

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR HB 1015**

**Citations Affected:** IC 22-2-2-4.

**Synopsis:** Indiana minimum wage law. Conference Committee Report for EHB 1015. Makes changes in Indiana minimum wage law. Increases the Indiana minimum wage law from \$4.25 to \$5.15 per hour, effective March 1, 1999. Provides for a "tip credit" for purposes of determining the amount of cash wage paid to tipped employees. Provides that employees less than 20 years of age may be paid at the minimum wage of \$4.25 for up to the first three months after hire, effective March 1, 1999. Provides for overtime and compensatory time off. (The conference committee report adds the above items to the state minimum wage law.)

**Effective:** July 1, 1998.

Adopted

Rejected

## CONFERENCE COMMITTEE REPORT

**MR. PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1015 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1           Page 2, line 9, after "credit" strike "of up to forty percent (40%) of  
2           the applicable minimum wage".  
3           Page 2, line 10, after "employees." insert **"In determining the  
4           wage an employer is required to pay a tipped employee, the  
5           amount paid the employee by the employee's employer shall be an  
6           amount equal to:**  
7           **(1) the cash wage paid the employee which for purposes of  
8           the determination shall be not less than the cash wage  
9           required to be paid to employees covered under the federal  
10          Fair Labor Standards Act of 1938, as amended (29 U.S.C.  
11          210(m)(1)) on August 20, 1996, which amount is two dollars  
12          and thirteen cents (\$2.13) an hour; and  
13          (2) an additional amount on account of the tips received by  
14          the employee, which amount is equal to the difference  
15          between the wage specified in subdivision (1) and the wage in  
16          effect under subsections (b), (f), and (g)".  
17          Page 2, line 38, after "1998" insert ", and before March 1, 1999".  
18          Page 2, between lines 39 and 40, begin a new line block indented  
19          and insert:  
20          **"(g) Except as provided in subsections (c) and (i), every  
21          employer employing at least two (2) employees during a work week  
22          shall, in any work week in which the employer is subject to this  
23          chapter, pay each of the employees in any work week beginning on  
24          or after March 1, 1999, wages of not less than five dollars and****

1 **fifteen cents (\$5.15) an hour."**

2 Page 2, line 40, delete "(g)" and insert "(h)".

3 Page 3, after line 3, begin a new line block indented and insert:

4 **"(i) This subsection applies only to an employee who has not**  
 5 **attained the age of twenty (20) years. Instead of the rates**  
 6 **prescribed by subsections (c), (f), and (g), an employer may pay an**  
 7 **employee of the employer, during the first ninety (90) consecutive**  
 8 **calendar days after the employee is initially employed by the**  
 9 **employer, a wage which is not less than four dollars and**  
 10 **twenty-five cents (\$4.25) per hour, effective March 1, 1999.**  
 11 **However, no employer may take any action to displace employees**  
 12 **(including partial displacements such as reduction in hours, wages,**  
 13 **or employment benefits) for purposes of hiring individuals at the**  
 14 **wage authorized in this subsection.**

15 **(j) Except as otherwise provided in this section, no employer**  
 16 **shall employ any employee for a workweek longer than forty (40)**  
 17 **hours unless the employee receives compensation for employment**  
 18 **in excess of the hours above specified at a rate not less than one**  
 19 **and one-half (1.5) times the regular rate at which he is employed.**

20 **(k) For purposes of this section the following apply:**

21 **(1) "Overtime compensation" means the compensation**  
 22 **required by subsection (j).**

23 **(2) "Compensatory time" and "compensatory time off"**  
 24 **mean hours during which an employee is not working, which**  
 25 **are not counted as hours worked during the applicable**  
 26 **workweek or other work period for purposes of overtime**  
 27 **compensation, and for which the employee is compensated at**  
 28 **the employee's regular rate.**

29 **(3) "Regular rate" means the rate at which an employee is**  
 30 **employed is considered to include all remuneration for**  
 31 **employment paid to, or on behalf of, the employee, but is not**  
 32 **considered to include the following:**

33 **(A) Sums paid as gifts, payments in the nature of gifts**  
 34 **made at Christmas time or on other special occasions, as**  
 35 **a reward for service, the amounts of which are not**  
 36 **measured by or dependent on hours worked,**  
 37 **production, or efficiency.**

38 **(B) Payments made for occasional periods when no**  
 39 **work is performed due to vacation, holiday, illness,**  
 40 **failure of the employer to provide sufficient work, or**  
 41 **other similar cause, reasonable payments for traveling**  
 42 **expenses, or other expenses, incurred by an employee in**  
 43 **the furtherance of his employer's interests and properly**  
 44 **reimbursable by the employer, and other similar**  
 45 **payments to an employee which are not made as**  
 46 **compensation for his hours of employment.**

47 **(C) Sums paid in recognition of services performed**  
 48 **during a given period if:**

49 **(i) both the fact that payment is to be made and the**  
 50 **amount of the payment are determined at the sole**  
 51 **discretion of the employer at or near the end of the**

- 1 period and not pursuant to any prior contract,  
2 agreement, or promise causing the employee to  
3 expect the payments regularly;
- 4 (ii) the payments are made pursuant to a bona fide  
5 profit sharing plan or trust or bona fide thrift or  
6 savings plan, meeting the requirements of the  
7 administrator set forth in appropriately issued  
8 regulations, having due regard among other  
9 relevant factors, to the extent to which the amounts  
10 paid to the employee are determined without  
11 regard to hours of work, production, or efficiency;  
12 or
- 13 (iii) the payments are talent fees paid to performers,  
14 including announcers, on radio and television  
15 programs.
- 16 (D) Contributions irrevocably made by an employer to  
17 a trustee or third person pursuant to a bona fide plan  
18 for providing old age, retirement, life, accident, or  
19 health insurance or similar benefits for employees.
- 20 (E) Extra compensation provided by a premium rate  
21 paid for certain hours worked by the employee in any  
22 day or workweek because those hours are hours worked  
23 in excess of eight (8) in a day or in excess of the  
24 maximum workweek applicable to the employee under  
25 subsection (h) or in excess of the employee's normal  
26 working hours or regular working hours, as the case  
27 may be.
- 28 (F) Extra compensation provided by a premium rate  
29 paid for work by the employee on Saturdays, Sundays,  
30 holidays, or regular days of rest, or on the sixth or  
31 seventh day of the workweek, where the premium rate  
32 is not less than one and one-half (1.5) times the rate  
33 established in good faith for like work performed in  
34 nonovertime hours on other days.
- 35 (G) Extra compensation provided by a premium rate  
36 paid to the employee, in pursuance of an applicable  
37 employment contract or collective bargaining  
38 agreement, for work outside of the hours established in  
39 good faith by the contract or agreement as the basic,  
40 normal, or regular workday (not exceeding eight hours)  
41 or workweek (not exceeding the maximum workweek  
42 applicable to the employee under subsection (a)) where  
43 the premium rate is not less than one and one-half (1.5)  
44 times the rate established in good faith by the contract  
45 or agreement for like work performed during the  
46 workday or workweek.
- 47 (I) No employer shall be considered to have violated subsection  
48 (j) by employing any employee for a workweek in excess of that  
49 specified in subsection (a) without paying the compensation for  
50 overtime employment prescribed therein if the employee is so  
51 employed:

1 (1) in pursuance of an agreement, made as a result of  
2 collective bargaining by representatives of employees  
3 certified as bona fide by the National Labor Relations Board,  
4 which provides that no employee shall be employed more  
5 than one thousand forty (1,040) hours during any period of  
6 twenty-six (26) consecutive weeks; or

7 (2) in pursuance of an agreement, made as a result of  
8 collective bargaining by representatives of employees  
9 certified as bona fide by the National Labor Relations Board,  
10 which provides that during a specified period of fifty-two  
11 (52) consecutive weeks the employee shall be employed not  
12 more than two thousand two hundred forty (2,240) hours  
13 and shall be guaranteed not less than one thousand eight  
14 hundred forty (1,840) hours (or not less than forty-six (46)  
15 weeks at the normal number of hours worked per week, but  
16 not less than thirty (30) hours per week) and not more than  
17 two thousand eighty (2,080) hours of employment for which  
18 the employee shall receive compensation for all hours  
19 guaranteed or worked at rates not less than those applicable  
20 under the agreement to the work performed and for all  
21 hours in excess of the guaranty which are also in excess of  
22 the maximum workweek applicable to the employee under  
23 subsection (a) or two thousand eighty (2,080) in that period  
24 at rates not less than one and one-half (1.5) times the regular  
25 rate at which the employee is employed; or

26 (m) No employer shall be considered to have violated  
27 subsection (j) by employing any employee for a workweek in excess  
28 of the maximum workweek applicable to the employee under  
29 subsection (a) if the employee is employed pursuant to a bona fide  
30 individual contract, or pursuant to an agreement made as a result  
31 of collective bargaining by representatives of employees, if the  
32 duties of the employee necessitate irregular hours of work, and the  
33 contract or agreement includes the following:

34 (1) Specifies a regular rate of pay of not less than the  
35 minimum hourly rate provided in subsections (c), (f), (g), and  
36 (i) (whichever is applicable) and compensation at not less  
37 than one and one-half (1.5) times that rate for all hours  
38 worked in excess of the maximum workweek.

39 (2) Provides a weekly guaranty of pay for not more than  
40 sixty hours based on the rates so specified.

41 (n) No employer shall be considered to have violated  
42 subsection (j) by employing any employee for a workweek in excess  
43 of the maximum workweek applicable to the employee under that  
44 subsection if, pursuant to an agreement or understanding arrived  
45 at between the employer and the employee before performance of  
46 the work, the amount paid to the employee for the number of hours  
47 worked by him in the workweek in excess of the maximum  
48 workweek applicable to the employee under that subsection:

49 (1) in the case of an employee employed at piece rates, is  
50 computed at piece rates not less than one and one-half (1.5)  
51 times the bona fide piece rates; applicable to the same work

1 when performed during nonovertime hours; or  
2 (2) in the case of an employee performing two (2) or more  
3 kinds of work for which different hourly or piece rates have  
4 been established, is computed at rates not less than one and  
5 one-half (1.5) times those bona fide rates; applicable to the  
6 same work when performed during nonovertime hours; or  
7 (3) is computed at a rate not less than one and one-half (1.5)  
8 times the rate established by the agreement or understanding  
9 as the basic rate to be used in computing overtime  
10 compensation thereunder, provided that the rate so  
11 established shall be substantially equivalent to the average  
12 hourly earnings of the employee, exclusive of overtime  
13 premiums, in the particular work over a representative  
14 period of time;

15 and if the employee's average hourly earnings for the workweek  
16 exclusive of payments described in this section are not less than the  
17 minimum hourly rate required by applicable law, and extra  
18 overtime compensation is properly computed and paid on other  
19 forms of additional pay required to be included in computing the  
20 regular rate.

21 (o) Extra compensation paid as described in this section shall  
22 be creditable toward overtime compensation payable pursuant to  
23 this section.

24 (p) No employer shall be considered to have violated  
25 subsection (j) by employing any employee of a retail or service  
26 establishment for a workweek in excess of the applicable workweek  
27 specified therein, if:

28 (1) the regular rate of pay of the employee is in excess of one  
29 and one-half (1.5) times the minimum hourly rate applicable  
30 to the employee under section 2 of this chapter; and

31 (2) more than half of the employee's compensation for a  
32 representative period (not less than one (1) month)  
33 represents commissions on goods or services.

34 In determining the proportion of compensation representing  
35 commissions, all earnings resulting from the application of a bona  
36 fide commission rate shall be considered commissions on goods or  
37 services without regard to whether the computed commissions  
38 exceed the draw or guarantee.

39 (q) No employer engaged in the operation of a hospital or an  
40 establishment which is an institution primarily engaged in the care  
41 of the sick, the aged, or the mentally ill or defective who reside on  
42 the premises shall be considered to have violated subsection (j) if,  
43 pursuant to an agreement or understanding arrived at between the  
44 employer and the employee before performance of the work, a  
45 work period of fourteen (14) consecutive days is accepted in lieu of  
46 the workweek of seven (7) consecutive days for purposes of  
47 overtime computation and if, for his employment in excess of eight  
48 (8) hours in any workday and in excess of eighty (80) hours in that  
49 fourteen (14) day period, the employee receives compensation at a  
50 rate not less than one and one-half (1.5) times the regular rate at  
51 which the employee is employed.

1           (r) No employer shall employ any employee in domestic service  
2 in one (1) or more households for a workweek longer than forty  
3 (40) hours unless the employee receives compensation for that  
4 employment in accordance with subsection (j).

5           (s) In the case of an employee of an employer engaged in the  
6 business of operating a street, suburban or interurban electric  
7 railway, or local trolley or motorbus carrier (regardless of whether  
8 or not the railway or carrier is public or private or operated for  
9 profit or not for profit), in determining the hours of employment  
10 of such an employee to which the rate prescribed by subsection (j)  
11 applies there shall be excluded the hours the employee was  
12 employed in charter activities by the employer if both of the  
13 following apply:

14           (1) The employee's employment in the charter activities was  
15 pursuant to an agreement or understanding with the  
16 employer arrived at before engaging in that employment.

17           (2) If employment in the charter activities is not part of the  
18 employee's regular employment.

19           (t) Any employer may employ any employee for a period or  
20 periods of not more than ten (10) hours in the aggregate in any  
21 workweek in excess of the maximum workweek specified in  
22 subsection (j) without paying the compensation for overtime  
23 employment prescribed in subsection (j), if during that period or  
24 periods the employee is receiving remedial education that:

25           (1) is provided to employees who lack a high school diploma  
26 or educational attainment at the eighth grade level;

27           (2) is designed to provide reading and other basic skills at an  
28 eighth grade level or below; and

29           (3) does not include job specific training.

30           (u) Subsection (j) does not apply to an employee of a motion  
31 picture theater."

(Reference is to EHB 1015 as printed February 20, 1998.)

**Conference Committee Report**  
**on**  
**House Bill 1015**

**S**igned by:

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Senator Craycraft

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Representative Day

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Senator Server

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Representative Hoffman

**Senate Conferees**

**House Conferees**