

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 35-23 COUNTY MINIMUM WAGE – TIPPED EMPLOYEES

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 35-23 could have a favorable impact on racial equity and social justice (RESJ) in the County by disproportionately increasing wages for BIPOC workers concentrated in tipped occupations and narrowing racial disparities in wages.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 35-23

If enacted, Bill 35-23 would:

- Adjust the calculation of the minimum wage for tipped workers;
- Phase out the tip credit amount under the County minimum wage law; and
- Generally amend the County minimum wage law.

Under current County law, an employer calculating a minimum wage may include within the calculation a “tip credit” for tipped workers. The tip credit represents an amount of the minimum wage a worker is expected to receive in tips. If enacted, Bill 35-23 would discontinue the tip credit for minimum wage workers by July 1, 2028 and require employers to pay workers the legal minimum wage without including their tips.³ Generally, the tip credit that the employer would be able to include as part of the calculation of the minimum wage would not be permitted to exceed the County minimum wage less:

- \$4.00 per hour, until July 1, 2024;
- \$6.00 per hour, effective July 1, 2024 until July 1, 2025;
- \$8.00 per hour, effective July 1, 2025 until July 1, 2026;
- \$10.00 per hour, effective July 1, 2026 until July 1, 2027; and
- \$12.00 per hour, effective July 1, 2027 until July 1, 2028

Bill 35-23, County Minimum Wage – Tipped Employees, was introduced by the Council on September 19, 2023.

The RESJIS for Bill 35-23 builds off the RESJIS for Bill 34-23, County Minimum Wage – Wage Commission – Established. For background on racial inequities in wages, refer to the RESJIS for Bill 34-23.

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RACIAL INEQUITY AND TIPPED WORKERS

The origins of the national and local economy were built on racial inequity in wages, income, and wealth.⁴ This includes racial inequities in who received tips rather than wages for their work. For example, Wendy Pollack of the Shriver Center on Poverty Law notes that post-Emancipation, “tipping was introduced as a way to exploit the labor of former slaves.”⁵ More specifically, she finds that:⁶

“Tipping proliferated in the United States after the Civil War, when the restaurant and hospitality industries hired newly emancipated Black women and men but offered them no wage – leaving them to rely on patrons’ gratuities for their pay instead.”

Later, New Deal Era laws such as the Fair Labor Standards Act of 1938 sought to reduce the exploitation of workers by establishing a federal minimum wage. Yet, occupations reliant on Black, Indigenous, People of Color (BIPOC) workers, such as domestic, agricultural, and tipped occupations, were excluded. While 1966 amendments to the Fair Labor Standards Act added a tip credit provision to its minimum wage provisions,⁷ BIPOC workers continued to disproportionately earn subminimum wages.

The Maryland tipped wage is currently \$3.63 per hour. Montgomery County law requires that restaurants and other employers pay tipped employees a \$4.00 base hourly wage as long as their tip earnings put them at or above the regular minimum wage rate of \$16.70 per hour for larger employers, \$15.00 for employers with 50 or fewer employees, and \$14.50 for employers with 10 or fewer employees.⁸ If the employee’s tips combined with the employer’s direct wages of at least \$4.00 per hour does not equal the County minimum wage, the employer must make up the difference.

Most tipped workers continue to be concentrated in the restaurant and hospitality industries. Other occupations that include tipped workers include hotel housekeepers, bellhops, private parking attendants, airport wheelchair escorts, and hairdressers. A report by the Maryland Center on Economic Policy (MDCEP) indicates that a significant share of tipped workers in Montgomery County are adults rather than teens, have some college education, are foreign-born, and reside in the County.⁹ For example, among tipped workers:

- 86 percent are at least 20 years old, and more than half are at least 30 years old;
- 19 percent have a college degree and another 30 percent have at least some college education;
- 24 percent are caring for children under 18;
- 44 percent were born outside the United States, including 21 percent who are naturalized U.S. citizens; and
- 84 percent of tipped workers in Montgomery County also live here.

According to One Fair Wage, women comprised 65 percent of the tipped workforce in Maryland while BIPOC accounted for 52 percent of tipped workers.¹⁰ The MDCEP further observes that among industries with tipped occupations in Montgomery County, women also comprised 65 percent of the workforce and BIPOC women comprised 49 percent of the workforce compared to accounting for only 29 percent of workers in other industries.¹¹

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 35-23 on RESJ in the County, OLO considers two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

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The primary beneficiaries of Bill 35-23 are tipped workers earning the County tipped minimum wage including their tips. When fully enacted, this bill will enable tipped workers to earn the minimum wage on top of the tips they earn. Since BIPOC (and BIPOC women in particular) are over-represented among tipped workers, they could especially benefit from Bill 35-23. By increasing wages for tipped workers that are disproportionately BIPOC, this bill could also potentially narrow racial disparities in wages and earnings.

Of note, BIPOC business owners are also concentrated in tipped industries that could potentially be adversely impacted by rising labor costs associated with ending tipped minimum wages. Nationally, BIPOC-owned businesses accounted for 20 percent of all businesses but 38 percent of all businesses in the accommodations and food service sector in 2016. The research is mixed regarding whether restaurants are adversely impacted by eliminating tipped wages (see for example Economic Policy Institute, Center for American Progress, and One Fair Wage). Moreover, it remains unclear whether BIPOC businesses are adversely impacted. Even if BIPOC businesses are adversely impacted, OLO anticipates that the harm to such businesses will be less than the benefit to BIPOC workers of eliminating tipped wages.

Taken together, OLO anticipates Bill 35-23 will have a positive impact on RESJ in the County. National and local data indicate that BIPOC and especially, women of color would be the primary beneficiaries of Bill 35-23. If the Bill increases the wages and income of BIPOC workers, then it could diminish racial disparities in wages and income.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to offer recommended amendments to bills that are anticipated to have a negative impact on RESJ in the County.¹² OLO anticipates that if enacted Bill 35-23 would disproportionately benefit BIPOC, and in particular BIPOC women. Therefore, OLO does not offer recommended amendments for Bill 35-23.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools.

<https://www.racialequitytools.org/glossary>

² Ibid.

³ Memorandum from Christine Wellons, Legislative Attorney to County Council. September 14, 2023

https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&clip_id=16907&meta_id=164404

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⁴ Field Note, 2020-2, December 2020 – Turning the Floodlights on the Root Causes of Today’s Racialized Economic Disparities, Community Development Work at the Boston Fed Post-2020, Regional and Community Outreach

⁵ Pollack, Wendy, The Racist History Behind America’s Tipping Culture. Shriver Center on Poverty Law. August 19, 2019

⁶ Ibid

⁷ EveryCRSReport.com. The Tip Credit Provisions of the Fair Labor Standards Act (FLSA): In Brief. March 27, 2014 – March 19, 2015

<https://www.everycrsreport.com/reports/R43445.html>

⁸ Montgomery County Office of Human Rights. Minimum Wage Increase - Effective July 1, 2023.

<https://www.montgomerycountymd.gov/humanrights/min-wage.html>

⁹ Meyer, Christopher, Tips on Top in Montgomery County: Guaranteeing Full Wage Protection Would Ultimately Put \$150 Million in Workers’ Pockets. Maryland Center on Economic Policy. August 16, 2023

<http://www.mdeconomy.org/tips-on-top-in-montgomery-county-guaranteeing-full-wage-protection-would-ultimately-put-150-million-in-workers-pockets/>

¹⁰ One Fair Wage. 2023. Ending a Legacy of Slavery and Addressing Maryland’s Restaurant Staffing Crisis. January 1.

https://onefairwage.site/wp-content/uploads/2023/01/OFW_EndingLegacySlavery_MD-1.pdf

¹¹ Meyer, Christopher

¹² Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council