

CHAPTER 188
MINIMUM WAGE SCOPE AND COVERAGE

347—215.1(91D) Requirement to pay.

215.1(1) Every employer shall pay to each of the employer's employees performing work in this state, wages of not less than the current federal minimum wage, pursuant to 29 U.S.C. Section 206, or the wage specified in 215.1(2), whichever is greater.

215.1(2) The current federal minimum wage is \$3.35 per hour. Effective January 1, 1990, the state minimum wage shall be \$3.85 per hour. Effective January 1, 1991, the state minimum wage shall be \$4.25 per hour. Effective January 1, 1992, the state minimum wage shall be \$4.65 per hour.

215.1(3) Rescinded IAB 11/23/94, effective 1/1/95.

347—215.2(91D) Initial employment wage rate.

215.2(1) The wage rate requirement in rule 215.1(91D) does not apply until the employee has completed 90 calendar days of employment with the employer. The 90-day calendar period is counted from the employee's initial day of work. The employer shall pay to each employee who has not completed 90 calendar days of employment at least the following effective wage rates: Effective January 1, 1990, the state minimum initial employment wage rate shall be \$3.35 per hour; effective January 1, 1991, the state minimum initial employment wage rate shall be \$3.85 per hour; and effective January 1, 1992, the state minimum initial employment wage rate shall be \$4.25 per hour.

215.2(2) If the state minimum initial employment wage rate changes during the 90-calendar day period, the employer shall pay the new effective rate.

215.2(3) If, after less than 90 calendar days from the initial day of work, the employee's employment is terminated and the employee is rehired by the same employer within three years of the initial hiring, the initial employment wage rate in effect at rehiring may be paid until the 90-calendar-day employment period is reached. If, after 90 calendar days from the initial day of work, the employee's employment is terminated and the employee is rehired in less than three years from the last date of employment, the employee shall not be employed at the initial employment wage rate. The rates specified in 215.1(2) shall apply as the minimum wage rate.

215.2(4) In the event the federal minimum wage is greater than the rates established in 215.2(1), the employer is not required by these rules to pay the higher rate. The employer may be required to pay the higher rate under federal law.

347—215.3(91D) Definitions. As used in 347—Chapters 216 to 220:

215.3(1) "*Agriculture*" includes farming in all its branches and among other things includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15(g) of the Agricultural Marketing Act, as amended); the raising of livestock, bees, furbearing animals, or poultry; and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

215.3(2) "*American vessel*" includes any vessel which is documented or numbered under the laws of the United States.

215.3(3) "*Commissioner*" means the labor commissioner or the commissioner's designee.

215.3(4) "*Commerce*" means trade, commerce, transportation, transmission, or communication among the several states or between any state and any place outside thereof.

215.3(5) "*Elementary school*" means a day or residential school which provides elementary education, as determined under state law.

215.3(6) "*Employ*" includes to suffer or permit to work.

215.3(7) "*Employee*" means any individual employed by an employer. In the case of an individual employed by a public agency, the term means any individual employed by the state, political subdivision of the state, or an interstate governmental agency, other than the individual:

a. Who is not subject to the civil service laws of the state, political subdivision, or agency which employs the individual; and

b. Who

- (1) Holds a public elective office of that state, political subdivision, or agency,
- (2) Is selected by the holder of the office to be a member of the holder's personal staff,
- (3) Is appointed by the officeholder to serve on a policymaking level,
- (4) Is an immediate adviser to the officeholder with respect to the constitutional or legal powers of the office, or
- (5) Is an employee in the legislative branch or legislative body of that state, political subdivision, or agency and is not employed by the legislative library of the state, political subdivision, or agency.

215.3(8) "Employee" does not mean:

a. For purposes of the definition of "Person-day," any individual employed by an employer engaged in agriculture if the individual is the parent, spouse, child, or other member of the employer's immediate family.

b. Any individual who volunteers to perform services for a public agency which is the state, a political subdivision of the state, or an interstate government agency, if:

- (1) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
- (2) The services are not the same type of services which the individual is employed to perform for the public agency.

However, an employee of a public agency which is the state, political subdivision of the state, or an interstate governmental agency may volunteer to perform services for any other state, political subdivision, or interstate governmental agency, including a state, political subdivision or agency with which the employing state, political subdivision, or agency has a mutual aid agreement.

215.3(9) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of the labor organization.

215.3(10) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements. Enterprise shall not include the related activities performed for the enterprise by an independent contractor, provided that, within the meaning of this definition, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement:

a. That it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser;

b. That it will join with other establishments in the same industry for the purpose of collective purchasing; or

c. That it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. For purposes of this definition, the following activities performed by any person or persons shall be deemed to be those activities performed for a business purpose:

(1) In connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or deficient who reside on the premises of the institution; a school for mentally or physically handicapped or gifted children; a day-care, preschool, elementary or secondary school; or an institution of higher education (regardless of whether the hospital, institution, or school is public or private or operated for profit or not for profit);

(2) In connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of the railway or carrier are subject to regulation by

a state or local agency (regardless of whether the railway or carrier is public or private or operated for profit or not for profit); or

(3) In connection with the activities of a public agency.

215.3(11) “*Enterprise engaged in commerce or in the production of goods for commerce*” means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which:

a. Is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in 215.3(11)“*b.*,” whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) is not less than \$250,000;

b. Is an enterprise whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) is not less than \$300,000 (\$217,500 if prior to March 31, 1990);

c. Is, without regard to gross volume of sales or business done, engaged in laundering, cleaning, or repairing clothing or fabrics;

d. Is, without regard to gross volume of sales or business done, engaged in the business of construction or reconstruction, or both;

e. Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or deficient who reside on the premises of the institution; a school for mentally or physically handicapped or gifted children; a day-care, preschool, elementary or secondary school; or an institution of higher education (regardless of whether the hospital, institution, or school is public or private or operated for profit or not for profit); or

f. Is an activity of a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of the owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of an enterprise, and the sales of the establishments shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of 215.3(11). The employees of an enterprise which is a public agency shall for purpose of this definition be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

215.3(12) “*Goods*” means goods (including ships and marine equipment), wares, products, commodities, merchandise or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

215.3(13) “*Hours worked.*” In determining, for the purpose of the minimum wage, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective bargaining agreement applicable to the particular employee. In determining the total hours worked, the employer must include all time the employee is required to be on the premises or on duty (and not completely relieved of all job duties during a meal or sleep period) and all the time the employee is suffered or permitted to work.

215.3(14) “*Industry*” means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

215.3(15) “*Person*” means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

215.3(16) “*Person-day*” means any day during which an employee performs any agricultural labor for not less than one hour.

215.3(17) “*Produced*” means produced, manufactured, mined, handled, or in any other manner worked on in any state; and an employee shall be deemed to have been engaged in the production of

goods if the employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on the goods, or in any closely related process or occupation directly essential to the production thereof, in any state.

215.3(18) “*Public agency*” means the government of the state of Iowa, its various departments and agencies, and any political subdivision of the state.

215.3(19) “*Resale*” shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance, provided that the sale is recognized as a bona fide retail sale in the industry.

215.3(20) “*Sale*” or “*sell*” includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

215.3(21) “*Secondary school*” means a day or residential school which provides secondary education, as determined under state law.

215.3(22) “*Tipped employee*” means any employee engaged in an occupation in which the employee customarily received more than \$30 a month in tips.

215.3(23) “*Wage*” paid to any employee includes the reasonable cost, as determined by the labor commissioner, to the employer of furnishing the employee with board, lodging, or other facilities, if the board, lodging, or other facilities are customarily furnished by the employer to the employees, provided that the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee, provided further, that the commissioner is authorized to determine the fair value of the board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. The evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid the employee by the employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 40 percent of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless:

a. The employee has been informed by the employer of the provisions of this definition, and

b. All tips received by the employee have been retained by the employee, except that this definition shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

SOURCE: 29 U.S.C. 203

347—215.4(91D) Exceptions. The rules contained in 347—Chapters 215 to 220 shall not apply with respect to:

215.4(1) Any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesperson (except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in employee’s workweek which the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 percent of the employee’s hours worked in the workweek are devoted to the activities).

215.4(2) Any employee employed by a retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described and defined in 215.3(11)“*e*”) if more than 50 percent of the establishment’s annual dollar volume of sales of goods or services is made within the state in which the establishment is located, and the establishment is not in an enterprise described and defined in 215.3(11). A “retail or service establishment” shall mean an establishment 75

percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

215.4(3) Any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or nonprofit education conference center, if

a. It does not operate for more than seven months in any calendar year, or

b. During the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 percent of its average receipts for the other six months of the year, except that the exemption provided does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.

215.4(4) Any employee employed by an establishment which qualifies as an exempt retail establishment under 215.4(2) and is recognized as a retail establishment in the particular industry notwithstanding that the establishment makes or processes at the retail establishment the goods that it sells, provided that more than 85 percent of the establishment's annual dollar volume of sales of goods so made or processed is made within the state in which the establishment is located.

215.4(5) Any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any employee.

215.4(6) Any employee employed in agriculture:

a. If the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 person-days of agricultural labor;

b. If the employee is the parent, spouse, child, or other member of the employer's immediate family;

c. If the employee:

1. Is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

2. Commutes daily from the employee's permanent residence to the farm on which the employee is employed, and

3. Has been employed in agriculture less than 13 weeks during the preceding calendar year;

d. If the employee (other than an employee described in 215.4(6) "c"):

1. Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

2. Is employed on the same farm as the employee's parent or person standing in the place of the employee's parent, and

3. Is paid at the same piece rate as employees over age 16 are paid on the same farm; or

e. If the employee is principally engaged in the range production of livestock.

215.4(7) Any employee to the extent that the employee is exempted by regulations, order, or certificate of the Secretary of Labor issued under the federal Fair Labor Standards Act, 29 U.S.C. 214.

215.4(8) Any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than 4,000, having the major part of its circulation within the county where published or counties contiguous thereto.

215.4(9) Reserved.

215.4(10) Any switchboard operator employed by an independently owned public telephone company which has not more than 750 stations.

215.4(11) Reserved.

215.4(12) Any employee employed as a stevedore on a vessel other than an American vessel.

215.4(13) Reserved.

215.4(14) Any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.

215.4(15) Any enterprise whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) falls below the applicable amount so stated in 215.3(11) which initially required compliance. Future compliance shall be determined following each succeeding quarter with the gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) from the most recent four quarters being totaled to determine an annual gross. The gross amount initially requiring compliance shall continue in effect.

SOURCE: 29 U.S.C. 213

347—215.5(91D) Interpretative guidelines. The rules contained in 347—Chapters 215 to 220 are based on the federal rules indicated at the end of each rule. The federal rules contained illustrative examples of the application of the rule. The examples are not adopted, but the commissioner will be guided in enforcement by the examples provided in the rules. The Secretary of Labor has adopted statements of general policy and interpretations not directly related to regulations at 29 CFR Parts 776, 779, 780, and 785. The commissioner will follow these statements and interpretations in the application and enforcement of Iowa Code chapter 91D.

These rules are intended to implement Iowa Code chapter 91D.

[Filed emergency 11/8/89 after Notice of 9/6/89—published 11/29/89, effective 1/1/90]

[Filed 11/2/94, Notice 6/22/94—published 11/23/94, effective 1/1/95]