

For tipped employees, how does an employer establish that direct wages combined with tips equals or exceeds the Arizona minimum wage?

Employers are permitted to pay tipped employees a maximum of \$3.00 per hour less than non-tipped employees, provided that the tipped employees earn at least minimum wage for all hours worked each week (when tips are included). In calculating whether a tipped employee has earned at least minimum wage, tips must be counted in the workweek in which the tip is earned. Employers utilizing a tip credit must maintain a record of any tips the employer considered for purposes of paying minimum wage.

For tipped employees, what if actual tips received are not sufficient to make up the difference between the employer's direct wage obligation and minimum wage?

If a tipped employee does not earn the required minimum wage after including tips, the employer is required to pay the difference. Employers must always pay tipped employees a base wage of no less than three dollars below minimum wage.

May tipped employees pool, share, or split tips?

Yes. Employees who customarily and regularly receive tips may pool, share, or split tips between them. Where employees pool, share, or split tips, the amount actually retained by each employee is considered the tip of the employee who retained it.

May tipped employees pool, share or split tips with employees who do not customarily and regularly receive tips in the occupation in which they work, such as management or food preparers?

Yes, but the tips received by the employee who does not customarily and regularly receive tips may not be credited toward that employee's minimum wage.

For tipped employees, to what hours may a "tip credit" be applied?

Employers are permitted to pay tipped employees a maximum of \$3.00 per hour less than non-tipped employees, provided that the tipped employees earn at least minimum wage for all hours worked each week (when tips are included). The tip credit is available only for hours an employee works in the tipped occupation. Where a tipped employee is routinely assigned to duties associated with a non-tipped occupation, such as maintenance or general preparation work, no tip credit may be taken for the hours worked in performing such duties.

Is a compulsory charge for service a tip?

Maybe. A compulsory charge for service constitutes a tip only if it is actually distributed by the employer to the employee in the pay period in which the charge is earned. A compulsory charge for service imposed on a customer by an employer is not a tip if it is considered part of the employer's gross receipts and is not distributed to the employee in the pay period in which the charge is earned.

Earned Paid Sick Time

What is earned paid sick time?

Earned paid sick time is sick time accrued by an employee that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked.

When can employees begin accruing earned paid sick time?

Employees can begin accruing earned paid sick time at the commencement of employment or July 1, 2017, whichever is later. For more information, see [How soon can an employee begin using accrued earned paid sick time?](#)

What can earned paid sick time be used for?

Employees may use earned paid sick time for themselves or for family members (see [Arizona Revised Statutes § 23-373](#) to see who qualifies as a family member) in the following circumstances:

- Medical care or mental or physical illness, injury, or health condition;
- A public health emergency; and
- Absence due to domestic violence, sexual violence, abuse, or stalking.

See [Arizona Revised Statutes § 23-373](#) for further detail concerning authorized uses for earned paid sick time and definitions of family members.

What is a public health emergency within the meaning of the Act?

Absent statutory or judicial guidance, the Industrial Commission is proposing a rule that would define a “public health emergency” as a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. The Industrial Commission will update this FAQ as the rulemaking process progresses.

Which employers are subject to earned paid sick time laws?

Under The Fair Wages and Healthy Families Act (the “Act”), “employers” are subject to Arizona’s earned paid sick time laws. Earned paid sick time accrual rates, however, differ based on an employer’s number of employees.

Under the Act, “employer” is defined as any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the state of Arizona, the United States. Notably, this definition differs slightly from the definition of “employer” in the minimum wage context because it has no exemption for “small businesses.” Therefore, even “small businesses” that are exempt from the minimum wage requirements are subject to the Act’s earned paid sick time requirements.

Can an employer count earned paid sick time as an absence that may lead to an adverse action (including discipline and discharge)?

No.

What kind of posting and recordkeeping is required by Arizona's earned paid sick time laws?

Unless otherwise exempted from the posting and recordkeeping requirements, employers subject to Arizona's earned paid sick time laws are required to comply with notice, posting, and recordkeeping requirements pertaining to earned paid sick time. The requirements include: (1) posting earned paid sick time notices in the workplace; (2) providing employees with the employer's business name, address, and telephone number in writing upon hire; (3) providing employees with a notice that informs them of their rights and responsibilities under the Fair Wages and Healthy Families Act; and (4) maintaining payroll records in accordance with Arizona's statutes and rules. For more information about which employers are subject to Arizona's earned paid sick leave laws, see [Which employers are subject to earned paid sick time laws?](#)

The Industrial Commission's 2017 model earned paid sick time notice can be found [here](#).

Note: The Industrial Commission is currently proposing rules that would exempt small employers (defined as a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue) from the Act's posting requirements. The Industrial Commission will update this FAQ as the rulemaking process progresses.

How long is an employer required to keep the records under Arizona's earned paid sick time laws?

Four years.

Violations of Proposition 206 - The Fair Wages and Healthy Families Act

What recourse does an employee have against an employer that is not paying minimum wage or earned paid sick time?

Employees who believe that their employer is violating the Fair Wages and Healthy Families Act may file a complaint with the Labor Department of the Industrial Commission of Arizona or file a civil lawsuit. To file a complaint with the Labor Department online, please click [here](#). To file a claim in writing, send the completed claim form (available [here](#)) to:

Industrial Commission of Arizona, Labor Department
800 W Washington St.
Phoenix, AZ 85007

Who can file an administrative complaint?

Any person or organization may file a complaint with the Labor Department of the Industrial Commission alleging a minimum wage or earned paid sick time violation.

When must an administrative complaint be filed?

An administrative complaint concerning minimum wage must be filed within one year of the date that the wages were due. In the absence of statutory and judicial guidance, the Industrial Commission is proposing rules that would also require administrative complaints concerning unpaid earned paid sick time to be filed within one year of that the date that the earned paid sick time payment was due.

As concerns claims for minimum wage retaliation, an administrative complaint must be filed with the Labor Department of the Industrial Commission within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation. In the absence of statutory or judicial guidance, the Industrial Commission is proposing rules that would permit a person or organization alleging minimum wage or earned paid sick time retaliation, discrimination, or a violation of A.R.S. § 23-377 to file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.

Who can file a lawsuit to enforce The Fair Wages and Healthy Families Act and when must it be filed?

A civil action to enforce The Fair Wages and Healthy Families Act (the “Act”) may be filed by a law enforcement officer (which means the attorney general, a city attorney, a county attorney, or a town attorney) or by any private party injured by a violation of the Act. The civil action must be filed no later than two years after a violation last occurs, or three years in the case of a willful violation. The civil action may include all violations that occurred as part of a continuing course of employer conduct regardless of the date of the violation.

Can an employer retaliate against an employee for asking questions about not being paid minimum wage or for asserting any rights under the Fair Wages and Healthy Families Act?

No. The Fair Wages and Healthy Families Act (the “Act”) prohibits an employer from discriminating or retaliating against an employee or other person for asserting any right under the Act. Additionally, if an employer takes an adverse action against an employee within 90 days of the employee asserting a right under the Act, the presumption is that the employer retaliated against the employee. This presumption can only be overcome if the employer shows by clear and convincing evidence that the action taken against the employee was for a permissible reason.

What can an employee do if an employer retaliates against the employee for asserting a right under the The Fair Wages and Healthy Families Act?

An employee may file an administrative complaint with the Labor Department of the Industrial Commission of Arizona or file a civil lawsuit.

What remedies are available to an employee for violations of Arizona’s minimum wage and earned paid sick time laws?

An employer who fails to pay minimum wage or earned paid sick time will be required to pay the employee the wages owed with interest and an additional amount equal to twice the underpaid wages.

An employer who retaliates against an employee is required to pay penalties sufficient to compensate the employee and deter future violations, but not less than \$150 for each day that the violation continued or until legal judgment is final.

The Commission and courts also have the authority to order other appropriate legal or equitable relief for violations of The Fair Wages and Healthy Families Act.

Will the Labor Department of the Industrial Commission of Arizona keep an employer's payroll records confidential?

Payroll information provided to the Labor Department of the Industrial Commission of Arizona will be kept confidential except as necessary to prosecute violations under The Fair Wages and Healthy Families Act.

Can an employee's identity be kept confidential after an administrative complaint is filed with the Labor Department of the Industrial Commission?

The Labor Department of the Industrial Commission will keep the name of an employee identified in an administrative complaint confidential for as long as possible. If the Commission determines that an employee's name must be disclosed in order to conduct a further investigation, it may do so only with the employee's consent.

What happens if an employer violates The Fair Wages and Healthy Families Act's recordkeeping, posting, or other requirements?

An employer who violates The Fair Wages and Healthy Families Act's recordkeeping, posting, or other requirements is subject to a civil penalty of at least \$250 for the first violation and at least \$1000 for each subsequent or willful violation. Special monitoring and inspections may also be imposed. Additionally, if an employer fails to maintain required records, it will be presumed that the employer did not pay the required minimum wage or earned paid sick time. An employer has the right to rebut this presumption with evidence that the employer paid the employee the required minimum wage.