FEBRUARY 1, 2024

Maryland's Minimum Wage Should Not Leave Tipped Workers Behind

Position Statement in Support of Senate Bill 160

Given before the Senate Finance Committee

Most Marylanders agree that working hard should leave you and your family with enough to afford the basics, and lawmakers and Gov. Moore affirmed this principle by enacting the Fair Wage Act of 2023. However, the tipped subminimum wage – a relic of racist New Deal-era compromises – forces too many workers to make do with wages that cannot support a family, let alone appropriately compensate for the hard work their jobs require. **The Maryland Center on Economic Policy supports Senate Bill 160** with sponsor amendment because it would put tipped workers on a path toward full minimum wage protection.

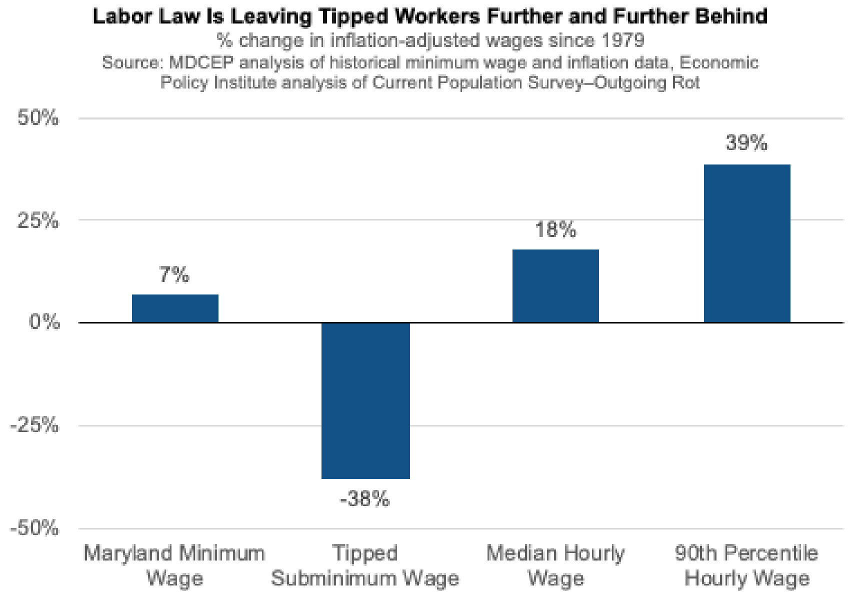
When Congress established the federal minimum wage in 1938, lawmakers specifically denied protections to workers in restaurants, hotels, and certain other service industries as a compromise to secure the support of racist southern Democrats.[i] Congress extended partial wage protections to these workers in 1966, but also created the subminimum wage, a carveout that allows employers to pay tipped workers less than the full minimum wage. The subminimum wage for tipped workers was unjust in 1966, and federal as well as state lawmakers have chosen to expand both its reach and its harm in the decades since:

- Congress originally imposed the subminimum wage on workers who regularly earn at least $20 per month in tips, equivalent to more than $180 today. Lawmakers raised this threshold to $30 in 1978, equivalent to more than $130 today. Lawmakers' failure to adjust this threshold in the last 46 years has effectively extended the tipped subminimum wage to a larger pool of workers who take home only nominal tips.[ii]
- Lawmakers originally set the tipped subminimum wage equal to half the standard wage floor. This brought the tipped wage to $2.13 per hour in 1991, equivalent to $4.71 today. However, Congress froze the federal tipped wage at this level in 1996 and has not updated it since.
- Maryland legislators have changed the formula for our tipped subminimum wage several times. It reached $3.63 per hour in 2009 – half of the standard federal wage floor – and lawmakers froze it at this value in 2014. Our tipped wage has lost more than a quarter of its value since it was last updated.

The tipped subminimum wage most directly hurts workers by forcing them to live on deeply inadequate incomes:[iii]

- Gradually eliminating the subminimum wage would boost incomes for about 51,000 Maryland workers, with a total impacts of $530 million once fully phased in ($10,350 on average).
- Workers benefiting from the bill include 10,000 parents.
- More than 80% of tipped workers are at least 20 years old and nearly half work full time.

- One-third of tipped workers have family income less than double the federal poverty line, and 42% have family income under $50,000 per year.
- Nationwide, tipped workers are more likely than other workers to struggle to put food on the table.[iv]
- Between housing, food, clothing, and other essentials, there is nowhere in Maryland where even a single adult, working full time and not caring for children, can afford a basic living standard on less than $15 per hour.[v]



The subminimum wage also entrenches inequity in our economy:

- 20% of tipped workers are Black and 15% are Latinx. Altogether, 47% of tipped workers are people of color. Research has found that diners systematically leave smaller tips for Black restaurant servers than white servers.[vi]
- 60% of tipped workers are women. While sexual harassment occurs across all industries, it is more prevalent in the accommodation and food services industry, where women represent a majority of workers.[vii]

Senate Bill 160 (with sponsor amendment) would put tipped workers on a path toward full minimum wage protection, eliminating the subminimum wage by January 1, 2027. This gradual approach prevents sharp cost increases for restaurants and other employers that exploit the subminimum wage. **Senate Bill 160 would increase tipped workers' pay by $208 million in 2025**, increasing to **$530 million per year once fully phased in**.

"Backfilling" Requirement Provides Inadequate Protection

Defenders of the subminimum wage are quick to point to the requirement that employers make up for any deficit between a tipped worker's total pay after tips and the minimum wage, claiming that this nullifies the harm caused by the subminimum wage. This argument does not hold water:[viii]

- Enforcement of this "backfilling" provision requires workers to add their wages and tips, divide by hours worked, and proactively request reimbursement from the employer if there is a deficit. This process is complicated and cumbersome, especially for the large number of tipped workers whose hours are far from stable.
- Moreover, workers must contend with pressure from their boss – actual or suspected – to let underpayment slide. It is easy for a boss to reduce hours, deny advancement opportunities, or retaliate in other ways against a worker who insists on appropriate payment. As managers in tipped workplaces

already exercise significant discretion in scheduling and other decisions, such retaliation is difficult to prove.

- The subminimum wage twists the intended purpose of tipping, often without customers' knowledge. While customers typically leave a tip to compensate a worker for their labor or to reward a job well done, a portion of tips effectively subsidizes the employer's choice to pay less than the standard minimum wage. For a full-time worker (nearly half of all tipped workers), the first $796 in tips for each pay period simply reduce the employer's pay responsibilities. Customers wind up unknowingly tipping the boss.

Long-Lasting Benefits

Ending the tipped subminimum wage would benefit Maryland families and children for decades to come. A large body of research shows that when families earn enough to afford the basics, the benefits ripple out to nearly every part of their lives. A 2013 systematic review of academic literature linked higher family incomes to:[ix]

- Fewer families struggling to put food on the table
- Fewer underweight births and lower infant mortality
- Increased spending on children's clothing, reading materials, and toys
- Fewer behavioral problems, less physical aggression, and less anxiety among children
- Improved academic and cognitive test results, and more years of schooling completed

Guaranteeing a consistent wage floor is the right choice for Maryland's economy. Increased pay for low-wage workers who live paycheck to paycheck translates almost immediately into higher spending, which means stronger sales at local businesses. Evidence also shows that higher wages reduce employee turnover, which means more experienced workers and lower hiring costs.[x] Family-supporting wages make Maryland a more attractive place to live and work, which means a deeper talent pool for employers to draw from.

Despite dire predictions from minimum wage opponents, a robust body of credible research shows no significant link between the minimum wage and the number of jobs available.[xi] For example, a 2019 study described as "the most important work on the minimum wage in 25 years" examined 138 state minimum wage changes between 1979 and 2014. The study found no evidence of any reduction in the total number of jobs for low-wage workers and no evidence of reductions affecting subsets of the workforce such as workers without a college degree, workers of color, and young workers. Similarly, a 2016 meta-analysis of 37 studies on the minimum wage published since 2000 found "no support for the proposition that the minimum wage has had an important effect on U.S. employment."

Moreover, opponents' claims that a higher minimum wage will somehow lower tipped workers' earnings do not hold water. Well-designed research on tipped minimum wages has in most cases found positive impacts on workers' net earnings and practically meaningless impacts on tipping.[xii] Senate Bill 160 specifically protects tips by requiring transparency about the use of "service charges," preventing restaurants by artificially depressing tips through misleading charges customers may assume go to workers.

The verdict is in: Guaranteeing One Fair Wage works.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Finance Committee make a favorable report on Senate Bill 160.

Equity Impact Analysis: Senate Bill 160

Bill summary

Senate Bill 160 gradually reduces Maryland's subminimum wage, increasing the effective minimum wage for tipped workers. Tipped workers would receive full minimum wage protection beginning in January 2027.

The bill also requires restaurants to disclose the use of service charges.

Background

The Fair Wage Act of 2023 increased Maryland's minimum wage to $15 effective January 1, 2024.

Maryland's minimum wage law is modeled after federal wage and hour law. When Congress enacted the federal employment law framework in the 1930s, New Deal proponents made concessions to win the votes of Southern Democrats, generally denying protections to workers in disproportionately Black industries including restaurants and hotels. Congress extended partial minimum wage protection to these workers in 1966, allowed employers to pay tipped workers only half the standard minimum wage. Congress broke this 50% linkage in 1996, freezing the federal tipped subminimum wage at $2.13 per hour. The Maryland General Assembly did the same in 2014, freezing our tipped wage at $3.63.

Equity Implications

Structural barriers built into our economy through policy have disproportionately kept Black workers, other workers of color, women, and workers in other marginalized groups out of high-paying jobs. As a result, guaranteeing a consistent minimum wage would deliver particularly important benefits to workers in these groups.

- Gradually eliminating the subminimum wage would boost incomes for about 51,000 Maryland workers, with a total impacts of $530 million once fully phased in ($10,350 on average).
- Workers benefiting from the bill include 10,000 parents.
- More than 80% of tipped workers are at least 20 years old and nearly half work full time.
- One-third of tipped workers have family income less than double the federal poverty line, and 42% have family income under $50,000 per year.
- Nationwide, tipped workers are more likely than other workers to struggle to put food on the table.
- Between housing, food, clothing, and other essentials, there is nowhere in Maryland where even a single adult, working full time and not caring for children, can afford a basic living standard on less than $15 per hour.[xiii]

Impact

Senate Bill 160 would likely **improve racial, gender, and economic equity** in Maryland.

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[i] Wendy Pollack, "The Racist History behind America's Tipping Culture," Shriver Center on Poverty Law, 2019, https://theshriverbrief.org/the-racist-history-behind-americas-tipping-culture-b5edcb08fcb6

[ii] Sylvia Allegretto and David Cooper, "Twenty-Three Years and Still Waiting for Change: Why it's Time to Give Tipped Workers the Regular Minimum Wage," Economic Policy Institute, 2014, https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/
All inflation adjustment in this document is based on CPI-U, all items.

[iii] Based on Economic Policy Institute Minimum Wage Simulation Model, with calculations by MDCEP (except where otherwise noted). See Technical Methodology by Dave Cooper, Zane Mokhiber, and Ben Zipperer, https://www.epi.org/publication/minimum-wage-simulation-model-technical-methodology/

[iv] MDCEP analysis of 2017–2022 Current Population Survey IPUMS microdata (Food Security Supplement, Outgoing Rotation Groups, and Annual Social and Economic Supplement).

[v] Based on the Economic Policy Institute Family Budget Calculator, adjusted for inflation by MDCEP.

[vi] Michael Lynn, Michael Sturman, Christie Ganley, Elizabeth Adams, Mathew Douglas, and Jessica McNeil, "Consumer Racial Discrimination in Tipping: A Replication and Extension," *Journal of Applied Social Psychology 38*(4), 2008, https://onlinelibrary.wiley.com/doi/full/10.1111/j.1559-1816.2008.00338.x

[vii] Jocelyn Frye, "Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers," Center for American Progress, November 2017, https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/

[viii] Allegretto and Cooper, 2014.

[ix] Kerris Cooper and Kitty Stewart, "Does Money Affect Children's Outcomes? A Systematic Review," Joseph Rowntree Foundation, October 2013, https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/money-children-outcomes-full.pdf
The systematic review methodology involves defining in advance how researchers will identify relevant studies, as well as quality control measures to ensure that only studies with credible methodologies are included. This methodology protects against researchers cherry-picking studies that support their viewpoint.

[x] Arindrajit Dube, T. William Lester, and Michael Reich, "Minimum Wage Shocks, Employment Flows and Labor Frictions," IRLE Working Paper #149-13, 2014, http://irle.berkeley.edu/files/2013/Minimum-Wage-Shocks-Employment-Flows-and-Labor-Market-Frictions.pdf.

[xi] David Cooper, "Raising the Federal Minimum Wage to $15 by 2024 Would Lift Pay for Nearly 40 Million Workers, Economic Policy Institute, 2019, https://www.epi.org/publication/raising-the-federal-minimum-wage-to-15-by-2024-would-lift-pay-for-nearly-40-million-workers/

[xii] Forthcoming MDCEP literature review. Credibly designed studies such as Allegretto and Nadler (2015), Even and MacPherson (2014), Paarlberg and Reyes (2018), and Neumark and Yen (2023) find positive (though in some cases small) impacts on workers' net hourly or weekly earnings including tips. Many studies specifically of tipping behavior suffer from serious design flaws, but the most credible research finds impacts on tip sizes so small as to be practically meaningless. For example, based on Ali et al. (2023), Senate Bill 160 might decrease average tip percentages by 0.7 percentage points (e.g., from 20.0% to 19.3%).

[xiii] Based on the Economic Policy Institute Family Budget Calculator, adjusted for inflation by MDCEP.