



How Will the Election and Recent Legislative Trends Impact Tipped Wages? 4 Developments for Hospitality Employers to Watch

Insights

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There's been a lot of buzz about tipped wages as Election Day approaches – and hospitality employers will want to track key proposals that may have a huge impact on pay practices. Former President Trump and Vice President Harris have both vowed to eliminate federal income taxes on gratuities, which may be welcome news to workers and employers alike. But in several states, there have recently been efforts through ballot initiatives or legislation to end the so-called “tip credit” that allows employers to pay less than the standard minimum wage to tipped employees. Tip-sharing rules, taxes on restaurant service fees, and the impact of inflation and tip fatigue have all been part of the discussion as tight races to control the White House and Congress unfold. Here are the top four developments hospitality employers should be tracking as you prepare for changes in 2025. You can also visit our [Election Season Resource Center for Employers](#) to review all our thought leadership and practical resources.

1. Presidential Candidates Tout “No-Tax-On-Tips” Policies

Both Former President Trump and Vice President Harris said they would support legislation that ends federal income taxes on tips for hospitality workers:

- “To those hotel workers and people who get tips, you are going to be very happy, because when I get to office we are going to not charge taxes on tips, people making tips,” [Trump said at a rally](#). “We’re going to do that right away, first thing in office.”
- Perhaps in a sign that the policy is viewed as a political winner, [Harris followed suit two months later, saying](#): “It is my promise to everyone here: When I am President, we will continue our fight for working families of America, including to raise the minimum wage and eliminate taxes on tips for service and hospitality workers.”

Key Takeaways: Supporters say such a move would help employees take home more pay without forcing hospitality employers to increase base wages in the face of high inflation and low margins. Critics, however, say income-tax-free tips may drive base wages down, encourage customers to tip less, and cause a revenue shortfall for the federal government.

These campaign promises are a long way from becoming law, but [they have bipartisan support](#), and

we've already seen some movement in Congress on this issue. You might want to start thinking about how this change could impact your wage structure, tip pooling, policies on employees reporting the tips they receive, and other pay policies.

2. Proposed Federal Legislation Would Give Employers a Tax Break on Service Charges

Some hospitality businesses would rather charge customers a service fee to reduce the unpredictability of tipped wages, but businesses face taxes on these service charges that they aren't obligated to pay on traditional gratuities. Back in May, Rep. Earl Blumenauer (D-OR) introduced the Service Charge Tax Fairness Act, "which would treat service charges like tips and provide an avenue within the tax system for independent restaurants and bars to adapt to a changing environment," according to a press release.

But employers would have to follow certain guidelines to qualify for the exemption. While they can currently use service fees to offset a variety of business expenses, **the tax credit would require that service charges go directly to non-management employees in the form of wages.** H.R. 8401 would:

- exclude service charges from FICA taxes, aligning their treatment with traditional tips;
- cap the excluded percentage of service charges at 25%; and
- exclude service charges from the calculation of overtime wages.

Key Takeaways: While H.R. 8401 is unlikely to become law, you'll want to track measures like this as the White House and Congress shape their priorities in 2025 and beyond. Proponents say this would give hospitality employers more choices when structuring compensation plans, in addition to traditional tipping and taking a tip credit. Opponents fear that it won't do much to raise wages for hospitality workers.

In the meantime, if you're relying on the tip credit and using service charges, you should ensure the service charges provided to tipped employees are included in their regular rate of pay for overtime calculations. [You can read more about overtime calculations here.](#)

3. Federal Tip Credit Rules May Continue to Evolve

Recent rules from the DOL have created more challenges for hospitality businesses that utilize the tip-credit method of wage payments. Historically, shifts in policy priorities under different administrations have affected the way the DOL interprets tip credit rules – and certainly could again in the next administration. Notably, however, the Supreme Court's recent ruling in *Loper Bright* – which reined in federal agency power – will continue to have an impact on DOL regulations and may continue to bring positive changes for hospitality employers. [You can read more about the impact of the SCOTUS ruling on hospitality employers here.](#)

Already, a federal appeals court just shut down the DOL's infamous 80/20/30 rule, which created time-keeping and other compliance nightmares for employers that take the tip credit toward their minimum wage obligation under the FLSA. The appeals court cited to *Loper Bright* and said the DOL's interpretation doesn't align with the FLSA's text or the intent of Congress. [You can read more about the tip credit, the 80/20/30 rule, and the recent appeals court decision here.](#)

Key Takeaways: The next administration will continue to face challenges regarding existing wage and hour interpretations, and we expect the DOL to be more cautious and thorough when developing new regulations in light of greater judicial scrutiny. Employment associations representing the hospitality community have already filed successful legal challenges to fight burdensome rules for employers that take the tip credit, and the *Loper Bright* decision could be key to fighting such overreach in the future.

4. Voters Will Decide Tip Credit Rules in Some States

On Election Day, voters in Arizona and Massachusetts will be weighing in on the tip credit in their respective states.

- Notably in **Arizona**, where the current tipped wage is \$3 less than the state's standard minimum wage, a campaign to end the tip credit failed to make the ballot. Instead, voters will see a ballot initiative that would allow hospitality employers to pay a lower tipped minimum wage (25% less than the standard minimum wage) if workers earn at least \$2 an hour more than the standard minimum wage when tips are factored in. Proponents say the initiative will support small businesses and their employees. Opponents say they will continue their efforts to end tipped wages in Arizona either through legislation or a ballot initiative in a future election.
- In **Massachusetts**, the ballot initiative would end the tip wage by 2029 and require hospitality employers to pay the standard minimum wage regardless of how much workers earn in tipped wages. Industry groups like the National Restaurant Association are pushing back against this type of initiative, arguing that it would lead to higher prices and fewer jobs.

Key Takeaways: Several states and cities have already banned use of the tip credit, and we expect to see more efforts at the state and local level to do the same. We will continue to track these initiatives and provide updates as warranted. Make sure to sign up for [Fisher Phillip's Insight System](#) to stay up to speed on the latest developments and any critical updates.

Conclusion

Going forward, employers will have the opportunity to make their voices heard and help influence conversations in Washington regarding tipped wage policies. If you have questions or would like to take part in the discussions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Hospitality Industry Team](#) or in our [Wage and Hour](#) or [Government Relations](#)

Practice Groups. You can also visit our [Election Season Resource Center for Employers](#) to review all our thought leadership and practical resources.

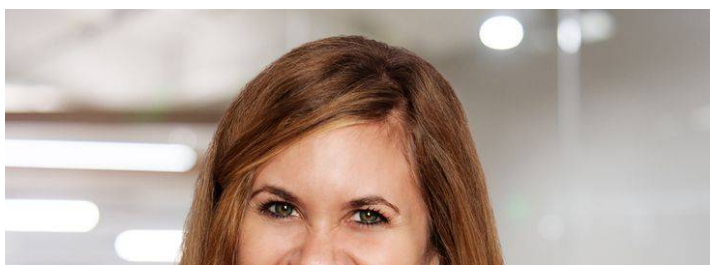
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