Maine Revised Statutes

Title 26: LABOR AND INDUSTRY

Chapter 7: EMPLOYMENT PRACTICES

§664. MINIMUM WAGE; OVERTIME RATE

Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section. [1995, c. 305, §1 (RPR).]

1. **Minimum wage.** The minimum hourly wage is $7.50 per hour. Starting January 1, 2017, the minimum hourly wage is $9.00 per hour; starting January 1, 2018, the minimum hourly wage is $10.00 per hour; starting January 1, 2019, the minimum hourly wage is $11.00 per hour; and starting January 1, 2020, the minimum hourly wage is $12.00 per hour. On January 1, 2021 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, and must be increased in accordance with this section thereafter.

[2015, c. 2, §1 (AMD) .]

2. **Tip credit.** An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. Starting January 1, 2017, the minimum cash wage paid directly to a tipped service employee may not be less than $5.00 per hour, and the tip credit may not exceed the difference between the minimum cash wage paid directly to a tipped service employee and the minimum hourly wage established under subsection 1. Starting January 1, 2018, and on each January 1st thereafter, the minimum cash wage paid directly to a tipped service employee must be increased by an additional $1.00 per hour until it reaches the same amount as the annually adjusted minimum hourly wage established under subsection 1, except that if the minimum cash wage paid directly to a tipped service employee is less than $1.00 less than the annually adjusted minimum hourly wage, it must be increased by that lesser amount. An employer who elects to use the tip credit, until it is eliminated under this subsection, must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. Tips that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.

[2015, c. 2, §2 (AMD) .]

2-A. **Tip pooling.** This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement among service employees that is consistent with the federal Fair Labor Standards Act and regulations made pursuant to that Act.

[2011, c. 118, §4 (NEW) .]

2-B. **Service charges.** An employer in a banquet or private club setting that adds a service charge shall notify the customer that the service charge does not represent a tip for service employees. The employer in a banquet or private club setting may use some or all of any service charge to meet its obligation to compensate all employees at the rate required by this section.

[2011, c. 118, §4 (NEW) .]

3. **Overtime rate.** An employer may not require an employee to work more than 40 hours in any one week unless 1 1/2 times the regular hourly rate is paid for all hours actually worked in excess of 40 hours in that week. The regular hourly rate includes all earnings, bonuses, commissions and other compensation that is paid or due based on actual work performed and does not include any sums excluded from the definition of "regular rate" under the Fair Labor Standards Act, 29 United States Code, Section 207(e).

The overtime provision of this section does not apply to:

A. Automobile mechanics, automobile parts clerks, automobile service writers and automobile salespersons as defined in section 663. The interpretation of these terms must be consistent with the interpretation of the same terms under federal overtime law, 29 United States Code, Section 213; [2007, c. 360, §5 (AMD).]

B. [2007, c. 640, §5 (RP).]

C. Mariners; [1995, c. 305, §1 (NEW).]

D. Public employees, except those employed by the executive or judicial branch of the State; [2003, c. 423, §1 (AMD); 2003, c. 423, §5 (AFF).]

E. [2007, c. 640, §6 (RP).]

F. The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

(1) Agricultural produce;

(2) Meat and fish products; and

(3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection; and [2011, c. 681, §1 (AMD).]

G. [2001, c. 628, §3 (NEW); 2001, c. 628, §5 (AFF); T. 26, §664, sub-§3, ¶ G (RP).]

H. [2011, c. 681, §2 (RP).]

I. [2011, c. 681, §2 (RP).]

J. [2011, c. 681, §2 (RP).]

K. A driver or driver's helper who is not paid hourly and is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section, who is governed by the applicable provisions of federal law with respect to payment of overtime.

Nothing in this paragraph may be construed to limit the rights of parties to negotiate rates of pay for drivers and driver's helpers who are represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board or who are employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid a driver or driver's helper. [2011, c. 681, §3 (NEW).]

[2011, c. 681, §§1-3 (AMD) .]

4. **Compensatory time.** To the extent permitted under the federal Fair Labor Standards Act of 1938, as amended, 29 United States Code, Section 207(o), the overtime pay requirement applicable to executive or judicial employees as described in subsection 3, paragraph D may be met through compensatory time agreements.

[2003, c. 423, §2 (NEW); 2003, c. 423, §5 (AFF) .]

SECTION HISTORY
1965, c. 410, §5 (AMD). 1967, c. 333, (AMD). 1967, c. 466, §5 (AMD). 1969, c. 184, (AMD). 1969, c. 356, (AMD). 1969, c. 504, §43 (AMD). 1969, c. 590, §41 (AMD). 1971, c. 78, §1 (AMD). 1971, c. 415, (AMD). 1971, c. 620, §13 (AMD). 1971, c. 622, §88 (AMD). 1973, c. 420, (AMD). 1973, c. 467, (AMD). 1973, c. 625, §171 (AMD). 1973, c. 752, §§1,2 (AMD). 1975, c. 23, (AMD). 1975, c. 352, (AMD). 1979, c. 54, (AMD). 1979, c. 516, §3 (AMD). 1983, c. 857, (AMD). 1985, c. 76, §2 (AMD). 1985, c. 576, (AMD). 1987, c. 738, §§1,2 (AMD). 1991, c. 507, §2 (AMD). 1991, c. 544, §1 (AMD). 1993, c. 233, §1 (AMD). 1993, c. 233, §3 (AFF). 1993, c. 434, §1 (AMD). 1993, c. 434, §8 (AFF). 1995, c. 305, §1 (RPR). 1995, c. 510, §1 (AMD). 1997, c. 136, §1 (AMD). 2001, c. 297, §1 (AMD). 2001, c. 336, §1 (AMD). 2001, c. 628, §§1-3 (AMD). 2001, c. 628, §5 (AFF). 2003, c. 423, §§1,2 (AMD). 2003, c. 423, §5 (AFF). 2003, c. 697, §1 (AMD). 2005, c. 578, §1 (AMD). 2007, c. 360, §5 (AMD). 2007, c. 367, §2 (AMD). 2007, c. 640, §§4-6 (AMD). 2011, c. 118, §§3, 4 (AMD). 2011, c. 681, §§1-3 (AMD). IB 2015, c. 2, §§1, 2 (AMD). MRSA T.26, §664/3/G (AMD).

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