

SECTION .0500 - JURISDICTION AND EXEMPTIONS

13 NCAC 12 .0501 EXEMPTIONS

(a) G.S. 95-25.14(a)(1) provides an exemption from the minimum wage, overtime, youth employment and related record keeping requirements of the Wage and Hour Act for any person employed in an "enterprise" as defined by the F.L.S.A. Persons who are not employed by an "enterprise", but who are subject to the F.L.S.A. because they are engaged in commerce or in the production of goods for commerce are subject to both the F.L.S.A. and the Wage and Hour Act, unless otherwise exempted.

(b) Pursuant to G.S. 95-25.14(a)(1)(c), where the F.L.S.A. provides an exemption from child labor, minimum wage, or overtime (other than an exemption providing for an alternate method of computing overtime), but the Wage and Hour Act does not provide the same exemption, the provisions of the Wage and Hour Act apply. Examples of such federal exemptions include:

- (1) Minimum wage and overtime exemptions under the F.L.S.A.:
 - (A) Seasonal amusement or recreational establishments as specified in 29 U.S.C. 213(a)(3);
 - (B) Small newspapers as specified in 29 U.S.C. 213(a)(8); and
 - (C) Small public telephone companies as specified in 29 U.S.C. 213(a)(10).
- (2) Overtime exemptions under the F.L.S.A.:
 - (A) Outside buyers of poultry, eggs, and milk as specified in 29 U.S.C. 213(b)(5);
 - (B) Small grain elevators as specified in 29 U.S.C. 213(b)(14);
 - (C) Maple sugar or syrup processors as specified in 29 U.S.C. 213(b)(15);
 - (D) Employees engaged in intra-state transportation of fruits or vegetables as specified in 29 U.S.C. 213(b)(16);
 - (E) Motion picture theaters as specified in 29 U.S.C. 213(b)(27);
 - (F) Small lumbering or forestry operations as specified in 29 U.S.C. 213(b)(28); and
 - (G) Newspaper carriers and makers of wreaths composed of natural materials as specified in 29 U.S.C. 213(d).

(c) Pursuant to G.S. 95-25.14(a)(1)(c), where an F.L.S.A. exemption provides an alternate method for computing overtime, persons subject to that exemption are also exempted from the overtime provisions of the Wage and Hour Act. Moreover, persons covered only by the overtime provisions of the Wage and Hour Act are subject to the same alternate methods of overtime calculation. Examples of such F.L.S.A. exemptions include:

- (1) Petroleum distributors as specified in 29 U.S.C. 207(b)(3);
- (2) Employees who work irregular hours and are paid a guaranteed salary as specified in 29 U.S.C. 207(f);
- (3) Piece rate workers as specified in 29 U.S.C. 207(g);
- (4) Commissioned inside salespersons in retail as specified in 29 U.S.C. 207(i);
- (5) Employees of hospitals, nursing homes, old age homes as specified in 29 U.S.C. 207(j);
- (6) Seasonal employees at tobacco warehouses and auctions as specified in 29 U.S.C. 207(m);
- (7) Bus drivers as specified in 29 U.S.C. 207(n);
- (8) Employees of concessionaires in national parks as specified in 29 U.S.C. 213(b)(29);
- (9) Seasonal employees in cotton ginning, sugarcane or sugar beet processing as specified in 29 U.S.C. 213(h);
- (10) Seasonal employees in local cotton ginning as specified in 29 U.S.C. 213(i); and
- (11) Seasonal employees in sugar processing as specified in 29 U.S.C. 213(j).

(d) The statutory exemption from certain wage and hour provisions for the spouse, child, parent or dependent of the employer applies equally to the spouse, child, parent or dependent of corporate officers. For the purposes of this Section only, corporate officers are those who directly head the establishment and:

- (1) are majority stockholders, or
- (2) are principal stockholders with voting control, or
- (3) are in voting control through stock ownership or with joint ownership of spouse or family.

(e) Homes for dependent children pursuant to G.S. 95-25.14(c)(6) include institutions and group homes for dependent children.

History Note: Authority G.S. 95-25.14; 95-25.19;
Eff. November 1, 1980;
Amended Eff. April 1, 2001;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.