek, that is, the excess compensation for overtime worked, which amount is over and above all straight time earnings or wages also earned during overtime worked.

(9) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain, in individual employee's accounts, a record of the dates, amounts and nature of the items which make up the total additions and deductions.

(10) Allowances, if any, claimed as part of the minimum wage.

(11) Total wages paid each pay period.

(12) Date of payment and the pay period covered by payment.

(13) Special certificates for students and learners as set forth in section 4(b) of the act (43 P. S. § 333.104(b)).

(b) Where microfilm or another method is used for recordkeeping purposes, employers who use the microfilm or another method shall make available to authorized representatives of the Department the equipment which is necessary to facilitate review of the record.

(c) Where records are maintained at a central recordkeeping office other than in the place of employment, the records shall be made available for inspection at the place of employment within 7 calendar days following verbal or written notice from the Secretary or the authorized representative of the Secretary. The records shall be maintained for a period of 3 years from date of last entry.

#### **Cross References**

This section cited in 34 Pa. Code § 231.32 (relating to exception); 34 Pa. Code § 231.95 (relating to employee incentive account); and 34 Pa. Code § 231.96 (relating to writing required).

### **§ 231.32. Exception.**

With respect to persons employed in a bona fide executive, administrative or professional capacity or in the capacity of outside salesman, as defined in this chapter, employers shall maintain and preserve records containing the information and data required by § 231.31 (relating to contents of records) except § 231.31(a)(3) and (5)—(8) and containing the basis on which wages are paid. This may be shown as "\$435 mos.," "\$115 wk.," or "on fee."

#### **Cross References**

This section cited in 34 Pa. Code § 231.96 (relating to writing required).

### **§ 231.33. Students.**

(a) For each individual for whom student status is claimed the records of an employer shall contain a statement from the school which the student attends indicating one of the following:

(1) The student is a full-time day student and the course of instruction is one leading to a degree, diploma or certificate.

(2) The student is completing residence requirements for a degree.

#### **Cross References**

This section cited in 34 Pa. Code § 231.96 (relating to writing required).

**§ 231.34. Tipped employees.**

Supplementary to the provisions of any section of this chapter pertaining to the payroll records to be kept with respect to employees, every employer shall also maintain and preserve payroll or other records containing the following additional information with respect to each tipped employee whose wages are determined under section 3(d) of the act (43 P. S. § 333.103(d)):

- (1) A symbol or letter placed on the pay records identifying each employee whose wage is determined in part by tips.
- (2) 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.
- (3) Amount by which the wages of each tipped employee have been deemed to be increased by tips, as determined by the employer, not in excess of 45% of the applicable statutory minimum wage until January 1, 1980 and thereafter 40% of the applicable statutory minimum wage. 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. An employee failing or refusing to report to the employer the amount of tips received in any workweek shall not be permitted to show that the tips received were less than the amount determined by the employer in the workweek.
- (4) Hours worked each workday in any occupation in which the tipped employee does not receive tips and total daily or weekly straight-time payment made by the employer for such hours.
- (5) Hours worked each workday in occupations in which the employee received tips and total daily or weekly straight-time earnings for the hours.

**Source**

The provisions of this § 231.34 amended May 4, 1979, effective May 5, 1979, 9 Pa.B. 1467. Immediately preceding text appears at serial page (32186).

**Cross References**

This section cited in 34 Pa. Code § 231.96 (relating to writing required).

**§ 231.35. Inspection.**

Payroll records of an employer shall be open to inspection by an authorized representative of the Secretary at a reasonable time. Employers shall permit an authorized representative of the Secretary to interrogate an employee in the place of employment and during work hours, with respect to the wages paid to and the hours worked by the employee or other employees.

**Cross References**

This section cited in 34 Pa. Code § 231.96 (relating to writing required).

**§ 231.36. Statement to employee.**

Every employer shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages.

**§ 231.37. Posting.**

Every employer covered by this chapter shall post, in a conspicuous place in the establishment of the employer, a summary of the act and this chapter.

**OVERTIME PAY****§ 231.41. Rate.**

Except as otherwise provided in section 5(a)—(c) of the act (43 P. S. § 333.105(a)—(c)), each employee shall be paid for overtime not less than 1-1/2 times the employee's regular rate of pay for all hours in excess of 40 hours in a workweek.

**Cross References**

This section cited in 34 Pa. Code § 231.43 (relating to regular rate).

**§ 231.42. Workweek.**

The term workweek shall mean a period of 7 consecutive days starting on any day selected by the employer. Overtime shall be compensated on a workweek basis regardless of whether the employee is compensated on an hourly wage, monthly salary, piece rate or other basis. Overtime hours worked in a workweek may not be offset by compensatory time off in any prior or subsequent workweek.

**Cross References**

This section cited in 34 Pa. Code § 231.43 (relating to regular rate).

**§ 231.43. Regular rate.**

For purposes of these §§ 231.41—231.43 (relating to overtime pay), the regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to or on behalf of the employee, but it shall not be deemed to include the following:

- (1) Sums paid as gifts, payments in the nature of gifts made at Christmas time or on other special occasions as a reward for service, the amounts of which are not measured by or dependent on hours worked, production or efficiency.
- (2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work or other similar cause, reasonable payments for traveling expenses or other

expenses incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for the employee's hours of employment.

(3) Sums paid in recognition of services performed during a given period if:

(i) Both the fact that payment is to be made and the amounts of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement or promise causing the employee to expect such payments regularly.

(ii) The payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan without regard to hours of work, production or efficiency.

(iii) The payments are talent fees paid to performers, including announcers on radio and television programs.

(4) Contributions irrevocably made by an employer to a trustee or third person under a bona fide plan for providing old-age, retirement, life, accident or health insurance or similar benefits for employees.

(5) Extra compensation provided by a premium rate for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of 8 in a day or in excess of the maximum workweek applicable to the employee under § 231.41 (relating to rate) or in excess of the normal working hours or regular working hours of the employee, as the case may be.

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than 1 1/2 times the rate established in good faith for like work performed in non-overtime hours on other days.

(7) Extra compensation provided by a premium rate paid to the employee in pursuance of an applicable employment contract or collective bargaining agreement for work outside of the hours established in good faith by the contract or agreement as the basic, normal or regular workday not exceeding 8 hours or workweek not exceeding the maximum workweek applicable to the employee under § 231.41 (relating to rate), where the premium rate is not less than 1 1/2 times the rate established in good faith by the contract or agreement for like work performed during the workday or workweek.

(b) If the employee is paid a flat sum for a day's work or for doing a particular job without regard to the number of hours worked in the day or at the job and if he receives no other form of compensation for services, his regular rate is determined by totaling all the sums received at the day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for hours worked in excess of 40 in the workweek.

(c) No employer may be deemed to have violated these §§ 231.41—231.43 (relating to overtime pay) by employing an employee for a workweek in excess of the maximum workweek applicable to the employee under § 231.41 (relating to rate) if the employee is employed under a bona fide individual contract or under an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate substantially irregular hours of work. For example, where neither the employee nor the employer can either control or anticipate with a degree of certainty the number of hours the employee must work from week to week, where the duties of the employee necessitate significant variations in weekly hours of work both below and above the statutory weekly limit on nonovertime hours, or where the substantially irregular hours of work are not attributable to vacation periods, holidays, illness, failure of the employer to provide sufficient work, or other similar causes, and the contract or agreement:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate and compensation at not less than 1 1/2 times the rate for hours worked in excess of the maximum workweek.

(2) Provides a weekly guaranty of pay for not more than 60 hours based on the rates so specified.

(d) No employer may be deemed to have violated these §§ 231.41—231.43 by employing an employee for a workweek in excess of the maximum workweek applicable to the employee under § 231.41 if, under an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in the workweek in excess of the maximum workweek applicable to the employee under § 231.41:

(1) In the case of an employee employed at piece rates, is computed at piece rates not less than 1 1/2 times the bona fide piece rates applicable to the same work when performed during nonovertime hours.

(2) In the case of an employee's performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than 1 1/2 times the bona fide rate applicable to the same work when performed during nonovertime hours.

(3) Is computed at a rate not less than 1 1/2 times the rate established by the agreement or understanding as the basic rate to be used in computing overtime compensation thereunder; and if the average hourly earnings of the employee for the workweek, exclusive of payments described in subsection (a)(1)—(7), are not less than the minimum hourly rate required by applicable law and if extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(e) Extra compensation paid as described in subsection (a)(5)—(7) shall be creditable toward overtime compensation payable under these §§ 231.41—231.43 (relating to overtime pay).

(f) No employer may be deemed to have violated these §§ 231.41—231.43 by employing an employee of a retail or service establishment for a workweek in excess of 40 hours if:

(1) The regular rate of pay of the employee is in excess of 1 1/2 times the minimum hourly rate applicable.

(2) More than half of the employee's compensation for a representative period, not less than 1 month, represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

#### Notes of Decisions

##### *Daily Basis*

By its very terms, this regulation applies to those employees whose salaries are quoted on a daily basis. These plaintiffs received a salary computed on a biweekly basis, so the regulation does not apply to them. This regulation simply does not apply to all Pennsylvania employees who receive a fixed annual salary. *Friedrich v. U. S. Computer Systems, Inc.*, # 90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

##### *Flat Sum*

The placement of the disjunctives in subsection (b) of this regulation makes it applicable to two classes of employees. First, it applies to employees "paid a flat sum for a day's work . . . without regard to the number of hours worked in the day . . ." Second, it applies to employees "paid a flat sum . . . for doing a particular job without regard to the number of hours worked . . . at the job." *Friedrich v. U. S. Computer Systems, Inc.*, # 90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

##### *Hourly Wages*

The computer field engineers' argument that they were hourly workers and entitled to overtime compensation failed when they were paid biweekly according to a 2-week pro rata proportion of their annual salaries and, therefore, this section was inapplicable. *Friedrich v. U. S. Computer Services, Inc.*, 833 F.Supp. 470 (E. D. PA 1993).

##### *Particular Job*

The term "particular" in this regulation presumably encompasses employees who perform duties as independent contractors, working on specific, discrete projects such as painting, construction or other services. *Friedrich v. U. S. Computer Systems, Inc.*, # 90-1615, 3 Wage & Hour Cas. 2d (BNA) 181 (January 23, 1996).

## EMPLOYMENT OF LEARNERS

### § 231.51. Procedure.

An employer who wishes to employ a learner at less than the prescribed minimum wage must complete an application on a form furnished by the Secretary containing the following information:

- (1) Occupation at which learners are to be employed.

- (2) Duration of learning period during which the employer proposes to pay a wage less than the prescribed minimum.
- (3) The nature and extent of the instruction and supervision.
- (4) The number of regular employees employed by the employer in the occupation involved.
- (5) Other information as may be required by the Secretary.

**§ 231.52. Special certificate.**

If the Secretary finds that the requested employment of learners in a given occupation at less than the minimum wage is necessary in order to prevent curtailment of opportunities for employment, the Secretary may issue a certificate to the employer authorizing employment at less than the prescribed minimum wage; provided however, that the wage may not be less than 85% of the otherwise applicable minimum wage established in section 4 of the act (43 P. S. § 333.104). The certificate may limit the number of learners and proportion of learners to nonlearners. The wage specified on the certificate shall constitute the minimum wage for learners in the particular occupation at the establishment named therein.

**§ 231.53. Posting of special certificate.**

A copy of the special certificate and evidence that the employee is a learner shall be retained at the place of employment and be made available for inspection by the Secretary for a period of not less than 3 years after termination of employment of learners.

**§ 231.54. Denial of an application for a special certificate.**

An application for a special certificate may be denied, or the special certificate may be revoked by the Secretary for misrepresentation of facts in the application, for violation of the act or for other good cause shown. In addition, the certificate may be modified because of changes in conditions or circumstances.

## EMPLOYMENT OF STUDENTS

**§ 231.61. Procedure.**

- (a) An employer who wishes to employ students at less than the prescribed minimum wage shall complete an application on a form furnished by the Secretary.
- (b) If the Secretary finds that the requested employment of students at less than the minimum wage is necessary in order to prevent curtailment of opportunities for employment, the Secretary may issue a certificate to the employer authorizing employment at a wage less than the prescribed minimum rate; provided however, that the wage may not be less than 85% of the otherwise applicable minimum wage established in section 4 of the act (43 P. S. § 333.104).
- (c) The following two types of special certificates for students may be issued:

- (1) *Six or less students.* The employment of six or less students at less than the minimum hourly wage may not create a substantial probability of reducing the full-time employment opportunities for other workers nor shall it impair or depress the wage rates or working standards established for other workers engaged in work of the same or comparable nature.
- (2) *Seven or more students.* If employment of students at subminimum wages increases to seven or more students, then the employer must file a new application for the appropriate certificate to hire seven or more students. To qualify for the certificate to hire seven or more students, the employer must maintain a ratio of at least three regular employees to each student employed.
- (d) Students are permitted to work on a part-time basis, but not in excess of 20 hours in any workweek at the subminimum wage rate during the school term, except that when school is not in session the weekly limitation on the maximum number of hours which may be worked at the subminimum rate may be increased by 8 hours for each holiday, but in no event for more than 40 hours a week.
- (e) A copy of the certificate permitting the employment of students at the student rate shall be retained at the place of employment and be made available for inspection by the Secretary for not less than 3 years after termination of employment of students.

**Source**

The provisions of this § 231.61 amended May 4, 1979, effective May 5, 1979, 9 Pa.B. 1467. Immediately preceding text appears at serial page (32192).

**§ 231.62. Denial of application for special certificate.**

An application for a special certificate may be denied or the special certificate may be revoked by the Secretary for misrepresentation of facts in the application, for violation of the act, or for other good cause shown. In addition, the certificate may be modified because of changes in conditions or circumstances.

**EMPLOYMENT OF  
HANDICAPPED WORKERS**

**§ 231.71. Procedure.**

- (a) An employer who wishes to employ handicapped workers at less than the prescribed minimum wage shall complete an application on forms furnished by the Secretary.
- (b) The application shall set forth the following information:
- (1) The nature of the disability in detail.
  - (2) A description of the occupation at which the handicapped worker is to be employed.
  - (3) The wage the employer proposes to pay the handicapped worker per hour.

(4) Other information as may be required by the Secretary.

(c) The application shall be signed jointly by the employer and the handicapped worker for whom such application is being made, except as otherwise authorized by the Secretary.

#### Cross References

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

### § 231.72. Conditions for granting certificate.

A certificate may be issued if the application is in proper form and sets forth facts showing that:

- (1) The handicap impairs the earning capacity of the worker for the work the employee is to perform.
- (2) The proposed minimum wage is commensurate with the production capacity of the employee.

#### Cross References

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

### § 231.73. Special certificate.

If the application and other available information indicate that the requirements of these §§ 231.71—231.76 (relating to employment of handicapped workers) are satisfied, the Secretary will issue a certificate. If issued, copies of the certificate will be mailed to the employer and the handicapped worker, and if the certificate is not issued, the employer and the handicapped worker will be given written notice of the denial.

### § 231.74. Specifications of the certificate.

- (a) A certificate will specify, among other things, the name of the handicapped worker, the name of the employer, the occupation in which the handicapped worker is to be employed, the authorized subminimum wage rate and the period of time during which such wage rate may be paid.
- (b) A certificate shall be effective for a period to be designated by the Secretary. The handicapped worker employed under the certificate may be paid subminimum wages only during the effective period of the certificate.
- (c) The wage rate set in the certificate will be fixed at a figure designated to reflect adequately the earning capacity of the handicapped worker.
- (d) A money received by a handicapped worker by reason of a state or Federal pension or compensation program for handicapped persons may not be considered as offsetting any part of the wage due the handicapped worker by the employer.

(e) Except as otherwise provided in section 5(a)—(c) of the act (43 P. S. § 333.105(a)—(c)), the handicapped worker shall be paid not less than 1 1/2 times the regular rate for hours worked in excess of 40 in the workweek.

(f) The terms of a certificate, including the subminimum wage rate specified therein, may be amended by the Secretary upon written notice to the parties concerned if the facts justify the amendment.

#### Cross References

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

### § 231.75. Renewal of certificate.

Application for renewal of a certificate shall be filed in the same manner as an original application. If the application has been filed prior to the expiration date of the certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

#### Cross References

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

### § 231.76. Denial of application for a special certificate.

An application for a special certificate may be denied, or the special certificate may be revoked by the Secretary, for misrepresentation of facts in the application, for violation of the act, or for other good cause shown. In addition, the certificate may be modified because of changes in conditions or circumstances.

#### Cross References

This section cited in 34 Pa. Code § 231.73 (relating to special certificate).

## SPECIAL DEFINITIONS

### § 231.81. Definitions.

The term outside salesmen, executive, administrative and professional capacity shall be defined in these §§ 231.81—231.85 (relating to special definitions), and employment in those classifications shall be exempt from both the minimum wage and overtime provisions of the act.

### § 231.82. Executive.

Employment in a bona fide executive capacity means work by an individual:

- (1) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision.
- (2) Who customarily and regularly directs the work of two or more other employees.

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight.

(4) Who customarily and regularly exercises discretionary powers.

(5) Who does not devote more than 20%, or, in the case of an employee of a retail or service establishment, who does not devote as much as 40% of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1)—(4), provided that this paragraph may not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment or who owns at least 20% interest in the enterprise in which he is employed.

(6) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week, exclusive of board, lodging or other facilities, provided that an employee who is compensated on a salary basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein shall be deemed to meet all the requirements of this section.

#### Cross References

This section cited in 34 Pa. Code § 231.81 (relating to definitions).

### § 231.83. Administrative.

Employment in a bona fide administrative capacity means work by an individual:

(1) Whose primary duty consists of the performance of office or non-manual work directly related to management policies or general operation of his employer or the customers of the employer.

(2) Who customarily and regularly exercises discretion and independent judgment.

(3) Who regularly and directly assists an employer or an employee employed in a bona fide executive or administrative capacity, who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge, or who executes under only general supervision special assignments and tasks.

(4) Who does not devote more than 20% of time worked in a workweek, or, in the case of an employee of a retail or service establishment, who does

not devote more than 40% of time worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (1)—(3).

(5) Who is paid for his services a salary of not less than \$155 per week, exclusive of board, lodging, or other facilities, provided that an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities and whose primary duty consists of the performance of work described in paragraph (1), which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

#### Cross References

This section cited in 34 Pa. Code § 231.81 (relating to definitions).

### § 231.84. Professional.

Employment in a bona fide professional capacity means work by an individual:

(1) Whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study or the performance of work that is original and creative in character in a recognized field of artistic endeavor.

(2) Whose work requires the consistent exercise of discretion and judgment in its performance.

(3) Whose work is predominately intellectual and varied in character, as opposed to routine mental, manual, mechanical or physical work, and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(4) Who does not devote more than 20% of time worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (1)—(3).

(5) Who is compensated for his services on a salary or fee basis at a rate of not less than \$170 per week, exclusive of board, lodging or other facilities, provided that an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging or other facilities, and whose primary duty consists of the performance of work described in paragraph (1), which includes work requiring the consistent exercise of discretion and judgment, or the performance of work requiring invention, imagination or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

#### Cross References

This section cited in 34 Pa. Code § 231.81 (relating to definitions).

**§ 231.85. Outside salesman.**

Outside salesman means an employee who is employed for the purpose of and who is customarily and regularly engaged more than 80% of work time away from the employer's place or places of business in the following manner:

- (1) Making sales, including any sale, exchange, contract to sell, consignment for sale, or other disposition or selling, and delivering articles or goods.
- (2) Obtaining orders or contracts for the use of facilities for which a consideration will be paid by the client or customer. In addition, the employee may not spend more than 20% of the hours worked in any week in work of a nature not directly related to and in conjunction with the making of sales; provided however, that work performed incidental and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be not regarded as nonexempt work.

**Cross References**

This section cited in 34 Pa. Code § 231.81 (relating to definitions).

**FOOD-SERVICE EMPLOYEE INCENTIVE PROGRAM****§ 231.91. Authority and effective date.**

(a) This section and §§ 231.92—231.99 set forth the rules governing the Food-Service Incentive Employee Program for participating restaurant and food-service operations employers and their employees in this Commonwealth under section 5.1 of the Minimum Wage Act of 1968 (act) (43 P. S. § 333.105a).

(b) This section and §§ 231.92—231.99 will expire, along with section 5.1 of the act on July 14, 2004, unless section 5.1 is extended by the General Assembly.

(c) Under section 5.1(j) of the act (43 P. S. § 333.105a(j)), a claim arising under the Food-Service Employee Incentive Program provisions shall be brought under the Wage Payment and Collection Law (43 P. S. §§ 260.1—260.12).

(d) Any employee, labor organization or party to whom wages are payable under the Food-Service Employee Incentive Program may request the Secretary, or an authorized representative, to take an assignment in trust and to bring legal action to collect the wages, as provided by section 9.1 of the Wage Payment and Collection Law (43 P. S. § 260.9a).

**Authority**

The provisions of this § 231.91 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 333.105a note).

**Source**

The provisions of this § 231.91 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**§ 231.92. Eligibility.**

(a) The Food-Service Employee Incentive Program is a voluntary program open to new employees of employers engaged as restaurant and food-service operations in this Commonwealth.

(b) A participating employee shall work a minimum of 20 hours a week.

**Authority**

The provisions of this § 231.92 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 333.105a note).

**Source**

The provisions of this § 231.92 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**Cross References**

This section cited in 34 Pa. Code § 231.91 (relating to authority and effective date).

**§ 231.93. Amount of training wage.**

(a) The amount of the training wage paid to participants in the Food Service Employee Incentive Program shall be established and agreed to in writing by the employee and the employer.

(b) The training wage cannot be less than the minimum wage established by The Minimum Wage Act of 1968 (43 P. S. §§ 333.101—33.115).

(c) The employer may use tip credits toward satisfying the minimum wage for tipped employees, as provided for in section 3(d) of The Minimum Wage Act of 1968 (43 P. S. § 333.103(d)).

**Authority**

The provisions of this § 231.93 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 333.105a note).

**Source**

The provisions of this § 231.93 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**Cross References**

This section cited in 34 Pa. Code § 231.91 (relating to authority and effective date).

**§ 231.94. Length of training period.**

The training periods shall be at least, but not more than, the following:

<i>Job Title</i>	<i>Training Period</i>
Dishwashers	2—4 weeks
Bus Persons	2—4 weeks
Servers	2—12 weeks
Sales Staff	2—6 weeks

<i>Job Title</i>	<i>Training Period</i>
Cooks	4—12 weeks
Hostess/Host/Cashier	4—12 weeks

**Authority**

The provisions of this § 231.94 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 333.105a note).

**Source**

The provisions of this § 231.94 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**Cross References**

This section cited in 34 Pa. Code § 231.91 (relating to authority and effective date).

**§ 231.95. Employee incentive account.**

(a) The employer shall maintain at least one escrow or restricted account designated as an Employee Incentive Account (Account) in accordance with section 5.1 of the Minimum Wage Act of 1968 (43 P. S. § 333.105a).

(b) The employer shall deposit sums consisting of no less than the difference between the training wage and the entry-level wage into the Account on each regular payday during the training period. The employer shall credit the deposit in the name of each participating employee.

(c) Funds in the Account shall be the property of the employer until the employer is required to make payments to the employee. Funds in the Account are nontransferable and nonassignable.

(d) The employer shall maintain complete, detailed payroll records. The records shall include a listing of all deposits and withdrawals from the Account.

(e) The employer shall maintain the records at the place of employment or at a central recordkeeping office within or outside this Commonwealth. The employer shall maintain these records for 3 years in accordance with § 231.31 (relating to contents of record).

(f) Access to records maintained by the employer under this section shall be provided to the Department's representatives within 7 days following written or verbal notice by the Secretary or an authorized representative.

**Authority**

The provisions of this § 231.95 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 331.105a note).

**Source**

The provisions of this § 231.95 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**Cross References**

This section cited in 34 Pa. Code § 231.91 (relating to authority and effective date).

**§ 231.96. Writing required.**

(a) The employer shall provide written notification to the employee prior to the commencement of the training program of the following:

(1) The training wage and the starting date of training.

(2) The length of the training period and the position for which the employee is being trained.

(3) The entry-level wage which the employee will receive upon completion of the training period.

(4) The financial institution where the employer maintains the Food-Service Employee Incentive Account.

(5) The installment-payment schedule to be following after the employee completes the training period, provided that the employer shall revise this schedule with the employee's written consent when the employee is promoted prior to completion of the training period.

(b) The employer shall obtain a signed acknowledgement that the employee has read and understands the written notification.

(c) The employer shall maintain a copy of the signed acknowledgement for 3 years, along with other records required to be kept under §§ 231.31—231.35.

(d) The Department will prepare a recommended notification and acknowledgement form that an employer may use. The Department will make these forms available on its Internet website and by electronic mail, facsimile transmission or regular mail, upon request.

**Authority**

The provisions of this § 231.96 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 331.105a note).

**Source**

The provisions of this § 231.96 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**Cross References**

This section cited in 34 Pa. Code § 231.91 (relating to authority and effective date).

**§ 231.97. Training.**

(a) The employer shall provide an employee with the usual and customary training associated with the position for which the employee was hired.

(b) The employer shall be responsible for all training costs, whether incurred by the employer or employee.

**Authority**

The provisions of this § 231.97 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 331.105a note).

**Source**

The provisions of this § 231.97 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**Cross References**

This section cited in 34 Pa. Code § 231.91 (relating to authority and effective date).

**§ 231.98. Completion of training.**

(a) After an employee completes the training period or is promoted, the employer shall pay all funds credited to the employee in the Food-Service Employee Incentive Account (Account). Payment shall be made in equal installments over a period of time equal to the length of the training period. These installment payments shall be paid to the employee, in addition to employee's entry-level wage, until the employee has received the full amount credited to the employee in the Account.

(b) The employer shall pay funds credited to employees in the Account, within 30 days of separation, to employees who are separated from the employer under any of the following conditions:

- (1) Involuntary termination prior to completion of the training period for reasons other than willful misconduct.
- (2) Voluntary termination of employment after promotion or completion of the training period.
- (3) Involuntary separation from employment after promotion or completion of the training period without regard to cause.

**Authority**

The provisions of this § 231.98 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 331.105a note).

**Source**

The provisions of this § 231.98 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**Cross References**

This section cited in 34 Pa. Code § 231.91 (relating to authority and effective date).

**§ 231.99. Forfeiture of escrowed funds.**

(a) An employee who voluntarily terminates employment with the employer prior to completion of the training period forfeits all funds credited to the employee in the Food-Service Employee Incentive Account (Account).

(b) An employee terminated from employment for willful misconduct, as that term is used in the Unemployment Compensation Law (43 P. S. §§ 751—914), prior to completion of the training period forfeits all funds credited to the employee in the Account.

(c) When investigating claims and complaints regarding payments or forfeitures of funds in the Account, the Department may rely upon any final adjudica-

tion issued under the Unemployment Compensation Law regarding the nature of the employee's separation or whether the separation was for willful misconduct.

**Authority**

The provisions of this § 231.99 issued under section 3 of the act of December 21, 1998 (P. L. 1290, No. 168) (43 P. S. § 331.105a note).

**Source**

The provisions of this § 231.99 adopted July 13, 2001, effective July 14, 2001, 31 Pa.B. 3765.

**Cross References**

This section cited in 34 Pa. Code § 231.91 (relating to authority and effective date).

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