
NOTE: The Industrial Commission of Arizona has received a large volume of inquiries concerning Proposition 206, The Fair Wages and Healthy Families Act (the “Act”). In the interest of providing a prompt response to the inquiries, the Commission provides the following answers to frequently asked questions. Because the Act modifies Arizona’s existing minimum wage laws and creates earned paid sick time requirements, these answers may be inconsistent with other information found on the website. To the extent that there are such inconsistencies, this information controls.

DISCLAIMER: This is an unofficial publication of the Industrial Commission of Arizona. All information provided herein is for informational purposes only and is not intended as legal advice. This information should not be used as a replacement for the Fair Wages and Healthy Families Act or the advice of qualified legal counsel.

FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT MINIMUM WAGE AND EARNED PAID SICK TIME

Proposition 206, the Fair Wages and Healthy Families Act (the “Act”), gives the Industrial Commission of Arizona authority to enforce and implement the Act’s minimum wage and earned paid sick time requirements. The following information is derived from the language of the Act and current administrative rules found in Title 20, Chapter 5, Article 12 of the Arizona Administrative Code.

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Proposition 206 – The Fair Wages and Healthy Families Act

What is Proposition 206 – The Fair Wages and Healthy Families Act?

Proposition 206, the Fair Wages and Healthy Families Act (the “Act”), was a ballot initiative on the November 8, 2016 Arizona ballot. It was approved by over 58% of voters. The Act establishes a [new state minimum wage](#) effective January 1, 2017, and entitles employees to accrue [earned paid sick time](#) beginning July 1, 2017. For more information about minimum wage requirements, click [here](#). For more information about earned paid sick time requirements, click [here](#). To view the entire text of Proposition 206, click [here](#).

Has the pending legal challenge to Proposition 206 prevented the new minimum wage laws from going into effect on January 1, 2017?

No. On December 15, 2016, a group of Arizona businesses, Chambers of Commerce, and individual citizens filed a lawsuit, challenging the constitutionality of Proposition 206, the Fair Wages and Healthy Families Act (the “Act”). On December 21, 2016, the trial court denied a motion to temporarily halt implementation of the Act pending resolution of the legal challenge. The trial court’s ruling was appealed to the Arizona Supreme Court. On December 29, 2016, the Supreme Court denied a request

to temporarily halt implementation of the Act while the Court considers whether to take up the appeal. As a result, employers are required to comply with the minimum wage requirements under the Act beginning on January 1, 2017. The Industrial Commission will promptly update this information as the case develops.

What employers are affected by Proposition 206 – The Fair Wages and Healthy Families Act?

Proposition 206, the Fair Wages and Healthy Families Act (the “Act”), applies to all “employers.”

In the minimum wage context, Arizona law broadly defines “employer” 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, or a small business. Of note, “small businesses” are excluded from the definition and are exempt from the minimum wage requirements. For further information about the small business exemption, see [Which employers are subject to the Arizona’s minimum wage laws?](#)

Notably, the Act does not change the definition of “employer” for purposes of minimum wage. Therefore, in general, if an employer was subject to Arizona’s minimum wage laws prior to approval of Proposition 206, the employer will be subject to the Act’s new minimum wage requirements.

In the earned paid sick time context, “employer” is defined similarly, but does not exempt “small businesses.” Under the Act, an “employer” for purposes of earned paid sick time is 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 or the United States. For further information, see [Which employers are subject to earned paid sick time laws?](#) Therefore, even “small businesses” that are exempt from the minimum wage requirements are subject to the Act’s earned paid sick time requirements.

Does Proposition 206 – The Fair Wages and Healthy Families Act impose new posting and recordkeeping requirements?

Yes. Employers subject to Arizona’s minimum wage laws are required to comply with notice, posting, and recordkeeping requirements pertaining to minimum wage. The requirements include: (1) posting minimum wage notices in the workplace; (2) providing employees with the employer’s business name, address, and telephone number in writing upon hire; and (3) maintaining payroll records in accordance with Arizona’s statutes and rules. For more information about these requirements, see [What kind of recordkeeping is required by Arizona’s minimum wage laws?](#) For more information about which employers are subject to Arizona’s minimum wage laws, see [Which employers are subject to Arizona’s minimum wage laws?](#)

The Industrial Commission’s 2017 model minimum wage and earned paid sick time notices are available [here](#),

Employers subject to earned paid sick time laws are similarly 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](#).

Proposition 206 permits the Industrial Commission to adopt rules to reduce or waive posting and recordkeeping requirements for "small employers" who would be unreasonably burdened by the statutory requirements. Current Arizona rules permit a "small employer" to request relief from recordkeeping requirements in the minimum wage context. See A.A.C. R20-5-1220. "Small employer" is defined as a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue. For further information about requesting exemption from recordkeeping requirements, see [Are any businesses exempt from recordkeeping and posting requirements?](#)

A request for relief from the recordkeeping requirements must be submitted in writing to the Labor Department of the Industrial Commission of Arizona and must contain the following:

- The reasons for the request for relief;
- An alternate manner or method of making, keeping, and preserving records that will enable the Labor Department to determine hours worked and wages paid; and
- The signature of the employer or an authorized representative of the employer.

Employers can direct requests for relief from recordkeeping requirements to:

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

How does Flagstaff's minimum wage ordinance change the requirements of Proposition 206?

Proposition 206, The Fair Wages and Healthy Families Act (the "Act"), enables counties, cities, and towns to regulate minimum wages and benefits within its geographic boundaries, provided that a county, city, or town does not permit a lower minimum wage than required by the Act. Flagstaff's Proposition 414, passed in 2016, created an ordinance that requires employers to pay employees a minimum wage higher than the State's minimum wage. The Flagstaff ordinance defines "employee" as any individual who works or is expected to work 25 hours or more in any given calendar year within the geographic boundaries of the City of Flagstaff.

The Industrial Commission does not enforce Flagstaff city ordinances. You can find the full text of Flagstaff's city ordinances [here](#).

Minimum Wage

What is Arizona's minimum wage?

Until January 1, 2017, Arizona's minimum wage will remain \$8.05 per hour. Beginning January 1, 2017, the Arizona minimum wage will be increased to \$10.00 per hour. The Industrial Commission's 2017 model minimum wage notice is available [here](#).

Under Proposition 206, the Fair Wages and Healthy Families Act (the "Act"), Arizona minimum wage will increase to \$10.50 per hour in 2018; \$11.00 per hour in 2019; and \$12.00 per hour in 2020. On January 1, 2021, the Arizona minimum wage will increase each year by the cost of living.

Employers required to comply with the Act's minimum wage requirements will be required to pay each employee wages not less than the applicable minimum wage for each hour worked. For more information about which employers are subject to Arizona's minimum wage laws, see [Which employers are subject to the Arizona's minimum wage laws?](#) Arizona does not allow a sub-minimum wage for different classes of employees (*e.g.*, young workers, students, etc.). Minimum wage must 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.

Note: Employers will still be permitted to pay employees receiving tips up to \$3.00 per hour less than the minimum wage, provided that the employees earn at least minimum wage for all hours worked each week (when tips are included). For further information regarding payment of minimum wages to tipped employees, see [What is the Arizona minimum wage for tipped employees?](#)

How does Proposition 206 – The Fair Wages and Healthy Families Act affect minimum wage?

Beginning January 1, 2017, the Arizona minimum wage will increase from \$8.05 per hour to \$10.00 per hour. The Industrial Commission's 2017 model minimum wage notice is available [here](#).

Under Proposition 206, the Fair Wages and Healthy Families Act, Arizona minimum wage will increase to \$10.50 per hour in 2018; \$11.00 per hour in 2019; and \$12.00 per hour in 2020. On January 1, 2021, the Arizona minimum wage will increase each year by the cost of living.

Note: Employers will still be permitted to pay employees receiving tips up to \$3.00 per hour less than the minimum wage, provided that the employees earn at least minimum wage for all hours worked each week (when tips are included). For further information regarding payment of minimum wages to tipped employees, see [What is the Arizona minimum wage for tipped employees?](#)

Which employers are subject to Arizona's minimum wage laws?

Arizona's minimum wage laws apply to all "employers." Arizona law defines an "employer" in the minimum wage context 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, or a small business. The definition of “employer” in the minimum wage context was not changed by Proposition 206, the Fair Wages and Healthy Families Act.

“Small businesses,” as the term is defined by Arizona law, are excluded from the definition of employer and are exempt from the minimum wage requirements. Arizona law defines a “small business as any corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than five hundred thousand dollars in gross annual revenue and that is exempt from having to pay a minimum wage under section 206(a) of title 29 of the United States Code.” Section 206(a) of title 29 of the United States Code is a subsection of the federal Fair Labor Standards Act (FLSA) that requires employers whose employees or enterprises are engaged in “commerce” to pay their employees a minimum wage.

Under the FLSA, “commerce” is a broad term that refers to any form of commercial interstate interaction. “Commerce” includes (but is not limited to) taking payments from out-of-state customers; processing payments that come from out-of-state banks or credit card issuers; using a telephone, fax machine, U.S. Mail, or email to communicate with someone in another state; driving or flying to another state for job duties; and loading, unloading, or using goods that come from an out-of-state supplier (assuming that the goods were purchased from the out-of-state supplier).

Due to these restrictive requirements, few businesses in today’s economy would qualify as exempt from having to pay minimum wage under either the FLSA or Arizona minimum wage statutes. Examples of small businesses that the ICA Labor Department has determined may meet the exemption are barbers and janitors who buy all of their supplies locally and accept only cash or checks from Arizona banks.

Are any employers or employees exempted from Arizona’s minimum wage laws?

Unlike the Federal Fair Labor Standards Act (which governs the payment of minimum wage on a federal level), Arizona’s minimum wage laws have very few exemptions. Arizona’s minimum wage requirements apply to any employee except the following:

- A person who is employed by a parent or a sibling.
- A person who is employed performing babysitting services in the employer’s home on a casual basis.
- A person employed by the State of Arizona or the United States government.
- A person employed in a “small business” grossing less than \$500,000 in annual revenue, if that small business is not required to pay minimum wage under the Federal Fair Labor Standards Act. This exclusion for small businesses under Arizona minimum wage law is very limited. Given current economic realities, most Arizona businesses who gross less than \$500,000 will still be subject to the Arizona minimum wage laws. For additional discussion of the “small business” exemption, see [the preceding question](#).

Does the Arizona minimum wage apply to part-time or temporary employees?

Yes. The Arizona minimum wage laws make no distinction between full-time, part-time, or temporary employees.

Does the Arizona minimum wage apply to independent contractors?

Except for the exemptions described [here](#), the Arizona minimum wage laws apply only to the payment of wages to employees. Arizona's minimum wage laws do not apply to independent contractors.

Does the Arizona minimum wage apply to volunteers?

No. An individual that works for another person without any express or implied compensation agreement is not an employee under Arizona minimum wage laws. This may include an individual that volunteers services for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those for which the individual proposes to volunteer.

May an employer take a credit against the minimum wage for tools or uniforms?

No. Unless included by a bona fide collective bargaining agreement applicable to the particular employee, an employer may not claim a credit towards minimum wage for the cost of any tools, equipment, uniforms, or any other garment worn by an employee as a condition of employment. This also includes the cleaning or maintenance of uniforms and tools.

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

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. If in any workweek the combined wages of an employee are less than the applicable minimum wage, the employer shall pay, in addition to sums already earned, no less than the difference between the amounts earned and the minimum wage as required under Arizona's minimum wage laws.

How does an employer determine whether a commissioned employee was paid at least minimum wage in a given workweek?

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 applicable minimum wage multiplied by the hours that the employee worked that workweek, the employer must make up the difference between the amount actually earned and the current minimum wage multiplied by the hours worked.

For example, if a commissioned employee earns \$200 in a 40-hour workweek (including all commissions) and the current minimum wage is \$10 per hour, Arizona's minimum wage laws require that the employee earned at least \$400 (40 hours x \$10 per hour). In this example, the employer would be responsible for paying the employee an additional \$200 to make up the difference between the employee's actual earnings and the required minimum wage.

For more information about the current minimum wage, see [What is Arizona's minimum wage?](#)

Is the Arizona minimum wage the same for both adult and minor employees?

Yes. There is no distinction made between adults and minors in Arizona's minimum wage laws.

What other responsibilities do employers have in the minimum wage context?

In addition to paying minimum wage, employers are required to:

- Keep accurate records of employee wages and hours ([unless the employer is granted an exception to the recordkeeping requirements](#)). Employers generally maintain these records in their ordinary business practice.
- Provide their business name, address, and telephone number in writing to employees upon hire.
- Allow inspection at the worksite of all payroll records by the Labor Department of the Industrial Commission of Arizona (hereafter, the "Labor Department").
- Furnish copies of payroll records requested by the Labor Department.
- Cooperate with the Labor Department's investigation into complaints of violation of Arizona minimum wage laws.
- Allow the Labor Department to interview employees.
- Post the Industrial Commission's minimum wage notice in a conspicuous place where employees can read the notice. This notice is available as a free download [here](#). Versions are available in both English and Spanish.

Are any businesses exempt from minimum wage recordkeeping and posting requirements?

Current Arizona rules permit a "small employer" to request relief from recordkeeping requirements in the minimum wage context. See A.A.C. R20-5-1220. A "small employer" is defined as a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.

Note: There is a difference between the defined terms "small employer" and "small business." Unlike "small business," which applies to exempting an employer altogether from minimum wage requirements, the definition of "small employer" does not restrict the employer from engaging in interstate commerce. For more information about the definition of "small business," see [Which employers are subject to Arizona's minimum wage laws?](#)

A request for relief from minimum wage recordkeeping requirements must be submitted in writing to the Labor Department of the Industrial Commission of Arizona and must contain the following:

- The reasons for the request for relief;
- An alternate manner or method of making, keeping, and preserving records that will enable the Labor Department to determine hours worked and wages paid; and
- The signature of the employer or an authorized representative of the employer.

Employers can direct requests for relief from recordkeeping requirements to:

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

What kind of recordkeeping is required by Arizona's minimum wage laws?

[Unless otherwise exempted from the recordkeeping requirements](#), employers subject to Arizona's minimum wage laws are required to keep records that employers generally maintain in their ordinary business practice, and track records required under the Federal Fair Labor Standards Act. Employers are required to maintain payroll records showing the hours worked and wages paid, including basic time and earning cards or sheets, wage rate tables, records of additions to or deductions from wages paid and any written agreement relied upon to calculate credits toward the minimum wage. Separate recordkeeping requirements are permitted for employees on fixed schedules and employees who are compensated on a salary basis at a rate that exceeds the minimum wage required under the Fair Wages and Healthy Families Act and who, under The Federal Fair Labor Standards, are an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales.

How long is an employer required to keep records required by Arizona's minimum wage laws?

Four years.

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

An employer who violates The Fair Wages and Healthy Families Act's recordkeeping and posting 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 in a disputed case. An employer has the right to rebut this presumption with evidence that the employer paid the employee the required minimum wage.

How can Arizona's minimum wage be higher than the federal minimum wage?

Under federal law, a state may require payment of a minimum wage that exceeds the federal minimum wage.

Which minimum wage law applies to Arizona employers – state or federal?

Most employers are subject to both federal and state minimum wage laws. When there are different requirements between the laws, employers must follow the requirement that is the most beneficial to the employee. Because Arizona's minimum wage laws require payment of a higher minimum wage than federal law, an Arizona employer who is subject to both laws must pay the Arizona minimum wage rate.

Can an employee agree to work for less than Arizona’s minimum wage?

No. The minimum wage obligation cannot be waived by any verbal agreement, written agreement, or employment contract.

Tipped Employees

What is the Arizona minimum wage for tipped employees?

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). However, if a tipped employee does not earn the required minimum wage after including tips, the employer is required to make up the difference. For more information about who qualifies as a tipped employee, see [What is a tipped employee?](#) For information about steps that an employer must take to assert a tip credit of up to \$3.00, see [What steps must an employer take to assert a “tip credit” of up to \\$3.00 per hour for tipped employees?](#)

What is a tipped employee?

A tipped employee is an employee who customarily and regularly receives tips, including the occupation of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender. The employee must actually receive the tip free of any control by the employer. The tip must be the property of the employee.

What steps must an employer take to assert a “tip credit” of up to \$3.00 per hour for tipped employees?

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). If an employer elects to utilize this tip credit provision, the employer must:

- Provide written notice to each employee prior to exercising the tip credit.
- Be able to show that the employee received at least the minimum wage when direct wages and the tip credit are combined.
- Permit the tipped employee to retain all tips, whether or not the employer elects to take a tip credit for tips received, except to the extent the employee participates in a valid tip pooling arrangement.

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.

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 (ACCRUAL BEGINS JULY 1, 2017)

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 (see [Arizona Revised Statutes § 23-373](#) for more information about what qualifies as 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.

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.

How much earned paid sick time must an employer offer an employee?

For employers with 15 or more employees: Employees must accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but employees are not entitled to accrue or use more than 40 hours of earned paid sick time per year, unless the employer selects a higher limit.

For employers with fewer than 15 employees: Employees must accrue a minimum of one hour of earned paid sick time for every 30 hours worked, but they are not entitled to accrue or use more than 24 hours of earned paid sick time per year, unless the employer sets a higher limit.

How should an employer determine how many employees it has for purposes of the earned paid sick time laws?

The Fair Wages and Healthy Families Act (the “Act”) counts everyone performing work for compensation, whether full-time, part-time, or on a temporary basis, as an employee. For purposes of determining the number of employees, an employer has 15 or more employees if it maintained 15 or more employees on the payroll for some portion of a day in each of 20 different calendar weeks (the weeks do not have to be consecutive) in the current or preceding year.

How does an employer determine the hourly wage rate for earned paid sick time purposes when an employee's pay rate varies (based on task performed or otherwise)?

Because Proposition 206 does not address this issue, additional legislative, regulatory, and/or judicial guidance may be forthcoming. Absent additional guidance, the Industrial Commission recommends that employers pay an hourly wage rate for earned paid sick time that is based on: (1) the actual wages the employee would have been paid, if known, for the period of time in which sick time is used; or (2) the average hourly rate of all wages paid during the previous 90 days.

How does an employer determine a commissioned employee's hourly wage rate for earned paid sick time purposes?

Because Proposition 206 does not address this issue, additional legislative, regulatory, and/or judicial guidance may be forthcoming. Absent additional guidance, the Industrial Commission recommends that employers pay commissioned employees an hourly wage for earned paid sick time that is based on the average hourly rate for all wages (including commissions) paid during the previous 90 days.

Is an employer required to provide notice to its employees concerning earned paid sick time rights and responsibilities?

Yes. Employers must give employees written notice of the following at the commencement of employment or by July 1, 2017, whichever is later:

- Employees are entitled to earned paid sick time;
- The amount of earned paid sick time that employees are entitled to accrue;
- The terms of use guaranteed by Arizona's earned paid sick time laws;
- That retaliation against employees who request or use earned paid sick time is prohibited;
- That each employee has the right to file a complaint if earned paid sick time is denied by the employer or the employee is subjected to retaliation for requesting or taking earned paid sick time; and
- Contact information for the Industrial Commission.

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

An employer must also provide employees either in or on an attachment to the employee's paycheck:

- The amount of earned paid sick time available to the employee;
- The amount of earned paid sick time taken by the employee to date in the year; and
- The amount of pay time the employee has received as earned paid sick time.

Can an employer loan earned paid sick time to an employee before the employee earns or accrues it?

Yes, at the employer's discretion.

How soon can an employee begin using accrued earned paid sick time?

An employee may use earned paid sick time as soon as it is accrued. However, an employer may require an employee hired after July 1, 2017 to wait 90 calendar days after the start of employment before using accrued earned paid sick time.

Is there a new hire probation period before earned paid sick leave begins to accrue?

No. Employees must accrue earned paid sick leave immediately upon hire. The employer, however, may require that employees hired after July 1, 2017 wait 90 days before they can use earned paid sick time.

How is the accrual of earned paid sick time calculated for exempt employees?

An employee who is exempt under the Fair Labor Standards Act is presumed to have worked 40 hours per workweek, unless the employee's normal workweek is less than 40 hours (in which case accrual of earned paid sick time is based on the employee's normal workweek).

Must an employer carry forward balances of earned paid sick time at the end of a year to the next year?

Yes, unless an employer elects to pay an employee for unused earned paid sick time at the end of the year *and* provides the employee with an amount of earned paid sick time that meets or exceeds the requirements of the Article that is available for the employee's immediate use at the beginning of the subsequent year. This way, the employer can reduce an employee's unused earned paid sick time balance at the end of a year, provided that the employer gives the employee a year's worth of earned paid time at the beginning of the following year.

Take, for example, an employer with more than 20 employees that has an employee with an 80-hour earned paid sick time balance. If the employer wants to reduce that employee's unused earned paid sick time at year's end, it may pay the employee for unused earned paid sick time as long as it provides the employee with a year's worth of sick time at the beginning of the subsequent year (and the employee can use it at the beginning of the subsequent year).

What happens to accrued earned paid sick time if an employee is relocated or transferred within the same company?

The employee retains all accrued earned paid sick time already accrued at the prior division, entity, or location.

What happens to accrued earned paid sick time if an employee is separated from employment and later rehired?

If rehire occurs within nine months of separation from the same employer, any previously-accrued earned paid sick time that was not used must be reinstated and the employee is entitled to use and accrue earned paid sick time immediately at the re-commencement of employment.

What happens to accrued earned paid sick time when one employer takes the place of an existing employer?

All employees of the original employer still employed by the successor employer are entitled to previously-accrued earned paid sick time and are entitled to use that earned paid sick time.

If an employer already has a paid-time-off policy, does it have to offer additional earned paid sick time?

If an employer has a paid leave policy that provides an amount of paid leave that meets or exceeds Arizona's earned paid sick time minimum requirements (and can be used for the same purposes and under the same conditions as the statutorily-required earned paid sick time), the employer is not required to provide additional earned paid sick time.

Is an employer required to pay an employee for accrued but unused earned paid sick time at separation?

No.

How does an employee request earned paid sick time?

A request to use earned paid sick time may be made orally, in writing, by electronic means, or by any other means acceptable to the employer. When possible, the request to use earned paid sick time must include the expected duration of the absence.

Must an employee give an employer advance notice of intent to use earned paid sick leave?

When foreseeable, an employee must make a good faith effort to provide notice of the need to use earned paid sick time in advance and should schedule the leave in a manner that does not unduly disrupt the employer's operations.

Can an employer require prior notice of the need to use earned paid sick time when the need is not foreseeable?

Yes, provided that the employer provides a written policy that contains procedures for providing notice. If the employer does not provide an employee with a copy of the written policy, the employer cannot deny the use of earned paid sick time for the employee's failure to follow the policy.

Can an employer require that an employee seeking to use earned paid sick leave search for or find a replacement worker to cover the employee's absence?

No.

What is the smallest increment of earned paid sick time that an employee can use?

Earned paid sick time can either be used in hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time, whichever is smaller. For example, if an employer's payroll system accounts for absences or use of other time in 6 minute increments (a tenth of an hour), an employee may use earned paid sick time in this same increment.

Can an employer require employees to document absences in which earned paid sick time was used?

Yes, but only if an employee uses earned paid sick time on three or more consecutive work days. Where earned paid sick time is used on three or more consecutive work days, an employer can require reasonable documentation that the earned paid sick time was used for purposes permitted by Arizona's earned paid sick time laws. For further information about permitted uses of earned paid sick time, see [What can earned paid sick time be used for?](#)

Reasonable documentation includes documentation signed by a health care professional indicating that the earned paid sick time is necessary. In the case of domestic violence, sexual violence, abuse or stalking, the following documents are considered reasonable:

- A police report;
- A protective order, injunction against harassment, general court order, or other evidence from a court or prosecuting attorney;
- A signed statement from a domestic violence or sexual violence program, or victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual abuse, or stalking;
- A signed statement from a witness advocate concerning services from a victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual abuse, or stalking;
- A signed statement from an attorney, member of the clergy, or a medical or other professional affirming that the employee or employee's family member is receiving services related to domestic violence, sexual abuse, or stalking ; or
- An employee's legible, written statement concerning status of the employee or the employee's family member as a victim of domestic violence, sexual violence, abuse, or stalking that signals the employee's identity and (if applicable) relationship to the family member.

Can an employer require that an employee using earned paid sick time explain the nature of the relevant health condition or the details of the domestic violence, sexual violence, abuse, or stalking?

No. Although an employer can require reasonable documentation of absences of three or more consecutive work days, an employer may not require that an employee specify the relevant health condition or the details of domestic violence, sexual violence, abuse or stalking. See [Can an employer require employees to document absences in which earned paid sick time was used?](#)

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 recordkeeping is required by Arizona's earned paid sick time laws?

Unless otherwise exempted from the 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](#).

Proposition 206 permits the Industrial Commission to adopt rules to reduce or waive posting and recordkeeping requirements for “small employers” who would be unreasonably burdened by the statutory requirements.

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?

Employees who believe that their employer is violating Arizona’s minimum wage laws may file a complaint with the Labor Department of the Industrial Commission of Arizona or file a civil lawsuit. To file a minimum wage complaint with the Labor Department online, please click [here](#). To file a minimum wage 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 minimum wage complaint and when must it be filed?

Any person or organization may file a complaint with the Labor Department of the Industrial Commission of Arizona alleging a minimum wage violation. An administrative minimum wage complaint must be filed within one year 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.