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The Tip Credit Provisions of the Fair Labor Standards Act (FLSA): In Brief

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Summary

The Fair Labor Standards Act (FLSA), enacted in 1938 (P.L. 75-718), is the federal legislation that establishes the general minimum wage that must be paid to all covered workers. In 1966, Congress amended the FLSA to add a “tip credit” provision to the minimum wage provisions. These amendments, which apply to “tipped workers,” do not change the guaranteed minimum wage of \$7.25 per hour but they allow a combination of earnings from employer cash wages and employee tips to equal the federal minimum wage (currently \$7.25 per hour). That is, the “credit” is the amount from employee tips that an employer may count against his or her liability for the required payment of the full federal minimum wage. Under the current federal minimum wage and the current required minimum employer cash wage, the maximum tip credit is \$5.12 per hour (i.e., \$7.25 minus \$2.13). Thus, all workers covered under the tip credit provision of the FLSA are guaranteed the federal minimum wage but tipped workers receive some of this income from employers and some from tips.

From the introduction of the tip credit provisions in 1966 through 1996, the amounts for the minimum employer cash wage and tip credit were set as a percentage of the minimum wage, ranging from 40% to 60%. That is, during that 40-year period, employers of tipped employees could take a credit from tip earnings of between 40% and 60% of the federal minimum wage against their liability to provide the minimum wage to their employees.

The 1996 FLSA amendments changed the tip credit provisions to set the employer’s statutory minimum cash wage obligation to a dollar amount (\$2.13 per hour), rather than a percentage of the minimum wage. The maximum tip credit thereafter became the difference between \$2.13 and the federal minimum wage. If the tip credit continues to be set by reference to a fixed dollar amount, rather than as a percentage of the minimum wage rate, the tip credit percentage of the guaranteed minimum wage will continue to increase and the employer cash wage percentage will continue to decrease if and when the federal minimum wage increases. With the minimum wage increase in 2007, the tip credit increased to its current level of 71%. Thus, under the current federal minimum wage of \$7.25 per hour employers are required to pay a minimum cash wage of \$2.13 per hour (29% of the federal minimum wage) and may take up to \$5.12 per hour (71% of the federal minimum wage) as a credit against their liability to provide the full minimum wage of \$7.25 per hour.

In the 113th Congress, legislation was introduced that would have amended the FLSA to alter the payment structure for tipped employees. Specifically, the most common proposed changes in the different bills would have increased the required employer contribution from the current level of \$2.13 per hour to 70% of the prevailing federal minimum wage rate and would thus reduce the tip credit to 30% of the federal minimum wage.

Several states have minimum wage rates that are different (mostly higher) than the federal minimum wage and different tip credit provisions. Of the 50 states and Washington DC, seven do not allow a tip credit, while the other 44 have a range of tip credit provisions, most of which require a minimum employer cash wage higher than the federal rate of \$2.13 per hour. In cases in which states enact more protective minimum wage laws (i.e., higher minimum wage, lower tip credit), the employee is entitled to the provisions of state law.

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The Fair Labor Standards Act (FLSA) and the Minimum Wage

The FLSA, enacted in 1938 (P.L. 75-718), is the federal legislation that establishes the general minimum wage that must be paid to all covered workers.¹ At present, the vast majority of workers are covered by the minimum wage provisions of the FLSA. The minimum wage provisions of the FLSA have been amended numerous times since 1938, typically for the purpose of expanding coverage or raising the wage rate. The most recent change was enacted in 2007 (P.L. 110-28) to increase the minimum wage to \$7.25 per hour by July 2009.

History and Mechanics of Tip Credit Provisions

Congress amended the FLSA in 1966 to add a “tip credit” provision to the minimum wage provisions.² Under Section 203(m) of the FLSA, a “tipped employee”—a worker who “customarily and regularly receives more than \$30 a month in tips”—may have his or her cash wage from an employer reduced to \$2.13 per hour, as long as the combination of tips and wages from the employer equals the federal minimum wage (currently \$7.25 per hour). That is, the “credit” is the amount from employee tips that an employer may count against its liability for the required payment of the full federal minimum wage. Under the current federal minimum wage and the current required minimum employer cash wage, the maximum tip credit is \$5.12 per hour (i.e., \$7.25 minus \$2.13). Thus, all workers covered under the tip credit provision of the FLSA are guaranteed the federal minimum wage.³

The tip credit provisions of the FLSA do not mean that a tipped worker may earn a subminimum wage; rather the tip credit provisions change the composition of a worker’s earnings. Specifically, the key concepts that comprise the tip credit provisions are the following:

- The “employer cash wage” is the minimum amount that an employer is required to pay a tipped worker. Currently, the FLSA sets this amount at \$2.13 per hour, which is 29% of the current federal minimum wage of \$7.25 per hour. An employer of a tipped employee, just like an employer of any FLSA-covered employee, is ultimately responsible for the payment of the full minimum wage to that employee.
- The “tip credit” is the amount of earnings from tips that an employer may count against its liability for the full minimum wage. Under current law and at the current rate of \$7.25 per hour, the maximum tip credit is \$5.12 per hour, which means employers may take a credit of up to 71% of their required obligation to pay a minimum wage. A higher tip credit means that an employer may count

¹ A full discussion of the coverage of the minimum wage is beyond the scope of this report. For an overview of the FLSA minimum wage, see CRS Report R43089, *The Federal Minimum Wage: In Brief*, by (name redacted).

² The description of the tip credit provisions in this report does not include implementation and administrative issues, such as tip pooling and service charges on credit cards. For additional information on administrative provisions related to tips, see <http://www.dol.gov/whd/regs/compliance/whdfs15.pdf>.

³ For employees working in states with a minimum wage different from that of the federal minimum wage, the employee is entitled to the higher wage of the two.

more in tips toward the employer liability for the minimum wage. A lower tip credit means that employers must provide a greater share of an employee's compensation in direct cash wages. No tip credit means that an employer must pay direct cash wages equal to the minimum wage and the tipped worker does not have to credit any tip income toward the total minimum wage.

- The existence of a tip credit thus means there are two components of the minimum wage for tipped workers—employer cash wage and tips. The combination of the employer cash wage and the tips must equal the required minimum wage. The tip credit thus does not create a subminimum wage from the standpoint of a tipped worker but it changes the composition of earnings from solely employer pay to a combination of employer wages and tips. The exact mix of those two earnings components depends on the minimum wage, tip credit allowance, and the amount received in tips.

As shown in **Table 1**, the tip credit and cash wage proportions of the minimum wage have changed over time as Congress has amended the FLSA. Prior to 1996, the amounts for the minimum employer cash wage and tip credit were set as a percentage of the minimum wage and ranged from 40% to 55% of the minimum wage. That is, during the 30 year period of 1966-1996, employers of tipped employees could take a credit from tip earnings of between 40% and 55% of the federal minimum wage against their liability to provide the minimum wage to their employees.

The 1996 FLSA amendments set the employer's statutory minimum cash wage at \$2.13 per hour (rather than a percentage of the minimum wage) and the size of the tip credit became dependent on the value of the minimum wage (i.e., the tip credit after 1996 equals the minimum wage minus \$2.13). Specifically, P.L. 104-188 provided that the employer minimum would be 50% of the minimum wage at the time that the legislation was enacted (\$4.25). Thus, the 1996 amendments locked into place the minimum employer cash wage at a fixed dollar amount rather than setting the credit as a percentage of the minimum wage, which had been the practice since the tip credit was enacted in 1966. If the tip credit continues to be set by reference to a fixed dollar amount, rather than as a percentage of the minimum wage rate, the tip credit percentage of the guaranteed minimum wage will continue to increase and the employer cash wage percentage will continue to decrease if and when the federal minimum wage increases.

With the minimum wage increase in 2007, the tip credit began to increase to its current level of 71% of the minimum wage. Under the current federal minimum wage of \$7.25 per hour, employers are required to pay a minimum cash wage of \$2.13 per hour (29% of the federal minimum wage) and may take up to \$5.12 per hour (71% of the federal minimum wage) as a credit against their liability to provide the full minimum wage of \$7.25 per hour.

Table I. Evolution of the Tip Credit Provisions of the FLSA

| Year and FLSA Amendment | Minimum Wage at Effective Date | Tip Credit in Current \$ | Employer Cash Wage in Current \$ | Tip Credit as a % of the Minimum Wage | Employer Contribution as a % of the Minimum Wage |
|-------------------------|--------------------------------|--------------------------|----------------------------------|---------------------------------------|--|
| P.L. 89-601 | | | | | |
| <i>1967</i> | \$1.40 | \$0.70 | \$0.70 | 50% | 50% |
| <i>1968</i> | \$1.60 | \$0.80 | \$0.80 | 50% | 50% |
| P.L. 95-151 | | | | | |
| <i>1978</i> | \$2.65 | \$1.33 | \$1.33 | 50% | 50% |
| <i>1979</i> | \$2.90 | \$1.30 | \$1.60 | 45% | 55% |
| <i>1980</i> | \$3.10 | \$1.24 | \$1.86 | 40% | 60% |
| <i>1981</i> | \$3.35 | \$1.34 | \$2.01 | 40% | 60% |
| P.L. 101-157 | | | | | |
| <i>1990</i> | \$3.80 | \$1.71 | \$2.09 | 45% | 55% |
| <i>1991</i> | \$4.25 | \$2.13 | \$2.13 | 50% | 50% |
| P.L. 104-188 | | | | | |
| <i>1996</i> | \$4.75 | \$2.62 | \$2.13 | 55% | 45% |
| <i>1997</i> | \$5.15 | \$3.02 | \$2.13 | 59% | 41% |
| P.L. 110-28 | | | | | |
| <i>2007</i> | \$5.85 | \$3.72 | \$2.13 | 64% | 36% |
| <i>2008</i> | \$6.55 | \$4.42 | \$2.13 | 67% | 33% |
| <i>2009</i> | \$7.25 | \$5.12 | \$2.13 | 71% | 29% |

Source: CRS analysis of P.L. 89-601 (enacted 1966), P.L. 95-151 (enacted 1977), P.L. 101-157 (enacted 1989), P.L. 104-188 (enacted 1996), and P.L. 110-28 (enacted 2007).

Notes: The information in **Table I** is intended to summarize the evolution of the tip credit provisions and thus primarily summarizes provisions of FLSA legislation that affected the tip credit amounts, rather than addressing every change in the minimum wage rate. The first four public laws in **Table I** changed the tip credit provisions related to the minimum wage. The fifth public law (P.L. 110-28) did not make changes to the tip credit but is included to show the effects of the 1996 amendments that changed the tip credit from a percentage of the minimum wage to a dollar amount. The italicized years in **Table I** indicate changes in the tip credit provisions related to the previous public law. For example, P.L. 95-151 was enacted in 1977 but made changes to the minimum wage that were effective in 1978, 1979, 1980, and 1981.

Illustrative Examples of the Tip Credit Provisions of the FLSA

Data in **Table 2** illustrate the functioning of the tip credit under the current provisions of the FLSA.⁴ To illustrate the mechanics of the tip credit, tip amounts vary in each of the six scenarios. For example, under the current minimum wage of \$7.25 per hour, an employer initially would be responsible for paying a tipped employee \$2.13 per hour. The variation in employee tips would then determine the actual amount of the tip credit and the relative proportions of the minimum wage between employer cash wages and tips:

- If the employee made at least \$5.12 per hour in tips, then the employer would have no further cash wage obligations. Thus, the credit in this case would equal \$5.12 per hour. The employer’s cash wage (\$2.13) would comprise at most 29% of the employee’s hourly wage.
- If the employee earned less than \$5.12 per hour in tips, the employer would be responsible for making up the difference between the amount of the credit and the statutory minimum wage. For example, if an employee received \$1.00 per hour in tips, the employer would be required to pay \$4.12 per hour (in addition to the minimum of \$2.13 per hour). Under this scenario, the employer’s cash wage (\$6.25) would comprise 86% of the employee’s hourly wage.

An employee’s total hourly wage, therefore, would depend on the amount, if any, above the statutory minimum received in tips. Likewise, the employer’s ultimate required payment, and thus share of the total federal minimum wage, would depend on the amount in tips that an employee received. A tipped employee’s hourly earnings are thus a minimum of \$7.25 per hour until tips exceed \$5.12 per hour. When tips exceed \$5.12 per hour, the employee’s hourly earnings are \$2.13 plus the amount received in tips per hour.

Table 2. Federal Minimum Wages for Tipped Employees
Structure of Payment for Tipped Employees by Level of Tip

| Federal Minimum Wage | Minimum Cash Wage Paid by Employer | Employee Hourly Tip | Additional Cash Wage Paid by Employer | Total Employer Contribution | Employer Cash Wage as % of Federal Minimum Wage | Employee’s Total Hourly Earnings |
|----------------------|------------------------------------|---------------------|---------------------------------------|-----------------------------|---|----------------------------------|
| \$7.25 | \$2.13 | \$1.00 | \$4.12 | \$6.25 | 86% | \$7.25 |
| \$7.25 | \$2.13 | \$2.00 | \$3.12 | \$5.25 | 72% | \$7.25 |
| \$7.25 | \$2.13 | \$4.00 | \$1.12 | \$3.25 | 45% | \$7.25 |

⁴ **Table 2** is for illustrative purposes to demonstrate the variations in the tip credit system. The scenarios in the table are based on two assumptions. One, the tipped employee is working in a state in which the federal minimum wage is applicable (i.e., the federal minimum wage equals or exceeds the state minimum wage in those states with minimum wage laws). Two, the tipped employee is working in a state in which the full federal tip credit is allowed. In practice the tip credit is more complex because of differences in state minimum wages and state tip credit allowances. The impact of these differences is discussed later in this report.

| Federal Minimum Wage | Minimum Cash Wage Paid by Employer | Employee Hourly Tip | Additional Cash Wage Paid by Employer | Total Employer Contribution | Employer Cash Wage as % of Federal Minimum Wage | Employee's Total Hourly Earnings |
|----------------------|------------------------------------|---------------------|---------------------------------------|-----------------------------|---|----------------------------------|
| \$7.25 | \$2.13 | \$5.12 | \$0.00 | \$2.13 | 29% | \$7.25 |
| \$7.25 | \$2.13 | \$6.00 | \$0.00 | \$2.13 | 29% | \$8.13 |
| \$7.25 | \$2.13 | \$10.00 | \$0.00 | \$2.13 | 29% | \$12.13 |

Source: CRS analysis of Section 203 (m) of the FLSA. Minimum wage as of January 1, 2015.

Note: Because **Table 2** is intended to show the functioning of the tip credit provision, it is necessary to hold the federal minimum wage (\$7.25) and minimum cash wage (\$2.13) constant.

Proposed Changes to Tip Credit Provisions

Legislation was introduced in the 113th Congress that would have amended Section 203(m)(1) of the FLSA to alter the payment structure for tipped employees.⁵ Specifically, the most common proposed changes included in the bills introduced in the 113th Congress would have increased the required employer contribution from the current level of \$2.13 per hour to 70% of the prevailing federal minimum wage rate.⁶ This increase would occur in the following steps:

- The minimum employer contribution would increase to \$3.00 per hour beginning three months after enactment of the legislation;
- Thereafter, the minimum employer contribution would increase annually by the lesser of \$0.95 per hour or the amount necessary for the employer cash wage to equal 70% of the federal minimum wage; and
- Once the 70% threshold was attained, the minimum employer cash wage would increase annually to an amount necessary to maintain it at 70% of the current federal minimum wage.

Because the recent proposed changes to the tip credit provisions have been included in bills that would generally also increase the federal minimum wage, **Table 3** provides an estimate of the proposed tip credit provisions in all of the aforementioned recent bills under both the tip credit provisions and the proposed increases in the federal minimum wage. Following an initial increase from \$2.13 to \$3.00 per hour, the minimum employer cash wage would increase by \$0.95 per hour for four years. After that an additional \$0.75 per hour increase would be necessary to make the minimum employer cash wage equal to 70% of the federal minimum wage and to make the tip credit equal to 30% of the minimum wage. Thereafter, the increase in the minimum employer

⁵ At least six bills were introduced in the 113th Congress—H.R. 650, H.R. 1010, H.R. 1346, H.R. 3746, S. 460, and S. 1737—that would have changed the FLSA to increase the federal minimum wage rate, index the federal minimum wage rate to a measure of inflation, and change the tip credit provisions of the minimum wage. The proposed changes to the tip credit provisions in four of these bills (H.R. 1010, H.R. 3746, S. 460, and S. 1737) are identical. The minimum wage rate increase and indexation proposals in the bills are not discussed in this report.

⁶ This proposal is included in four bills. The four bills (H.R. 1010, H.R. 3746, S. 460, and S. 1737) are identical with the exception that S. 1737 would implement the increase to \$3.00 per hour six months after enactment of the legislation.

cash wage would depend on the value of the federal minimum wage but it would be required to stay at 70% of the federal rate. In brief, the recent proposals would invert the ratio of minimum employer cash wage to tip credit from its current 29%-71% to 70%-30% in six years from the time of enactment.

Table 3. Employer Cash Wages and Tip Credits Required Under Recent Proposals

| Year | Federal Minimum Wage | Minimum Cash Wage Paid by Employer | Employer Contribution as % of Minimum Wage | Maximum Tip Credit | Tip Credit as % of Minimum Wage |
|------|----------------------|------------------------------------|--|--------------------|---------------------------------|
| 2014 | \$7.25 | \$2.13 | 29% | \$5.12 | 71% |
| 2015 | \$8.20 | \$3.00 | 37% | \$5.20 | 63% |
| 2016 | \$9.15 | \$3.95 | 43% | \$5.20 | 57% |
| 2017 | \$10.10 | \$4.90 | 49% | \$5.20 | 51% |
| 2018 | \$10.30 | \$5.85 | 57% | \$4.45 | 43% |
| 2019 | \$10.55 | \$6.80 | 64% | \$3.75 | 36% |
| 2020 | \$10.80 | \$7.55 | 70% | \$3.25 | 30% |

Source: CRS analysis of tip credit provisions in H.R. 1010, H.R. 3746, and S. 460, and S. 1737.

Notes: For illustrative purposes, the figures in **Table 3** assume the proposed changes included in these four recently introduced bills are enacted in 2014 and are effective beginning January 1, 2015. The minimum wage proposals under review here all call for indexing the minimum wage rate to inflation (the Consumer Price Index) after the rate reaches \$10.10 per hour. Minimum wage rates for 2018-2020 were estimated using inflation projections in the Congressional Budget Office, *Baseline Economic Forecast*, February 2014 Baseline Projections, Washington, DC, February 4, 2014, <http://www.cbo.gov/publication/45066>.

Changing the tip credit provisions to set the required employer minimum cash wage from a fixed dollar amount (\$2.13) to a percentage of the minimum wage (70%) has implications for tipped employees, their employers, and the total cost of the increase:

- Under the proposed changes, the tip credit would remain a constant share, 30%, of the federal minimum wage. Assuming that tips do not decrease as the minimum wage increases over time, the practical effect of the legislation would be to increase the wages received by tipped employees.
- Determining the cost of changes (regardless of how these costs are borne) in the tip credit provision is complicated because of the lack of reliable data on tips. When there is a general minimum wage increase for all covered employees, it is possible to make a reasonable estimate of the number of workers affected and the potential cost to employers as a whole.⁷ For tipped workers, the calculation is more complicated because employers of tipped workers may be paying different cash wages. Some employers may already be paying more than the minimum of \$2.13 because employee tips are not enough to cover the full minimum wage. Other employers would bear the full increase of the minimum employer cash

⁷ For example, it is possible to generate a cost estimate by multiplying the number of affected workers by the increase in the minimum wage. Data from the U.S. Census Bureau's Current Population Survey (CPS) could be used to estimate the number of individuals at or near the minimum wage level.

wage. In the absence of data showing the distribution of employer liability under the current system, it is difficult to estimate with precision the increased employer liability of raising the employer minimum cash wage.

Interaction with State Minimum Wage Provisions

Because several states have minimum wage rates that are different (mostly higher) than the federal minimum wage and different tip credit provisions, the impact of increasing the federal employer minimum cash wage would vary across states. In general, where there are conflicting minimum wage provisions, the higher standard (e.g., wage rate) prevails. That is, where the minimum wage or tip credit provisions are more beneficial to employees, they prevail. For example, the West Virginia tip credit is 70% of the state minimum wage (\$8.00), or \$5.60, which means that employers of tipped employees in West Virginia may take a maximum tip credit of \$5.60 toward the employee's wage. As a result, the minimum employer cash wage in West Virginia is \$2.40 (i.e., \$8.00 minus \$5.60). The increase in the employer minimum cash wage proposed in current legislative proposals would not be binding in West Virginia.

Table 4 provides information on minimum wage and tip credit provisions in the 50 states and the District of Columbia.⁸ As the data show, the diversity of policies makes an analysis of potential effects of a change in the federal tip credit provisions difficult. Of the 50 states and the District of Columbia:

- Seven states—Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington—do not currently allow a tip credit. That is, all workers subject to the minimum wage, regardless of their “tipped” status, are entitled to the full statutory state or federal minimum wage (whichever is higher) from their employer. In these states, any change in the federal tip credit would not affect the payment structure for tipped employees.
- 39 jurisdictions allow a tip credit:
 - 26 states and the District of Columbia require a minimum employer cash wage greater than the federal rate of \$2.13 per hour. Two of these states—Connecticut and New York—have different tip credit provisions based on the occupation of the tipped worker;
 - The remaining 12 states require a minimum employer cash wage of \$2.13 per hour, either by reference to federal law or by state law.
- Five states—Alabama, Louisiana, Mississippi, South Carolina, and Tennessee—do not have state minimum wages. In these states, employees covered by the FLSA would also be subject to the tip credit provisions of the federal minimum wage; for non-covered employees, there is not a minimum wage for tipped or non-tipped employees.

⁸ Data in **Table 4** reflect the interaction of state minimum wage laws and the populations covered by the FLSA. In cases of states with no minimum wage—Alabama, Louisiana, Mississippi, South Carolina, and Tennessee—workers in these states who are covered by the FLSA are also subject to the tip credit provisions of the FLSA. Similarly, in the states with minimum wage rates below the FLSA minimum—Georgia and Wyoming—workers covered by the FLSA are subject to the higher FLSA minimum wage but are subject to the tip credit provisions of state law.

Table 4. Tip Credit Provisions in Effect in the States

As of January 1, 2015

| State | Total Minimum Wage (i.e., Minimum Employer Cash Wage + Maximum Tip Credit) | Minimum Employer Cash Wage | Maximum Tip Credit | Minimum Employer Cash Wage as a Percentage of Minimum Wage |
|---|--|----------------------------|--------------------|--|
| Federal | \$7.25 | \$2.13 | \$5.12 | 29% |
| Alabama ^a | \$7.25 | \$2.13 | \$5.12 | 29% |
| Alaska | \$8.75 | \$8.75 | \$0.00 | 100% |
| Arizona | \$8.05 | \$5.05 | \$3.00 | 63% |
| Arkansas | \$7.50 | \$2.63 | \$4.87 | 35% |
| California | \$9.00 | \$9.00 | \$0.00 | 100% |
| Colorado | \$8.23 | \$5.21 | \$3.02 | 63% |
| Connecticut ^b : <i>Bartenders</i> | \$9.15 | \$7.46 | \$1.69 | 82% |
| Connecticut: <i>Service Employees</i> | \$9.15 | \$5.78 | \$3.37 | 63% |
| District of Columbia | \$9.50 | \$2.77 | \$6.73 | 29% |
| Delaware | \$7.75 | \$2.23 | \$5.52 | 29% |
| Florida | \$8.05 | \$5.03 | \$3.02 | 62% |
| Georgia ^c | \$7.25 | \$2.13 | \$5.12 | 29% |
| Hawaii | \$7.75 | \$7.25 | \$0.50 | 94% |
| Idaho | \$7.25 | \$3.35 | \$3.90 | 46% |
| Illinois ^d | \$8.25 | \$4.95 | \$3.30 | 60% |
| Indiana | \$7.25 | \$2.13 | \$5.12 | 29% |
| Iowa | \$7.25 | \$4.35 | \$2.90 | 60% |
| Kansas | \$7.25 | \$2.13 | \$5.12 | 29% |
| Kentucky | \$7.25 | \$2.13 | \$5.12 | 29% |
| Louisiana ^e | \$7.25 | \$2.13 | \$5.12 | 29% |
| Maine ^f | \$7.50 | \$3.75 | \$3.75 | 50% |
| Maryland | \$8.00 | \$3.63 | \$4.37 | 45% |
| Massachusetts | \$9.00 | \$3.00 | \$6.00 | 33% |
| Michigan | \$8.15 | \$3.10 | \$5.05 | 38% |
| Minnesota ^g | \$8.00 | \$8.00 | \$0.00 | 100% |
| Mississippi ^h | \$7.25 | \$2.13 | \$5.12 | 29% |
| Missouri | \$7.65 | \$3.83 | \$3.83 | 50% |
| Montana ⁱ | \$8.05 | \$8.05 | \$0.00 | 100% |
| Nebraska | \$8.00 | \$2.13 | \$5.87 | 27% |

| State | Total Minimum Wage (i.e., Minimum Employer Cash Wage + Maximum Tip Credit | Minimum Employer Cash Wage | Maximum Tip Credit | Minimum Employer Cash Wage as a Percentage of Minimum Wage |
|---|---|----------------------------|--------------------|--|
| Nevada: <i>No Health Insurance</i> | \$8.25 | \$8.25 | \$0.00 | 100% |
| New Hampshire ^k | \$7.25 | \$3.26 | \$3.99 | 45% |
| New Jersey ^l | \$8.38 | \$2.13 | \$6.25 | 25% |
| New Mexico | \$7.50 | \$2.13 | \$5.37 | 28% |
| New York ^m : <i>Food Service Workers</i> | \$8.75 | \$5.00 | \$3.75 | 57% |
| New York: <i>Service Employees</i> | \$8.75 | \$5.65 | \$3.10 | 65% |
| New York: <i>Service Employees in Resorts</i> | \$8.75 | \$4.90 | \$3.85 | 56% |
| North Carolina | \$7.25 | \$2.13 | \$5.12 | 29% |
| North Dakota ⁿ | \$7.25 | \$4.86 | \$2.39 | 67% |
| Ohio ^o | \$8.10 | \$4.05 | \$4.05 | 50% |
| Oklahoma | \$7.25 | \$3.63 | \$3.63 | 50% |
| Oregon | \$9.25 | \$9.25 | \$0.00 | 100% |
| Pennsylvania | \$7.25 | \$2.83 | \$4.42 | 39% |
| Rhode Island | \$9.00 | \$2.89 | \$6.11 | 32% |
| South Carolina ^p | \$7.25 | \$2.13 | \$5.12 | 29% |
| South Dakota | \$8.50 | \$4.25 | \$4.25 | 50% |
| Tennessee ^q | \$7.25 | \$2.13 | \$5.12 | 29% |
| Texas | \$7.25 | \$2.13 | \$5.12 | 29% |
| Utah | \$7.25 | \$2.13 | \$5.12 | 29% |
| Vermont | \$9.15 | \$4.58 | \$4.58 | 50% |
| Virginia | \$7.25 | \$2.13 | \$5.12 | 29% |
| Washington | \$9.47 | \$9.47 | \$0.00 | 100% |
| West Virginia ^r | \$8.00 | \$2.40 | \$5.60 | 30% |
| Wisconsin | \$7.25 | \$2.33 | \$4.92 | 32% |
| Wyoming ^s | \$5.15 | \$2.13 | \$3.02 | 41% |

Source: CRS analysis of Department of Labor, Wage and Hour Division, *Minimum Wages for Tipped Employees*, Washington, DC, January 1, 2015, <http://www.dol.gov/whd/state/tipped.htm>.

Notes: While the definition of a “tipped employee” is specified in the FLSA, this definition is often different in different states. That information is not included in this analysis.

- a. Alabama does not have a statutory minimum wage. For workers covered by the Fair Labor Standards Act (FLSA), the FLSA minimum wage and tip credit provisions apply.

- b. Connecticut has two different tip credit amounts, based on the occupation of the tipped employee. For bartenders the tip credit is 18.5%, or \$1.69 per hour, of the current minimum wage of \$9.15 per hour. For non-bartender service employees, the tip credit is 36.8%, or \$3.37 per hour, of the current minimum wage of \$9.15 per hour.
- c. Georgia's statutory minimum wage is \$5.15 per hour. Tipped employees, however, are specifically exempted from the state's minimum wage laws. Thus tipped workers in Georgia are covered by the Fair Labor Standards Act (FLSA) minimum wage and tip credit provisions.
- d. Illinois statute specifies that an employer may take a tip credit in an amount not to exceed 40% of the employee's wages. Thus, based on the current minimum wage of \$8.25 per hour, a 40% tip credit equals \$3.30 per hour.
- e. Louisiana does not have a statutory minimum wage. For workers covered by the Fair Labor Standards Act (FLSA), the FLSA minimum wage and tip credit provisions apply.
- f. Maine statute specifies that an employer may take a tip credit in an amount not to exceed 50% of the minimum hourly wage. Thus, based on the current minimum wage of \$7.50 per hour, a 50% tip credit equals \$3.75 per hour.
- g. Minnesota has two different minimum wage rates (\$8.00 and \$6.50 per hour), based on annual gross revenue. A "large" employer is one with annual receipts of \$500,000 or more and a "small" employer is one with annual receipts of less than \$500,000. For employees covered by the FLSA, the minimum wage is \$7.25 per hour. A tip credit is not allowed in either case.
- h. Mississippi does not have a statutory minimum wage. For workers covered by the Fair Labor Standards Act (FLSA), the FLSA minimum wage and tip credit provisions apply.
- i. Montana has two different minimum wage rates (\$8.05 per hour for large employers and \$4.00 per hour for small employers), based on gross annual sales. A "large" employer is one with gross annual sales of more than \$110,000 or more and a "small" employer is one with gross annual sales of \$110,000 or less. For employees covered by the FLSA who work for small employers, the minimum wage is \$7.25 per hour. A tip credit is not allowed in either case.
- j. Nevada has two different minimum wage rates (\$8.25 and \$7.25 per hour), based on provision of health insurance. Minimum wage is \$8.25 per hour if health insurance is not provided by employer and received by employee; wage is \$7.25 if health insurance is provided by employer and received by employee. Tip credit is not allowed in either case.
- k. New Hampshire statute specifies that an employer must pay a tipped employee a base rate of not less than 45% of the minimum hourly wage. Thus, based on the current minimum wage of \$7.25 per hour, a 45% base rate equals \$3.26 per hour.
- l. The state of New Jersey does not require a minimum hourly employer cash wage but has a "suggested rate" of \$2.13 per hour.
- m. New York has three different tip credit amounts, based on the occupation of the tipped employee. For food service employees the tip credit is \$3.75 per hour, for service employees the tip credit is \$3.10 per hour, and for service employees in resort hotels the tip credit is \$3.85 per hour.
- n. North Dakota statute specifies that an employer may take a tip credit in an amount not to exceed 33% of the minimum wage. Thus, based on the current minimum wage of \$7.25 per hour, a 33% tip credit equals \$2.39 per hour.
- o. Ohio has two different minimum wage rates (\$8.10 and \$7.25 per hour), based on gross annual sales. An employee of an employer with gross annual sales of \$297,000 or more is subject to a minimum wage of \$8.10 per hour, while an employee of an employer with gross annual sales of less than \$297,000 is subject to the federal minimum wage of \$7.25 per hour.
- p. South Carolina does not have a statutory minimum wage. For workers covered by the Fair Labor Standards Act (FLSA), the FLSA minimum wage and tip credit provisions apply.
- q. Tennessee does not have a statutory minimum wage. For workers covered by the Fair Labor Standards Act (FLSA), the FLSA minimum wage and tip credit provisions apply.

- r. West Virginia statute specifies that an employer may take a tip credit in an amount equal to 70% of the minimum wage. Thus, based on the current minimum wage of \$8.00 per hour, a 70% tip credit equals \$5.60 per hour.
- s. The state minimum wage in Wyoming is \$5.15 per hour and the minimum employer cash wage is \$2.13 per hour. For employees covered by the FLSA, the minimum wage is \$7.25 per hour. The minimum employer cash wage of \$2.13 per hour applies in either case.

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