

West Virginia Division of Labor Establishing Minimum Wage Coverage

Once you've determined that your company doesn't gross over \$500,000.00 annually (the enterprise test) and that the nature of your business does not involve interstate commerce, **you must also meet the following requirements to be a covered "employer" under West Virginia law:**

1. You must have six (6) employees at a separate and distinct location.
2. Less than 80% of your employees are engaged in any type of "individual" interstate commerce activity.

If you answered yes to both of these questions and have already determined that your business does not meet the enterprise OR interstate commerce test to qualify for federal minimum wage jurisdiction, then your business would be considered a covered employer under the West Virginia Minimum Wage statute.

THE EIGHTY PERCENT (80%) RULE

In order to determine whether or not an *employee* is engaged in "*individual*" *interstate commerce activity*, the tasks they perform each day must be evaluated.

Some examples of job duties that constitute "individual" interstate commerce activity are as follows:

- Processing, accepting or otherwise handling credit card transactions.
- Ordering supplies (via telephone, fax, or email) or receiving goods shipped across state lines.
- Driving a motor vehicle across states lines or on a federal highway.
- Keeping records of interstate transactions (such as invoices, payables, etc).
- Conducting company business via phone, e-mail, regular mail or fax across state lines.

Some industries are automatically covered under federal law and are therefore exempt from the West Virginia minimum wage provisions regardless of specific employee activity. The following list is a "sampling" of those industries. *If you have questions concerning an industry that is not listed, please contact the United States Department of Labor or visit their website at www.dol.gov for further information.*

Construction	Mining
Child Day Care Centers	In-Home Health Care Providers
Hospitals	Agricultural / Farming
Nursing Care (includes in home care)	National Restaurant Chains
National Fast Food Chains	Banking & Financial Enterprises
Security Guards / Janitors	Real Estate
The Federal Government	County and local governments
Automobile Dealerships	National Hotel and/or Motel Chains
Emergency Response (police, firefighters, ambulance workers)	