

HOUSE No. 4606

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES

REPORT
of the
SPECIAL JOINT
COMMITTEE
on
INITIATIVE PETITIONS
on the
INITIATIVE PETITION
of
IRENE S. LI
AND OTHERS
FOR THE PASSAGE OF AN ACT
TO REQUIRE THE FULL MINIMUM WAGE FOR
TIPPED WORKERS WITH TIPS ON TOP
(see House, No. 4254)

April 30, 2024.

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions (“The Committee”) recommends that the Initiative Petition 23-12, House 4254, “An Act to require the full minimum wage for tipped workers with tips on top,” (“the Initiative Petition”) as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petition as written for consideration and enactment.

The proposed Initiative Petition would remove a provision in state law allowing employers to compensate their tipped workers at a lower minimum rate if the “tipped minimum wage” together with the value of the worker’s tips plus equals at least the state non-tipped hourly minimum wage over the course of each shift worked. Additionally, the Initiative Petition would allow restaurant owners to require their tipped employees to share their tips with non-tipped employees working at the restaurant.

Testimony

The Committee heard from experienced professionals, proponents and opponents of the Initiative Petition, as well as members of the general public.

Lauren Moran, the Chief of the Fair Labor Division of the Office of the Attorney General, testified as a subject matter expert and spoke about the 2018 “Grand Bargain” legislation. The Grand Bargain changed the tipped worker minimum wage from \$3.75 per hour plus average hourly tips for the week up to the state minimum wage, with the employer paying the difference to \$6.75 per hour plus average hourly tips for the *shift*, with the employer paying the difference, and the rate increasing incrementally over a five-year period beginning in 2019. The Fair Labor Division currently has broad enforcement authority over wage rights for workers and collects data on claims of tip violations. The data presented showed that from March 2021 to the present hearing date, 15 per cent of claims came from the restaurant and salon industries, industries typically employing a high number of tipped workers, with 30 per cent of active open claims coming from these industries. Nearly 700 complainants claimed tip violations from workers, and these industries have accounted for 35 per cent of total civil enforcement, with nearly \$2,000,000 in restitution and \$3,400,000 in penalties assessed.

In addition to the Attorney General’s office, university-based economists also shared their perspectives and findings. Dr. Jeannette Wicks-Lim, Associate Research Professor at the Political Economy Research Institute at the University of Massachusetts Amherst, cited two peer reviewed papers that surveyed all of the contemporary research on minimum wage data, and suggested that there is little to no evidence suggesting negative employment outcomes from raising the minimum wage. Dr. Wicks-Lim stated that there is limited data available regarding the labor and economic impacts of a similar measure passed in Washington, D.C., which since 2023 has been incrementally phasing out the tipped minimum wage until it is completely removed by 2027. Dr. Wicks-Lim stated that restaurants would not necessarily see their total costs go up by the same proportion as the

increase in wages paid to employees, and that restaurants have flexible ways to adjust to cost increases, such as modified price increases. Additionally, Dr. Wicks-Lim observed that the increase in wages will lead to lower administrative and training costs due to reduced worker turnover. Dr. Wicks-Lim also cited that the poverty rate is higher for tipped workers than non-tipped workers — a statistic especially noticeable in states with a lower tipped minimum wage — and that the industry is made up of mostly women a quarter of whom are raising children. Dr. Sean Jung, Assistant Professor at Boston University’s School of Hospitality Administration contrasted Dr. Wick-Lim’s testimony by pointing to evidence showing that the removal of the tipped minimum wage will likely lead to full-service restaurants converting to limited or counter service, due to labor costs. Dr. Jung also highlighted that removing the tip credit could lead to increased menu prices and service charges and more restaurants going out of business due to low profit margins. Dr. Jung predicted this would be especially acute in rural areas where profit margins and customer demand are lower, but labor costs would increase at the same rate as suburban or urban areas. Dr. Jung also testified that historically when labor costs increase, restaurants pivot to methods that allow for a reduction in service staff, such as tablets for ordering

A panel of proponents of the Initiative Petition from the national One Fair Wage campaign consisted of an academic professional, a restaurant owner, and tipped restaurant workers. The panel described the current tipped minimum wage practice as a “subminimum wage” that is an economic, gender and racial equity, gender justice, and gender pay equity issue. The panel argued that a power imbalance exists where tipped workers, especially women and women of color, are forced to ignore gender violence, sexual harassment, and wage theft because they rely on tips as part of their full compensation. The proponents pointed to seven states that currently do not have a lower minimum wage for tipped workers: Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington. The proponents cited evidence that the growth in the net number of restaurants in California outpaced the average growth in states subject to a tipped minimum wage, including Massachusetts. They also highlighted data that shows the average tipped worker in those seven states takes home between 10-18 per cent more than the average tipped worker in the rest of the country. The proponents also maintain that there are higher levels of poverty, unenforceable wage violations and the highest rates of sexual harassment of any industry as studied by Professor Catharine A. MacKinnon.

Opponents of the Initiative Petition consisted of restaurant industry representatives, restaurant owners, and tipped restaurant workers. The first panel of opponents pointed to the costs associated with eliminating the tipped minimum wage, which would raise what a restaurant pays an employee from a wage of between \$6.75 to \$15 an hour to a flat \$15 an hour. They described new restaurant Point of Sale technologies that provide enhanced data tracking designed to reduce discrepancies relating to wages and tips earned per shift. Opponents to the Initiative Petition also attributed instances of sexual harassment and assault to the bad actions of patrons and poor management of employers rather than being endemic to a tipped wage system of compensation. Opponents further argued that removing the tip credit would hurt affordable restaurants, which operate at a much lower margin than high-end restaurants and are currently in competition with grocery stores, takeout and quick service establishments, and fast food. The opponents fear that the

increased costs associated with implementing this practice will wipe out the affordable restaurant industry and take with it a tipped workforce that on average earns \$35-40 an hour, with atypical wages up to as high as \$70 an hour, ending the testimony by highlighting that the practice of tipping as an incentive for good service is an affect, not a defect, of the restaurant industry.

The second panel of opponents, which consisted of restaurant workers, provided anecdotal evidence and their personal beliefs that removing the tipped minimum wage would lead to a decrease in tip percentage and eventually overall compensation compared to the current model, with one opponent member panel arguing that the fact that only seven states have no tipped minimum wage is evidence that the current system works well.

The Committee was not presented with data showing the impacts to the Massachusetts restaurant industry based on the tipped minimum wage and minimum wage increases of the “Grand Bargain” legislation enacted in 2018. According to the U.S. Department of Labor in 2024, because of these increases Massachusetts is tied for the sixth highest effective minimum wage for tipped workers out of all fifty states and the District of Columbia, even when accounting for the highest possible minimum wage in states that have different rates for employers in cities, counties, or by employer size and status. Massachusetts also has a higher effective minimum wage for tipped workers than all but two states that do not have a tipped minimum wage: California and Washington. There was also a question on the impact of a similar recent phase-out policy in Maine, which had to rollback a similar provision to the Initiative Petition before the committee due to a spike in restaurant loan defaults, but there was no evidence available from a subject matter expert on the situation in Maine.

Another element of the public hearing focused on the provision of the Initiative Petition concerning tip pooling. The practice of requiring the pooling of tips from “front-of-house” staff with “back-of-house” staff is currently outlawed in the Commonwealth of Massachusetts under M.G.L. c 149, s 152A(c). In addition to removing the tipped minimum wage in the Commonwealth, the Initiative Petition would also change this separate law to allow a restaurant to require the pooling of all tips with non-service staff, provided that waitstaff are being paid the full minimum wage.

Subject matter experts testified that there are strict rules regarding tip pools, specifically that any employer, manager, or supervisor cannot receive tips on days that they have managerial or supervisory responsibilities, even if they serve customers that day. There is currently a low variance between the wages of “front-of-house” and “back-of-house staff”, but this provision would reduce the disparity that may arise from the removal of the tipped minimum wage.

Proponents argued that the tip pool would still be governed by federal law preventing supervisors or employers from receiving tips from the pool and would encourage more teamwork between “front-of-house” and “back-of-house staff”, since they would all benefit in a shared manner from tips received. Proponents also cited instances where “back-of-house” staff use tipping as leverage, sexually harassing wait staff to ensure food comes out promptly or correctly.

Opponents viewed the tip pooling provision as harmful to “front-of-house” staff who receive tips for their good service in customer-facing roles. Currently, “front-of-house” employees can “tip out” to “back-of-house” staff at their discretion, with an example given that a tip was shared with “back-of-house staff” for helping the employee out, but the “front-of-house” staff does not want to lose this important component of their work. Several opponents who are restaurant employees stated that their opposition to the Initiative Petition was more in part due to the tip pool provision, but they would likely still oppose the Initiative Petition if it was just to remove the tipped minimum wage.

Conclusion

At this time, there is insufficient evidence provided on the overall impact that this Initiative Petition would have on the restaurant industry and restaurant workforce in the Commonwealth. Questions remain on the viability of restaurants and other tipped wage industries to absorb the costs of the more than 100 per cent increase from the current minimum tipped wage an employer is responsible for paying, and comparisons to other jurisdictions are challenging given that the seven states employing this law have followed this policy for many years. The Committee does not believe it received enough evidence on the experiences in Washington, D.C. (currently phasing out the tipped minimum wage) or Maine (rolling back the raise of the tipped minimum wage), or the impact that the Grand Bargain tipped minimum wage increase that was finalized in 2023 to draw conclusions on what the likely impact this Initiative Petition would have on restaurants in Massachusetts. Based on testimony received, the Committee believes the legislature would be well-served to work with the Attorney General to support enhanced prevention of wage theft, sexual harassment, and assault in tipped wage industries. It should be noted that this Initiative Petition is also the subject of a legal challenge that sits before the Supreme Judicial Court in the month of May 2024, after the deadline that the legislature would need to enact this Initiative Petition.

For these reasons, we, the majority of the Special Joint Committee on Initiative Petitions, recommend that “An Act to require the full minimum wage for tipped workers with tips on top” (see House No. 4254) as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.

Cindy F. Friedman
Paul R. Feeney
Jason M. Lewis
Ryan C. Fattman

Representatives.

Alice Hanlon Peisch
Michael S. Day
Kenneth I. Gordon
David T. Vieira