Tip-Lash: D.C.'s Tipped Minimum Wage Back on the Chopping Block

Insights
11.22.22

It's déjà vu for District restaurant owners and other employers of tipped workers as D.C. voters once again approved an initiative that will gradually increase minimum wage for tipped employees over the next five years. The Tip Credit Elimination Act of 2021, which was just passed this Election Day as Initiative 82, will eventually eliminate employers' ability to rely upon tips in satisfying their DC minimum wage (currently $16.10) obligation to employees. In 2018, the District passed similar legislation that would have eliminated an employers' ability to rely upon the so-called "tip credit" by 2026, but the D.C. Council struck down the law before it went into effect. This time, however, the Council does not appear to be poised to take such an action. Here are some tips for employers affected by the legislation.

D.C. Voters Overwhelmingly Approve a Wage Hike for Tipped Workers

Currently, in D.C. and many other jurisdictions around the country, employers are allowed to rely upon tips, in part, to satisfy their minimum wage obligation to employees who customarily and regularly receive tips. Most of the time, this pay structure works out to the advantage of both the employer and the employee. The employer pays a lower direct cash wage, and as the employee receives customer tips and gratuities, which often substantially surpass the state minimum wage. Nevertheless, should the tips fall short, under current law, employers must pay the difference between the earned wage with tips and the minimum wage.

Nearly identical to the defeated 2018 measure, D.C.'s Initiative 82 was purportedly intended to provide a boost to the wages received by tipped employees to secure a more stable income, eventually topping out at the standard legal minimum hourly wage in the District. The District's voters overwhelmingly agreed with this line of thinking this Election Day, with close to 74% of voters voting yes on the measure.

So, What Changes Are on The Menu?

Under current law, employers in D.C. are permitted to pay a tipped employee a direct cash wage of $5.35 per hour so long as the tips they receive provide for a minimum wage rate of at least $16.10 per hour.

If it becomes law, Initiative 82 will increase the minimum tip-credit wage for tipped employees well beyond the current $5.35 per hour. Instead, the tipped minimum wage under Initiative 82 will slowly but significantly accelerate each year (and twice in 2023) until it matches the city's full minimum wage in the year 2027. The schedule for the wage hikes is as follows:

Jan. 1, 2023:	increase to $6.00 per hour
July 1, 2023:	increase to $8.00 per hour
July 1, 2024:	increase to $10.00 per hour
July 1, 2025:	increase to $12.00 per hour
July 1, 2026:	increase to $14.00 per hour
July 1, 2027:	the wage rate for tipped workers would increase to match the rate of D.C.'s minimum wage, whatever it happens to be on that date.

But Controversy Remains

This cost-increasing measure comes at a particularly difficult time for the hospitality industry, which historically operates on razor-thin margins, and where employers are still adjusting to a post-pandemic world characterized by increased operating costs and an unprecedented labor shortage. It is, thus, no surprise that the measure faced significant opposition from some of the District's most prominent restaurant leaders, who are among the largest employers of tipped workers.

Perhaps more surprisingly, however, is that Initiative 82 also faced widespread opposition from the workers themselves. Many claim that they already make substantially more than the $16.10 minimum wage under the current pay structure, and fear that increased prices resulting from the employer-paid wage hike will force business closures, suppress tips, and lead to lower income and job opportunity overall.

Indeed, many hospitality business owners have already indicated that they plan to compensate for the increased cost by passing it on to consumers. This would come in the form of mandatory service or gratuity charges, which, unlike earned tips, do not necessarily get shared with the workers. Mandatory service and gratuity charges also tend to make cash-conscious customers less likely to tip workers on top of the already-added gratuity. This would likely lead to less take-home pay on average for tipped employees.

Additionally, considering DC's proximity to both Maryland and Virginia — states that currently still permit use of the tip-credit — some are predicting that many businesses that rely on tipped work will simply pick up and move shop across the river where it is less expensive to do business.

What Should Employers Do?

Washington, D.C. employers should prepare for a wage hike impacting their tipped employees starting January 1, 2023. Unlike the last time, the measure is not expected to be shot down by the D.C. City Council. Therefore, although it could face some minor revisions to the structure or timeline, it will more than likely be implemented as planned.

You should communicate with your managers at all D.C. locations regarding the change that will soon take effect. You should also prepare to adjust any payroll systems and compensation practices as necessary.

The Washington, D.C. Metro office of Fisher Phillips will monitor developments and provide updates as necessary, so we recommend you subscribe to Fisher Phillips Insights to make sure you don't miss out. If you have any questions, reach out to your Fisher Phillips attorney, the author of this Insight, or any attorney in our Washington, D.C. Metro office.

Related People

Eleanor F. Miller
Associate
202.916.7189
Email

Service Focus

Wage and Hour

Industry Focus

Hospitality

Related Offices

Washington, D.C.