

## Bill Would Compel Higher Cash Wages For Tipped Employees

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by Lawrence S. McGoldrick

A bill introduced recently by U.S. Representative Donna Edwards (D. Md.) would amend the federal Fair Labor Standards Act to require many employers to boost their direct cash payments to tipped employees by 76% within 90 days after passage, even though these employees are already receiving (by law) at least the FLSA minimum wage in combined tips and cash wages. A year later, the cash-wage requirement would be \$5.00 (135% higher than the current level). In two years, the figure would increase to \$5.50 (158% higher than today) or 70% of the FLSA minimum wage, whichever is more. H.R. 631 would be known as the WAGES Act ("Working for Adequate Gains for Employment in Services").

The bill's stated purpose, "to establish a base minimum wage for tipped employees," is misleading: Tipped employees are now, and would continue be, covered by the existing FLSA minimum wage (currently \$7.25 per hour). The bill would not change or expand this obligation. What the amendment would *actually* do might be more-accurately stated this way: "To increase the employer's direct wage costs by mandating an increase in its *cash* wages paid to tipped employees, who are already guaranteed by law to make at least the same FLSA minimum wage that applies to all other workers."

Currently, the FLSA permits an employer to pay a "tipped employee" a direct cash wage of at least \$2.13 per hour and to take a "tip credit" against the employee's tips received which is sufficient to bring the total to at least \$7.25 per hour. If the employee's tips received are too low to produce the combined hourly rate of at least \$7.25, the employer must make up the difference by paying additional cash wages.

The first-tier impact of the proposal would be to require employers to boost their minimum cash payment to tipped employees from the current \$2.13 per hour to \$3.75 per hour. For example, a tipped employee who this week averages \$10 per hour in tips and who is also paid the minimum FLSA cash wage of \$2.13 per hour is compensated at an effective average hourly rate of \$12.13. Under the WAGES Act, on those same facts the employee would instead be compensated at an effective hourly rate of \$13.75. This substantial increase in the employer's cash-wage contribution would be required even though under current law the employee already receives an all-in average hourly rate significantly higher than the \$7.25 FLSA minimum.

At a teleconference with reporters, Representative Edwards reportedly acknowledged that the bill does not have much of a chance of advancing in the Republican-led House. Nevertheless, experience suggests that such proposals can get traction as legislative sausage-making proceeds during a session.

# Wage and Hour Laws



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At the same teleconference, Saru Jayaraman, Co-Director of Restaurant Opportunities United Centers, reportedly asserted that restaurant workers on average make \$8.89 per hour with tips. Jayaraman reportedly said, "People are making-do on poverty wages."

Even if one assumes for the moment that tipped restaurant workers are indeed averaging \$8.89 per hour, this *already* exceeds the FLSA minimum wage. Perhaps the unstated aim that Representative Edwards and Co-Director Jayaraman really have in mind is to provoke an increase in the FLSA minimum wage *itself*. The present-day unemployment situation would seem to counsel against any such move.

And for the same reasons, mandatory cash-wage increases for tipped employees would likely have unintended, but predictable, negative consequences for the affected industries, for the employees in those industries, and for unemployment generally. So much for good intentions.