

D.C. Council Repeals Minimum Wage Increase for Tipped Workers, Adopts Training and Notice Measures

By Teresa Burke Wright

October 25, 2018

On October 23, 2018, the D.C. Council, by an 8-5 vote, approved the “Tipped Wage Workers Fairness Amendment Act of 2018.” The legislation repealed Initiative 77, a contentious ballot measure that narrowly passed this summer and that would have substantially increased the minimum wage for tipped workers. The Act nonetheless does implement a number of additional programs and requirements related not only to tipped employees, but also to addressing workplace harassment in the wake of the #MeToo movement.

Initiative 77

Had it become law, Initiative 77 would have eliminated the common practice of allowing employers to pay a lower minimum hourly wage (currently \$3.89) to traditionally tipped employees and using the employees’ tips to make up the difference between the hourly tipped wage and the standard minimum wage (currently \$13.25), a.k.a. a “tip credit.” Instead, the Initiative would have gradually raised the current hourly tipped wage until, in 2026, it matched the standard minimum wage, which by existing law will reach \$15.00 in July 2020. Advocates of the Initiative sought to counteract the inconsistency of tip income and instances of employers not making up the difference when tips were insufficient. Business opponents of the Initiative were concerned about the financial burden the Initiative would impose. Employee opponents were concerned that customers would adversely alter their tipping habits once they were aware that the employees were already receiving the standard minimum wage. While members of the D.C. Council attempted to reach a compromise, ultimately the majority decided to reject the Initiative outright.

Training, Notice, and Reporting Requirements

Although the Act repealed the minimum wage initiative, it does implement a number of significant training, notice and reporting requirements, not only as to issues involving tipped workers but also as to sexual harassment training and to posting of employment law rights and responsibilities. With respect to tipped workers, the Act:

- Requires the Mayor to create a website describing the various District wage and hour and anti-discrimination laws; to launch a public education and awareness campaign concerning the rights of tipped workers; and to create and staff a hotline to receive wage-specific complaints;
- Requires the D.C. Office of Human Rights (OHR) to provide, or alternatively to certify a list of providers to conduct, sexual harassment training for employees of businesses that employ tipped workers;
- Requires at least annual training on the District’s wage payment and collection law for all business owners or operators who employ tipped workers, as well as for all managers in such businesses, and further requires such employers to offer its employees, on at least an annual basis, the opportunity to attend or complete training on that law;
- Dictates that employers must provide each tipped employee with a “tip out” sheet each payday identifying the amount or percentage of tips;
- Beginning in 2020, requires employers of tipped employees (other than hotels) to use a third party provider to perform payroll services for the employer and further requires that third party provider (or the hotel) to report certain wage data, including the employer’s tip- out policy, to the Department of Employment Services (DOES) on a quarterly basis; and
- Creates the Tipped Workers Coordinating Council, a “partnership of tipped worker[] [advocates], employers, and public agencies that promotes a high-quality response to tipped worker cases of wage theft and unfair labor practices.”

Beyond the wage and hour arena, the Act implements substantial sexual harassment training requirements and employment law posting requirements. Specifically, the Act requires:

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Practices

Wage and Hour

- In-person or online sexual harassment training within 90 days of hire for new hires after the Act's effective date, unless the employee has participated in training within the past two (2) years and, for those already employed, completion of such training within 2 years of the Act's effective date;
- In-person harassment training at least once every two (2) years for managers and in-person or online training for business owners and operators at least every 2 years;
- Submission of certification to OHR within 30 days of completion of all required training;
- Filing with the OHR by all employers, no later than July 1, 2019, a policy outlining how employees can report instances of sexual harassment to management and OHR, distribution of the employer's sexual harassment policy to employees and posting of the policy in a conspicuous place in the workplace;
- Documentation by employers of any and all instances of sexual harassment reported to management, including whether the reported harasser was a non-managerial employee, managerial employee, owner, or operator and, beginning on July 1, 2019 and annually thereafter, reporting to the OHR the number of instances of harassment reported to management and the total number of reported harassers who were non-managerial employees, managerial employees, owners, or operators; and
- Each employer to provide certification to the Department of Employment Services (DOES) that all training, documenting, and filing requirements have been fulfilled by December 31st of each year.

Finally, the Act establishes universal notice requirements for the District. Under those requirements, the Mayor must provide all private employers with a poster that includes the address of the new website, a list of District-specific employment laws, including identification of those that provide greater benefits or protections than federal law, notice that an employee may access information and obtain a description of his or her rights under the District laws listed on the poster, and the District's current hourly minimum standard and tipped wages.

Once the law takes effect, employers will be required to post the poster in a conspicuous place, including in at least every break room and by every time clock. Additionally, employers must print out and maintain a binder or other single compilation of the information found on the website, and place a copy of the compilation wherever the poster is located. Employer must verify, on at least a monthly basis, that the printed materials are up to date and correspond to the website information. Failure to abide by these notice and posting requirements could result in a fine of \$100 for each day of non-compliance. On the plus side, employers who comply with these notice and posting obligations will no longer have to satisfy the individual posting requirements set forth in the myriad of District employment laws.

Mayor Muriel E. Bowser (D) is expected to sign the bill, although its funding still remains an issue and could result in additional amendments to the bill when the budget is addressed again next summer. Once signed by the Mayor, the bill will become law following a 30-day period of Congressional review and publication in the District of Columbia Register.

Please contact the Jackson Lewis attorney(s) with whom you regularly work with any questions about the D.C. law and any other wage and hour issues.

Thank you to Andre Guthrie for his assistance in drafting this update.

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