

EMPLOYMENT LAW SUMMARY

Pennsylvania Minimum Wage Law

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 Pennsylvania Minimum Wage Act (the Act) complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. When both state and federal laws apply, employers must comply with the law that provides the greater protection or benefit for their employees.

[The Bureau of Labor Law Compliance](#), part of the Pennsylvania Department of Labor and Industry (PDLI), enforces and investigates minimum wage violation claims.

Minimum Wage Rate

The minimum wage rate in Pennsylvania is \$7.25 per hour. Employee wages include any means of compensation due to them by reason of their employment. This includes salaries, tips and the reasonable costs of board, lodging and other facilities (when these are customarily provided to employees).

Tipped Employees

Employers may pay tipped employees a cash wage of \$2.83 per hour.

Tipped employees are employees engaged in an occupation in which they customarily and regularly receive at least \$135 a month in tips.

State law requires employers to ensure their tipped employees receive wages that are at least equal to the state's minimum wage rate. This means that employers may need to subsidize a tipped employee's wages if the employee's tips and cash wage are not enough to allow the employee to earn a wage rate is at least equal to the state's minimum wage rate.

Tip Pooling: Pennsylvania has incorporated by reference the [federal standards](#) related to tip pooling. In addition, affected employees must receive written notice of tip pooling arrangements:

- At the time (or before) employers make an employment offer; or
- At least one pay period before the tip pooling arrangement takes effect.

Credit Card and Processing Fees: Employers that permit patrons to pay tips by credit card or other non-cash forms of payment must pay their tipped employees the full amount of the tip authorized by the patron. Employers cannot deduct credit card payment or other processing fees or costs that the credit card or other company may charge to employers.

Similarly, employers that permit patrons to pay tips by credit card or other non-cash forms of payment may not deduct credit card payments or other processing fees or costs before distributing tips under a tip pooling arrangement.

Service Charges: Employers that charge for the administration of a banquet, special function or package deal must notify patrons of service charges by providing notice in a statement, contract or agreement with the patron; and on any menu provided to the patron.

This required notice must state that the administrative charge is for the administration of the banquet, special function or package deal and does not include a tip to be distributed to the employees who provided service to the guests.

When an employer chooses to charge for the administration of the banquet, special function or package deal, any billing statement must contain separate lines for service charges and tips. Employers may distribute a service charge to its employees. The amount distributed to employees must count as remuneration (and the regular rate) but may not count as a tip.

Students

State law allows employers to claim a minimum wage exemption for students.

Under this exemption, a student is an individual who is enrolled in and regularly attends an institution of learning or is completing residence requirements for a degree. The student must attend on a full-time basis during the daytime. The institution of learning must offer a course of instruction leading to a degree, certificate or diploma.

A person is deemed to be a student during the time that school is not in session if that person was a student during the preceding semester, trimester or similar term of instruction. However, no person may be deemed a student for a period after they receive a degree, certificate or diploma.

Employers can hire students at a subminimum wage rate only if employing students does not decrease employment opportunities for full-time employees. Employers hiring more than six students at subminimum wage rates must show the PDLI that they maintain at least three full-time regular employees for every student employed.

In addition, employers that pay students at a subminimum rate cannot allow the student to work more than 20 hours per workweek when school is in session (40 hours when school is not in session).

Learners

Employers can pay subminimum wages to their learner-employees only during the employees' first 60 calendar days of employment. Learners are individuals who are under the age of 20 and are participating in a legitimate training program for the occupations for which they were hired. Training periods must last between two and eight weeks, unless the PDLI authorizes an exception.

Employees who have completed the training program for an occupation may no longer be considered learners for that occupation and must receive wages at or above the minimum wage rate.

The PDLI reserves the right to limit the ratio of learners to non-learners and the approved subminimum rate for any particular occupation and for any particular employer.

Workers With Disabilities

Employers may pay subminimum wage rates to handicapped workers if they obtain a certificate from the PDLI or under FLSA section 14(c) from the U.S. Department of Labor (DOL). Handicapped workers are individuals "whose earning capacity for the work to be performed is impaired by physical or mental deficiency or injury."

Subminimum Wage Certificates

Employers can pay wages as low as \$6.16 per hour (85% of the applicable minimum wage rate) to individuals covered by subminimum wage rate certificates. The PDLI authorizes these certificates for students, learners and handicapped workers.

To receive these certificates, employers must file an application with the PDLI and meet the criteria specified for each group. The PDLI can deny or revoke these certificates for misrepresentation of fact, violation of certificate terms or other good cause. The PDLI may also modify the parameters of any certificate at any time to accommodate changes in conditions or circumstances. Employers should check with the PDLI periodically for updates and modifications to their certificates.

In addition, employers must maintain copies of subminimum wage certificates for PDLI inspection for at least three years after the termination of a special group employee.

Minimum Wage Exceptions

Pennsylvania minimum wage rate requirements do not apply to:

- Farm laborers;
- Independent contractors;
- Executive, administrative or professional employees;
- Domestic employees;
- Educational, charitable, religious or nonprofit organization volunteers;
- Seasonal employees 18 years of age or younger (age 24 or younger for students);
- Religious or nonprofit educational conference center employees;
- Golf caddies;
- Newspaper delivery and publication employees, when the newspaper has a circulation of less than 4,000 and its major circulation is within the county (or contiguous counties) where the paper is published;

- Public amusement, recreational establishment or organized camp employees;
- Switchboard operators working for an independently owned public telephone company having no more than 750 stations; and
- Employees not subject to civil service laws who hold elective office or are on the personal staff of an officeholder, are immediate advisers to him or her or are appointed by the officeholder to serve on a policy-making level.

Posting Requirement

Employers must post a summary of the Act in a conspicuous place where employees normally pass and can read it. The PDLI has provided a [model poster](#) for employers to use.

Prohibited Retaliation

Employers are prohibited from discharging or in any other way discriminating against an employee because he or she cooperates with the PDLI in a wage investigation.

Penalties

The PDLI may impose penalties on employers that violate the Act, as follows:

Violation	Sanction
General violation of the Act	<ul style="list-style-type: none"> • A fine of between \$100 and \$500. Each day of violation is a separate offense.
Paying an employee wages below the minimum wage rate	<ul style="list-style-type: none"> • A fine of between \$75 and \$300, imprisonment between 10 and 60 days or both. • Each week of noncompliance is a separate offense. • An agreement between the employer and the employee for wages below the minimum rate is not a defense against this violation.
Retaliating against an employee that cooperates with the PDLI in a wage investigation	<ul style="list-style-type: none"> • A fine of between \$500 and \$1,000. If the employer fails to pay this fine it will be sentenced to imprisonment between 10 and 90 days.

In addition to the penalties described above, employees may file a lawsuit to recover any amount of unpaid wages in civil court. Employees can also assign the claim to the PDLI to initiate a lawsuit on behalf of the employee to recover unpaid wages. Employers may be ordered to cover the costs and reasonable attorney's fees related to a lawsuit brought by an employee.

More Information

Contact Heffernan Insurance Brokers for more information on Pennsylvania's wage and hour laws.

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