

Update: New Rules Clarify the Minimum Wages for Tipped Employees, Overtime and Complaints Under the Chicago Minimum Wage Ordinance Going Into Effect July 1, 2015

Labor & Employment Law Update

By Sara Zorich on June 30, 2015

The City of Chicago just issued new rules clarifying the Chicago Minimum Wage Ordinance with respect to the minimum wage for tipped employees, overtime calculations for tipped and non-tipped employees, and complaints against employers.

The Minimum Wage and Tip Credit for Tipped Employees

The Rules clarify that the minimum wage for tipped employees is \$10.00 and that Section 1-24-030(a)(1) sets forth the minimum wage minus tip credit that tipped employees may be paid.

As of July 1, 2015, the minimum wage minus tip credit is **\$5.45**, or the state minimum wage of \$8.25, minus the state tip credit of \$3.30 (40% of \$8.25), plus \$.50 provided by the Ordinance. Thus, under the Ordinance's current minimum wage of \$10.00, the current tip credit for employers under the Ordinance is **\$4.55** (i.e. \$10.00 minus \$5.45).

Chicago's minimum wage for tipped employees is calculated based on the State and/or Federal minimum wage and tip credits. So, if either the State or Federal minimum wage is increased or the tip credits are decreased, it will impact the Chicago minimum wage for tipped employees. For example, if Illinois increases the state minimum wage to \$9.00 and decreased the state tip credit to 30%, the new Chicago minimum wage for tipped employees would be \$6.80, or the state minimum wage of \$9.00, minus the state tip credit of \$2.70 (30% of \$9.00), plus the \$.50 provided by the Ordinance.

Overtime

Unless an employee is exempt from overtime under the Illinois Minimum Wage Law (IMWL), employers subject to the Chicago Ordinance must pay employees overtime of 1.5 times the City's minimum wage. This means that on July 1st, the Chicago's minimum overtime wage will be \$15.00 per hour (i.e. \$10.00 times 1.5).

Under the Ordinance, tipped employees must be paid an overtime hourly wage of 1.5 times the City's minimum wage, minus the City's tip credit. Under Chicago's current minimum wage of \$10.00, the minimum overtime wage for tipped employees will be \$10.45 per hour (i.e. \$10.00 times 1.5, minus Chicago's tip credit of \$4.55 [\$10.00 minus \$5.45]).

Again, it is important to remember that the Chicago minimum wage for tipped employees is tied to the State and/or Federal minimum wage and tip credit. Thus, if Illinois increased the minimum wage to \$9.00 and decreased the tip credit to 30%, the new Chicago minimum wage for tipped employees would be \$6.80 and the overtime hourly wage for tipped employees change to \$11.80 per hour (i.e. \$10.00 times 1.5, minus the City's tip credit of \$3.20 [\$10.00 minus \$6.80]).

More importantly, much like state law, under the Ordinance employers must be able to show that the employee's wages plus tips equal Chicago's minimum wage (which is currently \$10.00 and \$15.00 for overtime), or else the employer is required to pay the shortfall so that the employee's wages plus tips equals the minimum wage.

For example, if a tipped employee works 50 hours in a particular week and makes \$200 in tips, the employer would be required to pay the employee an additional \$27.50 on the employee's paycheck:

$(40 \text{ hours of straight-time at } \$5.45 = \$218.00) + (10 \text{ hours of overtime at } \$10.45 = \$104.50) + (\text{Tips Received} = \$200.00) = (\text{Sub-Total} = \$522.50)$

- Under the Ordinance, the minimum wage owed for 50 hours would equal 40 hours times the minimum straight-time wage of \$10 (\$400) and 10 hours times the minimum overtime wage of \$15 (\$150), for a total of \$550.
- Under this scenario, the employer would be required to pay the employee an additional \$27.50 on the tipped employee's paycheck, since the amount received in wages and tips by the employee of \$522.50 is \$27.50 less than the \$550 required to be paid.

Record Keeping for Tipped Employees

The Rules specifically state that employers must keep records of wages and tips for all tipped employees for at least three (3) years and that the records must include the following:

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1. An identifying symbol on payroll records indicating if an employee's wages include tips;
2. A report received from and signed by each tipped employee that state the tips received during each work day;
3. A report that shows the amount by which the wage of each tipped employee was increased by his or her tips, as calculated by the employer;
4. A record of the hours worked each work day in which each tipped employee received tips and the total daily or weekly straight-time and overtime earnings for such hours; and
5. A record of the hours worked each work day in which each tipped employee receives no tips, and the total daily or weekly straight-time and overtime payment made by the employer.

Complaints and Investigations

Employers should note that there is no set time period in the Ordinance that employees must file a complaint with the City's Department of Business Affairs and Consumer Protection (BACP) or a civil action. The Rules do provide that the BACP may choose not to accept a complaint filed more than one (1) year after the disputed wages were due. However, the ability or inability of an employee to file a complaint with the BACP, does not limit their ability to file a civil action.

It is important for employers to keep good records and be aware of the potential for complaints, as once a complaint is filed with the BACP and a copy of the complaint is sent to the employer, you will have 14 days to respond. Additionally, the BACP may request specific documents or records from employers, including copies of any checks or payments made to the employee. Indeed, under the Rules failing to respond to a complaint or provide requested documents could result in the BACP issuing administrative notices of violations seeking fines of \$500-\$1,000, license suspension or revocation and/or restitution for employees and/or former employees.

Copies of the new rules and FAQs issued by the City may be found here:

- [Chicago's Minimum Wage Ordinance Rules and Regulations](#)

As previously noted, Chicago's Ordinance goes into effect July 1st. While the rules and guidance from the City of Chicago continue to develop, employers will be required to comply with the Ordinance. As such, it is important to contact your legal counsel with any questions to make sure you are in compliance due to the penalties allowed under the Ordinance.

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