



Disinformation And The "Tipped-Employee Minimum Wage"

Insights

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A White House report promoting a substantial jump in the federal Fair Labor Standards Act's minimum wage perpetuates now-widely-disseminated propaganda about an alleged "tipped employee minimum wage" of \$2.13 per hour.

The fact is that there is no such thing. Talk of a so-called "tipped minimum wage" is designed in part to create a false impression that tipped employees are typically relegated to making less than the actual FLSA minimum wage.

Where Does The \$2.13 Figure Come From?

The current FLSA minimum wage for tipped employees is the same as the FLSA minimum wage for every other non-exempt employee: \$7.25 per hour. And even if leading proposals to increase that rate become law, the then-higher FLSA minimum wage will *still* be the same for tipped employees that it will be for all other non-exempt workers.

"Tipped-employee minimum wage" references are in reality a misrepresentation of the longstanding tip-credit arrangement found in the FLSA's Section 3(m). This provision permits an employer to:

- Pay a tipped employee a direct cash wage of at least \$2.13 per hour; and
- Take a credit against the employee's tips received that is sufficient to bring the total pay to *at least the FLSA minimum wage*.

If the employee's cash wages and tips received turn out to be too low to produce the combined hourly rate of (today) at least \$7.25, then the employer *must pay additional cash wages to make up the difference*. Failing to do this is an FLSA violation.

Much Talk, Little Substance

The White House report eventually gets around to saying what the law actually is. However, based in part upon data that do not contain any information about tips received, it quickly moves on to insinuate widespread employer non-compliance with Section 3(m).

From there, the report further claims that increasing the actual minimum wage without also raising the cash-wage requirement for tipped employees will exacerbate this supposed non-compliance. This assertion is based principally upon the propositions that:

- At a cash-wage hourly rate of \$2.13, tipped employees must make about 70% of their wages in tips to reach \$7.25; whereas
- A "[Payscale 2013 Tipping Study](#)" shows that tips tend to represent less than 70% of tipped-employee total wages.

But this study refutes the conclusion that the report seeks to draw. The study indicates instead that tipped workers typically make substantially *more* than the *current* FLSA minimum wage. Its results further show that all but a handful of the tipped-worker job groups listed *already* make more than the *proposed* FLSA minimum wage of \$10.10, which probably would not go into effect until 2017.

For example, one group the White House mentions is "servers". The Payscale 2013 study says that the "Typical Total Hourly Income" for the "Waiter/Waitress" category is \$11.80. For the "Bartender" group – another one the White House specified – the figure is \$16.30. Even for the "Fast Food Worker" group, which is ranked as earning the smallest percentage of total wages from tips, the rate is \$8.30.

The Bottom Line

There is of course room for reasonable disagreement about whether it is wise to increase the FLSA minimum wage. However, the debate is best served by intellectually-honest discussion involving a straightforward disclosure of the facts.

Tipped-worker employers act at their peril in failing to engage in what has so far been a largely one-sided conversation of a different kind.