

SENATE BILL No. 308

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-2-2.

Synopsis: Minimum wage. Increases the state minimum wage from \$7.25 an hour to \$11.31 an hour. Eliminates the tip credit in determining the minimum wage paid to a tipped employee. Makes a technical correction.

Effective: July 1, 2018.

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January 4, 2018, read first time and referred to Committee on Pensions and Labor.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 308

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 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2018]: Sec. 3. As used in this chapter:
3 "Commissioner" means the commissioner of labor or the
4 commissioner's authorized representative.
5 "Department" means the department of labor.
6 "Occupation" means an industry, trade, business, or class of work
7 in which employees are gainfully employed.
8 "Employer" means any individual, partnership, association, limited
9 liability company, corporation, business trust, the state, or other
10 governmental agency or political subdivision during any work week in
11 which they have two (2) or more employees. However, **except as**
12 **provided in section 14 of this chapter**, it shall not include any
13 employer who is subject to the minimum wage provisions of the federal
14 Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209).
15 "Employee" means any person employed or permitted to work or
16 perform any service for remuneration or under any contract of hire,
17 written or oral, express or implied by an employer in any occupation,



- 1 but shall not include any of the following:
- 2 (a) Persons less than sixteen (16) years of age.
- 3 (b) Persons engaged in an independently established trade,
4 occupation, profession, or business who, in performing the
5 services in question, are free from control or direction both under
6 a contract of service and in fact.
- 7 (c) Persons performing services not in the course of the
8 employing unit's trade or business.
- 9 (d) Persons employed on a commission basis.
- 10 (e) Persons employed by their own parent, spouse, or child.
- 11 (f) Members of any religious order performing any service for that
12 order, any ordained, commissioned, or licensed minister, priest,
13 rabbi, sexton, or Christian Science reader, and volunteers
14 performing services for any religious or charitable organization.
- 15 (g) Persons performing services as student nurses in the employ
16 of a hospital or nurses training school while enrolled and
17 regularly attending classes in a nurses training school chartered
18 or approved under law, or students performing services in the
19 employ of persons licensed as both funeral directors and
20 embalmers as a part of their requirements for apprenticeship to
21 secure an embalmer's license or a funeral director's license from
22 the state, or during their attendance at any schools required by law
23 for securing an embalmer's or funeral director's license.
- 24 (h) Persons who have completed a four (4) year course in a
25 medical school approved by law when employed as interns or
26 resident physicians by any accredited hospital.
- 27 (i) Students performing services for any school, college, or
28 university in which they are enrolled and are regularly attending
29 classes.
- 30 (j) Persons with physical or mental disabilities performing
31 services for nonprofit organizations organized primarily for the
32 purpose of providing employment for persons with disabilities or
33 for assisting in their therapy and rehabilitation.
- 34 (k) Persons employed as insurance producers, insurance
35 solicitors, and outside salesmen, if all their services are performed
36 for remuneration solely by commission.
- 37 (l) Persons performing services for any camping, recreational, or
38 guidance facilities operated by a charitable, religious, or
39 educational nonprofit organization.
- 40 (m) Persons engaged in agricultural labor. The term shall include
41 only services performed:
- 42 (1) on a farm, in connection with cultivating the soil, or in



- 1 connection with raising or harvesting any agricultural or
 2 horticultural commodity, including the raising, shearing,
 3 feeding, caring for, training, and management of livestock,
 4 bees, poultry, and furbearing animals and wildlife;
 5 (2) in the employ of the owner or tenant or other operator of a
 6 farm, in connection with the operation, management,
 7 conservation, improvement, or maintenance of the farm and its
 8 tools and equipment if the major part of the service is
 9 performed on a farm;
 10 (3) in connection with:
 11 (A) the production or harvesting of maple sugar or maple
 12 syrup or any commodity defined as an agricultural
 13 commodity in the Agricultural Marketing Act, as amended
 14 (12 U.S.C. 1141j);
 15 (B) the raising or harvesting of mushrooms;
 16 (C) the hatching of poultry; or
 17 (D) the operation or maintenance of ditches, canals,
 18 reservoirs, or waterways used exclusively for supplying and
 19 storing water for farming purposes; and
 20 (4) in handling, planting, drying, packing, packaging,
 21 processing, freezing, grading, storing, or delivering to storage,
 22 to market, or to a carrier for transportation to market, any
 23 agricultural or horticultural commodity, but only if service is
 24 performed as an incident to ordinary farming operation or, in
 25 the case of fruits and vegetables, as an incident to the
 26 preparation of fruits and vegetables for market. However, this
 27 exception shall not apply to services performed in connection
 28 with any agricultural or horticultural commodity after its
 29 delivery to a terminal market or processor for preparation or
 30 distribution for consumption.
 31 As used in this subdivision, "farm" includes stock, dairy, poultry,
 32 fruit, furbearing animals, and truck farms, nurseries, orchards, or
 33 greenhouses or other similar structures used primarily for the
 34 raising of agricultural or horticultural commodities.
 35 (n) Those persons employed in executive, administrative, or
 36 professional occupations who have the authority to employ or
 37 discharge and who earn one hundred fifty dollars (\$150) or more
 38 a week, and outside salesmen.
 39 (o) Any person not employed for more than four (4) weeks in any
 40 four (4) consecutive three (3) month periods.
 41 (p) Any employee with respect to whom the Interstate Commerce
 42 Commission has power to establish qualifications and maximum



- 1 hours of service under the federal Motor Carrier Act of 1935 (49
 2 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.
- 3 SECTION 2. IC 22-2-2-4, AS AMENDED BY P.L.165-2007,
 4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2018]: Sec. 4. (a) Every employer employing four (4) or more
 6 employees during a work week shall:
- 7 (1) in any work week beginning on or after July 1, 1968, in which
 8 the employer is subject to the provisions of this chapter, pay each
 9 of the employer's employees wages of not less than one dollar and
 10 twenty-five cents (\$1.25) per hour;
- 11 (2) in any work week beginning on or after July 1, 1977, in which
 12 the employer is subject to this chapter, pay each of the employer's
 13 employees wages of not less than one dollar and fifty cents
 14 (\$1.50) per hour;
- 15 (3) in any work week beginning on or after January 1, 1978, in
 16 which the employer is subject to this chapter, pay each of the
 17 employer's employees wages of not less than one dollar and
 18 seventy-five cents (\$1.75) per hour; and
- 19 (4) in any work week beginning on or after January 1, 1979, in
 20 which the employer is subject to this chapter, pay each of the
 21 employer's employees wages of not less than two dollars (\$2) per
 22 hour.
- 23 (b) Except as provided in subsection (c), every employer employing
 24 at least two (2) employees during a work week shall, in any work week
 25 in which the employer is subject to this chapter, pay each of the
 26 employees in any work week beginning on and after July 1, 1990, and
 27 before October 1, 1998, wages of not less than three dollars and
 28 thirty-five cents (\$3.35) per hour.
- 29 (c) **This subsection applies in determining the wage of a tipped**
 30 **employee before July 1, 2018.** An employer subject to subsection (b)
 31 is permitted to apply a "tip credit" in determining the amount of cash
 32 wage paid to tipped employees. In determining the wage an employer
 33 is required to pay a tipped employee, the amount paid the employee by
 34 the employee's employer shall be an amount equal to:
- 35 (1) the cash wage paid the employee, which for purposes of the
 36 determination shall be not less than the cash wage required to be
 37 paid to employees covered under the federal Fair Labor Standards
 38 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
 39 1996, which amount is two dollars and thirteen cents (\$2.13) an
 40 hour; and
- 41 (2) an additional amount on account of the tips received by the
 42 employee, which amount is equal to the difference between the



1 wage specified in subdivision (1) and the wage in effect under
2 subsections (b), (f), (g), and (h).

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

5 (d) No employer having employees subject to any provisions of this
6 section shall discriminate, within any establishment in which
7 employees are employed, between employees on the basis of sex by
8 paying to employees in such establishment a rate less than the rate at
9 which the employer pays wages to employees of the opposite sex in
10 such establishment for equal work on jobs the performance of which
11 requires equal skill, effort, and responsibility, and which are performed
12 under similar working conditions, except where such payment is made
13 pursuant to:

- 14 (1) a seniority system;
- 15 (2) a merit system;
- 16 (3) a system which measures earnings by quantity or quality of
17 production; or
- 18 (4) a differential based on any other factor other than sex.

19 (e) An employer who is paying a wage rate differential in violation
20 of subsection (d) shall not, in order to comply with subsection (d),
21 reduce the wage rate of any employee, and no labor organization, or its
22 agents, representing employees of an employer having employees
23 subject to subsection (d) shall cause or attempt to cause such an
24 employer to discriminate against an employee in violation of
25 subsection (d).

26 (f) Except as provided in subsection (c), every employer employing
27 at least two (2) employees during a work week shall, in any work week
28 in which the employer is subject to this chapter, pay each of the
29 employees in any work week beginning on or after October 1, 1998,
30 and before March 1, 1999, wages of not less than four dollars and
31 twenty-five cents (\$4.25) per hour.

32 (g) Except as provided in subsections (c) and ~~(j)~~; **(k)**, every
33 employer employing at least two (2) employees during a work week
34 shall, in any work week in which the employer is subject to this
35 chapter, pay each of the employees in any work week beginning on or
36 after March 1, 1999, and before July 1, 2007, wages of not less than
37 five dollars and fifteen cents (\$5.15) an hour.

38 (h) Except as provided in subsections (c) and ~~(j)~~; **(k)**, every
39 employer employing at least two (2) employees during a work week
40 shall, in any work week in which the employer is subject to this
41 chapter, pay each of the employees in any work week beginning on or
42 after June 30, 2007, **and before July 1, 2018**, wages of not less than



1 the minimum wage payable under the federal Fair Labor Standards Act
2 of 1938, as amended (29 U.S.C. 201 et seq.).

3 **(i) Except as provided in subsection (k), every employer**
4 **employing at least two (2) employees during a work week shall, in**
5 **any work week in which the employer is subject to this chapter,**
6 **pay each of the employees in any work week beginning on or after**
7 **July 1, 2018, wages of not less than eleven dollars and thirty-one**
8 **cents (\$11.31) an hour.**

9 **(j)** This section does not apply if an employee:

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

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

15 **(k)** This subsection applies only to an employee who has not
16 attained the age of twenty (20) years. Instead of the rates prescribed by
17 subsections (c) **(before July 1, 2018)**, (f), (g), ~~and~~ (h), **and (i)**, an
18 employer may pay an employee of the employer, during the first ninety
19 (90) consecutive calendar days after the employee is initially employed
20 by the employer, a wage which is not less than:

21 (1) four dollars and twenty-five cents (\$4.25) per hour, effective
22 March 1, 1999; and

23 (2) the amount payable under the federal Fair Labor Standards
24 Act of 1938, as amended (29 U.S.C. 201 et seq.), during the first
25 ninety (90) consecutive calendar days after initial employment to
26 an employee who has not attained twenty (20) years of age,
27 effective July 1, 2007.

28 However, no employer may take any action to displace employees
29 (including partial displacements such as reduction in hours, wages, or
30 employment benefits) for purposes of hiring individuals at the wage
31 authorized in this subsection.

32 ~~(l)~~ **(l)** Except as otherwise provided in this section, no employer
33 shall employ any employee for a work week longer than forty (40)
34 hours unless the employee receives compensation for employment in
35 excess of the hours above specified at a rate not less than one and
36 one-half (1.5) times the regular rate at which the employee is
37 employed.

38 **(m)** For purposes of this section the following apply:

39 (1) "Overtime compensation" means the compensation required
40 by subsection ~~(k)~~: **(l)**.

41 (2) "Compensatory time" and "compensatory time off" mean
42 hours during which an employee is not working, which are not



1 counted as hours worked during the applicable work week or
2 other work period for purposes of overtime compensation, and for
3 which the employee is compensated at the employee's regular
4 rate.

5 (3) "Regular rate" means the rate at which an employee is
6 employed is considered to include all remuneration for
7 employment paid to, or on behalf of, the employee, but is not
8 considered to include the following:

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

13 (B) Payments made for occasional periods when no work is
14 performed due to vacation, holiday, illness, failure of the
15 employer to provide sufficient work, or other similar cause,
16 reasonable payments for traveling expenses, or other expenses,
17 incurred by an employee in the furtherance of the employer's
18 interests and properly reimbursable by the employer, and other
19 similar payments to an employee which are not made as
20 compensation for the employee's hours of employment.

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

23 (i) both the fact that payment is to be made and the amount
24 of the payment are determined at the sole discretion of the
25 employer at or near the end of the period and not pursuant
26 to any prior contract, agreement, or promise causing the
27 employee to expect the payments regularly;

28 (ii) the payments are made pursuant to a bona fide profit
29 sharing plan or trust or bona fide thrift or savings plan,
30 meeting the requirements of the administrator set forth in
31 appropriately issued regulations, having due regard among
32 other relevant factors, to the extent to which the amounts
33 paid to the employee are determined without regard to hours
34 of work, production, or efficiency; or

35 (iii) the payments are talent fees paid to performers,
36 including announcers, on radio and television programs.

37 (D) Contributions irrevocably made by an employer to a
38 trustee or third person pursuant to a bona fide plan for
39 providing old age, retirement, life, accident, or health
40 insurance or similar benefits for employees.

41 (E) Extra compensation provided by a premium rate paid for
42 certain hours worked by the employee in any day or work



1 week because those hours are hours worked in excess of eight
 2 (8) in a day or in excess of the maximum work week
 3 applicable to the employee under subsection ~~(k)~~ (l) or in
 4 excess of the employee's normal working hours or regular
 5 working hours, as the case may be.

6 (F) Extra compensation provided by a premium rate paid for
 7 work by the employee on Saturdays, Sundays, holidays, or
 8 regular days of rest, or on the sixth or seventh day of the work
 9 week, where the premium rate is not less than one and one-half
 10 (1.5) times the rate established in good faith for like work
 11 performed in nonovertime hours on other days.

12 (G) Extra compensation provided by a premium rate paid to
 13 the employee, in pursuance of an applicable employment
 14 contract or collective bargaining agreement, for work outside
 15 of the hours established in good faith by the contract or
 16 agreement as the basic, normal, or regular workday (not
 17 exceeding eight (8) hours) or work week (not exceeding the
 18 maximum work week applicable to the employee under
 19 subsection ~~(k)~~ (l) where the premium rate is not less than one
 20 and one-half (1.5) times the rate established in good faith by
 21 the contract or agreement for like work performed during the
 22 workday or work week.

23 ~~(m)~~ (n) No employer shall be considered to have violated subsection
 24 ~~(k)~~ (l) by employing any employee for a work week in excess of that
 25 specified in subsection ~~(k)~~ (l) without paying the compensation for
 26 overtime employment prescribed therein if the employee is so
 27 employed:

28 (1) in pursuance of an agreement, made as a result of collective
 29 bargaining by representatives of employees certified as bona fide
 30 by the National Labor Relations Board, which provides that no
 31 employee shall be employed more than one thousand forty (1,040)
 32 hours during any period of twenty-six (26) consecutive weeks; or
 33 (2) in pursuance of an agreement, made as a result of collective
 34 bargaining by representatives of employees certified as bona fide
 35 by the National Labor Relations Board, which provides that
 36 during a specified period of fifty-two (52) consecutive weeks the
 37 employee shall be employed not more than two thousand two
 38 hundred forty (2,240) hours and shall be guaranteed not less than
 39 one thousand eight hundred forty (1,840) hours (or not less than
 40 forty-six (46) weeks at the normal number of hours worked per
 41 week, but not less than thirty (30) hours per week) and not more
 42 than two thousand eighty (2,080) hours of employment for which



1 the employee shall receive compensation for all hours guaranteed
 2 or worked at rates not less than those applicable under the
 3 agreement to the work performed and for all hours in excess of
 4 the guaranty which are also in excess of the maximum work week
 5 applicable to the employee under subsection ~~(k)~~ **(l)** or two
 6 thousand eighty (2,080) in that period at rates not less than one
 7 and one-half (1.5) times the regular rate at which the employee is
 8 employed.

9 ~~(n)~~ **(o)** No employer shall be considered to have violated subsection
 10 ~~(k)~~ **(l)** by employing any employee for a work week in excess of the
 11 maximum work week applicable to the employee under subsection ~~(k)~~
 12 **(l)** if the employee is employed pursuant to a bona fide individual
 13 contract, or pursuant to an agreement made as a result of collective
 14 bargaining by representatives of employees, if the duties of the
 15 employee necessitate irregular hours of work, and the contract or
 16 agreement includes the following:

17 (1) Specifies a regular rate of pay of not less than the minimum
 18 hourly rate provided in subsections (c) **(before July 1, 2018)**, ~~(h)~~;
 19 **(i)**, and ~~(j)~~ **(k)** (whichever is applicable) and compensation at not
 20 less than one and one-half (1.5) times that rate for all hours
 21 worked in excess of the maximum work week.

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

24 ~~(o)~~ **(p)** No employer shall be considered to have violated subsection
 25 ~~(k)~~ **(l)** by employing any employee for a work week in excess of the
 26 maximum work week applicable to the employee under that subsection
 27 if, pursuant to an agreement or understanding arrived at between the
 28 employer and the employee before performance of the work, the
 29 amount paid to the employee for the number of hours worked by the
 30 employee in the work week in excess of the maximum work week
 31 applicable to the employee under that subsection:

32 (1) in the case of an employee employed at piece rates, is
 33 computed at piece rates not less than one and one-half (1.5) times
 34 the bona fide piece rates applicable to the same work when
 35 performed during nonovertime hours;

36 (2) in the case of an employee performing two (2) or more kinds
 37 of work for which different hourly or piece rates have been
 38 established, is computed at rates not less than one and one-half
 39 (1.5) times those bona fide rates applicable to the same work
 40 when performed during nonovertime hours; or

41 (3) is computed at a rate not less than one and one-half (1.5) times
 42 the rate established by the agreement or understanding as the



1 basic rate to be used in computing overtime compensation
 2 thereunder, provided that the rate so established shall be
 3 substantially equivalent to the average hourly earnings of the
 4 employee, exclusive of overtime premiums, in the particular work
 5 over a representative period of time;

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

11 ~~(p)~~ **(q)** Extra compensation paid as described in this section shall be
 12 creditable toward overtime compensation payable pursuant to this
 13 section.

14 ~~(q)~~ **(r)** No employer shall be considered to have violated subsection
 15 ~~(k)~~ **(l)** by employing any employee of a retail or service establishment
 16 for a work week in excess of the applicable work week specified
 17 therein, if:

18 (1) the regular rate of pay of the employee is in excess of one and
 19 one-half (1.5) times the minimum hourly rate applicable to the
 20 employee under ~~section 2 of this chapter~~; **subsection (a), (b), (f),**
 21 **(g), (h), or (i)**; and

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

25 In determining the proportion of compensation representing
 26 commissions, all earnings resulting from the application of a bona fide
 27 commission rate shall be considered commissions on goods or services
 28 without regard to whether the computed commissions exceed the draw
 29 or guarantee.

30 ~~(r)~~ **(s)** No employer engaged in the operation of a hospital or an
 31 establishment which is an institution primarily engaged in the care of
 32 the sick, the aged, or individuals with a mental illness or defect who
 33 reside on the premises shall be considered to have violated subsection
 34 ~~(k)~~ **(l)** if, pursuant to an agreement or understanding arrived at between
 35 the employer and the employee before performance of the work, a work
 36 period of fourteen (14) consecutive days is accepted in lieu of the work
 37 week of seven (7) consecutive days for purposes of overtime
 38 computation and if, for the employee's employment in excess of eight
 39 (8) hours in any workday and in excess of eighty (80) hours in that
 40 fourteen (14) day period, the employee receives compensation at a rate
 41 not less than one and one-half (1.5) times the regular rate at which the
 42 employee is employed.



1 ~~(s)~~ (t) No employer shall employ any employee in domestic service
 2 in one (1) or more households for a work week longer than forty (40)
 3 hours unless the employee receives compensation for that employment
 4 in accordance with subsection ~~(k)~~ (l).

5 ~~(t)~~ (u) In the case of an employee of an employer engaged in the
 6 business of operating a street, a suburban or interurban electric railway,
 7 or a local trolley or motorbus carrier (regardless of whether or not the
 8 railway or carrier is public or private or operated for profit or not for
 9 profit), in determining the hours of employment of such an employee
 10 to which the rate prescribed by subsection ~~(k)~~ (l) applies, there shall be
 11 excluded the hours the employee was employed in charter activities by
 12 the employer if both of the following apply:

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

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

18 ~~(u)~~ (v) Any employer may employ any employee for a period or
 19 periods of not more than ten (10) hours in the aggregate in any work
 20 week in excess of the maximum work week specified in subsection ~~(k)~~
 21 (l) without paying the compensation for overtime employment
 22 prescribed in subsection ~~(k)~~ (l), if during that period or periods the
 23 employee is receiving remedial education that:

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

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

28 (3) does not include job specific training.

29 ~~(v)~~ (w) Subsection ~~(k)~~ (l) does not apply to an employee of a motion
 30 picture theater.

31 ~~(w)~~ (x) Subsection ~~(k)~~ (l) does not apply to an employee of a
 32 seasonal amusement or recreational establishment, an organized camp,
 33 or a religious or nonprofit educational conference center that is exempt
 34 under the federal Fair Labor Standards Act of 1938, as amended (29
 35 U.S.C. 213).

36 SECTION 3. IC 22-2-2-14 IS ADDED TO THE INDIANA CODE
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 38 1, 2018]: **Sec. 14. (a) This section applies to an employer that is
 39 subject to the minimum wage provisions of the federal Fair Labor
 40 Standards Act of 1938, as amended (29 U.S.C. 201-209).**

41 **(b) If the minimum hourly wage required under section 4 of this
 42 chapter is higher than the minimum wage provisions of the federal**



1 **Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209),**
2 **an employer shall pay the minimum hourly wage required under**
3 **section 4 of this chapter.**

