Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 160 (Senators Ellis and McCray)
Finance

Labor and Employment - Payment of Minimum Wage - Tipped Employees

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This bill reduces the tip credit for tipped employees in increments from its current level beginning January 1, 2025, before prohibiting the tip credit entirely beginning July 1, 2027, and instead requiring an employer to directly pay an employee at least the State minimum wage. The bill also requires the Commissioner of Labor and Industry to establish the High Road Kitchen Program as a recognition program for restaurants that complete equity training and do not include a tip credit in employees' wages.

Fiscal Summary

State Effect: General fund expenditures increase by $255,300 in FY 2025 for enforcement and administration. Future years reflect annualization, the elimination of one-time costs, and the termination of a contractual position after FY 2026. Revenues are not materially affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	$0	$0	$0	$0	$0
GF Expenditures	255,300	296,000	210,100	218,800	228,000
Net Effect	($255,300)	($296,000)	($210,100)	($218,800)	($228,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Tip Credit Phase Out

The tip credit that an employer may include as part of the wage of a tipped employee may not exceed the State minimum wage, less:

- $3.63, as under current law, through calendar 2024;
- $8.50 for the 6-month period beginning January 1, 2025;
- $10.50 for the 6-month period beginning July 1, 2025;
- $12.00 for the 6-month period beginning January 1, 2026; and
- $13.50 for the 12-month period beginning July 1, 2026.

Beginning July 1, 2027, an employer may not include a tip credit as part of the wage of an employee subject to the Maryland Wage and Hour Law and must pay the employee at least the State minimum wage.

High Road Kitchen Program

The commissioner must establish the High Road Kitchen Program as a recognition program for restaurants. To qualify for the program, a restaurant must (1) certify it has completed equity training, as defined; (2) certify that it does not include the current tip credit amount as part of the wages of an eligible employee; and (3) not have been determined to be in violation of any provision of the Maryland Wage and Hour Law during the immediately preceding three years.

"Equity training" means a training program provided, or approved, by the commissioner that is focused on achieving equity among restaurant employees and maintaining profitability without including a tip credit as part of an employee's wage.

A restaurant that meets the above requirements must be (1) listed on the department's website as a High Road Kitchen Program – Certified Restaurant and (2) issued a certificate identifying the restaurant as a program restaurant. The restaurant may display the certificate in the restaurant. However, if, after receiving certification, a restaurant is determined to be in violation of any provision of the Maryland Wage and Hour Law, the commissioner must notify the restaurant in writing that the certification will be revoked, that the restaurant will be removed from the department's website, and that the restaurant may no longer display the certification. The commissioner may also issue a civil penalty of up to $1,500 per day for each violation of the provisions related to the High Road Kitchen Program.

The commissioner must adopt regulations to carry out the program, as specified, including criteria for approval of the equity training programs.

Current Law: Generally, the employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than $30.00 per month in tips. The tip credit is equal to the State minimum wage, less $3.63. Thus, the wage paid by employers to tipped employees is $3.63, as long as their wages plus tips equal the minimum wage.

The commissioner must adopt regulations, in consultation with payroll service providers and restaurant industry trade group representatives, to require restaurant employers that include a tip credit as part of the wage of an employee to provide tipped employees with a written or electronic wage statement for each pay period that shows the effective hourly tip rate as derived from employer-paid cash wages plus all reported tips for tip credit hours worked each workweek of the pay period.

For additional related information, see the **Appendix – Maryland Wage and Hour Law**.

State Fiscal Effect: The bill is expected to increase the number of complaints to the Maryland Department of Labor (MDL) related to enforcement of the tip credit by approximately 200 per year. MDL must also establish the High Road Kitchen Program, which includes establishing related criteria for approval of equity training programs, processing applications, issuing certificates, and posting information on the department’s website. These responsibilities cannot be absorbed within existing resources.

MDL advises that it requires two wage and hour investigators to conduct investigations, one administrative specialist to assist with ongoing program administration and data entry, and one assistant Attorney General to develop regulations, training program approval criteria, forms, and a process for verifying prior violations of the Maryland Wage and Hour Law. The Department of Legislative Services (DLS) advises that the assistant Attorney General responsibilities as described by MDL are generally temporary and may be accomplished with contractual staff.

Accordingly, general fund expenditures increase by $255,250 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Permanent Positions	3.0
Contractual Position	1.0
Regular Salaries and Fringe Benefits	$144,592
Contractual Salary and Fringe Benefits	71,624
Other Operating Expenses	39,034
Total FY 2025 State Expenditures	**$255,250**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the elimination of the contractual position after fiscal 2026. Expenditures may decrease in future years to the extent that the ongoing lack of a tip credit reduces related complaints and fewer wage and hour investigators are needed.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Assuming compliance, general fund revenues from civil penalties issued under the bill are likely minimal.

Small Business Effect: Small businesses with tipped employees who utilize the tip credit must begin phasing out its use beginning January 1, 2025. By July 1, 2027, employers must pay tipped employees the full minimum wage rate without using a tip credit, thereby likely significantly increasing labor costs for employers that currently use a tip credit. However, the bill will eventually reduce documentation and tracking burdens for restaurant employers that currently use a tip credit from no longer needing to provide tipped employees with a wage statement for each pay period that shows the effective hourly tip rate.

Additional Comments: DLS notes that the High Road Kitchen Program – which recognizes restaurants that do not use a tip credit – is permanent, but the bill prohibits tip credits beginning July 1, 2027.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 803 and HB 1256 of 2023.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

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km/mcr

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Appendix – Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act, which specifies minimum wage and overtime requirements for employers and employees in the State. State law specifies that an employee must be paid the greater of the federal minimum wage (which is currently $7.25 per hour) or $15.00 per hour. However, an employer may pay 85% of the State minimum wage rate to employees younger than age 18.

The Maryland Wage and Hour Law and minimum wage requirements do not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16; salesmen and those who work on commission; an employer's immediate family; drive-in theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption and has an annual gross income of $400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; certain farm workers; and covered employees under the Secure Maryland Wage Act.

Generally, the employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than $30.00 a month in tips. The tip credit is equal to the State minimum wage, less $3.63. Thus, the wage paid by employers to tipped employees is $3.63, as long as their wages plus tips equal the minimum wage.

Under Maryland's Wage and Hour Law, an employer is required to pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 hours that an employee works during one work week. This requirement does not apply to an employer that is subject to federal rail laws; a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or specified amusement or recreational establishments. It also does not apply to an employee for whom the U.S. Secretary of Transportation sets qualifications and maximum hours of service under federal law; a mechanic, parts person, or salesperson, under certain conditions; a driver employed by a taxicab operator; or specified air carrier employees under certain conditions. Also, specific exemptions apply for farm work, bowling establishments, and infirmaries.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wage paid to the employee and the wage required; (2) an additional amount equal to the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

A person who violates the Maryland Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to $1,000.