

INFLATION PUSHES OREGON MINIMUM WAGE UP ANOTHER NOTCH

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Effective January 1, 2012, the minimum wage in Oregon will be going up to \$8.80 per hour.

As one of 10 states that has tied its minimum wage in some way to inflation, Oregon now calculates an adjustment to the minimum wage each year. The 30-cent increase reflects a 3.77% increase in the Consumer Price Index for the period from August 2010 through August 2011.

Of the annual adjustment, BOLI Commissioner Brad Avakian said, "By helping workers and their families preserve their purchasing power in difficult times, our strong minimum wage law also benefits our local economies, where workers spend most of their paychecks."

The passage of Ballot Measure 25 by Oregon voters in 2002 amended the state's minimum wage law to require the Commissioner to compute an adjustment to the minimum wage each year, no later than September 30. The adjustment reflects any increase to the US City Average Consumer Price Index for All Urban Consumers for All Items from August of the preceding year to August of the current year, rounded to nearest nickel.

Here are a few of the frequently asked questions fielded by BOLI's Technical Assistance for Employers program on the minimum wage:

Q. I know the federal minimum wage is lower-how does that relate to the Oregon minimum wage?

A. The current federal minimum wage remains \$7.25 per hour. However, when federal and state employment laws conflict, employers must apply whichever standard is most beneficial to the employee. In this case, Oregon employers must pay Oregon minimum wage because it is the more beneficial of the two for the employee.

Q. May I pay my new employees a training wage that is less than minimum wage?

A. No. Unlike federal law, Oregon law requires that employees receive at least minimum wage during all stages of employment. This includes any period of on-the-job training.

Q. May I count an employees tips against the minimum wage?

A. No. Oregon law does not allow for tip credits. ORS 653.035(3).

Q. If I hire minors, do I need to pay them minimum wage?

A. Yes. The minimum wage laws apply to minors.

Q. I provide meals and lodging for my employee. May I count the fair market value of the meals and lodging toward my minimum wage obligation?

A. Yes. Employers may make an authorized deduction for meals and lodging so long as they are provided for the "private benefit" of the employee. However, if you require your employee to live on-site, for example, or if you derive a mutual benefit from the employee living on the premises, you must pay minimum wage in addition to the value of any meals and lodging. OAR 839-020-0025.

Q. I paid my employee \$9.00 per hour in 2011 (50 cents above the minimum wage). He claims that now I'm legally obligated to pay him at least \$9.30 per hour (50 cents above the new minimum wage) as of January 1, 2012. Is that right?

A. No. The law only requires that you pay the minimum wage of \$8.80 per hour as of January 1, 2012, unless you have a contract or policy providing otherwise.

Q. Our last pay period of 2011 extends several days into 2012. Are we required to pay the new minimum wage (\$8.80 per hour) for hours worked in December 2011?

A. No. You need only pay the 2012 minimum wage for hours worked beginning January 1, 2012. Although the January paycheck will cover hours which will be worked in December, the hours from 2011 may still be paid at the 2011 minimum wage.

Q. I hired my newest employee in August-before the new rate went into effect-will I be able to continue paying him at \$8.50 in 2012?

A. No. Employers cannot "grandfather" an employee's previous minimum wage; all non-exempt employees will need to receive at least \$8.80 for all hours worked starting in 2012.

Q. If I pay my employee on a commission, do the minimum wage laws still apply?

A. Yes. Unless your employee falls plainly and unmistakably into an exemption, you'll need to pay at least minimum wage for all hours actually worked. This means that even with the commission employee, you must track all daily and weekly hours worked to determine whether the average hourly rate meets the minimum wage. If the average hourly rate is less than the minimum wage in any pay period, you'll need to boost the employee's wages up to the minimum wage.

For a detailed look at the criteria that separate exempt workers from all other employees, check out TA's newest handbook *Employee Classification & Wage and Hour Exemptions*. You'll find additional information on this and other topics of interest to Oregon employers online at www.Oregon.gov/boli/ta. TA is also available by phone at 971-673-0824.