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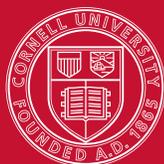


Restaurants at the Crossroads: A State By State Summary of Key Wage-and-Hour Provisions Affecting the Restaurant Industry

Cornell Hospitality Roundtable Retrospective

No. 3, December 2009 revision

by Carolyn D. Richmond, J.D., David Sherwyn, J.D., and Martha Lomanno
with Vimisha Dubal and Jason E. Shapiro



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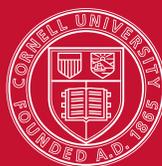
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EXECUTIVE SUMMARY

Restaurateurs face a remarkable tangle of laws and regulations that on their face are meant to protect workers, but which often serve to create confusion for operators—and employment for labor attorneys. While many states simply apply federal wage and hour laws, others have been active in passing their own statutes, which set regulations that are more stringent than those of the federal government. This tool presents a comprehensive compilation of the wage-and-hour rules from all fifty U.S. states, plus the District of Columbia and Commonwealth of Puerto Rico. While this tool does not substitute for the advice of legal counsel, it provides an overview of regulations to guide restaurateurs as they set their human resource policies and procedures.

ABOUT THE AUTHORS

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Carolyn D. Richmond, J.D., is a partner and co-chair of Fox Rothschild LLP's Hospitality Practice Group and a member of the Center for Hospitality Research advisory board (crichmond@foxrothschild.com). Her practice consists of representing and counseling employers in the hospitality industry on a wide range of employment related matters. In particular, Carolyn has extensive experience in litigating wage and hour class actions, litigating and advising clients with respect to restrictive covenants and EEO discrimination claims, counseling employers on employee handbooks and the hiring process, conducting diversity awareness and union avoidance training and counseling on e-workplace issues. She is a frequent contributor to a number of publications and is a member of the Board of Editorial Advisors for Hospitality Law. A 2009 recipient of Crain's New York prestigious Top 40 Under Forty Rising Stars award, Carolyn is frequently quoted in publications including the New York Times, Forbes, Nation's Restaurant News and Newsday. Previously, Carolyn served as General Counsel, Business & Legal Affairs to BR Guest Restaurants – JAMES Hotels. Carolyn is also counsel to the New York State Restaurant Association, New York City Chapter.



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The authors appreciate the additional research assistance of Vimisha Dubal and Jason Shapiro.

Please note: This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please contact the authors or legal counsel to discuss any concerns you may have as a result of reading this publication.

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The restaurant industry is at a crossroads, facing extraordinary challenges to its business model. With all segments of the industry still reeling from an unprecedented economic decline not seen since the Great Depression, the industry is struggling not only from an economic attack affecting its customers directly, but from a barrage of other interest groups including governmental agencies and plaintiff lawyers. Whether the headline-grabbing “issue *du jour*” has been menu labeling, banning *fois gras*, letter-graded health inspections, or service charges and tips, all have had a deleterious effect on the bottom line and viability of operators across the industry, from the smallest coffee shop owner to the largest of the quick-service franchise operators.

While some state and local legislatures have moved quickly to legislate on many of the issues related to hot-button health and environmental issues, legislative change to the wage and hour laws has not come as quickly. Restaurant and other food-service operators are left to make sense of a myriad of federal, state, and local laws and regulations that govern wage and hour and tipping matters in the workplace. Many of those laws and regulations are antiquated and, at times, even at odds with each other. As a result, over the last decade, restaurant owners have grown increasingly at risk of being sued in class action lawsuits for violations of minimum wage laws with respect to tip pooling, service charges, and overtime. Moreover, wage and hour investigations by many state departments of labor directed at restaurant owners have increased substantially.

The rise in class action lawsuits has become a problem for operators nationwide. Among others, such suits have included service-charge claims against hotel operators in Hawaii, claims over waiving meal breaks in California, and class actions against the fine-dining restaurants in Manhattan over the inclusion of maître d's in tip pools. The lawsuits have been fueled by a confluence of the following factors: (1) inconsistencies in the application and interpretation of the Federal Fair Labor Standards Act and related state labor laws; (2) increasing awareness outside the industry about restaurant industry customs; (3) a marked proliferation in class action litigation across the country as a result of the

Class Action Fairness Act;¹ (4) a general increase in class-action litigation in the service industry; and (5) public interest groups and civil rights organizations that have increased their focus on industries represented by significant immigrant workforces, such as the restaurant industry.²

¹ 28 U.S.C. § 1453 (c).

² The Restaurant Opportunities Center of New York (ROC-NY), Make the Road New York, and the Asian American Legal Defense Fund (AALDEF) are among the organizations which have focused their attention on the restaurant industry in recent years, both in the form of legal assistance to employees and organizing protests against restaurants. For example, AALDEF has served as co-counsel in lawsuits against New York- and New Jersey-based restaurants, including the landmark *Saigon Grill* decision discussed in this article. See: "Chinese Immigrant Delivery Workers At Saigon Grill Win \$4.6 Million Judgment For Back Wages" (October 22, 2008), at www.aaldef.org/article.php?article_id=385. As noted on their websites, these groups publicly target restaurants through both legal action and public protests to draw attention to ongoing disputes and perceived mistreatment of workers. Additionally, both ROC-NY and AALDEF helped represent plaintiffs who filed a discrimination lawsuit against Manhattan-based Daniel Restaurant. See: "Workers File Federal Lawsuit against Daniel Restaurant Alleging Racial Discrimination" (December 5, 2006), at www.aaldef.org/article.php?article_id=221. AALDEF is also currently carrying out a campaign on behalf of Korean restaurant workers in New Jersey. See: "Korean Immigrant Worker Wins \$30,000 Settlement for Overtime from Jin Go Gae Restaurant" (March 17, 2009), at www.aaldef.org/article.php?article_id=391. Make the Road New York has organized protests in front of restaurants it alleges are committing labor violations. See, e.g.: "Community Group to Release Report Revealing Widespread Labor Violations at Well-Known New York Restaurants" (February 4, 2009), at www.maketheroad.org/article.php?ID=773.

While these lawsuits make clear that much is in flux concerning wage and hour law and the restaurateur, operators can use a number of guiding legal parameters to make sure that they are complying with basic federal and state laws to minimize liability. This article will outline the legal requirements at the federal and state level in the following key areas: (1) pay day requirements; (2) minimum wage; (3) requirements for tipped employees; (4) premium pay; (5) meal period; (6) paid rest period; (7) tip pool; and (8) service charge. For operators with properties in multiple states, these particular wage and hour provisions are often the subject of investigations and lawsuits, and the requirements may vary from jurisdiction to jurisdiction. Accordingly, it is imperative that operators understand the subtle nuances. For instance, eight jurisdictions in the United States (including Guam) do not allow an employer to take a tip credit against the minimum wage.³ In the states and jurisdictions that do permit an employer to take the tip credit, the amount varies significantly.⁴ While an employer can audit and monitor such matters as whether paydays occur at the right interval, that meal periods occur at the correct time, or that overtime is paid at the correct rate, tip-pool compliance is far more subjective.

The definition of a “tip pool” and whether it can be mandated by a restaurant owner varies wildly across the country. The “voluntariness” of a tip pool was apparently settled by California courts almost twenty years ago, in *Leighton v. Old Heidelberg, Ltd.*, when the court found that tip pooling in restaurants is not prohibited by California Labor Code section 351.⁵ New York courts, however, have yet to address this issue, which remains the subject of much litigation.⁶ Finally, restaurants, as well as caterers, banquet operators and hotels across the country, are all grappling with increased litigation concerning use of “service charges,” or imposed automatic gratuities. The dispute revolves around whether service employees are entitled to some or all of these funds or whether this money is solely the property of the establishment. Treated differently under FLSA

³ The no-allowance states are Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington, plus Guam. New Mexico and Puerto Rico allow lower pay rates for tipped employees, but do not allow a tip credit.

⁴ New York, for example, has over a dozen tip-credit categories for various hospitality operations. Minimum cash wages in states with minimum wage laws range from \$1.59 in Kansas to \$7.00 in Hawaii, according to the U.S. Department of Labor (www.dol.gov/whd/state/tipped.htm), posted July 24, 2009.

⁵ 219 Cal. App. 3d 1062, 1071 (Cal. Ct. App. 1990)

⁶ The New York Department of Labor (NYDOL) and New York’s plaintiffs’ bar rely on a 1972 NYDOL “Interpretive Memo” stating that tip pools cannot be mandatory. To date, no court has issued any opinion finding that New York’s Labor Law prohibits mandatory pooling nor has any court enforced the 1972 Memorandum.

regulations and various state laws, service charges have seen an explosion of litigation in the last several years in jurisdictions including Massachusetts, New York, and Hawaii.

The extent of these lawsuits cannot be overemphasized. These lawsuits are seen as “bet the company” litigation by lawyers and operators alike. While it is beyond the scope of this tool to discuss each wage and hour lawsuit filed against restaurant companies, it is instructive to provide examples of some the litigation that has occurred. Below, we provide an overview of a small fraction of the cases filed in the last several years. The stated judgments do not include the huge sums of the money the companies spent on their own counsel or the amount of time that high level executives spent defending these claims.

In *Chan v. Sung Yue Tung Corp.*, a New York federal court awarded the plaintiffs—a group of waiters, busboys and captains—damages totaling nearly \$700,000 for violations of the Fair Labor Standards Act and the New York Labor Law.⁷ The court found, among other things, that managers and agents of the employer were participating in the restaurant’s tip pool. The restaurant was also found to have violated New York’s uniform laws by forcing its employees to purchase uniforms without reimbursement, which took their salaries below the minimum wage level.⁸ The Court subsequently awarded the plaintiffs \$957,710 in attorney’s fees.

In *Ke v. Saigon Grill, Inc.*, a New York federal court awarded a class of restaurant delivery workers \$4.6 million in damages for numerous violations of New York State and federal overtime and wage payment laws.⁹ Among the violations, the court found that the defendants did not meet their minimum wage or overtime obligations and did not reimburse the delivery staff for the use of bicycles for delivering the food. Further, the court reprimanded the defendants for destroying pertinent payroll records. To compound matters, on December 3, 2008, the owners of Saigon Grill were indicted for criminal violations stemming from this lawsuit.¹⁰

In a much publicized decision last year by a superior court in California, Starbucks was ordered to pay a staggering \$105 million in back pay (\$86.7 million in tips plus interest) to baristas for tip pool money the court found was improperly given to shift supervisors.¹¹ However, on June 2, 2009, this decision was reversed by a Court of Appeals

⁷ 2007 U.S. Dist. LEXIS 7770 (S.D.N.Y. Feb. 1, 2007),

⁸ *Id.* at *24

⁹ 595 F. Supp. 2d 240 (S.D.N.Y. 2008),

¹⁰ See: Case Numbers 2008-NY-088982, 2008-NY-088983, New York Criminal Court.

¹¹ See *Chau v. Starbucks Corp.*, Superior Court of San Diego County, No. GIC836925 (Cal. Super. Ct. 2007).

in California.¹² In reversing the decision, the court stated that under California law, even if shift supervisors were considered agents of the employer, they were still entitled to keep tips received for their own services that were placed in collective tip boxes meant for the baristas and shift supervisors. Specifically, as we mentioned above, the court held that California Labor Code § 351 does not prohibit an employer from permitting a shift supervisor to retain his or her portion of a collective tip intended for the entire team of service employees.¹³

Earlier in this decade, in *Bender v. Darden Restaurants Inc.*, the Ninth Circuit upheld a California jury's \$1.8 million punitive-damage award against Darden Restaurants (the parent corporation of Red Lobster and Olive Garden). This lawsuit was brought by Red Lobster employees for missed meal and rest breaks that were denied by the employer, as well as evidence of time-card violations.¹⁴ The Appeals Court found that the plaintiffs had shown that the employer had acted with the requisite "malice" to justify punitive damages, and that the employer had authorized the illegal conduct in violation of California laws on meal breaks.¹⁵

In *Chisolm v. Gravitas Restaurant Ltd.*, a Texas district court found an illegal wage deduction under the FLSA and ordered the restaurant to disgorge the tip credit and pay liquidated damages and attorney's fees to the plaintiffs. This occurred because the restaurant had imposed a "glass-breakage fee," which required the wait staff to contribute one dollar per shift to a glass-breakage fund.¹⁶ Although the Court did not give a total amount for the damages, it noted that the penalty the restaurant would pay "is heavy compared to the loss suffered by plaintiffs," but that the employer made a "conscious decision to shift one of its costs of doing business to its servers," and would now pay the penalty for it.¹⁷

The U.S. Department of Labor (DOL) has also effectuated a number of large settlements with restaurants for alleged wage and hour violations. For example, in 2008 the DOL secured \$593,222 in minimum wage and overtime back pay for 83 employees of Mizu Sushi.¹⁸ The DOL found that the restaurant was in violation of federal law by not paying proper overtime rates to its employees for hours worked over 40 per week.

In Rhode Island, the DOL secured \$207,000 in back wages for 154 employees of Ballard's Inn.¹⁹ The DOL alleged that the restaurant repeatedly failed to pay employees the required minimum wage rate, and also failed to properly compensate its employees for all overtime hours worked.

A Kansas-based restaurant settled with the DOL in 2009 for \$600,000 representing back wages for 19 employees.²⁰ The DOL investigation found that 13 servers were paid solely by tips, thereby violating minimum wage laws; that the company deducted servers' pay to cover uniform costs; and that the company violated federal overtime laws and kept inaccurate payroll records.

The DOL in 2008 also secured nearly \$500,000 in back pay to 234 employees for two locations, one in Denver, and one in Scottsdale, Arizona, for violations spread over a two-year period.²¹ The company was found to have violated federal tip-pooling laws by requiring tipped employees to share 3 percent of their tips with managers and back-of-the-house employees, such as cooks. The employees were also forced to contribute to a fund to cover for potential customer walk-outs.

Finally, five Long Island-based restaurants were forced in 2007 to pay \$966,046 in overtime back wages to 192 employees, in addition to paying \$14,773 to the U.S. DOL, in order to resolve various lawsuits.²² The DOL found the restaurants to have violated both federal minimum wage and federal overtime laws, as well as numerous violations of federal record-keeping requirements.

Given the fact that these lawsuits and investigations can result in verdicts exceeding seven figures and that they are almost always coupled with equally exorbitant legal fees, we believe that employers should have a tool to guide them as to the relevant wage and hour laws in their jurisdiction. This tool is not, of course, a substitute for legal advice. Instead, it is a guideline that employers can refer to when they draft policies and procedures, or conduct self audits. Moreover, since these laws are in a constant state of flux, employers should frequently consult with counsel to ensure that they are always in compliance with applicable laws and regulations, as well as agency interpretations and opinion letters. ■

¹² See *Chau v. Starbucks Corp.*, 2009 Cal. App. LEXIS 870 (Cal. Ct. App. June 2, 2009).

¹³ *Id.* at 3.

¹⁴ 2002 U.S. App. LEXIS 865 (9th Cir. Jan. 8, 2002).

¹⁵ *Id.* at *2.

¹⁶ 2008 U.S. Dist. LEXIS 28254 (S.D.Tex. Mar. 25, 2008).

¹⁷ *Id.* at *17.

¹⁸ See: "U.S. Labor Department Secures More than \$593,000 in Back Wages for Employees of Restaurant in Manhattan," May 21, 2008.

¹⁹ See: "U.S. Labor Department Secures More than \$207,000 in Back Wages for Employees of Block Island, R.I. restaurant" November 29, 2007.

²⁰ See: "U.S. Labor Department Secures More than \$600,000 for 19 Employees of El Torrero Inc.," February 18, 2009.

²¹ See: "Canadian-based Restaurant Chain Agrees to Pay Nearly \$500,000 in Back Minimum Wages to 234 Employees in Colorado and Arizona," September 17, 2008.

²² "Five Long Island Restaurants Ordered to Pay More than \$980,000 to Resolve U.S. Labor Department Lawsuits Alleging Federal Wage and Hour Law Violations," August 7, 2007.

Federal

Payday Requirements	No federal provisions. The Federal Department of Labor provides a state-by-state overview for state payday requirements at www.dol.gov/whd/state/payday.htm
Federal Minimum Wage Requirements	The federal minimum wage is \$7.25 per hour as of July 24, 2009. ¹ Note: Federal minimum wage laws apply in any state where the state minimum is lower. The federal DOL provides a state-by-state overview of minimum wage rates at www.dol.gov/whd/minwage/america.htm .
Requirements for Tipped Employees	Employers of tipped employees (i.e., those who customarily and regularly receive more than \$30 a month in tips) may consider such tips as part of their wages, but employers must pay a direct wage of at least \$2.13 per hour if they claim a tip credit. ² The Federal Department of Labor provides a state-by-state overview for state tip credits at www.dol.gov/whd/state/tipped.htm
Premium Pay Requirements	An employer must pay an overtime rate of not less than one and one-half times the employee's regular rate which the employee must receive for all hours worked in any workweek in excess of 40 hours. ³
Meal Period Requirements	No federal provisions. The Federal Department of Labor provides a state-by-state overview for state meal period requirements at www.dol.gov/whd/state/meal.htm
Paid Rest Period Requirements	No federal provisions. The Federal Department of Labor provides a state-by-state overview for state rest period requirements at www.dol.gov/whd/state/rest.htm
Tip Pooling	Tip pooling is available for employees whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves; the amounts received and retained by each individual as his own are counted as his tips for purposes of the act. ⁴
Service Charges	Service charges are not considered to be tips so all covered employees must be paid at least the federal minimum wage. However, where such sums are distributed by the employer to his employees, they may be used in their entirety to satisfy the monetary requirements of the act. ⁵

¹ FLSA, 29 CFR § 206.

² FLSA, 29 CFR § 531.50.

³ FLSA, 29 CFR §§ 778.101, 778.107.

⁴ FLSA, 29 CFR §§ 203(m), 531.54.

⁵ FLSA, 29 CFR § 531.55.

Alabama

Payday Requirements	Employees must be paid at least twice a month, and not more than 15 days following the close of the pay period. ⁶
State Minimum Wage Requirements	No state provisions.
Requirements for Tipped Employees	No state provisions.
Premium Pay Requirements	No state provisions.
Meal Period Requirements	There are no requirements for adult workers, but there are separate provisions for minors. Minors ages 14 and 15 must have a meal or rest period of at least 30 minutes for each five-hour period of continuous work. A meal or rest period of less than 30 minutes does not constitute an interruption of a continuous period of work. ⁷
Paid Rest Period Requirements	As above.
Tip Pooling	Tip pooling is permitted and follows federal laws. ⁸
Service Charges	No state provisions. ⁹

⁶ Ala. Code § 37-8-270.

⁷ Ala. Code § 25-8-38.

⁸ FLSA, 29 CFR § 531.54. *Note:* This is the reference for all states that follow federal law.

⁹ FLSA, 29 CFR § 531.55.

Alaska

Payday Requirements	Employees must be paid either semi-monthly or monthly, as the employee elects. ¹⁰
State Minimum Wage	Basic minimum wage rate per hour is \$7.25. ¹¹
Requirements for Tipped Employees	State law does not permit the taking of a tip credit. Minimum wage for tipped employees is the same as the state minimum wage for all employees. ¹²
Premium Pay Requirements	Premium pay is required after working more than eight hours per day or 40 hours per week. Under a written voluntary flexible work hour plan approved by the Alaska Department of Labor, a ten-hour day, 40-hour workweek may be instituted with premium pay after ten hours a day instead of after eight hours. The premium overtime pay requirement on either a daily or weekly basis is not applicable to employers of fewer than four employees. ¹³
Meal Period Requirements	No state provisions. ¹⁴
Paid Rest Period Requirements	No requirements for workers over age 18. ¹⁵
Tip Pooling	An employer may handle tips for the purpose of redistributing tips to employees under a tip-pooling arrangement. ¹⁶
Service Charges	A compulsory charge for service that is part of the employer's gross receipts is not considered a tip. ¹⁷

¹⁰ Alaska Stat. § 23.05.140.

¹¹ Alaska Stat. § 23.10.065; 8 Alaska Admin. Code 15.105.

¹² Alaska Stat. § 23.10.065(a).

¹³ Alaska Stat. § 23.10.060.

¹⁴ For regulations concerning minors, see Alaska Stat. § 23.20.350(c).

¹⁵ *Id.*

¹⁶ 8 Alaska Admin. Code 15.907.

¹⁷ *Id.*

American Samoa

Payday Requirements	No statutory provisions.
Minimum Wage Requirements	The Fair Labor Standards Act (FLSA), applies generally to employment within American Samoa as it does to employment within the United States. The Fair Minimum Wage Act of 2007 (Public Law 110-28) now sets minimum wage rates within American Samoa and provides for additional increases in the minimum wage of \$0.50 per hour each year on May 25, until reaching the minimum wage generally applicable in the United States. The wage rates are set for particular industries, not for an employee's particular occupation. ¹⁸ For the hotel industry, which includes all activities in connection with the operation of hotels (whether privately or government owned in whole or in part), motels, apartment hotels, and tourist courts engaged in providing lodging, with or without meals, for the general public, including such laundry and cleaning and other activities as are engaged in by a hotel or other lodging facility on its own linens or on garments of its guests, the minimum wage is \$4.50 beginning May 25, 2009 (the aforementioned yearly increases apply to each industry as well). ¹⁹
Requirements for Tipped Employees	A tip credit is permitted; employer must pay a cash wage of at least \$2.13 per hour as long as employee's tips and cash wage combined are not less than the minimum wage. ²⁰
Premium Pay Requirements	Employers are required to give premium pay to employees who work over 40 hours in a work week.
Meal Period Requirements	No statutory provisions.
Paid Rest Period Requirements	No statutory provisions.
Tip Pooling	No statutory provisions.
Service Charges	No statutory provisions.

¹⁸ FLSA Title 8 § 8103.

²⁰ Minimum wage poster for American Samoa (dol.gov).

¹⁹ FLSA Title 6 §§ 697.1–697.2

Arizona

Payday Requirements	Employees must be paid semi-monthly. There must be two or more paydays per month, not more than 16 days apart. ²¹
Minimum Wage Requirements	Basic minimum wage rate per hour is \$7.25. The rate is increased annually based upon a cost of living formula. ²²
Requirements for Tipped Employees	State law permits a tip credit of \$3.00. The employer must establish by its records that each week an employee's tips plus cash wages are not less than the minimum wage. An employer who intends to exercise a tip credit must provide written notification to each employee before exercising the credit. ²³
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. Employees who customarily and regularly receive tips may pool, share, or split tips among themselves. Employers may mandate tip pools, but employer-required tip sharing with employees who do not customarily and regularly receive tips may not be credited towards such employees' minimum wage. ²⁴
Service Charges	A service charge is considered a tip only if it is actually distributed by the employer to the employee in the pay period in which the charge is earned. ²⁵ A compulsory service charge imposed on a customer by an employer is not a tip if it is considered part of the employer's gross receipts and is not distributed to the employee in the pay period in which the charge is earned. As a result, a restaurant cannot take a tip credit in that situation. ²⁶

²¹ Ariz. Rev. Stat. Ann. § 23-351.

²² Ariz. Rev. Stat. Ann. § 23-363.

²³ *Id.*

²⁴ Ariz. Admin. Code § 20-5-1207.

²⁵ State of Arizona Minimum Wage, Frequently Asked Questions, www.ica.state.az.us/FAQs/minimumWage/index.html#.

²⁶ Ariz. Admin. Code § 20-5-1207.

Arkansas

Payday Requirements	Employees must be paid at least semi-monthly. ²⁷
Minimum Wage Requirements	Basic minimum wage rate per hour is \$6.25, applicable to employers of four or more employees. ²⁸
Requirements for Tipped Employees	State law permits a tip credit. Employers can take a credit of \$3.62 per hour against the minimum wage rate for tipped employees, provided that the employees actually receive that amount in tips, and the employees (including full-time students) are paid a cash wage of at least \$2.63 per hour. ²⁹
Premium Pay Requirements	Premium pay is required for an employee working more than 40 hours per week. ³⁰
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	According to the Arkansas Department of Labor, employers can mandate tip pools. Provided there is an agreement in advance with the employees, the employer may establish an average value of gratuities received by an employee in the establishment based on a percentage of gross sales apportioned on basis of hours worked among the employees in tipped positions. ³¹
Service Charges	A compulsory service charge is not considered a tip and cannot be counted as a tip even if distributed by the employer to the employees. ³²

²⁷ Ark. Code Ann. § 11-4-401.

²⁸ Ark. Code Ann. § 11-4-210; Ark. Reg. § 010.14-207.

²⁹ Ark. Code Ann. § 11-4-212.

³⁰ Ark. Code Ann. § 11-4-211.

³¹ Ark. Reg. § 010.14-107.

³² *Id.*

California

Payday Requirements	Employees must be paid semi-monthly. ³³
Minimum Wage Requirements	Basic minimum wage rate per hour is \$8.00. ³⁴
Requirements for Tipped Employees	State law does not permit the taking of a tip credit. The state minimum wage must be paid to tipped employees in addition to tips received. ³⁵
Premium Pay Requirements	Premium pay is required both on a daily and weekly basis. It is required after eight hours of work per day, and double pay is required after twelve hours per day. Weekly, premium pay is required after 40 hours per week. Overtime is due on this basis unless an alternative work week of no more than four days of ten hours was established prior to July 1, 1999. ³⁶ Premium pay is also required if an employee works seven days per week. On the 7 th day, the first eight hours are paid time and a half, and over eight hours is paid double time. This is not required for an employee whose total weekly work hours do not exceed 30 and whose total hours in any one work day do not exceed six in specific wage and hour orders. ³⁷
Meal Period Requirements	The employer must provide one half-hour meal period if the employee works more than five hours in a work day. If the total work period per day is no more than six hours, this meal period may be waived by mutual consent of employer and employee. An employee who works more than 10 hours per day must be provided with a second meal period of at least one half-hour. If the total work period per day is no more than 12 hours, the second meal period can be waived by mutual consent of employer and employee, but only if the first meal period was not waived. The Industrial Welfare Commission may adopt working condition orders permitting a meal period to start after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees. ³⁸
Paid Rest Period Requirements	The basic standard is a paid ten-minute rest period for each four hours worked or major fraction thereof, as practicable, in middle of each work period. Not required for employees whose total daily work time is less than three and one-half hours. ³⁹
Tip Pooling	Employer-mandated tip pooling among employees is not prohibited by Lab. Code §351 (employer may not take gratuity left for employee). Such pooling is not a prohibited "taking" within the meaning of that section. ⁴⁰ Employers can establish tip pools, which are "reasonable." Managers, supervisory, and non-service employees cannot participate in tip pools. ⁴¹
Service Charges	A mandatory service charge is an amount that a patron is required to pay based on a contractual agreement or a specified required service amount listed on the menu of an establishment. Such charges are considered as amounts owed by the patron to the establishment and are not gratuities voluntarily left for the employees. Therefore, when an employer distributes all or part of a service charge to its employees, the distribution may be at the discretion of the employer, and the service charge, which would be in the nature of a bonus, would be included in the regular rate of pay when calculating overtime payments. ⁴²

³³ Cal. Lab. Code § 204.

³⁴ Cal. Lab. Code § 1182.12.

³⁵ Cal. Lab. Code § 351.

³⁶ Cal. Lab. Code § 510.

³⁷ Cal. Lab. Code §§ 204, 510.

³⁸ Cal. Lab. Code § 512.

³⁹ Cal. Code Regs. tit. 8, §§ 11010, 11100, 11110, 11120, 11130, 11140, 11150, and 11160.

⁴⁰ *Leighton v. Old Heidelberg, Ltd.* (1990, Cal. App. 2d Dist.) 219 Cal. App. 3d 1062, 268 Cal. Rptr. 647, 1990 Cal. App. LEXIS 386.

⁴¹ Cal. Lab. Code § 351.

⁴² See: www.dir.ca.gov/dlse/FAQ_TipsandGratuities.html.

Colorado

Payday Requirements	Employees must be paid on at least a monthly basis. Employers must post notice of paydays. ⁴³
Minimum Wage Requirements	Basic minimum wage rate per hour is \$7.28. ⁴⁴
Requirements for Tipped Employees	State law permits a tip credit. The maximum tip credit against the minimum wage is \$3.02. The minimum cash wage is \$4.26. To qualify as a tipped employee in Colorado, an employee must receive a minimum of \$30 in tips on a monthly basis. ⁴⁵
Premium Pay Requirements	Premium pay is required if an employee works more than 12 hours in one day or more than 40 hours in one week. ⁴⁶
Meal Period Requirements	Generally, the standard is one half-hour after five hours, except when the workday will be completed in six hours or less. On-duty meal period can be counted as time worked and permitted if the nature of work prevents relief from all duties. ⁴⁷
Paid Rest Period Requirements	The basic standard is a paid 10-minute rest period for each four-hour work period (or a major fraction thereof) as practicable, in the middle of each work period. ⁴⁸
Tip Pooling	Employers can require employees to share or allocate such tips or gratuities on a pre-established basis among other employees who customarily and regularly receive tips. Employer-required sharing of tips with employees who do not regularly and customarily receive tips, such as management or food preparers, or deduction of credit card processing fees from tipped employees, nullifies allowable tip credits. ⁴⁹
Service Charges	It is unlawful for any employer engaged in any business where the custom prevails of the giving of...gratuities by patrons thereof to an employee of said business to assert any claim to, or right of ownership in, or control over such...gratuities; and such...gratuities shall be the sole property of the employee of said business unless the employer posts in his or her place of business in a conspicuous place a printed card, at least twelve inches by fifteen inches in size, containing a notice to the general public in letters at least one-half inch high that all presents, tips, or gratuities given by any patron of said business to an employee thereof are not the property of said employee but belong to the employer. ⁵⁰

⁴³ Colo. Rev. Stat. § 8-4-103; 8-4-107.

⁴⁴ 7 Colo. Code Regs. § 1103-1(3).

⁴⁵ Colo. Const. art. XVIII, § 15; 7 Colo. Code Regs. § 1103-11(3)(c).

⁴⁶ 7 Colo. Code Regs. § 1103-1.

⁴⁷ 7 Colo. Code Regs. § 1103-1 (7).

⁴⁸ 7 Colo. Code Regs. § 1103-1 (8).

⁴⁹ Colo. Rev. Stat. § 8-4-103 (6).

⁵⁰ *Id.*; Colo. Rev. Stat. § 8-70-141.

Connecticut

Payday Requirements	Employees must be paid on a weekly basis. A longer interval, up to monthly, is permitted if approved by the labor commissioner, provided that employees are paid at least once a month. ⁵¹
Minimum Wage Requirements	The minimum wage rate is \$8.00. In January 1, 2010, the minimum wage will be increased to \$8.25. The Connecticut minimum wage rate automatically increases to 0.5% above the rate set in the FLSA if the federal minimum wage rate equals or becomes higher than the state minimum. ⁵²
Requirements for Tipped Employees	State law permits a tip credit. Gratuities may be credited for up to 31% of the minimum wage for hotel and restaurant employees receiving at least \$10 per week in tips (at least \$2 per day for part-time employees). For bartenders who customarily receive tips, the credit is 11% of the minimum wage per hour. ⁵³ The tip credit may not exceed \$0.35 for employees in any industry other than bartending or the hotel and restaurant industry. ⁵⁴
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ⁵⁵
Meal Period Requirements	Employers must provide a meal or rest period of at least one half-hour after the first two hours and before the last two hours for employees who work 7.5 consecutive hours or more. This excludes an employer who provides 30 or more total minutes of paid rest or meal periods within each 7.5-hour work period. ⁵⁶
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. ⁵⁷
Service Charges	No state provisions.

⁵¹ Conn. Gen. Stat. §§ 31-71b, §31-71i.

⁵² Conn. Gen. Stat. § 31-58.

⁵³ Conn. Gen. Stat. § 31-60.

⁵⁴ Conn. Gen. Stat. § 31-60.

⁵⁵ Conn. Gen. Stat. § 31-76 b-i.

⁵⁶ Conn. Gen. Stat. § 31-51ii.

⁵⁷ 29 CFR 531.54.

Delaware

Payday Requirements	Employees must be paid at least once each calendar month. ⁵⁸
Minimum Wage Requirements	Basic minimum rate per hour is \$7.25. This is automatically replaced with the federal minimum wage rate if it is higher than the state minimum. ⁵⁹
Requirements for Tipped Employees	State law permits a tip credit of \$5.02. Tips may be credited against the state minimum wage requirement at the same percentage as under federal law for employees regularly receiving more than \$30 a month in gratuities and tips. However, the employer must pay at least \$2.23 per hour to tipped employees. ⁶⁰
Premium Pay Requirements	No state provisions.
Meal Period Requirements	The requirement is one half-hour after the first two hours and before the last two hours, for employees who work 7.5 consecutive hours or more. ⁶¹
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Delaware law does not permit employers to mandate tip pools. Employees may voluntarily establish a tip pooling system. Where more than one direct service employee provides personal service to the same customer from whom gratuities are received, the employer may require that such employees establish a tip pooling or sharing system not to exceed 15 percent of the primary direct service employee's gratuities. ⁶²
Service Charges	Clear and conspicuous notice must be made on either the menu, placard, the front of the statement of charges or other notice given to the customer indicating that all or part of the service charge is the property of the management. Such notice must be clearly printed, stamped or written in bold type. A service charge assessed to customers, patrons, or guests without such notice is the property of the primary direct service employee(s). ⁶³ Mandatory gratuities are not considered to be tips, and service charges levied without proper notice are the property of the primary direct service employee. ⁶⁴

⁵⁸ Del. Code Ann. tit. 19, § 1102.

⁵⁹ Del. Code Ann. tit. 19, § 902.

⁶⁰ *Id.*

⁶¹ Del. Code Ann. tit. 19, § 707.

⁶² Del. Code Ann. tit. 19, § 902.

⁶³ *Id.* at 14.

⁶⁴ Del. Code Ann. tit. 19, § 902.

District of Columbia

Payday Requirements	Employees must be paid on at least a semi-monthly basis. ⁶⁵
Minimum Wage Requirements	The basic minimum wage rate per hour is \$8.25. The rate is automatically set at \$1.00 above the federal minimum wage rate if the District of Columbia rate is lower. ⁶⁶
Requirements for Tipped Employees	The District of Columbia permits a tip credit. The maximum tip credit against the minimum wage is \$5.48. The minimum cash wage is \$2.77. The employee must receive actual gratuities in an amount equal to the difference between \$2.77 and the minimum wage. ⁶⁷
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours per week. ⁶⁸
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. ⁶⁹
Service Charges	Mandatory service charges are not considered gratuities under D.C. law. ⁷⁰

⁶⁵ D.C. Code § 32-1302.

⁶⁶ D.C. Code § 32-1003.

⁶⁷ D.C. Code § 32-1003.

⁶⁸ *Id.*

⁶⁹ 29 CFR 531.54.

⁷⁰ D.C. Mun. Regs. tit. 7 § 936.16.

Florida

Payday Requirements	No state provisions.
Minimum Wage Requirements	Basic minimum wage rate per hour is \$7.25. ⁷¹ The Florida minimum wage is recalculated yearly based on the Consumer Price Index. Therefore, the federal minimum applies.
Requirements for Tipped Employees	State law permits a tip credit of \$3.02. The minimum cash wage is \$4.23. ⁷²
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. ⁷³
Service Charges	No state provisions.

⁷¹ Fla. Const. art. X, § 24; Fla. Stat. § 448.110.

⁷³ 29 CFR 531.54.

⁷² *Id.*

Georgia

Payday Requirements	Employees must be paid on at least a semi-monthly basis. ⁷⁴
Minimum Wage Requirements	The state minimum wage rate is \$5.15 per hour (applicable to employers of six or more employees). However, this does not apply to any employee that is subject to the Fair Labor Standards Act when the federal rate is greater than the state rate. Georgia also exempts tipped employees from the state law. ⁷⁵
Requirements for Tipped Employees	As above, Georgia exempts tipped employees from the minimum wage law. ⁷⁶
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. Tip pooling is permitted only among employees that normally receive tips—i.e., servers, bussers, and bartenders. You cannot require servers to share their tips with dishwashers, cooks, and expeditors.
Service Charges	No state provisions.

⁷⁴ Ga. Code Ann. § 34-7-2.

⁷⁵ Ga. Code Ann. § 34-4-3.

⁷⁶ *Id.*

Hawaii

Payday Requirements	Employees must be paid on at least a semi-monthly basis. Employees may choose to be paid on a monthly basis under a special election procedure. The Director of Labor and Industrial relations may also grant exceptions to the general semi-monthly payday requirement. ⁷⁷
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25. An employee earning a guaranteed monthly compensation of \$2,000 or more is exempt from the state minimum wage and overtime law. Additionally, state law excludes from coverage any employment that is subject to the Fair Labor Standards Act unless the state wage rate is higher than the federal rate. ⁷⁸
Requirements for Tipped Employees	State law permits a tip credit if the combined amount received from an employer and from tips is at least \$0.50 more than the applicable minimum wage. The maximum tip credit against the minimum wage is \$0.25 per hour. To qualify as a tipped employee in Hawaii, an employee must receive a minimum of \$20 per month in tips. ⁷⁹
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours per week. ⁸⁰
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	No state law; tip pooling is at the discretion of the employer. ⁸¹
Service Charges	Any restaurant applying a service charge to food or beverage services must either (1) distribute the service charge to employees as tip income; or, (2) clearly disclose to the customer that the service charge is not being used for wages and tips of employees. ⁸²

⁷⁷ Haw. Rev. Stat. § 388-2.

⁷⁸ Haw. Rev. Stat. § 387-2.

⁷⁹ *Id.*

⁸⁰ Haw. Rev. Stat. § 387-3.

⁸¹ Haw. Rev. Stat. §§ 387-1, 387-3, 12 20-11.

⁸² Haw. Rev. Stat. § 481B-14.

Idaho

Payday Requirements	Employees must be paid on at least a monthly basis. ⁸³
Minimum Wage Requirements	The state minimum wage conforms with the federal minimum wage, currently \$7.25. ⁸⁴
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$3.90. The minimum cash wage is \$3.35. To qualify as a tipped employee in Idaho, an employee must receive a minimum of \$30 per month in tips. ⁸⁵
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. However, shared or pooled tips may not be used to offset or reduce the amount owed to employees under the minimum wage laws. ⁸⁶
Service Charges	No state provisions.

⁸³ Idaho Code Ann. § 45-608.

⁸⁴ Idaho Code Ann. § 44-1502.

⁸⁵ *Id.*

⁸⁶ *Id.*

Illinois

Payday Requirements	Employees must be paid at least semi-monthly unless they are executive, administrative, or professional personnel, in which case they can be paid monthly. ⁸⁷
Minimum Wage Requirements	The basic minimum rate per hour is \$8.00; will increase to \$8.25 on July 1, 2010. ⁸⁸
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 40%. The minimum cash wage is \$4.80. To qualify as a tipped employee in Illinois, an employee must receive a minimum of \$20 per month in tips. ⁸⁹
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours per week. ⁹⁰
Meal Period Requirements	Employees working for 7.5 continuous hours or longer must receive at least 20 minutes for a meal period beginning no later than five hours after the start of the work period. ⁹¹
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pools may be supervised by an employer as long as the arrangement meets the Department of Labor guidelines. Only traditionally tipped employees are to be included.
Service Charges	No state provisions.

⁸⁷ 820 Ill. Comp. Stat. 115/3.

⁸⁸ 820 Ill. Comp. Stat. 105/4.

⁸⁹ *Id.*

⁹⁰ 820 Ill. Comp. Stat. 105/4a (1); 56 Ill. Adm. Code 210-400.

⁹¹ 820 Ill. Comp. Stat. 140/3.

Indiana

Payday Requirements	Employees must be paid at least semi-monthly, or bi-weekly if requested. ⁹²
Minimum Wage Requirements	The state minimum wage will match the federal minimum wage (\$7.25). ⁹³
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.12, and the minimum cash wage is \$2.13. ⁹⁴
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours per week. ⁹⁵
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	Tips and gratuities received by an employee from persons other than his employer and not accounted for to the employer are not wages; however, the amount of tips or gratuities accounted for by the employee to the employer by written statement as required by Section 6053 of the Internal Revenue Code when such tips are in excess of \$20.00 per month, are wages within the meaning of IC 22-4-4-2. ⁹⁶

⁹² Ind. Code § 22-2-5-1.

⁹³ Ind. Code § 22-2-2-4.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ 646 Ind. Admin. Code 3-8-9.

Iowa

Payday Requirements	Employees must be paid on at least a bi-weekly basis. The regular payday is no more than 12 days (excluding Sundays and holidays) after the end of the period in which the wages were earned. ⁹⁷
Minimum Wage Requirements	The basic minimum wage per hour is \$7.25. ⁹⁸
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 40% (currently, \$2.90). The minimum cash wage is \$4.35. To qualify as a tipped employee in Iowa, an employee must receive more than \$30 per month in tips. ⁹⁹
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted, but must be voluntary and employee initiated. ¹⁰⁰
Service Charges	Employers cannot take a tip credit for a service charge. ¹⁰¹

⁹⁷ Iowa Code § 91A.3.

⁹⁸ Iowa Code § 91D.1.

⁹⁹ *Id.*

¹⁰⁰ Iowa Admin. Code § 347.217.54.

¹⁰¹ Iowa Admin. Code § 347.217.55.

Kansas

Payday Requirements	Employees must be paid on at least a monthly basis. ¹⁰²
Minimum Wage Requirements	The basic minimum wage per hour is \$2.65; however, the state law excludes from coverage any employment that is subject to the Fair Labor Standards Act. ¹⁰³
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 40%, and the minimum cash wage is \$1.59. To qualify as a tipped employee in Kansas, an employee must receive more than \$20 per month in tips. ¹⁰⁴
Premium Pay Requirements	Premium pay is required if an employee works more than 46 hours per week, unless the employment is subject to FLSA § 207. ¹⁰⁵
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

¹⁰² Kan. Stat. Ann. § 44-314.

¹⁰³ Kan. Stat. Ann. § 44-1203.

¹⁰⁴ *Id.*

¹⁰⁵ Kan. Stat. Ann. § 44-1204.

Kentucky

Payday Requirements	Employees must be paid on at least a semi-monthly basis and not more than 18 days after wages earned. ¹⁰⁶
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25. ¹⁰⁷
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.12 and the minimum cash wage is \$2.13. To qualify as a tipped employee in Kentucky, an employee must receive more than \$30 per month in tips. ¹⁰⁸
Premium Pay Requirements	Premium pay is required if an employee works over 40 hours per week, or on the seventh day if an employee works seven days in any one work week. Compensating time in lieu of overtime is allowed upon written request by an employee of any county, charter county, consolidated local government, or urban-county government, including an employee of a county-elected official. ¹⁰⁹ Premium pay is not required to be paid to employees of retail stores, hotels, motels, and restaurants with average annual sales of less than \$95,000 for the preceding five years. ¹¹⁰
Meal Period Requirements	Employers must offer a reasonable off-duty period for lunch, as close to the middle of the employee's scheduled shift as possible. An employee shall not be required to take a lunch period sooner than three hours or later than five hours from the commencement of his or her shift. The break is ordinarily a half-hour, but shorter periods are permitted under special conditions, between the third and fifth hour of work, which is not counted as time worked. Coffee breaks and snack time are not to be included in meal period. The meal period requirement does not negate collective bargaining agreement or mutual agreement between employer and employee. ¹¹¹
Paid Rest Period Requirements	There must be a paid ten-minute rest period for each four-hour work period. The rest period must be in addition to the regularly scheduled meal period. ¹¹²
Tip Pooling	No employer may suggest, collect, or disperse tips for tip pooling, nor may an employer require employees to participate in tip pools, wherein employees must remit any gratuity for distribution among all employees. However, employees may voluntarily enter into an agreement to pool tips among themselves. Employers may inform employees of the existence of the voluntary tip pool and the customary practices at the establishment. ¹¹³
Service Charges	Employers cannot take a tip credit for service charges. ¹¹⁴

¹⁰⁶ Ky. Rev. Stat. Ann. § 337.020.

¹⁰⁷ Ky. Rev. Stat. Ann. § 337.275.

¹⁰⁸ Ky. Rev. Stat. Ann. § 337.010.

¹⁰⁹ Ky. Rev. Stat. Ann. § 337.285.

¹¹⁰ 803 Ky. Admin. Regs. 1:075.

¹¹¹ Ky. Rev. Stat. Ann. § 337.355.

¹¹² Ky. Rev. Stat. Ann. § 337.365.

¹¹³ Ky. Rev. Stat. Ann. § 337.065.

¹¹⁴ 803 Ky. Admin. Regs. 1:080.

Louisiana

Payday Requirements	Employees must be paid on either a bi-weekly or semi-monthly basis. An employer that fails to designate paydays must pay employees on the first and sixteenth days of the month or as near as is practicable to those days. ¹¹⁵
Minimum Wage Requirements	No state provisions. Minimum wage is based on the Federal minimum wage rate for all employees covered under the FLSA.
Requirements for Tipped Employees	No state provisions.
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

¹¹⁵ La. Rev. Stat. Ann. § 23:633.

Maine

Payday Requirements	Employees must be paid on a semi-monthly basis. Payment is due at regular intervals not to exceed 16 days. ¹¹⁶
Minimum Wage Requirements	The basic minimum wage rate is \$7.50. The minimum wage is automatically replaced with the federal minimum wage rate if it is higher than the state minimum (with the exception that any such increase is limited to no more than \$1.00 per hour above the current legislated state rate). ¹¹⁷
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 50%. The minimum cash wage is \$3.75 To qualify as a tipped employee in Maine, an employee must receive more than \$30 per month in tips. ¹¹⁸
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹¹⁹
Meal Period Requirements	A half-hour after six consecutive hours is required, except in emergencies and except where nature of work allows employees frequent breaks during workday. ¹²⁰
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Service employees may volunteer to pool their tips with other service employees or to share their tips with employees who do not generally receive tips from customers. ¹²¹
Service Charges	Tips automatically included in a customer's bill or that are charged to a credit card must be given to the service employee. ¹²²

¹¹⁶ Me. Rev. Stat. Ann. tit. 26, § 621-A.

¹¹⁷ Me. Rev. Stat. Ann. tit. 26, § 664.

¹¹⁸ Me. Rev. Stat. Ann. tit. 26, §§ 663, 664.

¹¹⁹ Me. Rev. Stat. Ann. tit. 26, § 664.

¹²⁰ Me. Rev. Stat. Ann. tit. 26, § 601.

¹²¹ Me. Rev. Stat. Ann. tit. 26, § 664.

¹²² *Id.*

Maryland

Payday Requirements	Employers are required to pay employees at least once every two weeks or twice a month. ¹²³
Minimum Wage Requirements	Basic state minimum rate per hour is \$6.15, or the federal minimum rate, whichever is higher. ¹²⁴
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 50%. The minimum cash wage is \$3.63. To qualify as a tipped employee in Maryland, an employee must receive more than \$30 per month in tips. ¹²⁵
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹²⁶ Restaurants grossing less than \$500,000 that do not engage in interstate commerce are exempt. ¹²⁷
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. ¹²⁸
Service Charges	Compulsory charges are not considered tips. ¹²⁹

¹²³ Md. Code Ann., Lab. & Empl. § 3-502.

¹²⁴ Md. Code Ann., Lab. & Empl. § 3-413.

¹²⁵ Md. Code Ann., Lab. & Empl. § 3-419.

¹²⁶ Md. Code Ann., Lab. & Empl. §§ 3-420, 3-415.

¹²⁷ Md. Code Ann., Lab. & Empl. § 3-415 (b).

¹²⁸ Md. Code Ann., Lab. & Empl. § 3-419; 29 CFR 531.54.

¹²⁹ Md. Code Regs 09.12.41.19(D).

Massachusetts

Payday Requirements	Employees must be paid on either a weekly or bi-weekly basis, but not more than six days following the close of a pay period. ¹³⁰
Minimum Wage Requirements	Basic minimum rate per hour is \$8.00. The minimum wage rate automatically increases to 10 cents above the rate set in the Fair Labor Standards Act if the Federal minimum wage equals or becomes higher than the state minimum. ¹³¹
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.37. The minimum cash wage is \$2.63 per hour. To qualify as a tipped employee in Massachusetts, an employee must receive more than \$20 per month in tips. ¹³²
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹³³
Meal Period Requirements	A half-hour is required if the work period is for more than six hours. ¹³⁴
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pools for wait staff employees, service employees, or service bartenders which remit any portion thereof to any person who is not a wait staff employee, service employee, or service bartender are not permitted. An employer may administer a valid tip pool and may keep a record of the amounts received for bookkeeping or tax reporting purposes. ¹³⁵
Service Charges	Any service charge or tip remitted by a patron or person to an employer is to be paid to the wait staff employee, service employee, or service bartender by the end of the same business day, and in no case later than the time set forth by law for the timely payment of wages. An employer may impose a house or administrative fee in addition to or instead of a service charge or tip, provided the employer informs the patron that the fee does not represent a tip or service charge for wait staff employees, service employees, or service bartenders. ¹³⁶

¹³⁰ Mass. Gen. Laws ch. 149, § 148.

¹³¹ Mass. Gen. Laws ch. 151, § 1.

¹³² Mass. Gen. Laws ch. 151, § 7.

¹³³ Mass. Gen. Laws ch. 151, § 1A.

¹³⁴ Mass. Gen. Laws ch. 149, § 100.

¹³⁵ Mass. Gen. Laws ch. 149, § 152A.

¹³⁶ *Id.*

Michigan

Payday Requirements	Employees must be paid on either a weekly, bi-weekly, or monthly basis. Frequency of payday depends on the occupation. ¹³⁷
Minimum Wage Requirements	Basic minimum rate per hour is \$7.40. The state law excludes from coverage any employees that are subject to the Fair Labor Standards Act unless the state wage rate is higher than the federal rate. ¹³⁸
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$4.50, and the minimum cash wage is \$2.65. ¹³⁹
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹⁴⁰
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	The tip pool must be employee-initiated. State law requires that a signed consent agreement be kept on record from employees who receive tips directly from customers. ¹⁴¹
Service Charges	Employers cannot take a tip credit for service charges. ¹⁴²

¹³⁷ Mich. Stat. Ann. § 408.472.

¹³⁸ Mich. Stat. Ann. § 408.384.

¹³⁹ Mich. Stat. Ann. § 408.387a.

¹⁴⁰ Mich. Stat. Ann. § 408.384a.

¹⁴¹ Mich. Stat. Ann. § 408.387a.

¹⁴² *Id.*

Minnesota

Payday Requirements	Employees must be paid on at least a monthly basis. ¹⁴³
Minimum Wage Requirements	The basic state minimum rate per hour is \$6.15 for a large employer, which is any enterprise with annual receipts of \$625,000 or more. The state rate is \$5.25 for a small employer, which is any enterprise with annual receipts of less than \$625,000. ¹⁴⁴ Thus, federal minimum wage rates apply in both cases.
Requirements for Tipped Employees	State law does not permit a tip credit. An employer must pay each employee the set minimum wage in addition to tips received. ¹⁴⁵
Premium Pay Requirements	Premium pay is required if an employee works more than 48 hours in one week. ¹⁴⁶
Meal Period Requirements	There must be sufficient unpaid time for employees who work eight consecutive hours or more. Meal periods of less than 20 minutes and meal periods during which an employee is not entirely free from work responsibility may not be deducted from hours worked. ¹⁴⁷
Paid Rest Period Requirements	There must be paid adequate rest period within each four consecutive hours of work, to utilize nearest convenient restroom. Periods of less than 20 minutes may not be deducted from hours worked. ¹⁴⁸
Tip Pooling	Employers may not be involved in a tip pool. Employees can pool tips voluntarily among themselves. ¹⁴⁹
Service Charges	No state provisions.

¹⁴³ Minn. Stat. § 181.101.

¹⁴⁴ Minn. Stat. Ann. § 177.24.

¹⁴⁵ *Id.*

¹⁴⁶ Minn. Stat. Ann. § 177.25.

¹⁴⁷ Minn. Stat. Ann. § 177.254.

¹⁴⁸ Minn. Stat. Ann. § 177.253.

¹⁴⁹ Minn. Stat. Ann. § 177.24.

Mississippi

Payday Requirements	Employees must be paid on at least a bi-weekly or semi-monthly basis. (Payment is required once every two weeks or twice during each calendar month.) ¹⁵⁰
Minimum Wage Requirements	No state provisions. Minimum wage is based on the federal minimum wage rate for all employees covered under the FLSA.
Requirements for Tipped Employees	No state provisions.
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

¹⁵⁰ Miss. Code Ann. § 71-1-35.

Missouri

Payday Requirements	Employees must be paid on at least a semi-monthly basis, within 16 days of the close of the pay period. ¹⁵¹
Minimum Wage Requirements	The basic state minimum rate per hour is \$7.05 effective on January 1, 2009. If the federal minimum wage exceeds the state minimum, employers must pay the higher rate. The minimum wage is to be increased or decreased by a cost of living factor starting January 1, 2008, and every January 1 thereafter. In addition to the exemption for federally covered employment, the law exempts, among others, employees of a retail or service business with gross annual sales of less than \$500,000. ¹⁵²
Requirements for Tipped Employees	The maximum tip credit is \$3.62, and the minimum cash wage is \$3.63. If the amount of wages plus gratuities are less than the minimum wage, the employer must pay the difference. Special rules apply to tips given to gaming employees. ¹⁵³
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹⁵⁴
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

¹⁵¹ Mo. Rev. Stat. § 290.080.

¹⁵² Mo. Rev. Stat. § 290.502.

¹⁵³ Mo. Rev. Stat. § 290.512.

¹⁵⁴ Mo. Rev. Stat. § 290.505.

Montana

Payday Requirements	Wages must be paid within ten days after the wages are due and payable. ¹⁵⁵
Minimum Wage Requirements	The basic minimum rate per hour is \$6.90 or the federal minimum wage, whichever is higher. For businesses with gross annual sales of \$110,000 or less, the minimum rate is \$4.00 per hour. The minimum wage is subject to a cost of living adjustment done by September 30 of each year and effective on January 1 of the following year. ¹⁵⁶
Requirements for Tipped Employees	State law does not permit a tip credit. Employers must pay employees the set minimum wage in addition to tips received. ¹⁵⁷
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹⁵⁸
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

¹⁵⁵ Mont. Code Ann. § 39-3-204.

¹⁵⁶ Mont. Code Ann. § 39-3-409.

¹⁵⁷ Mont. Code Ann. § 39-3-402.

¹⁵⁸ Mont. Code Ann. § 39-3-405.

Nebraska

Payday Requirements	Payday designated by employer or agreed upon with employee. ¹⁵⁹
Minimum Wage Requirements	Basic minimum rate is \$7.25 per hour for employers with four or more employees. ¹⁶⁰
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.12 and the minimum cash wage is \$2.13, provided gratuities and wages exceed the minimum wage. ¹⁶¹
Premium Pay Requirements	No state provisions.
Meal Period Requirements	The requirement is one half-hour in each eight-hour shift. This is applicable to assembly plant, workshop, or mechanical establishments. This provision does not apply to employees covered by a valid collective bargaining agreement or other written employee-employer agreement. ¹⁶²
Paid Rest Period Requirements	No state provisions.
Tip Pooling	According to the Nebraska Department of Labor and the Nebraska Restaurant Association, Nebraska generally prohibits tip pooling by employees and employers cannot mandate tip pools.
Service Charges	According to the Nebraska Department of Labor, employers can take a tip credit for service charges as long as the employee is receiving all of the money.

¹⁵⁹ Neb. Rev. Stat. § 48-1230.

¹⁶⁰ Neb. Rev. Stat. § 48-1203.

¹⁶¹ *Id.*

¹⁶² Neb. Rev. Stat. § 48-212.

Nevada

Payday Requirements	Employees must be paid on either a semi-monthly or monthly basis. The monthly payday requirements are for executive, administrative, and professional personnel. ¹⁶³
Minimum Wage Requirements	The minimum wage rate for employers who offer qualifying health benefits to their employees is \$6.55, the federal minimum wage. Employers who do not provide qualifying health benefits to their employees must pay \$7.55. ¹⁶⁴ State minimum wage provisions may be waived only in a bona fide collective bargaining agreement, provided the waiver is set forth explicitly in the agreement in clear and unambiguous language. ¹⁶⁵
Requirements for Tipped Employees	State law does not permit a tip credit. Employers must pay employees minimum wage in full in addition to tips received. ¹⁶⁶ However, to the extent that a Nevada employer is subject to both the federal and the lower state rate, the employer must pay the higher federal minimum wage, then the employee is entitled to a tip credit on the difference between the higher federal rate and the lower state rate.
Premium Pay Requirements	Premium pay is required if an employee works more than eight hours in one day or more than 40 hours in one week. ¹⁶⁷
Meal Period Requirements	A half hour is required, if the work period is for eight continuous hours. This is applicable to employers of two or more employees. ¹⁶⁸ The Labor Commissioner may grant an exemption on employer evidence of business necessity.
Paid Rest Period Requirements	Paid ten-minute rest period for each four hours worked (or major fraction thereof) as practicable, in middle of each work period. This is not required for employees whose total daily work time is less than three and one-half hours. The Labor Commissioner may grant exemption on employer evidence of business necessity. ¹⁶⁹
Tip Pooling	"Nothing contained in this section shall be construed to prevent such employees from entering into an agreement to divide such tips or gratuities among themselves." ¹⁷⁰
Service Charges	No state provisions.

¹⁶³ Nev. Rev. Stat. § 608.060.

¹⁶⁴ Nev. Const. art. 15, § 16; Minimum Wage 2009 Annual Bulletin, April 1, 2009.

¹⁶⁵ Nev. Const. art. 15, § 16.

¹⁶⁶ *Id.*; Nev. Rev. Stat. § 608.160.

¹⁶⁷ Nev. Rev. Stat. § 608.018.

¹⁶⁸ Nev. Rev. Stat. § 608.019.

¹⁶⁹ *Id.*

¹⁷⁰ Nev. Const. art. 15, § 16; Nev. Rev. Stat. § 608.160.

New Hampshire

Payday Requirements	Employees must be paid on a weekly basis.
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25 or the federal minimum wage, whichever is greater. ¹⁷¹
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 55%, and the minimum cash wage is 45%. To qualify as a tipped employee in New Hampshire, an employee must receive more than \$30 per month in tips. ¹⁷²
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹⁷³
Meal Period Requirements	A half-hour is required after five consecutive hours, unless feasible for employee to eat while working and is permitted to do so by employer. This is applicable to any employer. ¹⁷⁴
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Employees must voluntarily agree to participate in a tip pool which is not required and not controlled in any manner by the employer. If the employee agrees to participate, the employer is not precluded from administering a valid tip pool in which participation is voluntary, not coerced, and the employer exercises no control over the manner in which tips are pooled other than for accounting and bookkeeping purposes. ¹⁷⁵
Service Charges	No state provisions.

¹⁷¹ N.H. Rev. Stat. Ann. § 279:21.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ N.H. Rev. Stat. Ann. § 275:30-a.

¹⁷⁵ N.H. Rev. Stat. Ann. § 279:26-b.

New Jersey

Payday Requirements	Employees must be paid on at least a semi-monthly basis. ¹⁷⁶
Minimum Wage Requirements	Basic minimum rate per hour is \$7.25. ¹⁷⁷
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.12 and the minimum cash wage is \$2.13. The maximum credit is the total amount allowed for tips, food, and lodging combined, not for tips alone as in other states. A higher tip credit may be taken in specific situations where the employer can prove to the satisfaction of the labor department that tips actually received exceed the credible amount. ¹⁷⁸
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹⁷⁹
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted, either voluntarily by employees or as a policy of management. ¹⁸⁰ However, tip pooling must be limited to employees who customarily and regularly receive tips such as waitresses, counterpersons, bus persons, and service bartenders. Tipped employees may not be required to share their tips with ineligible employees who do not customarily and regularly receive tips, such as janitors, dishwashers, chefs, and cooks. ¹⁸¹
Service Charges	No state provisions.

¹⁷⁶ N.J. Stat. Ann. § 34:11-4.2

¹⁷⁷ N.J. Stat. Ann. § 34:11-56a4.

¹⁷⁸ N.J. Stat. Ann. § 34:11-56a1; N.J. Admin. Code §§ 12:56-8.2, 12:56-8.4.

¹⁷⁹ N.J. Stat. Ann. § 34:11-56a4; N.J. Admin. Code §§ 12:56-6.1, 12:56-6.2,

12:56-6.4.

¹⁸⁰ N.J. Stat. Ann. § 34:11-56a1; N.J. Admin. Code §§ 12:56-8.2, 12:56-8.4.

¹⁸¹ *Id.*

New Mexico

Payday Requirements	Employees must be paid on either a semi-monthly or monthly basis. Monthly payday requirements are for executive, administrative, and professional personnel. ¹⁸²
Minimum Wage Requirements	The basic minimum rate is \$7.50. ¹⁸³
Requirements for Tipped Employees	State law permits a tip credit. For employees who customarily and regularly receive more than \$30.00 a month in tips, the maximum tip credit against minimum wage is \$5.37, and the minimum cash wage is \$2.13. ¹⁸⁴
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹⁸⁵
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. Tipped employees may not be required to share their tips with employees who have not customarily and regularly participated in tip pooling arrangements such as dishwashers, chefs, and janitors. ¹⁸⁶
Service Charges	No state provisions.

¹⁸² N.M. Stat. § 50-4-2.

¹⁸³ N.M. Stat. § 50-4-22.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

New York

Payday Requirements	Employees must be paid on either a weekly or semi-monthly basis. Weekly payday is for manual workers. Semi-monthly payday is used upon approval for manual workers and for clerical and other workers. ¹⁸⁷
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25. ¹⁸⁸
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$2.60 and the minimum cash wage is \$4.65. For employees averaging between \$1.60 and \$2.35 per hour in tips, the maximum tip credit is \$1.60, and the minimum cash wage is \$5.65. ¹⁸⁹ For employees averaging \$2.35 per hour or more in tips, the maximum tip credit is \$2.35, and minimum cash wage is \$4.90. ¹⁹⁰
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹⁹¹
Meal Period Requirements	Thirty-minute noontime period for employees who work shifts of more than six hours that extend over the noontime meal period. An additional twenty minutes between 5:00 PM and 7:00 PM for those employed on a shift starting before 11:00 AM and continuing after 7:00 PM. Forty-five minutes, midway in shift, for those employed more than a six-hour period starting between 1:00 PM and 6:00 AM. ¹⁹²
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling must be employee initiated. Employers cannot in any way manage, institute, or assist in tip pooling arrangements. Also, participation in a tip pool can not be a condition of employment. ¹⁹³
Service Charges	Employers cannot take a tip credit for mandatory service charges. ¹⁹⁴ <i>Note:</i> The New York State Department of Labor's Commissioner has convened a wage board to review the restaurant and hotel industries' wage orders. This will likely lead to additional changes and a combined restaurant and hotel industry wage order in the coming months. The above-referenced rates and allowances may be affected as well.

¹⁸⁷ N.Y. Lab. Law § 191.

¹⁸⁸ N.Y. Lab. Law § 652.

¹⁸⁹ *Id.*; N.Y. Comp. Codes R. & Regs. tit. 12, §§ 137-1.4, 137-1.5.

¹⁹⁰ Based on a November 5, 2009, order of Commissioner of Labor M. Patricia Smith, the tipped minimum wage for food-service workers will increase to \$4.75 per hour, effective January 1, 2010 (or the effective date

of the new regulations, if later), and to \$5.00 per hour effective January 1, 2011.

¹⁹¹ N.Y. Lab. Law § 160; N.Y. Comp. Codes R. & Regs. tit. 12, § 137-1.3.

¹⁹² N.Y. Lab. Law § 162.

¹⁹³ N.Y. Lab. Law § 196-d. The commissioner has indicated that employers will be permitted to require pooling effective with the new regulations.

¹⁹⁴ N.Y. Lab. Law § 196-d.

North Carolina

Payday Requirements	There are no specified requirements. Pay periods may be daily, weekly, bi-weekly, semi-monthly, or monthly. ¹⁹⁵
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25, the federal minimum wage rate. ¹⁹⁶
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.12, and the minimum cash wage is \$2.13. To qualify as a tipped employee in North Carolina, an employee must receive more than \$20 per month in tips. Taking a tip credit is not permitted unless the employer obtains from each employee, monthly or for each pay period, a signed certification of the amount of tips received. ¹⁹⁷
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ¹⁹⁸
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than 15 percent under a tip pooling arrangement. ¹⁹⁹
Service Charges	Employers cannot take a tip credit for service charges. ²⁰⁰

¹⁹⁵ N.C. Gen. Stat. § 95-25.6.

¹⁹⁶ N.C. Gen. Stat. § 95-25.3.

¹⁹⁷ *Id.*; 13 N.C. Admin. Code 12.0303.

¹⁹⁸ N.C. Gen. Stat. § 95-25.4.

¹⁹⁹ N.C. Gen. Stat. § 95-25.3; 13 N.C. Admin. Code 12.0303.

²⁰⁰ 13 N.C. Admin. Code 12.0303.

North Dakota

Payday Requirements	Employees must be paid on at least a monthly basis. ²⁰¹
Minimum Wage Requirements	The state minimum wage rate is \$7.25. ²⁰²
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 33%, and the minimum cash wage is \$4.86. To qualify as a tipped employee in North Dakota, an employee must earn more than \$30 per month in tips. ²⁰³
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ²⁰⁴
Meal Period Requirements	One half-hour is required, if desired, on each shift exceeding five hours. This is applicable when two or more employees are on duty. Employees who are completely relieved of their duties but required to remain on site do not have to be paid. ²⁰⁵
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted only among tipped employees. A vote of tipped employees to allow tip pooling must be taken, and 50 percent plus one of all tipped employees must approve it. The employer must maintain a written record of each vote on tip pooling, including names of employees voting and the vote totals. A vote on whether to pool tips is required if requested by 51 percent or more of the tipped employees. The tipped employees shall provide documentation verifying the request. ²⁰⁶
Service Charges	No state provisions.

²⁰¹ N.D. Cent. Code § 34-14-02.

²⁰² N.D. Cent. Code § 34-06-22.

²⁰³ N.D. Admin. Code § 46-02-07-03.

²⁰⁴ N.D. Admin. Code § 46-02-07-02.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

Ohio

Payday Requirements	Employees must be paid on at least a semi-monthly basis. ²⁰⁷
Minimum Wage Requirements	The basic minimum rate is \$7.30 per hour. Employers grossing \$267,000 or less may pay \$7.25 per hour. ²⁰⁸
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 50%, and the minimum cash wage is \$3.65. This applies to employers with gross annual sales in excess of \$255,000. For employers with gross annual sales of less than \$255,000, the minimum cash wage is \$2.93 per hour plus tips. To qualify as a tipped employee in Ohio, an employee must receive more than \$30 per month in tips. ²⁰⁹
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ²¹⁰
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted among employees who customarily and regularly receive tips. ²¹¹
Service Charges	No state provisions.

²⁰⁷ Ohio Rev. Code Ann. § 4113.15.

²¹⁰ Ohio Rev. Code Ann. § 4111.03.

²⁰⁸ Ohio Const. art. II, § 34a; Ohio Rev. Code Ann. § 4111.02.

²¹¹ Ohio Const. art. II, § 34a.

²⁰⁹ Ohio Const. art. II, § 34a.

Oklahoma

Payday Requirements	Employees must be paid on at least a semi-monthly basis. ²¹²
Minimum Wage Requirements	The basic minimum wage rate is \$7.25 per hour. ²¹³ Unless otherwise covered by federal wage and hour laws, employers with fewer than 10 full-time employees (or the equivalent) at any one location or that annually gross \$100,000 or less must pay employees age 18 years or older at least \$2.00 per hour. ²¹⁴
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is 50%, and the minimum cash wage is \$3.63. For those employers with fewer than 10 full-time employees at any one location and who have gross annual sales of \$100,000 or less, the minimum rate is \$2.00 per hour, and the maximum tip credit is 50%. The maximum tip credit is the total amount allowed for tips, food, and lodging combined, not for tips alone as in other states. ²¹⁵
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

²¹² Okla. Stat. tit. 40, § 165.2.

²¹⁴ Okla. Stat. tit. 40, § 197.5.

²¹³ Okla. Stat. tit. 40, § 197.2.

²¹⁵ Okla. Stat. tit. 40, § 197.16.

Oregon

Payday Requirements	Employers shall establish and maintain a regular payday. Paydays may not exceed 35 days from the date of the last regular payday. ²¹⁶
Minimum Wage Requirements	The basic minimum rate per hour is \$8.40 as of January 1, 2009. The rate is to be adjusted for inflation by a calculation using the U.S. city average consumer price index for all urban consumers for all items. The wage amount established will be rounded to the nearest five cents. ²¹⁷
Requirements for Tipped Employees	State law does not permit a tip credit. Employers must pay tipped employees minimum wage in full in addition to tips. ²¹⁸
Premium Pay Requirement	Premium pay is required for employees who work more than 40 hours per week. ²¹⁹
Meal Period Requirements	The requirement is one half-hour, with relief from all duty, for each work period of six to eight hours, between the second and fifth hour for work period of seven hours or less, and between third and sixth hour for work periods over seven hours. Alternatively, less than one half-hour, but not less than twenty minutes, with pay, with relief from all duty, where that employer can show that such a paid meal period is industry practice or custom; or, where an employer can show that nature of work prevents relief from all duty, an eating period with pay while on duty for each period of six to eight hours. In the absence of regularly scheduled meal periods, it is sufficient that an employer can show that the employee has, in fact, received the time specified (permitted only where employer can show that ordinary nature of the work prevents employer from establishing and maintaining a regularly scheduled meal period). ²²⁰
Paid Rest Period Requirements	The requirement is a paid ten-minute rest period for every four-hour segment (or major portion thereof) in one work period; as feasible, approximately in middle of each segment of work period. The rest period must be in addition to usual meal period and taken separately; not to be added to usual meal period or deducted from beginning or end of work period to reduce overall length of total work period. In absence of regularly scheduled rest periods, it is sufficient that an employer can show that the employee has, in fact, received the time specified (permitted only where employer can show that ordinary nature of the work prevents employer from establishing and maintaining a regularly scheduled rest period). Rest period is not required for employees aged 18 or older who work alone in a retail or service establishment serving the general public and who work less than five hours in a period of sixteen continuous hours. ²²¹
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

²¹⁶ Or. Rev. Stat. § 652.120.

²¹⁷ Or. Rev. Stat. § 653.025.

²¹⁸ Or. Rev. Stat. § 653.035.

²¹⁹ Or. Admin. R. 839-020-0030.

²²⁰ Or. Admin. R. 839-020-0050; Or. Rev. Stat. § 653.261.

²²¹ Or. Admin. R. 839-020-0050.

Pennsylvania

Payday Requirements	A regular payday shall be designated in advance by the employer. ²²²
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25. ²²³
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$4.42 and the minimum cash wage is \$2.83 for tipped employees making \$30.00 or more per month in tips. ²²⁴
Premium Pay Requirements	Premium pay is required for employees who work more than 40 hours in one week. ²²⁵
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	There are no state provisions. However, the Pennsylvania Code defines tips as being “voluntary contributions.” ²²⁶

²²² 43 Pa. Stat. Ann. § 260.3.

²²³ 43 Pa. Stat. Ann. § 333.104.

²²⁴ 43 Pa. Stat. Ann. § 333.103.

²²⁵ 43 Pa. Stat. Ann. § 333.104.

²²⁶ 43 Pa. Stat. Ann. § 333.103; 34 Pa. Code § 231.1.

Puerto Rico

Payday Requirements	Employers must pay their employees at intervals not exceeding 15 days in legal tender of the United States. ²²⁷
Minimum Wage Requirements	The federal minimum wage automatically applies to businesses and employees in Puerto Rico that are covered under the FLSA. The minimum wage of employees who are not covered under the FLSA is equal to 70 percent of the current minimum wage. The Secretary of Labor in Puerto Rico is authorized to reduce the percentage. ²²⁸
Requirements for Tipped Employees	No statutory provisions.
Premium Pay Requirements	Premium pay of double time is required for employees who work more than eight hours a day and for all statutory rest days. Employers must also pay double time for employees who work more than 40 hours in a work week. ²²⁹
Meal Period Requirements	At least one hour must be allowed for meals unless a shorter period is agreed on by the employee and employer and approved by the Department of Labor and Human Resources. The meal period must begin after the end of the third hour of work and before the sixth hour begins, so that employees are never required to work more than five consecutive hours without a meal break. The department may, however, authorize a period for meals between the second and third consecutive hours of work. A second meal period outside the regular workday may be waived if the employee has not worked more than two hours in excess of the regular workday. An employer that requires a nonexempt employee to work during the established meal period, or any part thereof, must pay the employee at twice the normal wage rate. ²³⁰
Paid Rest Period Requirements	No statutory provisions.
Tip Pooling	No statutory provisions.
Service Charges	No statutory provisions.

²²⁷ P.R. Laws Ann. tit. 29, § 173.

²²⁸ P.R. Laws Ann. tit. 29, §§ 250, 250a.

²²⁹ P.R. Laws Ann. tit. 29, §§ 271–274, and 298.

²³⁰ P.R. Laws Ann. tit. 29, § 283.

Rhode Island

Payday Requirements	Employees must be paid on a weekly basis. ²³¹
Minimum Wage Requirements	Basic minimum rate per hour is \$7.40. ²³²
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$4.51, and the minimum cash wage is \$2.89. ²³³
Premium Pay Requirements	Premium pay is required for employees who work more than 40 hours in one week. ²³⁴
Meal Period Requirements	Employees are entitled to a twenty-minute mealtime within a six-hour work shift, and a thirty-minute mealtime within an eight-hour work shift. ²³⁵
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted. The tip credit can only be taken by traditionally tipped employees; such as servers and bartenders, but not back-of-the-house employees. ²³⁶
Service Charges	No state provisions.

²³¹ R.I. Gen. Laws §§ 28-14-2, 28-14-2.2.

²³² R.I. Gen. Laws § 28-12-3.

²³³ R.I. Gen. Laws § 28-12-5.

²³⁴ R.I. Gen. Laws §§ 28-12-4.1, 28-12-4.2.

²³⁵ R.I. Gen. Laws § 28-3-14.

²³⁶ R.I. Gen. Laws § 28-12-5.

South Carolina

Payday Requirements	No state provisions.
Minimum Wage Requirements	No state provisions. Minimum wage is based on the Federal minimum wage rate for all employees covered under the FLSA.
Requirements for Tipped Employees	No state provisions.
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

South Dakota

Payday Requirements	Employees must be paid on at least a monthly basis. ²³⁷
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25. ²³⁸
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.12 and the minimum cash wage is \$2.13. To qualify as a tipped employee in South Dakota, an employee must receive more than \$35 per month in tips. The maximum tip credit is the total amount allowed for tips, food, and lodging combined, not for tips alone as in other states. ²³⁹
Premium Pay Requirements	A day's labor is not to exceed ten hours, unless an employer and employee expressly agree to the contrary. ²⁴⁰
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws. ²⁴¹
Service Charges	No state provisions.

²³⁷ S.D. Codified Laws § 60-11-9.

²³⁸ S.D. Codified Laws § 60-11-3.

²³⁹ S.D. Codified Laws § 60-11-3.1.

²⁴⁰ S.D. Codified Laws § 60-2-18.

²⁴¹ S.D. Codified Laws § 60-11-3.1; 29 C.F.R. § 531.54.

Tennessee

Payday Requirements	Employees must be paid on at least a semi-monthly basis. ²⁴²
Minimum Wage Requirements	No state provisions. Minimum wage is based on the Federal minimum wage rate for all employees covered under the FLSA.
Requirements for Tipped Employees	No state provisions.
Premium Pay Requirements	No state provisions.
Meal Period Requirements	One-half hour unpaid meal period or rest break for employees scheduled to work six consecutive hours or more. This is applicable to every employer. ²⁴³
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

²⁴² Tenn. Code Ann. § 50-2-103.

²⁴³ *Id.*

Texas

Payday Requirements	Employees must at least be paid on either a semi-monthly or monthly basis. A monthly payday is implemented for employees exempt from overtime provisions of the Fair Labor Standards Act. ²⁴⁴
Minimum Wage Requirements	The state minimum wage rate matches the federal minimum wage, \$7.25. ²⁴⁵
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.12, and the minimum cash wage is \$2.13. To qualify as a tipped employee in Texas, an employee must receive more than \$20 per month in tips. ²⁴⁶
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

²⁴⁴ Tex. Lab. Code Ann. §§ 61.011, 61.012.

²⁴⁶ Tex. Lab. Code Ann. § 62.052.

²⁴⁵ Tex. Lab. Code Ann. § 62.051.

Utah

Payday Requirements	Employees must be paid on at least a semi-monthly basis and not more than ten days following the close of the pay period. ²⁴⁷
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25. The State law excludes from coverage any employee that is subject to the Fair Labor Standards Act. ²⁴⁸
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$5.12 and The minimum cash wage is \$2.13. To qualify as a tipped employee in Utah, an employee must receive more than \$30 per month in tips. ²⁴⁹
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and may be mandated by the employer among employees who customarily and regularly receive tips. ²⁵⁰
Service Charges	Employers cannot take a tip credit where a compulsory service charge is imposed and the employee receives no tips. ²⁵¹

²⁴⁷ Utah Code Ann. § 34-28-3.

²⁵⁰ Utah Code Ann. § 34-40-104.

²⁴⁸ Utah Code Ann. § 34-40-103; Utah Admin. Code R. 610-1-3.

²⁵¹ *Id.*

²⁴⁹ Utah Code Ann. § 34-40-104; Utah Admin. Code R. 610-1-4.

Vermont

Payday Requirements	Employees must be paid weekly. However, employers may implement bi-weekly and semi-monthly paydays with written notice. ²⁵²
Minimum Wage Requirements	The basic minimum rate per hour is \$8.06 (unless the federal minimum wage rate is higher). On January 1 of each year, the minimum wage rate shall be increased by 5 percent or the percentage increase of the consumer price index, or city average, not seasonally adjusted. ²⁵³
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$4.15 and the minimum cash wage is \$3.91. To qualify as a tipped employee in Vermont, an employee must receive more than \$120 per month in tips. ²⁵⁴
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. The state overtime pay provision has limited application, because it exempts numerous types of establishments, such as retail and service, and hotels, motels, and restaurants, which the federal overtime provision does not cover. ²⁵⁵
Meal Period Requirements	Employers must provide employees with reasonable opportunities during work periods to eat and to use toilet facilities in order to protect the health and hygiene of the employees. ²⁵⁶
Paid Rest Period Requirements	See Meal Period Requirements above.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

²⁵² Vt. Stat. Ann. tit. 21, § 342.

²⁵³ Vt. Stat. Ann. tit. 21, § 384.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ Vt. Stat. Ann. tit. 21, § 304.

Virginia

Payday Requirements	Salaried employees must be paid at least once per month. Hourly employees must be paid on either a bi-weekly or semi-monthly basis. Employees whose weekly wages total more than 150 percent of the average weekly wage of the commonwealth may be paid monthly, upon agreement of each affected employee. ²⁵⁷
Minimum Wage Requirements	The state minimum wage rate per hour is \$7.25, the federal minimum rate. ²⁵⁸
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is the actual amount received, as there is no minimum cash wage. ²⁵⁹ However, it is important to note that federal law—which would cover most of these employees—requires a minimum cash wage for tipped employees of \$2.13 per hour.
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

²⁵⁷ Va. Code Ann. § 40.1-29.

²⁵⁸ Va. Code Ann. § 40.1-28.10.

²⁵⁹ Va. Code Ann. § 40.1-28.9.

Washington

Payday Requirements	Employees must be paid on a regular, established payday at least once a month. ²⁶⁰
Minimum Wage Requirements	The basic minimum rate per hour is \$8.55 per hour. The rate is adjusted for inflation by a calculation using the consumer price index for the prior year. ²⁶¹
Requirements for Tipped Employees	State law does not permit a tip credit. Employers must pay tipped employees minimum wage in full in addition to tips. ²⁶²
Premium Pay Requirements	Premium pay is required for employees working more than 40 hours in one week. Premium pay is not applicable to employees who request compensating time off in lieu of premium pay. ²⁶³
Meal Period Requirements	State law requires one half-hour, if the work period is more than five consecutive hours, to be given not less than two hours nor more than five hours from beginning of shift. This is counted as work time if employee is required to remain on duty on premises or at a prescribed worksite. An additional one half-hour is required, before or during overtime, for employees working three or more hours beyond regular workday. The Director of Labor and Industries may grant variance for good cause, upon employer application. ²⁶⁴
Paid Rest Period Requirements	State law requires a paid ten-minute rest period for each four-hour work period, scheduled as near as possible to midpoint of each work period. Employees may not be required to work more than three hours without a rest period. Additionally, scheduled rest periods are not required where nature of work allows employee to take intermittent rest periods equivalent to required standard. The Director of Labor and Industries may grant a variance from the basic standard for good cause, upon employer application. ²⁶⁵
Tip Pooling	Tip pooling is permitted and follows federal laws. The Washington Restaurant Association recommends not making the tip pool mandatory and letting it be strictly employee initiated.
Service Charges	No state provisions.

²⁶⁰ Wash. Rev. Code § 49.46.010.

²⁶¹ Wash. Rev. Code § 49.46.020.

²⁶² Wash. Admin. Code 296-126-022.

²⁶³ Wash. Rev. Code § 49.46.130.

²⁶⁴ Wash. Admin. Code 296-126-092.

²⁶⁵ *Id.*

West Virginia

Payday Requirements	Employees must be paid at least once every two weeks. ²⁶⁶
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25. This rate is applicable to employers of six or more employees at one location. ²⁶⁷
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$1.45 (or 20% of the hourly rate), and the minimum cash wage is \$5.80. ²⁶⁸
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours per week. ²⁶⁹
Meal Period Requirements	State law requires twenty minutes for employees who work six consecutive hours or more. A meal period is required where employees are not afforded necessary breaks or permitted to eat lunch while working. ²⁷⁰
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Tip pooling is permitted and follows federal laws.
Service Charges	No state provisions.

²⁶⁶ W. Va. Code §§ 21-5-1, 21-5-3.

²⁶⁷ W. Va. Code § 21-5C-2.

²⁶⁸ W. Va. Code § 21-5C-4.

²⁶⁹ W. Va. Code § 21-5C-3.

²⁷⁰ W. Va. Code § 21-3-10a.

Wisconsin

Payday Requirements	Employees must be paid on at least a monthly basis. ²⁷¹
Minimum Wage Requirements	The basic minimum rate per hour is \$7.25. ²⁷²
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$4.92 and the minimum cash wage is \$2.33. ²⁷³
Premium Pay Requirements	Premium pay is required if an employee works more than 40 hours in one week. ²⁷⁴
Meal Period Requirements	There are no state provisions. By regulation, the recommended standard is a one half-hour after six consecutive hours' work in factories, mechanical, and mercantile establishments and certain service industries, to be given reasonably close to usual meal time or near middle of shift. ²⁷⁵
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Employers can be involved in tip pooling arrangements. There must be mutual agreement between the employer and employees regarding the establishment of a tip pool. ²⁷⁶
Service Charges	Service charges are not considered a tip unless distributed by the employer to their employees. ²⁷⁷

²⁷¹ Wis. Stat. § 109.03.

²⁷² Wis. Stat. § 104.04; Wis. Admin. Code DWD § 272.03.

²⁷³ Wis. Admin. Code DWD § 272.03.

²⁷⁴ Wis. Admin. Code DWD §§ 274.01, 274.03.

²⁷⁵ Wis. Admin. Code DWD §§ 274.02, 272.04.

²⁷⁶ Wis. Admin. Code DWD § 272.03.

²⁷⁷ *Id.*

Wyoming

Payday Requirements	Employees must be paid on at least a semi-monthly basis. ²⁷⁸
Minimum Wage Requirements	Basic state minimum rate per hour is \$5.15. ²⁷⁹
Requirements for Tipped Employees	The maximum tip credit against the minimum wage is \$3.02, and the minimum cash wage is \$2.13. To qualify as a tipped employee in Wyoming, an employee must earn more than \$30 per month in tips. ²⁸⁰
Premium Pay Requirements	No state provisions.
Meal Period Requirements	No state provisions.
Paid Rest Period Requirements	No state provisions.
Tip Pooling	Employees can establish a voluntary tip-sharing arrangement, where tips are shared with certain other support staff such as bussers and bartenders. The employer, however, cannot mandate such an arrangement. The Wyoming Lodging & Restaurant Association recommends having employees sign a form agreeing to participate if they want to offer voluntary tip pooling. ²⁸¹
Service Charges	No state provisions.

²⁷⁸ Wyo. Stat. Ann. § 27-4-101.

²⁷⁹ Wyo. Stat. Ann. § 27-4-202.

²⁸⁰ *Id.*

²⁸¹ Wyo. Stat. Ann. § 27-4-507; Atty. Gen. Opinion No. 97-003 (30 WYGR 1).

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