Increase of Minimum Wage and Impact on Small Business

Illinois Valley Chamber of Commerce

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Jeffrey A. Risch
Labor & Employment Group Chair
SmithAmundsen LLC
www.salawus.com
www.laborandemploymentlawupdate.com
jrisch@salawus.com
(630) 569-0079
Amendments to the Illinois
Minimum Wage & Overtime Laws

EFFECTIVE 2/19/19

Increase in minimum wage and
substantial increase in employer
penalties available to the
employee!!!
Illinois Minimum Wage Ordinance Amendment (Eff. 2/19/19)

- $8.25 – Current – December 31, 2019
- $10.00 – July 1, 2020 – December 31, 2020
- $11.00 – January 1, 2021 – December 31, 2021
- $12.00 – January 1, 2022 – December 31, 2022
- $13.00 – January 1, 2023 – December 31, 2023
- $14.00 – January 1, 2024 – December 31, 2024
- $15.00 – January 1, 2025 – December 31, 2025
<table>
<thead>
<tr>
<th>Date</th>
<th>Min Wage</th>
<th>IL (Tip Wage/hr)</th>
<th>IL (Req. Tip/hr)</th>
<th>Tips Needed for 40 hr week</th>
<th>Chicago</th>
<th>Cook</th>
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<tbody>
<tr>
<td></td>
<td>Current</td>
<td>$8.25</td>
<td>$4.95</td>
<td>$3.30</td>
<td>$132.00</td>
<td>$6.25 ($5.75 tips/hr)</td>
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<td>$9.25</td>
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<td>$3.70</td>
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Tipped Employees – Wage Notice

Notice:
- If you are taking the tip credit, you need to have a notice (can be oral, but suggest in writing) to the employee that should be updated any time the minimum wage goes up.

- Based on the FLSA requirements – the 2018 notice should include the following:
  1) The amount of cash wage the employer is paying a tipped employee, which must be at least $4.95 per hour;
  2) The additional amount claimed by the employer as a tip credit, which cannot exceed $3.30 (the difference between the tipped minimum wage required cash wage of $4.95 and the current minimum wage of $8.25);
  3) That the tip credit claimed by the employer cannot exceed the amount of tips actually received by the tipped employee;
  4) That all tips received by the tipped employee are to be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and
  5) That the tip credit will not apply to any tipped employee unless the employee has been informed of these tip credit provisions.
Illinois Minimum Wage Law – Penalties

- **Illinois Department of Labor (IDOL) – 3 Year Statute of Limitations**
  - Treble the amount of the underpayment
  - 5% interest per month for the amount of underpayment that month
  - 20% of the total employer’s underpayment due to the IDOL where the employer’s conduct is proven by a preponderance of the evidence to be willful, repeated, or with reckless disregard
  - Penalty of $1,500, payable to the Department’s Wage Theft Enforcement Fund
  - IDOL or employee may request assignment of the wage claim to the IDOL and employer will owe the IDOL’s costs of collecting the claim
  - If employer doesn’t pay, IDOL has 5 years to file a collection action against the employer

- **Private Cause of Action in Court – 3 Year Statute of Limitations**
  - Treble the amount of the underpayment
  - Costs
  - Attorneys’ fees
  - 5% interest per month for the amount of underpayment that month
Individual Liability

- Illinois – Definition of “employer” includes “any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.”

- Fair Labor Standards Act (“FLSA”) - Definition of “employer” includes “any person acting directly or indirectly in the interest of an employer in relation to an employee.” That can include corporate officers and other management employees if they have significant ownership interests, exercise day-to-day control of operations, and are involved in the supervision and payment of employees, according to a ruling by a federal district court. (Foday v. Air Check, Inc., No. 15-CV-10205, 2018 WL 3970142 (N.D. Ill. Aug. 20, 2018)).
Policies are only as good as the supervisors who are enforcing and implementing them.

Train managers on the following:
- What is work time?
- Off-the-Clock work.
- Required Meals and Break Periods.
- Company policies regarding work, breaks, meals, and complaints.
What You Must Do…

- Showing good faith efforts to curb and correct unlawful pay practices can be done through conducting routine audits. In addition, it is imperative to have a written policy and complaint mechanism through which employees can bring issues related to meals and breaks.

- Good policies should address a policy for investigating complaints, policies on overtime work, meals and rest breaks, travel time and payroll integrity policies for actions such as falsifying time records and working off the clock.
Check Your House!!

- Employers should review timekeeping systems to ensure that non-exempt employees are being paid for all work performed, including work pre- or post-shift and during meal breaks.
  - Suggest employers not automatically deduct time for employee meals or breaks without verifying whether they were taken.

- Rounding issues – Employers may round up or down small fractions of hours up to 15 minutes, but should not be rounding down in all cases. If using rounding, must audit to ensure that overall the rounding scheme is to the benefit of the employee.

- Notification of tip credit and proper tip records.

- Ensure that required payroll records and policies are current and compliant.
Complaint Mechanism

- Establish a wage and hour complaint mechanism so employees can complain if they have been required to work off the clock, if their pay has been reduced, if they have not been paid for travel time, if their pay is incorrect, etc.
- Train managers to address complaints and report to HR.
- Investigate and remedy if an error is present.
Wage/Hour Waivers???

- NOT ENFORCEABLE IN MOST JURISDICTIONS, UNLESS APPROVED BY THE COURT OR DOL!!!

- However, ACKNOWLEDGEMENTS as to payment in full or receipt of certain monies may go a long way in preventing future/further controversies.
Record Keeping for EXEMPT Workers???

- **820 ILCS 105/8**
  - Every employer subject to any provision of this Act or of any order issued under this Act shall make and keep for a period of not less than 3 years, true and accurate records of the name, address and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each employee, the hours worked each day in each work week by each employee…

- **820 ILCS 105/11** was amended to say:
  - Any employer or his agent, or the officer or agent of any private employer who fails to keep the records required under this Act shall be guilty of a Class B misdemeanor; and each day of such failure to keep the records required under this Act or Any such employer who fails to keep payroll records as required by this Act shall be liable to the Department for a penalty of $100 per impacted employee, payable to the Department's Wage Theft Enforcement Fund…
Thank You!!

Jeffrey A. Risch
Partner - LABOR & EMPLOYMENT CHAIR
(630) 569-0079 – Direct 24/7
jrisch@salawus.com

FRONTLINE MANAGEMENT SIDE LABOR & EMPLOYMENT COUNSEL
www.laborandemploymentlawupdate.com

Chicago, St. Charles, Rockford, Woodstock, Milwaukee, St. Louis, Indianapolis.
USLaw Network Member.