

**BOARD OF ELECTIONS
NOTICE OF PUBLICATION**

In accordance with D.C. Official Code Section 1-1001.16(d)(2)(B)(ii), the District of Columbia Board of Elections (the “Board”) hereby publishes the formulations in support of the District of Columbia Tip Credit Elimination Act of 2021 (the “Initiative”) that were adopted at its special meeting on September 20, 2021, and the fiscal impact statement issued concerning the Initiative.

INITIATIVE MEASURE

NO. 82

SHORT TITLE

District of Columbia Tip Credit Elimination Act of 2021

SUMMARY STATEMENT

Under current law, employers of employees classified as “tipped workers” may take a credit against tipped wages received by workers to satisfy the minimum wage guaranteed to all workers by law. The Initiative would gradually eliminate the credit, such that the mandatory base wage (currently \$5.05 per hour, indexed to inflation) paid by employers shall increase until 2027, when the mandatory base wage matches the minimum wage established by District of Columbia law (currently \$15.20 per hour, indexed to inflation). Tips continue as property of employees and will be in addition to the statutory minimum hourly wage.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “District of Columbia Tip Credit Elimination Act of 2021.”

Sec. 2. Section 4 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9–248; D.C. Official Code § 32–1003), is amended as follows:

(a) Subsection (f) is amended to read as follows:

“(f)(1) For purposes of this subsection, the term “tipped minimum wage” shall mean the minimum hourly wage required to be paid by an employer to an employee who receives tips.

“(2) As of July 1, 2021, the “tipped minimum wage” shall be \$5.05 an hour with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this

section. This tipped minimum wage will increase on July 1, 2022 in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics of the United States Department of Labor for the previous calendar year. Any increase under this paragraph shall be adjusted to the nearest multiple of \$.05.

“(3) Except as provided in subsections (h) and (i) of this section, as of January 1, 2023, the tipped minimum wage shall be not less than \$6.00 an hour with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

“(4) Except as provided in subsections (h) and (i) of this section, as of July 1, 2023, the tipped minimum wage shall be not less than \$8.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

“(5) Except as provided in subsections (h) and (i) of this section, as of July 1, 2024, the tipped minimum wage shall be not less than \$10.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

“(6) Except as provided in subsections (h) and (i) of this section, as of July 1, 2025, the tipped minimum wage shall be not less than \$12.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

“(7) Except as provided in subsections (h) and (i) of this section, as of July 1, 2026, the tipped minimum wage shall be not less than \$14.00 an hour, with tips on top; provided, that the employee actually receives tips in an amount at least equal to the difference between the hourly wage paid and the minimum wage as set by subsection (a) of this section.

“(8) Except as provided in subsections (h) and (i) of this section, as of July 1, 2027, the tipped minimum wage shall be not less than the minimum wage as set by subsection (a) of this section, with tips on top.”

(b) A new subsection (i) is added to read as follows:

“(i) The provisions of subsection (f)(2), (3), (4), (5), (6), and (7) of this section shall not apply to employees of the District of Columbia, or to employees employed to perform services provided under contracts with the District of Columbia. Those employees shall continue to be subject to the minimum wage requirements of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9–248; D.C. Official Code § 32– 1001 et seq.), as amended by the Enhanced Professional Security Amendment Act of 2008, effective March 20, 2008 (D.C. Law 17–114; 55 DCR

1276), as amended by the Minimum Wage Amendment Act of 2013, effective March 11, 2014 (D.C. Law 20–91; 61 DCR 778), as amended by the Fair Shot Minimum Wage Act of 2016 (D.C. Law 21-144; 63 DCR 9275) as they existed before the effective date of the District of Columbia Full Minimum Wage for Tipped Workers Amendment Act of 2022, and to the requirements of all other applicable laws, regulations, or policies relating to wages or benefits, including the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16–118; D.C. Official Code § 2–220.01 et seq.).”

Sec. 3. Nothing in this act shall be construed as preventing the Council of the District of Columbia from increasing minimum wages or benefits to levels in excess of those provided for in this act for any category of employees.


Sec. 4. Nothing in this act shall be construed as preventing employers, during any period in which subsection (f)(7) of this section is in effect, from implementing a mandatory tip sharing policy among all employees, regardless of whether such employees normally receive tips

Sec. 5. If any section of this act or its application to any persons or circumstances is held invalid, the remainder of this measure, or the application of its provisions to other persons or circumstances, shall not be affected. To this end, the provisions of this act are severable.

Sec. 6. This act shall take effect after a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)).

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Fitzroy Lee 
Interim Chief Financial Officer

DATE: September 17, 2021

SUBJECT: Fiscal Impact Statement – District of Columbia Full Minimum Wage for Tipped Workers Amendment Act of 2021

REFERENCE: Draft Initiative as provided to the Office of Revenue Analysis on August 26, 2021

Conclusion

Funds are sufficient in the fiscal year 2022 through fiscal year 2025 budget and financial plan to implement the proposed initiative.

Background

In 2016, the District increased both the standard minimum wage and the tipped minimum wage.¹ The law set graduated increases through July, 1 2020, providing for a standard minimum wage of \$15 per hour and a tipped minimum wage of \$5 per hour. The law provides for mandated inflationary adjustments² of both minimum wages and as of July 1, 2021, these wages are \$15.20 and \$5.05, respectively.³

Employers can choose to pay their employees the lower tipped minimum wage if those employees also receive gratuities. This is known as receiving a tip credit against the full minimum wage obligation. Despite the lower minimum wage paid by the employer, the employer must ensure that these employees' tips are at least equal to the difference between the tipped minimum wage and the standard minimum wage.⁴ If the tips do not at least equal this difference, then the employer must pay the employee additional base wages to ensure that the employee receives an amount equal to the standard minimum wage. When the Council repealed Initiative 77,⁵ they imposed new requirements on employers of tipped employees that required employers taking a tip credit to use a third-party payroll company to submit their quarterly wage reports for employees receiving gratuities to the Department of Employment Services (DOES). Employers submit information through the DOES Employer Self-Service Portal or through paper submissions. If an employer fails to submit information, DOES sends a compliance letter and could initiate an audit or investigation.

The proposed initiative would periodically increase the minimum wage for tipped workers over a six-year period until the tipped minimum wage is equal to the standard minimum wage on July 1,

2027. The following chart reflects the initiative’s proposed schedule for increasing the tipped minimum wage from the current \$5.05:

Date of Rate Adjustment	Rate per Hour
July 1, 2022	\$5.05 plus the mandated inflationary adjustment
January 1, 2023	\$6.00
July 1, 2023	\$8.00
July 1, 2024	\$10.00
July 1, 2025	\$12.00
July 1, 2026	\$14.00
July 1, 2027	Hourly rate equal to the prevailing standard minimum wage

The initiative exempts District of Columbia government employees and contractors from this tipped minimum wage increase. The initiative states that it shall not prevent the Council from implementing tipped minimum wage increases in excess of what is proposed, nor shall it prevent an employer from implementing a tip sharing arrangement.

The initiative establishes that if any section of the act or the act’s application to any circumstance or person proposed to be covered by the act’s changes is deemed invalid by a District court ruling, the act’s remaining sections or its application to other circumstances and persons will not be affected.

Financial Plan Impact

Funds are sufficient in the fiscal year 2022 through fiscal year 2025 budget and financial plan to implement the initiative.

Today, employers must ensure that tipped employees earn the standard minimum wage, on average, including earnings from their employer-paid wages and tips. If the employee’s tips plus the employer-paid tipped minimum wage do not equal the standard minimum wage, then the employer must pay the difference. The Office of Wage-Hour at DOES currently enforces the tipped wage quarterly reporting requirement and the other elements of tipped wage laws, including the requirement that employers pay at least the \$5.05 tipped wage minimum and that with tips employees receive at least the standard \$15.20 wage. DOES also provides education and outreach to employers on how to comply with the law. The initiative’s periodic increases to the tipped minimum wage do not impose any new requirements on DOES. Because the initiative shifts more of the employee wage cost burden to the employer, DOES may have additional enforcement activities such as complaints, audits, and investigations if non-compliance increases as the tipped minimum wage increases. However, DOES data⁶ shows that the average employer using the tipped credit already paid an hourly rate higher than the legal minimum and, since 2019, higher than the 2023 increases included in the initiative.⁷ Given this data, the initiative’s increased minimum wages cannot be assumed to lead to increased non-compliance. Additionally, since these activities are already performed by DOES and the first increase imposed by the proposed initiative is January 1, 2023, DOES has sufficient time and resources to implement the proposed initiative.

ORA last performed an in-depth analysis of minimum wage increases after the Council approved the 2016 minimum wage increases.⁸ As noted in the fiscal impact statement issued on May 31, 2016,⁹ a

minimum wage increase was likely to increase incomes for low-wage workers, cause businesses to recoup some additional costs from consumers through higher prices, and cause businesses to lower some costs through reduced employment.

ORA does not forecast any significant revenue impacts from the proposed initiative. Business and labor responses to increased minimum wages may include several counter-acting effects. Additionally, if tipped employees continue to receive tips on top of the higher minimum wage, then there could be some positive impacts on incomes and spending in the District. The reality that the average tipped worker receives more than the tipped minimum wage should delay any price and labor effects until later in the financial plan period.

¹ Fair Shot Minimum Wage Amendment Act of 2016, effective August 19, 2016 (D.C. Law 21-144; D.C. Official Code § 32-1003).

² The rate is adjusted annually in proportion to increases in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area.

³ In 2018, District voters approved Initiative 77 that set periodic increases to the tipped minimum wage until it was equal to the standard minimum wage by July 1, 2026. The Council repealed the initiative later that year (Tipped Wage Workers Fairness Amendment Act of 2018, effective December 13, 2018 (D.C. Law 22-196; D.C. Official Code § 32-1003)).

⁴ D.C. Code § 32-1003(f)(1).

⁵ Initiative No. 77 – Minimum Wage Amendment Act of 2018, effective October 11, 2018 (D.C. Law 22-163; D.C. Official Code § 32-1003).

⁶ <https://lms.dccouncil.us/downloads/LIMS/45427/Introduction/RC23-0200-Introduction.pdf>, <https://lms.dccouncil.us/downloads/LIMS/45395/Introduction/RC23-0198-Introduction.pdf>, and <https://lms.dccouncil.us/downloads/LIMS/47014/Introduction/RC24-0041-Introduction.pdf>.

⁷ From October 1, 2017 through December 31, 2018, employers paid an hourly rate based on quarterly averages ranging from \$6.10 to \$6.57. DOES did not report average base wages from January 1, 2019 through March 31, 2020, but did report an average employer-paid hourly service rate that ranged from \$8.44 to \$14.28 each quarter. The service rate includes all employer-paid wages including ensuring employees are making the standard minimum wage when tips are low and overtime wages. The service rate ranges from \$6.85 to \$7.50 from October 1, 2017 through December 31, 2018.

⁸ https://ora-cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/Min%20Wage_ORA_Website_1%20030317.pdf

⁹ http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS-Fair-Shot-Minimum-Wage-Amendment-Act.pdf