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# CITY OF CHICAGO

## RULES

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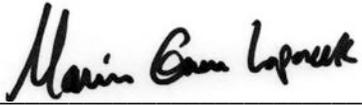
# MINIMUM WAGE RULES

Last Updated: August 17, 2015



BY AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS AFFAIRS AND CONSUMER PROTECTION PURSUANT TO **CHAPTER 2-25**, THE FOLLOWING RULES REGARDING **MINIMUM WAGE** ARE ADOPTED HEREIN.

By Order of the Commissioner:

Signed:   
Commissioner Maria Guerra Lapacek

Date: August 17, 2015

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## CHICAGO MINIMUM WAGE RULES

### DEFINITIONS

Terms used in these rules that are defined in Chapter 24 of Title 1 of the Chicago Municipal Code shall bear those definitions. Such terms, as well as those defined below, are set out in bold type for ease of reference.

“**BACP**” means the City of Chicago’s department of business affairs and consumer protection.

“**Day laborer**,” “day labor agency,” “contract employer,” and “day labor” have the meanings ascribed to those terms in Section 4-6-070 of the Chicago Municipal Code. As such: a) “**day laborer**” means any person referred by a day labor agency to a contract employer to perform day labor or seeking such a referral; b) “day labor agency” means any entity engaged in providing day labor workers for a contract employer, not including any not-for-profit organization; c) “contract employer” means any person who obtains the services of one or more individuals through an agreement with a day labor agency, regardless of whether such agreement is oral or in writing; and d) “day labor” means labor or employment that is 1) irregular or occasional; and 2) not longer than the time required to complete the assignment for which the person was hired; and 3) where wage payments are made directly or indirectly by the day labor agency or the contract employer for work undertaken by one or more day laborers. The term “day labor” does not include secretarial, clerical or professional services.

“**Ordinance**” means Chapter 1-24 of the Municipal Code of Chicago.

### SECTION I. General Information

#### **Rule MW 1.01 Application of the Ordinance**

All functions and powers of **BACP** and the **commissioner** under the **ordinance** shall be exercised in cooperation with the functions and powers of the U.S. Department of Labor under the Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq., as amended, and the Illinois Department of Labor and its Director under the Illinois **Minimum Wage Law**, 820 ILCS 105/1 et seq., as amended. In areas where the City of Chicago, the State of Illinois, and the federal government possess concurrent powers under their respective laws, the strictest of the three laws shall control.

**Rule MW 1.02            Notice to Employers – Copies of the Ordinance and Rules**

All **employers** shall have on file and readily accessible current copies of the **ordinance** and these rules.

**Rule MW 1.03            Domestic Workers and Day Laborers**

For purposes of the **ordinance** and these rules, a person or entity that employs one or more **domestic workers** or **day laborers** who qualify as **covered employees** qualifies as an **employer**.

**Rule MW 1.04            Notice**

Each **employer** shall post the notice described in Section 1-24-070 of the **ordinance** that informs **covered employees** of the current minimum wage and of their rights under the **ordinance**. The **commissioner** shall prepare the notice and make it available online at <http://www.cityofchicago.org/minimumwage>. This rule does not apply to **employers** who employ solely **domestic workers** and/or **day laborers**.

**Rule MW 1.05            Exclusions**

The **ordinance** does not apply to hours worked:

- a) for any **subsidized temporary youth employment program**;
- b) for any **subsidized transitional employment program**;
- c) for any governmental entity other than the City of Chicago;
- d) by persons subject to the provision in subsection 4(a)(2) of the **Minimum Wage Law**, which currently allows **employers** to pay certain **employees** a **wage** up to 50¢ per hour less than the state minimum wage during the first 90 consecutive calendar days of employment;
- e) by persons subject to subsection 4(a)(3) of the **Minimum Wage Law**, which currently allows **employers** to pay **employees** who are less than 18 years old a **wage** up to 50¢ per hour less than the state minimum wage;
- f) by camp counselors subject to subsections 4(d) and 4(e) of the **Minimum Wage Law**;
- g) by persons whose earning capacity is impaired by age, physical or mental deficiency, or injury, such that they are subject to Section 5 of the **Minimum Wage Law**; and

- h) By **employees** licensed as “learners” by the Illinois Department of Labor, pursuant to Section 6 of the **Minimum Wage Law**. Generally speaking, the term “learner” refers to a person participating in a training program for an occupation in which he or she is employed, where the program involves either formal instruction or on-the-job training during a period when the **employee** is entrusted with limited responsibility and is under supervision or guidance.

The exclusions described in this rule that are defined by reference to state law may be affected by changes to the **Minimum Wage Law**.

#### **Rule MW 1.06            Contents of Records of Employers**

**Employers** must maintain, at a minimum, the following records for **covered employees**, for a period of not less than three years, and shall make such records available for inspection upon request by **BACP**.

- a) Name of each **covered employee**.
- b) Address of each **covered employee**.
- c) Occupation of each **covered employee**.
- d) Social Security Number of each **covered employee**.
- e) Hours worked each day and hours worked each workweek by each **covered employee**.
- f) Type of payment (hourly rate, salary, commission, etc.), straight-time and overtime pay, and total wages paid to each **covered employee** in each pay period.
- g) Additions and deductions from each **covered employee’s wages** for each pay period and an explanation of additions and deductions.
- h) Dates of payment of each pay period covered by each **wage** payment to each **covered employee**.

#### **Rule MW 1.07            Tipped Employees**

##### *a) Calculation of the City tipped straight-time minimum wage*

The City tipped straight-time minimum wage is defined by reference to state law, and therefore may be affected by changes to the **Minimum Wage Law**. As of the date the City issued these rules, the state tipped straight-time minimum wage is \$4.95 per hour, which is calculated by reducing the state minimum wage of \$8.25 by \$3.30 (i.e., the maximum state tip

allowance of 40% of \$8.25). Under subsection 1-24-030(a)(1) of the ordinance, the City tipped straight-time minimum wage is \$5.45 per hour (i.e., the state tipped straight-time minimum wage of \$4.95 per hour plus \$0.50). If, for example, the state amended the **Minimum Wage Law** before July 1, 2016 to raise the state minimum wage to \$9 per hour and reduce the maximum tip allowance to 30%, the state tipped straight-time minimum wage would increase to \$6.30 per hour, which is calculated by reducing the new state minimum wage of \$9 per hour by \$2.70 (i.e., the new maximum tip allowance of 30% of \$9.00). The City tipped straight-time minimum wage would thereby increase to \$6.80 per hour (i.e., the new state tipped straight-time minimum wage of \$6.30 per hour plus \$0.50). Under both state law and the ordinance, if an employee's wages plus tips do not equal at least the number of hours worked times the applicable minimum wage, his or her employer must make up the difference.

*b) Record requirements*

**Employers** must maintain, at a minimum, the following records for **covered employees** whose compensation is derived in part from gratuities, for a period of not less than three years, and shall make such records available for inspection upon request by **BACP**.

1) An identifying symbol, letter, or number on the payroll record indicating such **employee** is a person whose **wage** is determined in part by gratuities.

2) The report received from the **employee** setting forth gratuities received during each workday. Such reports submitted by the **employee** shall be signed and include his or her **Social Security Number**.

3) The amount by which the **wage** of each such **employee** has been deemed to be increased by gratuities as determined by the employer. The amount per hour which the employer takes as a gratuity credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding pay period.

4) Hours worked each workday in any occupation in which the **employee** does not receive gratuities, and total daily or weekly straight-time payment made by the employer for such hours.

5) Hours worked each workday in occupations in which the **employee** received gratuities, and total daily or weekly straight time earnings for such hours.

## **Rule MW 1.08**

### **Overtime**

Unless subject to one of exceptions in subsection 4a(2) of the **Minimum Wage Law**, a **covered employee** is entitled to at least 1.5 times the City minimum wage for each hour in excess of 40 worked in any particular week. As of the date of these rules, the City minimum wage is \$10 per hour; therefore, the minimum overtime wage is \$10 times 1.5, which equals \$15 per hour.

A tipped **covered employee** is entitled to an overtime hourly wage of at least 1.5 times the City minimum wage, minus no more than the current maximum tip allowance. As of the date the City issued these rules, the maximum tip allowance is \$4.55 (which is calculated by subtracting the City tipped straight-time minimum wage of \$5.45 per hour from the general minimum wage of \$10 per hour) and the minimum tipped overtime wage is \$10.45 per hour (which is calculated by subtracting the maximum tip allowance of \$4.55 from the general minimum overtime wage of \$15 per hour). These figures, like the City tipped straight-time minimum wage, are tied to state law, and therefore may be affected by changes to the **Minimum Wage Law**. For example, under the scenario set out above in Rule MW 1.07(a), where the City tipped straight-time minimum wage increases to \$6.80 per hour, the new maximum tip allowance is \$3.20 (i.e., \$10 minus \$6.80) and the new tipped overtime minimum wage is \$11.80 per hour (which is calculated by subtracting the new maximum tip allowance of \$3.20 from the general overtime wage of \$15 per hour). Again, under both state law and the ordinance, if an employee's wages plus tips do not equal at least the number of hours worked times the applicable minimum wage, his or her employer must make up the difference.

## **SECTION II. Complaints and Investigations**

### **Rule MW 2.01**

#### **Filing a Complaint**

- a) A **covered employee** who believes that he or she was not paid the minimum wage required by the **ordinance** may file a complaint by completing the complaint affidavit found online at <http://www.cityofchicago.org/minimumwage> and sending it to the address on the form. In the alternative, the **employee** may register a complaint by calling 311. However, a complaint registered with the City's 311 system via telephone or online will not be deemed filed unless and until the complainant submits a complaint affidavit. All information requested by the complaint affidavit must be provided to allow proper review and investigation of the alleged violation.
- b) No anonymous complaints will be accepted or investigated by **BACP**.

- c) Documents that substantiate a claim shall be made available to **BACP** to allow the department to proceed on the **covered employee's** behalf.
- d) The **commissioner**, in his or her discretion, may choose not to accept a complaint filed more than one year after the disputed **wages** were due, or, in a situation involving a sequence of underpayments, more than one year after the complaining employee received the final, or his or her most recent, underpayment in the sequence. This decision shall not alter the **covered employee's** ability to exercise his or her rights under Section 1-24-110 of the **ordinance**.

**Rule MW 2.02            Investigation Procedures**

- a) **BACP** will send a letter with a copy of the complaint alleging a violation of the **ordinance** to the **employer**, requesting, within 14 days, either a response to the complaint or evidence of a voluntary resolution of the dispute.
- b) Evidence of the payment of back **wages** due the **covered employee(s)** and/or former **covered employee(s)** will be evidence of compliance with the provisions of the ordinance. The **commissioner** may require proof that the **covered employee(s)** and/or former **covered employee(s)** received all the back **wages** due. The **commissioner** may require the **employer** to send to **BACP** a copy of the certified checks, cashier's checks, or money orders made payable to the individual **covered employee(s)**.
- c) If the **employer** does not voluntarily comply, the **commissioner** may issue administrative notices of violations seeking fines payable to the City, license suspension or revocation, and/or restitution to the **covered employee(s)** and/or former **covered employee(s)**.