

HOUSE BILL No. 1394

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-2-2.

Synopsis: Minimum wage. Increases, for any work week beginning on or after July 1, 2023, the minimum wage paid to certain employees from \$7.25 per hour to \$15 per hour. Makes conforming amendments and a technical correction.

Effective: July 1, 2023.

Andrade, Pfaff

January 17, 2023, read first time and referred to Committee on Employment, Labor and Pensions.



First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1394

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-2-2-3, AS AMENDED BY THE TECHNICAL
2 CORRECTIONS BILL OF THE 2023 GENERAL ASSEMBLY, IS
3 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:
4 Sec. 3. As used in this chapter:
5 "Commissioner" means the commissioner of labor or the
6 commissioner's authorized representative.
7 "Department" means the department of labor.
8 "Occupation" means an industry, trade, business, or class of work
9 in which employees are gainfully employed.
10 "Employer" means any individual, partnership, association, limited
11 liability company, corporation, business trust, the state, or other
12 governmental agency or political subdivision during any work week in
13 which they have two (2) or more employees. However, **except as**
14 **provided in section 14 of this chapter**, it shall not include any
15 employer who is subject to the minimum wage provisions of the federal
16 Fair Labor Standards Act of 1938, as amended (29 U.S.C. ~~201-209~~).
17 **201-219**).



1 "Employee" means any person employed or permitted to work or
2 perform any service for remuneration or under any contract of hire,
3 written or oral, express or implied by an employer in any occupation,
4 but shall not include any of the following:

5 (a) Persons less than sixteen (16) years of age.

6 (b) Persons engaged in an independently established trade,
7 occupation, profession, or business who, in performing the
8 services in question, are free from control or direction both under
9 a contract of service and in fact.

10 (c) Persons performing services not in the course of the
11 employing unit's trade or business.

12 (d) Persons employed on a commission basis.

13 (e) Persons employed by their own parent, spouse, or child.

14 (f) Members of any religious order performing any service for that
15 order, any ordained, commissioned, or licensed minister, priest,
16 rabbi, sexton, or Christian Science reader, and volunteers
17 performing services for any religious or charitable organization.

18 (g) Persons performing services as student nurses in the employ
19 of a hospital or nurses training school while enrolled and
20 regularly attending classes in a nurses training school chartered
21 or approved under law, or students performing services in the
22 employ of persons licensed as both funeral directors and
23 embalmers as a part of their requirements for apprenticeship to
24 secure an embalmer's license or a funeral director's license from
25 the state, or during their attendance at any schools required by law
26 for securing an embalmer's or funeral director's license.

27 (h) Persons who have completed a four (4) year course in a
28 medical school approved by law when employed as interns or
29 resident physicians by any accredited hospital.

30 (i) Students performing services for any school, college, or
31 university in which they are enrolled and are regularly attending
32 classes.

33 (j) Persons with physical or mental disabilities performing
34 services for nonprofit organizations organized primarily for the
35 purpose of providing employment for persons with disabilities or
36 for assisting in their therapy and rehabilitation.

37 (k) Persons employed as insurance producers, insurance
38 solicitors, and outside salesmen, if all their services are performed
39 for remuneration solely by commission.

40 (l) Persons performing services for any camping, recreational, or
41 guidance facilities operated by a charitable, religious, or
42 educational nonprofit organization.



1 (m) Persons engaged in agricultural labor. The term shall include
2 only services performed:

3 (1) on a farm, in connection with cultivating the soil, or in
4 connection with raising or harvesting any agricultural or
5 horticultural commodity, including the raising, shearing,
6 feeding, caring for, training, and management of livestock,
7 bees, poultry, and furbearing animals and wildlife;

8 (2) in the employ of the owner or tenant or other operator of a
9 farm, in connection with the operation, management,
10 conservation, improvement, or maintenance of the farm and its
11 tools and equipment if the major part of the service is
12 performed on a farm;

13 (3) in connection with:

14 (A) the production or harvesting of maple sugar or maple
15 syrup or any commodity defined as an agricultural
16 commodity in the Agricultural Marketing Act, as amended
17 (12 U.S.C. 1141j);

18 (B) the raising or harvesting of mushrooms;

19 (C) the hatching of poultry; or

20 (D) the operation or maintenance of ditches, canals,
21 reservoirs, or waterways used exclusively for supplying and
22 storing water for farming purposes; and

23 (4) in handling, planting, drying, packing, packaging,
24 processing, freezing, grading, storing, or delivering to storage,
25 to market, or to a carrier for transportation to market, any
26 agricultural or horticultural commodity, but only if service is
27 performed as an incident to ordinary farming operation or, in
28 the case of fruits and vegetables, as an incident to the
29 preparation of fruits and vegetables for market. However, this
30 exception shall not apply to services performed in connection
31 with any agricultural or horticultural commodity after its
32 delivery to a terminal market or processor for preparation or
33 distribution for consumption.

34 As used in this subdivision, "farm" includes stock, dairy, poultry,
35 fruit, furbearing animals, and truck farms, nurseries, orchards, or
36 greenhouses or other similar structures used primarily for the
37 raising of agricultural or horticultural commodities.

38 (n) Those persons employed in executive, administrative, or
39 professional occupations who have the authority to employ or
40 discharge and who earn one hundred fifty dollars (\$150) or more
41 a week, and outside salesmen.

42 (o) Any person not employed for more than four (4) weeks in any



1 four (4) consecutive three (3) month periods.

2 (p) Any employee with respect to whom the Interstate Commerce
3 Commission has power to establish qualifications and maximum
4 hours of service under the federal Motor Carrier Act of 1935 (49
5 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.

6 (q) A person engaged in services as a direct seller. The term shall
7 include only services performed:

8 (1) by a person that is in the trade or business of:

9 (A) selling, or soliciting the sale of, consumer products or
10 services to any buyer on a buy-sell basis,
11 deposit-commission basis, or similar basis, in any place
12 other than in a permanent retail establishment; or

13 (B) selling, or soliciting the sale of, consumer products or
14 services in any place other than in a permanent retail
15 establishment;

16 (2) when substantially all the remuneration, whether or not
17 paid in cash, for the performance of the services is directly
18 related to sales or other output, including the performance of
19 services, rather than the number of hours worked; and

20 (3) when the services performed by the person are performed
21 pursuant to a written contract and the contract provides that
22 the person who performs the services will not be treated as an
23 employee for tax purposes under the contract.

24 SECTION 2. IC 22-2-2-4, AS AMENDED BY P.L.147-2020,
25 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2023]: Sec. 4. (a) No employer having employees subject to
27 any provisions of this section shall discriminate, within any
28 establishment in which employees are employed, between employees
29 on the basis of sex by paying to employees in such establishment a rate
30 less than the rate at which the employer pays wages to employees of the
31 opposite sex in such establishment for equal work on jobs the
32 performance of which requires equal skill, effort, and responsibility,
33 and which are performed under similar working conditions, except
34 where such payment is made pursuant to:

35 (1) a seniority system;

36 (2) a merit system;

37 (3) a system which measures earnings by quantity or quality of
38 production; or

39 (4) a differential based on any other factor other than sex.

40 (b) An employer who is paying a wage rate differential in violation
41 of subsection (a) shall not, in order to comply with subsection (a),
42 reduce the wage rate of any employee, and no labor organization, or its



1 agents, representing employees of an employer having employees
 2 subject to subsection (a) shall cause or attempt to cause such an
 3 employer to discriminate against an employee in violation of
 4 subsection (a).

5 (c) Except as provided in subsection ~~(d)~~; **(e)**, every employer
 6 employing at least two (2) employees during a work week shall, in any
 7 work week in which the employer is subject to this chapter, pay each
 8 of the employees in any work week beginning on or after June 30,
 9 2007, **and before July 1, 2023**, wages of not less than the minimum
 10 wage payable under the federal Fair Labor Standards Act of 1938, as
 11 amended (29 U.S.C. 201 et seq.).

12 **(d) Except as provided in subsection (e), every employer**
 13 **employing at least two (2) employees during a work week shall, in**
 14 **any work week in which the employer is subject to this chapter,**
 15 **pay each of the employees in any work week beginning on or after**
 16 **July 1, 2023, wages of not less than fifteen dollars (\$15) per hour.**

17 ~~(d)~~ **(e)** An employer subject to ~~subsection (e)~~ **subsections (c) and**
 18 **(d) (whichever is applicable)** is permitted to apply a tip credit in
 19 determining the amount of cash wage paid to tipped employees. In
 20 determining the wage an employer is required to pay a tipped
 21 employee, the amount paid the employee by the employee's employer
 22 must be an amount equal to:

23 (1) the cash wage paid the employee, which for purposes of the
 24 determination may be not less than the cash wage required to be
 25 paid to employees covered under the federal Fair Labor Standards
 26 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
 27 1996, which amount is two dollars and thirteen cents (\$2.13) an
 28 hour; and

29 (2) an additional amount on account of the tips received by the
 30 employee, which amount is equal to the difference between the
 31 wage specified in subdivision (1) and the wage in effect under
 32 ~~subsection (e)~~; **subsections (c) and (d) (whichever is**
 33 **applicable).**

34 An employer is responsible for supporting the amount of tip credit
 35 taken through reported tips by the employees.

36 ~~(e)~~ **(f)** This section does not apply if an employee:

37 (1) provides companionship services to the aged and infirm (as
 38 defined in 29 CFR 552.6); and

39 (2) is employed by an employer or agency other than the family
 40 or household using the companionship services, as provided in 29
 41 CFR 552.109 (a).

42 ~~(f)~~ **(g)** Except as otherwise provided in this section, no employer



1 shall employ any employee for a work week longer than forty (40)
 2 hours unless the employee receives compensation for employment in
 3 excess of forty (40) hours at a rate not less than one and one-half (1.5)
 4 times the regular rate at which the employee is employed.

5 ~~(g)~~ **(h)** For purposes of this section the following apply:

6 (1) "Overtime compensation" means the compensation required
 7 by subsection ~~(f)~~: **(g)**.

8 (2) "Compensatory time" and "compensatory time off" mean
 9 hours during which an employee is not working, which are not
 10 counted as hours worked during the applicable work week or
 11 other work period for purposes of overtime compensation, and for
 12 which the employee is compensated at the employee's regular
 13 rate.

14 (3) "Regular rate" means the rate at which an employee is
 15 employed is considered to include all remuneration for
 16 employment paid to, or on behalf of, the employee, but is not
 17 considered to include the following:

18 (A) Sums paid as gifts, payments in the nature of gifts made at
 19 Christmas time or on other special occasions, as a reward for
 20 service, the amounts of which are not measured by or
 21 dependent on hours worked, production, or efficiency.

22 (B) Payments made for occasional periods when no work is
 23 performed due to vacation, holiday, illness, failure of the
 24 employer to provide sufficient work, or other similar cause,
 25 reasonable payments for traveling expenses, or other expenses,
 26 incurred by an employee in the furtherance of the employer's
 27 interests and properly reimbursable by the employer, and other
 28 similar payments to an employee which are not made as
 29 compensation for the employee's hours of employment.

30 (C) Sums paid in recognition of services performed during a
 31 given period if:

32 (i) both the fact that payment is to be made and the amount
 33 of the payment are determined at the sole discretion of the
 34 employer at or near the end of the period and not pursuant
 35 to any prior contract, agreement, or promise causing the
 36 employee to expect the payments regularly;

37 (ii) the payments are made pursuant to a bona fide profit
 38 sharing plan or trust or bona fide thrift or savings plan,
 39 meeting the requirements of the administrator set forth in
 40 appropriately issued regulations, having due regard among
 41 other relevant factors, to the extent to which the amounts
 42 paid to the employee are determined without regard to hours



- 1 of work, production, or efficiency; or
 2 (iii) the payments are talent fees paid to performers,
 3 including announcers, on radio and television programs.
- 4 (D) Contributions irrevocably made by an employer to a
 5 trustee or third person pursuant to a bona fide plan for
 6 providing old age, retirement, life, accident, or health
 7 insurance or similar benefits for employees.
- 8 (E) Extra compensation provided by a premium rate paid for
 9 certain hours worked by the employee in any day or work
 10 week because those hours are hours worked in excess of eight
 11 (8) in a day or in excess of the maximum work week
 12 applicable to the employee under subsection ~~(f)~~ (g) or in
 13 excess of the employee's normal working hours or regular
 14 working hours, as the case may be.
- 15 (F) Extra compensation provided by a premium rate paid for
 16 work by the employee on Saturdays, Sundays, holidays, or
 17 regular days of rest, or on the sixth or seventh day of the work
 18 week, where the premium rate is not less than one and one-half
 19 (1.5) times the rate established in good faith for like work
 20 performed in nonovertime hours on other days.
- 21 (G) Extra compensation provided by a premium rate paid to
 22 the employee, in pursuance of an applicable employment
 23 contract or collective bargaining agreement, for work outside
 24 of the hours established in good faith by the contract or
 25 agreement as the basic, normal, or regular workday (not
 26 exceeding eight (8) hours) or work week (not exceeding the
 27 maximum work week applicable to the employee under
 28 subsection ~~(f)~~ (g)) where the premium rate is not less than one
 29 and one-half (1.5) times the rate established in good faith by
 30 the contract or agreement for like work performed during the
 31 workday or work week.
- 32 ~~(f)~~ (i) No employer shall be considered to have violated subsection
 33 ~~(f)~~ (g) by employing any employee for a work week in excess of that
 34 specified in subsection ~~(f)~~ (g) without paying the compensation for
 35 overtime employment prescribed therein if the employee is so
 36 employed:
- 37 (1) in pursuance of an agreement, made as a result of collective
 38 bargaining by representatives of employees certified as bona fide
 39 by the National Labor Relations Board, which provides that no
 40 employee shall be employed more than one thousand forty (1,040)
 41 hours during any period of twenty-six (26) consecutive weeks; or
 42 (2) in pursuance of an agreement, made as a result of collective



1 bargaining by representatives of employees certified as bona fide
 2 by the National Labor Relations Board, which provides that
 3 during a specified period of fifty-two (52) consecutive weeks the
 4 employee shall be employed not more than two thousand two
 5 hundred forty (2,240) hours and shall be guaranteed not less than
 6 one thousand eight hundred forty (1,840) hours (or not less than
 7 forty-six (46) weeks at the normal number of hours worked per
 8 week, but not less than thirty (30) hours per week) and not more
 9 than two thousand eighty (2,080) hours of employment for which
 10 the employee shall receive compensation for all hours guaranteed
 11 or worked at rates not less than those applicable under the
 12 agreement to the work performed and for all hours in excess of
 13 the guaranty which are also in excess of the maximum work week
 14 applicable to the employee under subsection ~~(f)~~ (g) or two
 15 thousand eighty (2,080) in that period at rates not less than one
 16 and one-half (1.5) times the regular rate at which the employee is
 17 employed.

18 ~~(f)~~ (j) No employer shall be considered to have violated subsection
 19 ~~(f)~~ (g) by employing any employee for a work week in excess of the
 20 maximum work week applicable to the employee under subsection ~~(f)~~
 21 (g) if the employee is employed pursuant to a bona fide individual
 22 contract, or pursuant to an agreement made as a result of collective
 23 bargaining by representatives of employees, if the duties of the
 24 employee necessitate irregular hours of work, and the contract or
 25 agreement includes the following:

26 (1) Specifies a regular rate of pay of not less than the minimum
 27 hourly rate provided in subsections (c) ~~and (d)~~ through (e)
 28 (whichever is applicable) and compensation at not less than one
 29 and one-half (1.5) times that rate for all hours worked in excess
 30 of the maximum work week.

31 (2) Provides a weekly guaranty of pay for not more than sixty (60)
 32 hours based on the rates so specified.

33 ~~(f)~~ (k) No employer shall be considered to have violated subsection
 34 ~~(f)~~ (g) by employing any employee for a work week in excess of the
 35 maximum work week applicable to the employee under that subsection
 36 if, pursuant to an agreement or understanding arrived at between the
 37 employer and the employee before performance of the work, the
 38 amount paid to the employee for the number of hours worked by the
 39 employee in the work week in excess of the maximum work week
 40 applicable to the employee under that subsection:

41 (1) in the case of an employee employed at piece rates, is
 42 computed at piece rates not less than one and one-half (1.5) times



1 the bona fide piece rates applicable to the same work when
 2 performed during nonovertime hours;

3 (2) in the case of an employee performing two (2) or more kinds
 4 of work for which different hourly or piece rates have been
 5 established, is computed at rates not less than one and one-half
 6 (1.5) times those bona fide rates applicable to the same work
 7 when performed during nonovertime hours; or

8 (3) is computed at a rate not less than one and one-half (1.5) times
 9 the rate established by the agreement or understanding as the
 10 basic rate to be used in computing overtime compensation
 11 thereunder, provided that the rate so established shall be
 12 substantially equivalent to the average hourly earnings of the
 13 employee, exclusive of overtime premiums, in the particular work
 14 over a representative period of time;

15 and if the employee's average hourly earnings for the work week
 16 exclusive of payments described in this section are not less than the
 17 minimum hourly rate required by applicable law, and extra overtime
 18 compensation is properly computed and paid on other forms of
 19 additional pay required to be included in computing the regular rate.

20 ~~(k)~~ **(l)** Extra compensation paid as described in this section shall be
 21 creditable toward overtime compensation payable pursuant to this
 22 section.

23 ~~(f)~~ **(m)** No employer shall be considered to have violated subsection
 24 ~~(f)~~ **(g)** by employing any employee of a retail or service establishment
 25 for a work week in excess of the applicable work week specified
 26 therein, if:

27 (1) the regular rate of pay of the employee is in excess of one and
 28 one-half (1.5) times the minimum hourly rate applicable to the
 29 employee under section 2 of this chapter; and

30 (2) more than half of the employee's compensation for a
 31 representative period (not less than one (1) month) represents
 32 commissions on goods or services.

33 In determining the proportion of compensation representing
 34 commissions, all earnings resulting from the application of a bona fide
 35 commission rate shall be considered commissions on goods or services
 36 without regard to whether the computed commissions exceed the draw
 37 or guarantee.

38 ~~(m)~~ **(n)** No employer engaged in the operation of a hospital or an
 39 establishment which is an institution primarily engaged in the care of
 40 the sick, the aged, or individuals with a mental illness or defect who
 41 reside on the premises shall be considered to have violated subsection
 42 ~~(f)~~ **(g)** if, pursuant to an agreement or understanding arrived at between



1 the employer and the employee before performance of the work, a work
 2 period of fourteen (14) consecutive days is accepted in lieu of the work
 3 week of seven (7) consecutive days for purposes of overtime
 4 computation and if, for the employee's employment in excess of eight
 5 (8) hours in any workday and in excess of eighty (80) hours in that
 6 fourteen (14) day period, the employee receives compensation at a rate
 7 not less than one and one-half (1.5) times the regular rate at which the
 8 employee is employed.

9 ~~(n)~~ **(o)** No employer shall employ any employee in domestic service
 10 in one (1) or more households for a work week longer than forty (40)
 11 hours unless the employee receives compensation for that employment
 12 in accordance with subsection ~~(f)~~ **(g)**.

13 ~~(o)~~ **(p)** In the case of an employee of an employer engaged in the
 14 business of operating a street, a suburban or interurban electric railway,
 15 or a local trolley or motorbus carrier (regardless of whether or not the
 16 railway or carrier is public or private or operated for profit or not for
 17 profit), in determining the hours of employment of such an employee
 18 to which the rate prescribed by subsection ~~(f)~~ **(g)** applies, there shall be
 19 excluded the hours the employee was employed in charter activities by
 20 the employer if both of the following apply:

21 (1) The employee's employment in the charter activities was
 22 pursuant to an agreement or understanding with the employer
 23 arrived at before engaging in that employment.

24 (2) If employment in the charter activities is not part of the
 25 employee's regular employment.

26 ~~(p)~~ **(q)** Any employer may employ any employee for a period or
 27 periods of not more than ten (10) hours in the aggregate in any work
 28 week in excess of the maximum work week specified in subsection ~~(f)~~
 29 **(g)** without paying the compensation for overtime employment
 30 prescribed in subsection ~~(f)~~ **(g)**, if during that period or periods the
 31 employee is receiving remedial education that:

32 (1) is provided to employees who lack a high school diploma or
 33 educational attainment at the eighth grade level;

34 (2) is designed to provide reading and other basic skills at an
 35 eighth grade level or below; and

36 (3) does not include job specific training.

37 ~~(q)~~ **(r)** Subsection ~~(f)~~ **(g)** does not apply to an employee of a motion
 38 picture theater.

39 ~~(r)~~ **(s)** Subsection ~~(f)~~ **(g)** does not apply to an employee of a seasonal
 40 amusement or recreational establishment, an organized camp, or a
 41 religious or nonprofit educational conference center that is exempt
 42 under the federal Fair Labor Standards Act of 1938, as amended (29



1 U.S.C. 213).

2 ~~(s)~~ **(t)** Subsection ~~(f)~~ **(g)** does not apply to an employee of an air
3 carrier subject to Title II of the federal Railway Labor Act (45 U.S.C.
4 181 et seq.) to the extent that the hours worked by the employee during
5 a work week in excess of forty (40) hours are not required by the air
6 carrier but are arranged through a voluntary agreement between
7 employees to trade or reassign their scheduled work hours.

8 SECTION 3. IC 22-2-2-14 IS ADDED TO THE INDIANA CODE
9 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
10 1, 2023]: **Sec. 14. (a) This section applies to an employer that is**
11 **subject to the minimum wage provisions of the federal Fair Labor**
12 **Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).**

13 **(b) If the minimum hourly wage required under section 4 of this**
14 **chapter is higher than the minimum wage provisions of the federal**
15 **Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et**
16 **seq.), an employer shall pay the minimum hourly wage required**
17 **under section 4 of this chapter.**

