

Legal Minute

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WHAT YOU NEED TO KNOW ABOUT “TIP CREDIT”

The minimum wage under both the Fair Labor Standards Act (FLSA) and Wisconsin law is \$7.25 per hour. Both federal and Wisconsin law allows the employer to, under some circumstances, count some of the tips received by the employee against the minimum wage owed to the employee. The tips counted against the minimum wage is called a “tip credit”. An employer is allowed to claim a tip credit as high as \$4.92 per hour under Wisconsin law, so that the tipped minimum wage is \$2.33 under Wisconsin law.

To claim a tip credit, the employer must notify the employee: (1) the amount of the cash wage the employer is paying the employee; (2) the additional amount that the employer is claiming as a tip credit, which can’t be more than \$4.92 in Wisconsin; (3) the tip credit claimed by the employer can’t be more than the tips actually received by the employee; (4) all tips received by a tipped employee belong to that employee, who is entitled to keep them (except in a bona fide tip pooling scenario); and (5) the employer cannot apply a tip credit to an employee’s wages unless the employee has been informed in advance of this tip credit rules.

Additionally, when the employer elects to take a tip credit, the employer must have a tip declaration signed by the tipped employee each pay period and show on the payroll records that any required social security or taxes have been withheld each pay period to show that when adding the tips received to the wages paid by the employer, no less than the minimum rate was received by the employee. When the employer’s time and payroll records do not contain these requirements, no tip credit shall be allowed. DWD 272.03(2)(b).

While many Wisconsin employers require their tipped employees to regularly report the amount of tips they receive, very few, if any, tipped employees are either signing (or electronically signing) the daily tip reports; or signing any other document each pay period that details the amount of tips they received during each pay period.

Be sure to contact your labor and employment law attorney for more information for the rules and regulations on tip credit and tipped employees.

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