

FREQUENTLY ASKED QUESTIONS

FLAGSTAFF MINIMUM WAGE ORDINANCE

EFFECTIVE: JANUARY 1, 2018

The Office of Labor Standards (OLS) provides this FAQ document to help business owners, employees and others understand and follow the law in Flagstaff. **This is a general guide and resource, and does not constitute legal advice.** It may be updated periodically, as deemed appropriate by the City of Flagstaff.

If you have questions about this guide, or questions about the law that are not addressed here, please email laborstandards@flagstaff.az.gov.

PROPOSITION 414

What is/was Proposition 414?

Answer: Proposition 414; the Minimum Wage Act (the "Act"), was a citizen initiative on the November 8, 2016 Flagstaff ballot. It was approved by 53.99% of voters. The Act established a new City of Flagstaff minimum wage schedule effective July 1, 2017.

When did Proposition 414 become effective?

Answer: Article 4, Section 1(5) and (13) and Arizona Revised Statutes, Section 19-126 indicates that a voter initiative becomes effected as stated in the initiative, upon approval of the voters and proclamation of the Mayor. On November 28, 2016, the Mayor proclaimed Proposition 414 into law and the Flagstaff City Charter and City Code Chapter 15-01 adopted Initiative Ordinance 2016-01.

How can City Council change or amend a voter initiative?

Answer: Article 4, Section 1(6)(C) and 1(14) of the Arizona Constitution requires any amendment to further the purposes of the initiative and be approved by a supermajority of the City Council. The City Council would need to satisfy both requirements and did so. Please visit the link below to view Ordinance 2017-08 explaining the changes.
<http://www.flagstaff.az.gov/DocumentCenter/View/51141>

Can the City Council repeal or overturn an adopted voter initiative?

Answer: No. Article 4, Section 1 of the Arizona Constitution allows voters to propose and approve any initiative that repeals or removes law created by a previous initiative.

FLAGSTAFF'S MINIMUM WAGE

What is Flagstaff's current minimum wage?

Answer: As of January, 1 2018, Flagstaff's minimum wage is \$11.00 per hour.

How can a new law be passed?

Answer: Article 4, Section 1(1) and (8) of the Arizona Constitution reserves power to voters to pass new laws. Under Article 4, Section 1(14) of the Arizona Constitution, a voter initiative approved by a majority of the voters cannot be repealed or overturned by the City Council.

When did Flagstaff's new minimum wage go into effect?

Answer: On July 1, 2017.

Are there future increases to Flagstaff's minimum wage?

Answer: Yes. On January 1, 2018, the minimum wage rate will increase to \$11.00, and will gradually increase by a \$1.00 on January 1 of each year until January 1, 2020, at which time it will increase to \$13.00. On January 1, 2021, the minimum wage will increase to \$15.00 per hour OR to \$2.00 above the state minimum wage, whichever is greater, with an additional increase on January 1, 2022 to \$15.50 per hour OR to \$2.00 above the state minimum wage. The minimum wage shall be increased on January 1, 2023, and on January 1 of successive years, by the increase in the cost of living.



I thought the minimum wage in Flagstaff was supposed to be \$12.00 starting on July 1, 2017. What happen?

Answer: On March 21, 2017, the Flagstaff City Council voted to adopt Ordinance 2017-08 amending Title 15 to adjust the incremental rate at which the minimum wage is raised annually. This was allowed by Article 4, Section 1(6)(C) and 1(14) of the Arizona Constitution. Ordinance 2017-08 may be found here <http://www.flagstaff.az.gov/DocumentCenter/View/511411>

What will I be paid in Flagstaff if paid \$11.00 per hour?

Answer: A typical work week of 40 hours at \$11.00 per hour is \$440.00 gross per week before taxes and other deductions. The total yearly amount would be \$22,880 / year.

What employers and employees are covered by the ordinance?

Answer: An **Employee** covered by the ordinance is a person who 1) works, or is expected to work, twenty-five (25) hours or more in a given calendar year within the geographic boundaries of the City of Flagstaff for an employer, and 2) is or was employed by an employer. An **Employer** includes 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, and shall include the City, but does not include the State of Arizona or the Federal government.

Does the ordinance protect undocumented workers?

Answer: Workers reporting violations of the ordinance to the City of Flagstaff will not be questioned about their immigration status.

Does the ordinance cover an employee no longer employed with their employer? Answer: Yes.**Does the ordinance apply to employers located outside the City of Flagstaff who employ employees working in Flagstaff?**

Answer: Yes. All employers, regardless of their location, must pay their employees the established Flagstaff minimum wage.

Does an employer need to provide notice of the minimum wage and an Employee's rights under the ordinance?

Answer: Yes. Employers must give written notices (Employer signature form & Employee notice) to all current and new employees at the time of hire or by the effective date of for the current minimum wage whichever is later.

Do employers have to display the Flagstaff minimum wage poster?

Answer. Yes. Posters shall be posted prominently at work sites and work areas that can be easily seen by all employees.

Can an employee agree to work for less than Flagstaff's minimum wage?

Answer: No. Flagstaff's minimum wage is mandatory for any employer who employs an individual who worked or is expected to work 25-hours or more per year within the geographical boundaries of the city of Flagstaff.

Does the ordinance apply to employees covered by an existing collective bargaining agreement?

Answer: Yes. The ordinance is a minimum labor standard and a law of general application applying to all employees who are eligible under the law, whether represented by a union or not. Nothing in the ordinance shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous wages to an employee than required by the ordinance.

Who do I contact if I have questions?

Answer: Employers, Employees and other interested parties should call (928) 213-2071 or email laborstandards@flagstaffaz.gov.

Is an employer subject to Flagstaff's minimum wage ordinance required to pay at least minimum wage for all hours worked?

Answer: Yes. Minimum wage shall be paid for all hours worked regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.

What type of recordkeeping am I required (employer) to keep under Flagstaff's minimum wage ordinance?

Answer: Employers are required to maintain payroll records showing hours worked, each day worked and wages paid for a period of **four years** for all employees. Employers may be subject to other record keeping requirements under State and Federal laws

For more information, you can visit the US Office of Labor-Management Standards,
<https://www.dol.gov/olms/>.



Please visit <http://www.flagstaff.az.gov/minwage> to obtain the required posters & forms.

In what languages do employers have to post the posters?

Answer: In English, Spanish and any language spoken by at least 5% of the employees at the worksite or job location. If you need a poster in a different language, please contact City’s Office of Labor Standards Division at laborstandards@flagstaffaz.gov.

Does the ordinance apply to internships?

Answer: The city defines the term “employ” broadly as does the FLSA meaning to “suffer or permit to work.” Employers should consult their legal counsel and refer to the DOL’s fact sheet #71 (<https://www.dol.gov/whd/regs/compliance/whdfs71.pdf>) that provides six criteria that must be applied when making a determination.

Does the Flagstaff minimum wage apply only to full time workers?

Answer: No. Flagstaff’s minimum wage applies to all employees working within the city limits of Flagstaff and worked or expected to work 25 hours or more in a calendar year.

TIPPED/COMMISSIONED-BASED EMPLOYEES

Can an Employer use tips as a credit towards its obligations under Flagstaff’s minimum wage?

Answer: Yes. For any tipped employee, the employer may pay a cash wage up to:

- \$3 per hour less than the minimum wage rate set forth in this section on or after July 1, 2017;
- \$2.50 per hour less than the minimum wage rate set forth in this section on or after January 1, 2022;
- \$2 per hour less than the minimum wage set forth in this section on or after January 1, 2023;
- \$1.50 per hour less than the minimum wage set forth in this section on or after January 1, 2024;
- \$1 per hour less than the minimum wage set forth in this section on or after January 1, 2025.

On and after January 1, 2026, an employer shall pay a tipped employee not less than the minimum wage set forth in this section for all hours worked.

Note: An employer may only pay this lower cash wage if, when the tips retained by the tipped employee, when added to the cash wage described above, equals at least the established minimum wage.

I am confused on how the tip credit (cash wage) works. How does it work?

Example: Employee A worked 32 hours with a tip credit of \$8.00 per hour (\$11.00-\$3.00) = \$8.00 (Determined by employer). Employee A grossed \$256.00 (\$8.00 x 32 hours) and made \$96.00 in tips totaling \$352.00. Employee A’s average hourly rate is \$11.00 per hour (\$352.00/32 hours).

- ✓ Work closely with your accountant or accounting department to ensure you have a simple and easy tracking system.
- ✓ Be sure your employees are tracking tips retained daily and confirming earned tips retained after each shift.
- ✓ Permit the tipped employee to retain all tips earned (1e; Spilt, pool, etc.)

What happens if my tipped employee earned less than minimum wage during the workweek when all tips and hours worked were combined?

Answer: If a tipped employee does not earn the required minimum wage after including tips, the employer is required to pay the difference.

If Employee A grossed \$240.00 with \$50.00 in tips (\$290.00) working 32 hours, then Employee A would be short \$62.00 and making less than minimum wage (\$9.06 per hour). The employer would have to make up the difference (\$62.00) to the employee to be at the minimum wage rate of \$11.00 per hour.

I am a commission-based employee. How does the minimum wage work with commissioned-based?

Answer: To determine whether an employer has paid a commissioned employee minimum wage for each hour worked in a given workweek, the employer may combine all monetary compensation (including commissions) earned by the employee during the applicable workweek. If the combined compensation is less than the minimum wage multiplied by the hours that the employee worked that workweek, the employer must make up the difference owed to the employee.

For example, if a commissioned employee earns \$200 in a 40-hour workweek (including all commissions) and the current minimum wage is \$11.00 per hour, Flagstaff’s minimum wage law requires the employee to earned at least \$440 (40 hours x \$11.00 per hour) in a workweek. In this example, the employer would be responsible for paying the employee an additional \$220 to make up the difference between the employee’s actual earnings and the required minimum wage.

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

Answer: 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 included with hours worked (cash wage). Employers utilizing a tip credit must maintain a record of any tips the employer considered for purposes of paying minimum wage.

Example formula: ((Tip credit x number of hours worked) + All tips earned)/Hours worked

Tip credit is \$8.00 (\$11.00-\$3.00), with 36 hours worked, \$200.00 total tips earned (((\$8.00 x 36)) + \$200.00)/36 = \$13.55 per hour.

What steps can I take (employer) to assert a "tip credit?"

- ✓ Provide written notice to each employee prior to exercising the tip credit and keep these records on file.
- ✓ Be able to show by your records that for each week, when adding tips received to wages paid, the employee earned no less than minimum wage for all hours worked.

What is piece rate "piecework" work?

Answer: This is a pay method in which the employer pays a set amount for each unit of work completed or gives a payment for each item produced.

Is an employee still entitled to earn minimum wage if being paid piece rate?

Answer: Yes. Employers must pay employees at least the applicable minimum wage for each hour worked.

How much will someone get paid if being paid piece rate?

Answer: Employee A is being paid \$5.50 for each room cleaned. Employee A cleans 135 rooms in the workweek thus receiving \$742.50. It took Employee A 40 hours to clean the rooms. If we take \$742.50 divided by 40 hours than Employee A's hourly rate of pay is \$18.60 per hour, will over the minimum wage rate of \$11.00 per hour. If Employee A cleaned 80 rooms during the week working 40 hours at the same piece rate of \$5.50 (((\$5.50 x 80)) / 40 hours) Employee A's rate of pay is \$11.00.

My employees are paid piecework. Does the Flagstaff minimum wage ordinance change the recordkeeping requirements?

Answer: No. Under Flagstaff's minimum wage ordinance, employers must maintain payroll records showing the hours worked for each day worked, and the wages paid for all employees for a period of **(4) four years**. Employers may be subject to other applicable recordkeeping requirements under State and Federal law. Please visit the Wages and Hours Division at www.dol.gov/whd or via telephone at 928-774-1272 or

COMPLAINTS

What city department is implementing the minimum wage ordinance?

Answer: The City Manager's Office is responsible for implementing and enforcing the Ordinance. The City Manager has designated the responsibilities for implementation and enforcement to the Office of Labor Standards (OLS).

What role does the City of Flagstaff have in ensuring compliance with the ordinance regarding minimum wage?

Answer: The City will investigate complaints of possible violations of the ordinance. The ordinance requires employers to permit the City's OLS access to relevant records to investigate employee complaints and monitor compliance with this law. The OLS may attempt to remedy any case through informal resolution. The Office of Labor Standards may also pursue administrative compliance orders and impose administrative fines for non-compliance.

How does an employee file a complaint with the Office of Labor Standards?

Answer: Complaints must be initiated by submitting a completed complaint declaration form provided by the Office of Labor Standards. Copies of the Claim Declaration form are available from the City via email or U.S. mail request; by download from the Minimum Wage webpage at www.flagstaff.az.gov/minwage; or from City Hall at 211 West Aspen Avenue during regular business hours. Email requests for a claim declaration form should be directed to: laborstandards@flagstaffaz.gov. Completed claim declaration forms may be mailed or submitted in person to the City Hall address above or submitted via email to: laborstandards@flagstaffaz.gov. Anonymous complaints will not be investigated by the Office of Labor Standards. Complaints can also be submitted via the online request form at www.flagstaff.az.gov/minwage, by phone at 928.213.2071 or via email laborstandards@flagstaffaz.gov. Supporting documents related to the complaint should accompany the claim declaration form. **For example:** claims regarding wage issues should come with pay stubs; claims regarding

Industrial Commission Office for the State of Arizona at www.azica.gov or via telephone at 602.542.4661.



may include but not limited to emails from employers and/or contacts of those who may be witnesses.

The Office of Labor Standards will review the complaint to determine whether there is sufficient evidence supporting the initial claim and, if so, will investigate the claim. The employee will be notified either way by the investigator.

What can an employee do if an employer does not pay him/her at least Flagstaff's minimum wage?

Answer: The employee has the right to file a complaint with the City's Office of Labor Standards or file a civil lawsuit against their employer without speaking to their employer.

What can an employer do to ensure all new and existing employees know their minimum wage rights and the employer responsibilities under the ordinance?

Answer: Under the ordinance, employers are required to provide all new and existing employees at the time of hire or by [January 1, 2018] whichever is later written notice of rights and responsibilities as prescribed under the ordinance. As an employer, complete and have your employee sign the employer signature form keeping this form for your records. Then provide the employee with the employee written notice for their records.

What remedies are available to an employee?

Answer: Employees are entitled to all remedies available to correct a violation of this law, including back pay, interest thereon and liquidated damages equal to twice the underpaid wages.

PROPOSITION 206

What was/is proposition 206?

Answer: Proposition 206 was a citizen initiative placed on the November 8, 2016 Arizona State ballot. The initiative called the "Fair Wages and Healthy Families Act" approved by State voters established a new state minimum wage schedule effective January 1, 2017, and entitles employees to accrue earned paid sick time beginning July 1, 2017. For more information about Proposition 206 visit www.azica.gov/divisions/labor-department.

What is the current State of Arizona minimum wage?

Answer: As of January 1, 2018, the State of Arizona's minimum wage is \$10.50 per hour.

What is going to be the State's minimum wage in the future?

Answer: Beginning January 1, 2018, the State of Arizona's minimum wage rate will increase to \$10.50 per hour. Thereafter, the Arizona minimum wage will continue to increase on January 1 thereafter as follows: January 1, 2019 to \$11.00 per hour and January 1, 2020 to \$12.00 per hour. After January 1, 202, cost of living increase.

Which minimum wage rate City, State or Federal applies if an employee works in Flagstaff?

Answer: Since Flagstaff has a higher minimum wage rate than the one set by Arizona or the Federal government, Flagstaff's minimum wage rate takes precedence and must be paid to all employees covered under the ordinance.

Does Flagstaff's new minimum wage law in change the overtime pay requirements?

Answer: No. Flagstaff's minimum wage law does not change the overtime requirements set forth under FLSA.

What is the overtime hours in Arizona?

Answer: The overtime hours in Arizona are any hours over 40 hours worked in a single week. Federal labor law requires overtime hours be paid at 1.5 times the normal hourly rate.

What are the penalties for employers for violating provisions under Flagstaff's minimum wage ordinance?

Answer: Penalties can range from \$250.00 per violation for first willful violation up to at least \$1,000 for subsequent violations. Additional civil penalties may also apply (i.e.; court costs, attorney fees, per employee/per day fines, etc.). The City's OLS will strive to achieve an equitable, consistent and fair resolution for all complaints when assessing civil penalties.

Can an employer take any adverse action against an employee for requesting to be paid Flagstaff's minimum wage or filing a complaint for any non-compliance with the ordinance?

Answer: No. An employer may not retaliate against an employee and it is unlawful to take adverse action against an employee who asserts his/her rights to receive Flagstaff's minimum wage, or for assisting any other person in doing so, or for informing any person about their rights. The prohibition against retaliation failure of employer to post notice of rights may include photos; claims regarding retaliation applies regardless of whether the city ultimately finds the employer to be out of compliance with the ordinance.

Is a Flagstaff employer still subject to the earned paid sick time regulation under proposition 206 (Fair Wages and Healthy Families Act)?

Answer: Yes. Under The "Fair Wages and Healthy Families Act," employers are subject to Arizona's earned paid sick time laws. Visit www.azica.gov

Is the City of Flagstaff enforcing the earned paid sick time?

Answer: No. The provisions under Proposition 206 "The Fair Labor and Healthy Families Act" are enforced by the State of Arizona's Industrial Commission.

As an employer do I follow federal, state (Arizona) or Flagstaff minimum wage laws?

Answer: An employer with employees performing or expected to perform (25) hours or more of work per year within the city limits of Flagstaff are required to pay employees no less than the Flagstaff's minimum wage rate in regard to minimum wage. Employers are also subject to the federal, state and other Flagstaff minimum wage regulations. When there are conflicting requirements in the laws, the employer must follow the stricter standard.