



AN UPDATE ON THE MINIMUM WAGE LAWS IN DC

Minimum Wage Laws

Under Federal law, the minimum wage is currently set at \$7.25 per hour.¹ However, like several states, the District of Columbia's minimum wage rate is higher than the current federal minimum wage rate. Currently, the minimum wage in D.C. is \$8.25 per hour.

In 2013, the D.C. Council passed the Minimum Wage Amendment Act of 2013 which would increase the minimum wage as follows:

- (a) Effective July 1, 2014, the minimum wage will be the greater of \$9.50 or \$1 more than the Federal minimum wage.
- (b) Effective July 1, 2015, the minimum wage will be the greater of \$10.50 or \$1 more than the Federal minimum wage
- (c) Effective July 1, 2016, the minimum wage will be the greater of \$11.50 or \$1 more than the Federal minimum wage.
- (d) Beginning July 1, 2017, and every year thereafter, the minimum wage will be increased to reflect any increase in cost of living.

¹ Employers who use the "tip credit" are permitted to pay employees \$2.77 per hour, provided however, that the employer ensures that the employee's total compensation, including tips, reaches the required minimum wage.

Therefore, starting July 1st the minimum wage in D.C. for employees who are not exempt from the federal and District wage and hour laws² will be \$9.50 per hour.

During the past several years, there has been an increase in the number of lawsuits filed against employers for alleged violations of state and federal wage-hour laws. Under D.C. law, an employee who is successful in a wage-hour lawsuit can collect compensatory, liquidated damages, plus costs and reasonable attorneys' fees.

Moreover, an employer may be found liable even where the underpayment was due to an oversight or unintentional mistake. Given the foregoing, it is in an employer's best interest to review its payroll policies and procedures to help ensure they comply with applicable federal and D.C. laws. If changes are required to their policies and practices, employers should revise them immediately, thus reducing any potential liability.

² All employees must be paid the minimum wage and overtime for any hours over 40 worked in the week, unless they are considered exempt under federal law. In order to be exempt, an employee must be paid at least \$455 per week, and be classified as an executive, administrative or professional employee. In addition certain outside sales persons and workers who perform certain computer-related work are exempt.

The D.C. minimum wage applies to any employee who is not exempt and who:

- regularly spends more than 50% of his or her working time in D.C.; or
- is based in D.C. and regularly spends a substantial amount of his or her working time in D.C. and does not spend more than 50% of his or her work time in any particular state.

For example, if your organization has an employee who spends 60% of his or her time at your offices in D.C., and 40% at your offices in Maryland, the employee must be paid the D.C. minimum wage for all hours worked, regardless of location, because he or she regularly spends more than 50% of working time in D.C.

In a second example, if your organization has an employee who is based in your D.C. office and spends one-third of his or her time in D.C., one-third in Maryland, and one-third in Virginia, the employee must be paid the D.C. minimum wage for all hours worked because he or she spends a substantial amount of work time in D.C. and does not spend more than 50% in any particular state.

D.C. Minimum Four Hour Shift Requirement

D.C. law also requires an employer to compensate an employee for at least four hours of work for each day on which the employee:

- reports for work under general or specific instructions, but does not receive work, or

- is given less than four hours of actual work.

If, however, the employee is regularly scheduled to work less than four hours a day, the employer is required to pay the employee for the hours regularly scheduled (i.e., not the minimum four hours of work).

Should an employer face a situation where it must pay an employee for four hours of work, even though the employee worked for less than four hours, the wage must be calculated by paying the employee's regular rate for the hours actually worked, plus payment at the minimum wage for the hours not worked.

D.C. Split Shift Requirement

D.C. law also provides that an employer must pay an employee for one additional hour at the minimum wage for each day during which the employee works a *split shift*. A *split shift* occurs when an employee's schedule of daily hours worked is not consecutive (i.e., when an employee's work day is split into two or more working periods).

The regulations provide an exception for employees living on the employer's premises. Thus, if an employee lives on the employer's premises, the employer is not required to pay an employee an additional hour for each day he/she works a *split shift*.

D.C. Poster Requirement

Employers subject to federal and D.C.'s minimum wage laws are required to post a copy or summary of the applicable laws and regulations. The poster must be posted in a conspicuous and accessible place in the worksite, such as a communal break room.

Should an employer need a poster, the employer can obtain the poster by visiting the District of Columbia's Department of Employment Services website, at <http://www.does.dc.gov>.

D.C. Living Wage Act

In addition to the minimum wage laws, employers that receive certain government grants and contracts must comply with D.C. minimum "living-wage." The minimum living wage for 2014 is \$13.60 per hour.

Under the "Living Wage Act of 2006," the minimum living wage is applicable to any employer that either:

- (a) has a contract with, or receives assistance from, the District government in the amount of \$100,000 or more annually; or
- (b) is a sub-contractor and is paid \$15,000 or more from a D.C. government contract, or receives \$50,000 or more from another organization receiving government assistance.

"Assistance" is broadly defined as a contract, loan, or tax increment financing that results in a financial benefit.

Living Wage Exemptions

Recognizing the potential fiscal burden the law will place on employers, the law contains several exceptions, enabling certain employers to be exempt from the Living Wage Act's requirements.

Specifically, the law exempts employees of nonprofit organizations that employ fifty

(50) full-time equivalent individuals or less provided the organization is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code.

The Living Wage Act also excludes other employees, including:

- work performed under contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor;
- work performed under contracts and agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration that are designed to provide health services;
- work performed under Medicaid provider agreements for direct care services to Medicaid recipients are exempt from the living wage requirement, provided, however, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons;
- tenants or retail establishments that occupy property constructed or improved using D.C. Government assistance, unless the government assistance was provided by the D.C. Government directly to the tenant or retail establishment;
- work performed under contracts or other agreements that provide trainees with additional services, including case management and job readiness services, provided that the trainees do not replace employees subject to the Act; and

- employees under twenty-two (22) years of age employed during a school vacation period, or enrolled as full-time students working less than twenty-five (25) hours per week.

D.C. Wage Payment Law Regarding Separation of Employment

Periodically, an employer must deal with an employee who separates from employment, whether voluntary or involuntary.

Under the D.C.'s Wage Payment Law, when an employer discharges an employee, the employer must pay the employee's wages earned no later than the working day immediately following the date of discharge.

If, however, an employee resigns or quits, the employer is obligated to pay the employee's wages due on the next regular payday or within seven days from the date of the employee's resignation, whichever occurs first.

In the case of an employee who is responsible for monies belonging to the employer, the employer has a period of four days from the employee's separation date to determine the accuracy of the employee's accounts, at the end of which time all wages earned by the employee must be paid.

However, these provisions do not apply if a collective bargaining agreement provides otherwise.

If there is a dispute concerning the amount of wages due, the employer is required to give the employee written notice of the amount of wages which the employer believes are due and then pay such amount within the time required above. The fact that the employee accepts such payment is

not considered a waiver of the employee's claim for additional wages.

Additional Resources:

The following resources may be of interest to you:

Information about D.C.'s wage and hour laws:

<http://does.dc.gov/service/wage-and-hour-compliance>

Information about D.C.'s wage and hour living wage requirements:

<http://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/Living%20Wage%20Act%20Fact%20Sheet%202013.pdf>

US Department of Labor wage and hour website:

<http://www.dol.gov/dol/topic/wages/>

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