



Massachusetts Voters Retain Current Tip Credit Law – What Does Your Restaurant Need to Know?

Insights

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In the recent Massachusetts state election, voters faced a pivotal decision on a ballot initiative aiming to eliminate the tip credit system. The proposal sought to require employers to pay tipped employees the full state minimum wage, regardless of the tips they receive. The initiative was met with significant attention from both employer groups and employee advocates. Ultimately, Massachusetts voters rejected the measure. What does your restaurant need to know about the initiative, the implications of the election results, and the 10 best practices to comply with existing wage and hour laws in the Bay State?

What Was On the Table?

Under current law, employers are permitted to pay tipped employees a base wage lower than the standard state minimum wage, provided that the employees' total earnings (base wage plus tips) equal or exceed the minimum wage. The proposed change would have mandated that all employers pay tipped employees the full state minimum wage (currently \$15.00 per hour) exclusive of tips.

Key components of the initiative included:

- **Eventual Elimination of the Tip Credit:** Employers would no longer have been allowed to count tips towards meeting the minimum wage requirement. The tip credit would have been gradually eliminated over the course of five years
- **Increased Employer Financial Liability:** Employers would have faced greater responsibility for ensuring employees receive at least the minimum wage, independent of tip income.
- **Weekly/Bi-weekly Reconciliation:** The initiative would have eliminated the obligation under state law to reconcile tips and the minimum wage every shift, returning to a weekly or bi-weekly process.

Proponents argued that eliminating the tip credit would provide greater financial stability for tipped workers and reduce income variability. Opponents contended that the change could lead to increased labor costs, higher menu prices, reduced staffing, and potential declines in tip income due to altered customer perceptions.

Voters “86ed” the Initiative

While the re-election of Donald Trump has received most of the headlines, Massachusetts voters also emphatically defeated the “Fair Wage for Tipped Workers Act” proposal with nearly 65% of voters saying “no.” The rejection means that the current tip credit system remains in place.

The election results reflect a significant decision by the electorate to maintain the status quo regarding tipped wages. The outcome suggests that voters considered the potential economic impacts on businesses and the hospitality industry, as well as concerns about unintended consequences for employees.

5 Key Implications for Employers

With the failure of the ballot initiative, employers in the restaurant and hospitality sectors can continue to utilize the tip credit as permitted under Massachusetts law. However, this does not diminish the importance of strict compliance with existing wage and hour regulations. Employers must remain vigilant in adhering to all legal requirements to avoid potential liabilities.

Key implications include:

- 1. Continued Use of Tip Credit:** Employers may continue to pay tipped employees a base wage (\$6.75/ per hour) below the state minimum wage, provided that the combination of base wage and tips equals or exceeds the minimum wage on a **per shift**. This means that up to \$8.25 of the current \$15.00 minimum wage may be covered by tips.
- 2. Mandatory Tip Credit Notices:** Employers must inform employees about the use of the tip credit, including the amount being credited towards minimum wage obligations, and should do so in writing.
- 3. Accurate Record-Keeping:** Employers are required to maintain precise records of hours worked, wages paid, and tips received to demonstrate compliance.
- 4. Tip Pooling Regulations:** Any tip pooling arrangements must comply with state laws, ensuring that only employees who customarily and regularly receive tips participate.
- 5. Overtime Calculations:** Employers must properly calculate overtime pay for tipped employees based on the full minimum wage rate, not the lower tipped minimum wage.

10 Best Practices for Compliance

To ensure compliance with Massachusetts wage and hour laws and to mitigate the risk of legal action, employers should implement the following 10 best practices:

- 1. Conduct Regular Compliance Audits:** Conduct periodic reviews of payroll practices, tip reporting, and record-keeping systems to ensure adherence to legal requirements.

- 2. Train Your Employees:** Educate managers and supervisors on wage and hour laws, including tip credit provisions, tip pooling rules, and overtime calculations.
- 3. Provide Clear Communication:** Provide written notices to all tipped employees explaining the tip credit, how it works, and their rights under the law.
- 4. Use Accurate Timekeeping Systems:** Utilize reliable timekeeping methods to track employee hours accurately, including start and end times, breaks, and overtime.
- 5. Create Proper Wage Statements:** Ensure that pay stubs include all required information, such as hours worked, rates of pay, tip credit taken, and tip income reported.
- 6. Comply With Tip Pooling Laws:** Review tip pooling arrangements to confirm they comply with state laws, and refrain from including non-tipped staff (such as hostesses or back of the house staff and management).
- 7. Ensure Accurate Overtime Pay Calculations:** Correctly calculate overtime compensation by applying the appropriate rates and including all eligible earnings.
- 8. Respond Promptly to Complaints:** Address any employee concerns or complaints about wages or tips promptly and thoroughly to prevent escalation.
- 9. Consult With Your Legal Counsel:** Regularly consult with legal counsel experienced in labor and employment law to stay informed about legislative changes and compliance strategies.
- 10. Ensure Your Policies Stay Updated:** Keep employee handbooks and policies up to date with current laws and ensure that all staff are aware of any changes.

What's Next?

The defeat of the Fair Wage for Tipped Workers Act measure allows Massachusetts employers to continue operating under the existing tip credit system. However, the attention brought to this issue underscores the importance of compliance with wage and hour laws governing tipped employees. Employers must remain proactive in implementing best practices to ensure legal compliance.

We will continue to monitor developments related to all aspects of workplace law with a focus on the 2024 elections. Visit our [Post-Election Resource Center for Employers](#) to review all our thought leadership and practical resources. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the [author](#) of this Insight, any attorney in [our Boston office](#), or any attorney on our [Hospitality Industry team](#).

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