

## **NEW NORTH CAROLINA MINIMUM WAGE**

During the 2006 Session of the N.C. General Assembly, the minimum wage that employers are required to pay their employees was increased to “\$6.15 per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the federal Fair Labor Standards Act (FLSA), 29 U.S.C. 206(a)(1), as that wage may change from time to time, whichever is higher.” The current federal minimum wage is \$5.15 per hour; therefore, effective January 1, 2007, employers in North Carolina will be required to pay their employees at least \$6.15 per hour in order to comply with the new law. This means that the \$6.15 per hour state minimum wage applies to all employers doing business in North Carolina except for agricultural and domestic employees. The \$6.15 per hour state minimum wage also applies to the state of North Carolina, to county and local governments and to instrumentalities of government.

For employers who have “tipped employees,” there will also be a change in the required minimum rate of pay. Employers are permitted to take a credit, for a certain amount of tips earned by their employees, toward the employers’ payment of the minimum wage. However, for an employer to be able to count tips as wages and take a tip credit towards the minimum wage, the state labor law requires that tipped employees be notified in advance and be permitted to retain all tips, and requires that the employer maintains accurate and complete records of tips received by each employee and such tips must be certified by tipped employees monthly or for each pay period. Tip pooling is permitted as long as the tipped employee retains at least 85% of the tips they receive, which means the employer must maintain accurate and complete records of the tips received and the amount of tips earned under the tip pooling arrangement.

In North Carolina, the maximum amount of an employee’s hourly tips that employers are permitted to credit toward payment of the minimum wage is determined by reference to the federal FLSA. N.C. Gen. Stat. § 95-25.3(f) provides that “tips earned by a tipped employee may be counted as wages **only up to the amount** permitted in section 3(m) of the Fair Labor Standards Act.” Under Section 3(m) of the FLSA, an employer is allowed to count as wages a portion of the tips that a tipped employee receives – and this credit is equal to the minimum wage established under Section 6(a)(1) of the FLSA (\$5.15) and the amount the cash wage required to be paid such an employee on the date of the enactment of this Section 3(m) of the FLSA (\$2.13). This means that under Section 3(m), an employer must pay a tipped employee \$2.13 per hour, and may take a maximum tip credit of \$3.02 per hour (\$5.15 minus \$2.13) toward the payment of the federal minimum wage, provided that the employee earns at least \$3.02 per hour in tips.

Since the maximum tip credit permissible under the FLSA is currently set at \$3.02 per hour, that is the maximum tip credit an employer may take toward payment of the new North Carolina minimum wage, pursuant to N.C. Gen. Stat. § 95-25.3(f). Consequently, an employer may take credit for \$3.02 of an employee’s hourly tips, and the employer must pay the employee the difference between the new North Carolina minimum wage (\$6.15) and the maximum tip credit of \$3.02. In other words, the employer must pay \$3.13 an hour to tipped employees who earn at least \$3.02 per hour in tips. However, an employer must pay more than \$3.13 per hour if the tipped employee earns less than \$3.02 an hour in tips, as it is the employer’s responsibility to make sure that all tipped employees earn at least \$6.15 an hour in cash wages and tips.

North Carolina Department of Labor  
Wage and Hour Bureau  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
(919) 807-2796 or (toll-free NC only) 1-800-NC-LABOR  
Web site: <http://www.nclabor.com>