Contact:
Melvin Thompson
Senior Vice President
Government Affairs & Public Policy
443-539-2455 (office direct dial)
mthompson@marylandrestaurants.com

October 17, 2023

Position: OPPOSE

Bill 35-23
County Minimum Wage - Tipped Employees

The Restaurant Association of Maryland strongly opposes legislation that would eliminate the tip credit. We urge the County Council to reject this legislation.

State and local policymakers in Maryland have consistently preserved the tip credit. In 2014, 2015, 2017, 2019 and 2023, the Maryland General Assembly considered legislation that would have phased out the tip credit statewide, but it failed to pass because of strong opposition from tipped employees and restaurant operators. Servers and bartenders have repeatedly urged lawmakers to reject such proposals because they make significantly more money under the current tipping system.

Most recently, after hearing strong opposition from local servers and restaurant operators, a Prince George's County Council Committee voted *4-0-1* on 10/12/23 to "*hold indefinitely*" (cease any further consideration) legislation that would have phased out the tip credit. Instead, Prince George's Councilmembers will work with stakeholders on separate legislation to assess and address wage theft and compliance/enforcement concerns. In 2021, the Howard County Council voted to preserve the tip credit in their local minimum wage law. In 2015, the Montgomery County Council voted nearly unanimously (*8 to 1*) to preserve the tip credit in the County's minimum wage law.

Contrary to what tip credit elimination advocates claim, there is no "subminimum wage" for restaurant tipped employees. County minimum wage law allows employers to pay tipped employees a base wage of at least $4.00 per hour. The "tip credit" is the difference between the minimum base wage and the full applicable minimum wage. The tip credit is lawful acknowledgement that tips contribute to the wages of tipped employees. The law allows employers to apply this portion of tip earnings to the employer's obligation to pay tipped employees the applicable minimum wage.

Under federal, state and local minimum wage laws, employers are required to make up any deficiencies if a tipped employee does not make enough in combined base wages plus tips to make at least the full applicable minimum wage per hour for the workweek.

The tip credit was established under the federal Fair Labor Standards Act in 1966 and is also allowed under most state minimum wage laws (43 states allow it).

(*more*)

Tipped employees are among the highest earners in full-service restaurants (earning a median of $27/hour including tips, according to National Restaurant Association research). Servers at some restaurants can earn $40 or more per hour including tips.

In a recent September-October survey of 257 restaurant tipped employees in Montgomery and Prince George's Counties, 76 percent of respondents said they earn $20 or more per hour in combined base wages plus tips, and 24 percent said they earn $15 to $19.99 per hour in combined base wages plus tips. (*See other key findings from server survey on page 3)*

Restaurant server earnings would significantly decrease if the tip credit was eliminated because most restaurants would be forced to impose service charges on customer checks to cover the substantially higher labor costs, and servers would earn a flat hourly rate instead. Customers are unlikely to tip on top of service charges. And there would be no incentive for servers to provide the best possible customer service because they would no longer be rewarded with tips.

Menu price increases alone cannot cover the additional labor cost (which would exceed the current profit of most full-service restaurants) because such a large increase in menu prices would result in fewer customers.

If the tip credit was eliminated, casual restaurants that could offer counter service to dine-in customers would likely eliminate server positions altogether because the increased labor costs would be unaffordable and customers at these restaurants would reject service charges they perceive to be too high.

Restaurants in the District of Columbia (D.C.) are starting to increase menu prices and impose service charges after passage of a ballot initiative that phases out the tip credit there, and customer feedback has been negative. Many frequent D.C. diners have changed their dining habits to eat out less or dine outside the city more often.

According to a recent National Restaurant Association survey of 944 frequent D.C. diners, 43% have been eating out less and 32% have been seeking dining options outside the city more often.

The restaurant industry is very labor-intensive and operates on razor-thin profit margins (typically 3-5% pre-tax margin). Customer volume is key. Food and labor costs are the two most significant line items for a restaurant, each accounting for approximately 33 cents of every dollar in sales. All other expenses, including occupancy costs, generally represent about 29% of sales. For the vast majority of restaurants, these three categories increased significantly in recent years. It's important to note that many restaurants had to take on new debt during the pandemic to stay afloat during shutdowns and recovery, and repaying these loans continues to add pressure on their budgets.

Advocates for eliminating the tip credit often say that the restaurant industry continues to grow in the 7 non-tip credit states. But restaurants opening in those states know that the tip credit will not be part of their business models. Therefore, they decide to open in locations that will support their menu prices or service charges. Maryland restaurant owners, however, have made financial commitments and secured mortgages or long-term leases based on a business model that utilizes the tip credit. Eliminating the tip credit would be devastating to these restaurants.

The tip credit maximizes the earnings potential of restaurant tipped employees, is critical to the full-service restaurant business model, and should be preserved for businesses that choose to utilize it.

<u>Server Survey Key Findings</u>*

A strong majority of tipped employees (87%) agree that the current tipping system works well for them and does not need to be changed (somewhat agree, 16%; strongly agree, 71%).

Many (37%) tipped employees say they are earning $20.00-$29.99 per hour, while others are earning $30.00-$39.99 per hour (28%), $15.00-$19.99 per hour (24%) or $40.00 per hour or more (11%).

If tipped wages are eliminated, most believe that tipped employees will earn less (89%). Fewer say they will earn more (7%) or earn the same (4%).

A majority believe that customers are unlikely (80%) to continue tipping on top of any mandatory service charge (somewhat unlikely, 14%; very unlikely, 66%).

Most (80%) say they are likely to quit their jobs and find work in a jurisdiction that allows tip credit if the tip credit were eliminated (somewhat likely, 16%; very likely, 64%).

A majority (86%) say they want the current system with a lower base wage and tips that provide the ability to earn more than the minimum wage, while 14 percent want a different system with a higher base wage, but a less certain outcome on tipped income for the server.

**Survey of 257 tipped restaurant workers in Montgomery and Prince George's Counties; conducted September-October 2023*

Lloyd Corder, Ph.D.
CorCom, Inc.
Carnegie Mellon University

Contact:

Melvin Thompson
Senior Vice President - Government Affairs
443-539-2455 (office direct dial)
mthompson@marylandrestaurants.com

January 10, 2024

Position: OPPOSE

Bill 35-23

County Minimum Wage - Tipped Employees

Additional Comments to Address Tip Credit Issue Misinformation

The Restaurant Association of Maryland appreciates the opportunity to provide additional information and comments that were not included in our initial written testimony opposing Bill 35-23. We believe it's necessary for us to share these supplementary comments and clarifications with Councilmembers to further address some of the misinformation from the bill advocates.

1. **The supporters of this legislation continue to downplay the impact of phasing out the tip credit in the District of Columbia (D.C.) after passage of ballot Initiative 82 (I-82) there. The primary bill advocate, *One Fair Wage*, recently released a report citing data that show an increase in D.C. restaurant jobs and restaurant establishments since November 2022.**

   An Employment Policies Institute analysis of U.S. Bureau of Labor Statistics data found that D.C. full-service restaurant employment dropped 2.4 percent (roughly 700 jobs) between May 2023 (when the first I-82 wage increase took effect) and September 2023.

   According to a recent Restaurant Association of Metropolitan Washington (RAMW) analysis of D.C. restaurant openings and closings, more D.C. restaurants closed in 2023 than in the previous two years. And fewer restaurants opened in D.C. in 2023 than in the previous two years. See related WAMU dcist article.

   Also, a recent RAMW survey of their restaurant members revealed that more than one-third of restaurants are experiencing a drop in sales and traffic. Summer sales fell for more than one-third (35 percent) of restaurants compared to 2022, dropping an average of 31 percent. Summer customer traffic fell for 44 percent of restaurants compared to 2022, dropping an average of 28 percent. See related Axios article.

   Also see related WUSA Channel 9 story for a good account of what's been going on in D.C.

   It's important to note that D.C. is currently experiencing the initial phases of eliminating the tip credit. The impact is expected to get worse as the tip credit elimination progresses there. Service charges, menu price increases and reduced staff/working hours are expected to become more prevalent.

2. **Clarification regarding *tips* vs. *service charges*.**

   Under federal law and [IRS rules](), service charges (sometimes called automatic gratuities) added to customer checks are part of the business's gross receipts and are not the same as tips. Although restaurants may choose to distribute all or part of such service charges to employees as regular wages (not tips), the law does not require it.

   Eliminating the tip credit quadruples server labor costs. This will force restaurants to impose service charges and use the revenue to cover these higher labor costs. Menu price increases alone cannot cover the additional labor cost (which would exceed the current profit of most full-service restaurants) because such a large increase in menu prices would drive away customers. Many D.C. restaurants are starting to impose service charges for these reasons.

3. **Bill advocates say that customers continue to tip in the 7 states without a tip credit (Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington).**

   According to a state listing of customer average tipping percentages in a Restaurant Trends Report by Toast (a point-of-sale system used by many restaurants), Maryland's average tipping percentage is higher than 6 of the states without a tip credit (except for Montana). California has the lowest tipping average among the list of 50 states.

4. **In the introduction packet for Bill 35-23, the bill sponsor's memorandum makes the following claim:**

   > **"A 2014 report by the Obama administration found that 84% of restaurants violate wage laws for tipped workers, including failing to make up the difference when tips don't bring workers to the full minimum wage."**

   This claim is false.

   During our exhaustive research, we were unable to find any such "2014 report by the Obama administration." The only related language we could find was in a 2014 report by the Economic Policy Institute (a Washington, D.C.-based think tank) that supports eliminating the tip credit. This report language included the following excerpts regarding a 2010–2012 compliance investigation of nearly 9,000 full-service restaurants by the U.S. Department of Labor's Wage and Hour Division (WHD):

   > "… 83.8 percent of investigated restaurants had some type of violation."
   >
   > "Violations included 1,170 tip credit infractions that resulted in nearly $5.5 million in back wages.[17]"
   >
   > *Report Endnotes*: "17. Email correspondence with U.S. Department of Labor program analysts from the Wage and Hour Division"

   Apparently, the basis for the related claim in the bill sponsor's memorandum was WHD email correspondence that the authors of the Economic Policy Institute's report used and cited – not a "report by the Obama administration." Moreover, this statistic was used incorrectly in the bill sponsor's memorandum. According to the referenced email correspondence with WHD analysts, 84 percent of investigated restaurants had "some type of violation." And "violations included 1,170 tip credit infractions." WHD violations can include many types of labor infractions. The bill sponsor's memorandum inaccurately connects the 84 percent to violations of wage laws for tipped workers.

> *We reviewed [WHD online violation data](#) for the 2010–2012 compliance investigation period and found a total of 44 Maryland full-service restaurants with various types of labor violations. Of these, 10 full-service restaurants had violations related to minimum wage (which could include tip credit violations), and 4 of these full-service restaurants were in Montgomery County.*

In 2022, *One Fair Wage* (the Massachusetts-based advocacy group that is pushing to eliminate the tip credit) launched a $25 million campaign to abolish such laws in 25 states by 2026. To achieve this goal, they have been targeting more progressive states and jurisdictions where they think they can persuade policymakers or pass ballot initiatives to eliminate the tip credit despite any opposition from local restaurants and tipped employees. Maryland's state and local policymakers should reject that organization's efforts to pursue their national agenda at the expense of local restaurants and tipped employees who support maintaining the tip credit.