

118TH CONGRESS
1ST SESSION

H. R. 5369

To amend the Fair Labor Standards Act of 1938 to repeal the separate minimum wage for tipped employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2023

Mrs. HAYES (for herself, Ms. BONAMICI, Ms. SCHAKOWSKY, Ms. TITUS, Mr. THOMPSON of Mississippi, Mr. CARTER of Louisiana, Mr. BOWMAN, Mrs. WATSON COLEMAN, and Mr. JACKSON of Illinois) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Fair Labor Standards Act of 1938 to repeal the separate minimum wage for tipped employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tipped Worker Protec-
5 tion Act”.

1 **SEC. 2. SCHEDULED REPEAL OF SEPARATE MINIMUM**
2 **WAGE FOR TIPPED EMPLOYEES.**

3 (a) IN GENERAL.—

4 (1) REPEAL.—Section 3(m)(2)(B) of the Fair
5 Labor Standards Act of 1938 (29 U.S.C.
6 203(m)(2)(A)), as so redesignated by section 3(a)
7 and as amended by section 3(b) of this Act, is
8 amended by striking the sentence beginning with “In
9 determining the wage an employer is required to pay
10 a tipped employee,” and all that follows through “of
11 this subsection.” and inserting “The wage required
12 to be paid to a tipped employee shall be the wage
13 set forth in section 6(a)(1).”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) RETENTION OF TIPS.—Section
16 3(m)(2)(C) of the Fair Labor Standards Act of
17 1938 (29 U.S.C. 203(m)(2)(B)), as so redesi-
18 gnated by section 3(a) and as amended by sec-
19 tion 3(e) of this Act, is further amended in
20 clause (i) of such section 3(m)(2)(C) by striking
21 “Regardless of whether or not an employer
22 takes a tip credit, the employer” and inserting
23 “An employer”.

24 (B) STATUS AS A TIPPED EMPLOYEE.—
25 Subsection (t) of section 3 of the Fair Labor

1 Standards Act of 1938 (29 U.S.C. 203) is re-
2 pealed.

3 (C) PENALTIES.—Section 16 of the Fair
4 Labor Standards Act of 1938 (29 U.S.C. 216),
5 as amended by this Act, is further amended—

6 (i) in subsection (b), by striking “the
7 sum of any tip credit taken by the em-
8 ployer and all such tips unlawfully kept by
9 the employer” and inserting “the sum of
10 all such tips unlawfully used or kept by the
11 employer”; and

12 (ii) in subsection (c), by striking “the
13 sum of any tip credit taken by the em-
14 ployer and all such tips unlawfully kept by
15 the employer” and inserting “the sum of
16 all such tips unlawfully used or kept by the
17 employer”.

18 (3) DELAYED EFFECTIVE DATE.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (B), the amendments made by
21 paragraphs (1) and (2) shall take effect with
22 the beginning of the first 1-year period de-
23 scribed in 3(m)(2)(A)(i) of the Fair Labor
24 Standards Act of 1938 (29 U.S.C.
25 203(m)(2)(A)(i)), as amended by subsection

1 (b), for which the hourly wage for such 1-year
2 period would equal or exceed the minimum
3 wage in effect under section 6(a)(1) as of the
4 beginning of such 1-year period.

5 (B) SPECIAL RULE FOR TIP POOLS ESTAB-
6 LISHED OR MAINTAINED DURING TRANSITION
7 PERIOD.—In any case in which a system to pool
8 tips is established for the non-supervisory em-
9 ployees of an employer in accordance with sec-
10 tion 3(m)(2)(D) of such Act (29 U.S.C.
11 203(m)(2)(D)) (as added by section 3(d) of this
12 Act) prior to the beginning of the 1-year period
13 described in subparagraph (A), the amendments
14 made by paragraphs (1) and (2) shall apply
15 with respect to such employer beginning with
16 the date on which such system is established.

17 (b) MINIMUM WAGE FOR TIPPED EMPLOYEES DUR-
18 ING TRANSITION PERIOD.—

19 (1) IN GENERAL.—Clause (i) of section
20 3(m)(2)(B) of the Fair Labor Standards Act of
21 1938 (29 U.S.C. 203(m)(2)(A)), as so redesignated
22 by section 3(a) of this Act, is amended to read as
23 follows:

1 “(i) the cash wage paid such em-
2 ployee, which for purposes of such deter-
3 mination shall be not less than—

4 “(I) for the 1-year period begin-
5 ning on the date of enactment of the
6 Tipped Worker Protection Act, \$3.60
7 an hour;

8 “(II) for each succeeding 1-year
9 period, an hourly wage equal to the
10 amount determined under this clause
11 for the preceding 1-year period in-
12 creased by \$1.50 (but not to exceed
13 the minimum wage in effect under
14 section 6(a)(1) as of the beginning of
15 such 1-year period); and”.

16 (2) DEFINITION OF TIPPED EMPLOYEE.—Sec-
17 tion 3(t) of such Act (29 U.S.C. 203(t)) is amended
18 by striking “he customarily and regularly receives
19 more than \$30 a month in tips” and inserting “the
20 employee customarily and regularly receives for each
21 month an amount in tips equal to (or in excess of)
22 the difference between the total cash wages paid to
23 the employee under subsection (m)(2)(A)(i) for such
24 month and the total wages that would have been
25 paid to the employee for the hours worked in such

1 month pursuant to the minimum wage in effect
2 under section 6(a)(1) but for subsection (m)(2), ex-
3 cept that an employee shall not be considered a
4 ‘tipped employee’ for any workweek in which the em-
5 ployee spends more than 20 percent of the employ-
6 ee’s hours of employment performing duties related
7 to the employee’s occupation for which the employee
8 does not directly receive tips”.

9 **SEC. 3. REQUIREMENTS RELATING TO RETENTION AND**
10 **POOLING OF TIPS.**

11 (a) TREATMENT OF CERTAIN AMOUNTS AS TIPS.—
12 Section 3(m)(2) of the Fair Labor Standards Act of 1938
13 (29 U.S.C. 203(m)(2)) is amended—

14 (1) by redesignating subparagraphs (A) and
15 (B) as subparagraphs (B) and (C), respectively; and
16 (2) by inserting before subparagraph (A), as so
17 redesignated, the following:

18 “(A) ‘Tip’ includes any discretionary amount paid di-
19 rectly to an employee by a customer and any portion of
20 a mandatory charge imposed on a customer by the em-
21 ployer which is added to the cost of the product or service
22 in any manner that may reasonably lead the customer to
23 believe that the amount collected by the employer from
24 such charge will be paid in full directly to the employee.”.

1 (b) ALL TIPS RETAINED BY EMPLOYEES.—Subpara-
2 graph (B) of section 3(m)(2) of the Fair Labor Standards
3 Act of 1938 (29 U.S.C. 203(m)(2)), as redesignated by
4 subsection (a), is amended by striking “of this subsection”
5 and all that follows through the end of the subparagraph
6 and inserting “of this subsection. Any employee shall have
7 the right to retain, regardless of whether received as part
8 of a system to pool tips established in accordance with
9 subparagraph (C), any tips received by such employee.”.

10 (c) NO TIPS RETAINED BY EMPLOYERS.—Subpara-
11 graph (C) of section 3(m)(2)(C) of the Fair Labor Stand-
12 ards Act of 1938 (29 U.S.C. 203(m)(2)), as redesignated
13 by subsection (b), is amended to read as follows:

14 “(C)(i) Regardless of whether or not an employer
15 takes a tip credit, the employer may not keep tips received
16 by its employees for any purpose or use such tips for any
17 purpose other than to facilitate the distribution to employ-
18 ees of the full amount of all such tips under a system to
19 pool tips established in accordance with subparagraph (D).

20 “(ii) A violation of clause (i) includes—

21 “(I) allowing managers or supervisors to keep
22 or use any portion of employees’ tips; and

23 “(II) keeping or using any portion of employ-
24 ees’ tips to cover the cost of financial transaction
25 fees, including any fee established, charged, or re-

1 ceived by a payment card network for the purpose
2 of compensating an issuer for its involvement in a
3 transaction in which a person uses a debit card or
4 credit card (as the terms “debit card”, “credit
5 card”, “issuer, and “payment card network” are de-
6 fined in section 921(c) of the Electronic Fund
7 Transfer Act (15 U.S.C. 1693o-2(c))”.”.

8 (d) TIP POOLS.—Section 3(m)(2) of the Fair Labor
9 Standards Act of 1938 (29 U.S.C. 203(m)(2)), as amend-
10 ed by this section, is further amended by adding at the
11 end the following:

12 “(D)(i) In any case in which an employer is provided
13 with written documentation demonstrating that not less
14 than 30 percent of all of the non-supervisory employees
15 of the employer request a vote on whether to establish or
16 modify a system to pool tips in accordance with this sub-
17 paragraph, such a system shall be considered to be so es-
18 tablished or modified if the employer is provided with writ-
19 ten documentation demonstrating that not less than 51
20 percent of all such employees vote in favor of establishing
21 or modifying such a system.

22 “(ii) The employer shall maintain a written record
23 of any vote to establish or modify a system to pool tips
24 held pursuant to this subparagraph, including the name
25 of each employee voting and the vote totals. The employer

1 shall provide a copy of such record to any employee upon
2 request.

3 “(iii)(I) A system to pool tips established under this
4 subparagraph shall be administered by the employer, at
5 the employer’s expense, in a manner ensuring that—

6 “(aa) participation in the system is voluntary
7 for each employee and determined without coercion
8 from the employer;

9 “(bb) such tips are shared among all non-super-
10 visory employees participating in such system;

11 “(cc) funds held in such system are maintained
12 separately from any other funds; and

13 “(dd) the records of such system are available
14 to be examined by each such participating employee.

15 “(II) In administering a system to pool tips estab-
16 lished under this subparagraph, an employer may suggest
17 reasonable and customary practices.

18 “(III) In any dispute among employees relating to the
19 administration of a system to pool tips established under
20 this subparagraph, the employer may mediate and impose
21 a resolution of the dispute on the employees participating
22 in the system only if—

23 “(aa) in the case of employees in a restaurant
24 or similar retail food establishment, no agreement
25 resolving the dispute can be reached among—

1 “(AA) 50 percent or more of the partici-
2 pating service employees whose primary job du-
3 ties include direct interaction with customers;
4 and

5 “(BB) 50 percent or more of all other par-
6 ticipating employees; and

7 “(bb) in the case of employees in any other es-
8 tablishment, no agreement resolving the dispute can
9 be reached among 50 percent or more of the partici-
10 pating employees.

11 “(iv) An employer shall not be required to com-
12 pensate any employee participating in a system to pool
13 tips established under this subparagraph in any case aris-
14 ing as a result of another participating employee with-
15 holding tips from such system.

16 “(v) An employer shall not discharge an employee or
17 otherwise discriminate against an employee based on the
18 employee’s vote with respect to, or participation in, a sys-
19 tem to pool tips established under this subparagraph.

20 “(vi) In this subparagraph, the term ‘non-supervisory
21 employee’ means any employee who has, at any point in
22 their typical duties, decision making authority over the
23 scheduling of other employees, the hiring of other employ-
24 ees, or the termination of other employees.”.

1 (e) SERVICE CHARGES.—Section 3(m)(2) of the Fair
2 Labor Standards Act of 1938 (29 U.S.C. 203(m)(2)), as
3 amended by this section, is further amended by adding
4 at the end the following:

5 “(E)(i) In any case in which an employer imposes a
6 mandatory charge on a customer which is added to the
7 cost of the product or service, the employer shall—

8 “(I) disclose to the customer and to all employ-
9 ees involved in the sale of such product or delivery
10 of such service—

11 “(aa) the reason for such charge; and

12 “(bb) the portion of such charge, if any,
13 which upon its collection will be paid in full by
14 the employer directly to employees; and

15 “(II) promptly pay to employees upon collection
16 of such charge any portion identified in the disclo-
17 sure required under subclause (I)(bb).

18 “(ii) In any case in which an employer represents
19 that a charge is payable at the discretion of the customer,
20 the employer may not add such charge to the cost of any
21 product or service unless first requested by the cus-
22 tomer.”.

23 (f) PENALTIES.—Section 16(e)(2) of the Fair Labor
24 Standards Act of 1938 (29 U.S.C. 216(e)(2)) is amend-
25 ed—

1 (1) by striking “section 3(m)(2)(B)” and in-
2 serting “any provision of section 3(m)(2)”;

3 (2) by inserting “or used” after “kept”.

4 (g) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of enactment of
6 this Act and shall apply with respect to all tips received
7 on or after such date.

8 **SEC. 4. SERVICE CHARGES TREATED AS TIPS FOR PUR-**
9 **POSES OF EMPLOYER CREDIT FOR SOCIAL**
10 **SECURITY TAXES, ETC.**

11 (a) IN GENERAL.—Section 3121(q) of the Internal
12 Revenue Code of 1986 is amended by adding at the end
13 the following: “In the case of any mandatory charge to
14 which section 3(m)(2)(E) of the Fair Labor Standards Act
15 applies, the portion of such charge described in subclause
16 (I)(bb) of such section shall be treated as tips for purposes
17 of this subsection.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to amounts received on or after
20 the date of the enactment of this Act.

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