





October 11, 2023

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin 
Director of Budget and Policy Analysis

FROM: Roger G. Banegas 
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-098-2023 Labor – Minimum Wage for Tipped Employees

CB-098-2023 (*Proposed by:* Council Members Burroughs, Oriadha, Blegay, Hawkins, Watson, and Harrison)

Assigned to the Government Operations and Fiscal Policy (GOFP) Committee

AN ACT CONCERNING LABOR - MINIMUM WAGE FOR TIPPED EMPLOYEES for the purpose of modifying the amount of the tip credit an employer can use to calculate the minimum wage for a tipped employee working the County; require an employer to submit quarterly wage reports; and generally, amend the law governing the minimum wage for a tipped employee working in the County.

Fiscal Summary

Direct Impact

Expenditures: Modest additional expenditures possible.

Revenue: No revenue impact likely.

Indirect Impact

Potentially favorable.

Legislative Summary:

CB-098-2023,¹ proposed and sponsored by Council Members Burroughs, Oriadha, Blegay, Hawkins, Watson, and Harrison, was presented on October 3, 2023, and was referred to the Government Operations and Fiscal Policy (GOPF) Committee. The proposed Bill would require all tipped employees working in the County to be paid at least the County or State minimum wage, whichever is higher, by 2028. The “tip credit” permitted under State law will be gradually decreased over the next (5) years until the base wage for all tipped employees is the higher of the County's or State's minimum wage. Neighboring jurisdictions such as Washington, D.C., Montgomery County, and Baltimore City have all either passed or proposed similar legislation with the united goal of raising the standard of living of service industry workers.

Background/Current Law:

County Law

Under the current Subtitle 13A., Division 2, Section 13A-117(d)² of the Prince George's County Code, as of October 1, 2017, the minimum wage required to be paid to any employee by any employer in Prince George's County shall be \$11.50, or the minimum wage pursuant to the Maryland Wage and Hour Law or the Fair Labor Standards Act, whichever is greater. Tipped wages are calculated under the same manner of computation of tipped wages in Section 3-419, Labor and Employment Article, Annotated Code of Maryland³ (the Maryland Wage and Hour Law).

State Law

As of January 1, 2023, the current Maryland minimum wage rate for a company that has 15 or more employees is \$13.25, while for a company with less than 15 employees, it is \$12.80. On January 1, 2024, the minimum wage rate will be \$15.00 for all employees, regardless of the company size.

Tipped Employees earning more than \$30 per month in tips must *earn* at least the State minimum wage, but employers of these employees are eligible to apply a “tip credit” calculated by subtracting \$3.63 per hour from the State minimum wage.⁴ Thus, employers must *pay* these

¹ [CB-098-2023](#)

² Prince George's County Code [-Sec. 13A-117](#)

³ Annotated Code of Maryland [-Sec. 3-419](#)

⁴ [Maryland Minimum Wage and Overtime Law - Employment Standards Service \(ESS\)](#)

employees at least \$3.63 per hour, but must ensure that the employee *earns* at least the minimum wage for every hour worked;⁵ the required employer portion plus tips received must equal at least the minimum wage. The employer must make up the difference if an employee does not earn enough tips to meet the tip credit amount. If an employer fails to make up the difference, the law still entitles workers to the hourly minimum wage, but they are required to take enforcement action with the Maryland State Department of Labor if the total of the employer-paid wage plus tips is less than the minimum wage.

Resource Personnel:

- Amanda Denison, Chief Legislative Officer
 - Dejah Williams, Chief of Staff, Council District 8
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Discussion/Policy Analysis:

Provisions of CB-098-2023:

If enacted, the proposed Bill would amend Subtitle 13A. *Labor Code. Division 2. Minimum Wage.* to add additional language to Section 13A-117. These amendments are primarily clarifying in nature and are as follows:

- **§13A-117(f).** The definition of a *Tipped Employee* would mean an employee who is engaged in an occupation in which they regularly receive more than Thirty Dollars (\$30.00) each month in tips. (page 2, lines 9 to 16).
- **§13A-117(f)(2). Computation of wage.** This section clarifies the calculation of wages for a tipped employee. The employer may include as part of the wage of a tipped employee (A) an amount that the employer sets to represent the tips of the employee, or (B) if the employee or representative of the employee satisfies the Maryland Department of Labor, Division of Labor and Industry Commissioner that the employee received a lesser amount in tips, the lesser amount. (page 2, lines 17 to 22).
- **§13A-117(f)(3). Tip Credit: Limit and Phase Out.** This section provides the County minimum wage limits until the planned phase-out of July 1, 2028. The tip credit amount that an employer may include must not exceed the County minimum wage less than the following:
 - (1) Three dollars and Sixty-Three cents (\$3.63) per hour, until July 1, 2024;
 - (2) Seven dollars (\$7.00) per hour, effective July 1, 2024, until June 30, 2025.
 - (3) Nine dollars (\$9.00) per hour, effective July 1, 2025, until June 30, 2026;
 - (4) Eleven dollars (\$11.00) per hour, effective July 1, 2026, until June 30, 2027.

⁵ [Understanding Maryland's Tip Credit](#)

(5) Thirteen dollars (\$13.00) per hour, effective July 1, 2027, until June 30, 2028.

The expected phase-out date is July 1, 2028, with the expectations that an employer will not include any tip credit amount and that they shall pay a tipped employee with Section 13A-117(d), which would be \$15.00 per hour (the State minimum wage, effective January 1, 2024), unless the County or State set it at a higher amount. The structure of the phase-out of the tip credit should mitigate some of the impact on businesses, while providing certainty for employers and workers as to the required wage amounts.

- **§13A-117(g).** This subsection serves to assist any covered employee who was paid a wage rate less than the County minimum wage to file a complaint with the Office of Human Rights pursuant to Subtitle 2, Division 12.

The provisions of CB-098-2023 set a firm mandate for employers in the County to comply with when they have Tipped Employees working for them. The tip credit limit and phase-out plan will be annual until Tipped Employees are being paid the full minimum wage in the County.

Relevant Legislation from Other Jurisdictions

CB-098-2023 is very similar to Montgomery County Council's Bill 35-23⁶ with key differences in the tip credit limit and phase-out plans. The minimum wage for tipped employees in Montgomery County, Maryland, is proposed at \$4.00 per hour compared to the \$3.63 in Prince George's County, Maryland, from the enactment date through July 1, 2024. However, the numbers do change and favor Tipped Employees working in Prince George's County after July 1, 2024, since the dollar amount is higher than the number proposed in Montgomery County. The increase in Prince George's County for each consecutive year until 2028 is \$7.00, \$9.00, \$11.00, and \$13.00 compared to Montgomery County's \$6.00, \$8.00, \$10.00, and \$12.00. In the District of Columbia, the minimum wage increased to \$8 per hour for tipped employees as of July 1, 2023⁷.

Items for Consideration

Advocacy groups for improving the minimum wage for tipped employees, such as the One Fair Wage organization, have gained ground in their efforts to improve employee pay and work conditions in the service industry. One Fair Wage calls for a "No Worker Left Behind" approach in which every person who works should be paid at least a full, fair minimum wage by their employer⁸. According to the U.S. Chamber of Commerce, the food service and hospitality industries have struggled with worker retention post-pandemic. The Accommodation and Food Services Industry has had the highest quit rate since July 2021, consistently above 4.9 percent⁹. Workers in this industry want better pay and working conditions.

⁶Montgomery County Council [Bill 35-23](#)

⁷[Department of Employment Services - Office of Wage-Hour Compliance](#)

⁸[One Fair Wage](#)

⁹[Understanding America's Labor Shortage: The Most Impacted Industries](#)

Employers argue, with some merit, that there will be greater costs to them as a result of this legislation, and as a result, they may impose service charges to consumers in lieu of the expectation of tips. Service charges will likely result in fewer, and smaller tips for employees. Thus, moving away from tips might not be universally received by all employees as some of them may be working in locations that often receive higher-end tips compared to others. Additionally, they may argue that eliminating tipping may force restaurants to implement service fees to sustain higher hourly wages, as raising menu prices risks losing customers to neighboring counties where tipping still exists.

It is worth reiterating that under the current tip credit scheme, employees are still entitled to the full hourly minimum wage amount, but the employer is not required to pay it to them directly. However, seeking enforcement is likely time-consuming and challenging, and probably not pursued by many workers who may have a legitimate claim. The certainty that eliminating the tip credit altogether would bring stability to some of the most vulnerable low-wage service industry workers.

Fiscal Impact:

- *Direct Impact*

Enactment of CB-098-2023 may have an adverse fiscal impact on the County as additional expenditures in the form of administrative costs for the enforcement of this Bill should the new provisions result in a significant number of complaints being filed with the Office of Human Rights.

- *Indirect Impact*

Enactment of CB-098-2023 may have a favorable indirect fiscal impact on the County to the extent that more tipped employees will seek employment as the required minimum wage amounts for tipped workers are competitive with the District of Columbia and Montgomery County.

- *Appropriated in the Current Fiscal Year Budget*

No.

Effective Date of Proposed Legislation:

The Act shall take effect forty-five (45) days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please reach out to me via phone or email.