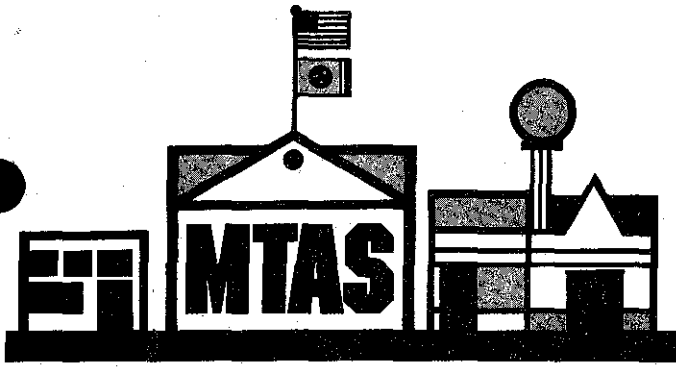




TECHNICAL BULLETIN



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MINIMUM WAGE CHANGES

by Richard L. Stokes

President Bush signed legislation (P.L. 101-157) amending the Fair Labor Standards Act (FLSA) and the minimum wage provisions provided by the Act. This represents the first increase in the minimum wage since 1981.

This bulletin focuses on specific sections of the Fair Labor Standards Act Amendment: Section 2. Minimum Wage Increase; Section 5. Tip Credit; Section 6. Training Wage; and Section 7. Maximum Hours Exemption for Employees Receiving Remedial Education.

Minimum Wage Increase

The new law amends Paragraph (1) of section 6(a) (29 U.S.C. 206(a)(1)) to state:

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engages in commerce or in the production of goods for commerce, wages at the following rate except as otherwise provided in this section, of not less than \$3.35 an hour during the period ending March 31, 1990, and not less than \$3.80 an hour during the year beginning April 1, 1990, and not less than \$4.25 an hour after March 31, 1991.

Employers need not pay employees hourly wages merely because the statute specifies a minimum wage on that basis. Employees may be paid on an hourly, salaried, commission, monthly, piecework, or any other basis, since pay covering each workweek equals or exceeds the minimum wage standard.

Tip Credit

Municipal employers who operate a restaurant or cafeteria who employ "tipped employees" as defined by the statute may be interested in the change in tip credits. "Tipped employees" engage in occupations where they customarily and regularly receive more than \$30 a month in tips. The statute now states:

In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased because tips by an amount determined by the employer, but not by an amount more than (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991, except that the amount of the increase because tips determined by the employer may not exceed the value of tips actually received by the employee.

Training Wage

The FLSA Amendment of 1989 provides for a sub-minimum wage for non-migrant agricultural or seasonal workers under the age of 20. It provides that a training wage of "... not less than \$3.35 an hour during the year beginning April 1, 1990 and after April 1, 1991, not less than \$3.35 or 85 percent of the minimum wage, whichever is greater."

Employers may pay eligible employees the wage prescribed while employed for the authorized period or while engaged in on-the-job training. The term "on-the-job training" means training offered to an individual while employed in productive work that provides training, technical, and other related skills essential to the full and adequate performance on the job.

An employee is initially eligible to be paid the sub-minimum wage for a total of 90 days. Workers employed by a different employer at the sub-minimum rate may be employed by another employer for an additional 90 days if the employer:

1. Notifies the Secretary of Labor annually of the positions at which each employee is to be employed at the sub-minimum rate;
2. Provides on-the-job training to such employees that meets the general criteria of the Secretary of Labor;
3. Maintains on file a copy of the training program that the employer will provide;

4. Provides a copy of the training program to the employees;
5. Posts in a conspicuous place a notice of the types of jobs for which the employer is providing on-the-job training; and
6. Sends to the Secretary of Labor annually a copy of the notice.

The authorized period begins April 1, 1990 and ends April 1, 1993. Employers may not pay eligible employees these sub-minimum wages, if any other individuals were laid off or terminated with the intention of filling the vacancy created by hiring an employee to be paid sub-minimum wages.

There are several limitations on using this training wage. The total period of eligibility an employee may be paid the sub-minimum wage may not exceed 180 days. The individual receiving the training wage is responsible for providing the proof of previous periods of employment with other employers. An employer's good faith reliance on the proof presented to the employer can be a complete defense to a charge that an employer has violated the Act.

The Secretary of Labor will issue regulations defining the proof required. The regulations shall establish minimal requirements for proof and may prescribe that an accurate list of the individual's employers and a statement of the dates and duration of employment with each employer.

During any month in which employees are to be employed under this section, the proportion of employee work hours to the total hours of employment may not exceed one-fourth or 25%. Additionally, no employer may take any action to displace employees (including reductions in hours, wages, or benefits) for hiring individuals at the sub-minimum wage. If the Secretary of Labor determines that an employer took an action violating this provision, the Secretary can issue an order disqualifying the employer from employing other individuals at this wage.

Maximum Hours Exemption for Employees Receiving Remedial Education

The FLSA adds a new subsection to the maximum hours provision of the law. Under the new subsection, any employer may employ a worker for a period (or periods) of not more than 10 hours in any workweek more than the maximum workweek without paying the compensation for overtime prescribed in the law (40 hours), if during that time the employee receives remedial education that is:

1. Provided to employees who lack a high school diploma or educational attainment at the eighth grade level;
2. Designed to provide reading and other basic skills at an eighth grade level or below; and
3. Not included in job specific training.

Further Information

For further information on minimum wage changes in the Fair Labor Standards Amendment of 1989, contact Richard L. Stokes, municipal personnel consultant, in Nashville at (615) 256-8141 or your MTAS municipal consultant.

The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee's Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League in providing technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, ordinance codification, and wastewater management.

MTAS TECHNICAL BULLETINS are information briefs that provide a timely review of topics of interest to Tennessee municipal officials. The BULLETINS are free to Tennessee local, state, and federal government officials and are available to others for \$2.00 each. Contact MTAS for a list of recent BULLETINS.

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