

Frequently Asked Questions

(last updated September 28, 2017)

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.

[September 28, 2017]

Babysitters and Childcare Providers

Q7: Would an occasional babysitter be covered as an employee under the Ordinance or exempt as an independent contractor?

A7: Independent contractors are not covered by the Ordinance, but whether someone is an employee or independent contractor depends on the application of a multi-factor, fact-intensive legal test. The primary consideration is whether the would-be employer has the right to control and supervise the work, not just as to the end result, but as to the means and manner of achieving that result. In most cases where a parent explicitly or implicitly maintains the right to provide detailed instructions for childcare to the babysitter (*e.g.*, when the sitter will put the children to bed, what the children can and cannot eat, what activities the children are and are not allowed to participate in), the babysitter would be considered an employee.

Interns

Q8: Are interns considered employees for the purpose of coverage by the Ordinance?

A8: In making the determination of whether an intern is an employee for the purpose of the Ordinance, the Commission would follow the guidance set out by the U.S. Department of Labor for determining whether interns are entitled to the federal minimum wage. The U.S. Department of Labor considers all facts and circumstances in making this determination, but focuses particularly on six criteria:

1. Whether the internship is similar to training which would be given in an educational environment;
2. Whether the internship experience is primarily for the benefit of the intern or the employer;
3. Whether the intern displaced regular employees or worked under the close supervision of existing staff;
4. Whether the employer derived an immediate advantage from the activities of the intern or, on occasion, the employer's operations may have actually been impeded by the intern;
5. Whether the intern is entitled to a job at the conclusion of the internship; and
6. Whether the employer and the intern understood that the intern was not entitled to wages or other employee benefits for the time spent in the internship.

The federal government views the intern exception to be relatively narrow. Additional information about the federal approach can be found on the U.S. Department of Labor website: <https://www.dol.gov/whd/regs/compliance/whdfs71.htm>.

Owners of an S Corp

Q9: Does the owner or owners of an S Corp also count as an employee towards the minimum number of employees needed to be a covered employer under the Ordinance?

A9: Consistent with state law, the owner of a non-incorporated sole proprietorship does not count towards the minimum number of employees needed for application of the Ordinance (*i.e.* typically four, unless the employer is employing domestic workers, in which case, one employee is sufficient).

Special Recreation Associations and Other Associations of Exempt Government Employers

Q10: Are special recreation associations (“SRAs”), which are associations of local governmental units collaborating to provide public recreation opportunities for disabled residents and created by written intergovernmental agreements expressly authorized by statute, exempt from the Ordinance as Government Employers?

A10: Yes. SRAs are exempt from coverage by the Ordinance as government employers. In addition, other types of associations of local governmental units similarly will be deemed exempt government employers, at least so long as such associations are composed solely of local government units and created by a written intergovernmental agreement as authorized by law.

Employees Who Receive Occasional Tips

Q11: If an employee is in a type of business where tips are generally given, but she receives very little in the way of tips (and no tips from most customers) and prior to the effective date of the Ordinance was paid the Illinois Minimum Wage for non-tipped workers by her employer (*i.e.* \$8.25/hour), is she considered a “Tipped Employee” or a “Non-tipped Employee” for purposes of the Ordinance?

A11: A Tipped Employee is defined under the Ordinance to mean an employee “engaged in an occupation in which gratuities have customarily and usually constituted part of the remuneration.” *See* MW Rule 1.01. While occupations such as waiter/waitress and hair stylist would generally come within that definition, the Commission recognizes that there are some sub-markets and individual restaurants or stores where tips are not allowed, or where tips have customarily been so infrequent and minimal as to be not considered part of an employee’s usual wage. In such circumstances, and where the employer has treated its employees as non-tipped employees for the purpose of complying with federal and state law, then the Commission will consider such employees non-tipped employees for purposes of the enforcing the Ordinance. Such employees are entitled a higher wage under the Ordinance (currently \$10/hour) than a true Tipped Employee.