

**Overtime Exemption**

[Overtime Exemption - Alabama Department of Revenue](https://www.revenue.alabama.gov/individual-corporate/overtime-exemption/)

**Overtime Pay Exemption\***

**Reporting Guidance and FAQs**

For the tax year beginning on or after January 1, 2024, overtime pay received by a full-time hourly wage paid employee for hours worked above 40 in any given week are excluded from gross income and therefore exempt from Alabama state income tax.

**Overtime Pay Exemption: Withholding Tax FAQ**

**What overtime qualifies as exempt?**

* Overtime pay received beginning on or after January 1, 2024, and before June 30, 2025.
* Overtime pay based on the act is amounts received by a full-time hourly wage paid employee as compensation for work performed in excess of 40 hours in a week, regardless of the rate paid for the hours over 40 in a week or how it is calculated.

For withholding tax purposes, only wages subject to Alabama withholding are used in calculating when the 40-hour weekly threshold has been exceeded. This applies both to employees who are residents of Alabama and to employees who are non-residents.

**Questions**

* **If an Alabama employee (resident) works in multiple states which require withholding and the employees’ wages exceed 40 hours, would the exemption apply?**

For withholding tax purposes for an Alabama resident, wages earned in other states that are subject to that other state’s withholding tax are not subject to Alabama withholding tax. Since the wages are not subject to Alabama withholding and the employer is not collecting and remitting Alabama withholding taxes on those wages, they are not used in the calculation of determining the 40-hour threshold for Alabama withholding purposes.

* **If a non-resident is earning wages while in Alabama, would the overtime exemption apply even though the total Alabama hours are less than 40?**

For withholding tax purposes only wages subject to Alabama withholding above 40 hours are used in the withholding tax determination for non-residents.

* **If an employer considers hourly employees full time at less than 40 hours per week (for example 35), at what point would wages above this threshold be exempt from taxation?**

Exempt overtime wages would begin once the employee exceeds more than 40 hours of work in that week. Regardless of the rate of pay the employee will be paid after 35 hours, the wages earned between 35 and 40 hours is considered taxable income to the employee. For reporting purposes, only the exempt wages above 40 hours should be included in overtime reporting.

* **If an employee is paid overtime for working more than 8 hours in one day, would these overtime wages be exempt if the employee does not exceed a 40 hour work week?**

No, only the wages that exceed 40 hours in the work week will qualify as exempt and be used for exempt overtime reporting purposes.

* **Does paid time off count toward the 40 hour work week?**

No, paid time off does not count toward overtime. Under the Fair Labor Standards Act (FLSA), sick time, vacation time, or anytime an employee is not physically working does not count as time worked. In determining if an employee has worked more than 40 hours, only hours physically worked by the employee will qualify as hours worked toward the 40 hour threshold. Paid time off hours will need to be removed in determining the total hours worked for the week.

* **Will an hourly part time or seasonal employee qualify for exempt overtime wages if they occasionally work over 40 hours in the week?**

Yes, wages earned above 40 hours for the week will qualify for exemption and reporting purposes if earned by an hourly part time or seasonal employee.

* **Will the overtime earned by full-time salaried nonexempt employees such as law enforcement or emergency responders qualify for exemption? Or employees who work  schedules other than an hourly work week, such as 7-on and 7-off?**

No, only full time hourly employees will qualify. Hybrid plans where an employee is salaried nonexempt but can also earn overtime will not qualify for the overtime exemption.  If an employee is paid by the hour and works more than 40 hours in one week, any compensation received for the hours worked in excess of 40 hours is exempt. Whether the employer considers the hours to be “overtime” hours is not relevant for determining the exemption. The statute also does not provide any adjustment for a work schedule that exceeds one week in duration; therefore, multiple weeks cannot be averaged to determine what wages are exempt. The statute is clear in that it applies to full time hourly employees.

* **Is the amount of differential pay or the amount of overtime paid above regular pay the only amount exempt or is it the full amount earned above 40 hours by a full time hourly employee?**

The full amount paid above 40 hours will qualify for exemption and reporting purposes if paid to a full time hourly employee. The amount of the pay is not a determining factor for the exemption whether time and a half, double time, or other method of payment if by the hour.

* **Will an amount of overtime earned on or before June 29, 2025, but paid after this date qualify for exemption?**

No, amount must be received/paid prior to June 30, 2025, to qualify for the exemption and reporting purposes.

* **Will earnings other than full time hourly wages qualify for exemption such as those that are paid by the mile or other schedules where the hours are averaged for a period such as biweekly, semi-monthly or monthly?**

No, a mileage basis compensation is not covered under this legislation. Only wages earned by full time hourly employees will qualify for exemption and reporting  purposes. Additionally, commissions and bonuses paid in addition to an hourly wage are not exempt.

* **For reporting purposes, if an employee receives exempt overtime wages multiple times within a reporting period, (ex: paid weekly and receives overtime 4 times within the monthly reporting period) is the employee reported once for the period or multiple times?**

The employee is only reported once for each reporting period regardless of the frequency of overtime paid to them. There is a distinct employee count for each reporting period. Each employee who receives overtime for the reporting period is included only once in the report.

*ALDOR is committed to providing employers and business with guidance and information related to the overtime pay exemption. If you have additional questions related to withholding and reporting of exempt overtime pay, please email**withholdingtax@revenue.alabama.gov**.*

\*[Act 2023-421](https://arc-sos.state.al.us/ucp/L1280257.AI1.pdf) was signed into law on June 8, 2023.