

§664. Minimum wage; overtime rate

Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section. [PL 1995, c. 305, §1 (RPR).]

1. Minimum wage. The minimum hourly wage is \$7.50 per hour. Starting January 1, 2017, the minimum hourly wage is \$9.00 per hour; starting January 1, 2018, the minimum hourly wage is \$10.00 per hour; starting January 1, 2019, the minimum hourly wage is \$11.00 per hour; and starting January 1, 2020, the minimum hourly wage is \$12.00 per hour. On January 1, 2021 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, and must be increased in accordance with this section thereafter.

[IB 2015, c. 2, §1 (AMD).]

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section except that from January 1, 2017 to December 31, 2017, the minimum cash wage paid directly to a tipped service employee may not be less than \$5.00 per hour. An employer who elects to use the tip credit must inform the affected employee in advance, as provided for in this subsection, and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined within the established 7-day workweek. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. Tips that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company. The employer may not deduct any amount from employee tips charged to a credit card, including, but not limited to, service fees assessed to the employer in connection with the credit card transaction.

An employer who elects to use the tip credit must inform the affected employee in advance, either orally or in writing, of the following information:

A. The amount of the direct wage to be paid by the employer to the tipped employee; [PL 2017, c. 272, §1 (NEW).]

B. The amount of tips to be credited as wages toward the minimum wage; [PL 2017, c. 272, §1 (NEW).]

C. That the amount of tips to be credited as wages may not exceed the value of the tips actually received by the employee; [PL 2017, c. 272, §1 (NEW).]

D. That all tips received by the affected employee must be retained by the employee, except for a valid tip pooling arrangement in accordance with subsection 2-A; [PL 2023, c. 179, §1 (AMD).]

E. That the tip credit may not apply to any employee who has not been informed by the employer of the provisions for a tip credit; and [PL 2017, c. 272, §1 (NEW).]

F. If the employer uses a tip pooling arrangement, any required tip pool contribution amount from the employee. [PL 2017, c. 272, §1 (NEW).]
[PL 2023, c. 179, §1 (AMD).]

2-A. Tip pooling. This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement that does not violate the federal Fair Labor Standards Act of 1938 and regulations made pursuant to that Act as long as:

A. The tip pooling arrangement is only among service employees when the employer uses the tip credit under subsection 2; or [PL 2023, c. 179, §2 (NEW).]

B. The tip pooling arrangement is among a group of employees when the employer pays all employees in the group the minimum hourly wage and does not use the tip credit under subsection 2. An employer may not receive tips from such a tip pool and may not allow supervisors and managers to receive tips from the tip pool. [PL 2023, c. 179, §2 (NEW).]

[PL 2023, c. 179, §2 (AMD).]

2-B. Service charges. An employer in a banquet or private club setting that adds a service charge shall notify the customer that the service charge does not represent a tip for service employees. The employer in a banquet or private club setting may use some or all of any service charge to meet its obligation to compensate all employees at the rate required by this section.

[PL 2011, c. 118, §4 (NEW).]

3. Overtime rate. An employer may not require an employee to work more than 40 hours in any one week unless 1 1/2 times the regular hourly rate is paid for all hours actually worked in excess of 40 hours in that week. The regular hourly rate includes all earnings, bonuses, commissions and other compensation that is paid or due based on actual work performed and does not include any sums excluded from the definition of "regular rate" under the Fair Labor Standards Act, 29 United States Code, Section 207(e).

The overtime provision of this section does not apply to:

A. Automobile mechanics, automobile parts clerks, automobile service writers and automobile salespersons as defined in section 663. The interpretation of these terms must be consistent with the interpretation of the same terms under federal overtime law, 29 United States Code, Section 213; [PL 2007, c. 360, §5 (AMD).]

B. [PL 2007, c. 640, §5 (RP).]

C. Mariners; [PL 1995, c. 305, §1 (NEW).]

D. Public employees, except those employed by the executive or judicial branch of the State; [PL 2003, c. 423, §1 (AMD); PL 2003, c. 423, §5 (AFF).]

E. [PL 2007, c. 640, §6 (RP).]

F. The canning; processing; preserving; freezing; drying; marketing; storing; packing for shipment; or distributing of:

- (1) Agricultural produce;
- (2) Meat and fish products; and
- (3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection; [PL 2019, c. 387, §1 (AMD).]

G. [PL 2001, c. 628, §3 (NEW); PL 2001, c. 628, §5 (AFF); MRSA T. 26 §664, sub-§3, ¶ G (RP).]

H. [PL 2011, c. 681, §2 (RP).]

I. [PL 2011, c. 681, §2 (RP).]

J. [PL 2011, c. 681, §2 (RP).]

K. A driver or driver's helper who is not paid hourly and is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section, who is governed by the applicable provisions of federal law with respect to payment of overtime.

Nothing in this paragraph may be construed to limit the rights of parties to negotiate rates of pay for drivers and driver's helpers who are represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board or who are employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid a driver or driver's helper; and [PL 2019, c. 387, §2 (AMD).]

L. Public employees employed by the executive or judicial branch of the State engaged in fire protection activities, as defined in the federal Fair Labor Standards Act, 29 United States Code, Section 203(y), or in law enforcement activities, as defined in 29 Code of Federal Regulations, Section 553.211, and who are eligible to have overtime pay calculated and paid in accordance with 29 United States Code, Section 207(k).

This paragraph may not be construed to limit the rights of parties to negotiate an agreement that provides for payment of overtime that exceeds the requirements of 29 United States Code, Section 207(k). [PL 2019, c. 387, §3 (NEW).]

[PL 2019, c. 387, §§1-3 (AMD).]

4. Compensatory time. To the extent permitted under the federal Fair Labor Standards Act of 1938, as amended, 29 United States Code, Section 207(o), the overtime pay requirement applicable to executive or judicial employees as described in subsection 3, paragraph D may be met through compensatory time agreements.

[PL 2003, c. 423, §2 (NEW); PL 2003, c. 423, §5 (AFF).]

SECTION HISTORY

PL 1965, c. 410, §5 (AMD). PL 1967, c. 333 (AMD). PL 1967, c. 466, §5 (AMD). PL 1969, c. 184 (AMD). PL 1969, c. 356 (AMD). PL 1969, c. 504, §43 (AMD). PL 1969, c. 590, §41 (AMD). PL 1971, c. 78, §1 (AMD). PL 1971, c. 415 (AMD). PL 1971, c. 620, §13 (AMD). PL 1971, c. 622, §88 (AMD). PL 1973, c. 420 (AMD). PL 1973, c. 467 (AMD). PL 1973, c. 625, §171 (AMD). PL 1973, c. 752, §§1,2 (AMD). PL 1975, c. 23 (AMD). PL 1975, c. 352 (AMD). PL 1979, c. 54 (AMD). PL 1979, c. 516, §3 (AMD). PL 1983, c. 857 (AMD). PL 1985, c. 76, §2 (AMD). PL 1985, c. 576 (AMD). PL 1987, c. 738, §§1,2 (AMD). PL 1991, c. 507, §2 (AMD). PL 1991, c. 544, §1 (AMD). PL 1993, c. 233, §1 (AMD). PL 1993, c. 233, §3 (AFF). PL 1993, c. 434, §1 (AMD). PL 1993, c. 434, §8 (AFF). PL 1995, c. 305, §1 (RPR). PL 1995, c. 510, §1 (AMD). PL 1997, c. 136, §1 (AMD). PL 2001, c. 297, §1 (AMD). PL 2001, c. 336, §1 (AMD). PL 2001, c. 628, §§1-3 (AMD). PL 2001, c. 628, §5 (AFF). PL 2003, c. 423, §§1,2 (AMD). PL 2003, c. 423, §5 (AFF). PL 2003, c. 697, §1 (AMD). PL 2005, c. 578, §1 (AMD). PL 2007, c. 360, §5 (AMD). PL 2007, c. 367, §2 (AMD). PL 2007, c. 640, §§4-6 (AMD). PL 2011, c. 118, §§3, 4 (AMD). PL 2011, c. 681, §§1-3 (AMD). IB 2015, c. 2, §§1, 2 (AMD). PL 2017, c. 219, §15 (AMD). PL 2017, c. 272, §1 (AMD). PL 2019, c. 10, §1 (AMD). PL 2019, c. 387, §§1-3 (AMD). PL 2023, c. 179, §§1, 2 (AMD).

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