



**Committee:** Joint  
**Committee Review:** At a future date  
**Staff:** Christine Wellons, Senior Legislative Attorney  
**Purpose:** To introduce agenda item – no vote expected  
**Keywords:** #MinimumWage

AGENDA ITEM #1A  
September 19, 2023  
**Introduction**

## SUBJECT

Bill 35-23, County Minimum Wage – Tipped Employees

Lead Sponsors: Councilmembers Jawando and Mink

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A

## DESCRIPTION/ISSUE

Bill 35-23 would:

- (1) adjust the calculation of the minimum wage for tipped workers;
- (2) phase out the tip credit amount under the County minimum wage law; and
- (3) generally amend the County minimum wage law.

## SUMMARY OF KEY DISCUSSION POINTS

- N/A

### **This report contains:**

Staff Report	Pages 1-2
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**M E M O R A N D U M**

September 14, 2023

TO: County Council

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 35-23, County Minimum Wage – Tipped Workers

PURPOSE: Introduction – no Council votes required

Bill 35-23, County Minimum Wage – Tipped Workers, sponsored by Lead Sponsors Councilmembers Jawando and Mink, is scheduled for introduction on September 19, 2023. A public hearing is tentatively scheduled for October 10, 2023 at 1:30 p.m. The bill will be considered jointly by the ECON and HHS Committees.

Bill 35-23 would:

- (1) adjust the calculation of the minimum wage for tipped workers;
- (2) phase out the tip credit amount under the County minimum wage law; and
- (3) generally amend the County minimum wage law.

**BACKGROUND**

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.

The current amount of the credit is the hourly minimum wage minus \$4.00; or a lesser credit if the employee or representative of the employee satisfies the Executive Director of the Office of Human Rights that the employee receives a lesser amount in tips.

**BILL SPECIFICS**

The bill would discontinue the tip credit for minimum wage workers as of July 1, 2028.

Leading up to July 1, 2028, the tip credit would be phased out. Specifically, the tip credit amount 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.

This packet contains:

Bill 35-23

Sponsors' Memorandum

Circle #

1

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Bill No. 35-23  
Concerning: County Minimum Wage –  
Tipped Employees  
Revised: 09/14/2023 Draft No. 3  
Introduced: September 19, 2023  
Expires: December 7, 2026  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmembers Jawando and Mink

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**AN ACT** to:

- (1) adjust the calculation of the minimum wage for tipped workers;
- (2) phase out the tip credit amount under the County minimum wage law; and
- (3) generally amend the County minimum wage law.

By amending

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

<b>Boldface</b>	<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:*

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

**27-69. Tipped employees.**

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

(1) an employee who:

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

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

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

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

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

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

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

(c) *Limit and phase-out of the tip credit amount.*

(1) The tip credit amount that the employer may include under subsection (b) must not exceed the County minimum wage less:

(A) \$4.00 per hour, until July 1, 2024;

(B) \$6.00 per hour, effective July 1, 2024 until July 1, 2025;

(C) \$8.00 per hour, effective July 1, 2025 until July 1, 2026;

(D) \$10.00 per hour, effective July 1, 2026 until July 1, 2027;

and

- 28                    (E)    \$12.00 per hour, effective July 1, 2027 until July 1, 2028.
- 29                    (2)    Effective July 1, 2028, an employer:
- 30                    (A)    must not include any tip credit amount under subsection
- 31    (b); and
- 32                    (B)    must pay a tipped employee in accordance with Section
- 33    27-68.
- 34                    (d)    *Reports.* An employer who employs a tipped employee in the County
- 35    must submit a quarterly wage report within 30 days after the end of
- 36    each quarter to the Director certifying that each tipped employee was
- 37    paid the minimum wage required by this Section.
- 38                    (e)    *Online reporting system.* The executive must establish an internet based
- 39    reporting system as an optional method for an employer of a tipped
- 40    employee to submit the quarterly wage report required by subsection
- 41    (d).



## MEMORANDUM

September 13, 2023

TO: Montgomery County Council

FROM: Will Jawando, Councilmember  
Kristin Mink, Councilmember

SUBJECT: Proposed Bill 35-23, County Minimum Wage – Tipped Employees

We have requested introduction of the attached Bill for the Council's next legislative day on Tuesday, September 19th. The Bill would phase out the tipped subminimum wage within Montgomery County between now and July 1, 2028, so that by that date all workers are paid a full minimum wage with ability to receive tips on top.

Regardless of their background or ability, every worker deserves to earn a wage that acknowledges their value and dignity. Subminimum wages undercut this foundational belief by institutionalizing lower pay for certain classes of workers.

Seven states have already eliminated the subminimum wage for tipped workers entirely. A Center for American Progress analysis found that "in those states, workers and businesses in tipped industries have done as well as or better than their counterparts in other states over the years since abolishing the subminimum wage." Those states have the same or higher restaurant sales, employment growth rates, and tipping averages compared to jurisdictions that still allow subminimum wages. Other cities and counties have also eliminated subminimum wages, recognizing their fundamental unfairness.

Washington, DC, has already led the way in our region, and it is time for Montgomery County to follow suit to ensure our workers are not left behind. In 2022, D.C. voters overwhelmingly voted for Initiative 82 to phase out the tip credit. We believe that now is the right time to take up this issue in Montgomery County before significant disparities are created between workers and restaurants in our region.

On paper, tipped workers must earn the full minimum wage, which is \$15.00 per hour for a medium-sized employer. The employer only has to contribute \$4.00 per hour if tips cover the rest for their workers. Unfortunately, research shows that this system is routinely abused. 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 problem has only worsened since the pandemic as tipping declined dramatically for many servers and bartenders.

We understand that restaurant owners will need time to adapt. The Bill's implementation schedule follows one year behind DC's phase-out, with the tipped subminimum wage increasing gradually each year until its complete elimination on July 1st, 2028. This phase-out is a full year later than DC's schedule.

The subminimum wage is an outdated practice that leads to pay inequity. The time has come to ensure all Montgomery County workers earn a fair living wage. We look forward to discussing the proposed legislation with the Council.