

Massachusetts's New Requirements for Calculating Tipped Employees' Wages

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In June 2018, Massachusetts Governor Charlie Baker signed into law An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday. As one part of the so-called "[grand bargain](#)" legislation, effective January 1, 2019, Massachusetts employers with tipped employees are now required to calculate tipped employees' wages at the end of *each shift* instead of at the end of each pay period. This change not only presents an additional administrative challenge but also makes it more likely that employers will be required to pay employees additional amounts to ensure that they receive at least minimum wage during slow shifts.

Like many states, Massachusetts allows employers to pay tipped employees at a "service rate" (\$4.35 in 2019) less than the basic minimum wage (\$12.00 in 2019) by claiming a "tip credit." To claim a tip credit, (1) the employer must inform affected employees in writing of how a tip credit works; (2) the employees must regularly receive gratuities exceeding \$20.00 each month; (3) the employees must retain all tips received by them, or tips must be distributed to them through a valid tip-pooling arrangement; and (4) the sum of the service rate and the tips received by the employees must equal or exceed the basic minimum wage. If the sum of an employee's service rate and tips is less than the basic minimum wage, the employer is required to pay the employee an amount sufficient to make up the difference. (Note: The [Massachusetts minimum wage](#) will rise \$0.75 per year until it reaches \$15.00 per hour in 2023; the service rate will rise \$0.60 per year until it reaches \$6.75 in 2023.)

Before January 1, 2019, employers were allowed to perform this calculation at the end of each pay period. Effective January 1, 2019, however, employers are required to perform it at the end of the employee's shift. Notably, while this change affects when employers must determine whether they owe tipped employees any amounts in addition to the service rate, it does not affect when employers must pay tipped employees.

To illustrate how the new law is to operate, the Massachusetts Office of the Attorney General has provided the following example of how employers are required to calculate a tipped employee's compensation:

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- In this example, assume that the minimum wage is \$12.00 per hour and the service rate is \$4.35 per hour
 - A restaurant server works one 5-hour shift on Tuesday and one 5-hour shift on Saturday during the same pay week
 - On Tuesday, the slow day, the employee earns \$21.75 in service rate wages + \$20.00 in tips for a total earned of \$41.75
 - The law requires that the employee receive at least \$60.00 for the shift (5 hours x \$12.00 minimum wage rate)
 - The employer is required to add \$18.25 to the employee's next paycheck to cover the differential for this shift
 - On Saturday, the busy day, the employee earns \$21.75 in service rate wages + \$100 in tips for a total earned of \$121.75. Since this total exceeds the \$12.00 per hour minimum wage rate for each hour worked, the employer is not required to add any amount to the employee's next paycheck for this shift.
 - Total gross wages to be paid to this employee for this pay week = \$181.75

As this example shows, calculating a tipped employee's compensation at the end of a shift, as opposed to the end of a pay period, is more likely to result in the employer being required to pay the employee an amount in addition to the service rate. Before January 1, 2019, the employer in the example would not have been required to add any amount to the employee's paycheck, as the higher tip total on the "busy day" would have offset the lower total on the "slow day." By contrast, under the new law, the employer owes the employee an additional \$18.25.

Employer Takeaways

The new law does not change when tipped employees must be *paid* in Massachusetts. Rather, for most Massachusetts employers with tipped employees, the law requires employers to change when they *calculate* tips to ensure that tipped employees receive at least minimum wage for hours worked during each shift. This change is likely to be challenging for many employers.

Massachusetts employers with tipped employees may want to review their payroll policies and practices to evaluate what steps they can take to comply with the law's requirement that tipped employee compensation be calculated, and the minimum wage rate met, on a shift-by-shift basis. In Massachusetts, failing to calculate and pay employee wages properly exposes employers to mandatory treble damages and attorneys' fees, as well as potential criminal penalties.

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