

EMPLOYMENT & LABOR LAW NEWSLETTER

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How the Change in Minimum Wage Law Effects You

On February 19, 2019, Governor Pritzker signed off on P.A. 101-0001. The new Act maintains the credit for tipped employees at 40% of the applicable minimum wage (820 ILCS 105/4(c)) and amends the Illinois Minimum Wage Law, changing the minimum wage on the following schedule:

Effective Date	Standard Minimum	Tipped Employee Minimum
1/1/2020	\$9.25	\$5.55
7/1/2020	\$10.00	\$6.00
1/1/2021	\$11.00	\$6.60
1/1/2022	\$12.00	\$7.20
1/1/2023	\$13.00	\$7.80
1/1/2024	\$14.00	\$8.40
1/1/2025	\$15.00	\$9.00

Tipped Employees

In 2018, the Federal Fair Labor Standards Act was amended to expressly prohibit an employer from keeping tips received by its employees for any purposes. It had always been implicit that employers could not retain employee tips; however, it is now expressly prohibited. Historically, if an employer improperly retained employee tips, the impact would be that the loss of the Tip Credit; however, with this FLSA change, even those employers who do not take a Tip Credit for its tipped employees, are prohibited from retaining control of any tips. This includes tip sharing or tip pooling with managers or supervisors. Such “taking” of tips is now expressly prohibited by the FLSA.

Remember, if you are taking the Tip Credit, you must provide notice to tipped employees, which includes the following:

1. The amount of cash wage they are being paid;
2. The additional amount claimed by the employer as a Tip Credit;
3. The Tip Credit claimed by the employer cannot exceed the amount of tips actually received by the tipped employee;
4. That all tips received by tipped employees are to be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips;

The Tip Credit will not apply to any tipped employee unless the employee has been informed of these provisions.

Attached is a [form](#) for your use. You will obviously need to fill in your relevant information; however, I encourage you to make sure each tipped employee receives a copy and signs an acknowledgment.

In addition, to the extent an employee works overtime hours (more than 40 in a work week), the time-and-a-half rate is applied to minimum wage, not the lower tip credit wage.

Other Recent Statutory Changes

Illinois Service Member Reemployment Rights Act Effective June 1, 2019. This legislation has been amended to require **public** employers to continue to pay their employees full compensation as a public employee for up to thirty days (rather than fifteen, as the previous statute required) per calendar year.

The Equal Pay Act was amended to include a prohibition from paying African American employees less for performing job of similar skills. Exceptions, of course, apply if payment is based on seniority, merit, a system that measures earnings by quantity or quality of production or any other system that does not use race as a factor. Quite frankly, this a simple redundancy. The Illinois Human Rights Act already prohibits such discrimination, but in an undoubtedly political move, this amendment has been made.

Employee Expense Reimbursement. Effective August 26, 2018, the Illinois Wage Payment and Collection Act was amended as it relates to the reimbursement for employee expenses. An employer shall now reimburse an employee for all necessary expenditures or losses incurred by the employee directly related to services performed for the employer. The employee must 1) be required or authorized by the employer to incur the expense, 2) submit a request within 30 calendar days, and 3) absent supporting documentation (such as a receipt) the employee provide a signed, written statement supporting the expense.

An employer is also not responsible for losses due to an employee's own negligence, losses due to normal wear, or losses due to theft unless the theft was a result of the employer's negligence.

In addition to the previously noted statutes, Illinois passed legislation amending the Human Rights Act and the Nursing Mothers in the Workplace Act in 2018. Effective June 8, 2018, Illinois employers were required and continue to be required to post a notice from the Illinois Department of Human Rights regarding and explaining unlawful discrimination and sexual harassment.

Effective August 21, 2018, the Nursing Mothers in the Workplace Act was amended to require employers to pay for "reasonable" break time to express milk, regardless of the length or number of times such breaks need to occur. This is limited to up to one year after the birth of a child.

New Overtime Proposals

The Department of Labor has issued new overtime proposals. On March 22nd, the U.S. Department of Labor published in the Federal Register notice of its proposed rulemaking for the new overtime rule, which began public comment that ends May 21st. It is anticipated that the U.S. Department of Labor will be making changes to the overtime salary threshold. As you may recall, under President Obama, the Department of Labor issued rules that, among other things, raised the minimum salary threshold for exempt from overtime pur-

poses from \$23,660 to \$47,476. This was challenged in a variety of courts and, ultimately, was withdrawn by the Trump Administration. The new proposal changes that salary threshold from \$23,660 to \$35,308. Highly compensated employees would be defined as those making \$147,414 (as opposed to the current \$100,000). In addition, employers will be allowed to satisfy up to ten percent of the \$35,308 salary threshold through non-discretionary bonuses, commissions or incentive paid no less than annually. (This ten percent

rule does not apply to highly compensated employees.) While this is not final, it is anticipated it will be put into place and the new threshold will be \$35,308. As you did under the Obama proposal, I encourage you to review those employees you currently treat as exempt for overtime purposes and ascertain if they will meet the new salary threshold. Please recall that compensation based on salary alone is not sufficient to meet the exempt/non-exempt test. There are other actual job duty requirements that must be met as well.

Employee Benefit Security Act Changes

The Employee Benefit Security Act is, as its title suggests, a statute that attempts to ensure proper employee protections for benefits. This existing statute is administered primarily by the United States Department of Labor. Two rules were recently finalized to create certain exemptions to the Employee Benefit Security Act. First, there is now an exemption for the

provision of contraceptive insurance coverage to protect the moral beliefs of certain entities and individuals whose health plans are subject to the mandatory contraceptive coverage under the moral exceptions. Second, under the religious exceptions, this same contraceptive coverage exemption exists and is designed to protect the employer's legitimate religious

beliefs. Before you unilaterally change your mandatory health insurance policy to eliminate coverage for contraception, please make every effort to ensure you are an employer who is entitled to the moral or religious exemption.