

Arizona Minimum Wage Act

Frequently Asked Questions and Answers

Under A.R.S.23-364(A), which became effective January 1, 2007, the Industrial Commission of Arizona was given the authority to enforce and implement the Arizona minimum wage. The following questions and answers flow from the language of the minimum wage initiative (2006 Proposition 202) and the final administrative rules under Title 20, Chapter 5, Article 12 which became effective on January 12, 2008.

What is Arizona's minimum wage?

Effective January 1, 2012, Arizona's minimum wage is \$7.65 per hour. Every employer covered under the Act is required to pay each employee wages not less than this amount. Arizona does not provide for a training or sub-minimum wage for different classes of employees (e.g. young workers, students, etc.). The minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis. For a discussion on the treatment of employees who customarily receive tips, please see below.

When will the minimum wage be increased?

The minimum wage will be increased January 1, 2013, and increased annually every successive January 1st by the increase in the cost of living.

Do the requirements of the Arizona Minimum Wage Act apply to all employers?

The Arizona Minimum Wage Act applies to all employers except:

- The State of Arizona;
- The United States; and
- Small businesses that are not subject to the Federal Fair Labor Standards Act and which have less than \$500,000 in gross annual revenue. This exclusion for small businesses under the Arizona Minimum Wage Act is very limited. Practically speaking, most Arizona small businesses will be subject to the Arizona Minimum Wage Act. This is because most employers, including small businesses, are subject to the Federal Fair Labor Standards Act. Under the Federal Fair Labor Standards Act coverage extends in one of two ways: Enterprise coverage or individual coverage. Employees who work for an "enterprise" that is engaged in interstate commerce or the production of goods for commerce are covered under the FLSA. Likewise, regardless of the volume of sales of an enterprise (more or less than \$500,000), individual employees whose work affects interstate commerce are covered under the FLSA.

Are there any exemptions under the Arizona Minimum Wage Act?

Unlike the Federal Fair Labor Standards Act, the Arizona Minimum Wage Act has very few exemptions. The Arizona Minimum Wage Act applies to any employee employed by an employer except the following:

- A person who is employed by a parent or a sibling;
- A person who is employed performing babysitting services in the employer's home on a casual basis;
- A person employed by the State of Arizona or the United States government; and
- A person employed in a small business grossing less than \$500,000 in annual revenue, if that small business is not required to pay minimum wage under the Federal Fair Labor Standards Act. This exclusion for small businesses under the Arizona Minimum Wage Act is very limited. Practically speaking, most Arizona small businesses will be subject to the Arizona Minimum Wage Act. For additional discussion of this exemption, please see the preceding question.

Does the Arizona minimum wage apply to part-time or temporary employees?

Yes. The Arizona Minimum Wage Act does not make any distinction between whether an employee is full-time, part-time, or temporary.

Does the Arizona minimum wage apply to an independent contractor?

Except for the exemptions described above, the Arizona Minimum Wage Act applies only to the payment of wages to employees. It does not apply to independent contractors. You are generally considered to be an employee if you are economically dependent on the business for which you are performing work. While no one factor or set of factors is controlling, factors showing this dependence include the degree to which the work performed is integral to the employer's business, the degree to which the employer controls the manner or method in which the work is performed, whether the employer provides the equipment or material necessary to do your work, the degree of skill required for the work, and the permanence of the working relationship.

Does the Arizona minimum wage apply to volunteers?

No. An individual that works for another person without any express or implied compensation agreement is not an employee under the Arizona Minimum Wage Act. This may include an individual that volunteers his or her services for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.

Is the Arizona minimum wage the same for both adult and minor employees?

Yes. There is no distinction made between adults and minors when it comes to payment of the minimum wage.

Does an employer have to pay for all hours worked?

Yes. The minimum wage shall be paid for all hours worked regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis. If in any workweek the combined wages of an employee are less than the applicable minimum wage, the employer shall pay, in addition to sums already earned, no less than the difference between the amounts earned and the minimum wage as required under the Arizona Minimum Wage Act.

What is the Arizona minimum wage for employees who receive tips?

For an employee who customarily and regularly receives tips or gratuities, an employer may pay a wage up to \$3.00 per hour less than the minimum wage. This means that an employer must pay not less than \$4.65 per hour in direct wages for a tipped employee. If, however, an employee's tips combined with the employer's direct wages do not equal the Arizona minimum hourly wage, then the employer must make up the difference.

Who is a "tipped" employee?

A tipped employee is an employee who customarily and regularly receives tips, including the occupation of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender. The employee must actually receive the tip free of any control by the employer. The tip must be the property of the employee.

May employees pool, share, or split tips?

Yes. Employees who customarily and regularly receive tips may pool, share, or split tips between them. Where employees pool, share, or split tips, the amount actually retained by each employee is considered the tip of the employee who retained it.

May employees pool, share or split tips with employees who do not customarily and regularly receive tips in the occupation in which they work, such as management or food preparers?

Yes, but the tips received by the employee who does not customarily and regularly receive tips may not be credited toward that employee's minimum wage.

What hours may a "tip credit" be applied towards?

A tip credit is available only for the hours spent in the tipped occupation. Where a tipped employee is routinely assigned to duties associated with a non-tipped occupation, such as maintenance or general preparation work, no tip credit may be taken for the time spent in such duties.

Is compulsory charge for service a tip?

Only if it is actually distributed by the employer to the employee in the pay period in which the charge is earned. A compulsory charge for service imposed on a customer by an employer is not a tip if it is considered part of the employer's gross receipts and is not distributed to the employee in the pay period in which the charge is earned.

What steps must an employer take to assert a "tip credit"?

If an employer elects to use the tip credit provision, then the employer must:

- Provide written notice to each employee prior to exercising the tip credit;
- Be able to show that the employee received at least the minimum wage when direct wages and the tip credit are combined; and
- Permit the tipped employee to retain all tips, whether or not the employer elects to take a tip credit for tips received, except to the extent the employee participates in a valid tip pooling arrangement.

How does an employer establish that direct wages combined with tips equals or exceeds the Arizona minimum wage?

In computing the minimum wage, tips are counted in the workweek in which the tip is earned. For purposes of the Arizona Minimum Wage Act, it is the employer's responsibility to maintain a record of the tips considered for purposes of asserting a tip credit. The amount per hour that the employer takes as a tip credit must be reported to the employee in writing each workweek.

What if tips are not sufficient to make up the difference between the employer's direct wage obligation and the minimum wage?

The employer must pay the difference.

What if the employee earns more than the minimum wage after adding the tips received to the base hourly wage?

The employer has fulfilled its obligation under the Arizona Minimum Wage Act.

May an employer take a credit against the minimum wage for tools or uniforms?

No. Unless included by a bona fide collective bargaining agreement applicable to the particular employee, an employer may not credit towards the minimum wage the cost of

any tools, equipment, uniforms, or any other garment worn by an employee as a condition of employment. This also includes the cleaning or maintenance of uniforms and tools.

May a credit for board or lodging be applied against the minimum wage?

No. Unlike other state and federal statutes, the Arizona Minimum Wage Act defines “wage” to include only “monetary compensation.” Credit for the value of lodging and other items is not allowed when computing an individual’s entitlement to receive minimum wages under the act.

What can an employee do if an employer is not paying an amount at least equal to the minimum wage?

An employee has different options if the employee believes that an employer is violating the requirements of the Arizona Minimum Wage Act. The employee can file an administrative complaint with the Labor Department of the Industrial Commission of Arizona or file a civil lawsuit.

Who can file an administrative complaint and when must it be filed?

Any person or organization may file an administrative complaint with the Labor Department of the Industrial Commission of Arizona charging that an employer has violated the Arizona Minimum Wage Act as to any employee or other person. An administrative complaint must be filed within one year from the date the wages were due.

Who can file a lawsuit and when must it be filed?

A civil action to enforce the Arizona Minimum Wage Act may be filed by a law enforcement officer (which means the Attorney General or a city, town, or county attorney) or by any private party injured by a violation of the Act. The civil action must be filed no later than two years after a violation last occurs, or three years in the case of a willful violation. The civil action may include all violations that occurred as part of a continuing course of employer conduct regardless of the date of the violation.

Can an employer retaliate against an employee for asking questions about not being paid the minimum wage or for asserting any right under the Arizona Minimum Wage Act?

No. The Arizona Minimum Wage Act prohibits an employer from retaliating against an employee or other person for asserting any right under the Arizona Minimum Wage Act. Additionally, if an employer takes adverse action against an employee within 90 days of the employee asserting a right under the Act, the presumption is that the employer retaliated against the employee. This presumption can only be overcome if the employer shows by clear and convincing evidence that the action taken against the employee was for a permissible reason.

What can an employee do if an employer retaliates against the employee for asserting a right under the Arizona Minimum Wage Act?

An employee may file an administrative complaint with the Labor Department of the Industrial Commission of Arizona or file a civil lawsuit.

What remedies are available to an employee for violations of the Arizona Minimum Wage?

An employer who fails to pay the minimum wage is required to pay the employee the wages owed with interest and an additional amount equal to twice the underpaid wages. An employer who retaliates against an employee is required to pay penalties sufficient to compensate the employee and deter future violations, but not less than \$150 for each day that the violation continued or until legal judgment is final. The Commission and courts also have the authority to order other appropriate legal or equitable relief for violations of the Act.

Will the State Labor Department keep an employer's payroll records confidential?

Payroll information provided to the Labor Department of the Industrial Commission of Arizona will be kept confidential except as necessary to prosecute violations under the Act.

Can an employee's identity be kept confidential after an administrative complaint is filed?

The Labor Department of the Industrial Commission of Arizona shall keep the name of an employee identified in an administrative complaint confidential for as long as possible. If the Commission determines that an employee's name must be disclosed in order to conduct a further investigation, it may do so only with the employee's consent.

What other responsibilities do employers have?

In addition to paying the correct Arizona minimum wage, employers are required to:

- Keep accurate records of employee wages and hours. Most of the information required to be kept is the type that employers generally maintain in their ordinary business practice;
- Allow inspection at the worksite of all payroll records by the Labor Department of the Industrial Commission of Arizona ("Department");
- Furnish copies of payroll records requested by the Department;
- Cooperate with the Department's investigation into complaints of violation with the Arizona Minimum Wage Act;
- Allow the Department to interview employees; and

- Post the Arizona Minimum Wage Poster in a conspicuous place where employees can read the poster. This poster is available for free from the Department at www.ica.state.az.us.

What kind of records are required?

The records required under the Arizona Minimum Wage Act consist of information that employers generally maintain in their ordinary business practice, and, in large part, track what is required under the Federal Fair Labor Standards Act. An employer is required to maintain payroll records showing the hours worked and wages paid, including basic time and earning cards or sheets, wage rate tables, records of additions to or deductions from wages paid and any written agreement relied upon to calculate credits toward the minimum wage. Separate recordkeeping requirements are permitted for employees on fixed schedules and employees who are compensated on a salary basis at a rate that exceeds the minimum wage required under the Arizona Minimum Wage Act and who, under the Federal Fair Labor Standards are an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales.

How long am I required to keep the records?

Four years.

What happens if an employer violates the recordkeeping, posting, or other requirements under the Arizona Minimum Wage?

An employer who violates these requirements is subject to a civil penalty of at least \$250 for the first violation and at least \$1000 for each subsequent or willful violation. Special monitoring and inspections may also be imposed. Additionally, if an employer fails to maintain the required records, it is presumed that the employer did not pay the required minimum wage. An employer has the right to rebut this presumption with evidence that the employer paid the employee the required minimum wage.

How can Arizona's minimum wage be higher than the federal minimum wage?

Under federal law, a state may require a minimum wage that exceeds the federal wage as the federal law establishes only the minimum wage that must be paid.

Which minimum wage law applies?

An employer will likely be subject to both the federal and state minimum wage laws. When there are different requirements between the laws, the employer must follow the requirement that is the most beneficial to the employee. Since Arizona's minimum wage law requires a higher minimum wage rate than does the federal law, an Arizona employer who is subject to both laws must pay the Arizona minimum wage rate.

What is the wage rate that forms the basis for calculation of overtime?

The Arizona minimum wage rate is considered the “regular rate” for purposes of calculating overtime under the Federal Fair Labor Standards Act.

May an employee agree to work for less than the minimum wage?

No. The minimum wage is an obligation of the employer and cannot be waived by any verbal or written agreement or employment contract.