

Frequently Asked Questions: Minimum Wage & Maximum Hour

What is the current minimum wage in West Virginia?

As of January 1, 2016, the state minimum wage is \$8.75 per hour.

Does the state minimum wage apply to everyone working in West Virginia?

Not necessarily. In order for state minimum wage requirements to apply, there must be at least six (6) or more non-exempt employees working at the same separate, distinct and permanent work location. If that requirement is not met, the federal minimum wage may apply.

How is the location of work determined?

The location of work is exactly that, the location where the employees actually perform the work. This remains true even when the work is performed at the employee's own home, or the residence of a patient or client. In situations where employees are assigned to work at different locations on a temporary basis, the place of work is where the work assignments are issued.

Does an out-of-state employer have to pay the state minimum wage to their employees that work in West Virginia?

Yes they do. Any employer that has six non-exempt employees working at any one separate, distinct and permanent location in West Virginia must pay its employees an hourly rate of at least the state minimum wage.

What if my employer has more than six employees working at some locations, but not where I work?

The six employee requirement must be met at each work location for state minimum wage requirements to apply. That means it is possible for some employees of the same employer to be covered by state minimum wage requirements, while others are not. Any employee working at a location that does not have the required six employees would not be covered by state minimum wage requirements, however federal minimum wage requirements may apply.

How do you know if you're supposed to be paid the state or federal minimum wage?

As the state minimum wage requirement is currently higher than the federal, the state minimum wage will apply in all cases where there are at least six non-exempt employees working at one location. However, if the six employee requirement is not met, the federal minimum wage may still apply. For information concerning federal minimum wage jurisdiction, contact the United States Department of Labor, Wage & Hour Division. Contact information for that agency is as follows: www.wvdol.gov – 866 487 9243 (866-4USWAGE)

What is meant by a non-exempt employee?

The West Virginia Minimum Wage statute lists several categories of workers that are not considered “employees” for the purpose of minimum wage enforcement. An employee that meets the conditions to qualify for one of those categories is considered “exempt” from state minimum wage requirements. Those employees that do not meet the conditions to qualify as an exempt worker are considered as “non-exempt”. See Minimum Wage Fact Sheet 1.

If an employee is paid by the number of items produced (by the piece) or by a unit of measurement (such as the square foot, etc.), is that employee entitled to minimum wage?

The method used to calculate an employee’s wages has no bearing on whether he or she is entitled to minimum wage. That decision is based on whether the employer has six nonexempt employees working at any one separate, distinct, and permanent work location. Once that decision is made, all covered employees must receive at least \$8.75 per hour regardless of how his or her wages are calculated. To determine the hourly rate for an employee being paid by the number of items produced or by a unit of measurement, simply divide the total amount of wages earned by the number of hours the employee actually worked. If that rate is less than \$8.75 per hour, the employer must increase the employee’s total wages to an amount that will meet that requirement.

What is the minimum wage for workers that receive tips?

West Virginia’s minimum wage standards allow employers a 70% credit against the minimum wage requirement for their service employees that receive tips. That means an employer may pay his or her tipped employees a cash wage of \$2.62 per hour, as long as the employee’s hourly cash rate, plus reported tips, equal \$8.75 per hour. Should the employer not meet the condition of having six employees at any one separate, distinct and permanent work location to fall under state minimum wage requirements, the federal tip credit of \$2.13 per hour may apply. To find out, you would need to contact the United States Department of Labor, Wage & Hour Division for information. Contact information for that agency is as follows: www.dol.gov (<https://www.dol.gov/whd/>) – 866 487 9243 (866–4USWAGE)

May an employer establish a policy that prohibits employees from accepting tips?

Yes, as long as all employees that are covered by state minimum wage requirements receive an hourly rate of at least \$8.75.

In a tip pooling situation, are there rules about which employees are entitled to receive a share?

State law is very specific relating to the sharing of tips. Only those employees that are eligible to receive tips may be included in a tip pool, or tip sharing, situation. Under no circumstances may the employer receive a share of any tips.

What if my employer deducts for tips that I didn’t receive?

In order to take a credit against the minimum wage for tips, the employer must have written tip records completed by the employee. If such tip records were not provided, the employer would have to pay the employee the full minimum wage of \$8.75 per hour.

May an employer take a deduction from wages for providing meals to employees?

When an employer makes meals available to an employee and the employee works a full eight hours, the employer may deduct \$4.00 per day as a meal credit from the employee's wages without obtaining written authorization. If the employee works less than eight hours but still eats a meal, the employer may deduct \$.50 per hour as a meal credit. However, if the employee does not eat the meal provided, the employer may not take a meal credit deduction.

What is meant by a training wage and who does it apply to?

A training wage is an established hourly wage that is less than the standard minimum wage, which applies to workers that are twenty years of age or younger during their first 90 days of employment. West Virginia's minimum wage standards specifically defer jurisdiction relating to training wages to the United States Department of Labor (USDOL) whenever the federal standards are equal to, or great than, the requirements of state law. As the federal requirement currently meets that standard, the USDOL has jurisdiction in this state relating to training wages. For information concerning federal training wages, contact the United States Department of Labor, Wage & Hour Division. Contact information for that agency is as follows: www.dol.gov (<https://www.dol.gov/whd/>) – 866 487 9243 (866-4USWAGE)

When do overtime wages apply?

West Virginia's maximum hour requirements require the payment of overtime wages at a rate of one and a half times the employee's regular rate of pay for all hours actually worked over forty within a seven consecutive day workweek, as long as all of the following conditions are also met. 1.) The employer is not covered by federal overtime laws due to interstate commerce activity or federal enterprise coverage. 2.) Less than 80% of the employer's work force are performing duties that would be considered interstate commerce activity under federal law. 3.) The employer has at least six or more non-exempt employees working at any one separate, distinct and permanent work location. See

Minimum Wage & Overtime Fact Sheet 2 (/Wage-Hour/Minimum_Wage/Documents/Fact%20Sheets/FACT%20SHEET%202%20-%20OVERTIME%20REQUIREMENTS.pdf).