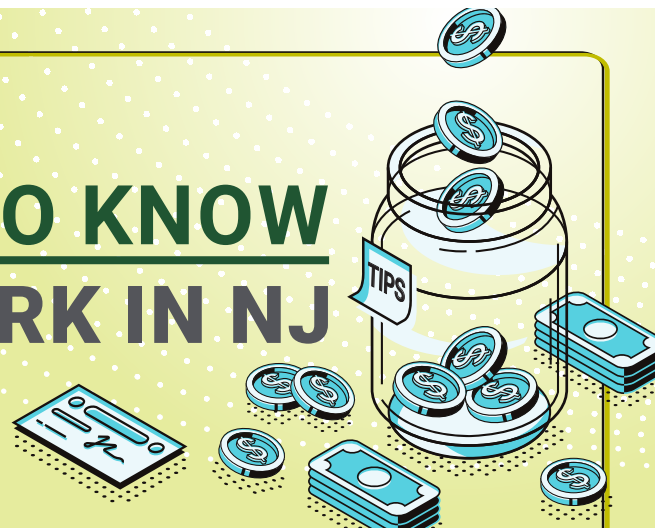


# WHAT YOU NEED TO KNOW ABOUT TIPPED WORK IN NJ



## MINIMUM WAGE REQUIREMENTS AND SPECIAL PROTECTIONS FOR TIPPED EMPLOYEES

[myworkrights.nj.gov](https://myworkrights.nj.gov)

On February 4, 2019, Gov. Phil Murphy signed **Public Law 2019, c. 32**, which amends the New Jersey Wage and Hour Law, increasing the state minimum hourly wage for most employees to \$15/hour incrementally over the course of five years. This law also permits employers of tipped employees to take a “tip credit” for a portion of the employee’s tips while paying the employee a minimum cash wage. **(Tip credit + minimum cash wage = state minimum wage.)**

If the employer of tipped employees chooses NOT to take a tip credit, then the employer must pay in cash the full state minimum hourly wage, or if the employer meets the requirements set forth under the law, then they may pay the state minimum hourly wage for employees of small employers and employees engaged in seasonal employment.

In order to implement the law, the New Jersey Department of Labor and Workforce Development (NJDOLE) adopted **amendments and new rules** within N.J.A.C. 12:56, including new N.J.A.C. 12:56-3.5, which contains protections specifically intended by the Department to protect the rights of tipped employees. Those special protections for tipped employees are described in detail below.

### TIPPED EMPLOYEES & NJ MINIMUM WAGE

Tipped employees whose employers take a tip credit must receive the full state minimum hourly wage. If the minimum cash wage plus the tip credit taken does not equal the full state minimum hourly wage, the employer must pay the employee the difference.

Effective Date	Minimum Cash Wage + Maximum Tip Credit		Must equal at least the state minimum wage* or employer must pay difference		
Jan. 1, 2020	\$3.13	<b>+</b>	\$7.87	<b>=</b>	\$11
Jan. 1, 2021	\$4.13		\$7.87		\$12
Jan. 1, 2022	\$5.13		\$7.87		\$13
Jan. 1, 2023	\$5.13		\$8.87		\$14
Jan. 1, 2024	\$5.13		\$9.87		\$15

\* For the minimum hourly wage schedule for employees of small businesses, and seasonal and agricultural employees, see [nj.gov/labor/forms\\_pdfs/wagehour/mw-571.pdf](https://nj.gov/labor/forms_pdfs/wagehour/mw-571.pdf).

## WHAT IS A TIP?

- A tip is money given to an employee by a customer in recognition of a service performed for the customer.
- A tip is made in addition to the amount charged for the service performed, and the customer decides if, to whom, and how much to tip.
- A tip can be a cash sum given directly to the employee, or it can also be given by another transfer method, such as when a customer pays by credit card and adds an amount to their card for the tip.
- Tips belong to the employee, whether or not the employer has taken a tip credit.

## IS A SERVICE CHARGE A TIP?

- No. If the employer's establishment charges a compulsory service charge, such as 15 percent of the amount of the bill, this cannot be counted as tip under NJ law, even if the employer eventually distributes the charge to their employees.

## FOR EXAMPLE

- Where negotiations between a hotel and a customer for banquet facilities include amounts for distribution to employees of the hotel, the amounts so distributed are not counted as tips.
- When a restaurant assesses an additional charge for parties over a certain number of people, this is not considered a tip under the law.

## WHO IS A TIPPED EMPLOYEE?

- A tipped employee is any worker (full-time, part-time, or temporary) engaged in an occupation in which they customarily and regularly receive more than \$30 per month in tips. An employee who customarily and regularly receives more than \$30 in tips over a one-month period, but occasionally does not, is also considered a tipped employee. For example, if an employee does not receive tips because they were out sick or on vacation, or because business was slow in a given week, they are still considered a tipped employee.
- Only tips kept by the employee count toward the \$30 threshold for tipped employee status. If an employee receives tips, but a portion gets redistributed to another employee via a tip pool (see below), then the amount redistributed is not included in the \$30 per month count.
- Not sure if you are a tipped employee? Email [wage.hour@dol.nj.gov](mailto:wage.hour@dol.nj.gov) and a staff member will help you answer this question.

## WHAT IS A TIP CREDIT?

- Under New Jersey Wage and Hour Law, an employer is permitted, but not required, to apply up to a set maximum amount of an employee's tips toward the employer's obligation to pay the full state minimum hourly wage. This is called taking a tip credit. The maximum tip credit allowed under the NJ Wage and Hour Law is scheduled to increase annually through 2024. **(See chart above).**
- In order for the employer to apply a tip credit, up to the maximum amount set forth under the law, the employer must demonstrate that the employee received at least that amount in actual tips.

## WHAT IS A TIP POOL?

- Tip pooling occurs when tipped employees combine all or some of their tips and redistribute the sum among themselves at the end of a work shift or other determined timeframe.
- An employer must notify its employees of any required tip pool contribution amount, may only take a tip credit for the amount of tips each employee ultimately receives, may not keep any of the employees' tips for any other purpose, and may not distribute them to non-tipped employees.

- Where the employer is taking a tip credit, once tips retrieved from the pool and cash wages from the employer are computed, an employee must receive the full state minimum hourly wage. If the hourly sum is less, the employer must make up the difference.

## WHAT IS THE MINIMUM CASH WAGE AN EMPLOYER MUST PAY A TIPPED EMPLOYEE IF THE EMPLOYER IS TAKING A TIP CREDIT?

- Effective January 2, 2020, employers applying a tip credit must pay tipped employees a minimum of \$3.13 per hour. (See chart above).
- **If the minimum cash wage plus the tips received by an employee do not equal at least the full state minimum hourly wage, then the employer must pay the employee the difference.**

### FOR EXAMPLE

- Pam is a server at a restaurant and works 40 hours a week. Before the COVID-19 pandemic hit, she made a weekly average of \$500 in tips, or \$12.50 an hour in tips. Her employer applied the maximum tip credit of \$7.87 per hour against the full state minimum hourly wage of \$11, and paid her a cash wage of \$3.13. Pam received \$15.63 an hour, on average, above the minimum wage of \$11 an hour. This use by the employer of the maximum tip credit is lawful.
- With most customers now ordering takeout, Pam's tips are down. She makes an average of \$200 in tips per 40-hour work week, or \$5 an hour. Now an hourly cash wage of \$3.13 plus \$5 an hour in tips equals \$8.13, which is below the full state minimum hourly wage. Pam's employer must pay her the difference of \$2.87 ( $\$3.13 + \$5 + \$2.87 = \$11$ ) to ensure she receives at least the State minimum hourly wage of \$11/hour.

## UNDER WHAT CONDITIONS CAN AN EMPLOYER TAKE A TIP CREDIT?

Under New Jersey Wage and Hour Law, an employer is eligible to apply a tip credit against the full state minimum hourly wage only if the employer has informed its tipped employees in advance of the following:

- The amount of the cash wage that is to be paid to the tipped employee;
- The amount of the tip credit, which will be claimed by the employer, which may not exceed the value of the tips actually received by the employee;
- That all tips received by the tipped employee must be retained by the employee, except in case of a valid tip pool arrangement limited to tipped employees; and
- That the tip credit shall not apply to any employee who has not been informed of the requirements of **N.J.A.C. 12:56-3.5**.

## WHAT HAPPENS TO AN EMPLOYEE'S PAY WHEN THEY ARE NOT DOING TIPPED WORK?

- A tipped employee may spend some time performing non-tipped duties related to their tipped work. However, in NJ, when a tipped employee spends more than 20 percent of their time performing related non-tipped duties, the employer is prohibited from taking a tip credit for the time spent performing the related non-tipped duties. That is, for the time spent performing the related non-tipped duties, the employer must pay the full state minimum hourly wage. This is referred to as the 80/20 rule.

### FOR EXAMPLE

- Santiago spends 30 hours styling hair and 10 hours preparing hair coloring mixtures and folding towels. His employer can apply a tip credit against the full state minimum hourly wage for the 30 hours of hair styling, but not for the 10 hours spent on related non-tipped duties, as those 10 hours of non-tipped work account for 25 percent of Santiago's work time.
- Desiree works as a waitress 30 hours per week. She spends 5 hours a week folding napkins and setting tables. Her employer could take a tip credit against each of the 30 hours as the five hours of non-tipped work equal only 17 percent of her total work hours.

## WHAT HAPPENS TO THE EMPLOYER TIP CREDIT IF AN EMPLOYEE HAS TWO DIFFERENT JOBS AT THE SAME ESTABLISHMENT, AND ONLY ONE IS TIPPED WORK?

- For the job for which the employee customarily and regularly receives at least \$30 per month in tips (and, therefore, is considered a tipped employee), the employer may take a tip credit for hours worked in that job.
- For the job for which the employee does not customarily and regularly receive at least \$30 per month in tips (and, therefore, is not considered a tipped employee), the employer may not take a tip credit.
- For example, Trinh works as an accountant for a nail salon, 20 hours a week. She also works there as a nail stylist for another 20 hours a week, and customarily and regularly receives more than \$30 per month in tips in that job. Her employer can only take a tip credit for the 20 hours she works as a nail stylist. For the remaining 20 hours a week of accounting work, the employer must pay Trinh the appropriate state minimum hourly wage.

## CAN AN EMPLOYER TAKE DEDUCTIONS FROM TIPS, INCLUDING TO COVER CREDIT CARD FEES?

- No, an employer is prohibited from using an employee's tips, whether or not they have taken a tip credit, for any reason other than as wages or in furtherance of a valid tip pool. This includes a prohibition against the employer using an employee's tips to pay any portion, however small, of the fee charged to the employer by a credit card company or other financial institution for the use of credit or debit cards in their businesses, including the processing of such credit or debit card transactions.

## CAN AN EMPLOYER DEDUCT FROM CASH WAGES OF TIPPED WORKERS?

- It depends. New Jersey's Wage Payment Law contains a list of permissible wage deductions. For example, it is permissible for an employer to make deductions from wages for payments authorized by the employee or their collective bargaining agent for rental of work clothing or for the laundering or dry cleaning of work clothing. However, deductions from wages other than those listed in the Wage Payment Law, such as for breakage or cash register shortages, are unlawful.

## HOW IS OVERTIME CALCULATED FOR TIPPED WORK?

- Overtime pay must be 1.5 times an employee's hourly rate of pay for any hours worked over 40 hours per week. **When an employer takes a tip credit, overtime is calculated on the *full* minimum hourly wage, not the lower cash wage payment.** The employer cannot take a larger tip credit for an overtime hour than for a straight time hour – i.e., no more than \$7.87 in 2020.
- For example, a tipped employee who works 44 hours in a week must be paid \$16.50 an hour for the 4 overtime hours, or \$66 ( $\$11 \times 1.5 \times 4 = \$66$ ).

## ARE TIPPED EMPLOYEES ENTITLED TO ANY PAID TIME OFF?

- Under the NJ Earned Sick Leave Law, almost all employees in New Jersey are entitled to up to 40 hours of paid leave to care for themselves or a loved one.
- When a tipped employee uses earned sick leave, the employer must pay them at their normal rate of pay. The employer is required to calculate the rate of pay for earned sick leave by adding together the employee's total earnings, including tips (but excluding overtime premium pay), for the seven most recent workdays when the employee did not take leave and dividing the sum by the number of hours the employee spend performing the work.
- Where it is not feasible to determine the employee's exact hourly wage for earned sick leave, the employer is to pay earned sick leave at the agreed upon hourly wage, but no less than the appropriate state minimum hourly wage.
- An employer may not take a tip credit during an employee's sick leave.
- Learn more at [mysickdays.nj.gov](https://mysickdays.nj.gov) and review your leave benefit eligibility at [getstarted.nj.gov/labor](https://getstarted.nj.gov/labor).

## WHAT IF AN EMPLOYEE IS UNDOCUMENTED OR LACKS FORMAL IMMIGRATION STATUS?

New Jersey Wage and Hour Law applies to all employees, regardless of immigration status. NJDOL is committed to serving all of New Jersey's employees and employers to advance labor standards in our state. Note that:

- NJDOL is a department of the State of New Jersey and is separate from the federal government.
- NJDOL will not share any information from an investigation with any federal immigration agency, unless legally required to do so.
- NJDOL employees do not ask about immigration or citizenship status and serve all workers regardless of immigration status.

## WHAT SHOULD I DO IF I THINK MY WORKPLACE RIGHTS ARE BEING VIOLATED?

- Write down the hours you work per day, how you are paid, and any other work conditions you are concerned about. This documentation will help NJDOL assist you.
- As soon as possible, file a complaint, called a "wage claim," online at <https://wagehour.dol.state.nj.us/default.htm>. You can have an advocate or trusted person help or file a claim on your behalf. A group of workers can choose to file together.
- You may file anonymously **by mail** only. Please note that if you file anonymously, you will not get status updates about your claim. You won't receive any information about the claim unless a resolution is reached and wages due are sent as part of the resolution.

## CAN MY EMPLOYER FIRE ME FOR RAISING CONCERNS ABOUT MY PAY OR WORKING CONDITIONS?

It is unlawful for an employer to retaliate against an employee who reports labor standards violations. Retaliation includes termination, demotion, or other adverse action. While NJDOL cannot guarantee that an employee will not experience retaliation for contacting us, we do enforce penalties against employers who are found to have retaliated against employees.

## WHAT ARE THE CONSEQUENCES FOR EMPLOYERS WHO DO NOT COMPLY WITH THE LAWS ON TIPPED WORK?

- An employer who violates any provisions of New Jersey's Wage and Hour Laws could face penalties and fees. These are set forth in **N.J.S.A. 34:11-56a22**.

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The full text of the regulations can be found here: [www.nj.gov/labor/forms\\_pdfs/legal/2020/52N.J.R.1562\(a\).pdf](http://www.nj.gov/labor/forms_pdfs/legal/2020/52N.J.R.1562(a).pdf)

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For more information contact NJDOL at [wage.hour@dol.nj.gov](mailto:wage.hour@dol.nj.gov).

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For required employer posters on employee rights, including the Wage and Hour Law see [nj.gov/labor](http://nj.gov/labor).



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