



# Massachusetts Rings in the New Year with Tweaks to Tip Credit Rules and Changes to Sunday/Holiday Premiums

Insights

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As you may remember, it was Christmas in July for employees when Massachusetts passed the “Grand Bargain,” among other things, putting the Commonwealth on a path to a \$15.00 minimum wage. When the clock struck midnight on January 1, 2019, however, not only did the minimum wage increase to \$12.00 per hour, but there was a significant change to the way employers calculate the tip credit and a decrease to the Sunday/Holiday mandatory premium rate that, though favorable, actually might complicate matters.

## Tip Credit Gets More Expensive

While the minimum wage increases and other provisions received top billing, a more subtle change to the way employers calculate the tip credit could prove costly. As in many states, Massachusetts allows tipped employees to be paid at a lower “service rate.” For 2019, the service rate is \$4.35 per hour. So long as an employee’s tips plus the service rate equal the minimum wage the employee has been properly paid. Historically, employers would total the service rate and the employee’s tips and as long as it averaged more than the minimum wage, the employer had met its obligation.

Under the new law, the tip credit must be calculated based on each shift. This means that employers may no longer “make up” for a bad night of tips with a good night of tips on another day. Calculating the tip credit after each shift may result in employers paying the same employee significantly more for the same amount of work. The change also adds the administrative burden of tracking an employee’s tips by shift and performing a separate calculation for each by the employer. Employers must immediately take steps to implement this change to avoid wage and hour liability.

## Sunday/Holiday Premium Pay Decreases

In one of the few “bargains” for employers to come out of the Grand Bargain, the premium pay obligation for Sunday work and certain holidays will scale down annually from 1.5x an employee’s regular rate until 2023, when it is eliminated entirely. For 2019, an employer must pay a premium of at least 1.4 an employee’s regular rate for any work on Sundays or the following holidays: Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Due to an error in drafting, the new premium pay rate does not currently apply to New Year’s Day, Columbus Day, or Veterans Day. While it is anticipated that the legislature will correct the error, the Attorney General has taken the position that employees must be paid 1.5x their regular rate on these days until such a change is made.

Employers must be mindful of these changes, especially if they have employees who work on a Sunday or holiday in a workweek with overtime hours. Employers will want to pay closer attention than they might have in the past regarding exclusions, credits, etc. for overtime purposes. Indeed, an employer might decide that it is less burdensome on the whole to continue to pay the higher 1.5 rate at least until the premium is no longer required by the state and is left to the parties.

### **Bottom Line**

Moving forward, employers are encouraged to review their wage and hour practices to conform to these 2019 changes as quickly as possible. Massachusetts has some of the most punitive wage and hour laws in the country, including automatic treble damages and attorneys' fees awards for even minor and unintentional mistakes. If you have questions, now is the time to consult with your employment attorney for advice regarding the best approach in your particular circumstances.

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