

Provided By BCG Advisors, Inc.

Minimum Wage Laws

Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is \$7.25 per hour for nonexempt employees.

The New Jersey State Wage and Hour Law (NJWHL) complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. Whenever state and federal laws conflict, the law that is more favorable to the employee applies. The New Jersey [Department of Labor and Workforce Development](#) (LWD) enforces and investigates minimum wage violation claims.

MINIMUM WAGE RATE

Effective Jan. 1, 2014, the minimum wage rate in the state is **\$ 8.25 per hour**. The constitutional amendment that set this new wage rate also authorizes the LWD to adjust the wage rate in the future to reflect changes in inflation.

In addition, the NJWHL warns employers to be mindful of local laws, ordinances and any rule or regulation that may increase an employee's minimum wage rate.

When an employer requires an employee to accept meal and lodging benefits, the cost of these benefits are considered a convenience and are *not* to be counted in a calculation of that employee's wages.

SPECIAL CERTIFICATES FOR SUBMINIMUM WAGE RATES

Under the NJWHL, employers can obtain special subminimum wage rate certificates from the LWD to pay disabled employees, learners, students and apprentices a wage rate below the minimum wage rate. To obtain these certificates, employers must submit a proposal and wait for the LWD to set the duration, wage rate and conditions for these certificates.

Student-Workers

Generally, student-workers may receive wages as low as **85 percent** of the minimum wage rate (\$7.01 per hour). A student-worker is an individual who works part-time for the institution where he or she receives full-time instruction as a means to defray part of his or her school expenses.

Disabled Workers

A disabled worker is an individual whose earning capacity or productivity is impaired because of physical or mental deficiency or injury. A disabled worker can receive subminimum wages at a rate that adequately reflects his or her earning capacity.

An employer applying for a subminimum wage rate certificate for a disabled employee must propose a wage rate and wait for LWD approval.

TIPPED EMPLOYEES

A tipped employee's wages consist of the **cash wage** plus all tips actually received by the employee for his or her services.

In New Jersey, employers must pay their tipped employees a cash wage of **at least \$2.13 per hour**. These employers must be able to prove that their tipped employees'

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

Minimum Wage Laws

tips account for at least the other \$6.12 per hour they need to meet the state's minimum wage rate requirements.

Employers are obligated to subsidize an employee's wages to the extent that the employee's tips are insufficient to enable him or her to receive the equivalent of the minimum wage rate.

MINIMUM WAGE RATE EXEMPTIONS

NJWHL minimum wage requirements do not apply to:

- Independent contractors and subcontractors;
- Minors under the age of 18 with no special vocational school graduate permit, *unless* their occupations are in apparel, beauty culture, first processing of farm products, food service, hotel and motel services, laundry, cleaning and dyeing, light manufacturing or retail;
- Motor vehicle sales personnel;
- Outside sales personnel;
- Part-time employees primarily engaged in the care and tending of children in the employer's home;
- Summer camp, conference and retreat employees working for any nonprofit or religious corporation or association during the months of June, July, August and September;
- Summer camp, conference and retreat employees working for nonprofit or religious organizations; and
- Volunteer employees that receive no more than incidental benefits at a county or agricultural fair operated by a nonprofit or religious organization.

NOTICE AND POSTINGS

Employers are required to post a notice advising employees of their employment rights. The notice must be displayed in a conspicuous place where employees regularly pass by and can see it. A [model poster](#) can be found on the LWD website.

In addition, employers must notify their employees of:

- The employees' rate of pay (at the time of hiring);
- The employer's established pay days (at the time of hiring);
- Any pay rate changes before the changes become effective; and
- Any wage deductions.

RETALIATION

The NJWHL prohibits employers from discharging or terminating employees solely because they refuse to participate in activities that violate federal or state law. Any employer that discharges, takes disciplinary action against or otherwise discriminates against an employee that files a complaint or assists the LWD in a wage investigation commits a disorderly persons offense, punishable by a fine of between **\$100 and \$1,000**.

Employers that retaliate against their employees may also be required to pay their employees all wages that they may have lost as a result of retaliation, to offer reinstatement (if applicable), to correct any other discriminatory action.

In addition, on Aug. 29, 2013, a bill went into effect barring employers from retaliating against employees who share certain information with other employees, former employees or their representatives in relation to an investigation of possible pay discrimination. The law also prohibits discrimination or retaliation against employees who request this information from co-workers and former

Minimum Wage Laws

employees even when co-workers and former employees are not required to disclose such information. The information protected under this law includes;

- Job title;
- Occupational category;
- Rate of compensation or benefits;
- Gender;
- Race;
- Ethnicity;
- Military status; and
- National origin.

PENALTIES

Employers that violate the NJWHL can be ordered to cover all unpaid wages and face the possibility of criminal, administrative and civil penalties. An agreement between an employer and an employee for wages lower than the minimum wage rate does *not* exempt employers from liability under the NJWHL.

Employers are only liable for actions that are filed within two years of when the violation takes place.

Criminal Penalties

Criminal penalties include misdemeanor charges, punishable by:

- Imprisonment for between **10 and 90 days**, a fine of between **\$100 and \$1,000** or both for a first offense; and
- Imprisonment for up to **100 days**, a fine of between **\$500 and \$1,000** or both for second and subsequent offenses.

Each week in which an employee has not been paid the minimum wage rate is a separate offense.

An employer that fails to pay a judgment is subject to imprisonment for **up to 100 days** for a first offense and **up to 200 days** for a second or subsequent offense.

Administrative Penalties

Administrative penalties include fines of up to:

- **\$250 plus 10 percent** of any unpaid wages for a first violation; and
- **\$500 plus 18 to 25 percent** of unpaid wages for second and subsequent violations.

When determining an employer's administrative penalties, the LWD will consider the employer's compliance history, the seriousness of the violation, the employer's good faith and the size of the employer's business.

When assessing administrative penalties, the LWD must notify the employer of the violation and the amount of the penalty. Employers are entitled to request a hearing **within 15 days** of receiving notice of the administrative penalties.

Civil Penalties

Civil penalties include compensation for **unpaid wages, interest, reasonable attorney's fees** and **court costs**. Employers may be required to pay interest if:

- They have unreasonably delayed compliance with a LWD order;
- Interest is necessary to allow an employee to recover the present value of unpaid wages; or
- Otherwise justified by the specific circumstances of a particular case.

MORE INFORMATION

Contact BCG Advisors, Inc. for more information on wage payment and work hour laws in New Jersey.