

## The Arkansas Minimum Wage Amendment

*Be it Enacted by the People of the State of Arkansas that the Arkansas Constitution is hereby amended as follows:*

Amendment \_\_\_\_\_

Every employer shall pay its employees a wage of not less than six dollars and fifteen cents per hour, an increase from the current minimum wage of five dollars and fifteen cents per hour, beginning January 1, 2007. The minimum wage shall be increased or decreased on January 1 of successive years by the increase or decrease in the cost of living. The increase or decrease in the cost of living shall be measured by the percentage increase or decrease as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index (All Urban Consumers, U.S. City Average for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase or decrease rounded to the nearest five cents.

Every employer of an employee engaged in any occupation in which gratuities have been customarily and usually constituted and have been recognized as a part of remuneration for hiring purposes shall be entitled to an allowance for gratuities as a part of the hourly wage rate provided in this amendment in an amount not to exceed fifty percent (50%) of the minimum wage established by this amendment, provided that the employee actually received that amount in gratuities and that the application of the foregoing gratuity allowances results in payment of wages other than gratuities to tipped employees of no less than fifty percent (50%) of the minimum wage prescribed by this amendment.

As used in this amendment: "employer" includes any individual, partnership, association, corporation, business trust, or entity, any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, and the state and any political subdivision thereof, including but not limited to any person, firm, corporation, or other entity subject to the minimum wage provisions of the federal Fair Labor Standards Act of 1938 but excludes any of the foregoing for any workweek in which fewer than four (4) employees are employed; "employee" is defined as it is under section 11-4-203(3) of the Arkansas Code as of November 1, 2005 (defining "employee" for the Minimum Wage Act of the State of Arkansas as any individual employed by an employer but excluding any individual employed in a bona fide executive, administrative, or professional capacity or as an outside commission-paid salesperson who customarily performs his or her services away from his or her employer's premises taking orders for goods or services; students performing services for any school, college, or university in which they are enrolled and are regularly attending classes, employees of the United States, any individual engaged in the activities of any educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to the organization gratuitously, bona fide independent contractors, certain small farm employees and other specified agricultural employees, employees principally engaged in the range production of livestock, employees of small forestry or lumbering operations, seasonal camp employees, and certain nonprofit child welfare house parents), except that this amendment shall not exclude employees of the state and certain political subdivisions

thereof; “employ” includes to suffer or to permit to work; and “Director” means the Director of the Arkansas Department of Labor or its successor agency.

The Director shall interpret, implement and enforce this amendment, including issuing regulations, making administrative findings of violations, and instituting legal actions against employers, including the State of Arkansas or a political subdivision, to enforce such findings. The Director shall establish workplace posting and record keeping requirements necessary or appropriate for the enforcement of this amendment. The Director shall establish appropriate civil penalties payable to the state for violations of the requirements and standards prescribed by this amendment or any implementing regulations.

Any person or organization may file a claim with the Director charging that an employer has violated this amendment as to any employee or other person. The Director shall promptly investigate each claim. The name of any employee identified in a claim shall be kept confidential until the Director issues an administrative complaint. No employer or other person shall discharge or take other adverse action against any person in retaliation for asserting any claim or right under this amendment, for assisting any other person in doing so, or for informing any person about their rights.

An employee may also bring an action for equitable and monetary relief against an employer, including the State of Arkansas or a political subdivision, in any court of competent jurisdiction for any violation of this amendment or any law or regulation implementing it within three years of the violation or of when the violation ceased if it was of a continuing nature, or within one year after final disposition by the Director of a complaint for the same violation, whichever is later. There shall be no exhaustion requirement, and no procedural, pleading, or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action.

Where an employer is found by the Director or a court to have violated any provision of this amendment, the employer shall pay any applicable civil penalties and pay the employee back wages, an additional equal amount as liquidated damages, and the employee’s costs and reasonable attorney fees. In the case of retaliation, the Director or a court shall set damages at an amount sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued.

This amendment shall be liberally construed in favor of its purposes and shall not limit any law or policy that requires payment of higher or supplemental wages or benefits. The general assembly may pass laws to implement the amendment, or extend its coverage, but in no manner restricting any of its provisions.

The provisions of this amendment are severable, and if any should be held invalid the remainder shall stand.