



Tipped Wage Webinar

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Disclaimer: The information provided in this webinar does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available on this webinar are for general informational purposes only.

Tip Requirements in New Mexico

- Tips & Gratuities
- Tip Credit
- Tip Pooling
- Common Pitfalls
- Resources

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Tips: Background

Gratuity - A **gratuity** (also called a **tip**) is a sum of money customarily given by a client or customer to a service worker in addition to the basic price. Tipping is commonly given to certain service sector workers for a service performed, as opposed to money offered for a product or as part of a purchase price.

Not every county follows the tip system.

Tips in New Mexico: Bottom line

RULE: Tipped workers must receive at least the hourly minimum wage. If for a pay period, their tips do not make up the difference between the hourly rate at the regular minimum wage, the employer must make up that difference.

Statewide minimum wage

In New Mexico, the employer may consider tips as part of wages, but the tips combined with the employer's cash wage shall not equal less than the state or local minimum wage rate.

- Current: \$7.50/hr.
- January 1, 2020: \$9.00/hr.
- January 1, 2021: \$10.50/hr.
- January 1, 2022: \$11.50/hr.
- January 1, 2023: \$12.00/hr.

NM Tipped Wage

“Tipped wage” = cash wage = direct cash wage

- Current \$2.13/hr.
 - January 1, 2020 \$2.35/hr.
 - January 1, 2021 \$2.55/hr.
 - January 1, 2022 \$2.80/hr.
 - January 1, 2023 \$3.00/hr.
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- Tipped rate applies to “secondary student” employees, not \$8.50/hr.
 - Actual rate depends on “tip credit” you *may* claim

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Tip credit - Definition

A **tip credit** allows you to pay tipped employees less than the minimum wage as long as **tips** bring their earnings up to that minimum amount. The **credit** itself **is the** amount of money you **do not** have to pay in a particular pay period because that amount was earned in **tips** by your employee.

Tip credit

You may take a tip credit toward your minimum wage obligation for tipped employees equal to the difference between the required cash wage (state or local) and the applicable minimum wage (again, state or local).

Maximum tip credit - Statewide

Effective Date	Minimum Cash Wage	Maximum Tip Credit	State Min. Wage
January 1, 2020	\$2.35	\$6.65	\$9.00
January 1, 2021	\$2.55	\$7.95	\$10.50
January 1, 2022	\$2.80	\$8.70	\$11.50
January 1, 2023	\$3.00	\$9.00	\$12.00

Tip credit – Requirements

- Employers must provide oral or written notice to tipped employees of the use of the tip credit in advance.
- Must be able to show that tipped employees receive at least the applicable minimum wage when direct wages and the tip credit amount are combined.
- If the employee's tips combined with the direct wages do not equal the applicable minimum wage, the employer must make up the difference during the pay period.
- Maximum tip credit is only a *potential tip credit*.

Credits Don't Affect Tip Ownership

- Tips are the property of the employee whether or not the employer has taken a tip credit.
- Even if the employer does not take a tip credit, tips remain the property of the employee that received them and the employee cannot be required to turn over tips to the employer.
- The employer is prohibited from using an employee's tips, whether or not it has taken a tip credit, for any reason other than that which is statutorily permitted:
 - As a credit against your minimum wage obligation or
 - in furtherance of a valid tip pool.

Maximum tip credit – Local Jurisdictions

Jurisdiction	Minimum Direct Cash Wage	Maximum Tip Credit	Applicable Minimum Wage
Albuquerque	\$5.50	\$3.70	\$9.20
Bernalillo County	\$2.13	\$6.65	\$9.05
Santa Fe	\$2.13	\$9.67	\$11.80
Santa Fe County	\$3.53	\$8.27	\$11.80
Las Cruces	\$4.40*	\$6.06	\$10.10

*40% of city minimum wage, currently \$10.10

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Tip Pooling - Definition

Tip pooling is the collection of all (or a portion of all) the tips collected from directly tipped staff to be put into one large "pool." From here, tips are redistributed among a larger group of employees.

Tip pooling – Bottom line

Tips

- Tips are the property of the employee
- Must be retained by the employee
- Tip pooling is allowed in NM but only for wait staff, beginning Jan. 1, 2020

Valid tip pools

Beginning Jan. 1, 2020 in New Mexico,

- a valid tip pool **may not** include employees who do not customarily and regularly receive tips, such as cooks, janitors, or dishwashers.
- a tip pool may only include “wait staff” - servers, waiters, waitresses, runners, hosts, counter personnel (who serve customers), bussers, and service bartenders.

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Common tipped employee pitfalls

- Failing to communicate tip credit & tip pool to employees
- Thinking tips will make up for sub-minimum wage times across pay periods
- Requiring tipped employees to work off the clock
- Only tipped work is eligible for tip credit – watch out for “dual jobs” & 20% rule
- Not paying tipped workers overtime pay (time and a half applicable min. wage, not direct cash wage)

Common tipped employee pitfalls, continued

- Tip pool error
 - E.g., allowing non-tipped employees into tip pool
 - Allowing managers & owners in tip pool
- Failing to keep proper records
 - ER & EE must keep accurate daily record of all tips received, for withholding purposes
- Improper deductions
 - Must be lawful & authorized (in writing)
 - Must not drop take-home pay below minimum wage

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Resources to Assist Employers

- nmdws.communication@state.nm.us
- <https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Wage-and-Hour>
- Call NMDWS LRD at 505-841-4400
- Future webinars

Q/A

Local jurisdiction tipped wage rates

Albuquerque

- As of Jan. 1, 2019, the **tipped rate** is **\$5.50/hr.**
- Max tip credit is \$3.70/hr.

Bernalillo County (unincorporated areas)

- \$2.13 per hour
- Max tip credit is \$6.65/hr.

Local jurisdiction tipped wage rates

Santa Fe – City

- City ordinance doesn't specify a tipped rate, so state tipped rate applies (currently \$2.13/hr.)
- Employers can claim tip credit if worker customarily earns \$100/month in tips
- Employer must make up difference between tips received plus cash wage and Living Wage rate of \$11.80/hr.
- Max tip credit is \$9.67/hr.

Santa Fe – County (unincorporated areas)

- \$3.53/hr. “base wage”

Local jurisdiction tipped wage rates

Las Cruces – City

- Tipped wage is 40% of non-tipped rate
- $\$10.10/\text{hour} \times 40\% = \$4.04/\text{hr.}$
- Max tip credit is $\$6.06/\text{hr.}$