

Montgomery County, Maryland
Office of the County Executive
Office of Internal Audit



Assessment of County's Implementation Plan for Minimum Wage Law
for Tipped Employees (Bill 24-15)

May 30, 2017

Highlights

Why MCIA Did this Audit

Following enactment of the County's Minimum Wage Law for Tipped Employees (Bill 24-15; enacted June 23, 2015, effective July 1, 2015), the accounting firm of SC&H, under contract with the County's Office of Internal Audit (MCIA), performed a program assessment of the County's implementation plan for this program. The County's Office of Human Rights (OHR) has responsibility for implementation and administration of the provisions in Bill 24-15.

Bill 24-15 became effective in July 1, 2015 and requires the County to collect wage information with the intention of verifying that tipped wage employers are paying the minimum wage equivalency to their tipped employees. OHR is responsible for ensuring processes are implemented to facilitate and ensure compliance with the law requirements. Key highlights of the bill include:

- A tipped employee is defined as a worker who receives more than \$30 each month in tips
- Employers must ensure tipped employees are paid the County Government's minimum wage
- Tip credit for employers cannot exceed \$4.00 per hour
- The Executive (OHR) must collect and monitor quarterly wage reports
- The Executive (OHR) must establish an online reporting tool to facilitate employer compliance

What MCIA Recommends

MCIA has identified four barriers that OHR faces in successfully implementing Bill 24-15, and identifies improvement actions that MCIA believes would assist OHR's implementation plan.

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What MCIA Found

The assessment found that OHR had implemented an online Wage Reporting Form that requested employers to report the following quarterly information:

- The number of tipped employees employed
- The wages paid for each tipped employee
- A signature to certify each tipped wage worker was paid at least the equivalent to the County's minimum wage

OHR temporarily postponed the further implementation and enforcement of Bill 24-15 pending the outcome of this program assessment.

MCIA identified the need to address several barriers that, if left unaddressed, could impact the County's implementation of Bill 24-15:

- Current County legislation, including the Montgomery County Tipped Wage Law (Bill 24-15), does not clearly state or dictate OHR's authority to audit, enforce, or penalize employer non-compliance.
- OHR does not have access to an inventory of licensed businesses in the County to target for quarterly tipped wage law compliance.
- The County does not appear to have a fully functional internet based system to facilitate the minimum wage law process.
- Additional level of effort may be required to perform the job duties associated with Bill 24-15 related processes.

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Background

Montgomery County is in the process of implementing Bill 24-15, County's Minimum Wage Law for Tipped Employees. The Office of Human Rights (OHR) has been assigned responsibility for implementation and administration of this program. OHR has implemented an online Wage Reporting Form that requested employers to report the following quarterly information:

- The number of tipped employees employed
- The wages paid for each tipped employee
- A signature to certify each tipped wage worker was paid at least the equivalent to the County's minimum wage

OHR temporarily postponed further implementation and enforcement of Bill 24-15 pending the completion of an assessment of OHR's current implementation plan.

The County requested that an assessment of the implementation transition plan – including current progress and planned future steps – be conducted to research and understand Bill 24-15 legislative requirements and the County's audit/enforcement authority; identify an inventory source of licensed businesses in the County; assess current methods used by the County to promote understanding of and compliance with the law by businesses in the County; and assess the current approach to providing an online reporting solution. The County assigned responsibility for conducting the assessment to the Office of Internal Audit (MCIA). MCIA undertook the investigation with the assistance of the SC&H Group, a contractor that provides internal audit services to the County.

Objectives

The assessment had the following objectives:

- Analyze legislative requirements to determine the industries likely affected by the bill;
- Identify potential sources for creating an initial inventory of all employers subject to the Wage Law and design a process to periodically update the inventory to ensure completeness;
- Assess the County's existing outreach/education programs, and identify recommended enhancements to the current plan to notify and communicate with employers subject to the Wage Law;
- Assess the current state for the reporting system (both paper and online) mandated by the legislation, and identify recommended enhancements to Montgomery County's (the County) current approach. Such enhancements could include options for an external

service provider or developing an in-house online reporting system to enable employers to submit and comply with the required quarterly wage reporting;

- Assess risks associated with the effective implementation of Bill 24-15, include but not limited to the following: the County's ability to verify/audit information reported by employers on the quarterly wage report and staffing issues.

This report summarizes the assessment approach, and the resultant findings and recommendations for County action.

Methodology and Approach

To achieve the finalized objectives of this review, SC&H performed the following tasks on behalf of MCIA:

Legislative Understanding: Researched and reviewed legislative language to understand the County's governance over tipped wage employers and enforcement authority.

- Reviewed County and State legislation to identify OHR's authority to audit and enforce Bill 24-15. Legislative documents reviewed included:
 - Bill 24-15
 - Chapter 27 of the Montgomery County Code
 - Chapter 27 of the Montgomery County Regulations
 - Montgomery County Minimum Wage Rates
 - Maryland Minimum Wage and Overtime Law Rates
 - Montgomery County Health and Human Services (HHS) Committee recommendations in response to Bill 24-15
- Reviewed the County's current regulatory procedures to process complaints and investigate cases of tipped wage non-compliance.

Inventory Research: Researched available options and methods for OHR to obtain a report of all businesses currently licensed in the County.

- Met with OHR to determine if any other County department maintained an inventory of licensed businesses.
- Contacted and interviewed various divisions with the Maryland Department of Labor, Licensing, and Regulation (DLLR) to verify DLLR maintains employer data for Montgomery County.
- Reviewed the data sharing agreement between DLLR and the County's Department of Finance to determine if OHR could leverage the existing shared DLLR data.
- Identified DLLR as the appropriate source for the business inventory data. Verified the necessary fields are available and maintained by DLLR and provided OHR Management

with the required next steps/options to make the formal request on behalf of the County.

Outreach Strategies: Assessed current OHR outreach efforts for Bill 24-15, researched government and business best practices, and provided OHR Management with a presentation of best practice outreach strategies moving forward.

Process Flowcharts: Based on discussions with OHR Management, draft process workflows were prepared and provided to OHR Management.

Online Reporting Solution Comparisons: Researched and compared internal/external reporting solutions to address the requirement of the County to provide an online reporting tool for tipped employers to comply with the minimum wage law.

Assessment of OHR Implementation Plan: Findings and Recommendations

The following section provides detailed observations and recommendations regarding four current barriers to OHR's successful implementation of Bill 24-15. Suggested improvement actions for each of the findings are provided that may assist in remediating the issues and mitigating the risks. The barriers and recommendations noted are based on information provided throughout this engagement by OHR Management and current conditions. As OHR Management pursues resolutions to the barriers identified, the conditions may change and Management should assess/ modify their approach based on any new information and knowledge gained that was not previously available or confirmed.

Barrier 1: Current County legislation, including the Montgomery County Tipped Wage Law (Bill 24-15), does not appear to clearly state OHR's authority to audit an employer's quarterly submission of wage information; or to enforce instances of employer non-compliance with either the quarterly wage reporting requirement or payment of the minimum wage equivalency requirement.

Barrier Detail and Risk: Bill 24-15 requires OHR to collect quarterly wage reports from tipped employers. The Bill makes no direct mention of either the County's authority to audit such reports or specific enforcement authorities. Therefore, it is unclear of the authority OHR has to enforce instances of non-compliance by employers that fail to submit quarterly wage reports timely or are found to not be paying an employee minimum wage equivalency as required in Bill 24-15. The observation is based on discussions with OHR Management as well as a review of the following legislation:

- Montgomery County Tipped Wage Law (Bill 24-15)
- Montgomery County Code Chapter 27
 - Human Rights and Civil Liberties, Article I: Commission on Human Rights
 - Human Rights and Civil Liberties, Article XI: County Minimum Wage

Absent clear authority by OHR to audit and enforce instances of employer non-compliance, employer compliance, and overall program effectiveness may be adversely affected.

Recommendation 1: OHR should take appropriate steps to determine and, as appropriate, clarify OHR's authority under Bill 24-15 (or other applicable law) to (a) audit employer quarterly wage reports, and (b) take appropriate enforcement action (including define what enforcement actions are specifically authorized) if employers do not submit quarterly wage reports timely or if the County determined that an employer did not pay their tipped employees at least the minimum wage as required under Bill 24-15.

Barrier 2: OHR does not have access to an inventory of licensed businesses in the County to target for quarterly tipped wage law compliance.

Barrier Detail and Risk: Maryland's DLLR maintains an inventory of licensed businesses operating in Montgomery County. The data is categorized by North American Industry Classification System (NAICS) codes. A data sharing agreement currently exists between the County's Department of Finance and DLLR for the sharing of similar business inventory information; data covered by this data sharing agreement would enable OHR to effectively establish and update an inventory of businesses in the County that are subject to Bill 24-15's reporting and wage requirements. However, based on numerous discussions with DLLR regarding OHR's intended uses of the data, the current data sharing agreement does not, as currently structured, allow OHR to use or receive the data, including such basic employer personally identifiable information (PII) as name, address, phone number, and e-mail address. The lack of an inventory of businesses licensed in the County that are potentially subject to the requirements of Bill 24-15 would make OHR's efforts to ensure full compliance particularly difficult. While alternative approaches to developing such an inventory are possible, these approaches would likely further delay the implementation of Bill 24-15 and increase the cost to generate business compliance.

Recommendation 2: OHR should coordinate with DLLR and the County's Department of Finance to determine whether the current data sharing agreement can be amended to include the OHR's intended use for data; or alternatively pursue with DLLR the establishment of a new data sharing agreement specific to Bill 24-15 uses. [NOTE: The following fields were identified as critical when receiving data from DLLR and has been verified as available: business name, business address, # of employees, business owner name, business owner phone number, business owner e-mail address, and NAICS code.]

Barrier 3: The County does not appear to have a fully-functional internet based system to facilitate the minimum wage law process.

Barrier Detail and Risk: OHR is required to provide an online reporting solution to facilitate employer compliance with Bill 24-15. The existing report available to employers on OHR's website provides minimal functionality, does not permit the reporting of all information OHR may potentially need for compliance and enforcement purposes, and would require additional

resources to manually collect and enter into a separate database information that is collected. Alternative online reporting solutions were identified and provided to OHR for their consideration and appropriate action.

Recommendation 3: OHR should pursue, in coordination with the County’s Department of Technology Service, the feasibility of acquiring and implementing a more robust online reporting system to support the requirements of Bill 24-15. [NOTE: Based on the initial fact-finding conducted by the audit firm, it is estimated that such a solution could be acquired for less than \$50,000, with a minimal monthly fee of less than \$100 per OHR user.]

Barrier 4: Additional level of effort may be required to perform the job duties associated with Bill 24-15 related processes.

Barrier Detail and Risk: OHR has not yet implemented a fully-functional internet based system or interim operational manual business processes related to Bill 24-15. Based on the anticipated daily and quarterly tasks, it is unclear whether OHR has the necessary resources to effectively implement the requirements of Bill 24-15. Inadequate resourcing of a program increases the risk of non-compliance and could potentially reduce the success of the program.

Recommendation 4: Using the results of this program assessment, OHR should re-assess the resources currently available to determine whether Bill 24-15’s requirements can be effectively implemented with existing resource levels.

Department Comments and MCIA Evaluation

MCIA provided a draft of this report to the Office of Human Rights (OHR) for their review and comment. OHR stated the findings and recommendations align with the efficient compliance with the requirements of the law. A copy of the OHR memorandum appears as Appendix A.

Appendix A - Department Response

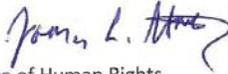


OFFICE OF HUMAN RIGHTS

Isiah Leggett
County Executive

James L. Stowe
Director

To: Fariba Kassiri, Assistance Chief
Administration Officer
Office of the County Executive

From: James L. Stowe, Director 
Montgomery County Office of Human Rights

Subject: Assessment of County's Implementation Plan for Minimum Wage Law for Tipped Employees
(Bill 24-15)

The Office of Human Rights has reviewed the draft report on the Assessment of the County's Implementation Plan for Minimum Wage. The key findings and recommendations align with the efficient compliance to the requirements of the new law. The final decision on the provider of the external software support is still an open issue; while a provider has been recommended. We agree that additional legislative revisions and guidance on enforcement requirements is required for greater clarity on enforcement authority. The other issue to be finalized is the notification of compliance and or non-compliance and the collection of fines. These are items to be further explored with the County Attorney's Office.

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