

## Frequently Asked Questions

The text of the Cook County Minimum Wage Ordinance (“Ordinance”) and the Interpretative and Procedural Rules (“MW Rules”) adopted by the Cook County Commission on Human Rights (“Commission”) provide detailed guidance for employers. The staff of the Commission does not have the authority to provide legal advice or render advisory opinions to individual employers. However, in an effort to facilitate broad compliance, the staff of the Commission will gather and attempt to answer frequently asked questions. These responses are not binding on the Commission in an enforcement action related to the Ordinance. To the extent that these responses conflict with the Ordinance or the MW Rules, the Ordinance and the MW Rules are more authoritative and will prevail.

This list of FAQs will be updated from time to time with newer FAQs appearing at the bottom.

**[July 10, 2017]**

### Current Cook County Minimum Wage

**Q1:** What is the current Cook County Minimum Wage for employees who do not customarily and usually receive tips or gratuities as part of their compensation (*i.e.* non-tipped employees)?

**A1:** As of July 1, 2017, non-tipped employees covered by the Ordinance must be paid at least \$10.00 per hour worked while physically present within the geographic boundaries of Cook County. *See* MW Rules 2.01, 2.02. If such employees are entitled to overtime pay for working more than 40 hours in any particular work week, the minimum wage for those overtime hours is at least \$15.00 per hour. *See* MW Rules 2.05. The Cook County Minimum Wage for non-tipped employees will increase on July 1, 2018.

**Q2:** What is the current Cook County Minimum Wage for employees who customarily and usually receive tips or gratuities as part of their compensation (*i.e.* tipped employees)?

**A2:** As of July 1, 2017, tipped employees covered by the Ordinance must make at least \$8.25 per hour worked while physically present within the geographic boundaries of Cook County. *See* MW Rules 2.01, 2.03. Employers of such employees must provide a base wage of \$4.95 per hour and make up any shortfalls in customer gratuities that would result in an employee earning less than \$8.25 per hour. *See* MW Rules 2.04. If such employees are entitled to overtime pay for working more than 40 hours in any particular work week, employers must ensure that tipped employees earn at least \$12.38 per hour with tips and cover any shortfall. *See* MW Rules 2.05. The base wage that employers must pay tipped employees will increase on July 1, 2018.

### Teenage Workers

**Q3:** Does the Ordinance require an employer to pay the Cook County Minimum Wage to an employee who is under the age of 18?

**A3:** No. The County Ordinance exempts employees who are less than 18 years old from coverage. *See* MW Rules 3.05(5). Employers are not required to pay such employees the Cook County Minimum Wage. Instead, under the Illinois Minimum Wage Act, employers must pay such employees at least \$7.75 per hour.

### **Training Wages**

**Q4:** Does the Ordinance require an employer to pay the Cook County Minimum Wage to an employee in his or her first 90 days of employment?

**Q4:** Employers are not required to pay an employee the Cook County Minimum Wage during the first 90 consecutive calendar days after the employee is initially employed by the employer. *See* MW Rules 3.05(4). Instead, under the Illinois Minimum Wage Act, employers must pay such employees at least \$7.75 per hour.

Note that this exception to the Cook County Minimum Wage does not apply to day laborers (*i.e.* a day laborer must be paid at least the Cook County Minimum Wage). This exception also does not apply to an employee whose employment is occasional or irregular and requires no more than 90 days to complete (*i.e.* a temporary or seasonal employee must be paid at least the Cook County Minimum Wage).

### **Coverage in the City of Chicago**

**Q5:** Does the Ordinance apply to employers and employees working in the City of Chicago?

**A5:** To the extent that an employee and employer are both located in the City of Chicago, enforcement of minimum wage obligations lies with the City of Chicago’s Department of Business Affairs and Consumer Protection (“BACP”) under the City of Chicago’s Minimum Wage Ordinance. *See* MW Rules 5.01.

There are some limited circumstances in which BACP may not have jurisdiction to hear a claim by employees working in the City of Chicago under the City’s Ordinance, but the Commission will have jurisdiction to hear the claim under the County’s Ordinance (*e.g.*, an employer in suburban Cook County that sends its employees into the City of Chicago to work or an employer in the City of Chicago that sends its employees into suburban Cook County to work). In those instances, an employer who can demonstrate that its treatment of its employees complies with the City’s Minimum Wage Ordinance (and/or any interpretative rules issued by BACP) has an absolute defense against the Commission finding a violation of the County’s Ordinance.

In other words, the Commission will generally not find that an employer who is complying with the City’s substantially similar Minimum Wage Ordinance has violated the County’s Ordinance.

### **Coverage in “Opt Out” Suburban Municipalities**

**Q6:** Does the Ordinance apply to employers and employees working in “opt out” suburban municipalities?

**A6:** To the extent that an employee and employer are both located in a suburban municipality that has lawfully preempted the Ordinance, the employer has no minimum wage obligations for the Commission to enforce. *See* MW Rules 2.01, 3.02, 3.04.

There are some limited circumstances, however, in which an employer in a suburban municipality that has lawfully preempted the Ordinance may have obligations under the County Ordinance. For example, an employer in such a jurisdiction may send its employees to another municipality or unincorporated area in Cook County where the County's Ordinance applies. Such employees could become covered by the Ordinance and entitled to earn at least the Cook County Minimum Wage on the basis of this work outside of the "opt out" municipality. Such employees can seek enforcement of those rights by the Commission even though the employer is located in a suburban municipality that has otherwise lawfully preempted the Ordinance.

Not every community that has purported to opt out of the Ordinance has lawfully preempted the Ordinance. For example, non-home rule municipalities may lack the authority to pass a minimum wage ordinance that would preempt the County's Ordinance. Additionally, in order to lawfully preempt application of the Cook County Minimum Wage, the wage requirement in a municipality must directly conflict with the wage requirement under the County Ordinance. A direct conflict does not exist where an employer can comply with both the County Ordinance and the municipal wage ordinance by paying the higher of the two minimum wage provisions. The Commission urges employers who are relying on legislation from a suburban municipality to relieve them of any obligations under the Ordinance to consult with an attorney.

Suburban municipalities that have purported to opt out of the Ordinance are not required to notify the Commission of this decision. The Commission will instead rely on employers located in these municipalities to raise the existence of such legislation as an affirmative defense to any enforcement action by the Commission, as appropriate.