

LABOR CODE

TITLE 2. PROTECTION OF LABORERS

SUBTITLE C. WAGES

CHAPTER 62. MINIMUM WAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. SHORT TITLE. This chapter may be cited as the Texas Minimum Wage Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.002. DEFINITIONS. In this chapter, unless the context requires a different definition:

(1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 5.35(10), eff. September 1, 2009.

(2) "Agriculture" includes:

(A) farming in all its branches;

(B) cultivating and tilling the soil;

(C) dairying;

(D) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity, including a commodity defined as an agricultural commodity by Section 15(g), Agricultural Marketing Act (12 U.S.C. Section 1141j(g));

(E) raising livestock, bees, fur-bearing animals, or poultry; and

(F) any practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including:

(i) forestry or lumber operations;

(ii) preparation for market; and

(iii) delivery to storage, market, or a carrier for transportation to market.

(3) "Commission" means the Texas Employment Commission.

(4) "Employ" includes to permit to work.

(5) "Employee" includes any individual employed by an employer.

(6) "Employer" includes a person acting directly or indirectly in the interest of an employer in relation to an employee.

(7) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.35(10), eff. September 1, 2009.

Sec. 62.003. EARNINGS STATEMENT. (a) At the end of each pay period, an employer shall give each employee a written earnings statement covering the pay period.

(b) An earnings statement must be signed by the employer or the employer's agent and must show:

(1) the name of the employee;

(2) the rate of pay;

(3) the total amount of pay earned by the employee during the pay period;

(4) any deduction made from the employee's pay and the purpose of the deduction;

(5) the amount of pay after all deductions are made; and

(6) the total number of:

(A) hours worked by the employee if the employee's pay is computed by the hour; or

(B) units produced by the employee during the pay period if the employee's pay is computed on a piece rate.

(c) An earnings statement may be in any form determined by the employer. The information required by Subsection (b) may be stated on a check voucher or bank draft given to an employee for the employee's wages.

(d) In this section, "pay period" means the period that an employee works for which salary or wages are regularly paid under the employee's employment agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 2003, 78th Leg., ch. 461, Sec. 1, eff. Sept. 1, 2003.

Sec. 62.004. PROVISION OF INFORMATION. The commission shall provide information to the public about this chapter to ensure that both employers and employees in this state are fully aware of:

- (1) their respective rights and responsibilities;
- (2) the specified exemptions; and
- (3) the penalties and liabilities that may be incurred for a violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.005. COLLECTIVE BARGAINING NOT IMPAIRED. This chapter does not interfere with or in any way diminish the right of employees to bargain collectively with their employer through representatives chosen by the employees to establish wages that exceed the applicable minimum wage under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.006. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

- (1) a franchisee; or
- (2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 3, eff. September 1, 2015.

#### SUBCHAPTER B. MINIMUM WAGE

Sec. 62.051. MINIMUM WAGE. Except as provided by Section 62.057, an employer shall pay to each employee the federal minimum wage under Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 386, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 461, Sec. 2, eff. Sept. 1, 2003.

Sec. 62.0515. APPLICATION OF MINIMUM WAGE TO CERTAIN GOVERNMENTAL ENTITIES; CERTAIN AGREEMENTS WITH GOVERNMENTAL ENTITIES. (a) Except as otherwise provided by this section, the minimum wage provided by this chapter supersedes a wage established in an ordinance, order, or charter provision governing wages in private employment, other than wages under a public contract.

(b) This section does not apply to any state or federal job training or workforce development program.

(c) This section does not apply to a minimum wage established by a governmental entity that applies to a contract or agreement, including a non-annexation agreement, entered into by a governmental entity and a private entity. A private entity that enters into a contract or agreement, including a non-annexation agreement, with a governmental entity, under the terms of which the private entity agrees to comply with a minimum wage established by the governmental entity, is subject to the terms of that contract or agreement, and those terms apply to and may be enforced against a general contractor, subcontractor, developer, and other person with which the private entity contracts in order to comply with the provisions of the original contract or agreement.

(d) For purposes of this section, "governmental entity" includes a municipality, a county, a special district or authority, a junior college district, or another political subdivision of this state.

Added by Acts 2003, 78th Leg., ch. 461, Sec. 3, eff. Sept. 1, 2003.

Sec. 62.052. TIPPED EMPLOYEES. (a) In determining the wage of a tipped employee, the amount paid the employee by the employer

is the amount described as paid to a tipped employee under Section 3(m), Fair Labor Standards Act of 1938 (29 U.S.C. Section 203(m)).

(b) In this section, "tipped employee" means an employee engaged in an occupation in which the employee customarily and regularly receives more than \$20 a month in tips.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 386, Sec. 2, eff. Sept. 1, 2001.

Sec. 62.053. COST OF MEALS OR LODGING. In computing the wage paid to an employee, an employer may include the reasonable cost to the employer of furnishing meals, lodging, or both to the employee if:

(1) meals or lodging customarily are furnished by the employer to employees; and

(2) the cost of the meals and lodging are separately stated and identified in the earnings statement furnished to the employee under Section 62.003.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.054. CERTAIN EMPLOYEES SUBJECT TO CALL. An employer may not be required to pay an employee who lives on the premises of a business and who is assigned certain working hours plus additional hours when the employee is subject to call for more than the number of hours the employee actually works or is on duty because of assigned working hours.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.057. PATIENTS AND CLIENTS OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION. (a) A person may be compensated for services rendered to the Texas Department of Mental Health and Mental Retardation or a department facility at a percentage of the base wage adopted under this section if:

(1) the person is a patient or client of a department facility;

(2) the person's productive capacity is impaired;

(3) the person:

(A) assists in the operation of the facility as

part of the person's therapy; or

(B) receives occupational training in a sheltered workshop or other program operated by the department; and

(4) the facility or department derives an economic benefit from the person's services.

(b) The percentage of the base wage paid to a person under Subsection (a) must correspond to the percentage of the person's productive capacity compared with the capacity of an employee who performs the same or similar tasks and who is not similarly impaired.

(c) The department shall adopt rules to determine the base wage and the percentage of productive capacity of the patients and clients and other rules necessary to implement this section.

(d) Services rendered and payment provided under this section may not be construed as creating an employer-employee relationship between the department and the patient or client engaged in occupational training or therapeutic or rehabilitative services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

#### SUBCHAPTER D. EXEMPTIONS

Sec. 62.151. PERSON COVERED BY FEDERAL ACT. This chapter and a municipal ordinance or charter provision governing wages in private employment, other than wages under a public contract, do not apply to a person covered by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 461, Sec. 4, eff. Sept. 1, 2003.

Sec. 62.152. EMPLOYMENT BY RELIGIOUS, EDUCATIONAL, CHARITABLE, OR NONPROFIT ORGANIZATION. An employer is exempt from this chapter with respect to the employment of a person who is:

(1) a member of a religious order while the person is performing a service for or at the direction of the order;

(2) a duly ordained, commissioned, or licensed

minister, priest, rabbi, sexton, or Christian Science reader while the person is performing services in that capacity for a church, synagogue, or religious organization;

(3) engaged in the activities of a religious, educational, charitable, or nonprofit organization in which:

(A) the employer-employee relationship does not in fact exist; or

(B) the services are rendered to the organization gratuitously;

(4) employed by the Boy Scouts of America, the Girl Scouts of America, or a local organization affiliated with those organizations;

(5) employed by a camp of a religious, educational, charitable, or nonprofit organization; or

(6) employed with the person's spouse by a nonprofit educational institution to serve as the parents of a child:

(A) who is an orphan;

(B) one of whose natural parents is deceased; or

(C) who is enrolled in and resides in residential facilities of the institution, if the employee and the employee's spouse:

(i) reside in residential facilities of the institution; and

(ii) receive, without cost, board and lodging from the institution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.153. EMPLOYMENT OF CERTAIN PROFESSIONALS, SALESPERSONS, AND PUBLIC OFFICIALS. An employer is exempt from this chapter with respect to the employment of a person:

(1) employed in a bona fide executive, administrative, or professional capacity;

(2) employed as an outside salesperson or collector and paid a commission; or

(3) who performs services for a political subdivision as an elected official or as a member of a legislative body.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.154. DOMESTIC EMPLOYMENT. An employer is exempt from this chapter with respect to the employment of a person who:

(1) performs domestic services in or about a private home, including a person who performs the duties of baby-sitting in or out of the employer's home; or

(2) lives in or about a private home and furnishes personal care for a resident of the home.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.155. EMPLOYMENT OF CERTAIN YOUTHS AND STUDENTS. An employer is exempt from this chapter with respect to the employment of a person who:

(1) is less than 18 years of age and is not a high school graduate or a graduate of a vocational training program, other than a person who is employed in agriculture and whose pay is computed on a piece rate;

(2) is less than 20 years of age and is a student regularly enrolled in a high school, college, university, or vocational training program, other than a person who is employed in agriculture and whose pay is computed on a piece rate; or

(3) has a disability and who is:

(A) not more than 21 years of age;

(B) a client of vocational rehabilitation; and

(C) participating in a cooperative school-work program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.156. EMPLOYMENT OF INMATES. An employer is exempt from this chapter with respect to the employment of a person who performs services while imprisoned in the institutional division of the Texas Department of Criminal Justice or while confined in a local jail.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.157. EMPLOYMENT OF CERTAIN FAMILY MEMBERS. An employer is exempt from this chapter with respect to employment of



the employer's brother, sister, brother-in-law, sister-in-law, child, spouse, parent, son-in-law, daughter-in-law, ward, or person in loco parentis to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.158. CERTAIN AMUSEMENT AND RECREATIONAL ESTABLISHMENTS. An employer is exempt from this chapter with respect to employment in an amusement or recreational establishment that:

(1) does not operate for more than seven months in a calendar year; or

(2) had average receipts for any six months of the preceding calendar year of not more than 33-1/3 percent of its average receipts for the other six months of the year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.159. CERTAIN EMPLOYERS NOT CONTRIBUTING TO UNEMPLOYMENT COMPENSATION FUND; CERTIFICATE. (a) An employer that is not liable for payment of contributions to the unemployment compensation fund under Subtitle A, Title 4, is exempt from this chapter, except with respect to employment of a person in agriculture.

(b) The commission shall furnish a certificate stating whether a specified employer is liable for the payment of contributions to the unemployment compensation fund under Subtitle A, Title 4, to a person making a written request for a certificate. The commission may require payment of a fee not to exceed \$5 for the issuance of the certificate.

(c) A certificate issued under this section is admissible in evidence in an action brought by an employee under Subchapter E. In the absence of evidence to the contrary:

(1) it is presumed that the facts stated in the certificate are true; and

(2) the certificate is conclusive as to whether the named employer is exempt from this chapter under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.16, eff. Sept. 1, 1995.

Sec. 62.160. AGRICULTURAL EXEMPTIONS. (a) An employer is exempt from this chapter with respect to employment of a person in dairy farming.

(b) Sections 62.051-62.054 do not apply to an agricultural employer with respect to an employee engaged in the production of livestock.

(c) In this section, "production of livestock" includes:

(1) any livestock operation, without regard to size or type of location, in which the land produces forage or feedstuffs, including naturally or artificially revegetated forage or feedstuffs;

(2) breeding, feeding, watering, containing, maintaining, and caring for livestock;

(3) production of livestock in feedlots; and

(4) all other activities necessary or useful to the raising of livestock.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.34, eff. September 1, 2009.

Sec. 62.161. SHELTERED WORKSHOPS. A nonprofit charitable organization that is engaged in evaluating, training, and employment services for clients with disabilities and that complies with federal regulations covering those activities is considered to have complied with this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

#### SUBCHAPTER E. CIVIL PENALTY

Sec. 62.201. CIVIL PENALTY. An employer who violates Section 62.051, 62.052, 62.053, or 62.054 or Subchapter C is liable to an affected employee in the amount of the unpaid wages plus an additional equal amount as liquidated damages.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 461, Sec. 5, eff. Sept. 1, 2003.

Sec. 62.202. LIMITATIONS. An action to recover a liability imposed by this subchapter must be brought not later than the second anniversary of the date on which the unpaid wages are due and payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.203. PLAINTIFFS. (a) An action to recover a liability under this subchapter may be brought by an employee for that employee and other similarly affected employees.

(b) An employee may not be a plaintiff to an action brought under this subchapter unless:

(1) the employee consents in writing; and

(2) the consent is filed in the court in which the action is brought.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.204. REQUIRED FINDINGS. At the trial of an action brought under this subchapter, the plaintiff recovers if the jury or the court finds from a preponderance of the evidence that:

(1) the plaintiff is or has been employed by the defendant at any time during the two years preceding the institution of the action;

(2) the original petition filed by or on behalf of the plaintiff is verified; and

(3) the defendant failed to pay the plaintiff the minimum wage under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.205. ATTORNEY'S FEES; COSTS. In addition to a judgment awarded to the plaintiff, the court shall allow reasonable attorney's fees and costs of the action to be paid by the defendant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.