

# EMPLOYMENT LAW SUMMARY

## New Hampshire Minimum Wage Laws



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Federal minimum wage law is governed by the federal Fair Labor Standards Act (FLSA). The current **federal** minimum wage rate is **\$7.25 per hour** for nonexempt employees. New Hampshire's minimum wage laws complement federal law and, in some cases, prescribe more stringent or additional requirements employers must follow. Whenever state and federal laws conflict, the law that is more favorable to the employee applies.

The [New Hampshire Department of Labor](#) (NHDOL) enforces compliance with minimum wage requirements throughout the state.

### Minimum Wage

Under state law, employers must pay employees wages that are at least equal to the minimum wage rate. Since New Hampshire has not adopted a state minimum wage rate, employers in the state are subject to the rate required by the FLSA.

State law defines "employer" as any entity that employs another person, including individuals, partnerships, associations, joint stock companies, trusts, corporations, limited liability companies, administrators or executors of an estate of a deceased individual, or the receiver, trustee or successor of any of these entities.

### Exemptions

The following are exempt from state minimum wage requirements:

- Employees engaged in household labor, domestic labor, farm labor or summer camps for minors;
- Outside salesmen;
- Newsboys, nonprofessional ski patrolmen or golf caddies; and
- Ski area employees who exclusively perform welcoming and guest relation services that are not essential to the functional operations of the ski area.

### Meal and Lodging Deductions

State law allows the hotel, motel, cabin, tourist home and restaurant industries to deduct meal and lodging allowances from their minimum wage rate obligations. Specifically, New Hampshire allows employers to claim the following allowances:

- **Full board and room:** Up to \$6.45 per day, \$45 per week
- **Meals:** Up to \$1.80 per meal, \$39.45 per week
- **Lodging:** Up to \$1.80 per day, \$10.88 per week

### Tipped Employees

Under state law, tipped employees may receive a cash wage equal to at least 45% of the applicable minimum wage. State law allows tipped employees to receive this lower cash wage because it assumes the employees' tips and gratuities, when added to the cash wage, will be sufficient to allow them to earn wages at or above the minimum wage rate. Employers are required to pay the difference when a tipped employee's combined tips and cash wage fall short of the minimum wage rate.

New Hampshire defines "tipped employee" as an individual working for a restaurant, hotel, motel, inn, cabin or ballroom who customarily and regularly receives more than \$30 a month in tips directly from customers. The tipped employee designation includes employees who deliver meals prepared in a restaurant to the customer's home, office or other location.

A "tip" means money, in cash or its equivalent, given to an employee by a customer. Customers may also transfer tips from a credit card by designating a sum to be added to their bill as a tip, gratuity or service charge to a customer's bill, in recognition of service performed.

## Tipped Employee Rights

Tips are considered wages and are the property of the employee who receives them. Employers must allow tipped employees to retain their tips unless employees voluntarily and without coercion from their employers agree to participate in a tip-pooling or tip-sharing arrangement. In this context, "coercion" means the threat of or a direct action that results in an adverse effect on an employee's economic or employment status.

## Tip Pooling and Sharing

Tipped employees in New Hampshire are allowed to participate in tip-pooling and tip-sharing arrangements. "Tip pooling" means the voluntary practice by which the tip earnings of directly tipped employees within the same job category are intermingled in a common pool and then redistributed among participating employees. "Tip sharing" means the practice by which a directly tipped employee gives a portion of his or her tips to another worker who participated in providing service to customers.

Employers may administer a valid tip-pooling or tip-sharing arrangement at the request of their employees, may suggest reasonable and customary practices, and mediate disputes between employees regarding a valid tip-pooling or tip-sharing arrangement.

Finally, employees participating in a tip pool may agree, voluntarily and without coercion, to provide a portion of the common pool to other employees who participated in providing service to customers, regardless of job category.

## Special Minimum Wage Rates

Employers may pay employees with disabilities, high school or post-secondary students working for practical experience, minors and employees with fewer than six months of experience in an occupation a lower minimum wage rate if they have authorization from the NHDOL.

Employers considering providing these subminimum wages should contact the agency to learn more about the terms, conditions and process for receiving this authorization.

## Recordkeeping and Notice Requirements

Employers must keep a true and accurate record of:

- The hours worked by each employee;
- The wages paid to each employee; and
- An employee's employment classification (when necessary).

These records must be open to the NHDOL for inspection at any reasonable time. If necessary, employers must provide a sworn statement of these records upon demand. These records may be made, signed, acknowledged, approved and retained electronically. Employers must retain these records for at least three years.

In addition, employers subject to New Hampshire's minimum wage laws must post and make available to their employees a copy of the state's minimum wage law [poster](#).

## Enforcement

The NHDOL is duly authorized to:

- Investigate and ascertain the wages of employees employed in any occupation in the state;
- Enter the place of business or employment of any employer for the purpose of examining and inspecting any and all books, registers, payrolls and other employee records for compliance purposes; and

- Require from employers full and correct statements in writing of the wages paid to all employees in their employment.

## **Civil Actions**

Under state law, employees may initiate a lawsuit to recover the full amount of unpaid wages from their employers. Employees that succeed in these lawsuits may recover:

- The full amount of unpaid wages;
- Court costs; and
- Reasonable attorney's fees.

Employers cannot claim any agreement between them and their employees to work for wages below the minimum wage as a defense in these lawsuits.

## **Penalties**

Employers that pay or agree to pay any employee wages below what is required by minimum wage laws may be charged with a felony (or a misdemeanor if the employer is a natural person). The NHDOL is authorized to charge a separate offense for each week in which there is a violation.

Employers that violate the recordkeeping requirements mentioned above may be charged with a misdemeanor (or a violation if the employer is a natural person). Each day for which the violation persists may constitute a separate offense.

## **More Information**

Contact Heffernan Insurance Brokers for more information on wage payment and work hour laws in New Hampshire.

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