

West Virginia Division of Labor

Minimum Wage Requirements for Tipped Employees

West Virginia Division of Labor Wage & Hour Section

Minimum Wage Fact Sheet 3 -West Virginia Code Chapter 21, Article 5C, Section 4
(July 2016)

MINIMUM WAGE REQUIREMENTS FOR TIPPED EMPLOYEES

West Virginia's Minimum Wage Standards allow covered employers to take a credit against the state minimum wage requirement for as much as seventy percent (70%) of the current minimum wage for their service employees that customarily receive gratuities (tips). As of January 1, 2016, the maximum allowable credit that an employer may take against the minimum wage requirement for tipped employees is \$6.13, which leaves a minimum cash wage requirement of \$2.62 per hour. §21-5C-4

If during any given workweek of seven consecutive twenty-four hour periods, a tipped employee should not receive an hourly rate, plus tips, to equal the current minimum wage of \$8.75 per hour, the employer must increase that individual's hourly wage by whatever amount necessary to meet the minimum wage requirement.

Covered Employers

To be considered a covered employer under West Virginia's minimum wage requirements for the purpose of using the 70% tip credit allowance, a business must employ during any calendar week at least six or more non-exempt employees in any one separate, distinct and permanent location or business establishment. §21-5C-1(e)

Service Employees

In order for an employer to take a tip credit allowance, the employee must be a service employee or a dual service employee. A service employee is an individual who customarily receives tips or gratuities in connection with his or her work. Employers are entitled to take the full seventy percent (70%) tip credit allowance for their employees that remain eligible to receive tips throughout the entire workweek. §42CSR 8-3.34

Whenever a service employee spends more than twenty percent (20%) of his or her time during a workweek performing duties in which he or she does not receive tips, an employer must pay the employee the full minimum wage of \$8.75 for the amount of time the employee spends performing such duties. §42CSR 8-12.1.b

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Dual Job Employees

A dual job employee is any employee who performs work as both a service (tipped) employee and a non-service (non-tipped) employee for one employer. Employers must pay dual job employees the full minimum wage requirement of \$8.75 for all hours spent performing work as a non-service (non-tipped) employee. §42CSR 8-12.1.d

When taking a credit against the minimum wage for the number of hours a dual employee works as a service (tipped) employee, the employer must have records to show the actual number of hours the employee was available to receive tips (gratuities). §42CSR 8-12.1.e

TIP REPORTING REQUIREMENTS

In order for an employer to take a credit for tips against the minimum wage requirement, he or she must have written tip records completed by the employee, and the employee's report of tips must specify the time period in which the tips were received, the amount of cash tips received, the amount of credit (or debit) card tips received, the amount of tips paid out, and the amount of net tips retained by the employee. The report must be signed and dated by the employee. §42CSR 8-12.1.e & §42CSR 8-12.1.e.1

An employee may use IRS Form 4070 "Employee's Report of Tips to Employer", IRS Form 4070A "Employee's Daily Record of Tips", or any other form that includes the information required by Code of State Rule §42CSR 8-12.1.e.1 to report tips.

TIP SHARING OR POOLING

If an employer permits tip-sharing or pooling, the employer shall divide the shared or pooled tips among only service (tipped) and dual job employees working as service (tipped) employees, and shall ensure that the employees individually report the amount of tips paid out. The employer as well as non-service employees are not permitted to receive a share of any shared or pooled tips. §42CSR 8-12.1.7 & §42CSR 8-12.1.8