

Understanding the Minimum Wage

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Every U.S. business must comply with the minimum wage laws of the Federal Fair Labor Standards Act (FLSA). This article shows the current national minimum hourly wage, explains whom it applies to, and lists the exceptions. It also describes which elements of workers' pay are included in the minimum wage and stresses keeping relevant records.

What You Need to Know

How much is the federal minimum wage?

The minimum hourly rate for adult workers aged 20 or over is \$5.15 before deductions. For workers under the age of 20, the minimum hourly rate is \$4.25 per hour during the first 90 consecutive days of employment. A minimum wage was first set in 1938 and has increased periodically ever since. The last rate change came in 1997—the longest period in which the minimum wage has not been adjusted. In January 2007, the U.S. House proposed an increase to \$5.85, but the measure needed to pass other hurdles before becoming law.

Do states have different minimum wage standards?

Yes, indeed. Of the 50 states, some 30 have minimum wage rates that exceed the national minimum wage. In such cases, if a business operates in a state that requires a higher level of payment, the state level must be paid to workers in that state. As 2007 began, for instance, Washington had the highest minimum wage, \$7.93. In addition, businesses must comply with state regulations regarding overtime, tipping, and other specific requirements.

Who is paid the minimum wage?

There are two types of coverage to which the minimum wage applies. The first type, *Enterprise Coverage*, applies to any business that has a minimum of two employees and makes over \$500,000 per year. Enterprise Coverage also applies to hospitals or businesses providing nursing care for residents, schools, pre-schools, or government agencies.

The second type of coverage, *Individual Coverage*, applies to employees who are involved in any form of interstate commerce. This includes but is not limited to working for an organization that

manufactures or sends products to another state, makes calls between states, or provides janitorial services in a building that is used for interstate commerce.

Domestic service workers (such as housekeepers, full-time babysitters, and cooks) are also included in the individual coverage and must be paid the minimum wage.

Is anyone exempt from the minimum wage?

Not all workers qualify for the minimum wage. For example, employees who receive tips directly from customers can be paid as low as \$2.13 per hour if their total tips received are at least \$30 per month and their total compensation, including tips, reaches the minimum wage requirement for their state.

If its employees include full-time students, a business can apply for a certificate from the Secretary of Labor authorizing it to pay not less than 85 percent of the minimum wage. The certificate also limits the number of hours the students can work.

For students who are at least 16 years old and participating in vocational programs, a certificate can be obtained from the Department of Labor authorizing a business to pay them not less than 75 percent of minimum wage.

A certificate can also be obtained exempting businesses from paying the minimum wage to disabled workers whose earning or productive capacity is impaired by physical or mental injury or other reasons. In such cases, though, application still must be made to the Secretary of Labor for a certificate of exemption.

To qualify for minimum wage, how many hours must a person work?

There is no minimum period that a person must work before her or she qualifies. The minimum wage is payable for the time when a worker is required to be at work or available for work. This includes any time spent training for and traveling for purposes to perform the job but excludes commuting to and from work.

In addition, an employer must pay an *average* hourly rate of no less than the minimum wage appropriate to the worker.

Under what conditions does the minimum wage apply?

An employer must pay the minimum wage for all the time an employee is required to be on premises, on duty, or at a prescribed workplace. An employee's workday, or that time for which the minimum

wage must be paid, is generally defined as the period between the time an employee commences and ceases his or her principal activities.

However, minimum wage payment may be required in other circumstances. The FLSA provides detailed information about additional applications of the minimum wage, including but not limited to:

- *Waiting time*: when an employee is engaged to wait by an employer; for example, a fireman waiting for an alarm
- *On-Call time*: time that an employee is required to remain on call at a worksite; this may or may not apply to on-call time that the employee performs at home or some other location not on premises
- *Rest and meal breaks*: rest periods of 20 minutes or less are covered, but meal periods generally are not covered; you must, however, pay for meal periods if employees remain at their desks performing work
- *Sleeping time*: this applies to those who work on a 24-hour duty roster
- *Lectures, meetings, and training*: time spent by employees at your direction or with your approval in any of these venues
- *Travel time*: the law cites a variety of categories of travel time, ranging from *home to work* (which may or may not be covered) to *home to work travel on a special one-day assignment* (which would be covered). Employers should review the FLSA requirements before assigning employees any travel, and ensure their pay reflects the appropriate travel time due them

Whatever the situation, when in doubt: *Check the rules!*

What to Do

Keep Excellent Records

An employer must keep records to prove that its workers have received at least the minimum wage. No particular format is required. However, certain data must be compiled and kept about each employee. That begins with the hours he or she worked and the wages earned.

According to the U.S. Department of Labor Web site, employee data also should include:

- Full name and social security number, address including zip code
- Birth date (if younger than 19), gender and occupation;
- Time and day when the employee's workweek begins
- Hours worked each day and total hours worked each workweek
- The basis on which the employee's wages are paid (by hour, week, piecework or other), the regular hourly rate, total daily or weekly straight-time earnings, overtime earnings for each

workweek, additions to or deductions from the employee's wages, total wages paid each pay period, the date of payment and pay period covered by each payment

If any queries arise about minimum wage payments, it is up to the employer to prove it has paid the minimum. It is *not* the employee's responsibility to prove that he or she has not been paid it. Records must be kept for a minimum of three years after the relevant pay period in question.

Understand Minimum Wage Legislation

Your business must conform to both the pay levels stated the Federal Fair Labor Standards Act and its record-keeping requirements. Remember, too, that many states have different minimum wage levels that exceed those of the federal government. Check with the Secretary of State, Commerce, or Labor in your state, or with the U. S. Department of Labor, to verify the amount you must pay your employees.

Enforcement of the law includes educating employers

The Wage and Hour Division of the Department of Labor enforces the minimum wage laws. The Division has programs that provide education to employers and employees as well as oversight of employers' activities. This helps ensure the law is being applied correctly and that employees are being paid their appropriate wage.

What to Avoid

You Don't Keep Employees Fully Informed

You should display details of the minimum wage prominently in your workplace so that your employees know their rights. The Department of Labor provides signs with the necessary and appropriate information for employers at no charge.

You Don't Pay the Minimum Wage

Refusing or willfully neglecting to pay the federal or state minimum wage is a criminal offense. The records you maintain will be vital to making your case should anyone allege that pay levels are inappropriate. Make sure you keep complete records and have obtained the appropriate certifications in case of exemptions.

You Don't Seek Advice

Talk with your company attorney, accountant and human resources officers to ensure that your employees are being paid the right wages. Mistakes can be costly and can give a business a bad reputation. If you do have any exempt employees or special circumstances, make sure that you have the appropriate documentation to support your pay schedules.

Where to Learn More

Web Sites:

G Neil-Tools To Manage And Motivate People: www.fedminwage.com

HR.BLR.com: <http://hr.blr.com>

U.S. Department of Labor on Wages: www.dol.gov/dol/topic/wages/index.htm