



Committee: Joint
Committee Review: At a future date
Staff: Christine Wellons, Senior Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #MinimumWage

AGENDA ITEM #7
October 17, 2023
Public Hearing

SUBJECT

Bill 35-23, County Minimum Wage – Tipped Employees

Lead Sponsor: Councilmembers Jawando

Co-Sponsor: Councilmember Mink

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; to receive testimony.

DESCRIPTION/ISSUE

Bill 35-23 would:

- (1) adjust the calculation of the minimum wage for tipped workers;
- (2) phase out the tip credit amount under the County minimum wage law; and
- (3) generally amend the County minimum wage law.

SUMMARY OF KEY DISCUSSION POINTS

- N/A

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M E M O R A N D U M

October 12, 2023

TO: County Council

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 35-23, County Minimum Wage – Tipped Workers

PURPOSE: Public Hearing – to receive testimony

Bill 35-23, County Minimum Wage – Tipped Workers, sponsored by Lead Sponsor Councilmember Jawando and Co-sponsor Councilmember Mink, was introduced on September 19, 2023. A public hearing is scheduled for October 17, 2023 at 1:30 p.m. The bill will be considered jointly by the ECON and HHS Committees.

Bill 35-23 would:

- (1) adjust the calculation of the minimum wage for tipped workers;
- (2) phase out the tip credit amount under the County minimum wage law; and
- (3) generally amend the County minimum wage law.

BACKGROUND

Under current County law, an employer calculating a minimum wage may include within the calculation a “tip credit” for tipped workers. The tip credit represents an amount of the minimum wage a worker is expected to receive in tips.

The current amount of the credit is the hourly minimum wage minus \$4.00; or a lesser credit if the employee or representative of the employee satisfies the Executive Director of the Office of Human Rights that the employee receives a lesser amount in tips.

BILL SPECIFICS

The bill would discontinue the tip credit for minimum wage workers as of July 1, 2028.

Leading up to July 1, 2028, the tip credit would be phased out. Specifically, the tip credit amount that the employer would be able to include as part of the calculation of the minimum wage would not be permitted to exceed the County minimum wage less:

- \$4.00 per hour, until July 1, 2024;
- \$6.00 per hour, effective July 1, 2024 until July 1, 2025;
- \$8.00 per hour, effective July 1, 2025 until July 1, 2026;
- \$10.00 per hour, effective July 1, 2026 until July 1, 2027; and
- \$12.00 per hour, effective July 1, 2027 until July 1, 2028.

This packet contains:

Bill 35-23
Sponsors' Memorandum
Fiscal Impact Statement
Climate Assessment

Circle #

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Bill No. 35-23
Concerning: County Minimum Wage –
Tipped Employees
Revised: 09/14/2023 Draft No. 3
Introduced: September 19, 2023
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando
Co-Sponsor: Councilmember Mink

AN ACT to:

- (1) adjust the calculation of the minimum wage for tipped workers;
- (2) phase out the tip credit amount under the County minimum wage law; and
- (3) generally amend the County minimum wage law.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Section 27-69

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 27-69 is amended as follows:

27-69. Tipped employees.

(a) *Definition.* As used in this Section, *tipped employee* means:

(1) an employee who:

(A) is engaged in an occupation in which the employee customarily and regularly receives more than \$30 each month in tips;

(B) has been informed by the employer about the provisions of this Section; and

(C) has kept all of the tips that the employee received.

(2) Notwithstanding paragraph (1)(C), this Section does not prohibit the pooling of tips.

(b) *Computation of wage.* Except as provided in subsection (c), an employer may include, as part of the wage of a tipped employee:

(1) an amount that the employer sets to represent the tips of the employee; or

(2) if the employee or representative of the employee satisfies the Director that the employee received a lesser amount in tips, the lesser amount.

(c) *Limit and phase-out of the tip credit amount.*

(1) The tip credit amount that the employer may include under subsection (b) must not exceed the County minimum wage less:

(A) \$4.00 per hour, until July 1, 2024;

(B) \$6.00 per hour, effective July 1, 2024 until July 1, 2025;

(C) \$8.00 per hour, effective July 1, 2025 until July 1, 2026;

(D) \$10.00 per hour, effective July 1, 2026 until July 1, 2027;

and

- 28 (E) \$12.00 per hour, effective July 1, 2027 until July 1, 2028.
- 29 (2) Effective July 1, 2028, an employer:
- 30 (A) must not include any tip credit amount under subsection
- 31 (b); and
- 32 (B) must pay a tipped employee in accordance with Section
- 33 27-68.
- 34 (d) *Reports.* An employer who employs a tipped employee in the County
- 35 must submit a quarterly wage report within 30 days after the end of
- 36 each quarter to the Director certifying that each tipped employee was
- 37 paid the minimum wage required by this Section.
- 38 (e) *Online reporting system.* The executive must establish an internet based
- 39 reporting system as an optional method for an employer of a tipped
- 40 employee to submit the quarterly wage report required by subsection
- 41 (d).



MEMORANDUM

September 13, 2023

TO: Montgomery County Council

FROM: Will Jawando, Councilmember
Kristin Mink, Councilmember

SUBJECT: Proposed Bill 35-23, County Minimum Wage – Tipped Employees

We have requested introduction of the attached Bill for the Council's next legislative day on Tuesday, September 19th. The Bill would phase out the tipped subminimum wage within Montgomery County between now and July 1, 2028, so that by that date all workers are paid a full minimum wage with ability to receive tips on top.

Regardless of their background or ability, every worker deserves to earn a wage that acknowledges their value and dignity. Subminimum wages undercut this foundational belief by institutionalizing lower pay for certain classes of workers.

Seven states have already eliminated the subminimum wage for tipped workers entirely. A Center for American Progress analysis found that "in those states, workers and businesses in tipped industries have done as well as or better than their counterparts in other states over the years since abolishing the subminimum wage." Those states have the same or higher restaurant sales, employment growth rates, and tipping averages compared to jurisdictions that still allow subminimum wages. Other cities and counties have also eliminated subminimum wages, recognizing their fundamental unfairness.

Washington, DC, has already led the way in our region, and it is time for Montgomery County to follow suit to ensure our workers are not left behind. In 2022, D.C. voters overwhelmingly voted for Initiative 82 to phase out the tip credit. We believe that now is the right time to take up this issue in Montgomery County before significant disparities are created between workers and restaurants in our region.

On paper, tipped workers must earn the full minimum wage, which is \$15.00 per hour for a medium-sized employer. The employer only has to contribute \$4.00 per hour if tips cover the rest for their workers. Unfortunately, research shows that this system is routinely abused. A 2014 report by the Obama administration found that 84% of restaurants violate wage laws for tipped workers, including failing to make up the difference when tips don't bring workers to the full

minimum wage. This problem has only worsened since the pandemic as tipping declined dramatically for many servers and bartenders.

We understand that restaurant owners will need time to adapt. The Bill's implementation schedule follows one year behind DC's phase-out, with the tipped subminimum wage increasing gradually each year until its complete elimination on July 1st, 2028. This phase-out is a full year later than DC's schedule.

The subminimum wage is an outdated practice that leads to pay inequity. The time has come to ensure all Montgomery County workers earn a fair living wage. We look forward to discussing the proposed legislation with the Council.



Fiscal Impact Statement

Office of Management and Budget

Bill 35-23

County Minimum Wage - Tipped Employees

Bill Summary

This bill amends the County minimum wage law to limit and phase out the tip credit amount.

Fiscal Impact Summary

The bill is not expected to impact County revenues or expenditures because the County does not employ tipped employees, or utilize a tip credit. It is anticipated that the current notification process used by the Office of Human Rights could be used to notify businesses of any change in the minimum wage.

Fiscal Year	0	0	0	0	0	0	Total
Personnel Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenues	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Impact	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00	

Fiscal Impact Analysis

There is no fiscal impact anticipated for this bill.

Staff Impact

The bill is not expected to impact staff time or duties.

Actuarial Analysis

The bill is not expected to impact retiree pension or group insurance costs.

Information Technology Impact

The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.

Other Information

Later actions that may impact revenue or expenditures if future spending is projected

The bill does not authorize future spending.

Contributors

Shantee Jackson, Office of Management and Budget
Alicia A. Singh, Office of Management and Budget



Climate Assessment

Office of Legislative Oversight

Bill 35-23: County Minimum Wage – Tipped Employees

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 35-23 will likely have a minimal impact on the County’s contribution to addressing climate change as it could increase resilience for County households and individuals whose incomes are generated via tipped employment, however evidence is inconclusive.

BACKGROUND AND PURPOSE OF BILL 35-23

The Montgomery County minimum wage law distinguishes between employees and tipped employees. As of July 1, 2023, the minimum wage rate per hour for employees is \$16.70 for large employers, \$15.00 for mid-sized employers, and \$14.50 for small employers.^{1,2}

Over time, County law will phase out differences in minimum wage rates by employer size by raising the rate for mid-sized and small employers to the rate for large employers. The single minimum wage hourly rate will be adjusted each year by the annual average increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for Washington-Baltimore.³

Like most jurisdictions in the U.S., the County does not require employers to pay tipped employees the full minimum wage *before tips*. County law defines “tipped employees” as employees who are engaged in an occupation in which they customarily and regularly receive more than \$30 each month in tips; have been informed by their employers about the provisions of this section; and have kept all tips they received.⁴

County law grants employers of these workers “tip credits.”⁵ Tip credits “allow employers to pay workers a guaranteed hourly wage, often referred to as the [tipped minimum wage], which is less than the statutory minimum wage as long as tips bring the worker up to the minimum wage; if tips leave the employee short of the minimum wage, employers have to make up the difference.”⁶

In the County, employers must pay tipped employees a tipped minimum wage of at least \$4.00 per hour. This amount plus tips must equal (at least) the minimum wage hourly rate. Thus, the current maximum tip credits are presented in Table 1.

Table 1. Current Maximum Tip Credits in the County

Employer Size	Tipped Minimum Wage Rate	Maximum Tip Credits	Minimum Wage Rates
Large Employer	\$4	\$12.7	\$16.7
Mid-Sized Employer	\$4	\$11.0	\$15.0
Small Employer	\$4	\$10.5	\$14.5

The purpose of Bill 35-23 is to phase out the tip credit by July 1, 2028. It would do so by increasing the tipped minimum wage rate along the following schedule:

- \$4.00 per hour, until July 1, 2024;
- \$6.00 per hour, effective July 1, 2024 until July 1, 2025;
- \$8.00 per hour, effective July 1, 2025 until July 1, 2026;
- \$10.00 per hour, effective July 1, 2026 until July 1, 2027; and
- \$12.00 per hour, effective July 1, 2027 until July 1, 2028.

By July 1, 2028, there would be a single minimum wage rate for employees and tipped employees in the County.⁷

ANTICIPATED IMPACTS

Raising minimum wages can increase community resilience as individuals and households who experience an increase in income are more resilient and can better withstand shocks, such as extreme weather events.¹ Tipped employees are often paid “subminimum wage” and while it is assumed that tips will boost their earnings to at or above minimum wage, it is not guaranteed.² Increasing the subminimum wage can provide stable, steady income for tipped employees and increase their economic resilience which in turn, increases their resilience to shocks like extreme weather events.³

Evidence on the results of raising the subminimum wage for tipped employees is mixed. There is research that indicates that raising the subminimum wage will stabilize and increase income for some tipped employees, while other research indicates that it could reduce overall employment in the restaurant industry, due to increased personnel costs.⁴

As of the first quarter in 2023, there are 38,292 employees (3.6% of the County’s population) in the Leisure and Hospitality sector in Montgomery County, where many employees are tipped employees.⁵

As the bill proposes a gradual increase in the tip credit for tipped employees, OLO anticipates Bill 35-23 will have a minimal impact on the County’s contribution to addressing climate change, as it could increase resilience for County households and individuals whose incomes are generated via tipped employment; however evidence is inconclusive.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.⁶ OLO does not offer recommendations or amendments as Bill 35-23 is likely to have a minimal impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptative capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ ["Measuring Community Resilience and Its Determinants: Relocated Vulnerable Community in Western China", International Journal of Environmental Research and Public Health, Volume 20, 2023.](#); ["The Geographies of Community Disaster Resilience", Global Environmental Change, Volume 29, 2014.](#); ["A \\$15 minimum wage would help millions of struggling households in small and mid-sized cities achieve self-sufficiency", Brookings, 2021.](#)

² ["Subminimum Wage Program: DOL Could Do More to Ensure Timely Oversight", U.S. Government Accountability Office, 2023.](#)

³ ["The Geographies of Community Disaster Resilience", Global Environmental Change, Volume 29, 2014.](#)

⁴ ["The Effect of the Tipped Minimum Wage on Employees in the U.S. Restaurant Industry", Southern Economic Journal, Volume 80, 2014.](#); ["Ending the Tipped Minimum Wage Will Reduce Poverty and Inequality", Center for American Progress, 2021.](#) ; ["The tipping](#)

point: could increasing the subminimum wage reduce poverty-related antenatal stressors in U.S. women?", [Annals of Epidemiology, Volume 45, 2020.](#); ["Understanding the Implications of Raising the Minimum Wage in the District of Columbia", Urban Institute, 2014.](#)

⁵["Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage", Economic Policy Institute, 2014.](#); [QCEW State and County Map Application: Maryland, US: 12 month percent change in employment, Total, All Industries Total Covered Mar 2022-Mar 2023 \(p\) : U.S. Bureau of Labor Statistics, Accessed 10/2/23.](#)

⁶ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022