

EMPLOYMENT LAW SUMMARY

New Jersey Minimum Wage



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

New Jersey's minimum wage rate is set to increase progressively until it reaches \$15 per hour. The LWD has announced the following schedule. However, the NJWHL authorizes the LWD to adjust the minimum wage rate in the state to reflect changes in inflation.

Effective date	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024
6 or more employees	\$12	\$13	\$14.13	\$15.13
1 -5 employees	\$11.10	\$11.90	\$12.93	\$13.50.93
Cash wage for tipped employees	\$4.13	\$5.13	\$5.26	\$5.26
Agricultural employees	\$10.30	\$10.90	\$12.10	\$12.81
Seasonal employees (May 1 - Sept. 30)	\$11.10	\$11.90	\$12.93	\$13.73
Long-term Care Facility Direct Care Staff *	\$15	\$16	\$17.13	\$18.13

*Long-term care facility direct care staff members must receive wages that are at least \$3 above the state minimum hourly wage rate.

The cost of meal and lodging benefits is not part of an employee's wages when the employee is required to accept them. In addition, employers should be mindful of local laws that may increase an employee's minimum wage rate.

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. The minimum wage increase scheduled above shows the hourly cash wage tipped employees must receive during each year.

Employers must ensure that the cash wage and the employee's tips, when combined, are at least equal to the state's minimum wage rate. Employers may need to make up the difference if the employee's tips are insufficient to allow the employee to earn wages that are at least equal to the state's minimum wage.

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 the certificates.

- **Student-workers:** In general, student-workers may receive wages as low as 85% of the minimum wage rate. 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.

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; or
- 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 must 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 retaliating against their employees for:

- Refusing to participate in activities that violate federal or state law;
- Filing a complaint with the LWD; or
- Assisting the LWD in a wage investigation.

The law also protects employees against retaliation for sharing or requesting certain information relating to an investigation of possible pay discrimination. The information protected under this provision includes:

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

Penalties

Employers that violate the NJWHL may 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 may be held liable for actions that are filed within **two years** of when a violation takes place

Criminal Penalties

Criminal penalties for failing to pay the minimum wage rate include misdemeanor charges, which are 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 for 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.

In addition, an employer may be charged with a disorderly persons offense, which is punishable by a fine of between \$100 and \$1,000, if it discharges, takes disciplinary action against or otherwise discriminates against an employee for filing a complaint or assisting the LWD in a wage investigation.

Civil Penalties

Civil penalties for failing to pay the minimum wage rate include compensation for unpaid wages, interest, reasonable attorney's fees and court costs. An employer may be required to pay interest if:

- It has unreasonably delayed compliance with a LWD order;
- Interest is necessary to allow an employee to recover the present value of unpaid wages; or
- The specific circumstances of a particular case otherwise justify the interest.

Employers that retaliate against their employees may also be required to:

- Pay the employees all wages that they may have lost as a result of the retaliation;
- Offer reinstatement (if applicable); or
- Correct any other discriminatory action.

Administrative Penalties

Administrative penalties include fines of up to:

- \$250 + 10% of any unpaid wages for a first violation; and
- \$500 + 25% 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.

More Information

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

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