

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 659
Finance

(Senator Madaleno, *et al.*)

Maryland Wage and Hour Law - Tip Credit - Repeal

This bill repeals the tip credit that employers can apply against the direct wages paid to employees classified as tipped employees.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$5,400 in FY 2016 for information technology and printing costs related to its employer and employee outreach program. The bill does not apply to the State as an employer. The bill does not have a material effect on State income tax revenues.

Local Effect: The bill does not apply to local governments as employers. The bill does not have a material effect on local income tax revenues.

Small Business Effect: Meaningful. Small businesses that are subject to the Maryland Wage and Hour Law and employ tipped employees incur additional payroll costs.

Analysis

Current Law: The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act (FLSA) of 1938. State law specifies that an employee must be paid the greater of the federal minimum wage, which is currently \$7.25 per hour, or \$8.00 per hour. Under Chapter 262 of 2014, the State minimum wage is scheduled to increase on an incremental basis over four years to:

- \$8.25 per hour as of July 1, 2015;
- \$8.75 per hour as of July 1, 2016;
- \$9.25 per hour as of July 1, 2017; and
- \$10.10 per hour as of July 1, 2018.

However, an employer may pay an employee a wage that equals 85% of the State minimum wage for the first six months that the employee is employed if the employee is younger than age 20. Additionally, an employer of an amusement or a recreational establishment, including a swimming pool, that meets specified conditions may pay an employee a wage that equals the greater of \$7.25 or 85% of the State minimum wage. Exceptions to the minimum wage requirement also exist for training wages and disabled employees of a sheltered workshop. The State and local governments are considered employers under the minimum wage requirements of the Maryland Wage and Hour Law.

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; and certain farm workers.

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 a month in tips. The tip credit is equal to the State minimum wage, less \$3.63. Thus, the tip credit increases as the minimum wage increases, and the wage paid by employers to tipped employees remains \$3.63, as long as their wages plus tips equal the minimum wage. The State and local governments are not considered employers under the tip credit provisions of the Maryland Wage and Hour Law.

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 State's Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Fair Labor Standards Act

With some exceptions, similar to State law, FLSA requires that workers be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week.

Under FLSA, 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 a month in tips. The tip credit is equal to \$5.12 per hour, which is the federal minimum wage less the required cash wage. Thus, the wage paid by employers to tipped employees is \$2.13, as long as their wages plus tips equal the minimum wage.

Background: As shown in **Appendix 1**, seven states require employers to pay workers the full state minimum wage before tips (Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington). Employers may pay workers the federal tipped minimum wage of \$2.13 per hour in 17 states. The remaining states, including Maryland, allow employers to pay tipped employees a minimum wage rate that is higher than the federal tipped minimum wage of \$2.13 per hour, but lower than the state's minimum wage.

State Revenues: General fund tax revenues increase minimally from employers subject to the Maryland Wage and Hour Law paying tipped employees the State minimum wage. To the extent that higher wages boost the purchasing power of tipped workers and generate new consumer spending, general fund sales tax revenues increase minimally. However, to the extent that payroll spending for employers increases, general fund tax revenues from employers decrease as they can deduct payroll from taxable income. The Department of Legislative Services assumes the net effect does not have a material effect on State income tax revenues.

State Expenditures: General fund expenditures for DLLR increase by \$5,400 in fiscal 2016 for information technology and printing costs related to its employer and employee outreach program.

Local Revenues: Local income tax revenues may increase minimally from employers subject to the Maryland Wage and Hour Law paying tipped employees the State minimum

wage. However, to the extent that payroll spending for employers increases, local income tax revenues from employers may decrease minimally as they can deduct payroll from taxable income. The Department of Legislative Services assumes the net effect does not have a material effect on local income tax revenues.

Small Business Effect: The bill has a significant impact on small businesses that are subject to the Maryland Wage and Hour Law and employ tipped employees. An employer subject to the Maryland Wage and Hour Law must pay an employee the State minimum wage regardless of any federal or local laws on tip credit provisions. Establishments that sell food and drink for on-premises consumption and have an annual gross income of \$400,000 or less are exempt from the Maryland Wage and Hour Law, so the bill has no effect on those establishments.

The Bureau of Labor Statistics reports there were 43,090 waiters and waitresses in the State in 2013, earning median hourly wages of \$8.71. By eliminating the tip credit, an employer must pay a tipped employee an hourly wage rate of \$8.25 instead of \$3.63 in fiscal 2016. Thus, an employer that currently pays a tipped employee \$3.63 per hour must pay each tipped employee an additional:

- \$4.62 per hour as of July 1, 2015;
- \$5.12 per hour as of July 1, 2016;
- \$5.62 per hour as of July 1, 2017; and
- \$6.47 per hour as of July 1, 2018.

To the extent that an employee earns less than the minimum wage after tips, the bill has less of an effect because current law requires an employer to make up the difference when the direct wages and the tips combined are less than the State minimum wage, so some employers may already be paying more than the adjusted cash wage to some tipped employees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; U.S. Department of Labor; Department of Legislative Services

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Appendix 1
State Minimum Wage Rates for Tipped Employees

<u>State</u>	<u>Combined Cash & Tip Rate</u>	<u>Tip Credit</u>	<u>Cash Wage</u>
Federal	\$7.25	\$5.12	\$2.13
Alabama*	7.25		2.13
Alaska	8.75		8.75
Arizona	8.05	\$3.00	5.05
Arkansas	7.50	\$4.87	2.63
California	9.00		9.00
Colorado	8.23	\$3.02	5.21
Connecticut	9.15	34.80%	5.78
Delaware	7.75	\$5.52	2.23
District of Columbia	9.50	\$6.73	2.77
Florida	8.05	\$3.02	5.03
Georgia	5.15		2.13
Hawaii	7.75	\$0.50	7.25
Idaho	7.25	\$3.90	3.35
Illinois	8.25	40%	4.95
Indiana	7.25	\$5.12	2.13
Iowa	7.25	\$2.90	4.35
Kansas	7.25	\$5.12	2.13
Kentucky	7.25	\$5.12	2.13
Louisiana*	7.25		2.13
Maine	7.50	50%	3.75
Maryland	\$8.00	\$4.37	\$3.63
Massachusetts	9.00	\$6.00	3.00
Michigan	8.15	\$5.05	3.10
Minnesota	8.00		8.00
Mississippi*	7.25		2.13
Missouri	7.65	50%	3.82
Montana	8.05		8.05
Nebraska	8.00	\$5.87	2.13
Nevada	8.25		8.25
New Hampshire	7.25	55%	45%
New Jersey	8.38	\$6.25	\$2.13
New Mexico	7.50	\$5.37	2.13
New York	8.75	\$3.75	5.00
North Carolina	7.25	\$5.12	2.13

<u>State</u>	<u>Combined Cash & Tip Rate</u>	<u>Tip Credit</u>	<u>Cash Wage</u>
North Dakota	\$7.25	33%	\$4.86
Ohio	8.10	\$4.05	4.05
Oklahoma	7.25	\$3.63	3.63
Oregon	9.25		9.25
Pennsylvania	7.25	\$4.42	2.83
Rhode Island	9.00	\$6.11	2.89
South Carolina*	7.25		2.13
South Dakota	8.50	50%	4.25
Tennessee*	7.25		2.13
Texas	7.25	\$5.12	2.13
Utah	7.25	\$5.12	2.13
Vermont	9.15	50%	4.58
Virginia	7.25	\$5.12	2.13
Washington	9.47		9.47
West Virginia	8.00	70%	2.40
Wisconsin	7.25	\$4.92	2.33
Wyoming	5.15	\$3.02	2.13

*No state minimum wage law; subject to FLSA.

Source: U.S. Department of Labor
