



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.

Questions? Ask WRA: 800-589-3211 or askwra@wirerestaurant.org

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Frequently Asked Questions

Q. My server is complaining about getting paid tipped minimum base wage while she is doing side work. She thinks she should be paid the full general minimum wage for time spent doing side work. Is she right?

A. The State of Wisconsin and the Federal Department of Labor (DOL) differ in this. In a recent Act, the DOL did not intend to place a limitation on the amount of duties related to a tip-producing occupation that may be performed so long as duties are performed contemporaneously with direct customer service duties. However 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. If more time than this is spent in non tip-producing activities, then the employer would need to pay the full general minimum wage per hour. In either case the work must be related to the overall assignment of being a server, like preparing the dining room, folding napkins and making coffee.

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

A. No. A server's base wage plus tips must equal at least the full general minimum wage (or opportunity wage) but this is calculated over the work week, not a single day or shift.

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 general minimum wage for attending a work-related meeting. Tipped employees may only be paid below the full general minimum wage during hours when they have an opportunity to earn tips or are doing side work for their tip-earning work that exceeds the time set by the Wisconsin Department of Workforce Development. Since the servers can't earn tips during the meeting, you cannot take a tip credit.

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