

# Employment Law Summary

## South Dakota Minimum Wage



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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. South Dakota's minimum wage laws (MWLs) complement federal law and, in some cases, prescribe more stringent or additional requirements that employers must follow. When both federal and state laws apply, employers must follow the standard that provides the greatest protection or benefit to their employees.

The South Dakota Department of Labor and Regulation (DLR) monitors and enforces compliance with the MWLs throughout the state.

### Minimum Wage Rate

Employers in South Dakota must pay wages that are at least equal to the state minimum wage rate. Employees are entitled to recover the full amount of these wages regardless of any agreement to work for less than the state's minimum wage rate.

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The minimum wage rate in South Dakota is adjusted annually to account for changes in the cost of living. This increase is calculated by using the consumer price index for all urban consumers and the U.S. city average for all items (or its successor index as published by the U.S. Department of Labor or its successor agency). The calculation is then rounded up to the nearest 5 cents. State law does not allow the DLR to decrease the state's minimum wage rate.

New rates are published by Oct. 15 each year and become effective on Jan. 1 of the following year. The table below provides a historical overview of minimum wage rates in the state.

Effective Date	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024
<b>State rate</b>	\$9.45	\$9.95	\$10.80	\$11.20
<b>Tipped employees</b>	\$4.725	\$4.975	\$5.40	\$5.60

### Tipped Employees

Tipped employees are individuals who are engaged in an occupation in which they customarily and regularly receive more than \$35 a month in tips or other considerations. The minimum wage rate for tipped employees in the state (also known as the cash wage) is equal to 50% of the state's rate.

However, under state law, tipped employees must earn wages that are at least equal to the state rate. This means that employers must make up the difference between the state rate and their tipped employees' earnings when their employees' tips, combined with their cash wages, fall below the state rate.

### Minimum Wage Exemptions

South Dakota's MWL requirements do not apply to:

- Apprentices, or individuals who are learning the business in which they are employed;

- Individuals with a developmental disability (the DLR must issue a permit fixing wages or compensation for this exemption);
- Babysitters;
- Outside salespersons;
- Individuals receiving an opportunity (training) wage; or
- Seasonal amusement or recreation establishments, organized camps, or religious or nonprofit educational conference center if:
  - The establishment, camp or center does not operate for more than seven months in any calendar year; or
  - During the preceding calendar year, the average receipts of the establishment, camp, or center for any six months of the calendar year were not more than 33.33% of its average receipts for the other six months of the year.

## **Enforcement**

Employers that violate MWLs may be charged with a Class 2 misdemeanor, punishable by 30 days imprisonment in a county jail, \$500 or both.

## **More Information**

Contact Heffernan Insurance Brokers for more information on wage payment and work-hour laws in South Dakota.

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Provided By Heffernan Insurance Brokers

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