



MINIMUM WAGE

Guide to laws and regulations for restaurant owners

As of July 24, 2009 the federal and state general minimum wage rate is the same.

Non-tipped employees

General minimum wage **\$7.25/hour**
Opportunity minimum wage **\$5.90*/hour**
(14 - 19 year olds during the first 90 calendar days on the job)

The federal opportunity wage rate is \$4.25. Wisconsin's opportunity wage rate of \$5.90 is higher and therefore more favorable for the employee and is the rate that should be used.

As of 7/24/09 the Wisconsin minor minimum wage is nullified. The opportunity wage of \$5.90 for eligible employees remains in effect. After the opportunity wage period of 90 consecutive calendar days on the job, all employees regardless of age must be paid the full minimum wage of \$7.25

An **opportunity employee** is an employee who is not yet 20 years old and who has been in employment status with a particular employer for 90 or fewer consecutive calendar days from the date of initial employment.

Tipped employees

Employees age 20 or older \$2.33/hour (base wages for general minimum wage)
and employees age 14-19 +\$4.92/hour (tip credit)
after 90 days of opportunity \$7.25/hour
wage has passed

New hires under age 20 \$2.13/hour (base wages for opportunity wage)
(14-19 year olds during the +\$3.77/hour (tip credit)
first 90 calendar days on the \$5.90/hour
job with opportunity wage)

The federal cash (or base) wage for tipped employees is \$2.13. Wisconsin's rate of \$2.33 is higher and therefore more favorable for the employee and is the rate that should be used.

If over the work week, an employee does not receive enough money in tips plus actual base wages to bring him or her up to the full minimum wage, the employer must increase the base wages to make up the difference. This adjustment may be paid at the normal pay period.

(See HERO 'Guide to State vs. Federal Law' to determine which laws you must follow)

Questions? Contact the WRA Hotline: 800-589-3211 or hotline@wirerestaurant.org

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Frequently Asked Questions

Q. My server is complaining about getting paid tipped minimum base wages (currently \$2.33 per hour) while she is doing side work. She thinks she should be paid at least the full minimum wage (federal/state rate as of July 24, 2009 = \$7.25 an hour) because she is not earning tips during that time. Is she right?

A. How you handle this depends on whether your business is subject to Wisconsin law only or both Wisconsin and federal law. When the state and federal law differs - and your business is subject to both - you would follow the guidelines that are more favorable for the employees. In most cases is the federal (allowing only 20% of a workweek, versus the 33% per shift allowed by the state). See more detailed explanations below. If an employee earning the tipped minimum wage exceeds these time allowances you would need to pay that employee the full minimum wage for the time spent in these non-tip producing activities.

The Wisconsin Department of Workforce Development's position is that up to 1/3 of an employee's time per shift can be spent in non tip-producing activities (this would be work related to the overall assignment of being a server, like preparing the dining room, folding napkins and making coffee). If more time than this is spent in non tip-producing activities, then the employer cannot pay the employee the tipped rate. The employee would have to receive at least the regular minimum wage rate per hour (as of July 24, 2009 = \$7.25 for adults).

WRA learned that our previous example of 20 minutes on either side of the shift being acceptable was an outdated interpretation of enforcement practices.

The National Restaurant Association points to the the Federal Department of Labor's position on this issue. In a DOL opinion letter from the 1980's on the subject of incidental work, they stated that the tipped minimum wage may be used for servers for the time spent on general preparation work such as setting tables and making coffee, however the DOL takes the position that if servers are routinely assigned maintenance duties such as floor cleaning, or they spend more than 20 percent of their time per workweek performing general preparation work or maintenance, this is not tipped employment and the tip credit may not be taken for time spent on such work.

See the HERO 'Guide to State vs. Federal Law' for clarification on which laws apply to your business.

Q. One of my servers told me she didn't make any tips last night and I have to pay her full minimum wage for the shift. Usually she's paid \$2.33 an hour. Is this true?

A. No. It is true that a server's base wage plus tips must equal at least the full minimum wage (as of July 24, 2009 = \$7.25 an hour, \$5.90 for opportunity wage earners) but this is calculated over the work week, not a single day or shift. If your waitress works 40 hours in a week and reports \$202 in tips, she has earned \$5.05 per hour in tips. That, plus her base wage of \$2.33 an hour, will bring her to \$7.38, which is higher than the federal/state minimum wage of \$7.25. Use the work week to calculate the adjustment, which can be paid at the normal pay period (if necessary).

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Q. My restaurant occasionally has staff meetings. Do I have to pay my employees to attend? And if I do, how much do I have to pay my servers?

A. Most meetings at work are going to be considered working time by the Labor Department. The only time they won't be considered working time is if the following four tests are met::

- Attendance is outside the employee's regular working hours.
- Attendance is truly voluntary.
- The subject of the meeting is not related to the employee's work.
- The employee doesn't perform any productive work during the meeting.

Even if the meeting is considered voluntary, it is probably related to work and you must pay your employees to attend. If you threw a company party on a day your restaurant was closed and employees could choose whether or not to attend, you would not have to pay.

A tipped employee would have to be paid the full minimum wage (currently \$7.25 for most workers, \$5.90 for opportunity wage earners) for attending a work related meeting. Tipped employees may only be paid below the full minimum wage during hours when they have an opportunity to earn tips or are doing side work for their tip-earning work. Since the servers can't earn tips during the meeting, you cannot take a tip credit.

The figures in these Q/A examples reflect the federal / state minimum wage as of July 24, 2009 and must be adjusted whenever the minimum wage rate changes.

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