

OUR INSIGHTS

Florida's Minimum Wage to Increase on January 1, 2017

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In 2004, Florida voters approved a constitutional amendment that established a statewide minimum wage. Florida minimum wage applies to all employees in the state who are covered by the federal minimum wage law. Florida minimum wage law requires a new minimum wage calculation each year on September 30. The calculations are based on the percentage increase in the federal Consumer Price Index for Urban Workers and Clerical Workers in the South Region for the 12-month period prior to September 1. If that calculation is higher than the federal rate, Florida's minimum wage rate takes effect the following January.

Florida's current minimum wage is \$8.05 per hour, [effective January 1, 2015](#). The minimum wage [did increase in 2016](#), but will increase in 2017. **Beginning January 1, 2017, Florida's minimum wage will be \$8.10 per hour**, which is a 0.6 percent (or \$0.05) increase from the previous year and is based on the the Consumer Price Index (CPI).

Employers of tipped employees who meet eligibility requirements for the [tip credit under the Fair Labor Standards Act \(FLSA\)](#) may count tips actually received as wages under the FLSA, but employers must pay these tipped employees a direct wage. Effective January 1, 2017, the new minimum wage for tipped employees will become \$5.08 per hour plus tips.

In determining whether the federal or state minimum wage applies, federal law requires that businesses pay the higher of the two. The Florida minimum wage will prevail over the federal rate until (and unless) the fe

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minimum wage increases. When inflation is positive (i.e., the price of consumer goods and services increases) the CPI increases and Florida's minimum wage increases with it. However, if the CPI is negative—which is what occurs in times of deflation—the minimum wage does not decrease. That is what happened in 2016.

Employers must pay their employees the Florida minimum wage for all hours worked in the state. The definitions of “employer,” “employee,” and “wage” for the Florida state minimum wage are the same as those established under the FLSA.

An employee who has not received the lawful minimum wage may bring a civil action in a court of law against an employer to recover back wages plus damages and attorneys' fees. But first, the employee must give the employer 15 days to resolve any claims for unpaid wages. The state attorney general also may sue to enforce the minimum wage. An employer found liable for intentionally violating minimum wage requirements may be subject to a fine of \$1,000 per violation, payable to the state.

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Ed McKenna's practice primarily involves litigation, including Federal Rule 23 class actions, and advising employers how to avoid litigation. He has represented private/public employers in a variety of employment lawsuits -- including Title VII, ADEA, ADA, FMLA, FLSA, wrongful discharge, whistle blowing, and defamation -- before agencies and in state and federal courts. He has been involved in numerous employment class and collective action cases, including significant decisions involving...
