

MEMORANDUM

May 19, 2015

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Expedited Bill 24-15, Human Rights – Minimum Wage – Tipped Employee – Amendments

Expedited Bill 24-15, Human Rights – Minimum Wage – Tipped Employee – Amendments, sponsored by Lead Sponsors Councilmembers Berliner, Katz, Council Vice President Floreen, and Councilmember Rice is scheduled to be introduced on May 21, 2015. A public hearing is tentatively scheduled for June 9 at 1:30 p.m.

Bill 24-15 would:

- (1) modify the amount of the tip credit an employer can use to calculate the minimum wage for a tipped employee working in the County;
- (2) require an employer of a tipped employee to submit quarterly wage reports;
- (3) require the Executive to establish an online reporting system for quarterly wage reports; and
- (4) generally amend the law governing the minimum wage for a tipped employee working in the County.

Background

In November 2013, the County enacted Bill 27-13, Human Rights and Civil Liberties – County Minimum Wage – Dollar Amount, establishing the County minimum wage with phased increases on October 1 of each year through 2017. Earlier this year the Council modified some of the effective dates for the phased increases by enacting Bill 59-14, Human Rights and Civil Liberties – County Minimum Wage – Effective Dates.

A tipped employee under Bill 27-13 must be paid the County minimum wage, but the employer may subtract from the hourly wage paid a tip credit. The maximum tip credit is the County minimum wage less 50% of the State minimum wage. For example, the County minimum wage is \$8.40 per hour. The State minimum wage is currently \$8.00 per hour. Therefore, the maximum tip credit is \$8.40 less \$4.00 (50% of \$8.00) or \$4.40. Therefore, an employer must pay a tipped employee working in the County a base pay of \$4.00 per hour. If the employee does not earn enough in tips to cover the tip credit, the employer must make up the difference. However,

the maximum tip credit will change as the County minimum wage and the State minimum wage change over time. A chart showing the different wage rates and the tip credit over time is at ©5. The County minimum wage less the tip credit (the County base pay for a tipped employee) is always 50% of the State minimum wage, but it would change over time as the State minimum wage rises. However, the State minimum wage less the State tip credit (the State base pay for a tipped employee) remains at the current \$3.63 per hour. Bill 24-15 would keep the County base pay for a tipped employee at its current \$4.00 per hour as the State minimum wage rises. An employer would still have to ensure that a tipped employee working in the County receives enough tips to cover the tip credit.

The Bill would also require the Executive to establish an online reporting system and an employer would have to file a quarterly report certifying that each tipped employee received the minimum wage through the base pay plus tips.

This packet contains:	<u>Circle #</u>
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Expedited Bill No. 24-15
Concerning: Human Rights -- Minimum
Wage -- Tipped Employee -
Amendments
Revised: May 19, 2015 Draft No. 2
Introduced: May 21, 2015
Expires: November 21, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Berliner, Katz, Council Vice President Floreen, and
Councilmember Rice

AN EXPEDITED ACT to:

- (1) modify the amount of the tip credit an employer can use to calculate the minimum wage for a tipped employee working in the County;
- (2) require an employer of a tipped employee to submit quarterly wage reports;
- (3) require the Executive to establish an online reporting system for quarterly wage reports; and
- (4) generally amend the law governing the minimum wage for a tipped employee working in the County.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Section 27-69

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 27-69 is amended as follows:**

2 **27-69. Tipped Employees.**

3 (a) *Definition.* As used in this Section, *tipped employee* means:

4 (1) an employee who:

5 (A) is engaged in an occupation in which the employee
6 customarily and regularly receives more than \$30 each
7 month in tips;

8 (B) has been informed by the employer about the provisions of
9 this Section; and

10 (C) has kept all of the tips that the employee received.

11 (2) Notwithstanding paragraph (1)(C), this Section does not prohibit
12 the pooling of tips.

13 (b) *Computation of wage.* Except as provided in subsection (c), an
14 employer may include, as part of the wage of a tipped employee:

15 (1) an amount that the employer sets to represent the tips of the
16 employee; or

17 (2) if the employee or representative of the employee satisfies the
18 Director that the employee received a lesser amount in tips, the
19 lesser amount.

20 (c) *Limit.* The tip credit amount that the employer may include under
21 subsection (b) must not exceed the County minimum wage less [50% of
22 the minimum wage required for that employee under the State Act]
23 \$4.00 per hour.

24 (d) *Reports.* An employer who employs a tipped employee in the County
25 must submit a quarterly wage report within 30 days after the end of each
26 quarter to the Director certifying that each tipped employee was paid the
27 minimum wage required by this Section.

28 (e) Online reporting system. The Executive must establish an internet
29 based reporting system for an employer of a tipped employee to submit
30 the quarterly wage report required by subsection (d).

31 **Sec. 2. Expedited Effective Date.**

32 The Council declares that this legislation is necessary for the immediate
33 protection of the public interest. This Act takes effect on July 1, 2015.

34 *Approved:*

35 _____
George Leventhal, President, County Council Date

36 *Approved:*

37 _____
Isiah Leggett, County Executive Date

38 *This is a correct copy of Council action.*

39 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 24-15

Human Rights – Minimum Wage – Tipped Employee – Amendments

DESCRIPTION: Bill 24-15 would:

- (1) modify the amount of the tip credit an employer can use to calculate the minimum wage for a tipped employee working in the County;
- (2) require an employer of a tipped employee to submit quarterly wage reports; and
- (3) require the Executive to establish an online reporting system for quarterly wage reports.

PROBLEM: The changing base pay for a tipped employee has caused some confusion among employers in the County.

GOALS AND OBJECTIVES: Reduce confusion over the amount of base pay for a tipped employee.

COORDINATION: Human Rights, County Attorney

FISCAL IMPACT: To be determined.

ECONOMIC IMPACT:

EVALUATION: N/A

EXPERIENCE

ELSEWHERE: Federal, State, and County minimum wages are different.

SOURCE OF

INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION

WITHIN

MUNICIPALITIES: No change.

PENALTIES: No change.

County and State Minimum Wage for Tipped Employees

County minimum wage for tipped employees = County minimum wage minus County "tip credit."

County tip credit must not exceed the County minimum wage minus 50% of the State minimum wage.

State minimum wage for tipped employees = State minimum wage minus State "tip credit."

State tip credit must not exceed State minimum wage minus \$3.63.

Date	County minimum wage	Maximum County tip credit	County min. wage for tipped employees less max. tip credit	State minimum wage	Maximum State tip credit	State min. wage for tipped employees less max. tip credit
October 1, 2014	\$8.40	\$4.77	\$3.63	\$7.25	\$3.62	\$3.63
January 1, 2015	\$8.40	\$4.40	\$4.00	\$8.00	\$4.37	\$3.63
July 1, 2015	\$8.40	\$4.27	\$4.13	\$8.25	\$4.62	\$3.63
October 1, 2015	\$9.55	\$5.42	\$4.13	\$8.25	\$4.62	\$3.63
July 1, 2016	\$10.75	\$6.37	\$4.38	\$8.75	\$5.12	\$3.63
July 1, 2017	\$11.50	\$6.87	\$4.63	\$9.25	\$5.62	\$3.63
July 1, 2018	\$11.50	\$6.45	\$5.05	\$10.10	\$6.47	\$3.63