

Employment Law Summary

Montana Minimum Wage Laws



Because You're Different

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. Montana's minimum wage laws complement federal law and, in some cases, prescribe more stringent or additional requirements that employers must follow. Under the FLSA, whenever both state and federal laws apply, the law that is more favorable to employees applies. Montana's [Department of Labor and Industry](#) (DLI) enforces compliance with the state's minimum wage laws throughout the state.

The DLI adopted a new rule that adopts and incorporates certain FLSA regulations in effect as of Oct. 27, 2023, regarding hours worked, recordkeeping, wage payments and overtime compensation.

Minimum Wage

Montana employers must pay wages that are at least equal to the federal or state minimum wage rate, whichever is higher. Montana's minimum wage rate is currently higher than the federal rate and is subject to annual adjustments to account for increases in the cost of living. The chart below provides an overview of how the hourly minimum wage rate in Montana has changed over the last few years.

	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024
State of Montana	\$8.75	\$9.20	\$9.95	\$10.30

However, a \$4 rate applies to small businesses. Small businesses are businesses not covered by the FLSA and with annual sales of \$110,000 or less. Finally, no tip credit, meal credit or training wage is allowed under Montana's wage and hour laws.

Wages

Montana defines wages as "compensation due to an employee by reason of employment." In Montana, employers may include the cost of lodging or facilities they provide for their employees in their calculation of wages.

However, wages do not include the cost of providing meals, a meal allowance or service charges employees receive for services rendered. A "service charge" means an arbitrary fixed charge added to the customer's bill by an employer instead of a tip. Absent a valid tip pool agreement, service charges must be collected by employers and must be distributed directly to the nonmanagement employee preparing or serving the food or to any other employee involved in related services. Management may create a valid tip pool agreement for the distribution of service charges.

Board and Lodging

Under certain circumstances, employers may include the fair value or reasonable cost of providing board, lodging or facilities to employees in their calculation of employees' wages if providing board, lodging or other facilities is customary, voluntary, furnished in compliance with federal, state and local law, provided for the employees' benefit and accurate records are maintained.

The DLI has declared that the cost of furnishing "facilities" that are primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not, therefore, be included when computing wages. The DLI list of facilities that are mainly for the benefit of the employer includes (but is not limited to):

- Tools of the trade and other materials and services incidental to carrying on the employer's business;
- The cost of any construction by and for the employer; and
- The cost of uniforms and their laundering, where the nature of the business requires the employee to wear a uniform.

"Reasonable cost" does not include a profit to the employer or any affiliated person. The DLI has also explained that, as a general rule, "affiliated person" includes an employer's:

- Spouses, children, parents or other close relatives;
- Partner, officer or employee;
- A parent, subsidiary, or otherwise closely connected corporation; and
- An agent of the employer.

Exclusions

The requirements mentioned above do not apply to:

- Students participating in a distributive education program established under the auspices of an accredited educational agency;
- Persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns and cleaning sidewalks;
- Persons employed directly by the head of a household to care for children dependent upon the head of the household;
- Immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;
- Persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;
- Persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;
- Apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;
- Learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid to the learners may not be less than 50% of the minimum wage rate established in this part;
- Retired or semi-retired persons performing part-time incidental work as a condition of their residence on a farm or ranch;
- Individuals employed in a bona fide executive, administrative or professional capacity;
- Computer systems analysts, computer programmers, software engineers, network administrators or other similarly skilled computer employee who earns not less than \$27.63 an hour as defined by the FLSA;
- Individuals employed in an outside sales capacity as defined by the FLSA;
- Individuals working for the federal government;
- Resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;
- Direct sellers;
- Persons placed as participants in a public assistance program into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities;
- Individuals serving as foster parents, licensed as foster care providers and providing care without wage compensation to no more than six foster children in the provider's own residence (they may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care);
- Individuals employed in domestic service employment to provide companionship services, as defined by the FLSA, or respite care for individuals who, because of age or infirmity, are unable to care for themselves (as defined by the FLSA), when they are employed directly by a family member or an individual who is legal guardian; and
- Employees of a seasonal nonprofit establishment (organized camp or religious or educational conference centers).

Subminimum Wage Rates for Employees With Disabilities

Employers may pay a lower wage rate to employees with disabilities if they have a valid certificate approved by the Department of Social and Rehabilitative Services. Employers need to seek these certificates from the DLI. Employees with disabilities are individuals whose earning is impaired by age, physical or mental deficiency, or injury for the work they are to perform.

Enforcement

State law considers that wages are paid only if they are provided "free and clear." Free and clear means that wages must be paid "finally and unconditionally." Employers that require their employees to pay kickbacks directly or indirectly to the employer or any third party are not providing these wages free and clear if kickbacks are for the benefit of the employer. The manner of payment (cash or other form of payment) is irrelevant in this determination.

Employers that violate minimum wage laws in Montana are subject to a penalty equal to 110% of the amount of unpaid wages and may be guilty of a misdemeanor. The DLI may adjust this penalty to 55% if employers pay these unpaid wages within the time frame indicated by the agency. Additional or alternative reductions in the penalty amount are possible if the parties and the DLI agree.

More Information

Contact Heffernan Insurance Brokers for more information on labor and employment laws in Montana.

Provided By Heffernan Insurance Brokers

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