

640.65 EMPLOYMENT RELATIONSHIPS - WAGE & HOUR ACT - WAGE  
PAYMENT CLAIM - DAMAGES. N.C. Gen. Stat. § 95-25.1 seq

*NOTE WELL: Any employer who violates N.C. Gen. Stat. § 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the employee or employees affected in the amount of their unpaid amounts under N.C. Gen. Stat. § 95-25.6 through 95-25.12, plus interest at the legal rate, from the date each amount first came due.<sup>1</sup> Although not a jury issue, the Court additionally shall award liquidated damages in an amount equal to the amount found to be due as provided in N.C. Gen. Stat. § 95-25.22(a), provided that if the employer shows to the satisfaction of the Court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of the Act, the Court may, in its discretion, award no liquidated damages or may award any amount of liquidated damages not exceeding the amount found due.<sup>2</sup> The Court may, in addition to any judgment awarded the plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant.<sup>3</sup>*

The [second] [(state number)] issue reads:

"What is the amount of [wages] [bonuses] [commissions] [sick pay] [vacation pay] [severance pay] [overtime] [(identify any other types of payments promised when the employer has a policy or practice of making such payments)] owed to the plaintiff as of (date)?"

You will answer this issue only if you answered this Issue (state number) in favor of the plaintiff. On this issue, the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of unpaid [wages] [bonuses] [commissions] [sick pay] [vacation pay] [severance pay] [overtime] [(identify any other types of payments promised when the employer has

*a policy or practice of making such payments*)] owed to the plaintiff.<sup>4</sup>

You will arrive at this amount based on the evidence presented.

In order to answer this Issue (*state number*), you must calculate the amount owed for

[All unpaid wages [and tips] due as of (*date of separation*)]

[[bonuses] [commissions] [other forms of calculation] that were owed as of (*date when such amounts become calculable*). As I previously explained to you [bonuses] [commissions] [other forms of calculation] do not have to be calculable at the time of separation so long as they will become calculable in the future.<sup>5</sup>]

[overtime at a rate of not less than time and one half of the regular rate of pay for those hours in excess of [40] [45]<sup>6</sup> per workweek. Workweek means any period of 168 consecutive hours.<sup>7</sup>]

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence the amount the plaintiff is entitled to recover from the defendant, then it would be your duty to write that amount in the blank space provided.

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1 N.C. Gen. Stat. § 95-25.22(a).

2 *Id.*

3 N.C. Gen. Stat. § 95-25.22(d).

4 See N.C. Gen. Stat. § 95-25.2(16).

5 See *Morris v. Scenera Research, LLC*, \_\_ N.C. App. \_\_, \_\_, 747 S.E.2d 362, 370 (2013) (holding the question of calculability of bonus compensation under the Wage and Hour Act is a jury question).

6 Where the plaintiff was employed in a seasonal amusement or recreational establishment, the overtime rate is paid only for hours in excess of 45 per workweek. See N.C. Gen. Stat. § 95-25.4.

NOTE WELL: N.C. Gen. Stat. § 95-25.14 sets forth certain exemptions to which the overtime pay requirements of N.C. Gen. Stat. § 95-25.4 do not apply. If the plaintiff falls

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*within any of these exemptions, do not give that portion of this instruction involving overtime. See, e.g., Bonham v. Wolf Creek Academy, 767 F. Supp. 2d 558, 565 (2011) (noting that claim for unpaid overtime wages under the NC Wage & Hour Act was not allowed where Fair Labor Standards Act governed the employer-employee relationship and thus fell within the exemption set forth in N.C. Gen. Stat. § 95-25.14).*

7 N.C. Gen. Stat. § 95-25.2(17).