

# U.S. Labor Department reviewing Portland's minimum wage hike

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The U.S. Department of Labor is reviewing Portland's minimum wage ordinance, as well as similar laws in other cities and states, to see how it "intersects with federal tip credit law."

Federal law sets a \$5.12 maximum for the tip credit, which is the difference between tip earners' base wage and the minimum. Under the ordinance that took effect in Portland on Jan. 1, the difference is \$6.35. If workers' tips don't bring their overall pay to the minimum wage, the tip credit provision requires employers to make up the difference.



Richard Greenleaf of Gorham fills in the tip amount on a check after eating lunch with friends at DiMillo's On the Water Friday. Gabe Souza/Staff Photographer

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It's not clear how long the review will take or what would happen here or elsewhere if the wage laws are found to be illegal.

For now, restaurant owners are assuming that Portland's ordinance is legal, but they are anxious for the matter to be resolved.



“Someone has got to make a call,” said Steve DiMillo, the owner of DiMillo’s On the Water, who opposed the wage increase. “It’s time for someone to make a call, so they don’t leave operators or the wait staff not knowing what their pay should be.”

The issue was raised by Gov. Paul LePage on Thursday at a meeting of business leaders in Waterville, where he cited Portland’s new minimum wage ordinance as an example of why the minimum wage should be left alone.

His administration argues that Portland’s ordinance establishing a \$10.10 an hour minimum wage doesn’t comply with federal law because the base wage for tipped workers, such as waiters and waitresses, continues to be \$3.75, resulting in a \$6.35 difference that exceeds the \$5.12 maximum.

A spokesman for the U.S. Department of Labor said in an email late Thursday that it was not investigating any violations in Portland and was not planning any enforcement action. But in response to follow-up questions Friday, the federal agency indicated that it is conducting a wider review of minimum wage laws, which could affect other states and cities, as well as Portland.

“The Department is pleased that many states and localities have increased their minimum wage beyond the federal law in recent years and federal law does not prevent the establishment of higher state minimum wages,” the federal labor department said in a statement. “In light of the increases, however, the department is currently reviewing how those higher state minimum wages intersect with federal tip credit law. The maximum tip credit that an employer can currently claim under the (Fair Labor Standards Act) is \$5.12 per hour under federal law.”

## **OTHER STATES HAVE LARGER GAPS**

A Department of Labor spokesman said the wider review was not sparked by the LePage administration, but is in response to “a number of states and localities increasing their minimum wage beyond federal law.”

The Department of Labor website lists nine states with tip credits larger than \$5.12 an hour.

In Massachusetts, the state legislature approved a raise in the minimum wage to \$10 per hour Jan. 1. The tipped employee base wage rose to \$3.35, making the state’s so-called tip credit \$6.65.

Despite that possible inconsistency with federal law, no one from Washington, D.C., has intervened, said Colleen Quinn, a spokeswoman for the Massachusetts Department of Labor and Workforce Development.

“We haven’t heard anything during the process of raising our minimum wage and our tipped wage,” Quinn said.

No issues have been raised in Nebraska either, according to a labor spokesperson for that state. As of Jan. 1, the minimum wage for most workers rose to \$9 an hour, but the tipped wage remained at the federal minimum, making the so-called tip credit \$6.87.

Washington, D.C. – where the Department of Labor is headquartered – raised its minimum wage last summer to \$10.50 and now has a tip credit of \$7.73 – one of the largest gaps in the country between the minimum wage and the base wage for tip earners.

Addressing a crowd of about 60 business leaders in Waterville on Thursday, LePage suggested that legal action was imminent against Portland over its wage law.

“Let me tell you what’s happening,” LePage said. “Right now, Portland increased their minimum wage to \$10.10. They are violating federal law. Now it is coming out shortly, (that) they got to pay all the money back to people, all the money that has been paid has to be paid back to employers since Jan. 1. It’s going to be a mess.”

It’s unclear what LePage was talking about in terms of the repayment of wages. For the second day, the governor’s media staff didn’t respond to a request to speak with the governor on Friday, nor did it provide clarification or an

explanation.

## CITY ORDINANCE LEGAL, LABOR LAWYER SAYS

The city and an outside attorney who helped with the minimum wage ordinance in Portland said it complies with federal law because both the minimum wage and the base wage of tipped workers are higher than the federal minimums.

That interpretation was supported by Andrew Schmidt, a Portland-based attorney who specializes in workers' rights. Schmidt said he was "flabbergasted" by the governor's allegations, especially the suggestion that money would have to be repaid to employers.

"That makes absolutely no sense," he said. "As long as an employer is paying (the federal minimum base wage), there is no federal violation. Anyone in compliance with the Portland ordinance will automatically comply with (federal law)."

David Turin, who owns David's Restaurant, believes the city's ordinance is valid, and attributed the flare-up to a political disagreement.

"How can you get in trouble for paying someone more than" the federal minimum wage? Turin said. "It seems like it's a lot of political wrangling. It's going to be really, really awful if this gets dragged out and a bureaucrat files a lawsuit in November."

*Staff Writer Matt Byrne contributed to this report.*

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