

---

---

# HOUSE BILL No. 1146

---

## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Minimum wage. Increases Indiana's minimum hourly wage to \$5.65 on September 1, 2005, \$6.15 on March 1, 2006, and \$7 on September 1, 2006.

**Effective:** July 1, 2005.

---

---

**Day**

---

---

January 6, 2005, read first time and referred to Committee on Employment and Labor.

---

---

**C**  
**O**  
**P**  
**Y**



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

C  
o  
p  
y

**HOUSE BILL No. 1146**



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-2-2-4 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Every employer employing  
3 four (4) or more employees during a work week shall:  
4 (1) in any work week beginning on or after July 1, 1968, in which  
5 ~~he the employer~~ is subject to the provisions of this chapter, pay  
6 each of ~~his~~ **the employer's** employees wages of not less than one  
7 dollar and twenty-five cents (\$1.25) per hour;  
8 (2) in any work week beginning on or after July 1, 1977, in which  
9 ~~he the employer~~ is subject to this chapter, pay each of ~~his~~ **the**  
10 **employer's** employees wages of not less than one dollar and fifty  
11 cents (\$1.50) per hour;  
12 (3) in any work week beginning on or after January 1, 1978, in  
13 which ~~he the employer~~ is subject to this chapter, pay each of ~~his~~ **the**  
14 **employer's** employees wages of not less than one dollar and  
15 seventy-five cents (\$1.75) per hour; and  
16 (4) in any work week beginning on or after January 1, 1979, in  
17 which ~~he the employer~~ is subject to this chapter, pay each of ~~his~~



1           **the employer's** employees wages of not less than two dollars (\$2)  
2           per hour.

3           (b) Except as provided in subsection (c), every employer employing  
4           at least two (2) employees during a work week shall, in any work week  
5           in which the employer is subject to this chapter, pay each of the  
6           employees in any work week beginning on and after July 1, 1990, and  
7           before October 1, 1998, wages of not less than three dollars and  
8           thirty-five cents (\$3.35) per hour.

9           (c) An employer subject to subsection (b) is permitted to apply a "tip  
10          credit" in determining the amount of cash wage paid to tipped  
11          employees. In determining the wage an employer is required to pay a  
12          tipped employee, the amount paid the employee by the employee's  
13          employer shall be an amount equal to:

14               (1) the cash wage paid the employee, which for purposes of the  
15               determination shall be not less than the cash wage required to be  
16               paid to employees covered under the federal Fair Labor Standards  
17               Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,  
18               1996, which amount is two dollars and thirteen cents (\$2.13) an  
19               hour; and

20               (2) an additional amount on account of the tips received by the  
21               employee, which amount is equal to the difference between the  
22               wage specified in subdivision (1) and the wage in effect under  
23               subsections (b), (f), ~~and~~ (g), **(h), (i), and (j)**.

24          An employer is responsible for supporting the amount of tip credit  
25          taken through reported tips by the employees.

26          (d) No employer having employees subject to any provisions of this  
27          section shall discriminate, within any establishment in which  
28          employees are employed, between employees on the basis of sex by  
29          paying to employees in such establishment a rate less than the rate at  
30          which ~~he~~ **the employer** pays wages to employees of the opposite sex  
31          in such establishment for equal work on jobs the performance of which  
32          requires equal skill, effort, and responsibility, and which are performed  
33          under similar working conditions, except where such payment is made  
34          pursuant to:

35               (1) a seniority system;  
36               (2) a merit system;  
37               (3) a system which measures earnings by quantity or quality of  
38               production; or  
39               (4) a differential based on any other factor other than sex.

40          (e) An employer who is paying a wage rate differential in violation  
41          of subsection (d) shall not, in order to comply with subsection (d),  
42          reduce the wage rate of any employee, and no labor organization, or its

C  
O  
P  
Y



1 agents, representing employees of an employer having employees  
 2 subject to subsection (d) shall cause or attempt to cause such an  
 3 employer to discriminate against an employee in violation of  
 4 subsection (d).

5 (f) Except as provided in subsection (c), every employer employing  
 6 at least two (2) employees during a work week shall, in any work week  
 7 in which the employer is subject to this chapter, pay each of the  
 8 employees in any work week beginning on or after October 1, 1998,  
 9 and before March 1, 1999, wages of not less than four dollars and  
 10 twenty-five cents (\$4.25) per hour.

11 (g) Except as provided in subsections (c) and ~~(f)~~; **(l)**, every employer  
 12 employing at least two (2) employees during a work week shall, in any  
 13 work week in which the employer is subject to this chapter, pay each  
 14 of the employees in any work week beginning on or after March 1,  
 15 1999, **and before September 1, 2005**, wages of not less than five  
 16 dollars and fifteen cents (\$5.15) an hour.

17 **(h) Except as provided in subsections (c) and (l), every employer**  
 18 **employing at least two (2) employees during a work week shall, in**  
 19 **any work week in which the employer is subject to this chapter,**  
 20 **pay each of the employees in any work week beginning on or after**  
 21 **September 1, 2005, and before March 1, 2006, wages of not less**  
 22 **than five dollars and sixty-five cents (\$5.65) an hour.**

23 **(i) Except as provided in subsections (c) and (l), every employer**  
 24 **employing at least two (2) employees during a work week shall, in**  
 25 **any work week in which the employer is subject to this chapter,**  
 26 **pay each of the employees in any work week beginning on or after**  
 27 **March 1, 2006, and before September 1, 2006, wages of not less**  
 28 **than six dollars and fifteen cents (\$6.15) an hour.**

29 **(j) Except as provided in subsections (c) and (l), every employer**  
 30 **employing at least two (2) employees during a work week shall, in**  
 31 **any work week in which the employer is subject to this chapter,**  
 32 **pay each of the employees in any work week beginning on or after**  
 33 **September 1, 2006, wages of not less than seven dollars (\$7) an**  
 34 **hour.**

35 ~~(h)~~ **(k)** This section does not apply if an employee:

36 (1) provides companionship services to the aged and infirm (as  
 37 defined in 29 CFR 552.6); and

38 (2) is employed by an employer or agency other than the family  
 39 or household using the companionship services, as provided in 29  
 40 CFR 552.109 (a).

41 ~~(i)~~ **(l)** This subsection applies only to an employee who has not  
 42 attained the age of twenty (20) years. Instead of the rates prescribed by

**C**  
**O**  
**P**  
**Y**



1 subsections (c), (f), ~~and (g)~~, **(h), (i), and (j)**, an employer may pay an  
 2 employee of the employer, during the first ninety (90) consecutive  
 3 calendar days after the employee is initially employed by the employer,  
 4 a wage which is not less than:

5 **(1) four dollars and twenty-five cents (\$4.25) per hour, effective**  
 6 **March 1, 1999;**

7 **(2) four dollars and seventy-five cents (\$4.75) per hour,**  
 8 **effective September 1, 2005;**

9 **(3) five dollars and twenty-five cents (\$5.25) per hour,**  
 10 **effective March 1, 2006; and**

11 **(4) six dollars and ten cents (\$6.10) per hour, effective**  
 12 **September 1, 2006.**

13 However, no employer may take any action to displace employees  
 14 (including partial displacements such as reduction in hours, wages, or  
 15 employment benefits) for purposes of hiring individuals at the wage  
 16 authorized in this subsection.

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

23 ~~(k)~~ **(n)** For purposes of this section the following apply:

24 (1) "Overtime compensation" means the compensation required  
 25 by subsection ~~(j)~~: **(m)**.

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

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

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

40 (B) Payments made for occasional periods when no work is  
 41 performed due to vacation, holiday, illness, failure of the  
 42 employer to provide sufficient work, or other similar cause,

C  
o  
p  
y



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his the employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for his the employee's hours of employment.

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

(i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly;

(ii) the payments are made pursuant to a bona fide profit sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the administrator set forth in appropriately issued regulations, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or

(iii) the payments are talent fees paid to performers, including announcers, on radio and television programs.

(D) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees.

(E) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or work week because those hours are hours worked in excess of eight (8) in a day or in excess of the maximum work week applicable to the employee under subsection (j) (m) or in excess of the employee's normal working hours or regular working hours, as the case may be.

(F) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the work week, where the premium rate is not less than one and one-half (1.5) times the rate established in good faith for like work performed in nonovertime hours on other days.

(G) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside

C  
o  
p  
y



1 of the hours established in good faith by the contract or  
 2 agreement as the basic, normal, or regular workday (not  
 3 exceeding eight **(8)** hours) or work week (not exceeding the  
 4 maximum work week applicable to the employee under  
 5 subsection ~~(j)~~ **(m)**) where the premium rate is not less than  
 6 one and one-half (1.5) times the rate established in good faith  
 7 by the contract or agreement for like work performed during  
 8 the workday or work week.

9 ~~(j)~~ **(o)** No employer shall be considered to have violated subsection  
 10 ~~(j)~~ **(m)** by employing any employee for a work week in excess of that  
 11 specified in subsection ~~(j)~~ **(m)** without paying the compensation for  
 12 overtime employment prescribed therein if the employee is so  
 13 employed:

14 (1) in pursuance of an agreement, made as a result of collective  
 15 bargaining by representatives of employees certified as bona fide  
 16 by the National Labor Relations Board, which provides that no  
 17 employee shall be employed more than one thousand forty (1,040)  
 18 hours during any period of twenty-six (26) consecutive weeks; or  
 19 (2) in pursuance of an agreement, made as a result of collective  
 20 bargaining by representatives of employees certified as bona fide  
 21 by the National Labor Relations Board, which provides that  
 22 during a specified period of fifty-two (52) consecutive weeks the  
 23 employee shall be employed not more than two thousand two  
 24 hundred forty (2,240) hours and shall be guaranteed not less than  
 25 one thousand eight hundred forty (1,840) hours (or not less than  
 26 forty-six (46) weeks at the normal number of hours worked per  
 27 week, but not less than thirty (30) hours per week) and not more  
 28 than two thousand eighty (2,080) hours of employment for which  
 29 the employee shall receive compensation for all hours guaranteed  
 30 or worked at rates not less than those applicable under the  
 31 agreement to the work performed and for all hours in excess of  
 32 the guaranty which are also in excess of the maximum work week  
 33 applicable to the employee under subsection ~~(j)~~ **(m)** or two  
 34 thousand eighty (2,080) in that period at rates not less than one  
 35 and one-half (1.5) times the regular rate at which the employee is  
 36 employed.

37 ~~(m)~~ **(p)** No employer shall be considered to have violated subsection  
 38 ~~(j)~~ **(m)** by employing any employee for a work week in excess of the  
 39 maximum work week applicable to the employee under subsection ~~(j)~~  
 40 **(m)** if the employee is employed pursuant to a bona fide individual  
 41 contract, or pursuant to an agreement made as a result of collective  
 42 bargaining by representatives of employees, if the duties of the

**C**  
**O**  
**P**  
**Y**



1 employee necessitate irregular hours of work, and the contract or  
 2 agreement includes the following:

3 (1) Specifies a regular rate of pay of not less than the minimum  
 4 hourly rate provided in subsections (c), ~~(f)~~, ~~(g)~~, and ~~(h)~~, (i), (j),  
 5 and ~~(l)~~ (whichever is applicable) and compensation at not less  
 6 than one and one-half (1.5) times that rate for all hours worked in  
 7 excess of the maximum work week.

8 (2) Provides a weekly guaranty of pay for not more than sixty ~~(60)~~  
 9 hours based on the rates so specified.

10 ~~(n)~~ ~~(q)~~ No employer shall be considered to have violated subsection  
 11 ~~(j)~~ ~~(m)~~ by employing any employee for a work week in excess of the  
 12 maximum work week applicable to the employee under that subsection  
 13 if, pursuant to an agreement or understanding arrived at between the  
 14 employer and the employee before performance of the work, the  
 15 amount paid to the employee for the number of hours worked by ~~him~~  
 16 **the employee** in the work week in excess of the maximum work week  
 17 applicable to the employee under that subsection:

18 (1) in the case of an employee employed at piece rates, is  
 19 computed at piece rates not less than one and one-half (1.5) times  
 20 the bona fide piece rates applicable to the same work when  
 21 performed during nonovertime hours;

22 (2) in the case of an employee performing two (2) or more kinds  
 23 of work for which different hourly or piece rates have been  
 24 established, is computed at rates not less than one and one-half  
 25 (1.5) times those bona fide rates applicable to the same work  
 26 when performed during nonovertime hours; or

27 (3) is computed at a rate not less than one and one-half (1.5) times  
 28 the rate established by the agreement or understanding as the  
 29 basic rate to be used in computing overtime compensation  
 30 thereunder, provided that the rate so established shall be  
 31 substantially equivalent to the average hourly earnings of the  
 32 employee, exclusive of overtime premiums, in the particular work  
 33 over a representative period of time;

34 and if the employee's average hourly earnings for the work week  
 35 exclusive of payments described in this section are not less than the  
 36 minimum hourly rate required by applicable law, and extra overtime  
 37 compensation is properly computed and paid on other forms of  
 38 additional pay required to be included in computing the regular rate.

39 ~~(o)~~ ~~(r)~~ Extra compensation paid as described in this section shall be  
 40 creditable toward overtime compensation payable pursuant to this  
 41 section.

42 ~~(p)~~ ~~(s)~~ No employer shall be considered to have violated subsection

C  
o  
p  
y





1 ~~(j)~~ **(m)** by employing any employee of a retail or service establishment  
2 for a work week in excess of the applicable work week specified  
3 therein, if:

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

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

10 In determining the proportion of compensation representing  
11 commissions, all earnings resulting from the application of a bona fide  
12 commission rate shall be considered commissions on goods or services  
13 without regard to whether the computed commissions exceed the draw  
14 or guarantee.

15 ~~(q)~~ **(t)** No employer engaged in the operation of a hospital or an  
16 establishment which is an institution primarily engaged in the care of  
17 the sick, the aged, or the mentally ill or defective who reside on the  
18 premises shall be considered to have violated subsection ~~(j)~~ **(m)** if,  
19 pursuant to an agreement or understanding arrived at between the  
20 employer and the employee before performance of the work, a work  
21 period of fourteen (14) consecutive days is accepted in lieu of the work  
22 week of seven (7) consecutive days for purposes of overtime  
23 computation and if, for ~~his~~ **the employee's** employment in excess of  
24 eight (8) hours in any workday and in excess of eighty (80) hours in  
25 that fourteen (14) day period, the employee receives compensation at  
26 a rate not less than one and one-half (1.5) times the regular rate at  
27 which the employee is employed.

28 ~~(r)~~ **(u)** No employer shall employ any employee in domestic service  
29 in one (1) or more households for a work week longer than forty (40)  
30 hours unless the employee receives compensation for that employment  
31 in accordance with subsection ~~(j)~~ **(m)**.

32 ~~(s)~~ **(v)** In the case of an employee of an employer engaged in the  
33 business of operating a street, a suburban or ~~an~~ interurban electric  
34 railway, or ~~a~~ local trolley or motorbus carrier (regardless of whether or  
35 not the railway or carrier is public or private or operated for profit or  
36 not for profit), in determining the hours of employment of such an  
37 employee to which the rate prescribed by subsection ~~(j)~~ **(m)** applies,  
38 there shall be excluded the hours the employee was employed in  
39 charter activities by the employer if both of the following apply:

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

C  
o  
p  
y



1           (2) If employment in the charter activities is not part of the  
2           employee's regular employment.  
3           ~~(t)~~ **(w)** Any employer may employ any employee for a period or  
4           periods of not more than ten (10) hours in the aggregate in any work  
5           week in excess of the maximum work week specified in subsection ~~(j)~~  
6           **(m)** without paying the compensation for overtime employment  
7           prescribed in subsection ~~(j)~~; **(m)**, if during that period or periods the  
8           employee is receiving remedial education that:  
9           (1) is provided to employees who lack a high school diploma or  
10          educational attainment at the eighth grade level;  
11          (2) is designed to provide reading and other basic skills at an  
12          eighth grade level or below; and  
13          (3) does not include job specific training.  
14          ~~(u)~~ **(x)** Subsection ~~(j)~~ **(m)** does not apply to an employee of a motion  
15          picture theater.  
16          ~~(v)~~ **(y)** Subsection ~~(j)~~ **(m)** does not apply to an employee of a  
17          seasonal amusement or recreational establishment, an organized camp,  
18          or a religious or nonprofit educational conference center that is exempt  
19          under the federal Fair Labor Standards Act of 1938, as amended (29  
20          U.S.C. 213).

C  
O  
P  
Y

