



## GET READY: NEW MINIMUM WAGE AND THE IMPENDING END OF THE TIP CREDIT

In a landmark July 31, 2024 decision, the Michigan Supreme Court approved significant changes to Michigan wage and hour law, reinstating two 2018 ballot initiatives as law.

The Improved Workforce Opportunity Wage Act (“Wage Act”) is one of the two laws currently set to become effective February 21, 2025. When it was a ballot initiative in 2018, it was set to bring a higher minimum wage to our State and tied subsequent increases to the minimum wage to inflation and shrinks the tip credit over the course of five years until the tip credit (and thus the tipped minimum wage) was totally eliminated. Additionally, the decision reinstated the Earned Sick Time Act (“ESTA”), also effective February 21, 2025.

*Unfortunately, the Wage Act and ESTA are imprecisely drafted and lack clear answers to some important questions business owners will have.*

*While we are all awaiting further guidance and interpretations from the State, the MRLA is actively working with the State legislature to identify legislative fixes to avoid business ending changes to the industry as a result of the Supreme Court’s action. The FAQ below is based on the interpretations of MRLA’s labor and employment counsel as of the date of publication.*

### Q#1: WHAT ARE THE DIFFERENCES BETWEEN THE CURRENT MINIMUM WAGE LAW IN MICHIGAN AND THE WAGE ACT SET TO GO INTO EFFECT ON FEBRUARY 21, 2025?

- A: The original language in the Wage Act (drafted in 2018) would have:
- raised the minimum wage to \$12.00 per hour by 2022, with gradual inflation-based increases each year afterwards and
  - increased the tipped wage year-over-year until it matched the regular minimum wage in 2024.

The Michigan Supreme Court has ruled that the Wage Act will gradually increase the minimum wage in Michigan each year by starting, in February 2025, to mirror the steps that would have taken place beginning in 2019 if the Wage Act had been implemented as adopted (with adjustments for inflation).

It is **estimated** that the minimum hourly wage will be \$12.48 per hour beginning in February 2025, and reach somewhere around \$15 per hour by 2030. In addition, the tipped minimum wage will increase from \$3.93 today to \$5.99 on February 21, 2025, increasing each year until it eventually matches the standard minimum wage (see chart in Question #2 below), which means the tip credit will be eliminated in Michigan by 2030.

*\*Information as of August 9, 2024. pg. 1*

*\*\*The current Michigan legislature is within its rights to amend either of the two laws effective immediately, and this FAQ document seeks to explain the implementation of the ruling if the current legislature opts not to intervene before February 21, 2025*



**Q#2: WHAT DO I NEED TO PLAN TO PAY FOR MINIMUM WAGE AND A TIPPED MINIMUM WAGE NEXT YEAR?**

A: Unfortunately, we don't yet know exactly. The Michigan Supreme Court directed the Michigan Department of Treasury to adjust the minimum wage rates discussed in Question 1 for inflation.

Below is a chart showing the estimated difference between the current (2024) minimum and tipped wage, and what those will look like beginning in 2025:

Year	Minimum Wage Rate	Tipped Wage Percentage	Tipped Wage Rate
2024 current	\$10.33 per hour	38% of minimum wage	\$3.93 per hour
2025	\$12.48 (est)	48% of minimum wage	\$5.99 (est)
2026	\$12.97 (est)	60% of minimum wage	\$7.78 (est)
2027	\$13.63 (est)	70% of minimum wage	\$9.54 (est)
2028	\$13.41 (est)	80% of minimum wage	\$10.73 (est)
2029	Treasury to calculate based on inflation	100% of minimum wage/eliminated completely*	Equal to minimum wage

\*\* Based on the court's own graduated implementation schedule, the tip credit percentage for 2029 should be 90% and the tip credit will be eliminated completely in 2030. In its opinion, the court wrote that the tip credit will be eliminated completely in 2029. We will have to wait and see what the Treasury and/or the Legislature does to clarify this inconsistency.

**Q#3: WHAT WILL THE STATE TREASURER USE AS A MEASUREMENT TO ADJUST THE MINIMUM WAGE EACH YEAR AS REQUIRED BY THE WAGE ACT?**

A: Every October, Treasury will increase the minimum wage by inflation, using the 12-month percentage increase, if any, in the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, as published by the U.S. Department of Labor's [Bureau of Labor Statistics](#).

We hope to soon have further insight from the State into what the minimum wage will be in 2025 and what this process will look like moving forward in the coming weeks.

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**Q#4: IF THE CONSUMER PRICE INDEX INFLATION RATE DECREASES, WILL MINIMUM WAGE DECREASE? HOW DO YOU TAKE MONEY AWAY FROM EMPLOYEES?**

A: The Wage Act does not appear to permit any decrease to minimum wage. Instead, we expect, the wage will remain the same in years where the calculation required by the law does not reflect inflation in the minimum wage itself.

The Wage Act does provide that minimum-wage increases are *paused* when the unemployment rate is 8.5% or greater. This, at least, is consistent with the current law governing minimum wage calculation.

**Q#5: WHAT TIPPED WAGE CAN I PAY TO MY TIPPED EMPLOYEES NOW? WHAT ABOUT ON FEBRUARY 21, 2025?**

A: Today, the minimum wage in Michigan is \$10.33 per hour. Employers who are eligible to take the tip credit are permitted to pay their employees 38% of the minimum, which is \$3.93 per hour. Under the Wage Act set to go into effect February 21, 2025, tipped workers will earn 48% of the minimum wage, instead of 38%.

As of the publication date of these FAQs, Treasury has not published its adjustment to the minimum wage rates for inflation.

*For illustrative purposes only, if the minimum wage rate beginning February 21, 2025 is set at \$12.36 per hour, the tipped minimum wage would be \$5.93 per hour.*

**Q#6: WHAT IF I CHOOSE NOT TO TAKE THE TIP CREDIT OR I AM NOT ELIGIBLE TO TAKE THE TIP CREDIT?**

A: The Wage Act does not alter the requirements for employer eligibility to take the tip credit. If you choose not to take the tip credit or you are not eligible to take the tip credit, you must pay all of your employees the Michigan minimum wage. Beginning on February 21, 2025, this will be the increased minimum wage rates as explained in the answer to Question #2 above.

*\*Information as of August 9, 2024. pg. 3*

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### **Q#7: HOW WILL THE TIP CREDIT BE ELIMINATED COMPLETELY?**

A: Currently, the tipped minimum wage is set at 38% of the State minimum wage. Under the Wage Act, the tipped minimum wage will increase each year until the tipped minimum wage is equal to the State minimum wage. In the years to come, the tipped minimum wage rate will be a percentage of the minimum wage as follows:

- 2025: The tipped minimum wage will be 38% of the minimum wage.
- 2026: The tipped minimum wage will be 60% of the minimum wage.
- 2027: The tipped minimum wage will be 70% of the minimum wage.
- 2028: The tipped minimum wage will be 80% of the minimum wage.
- 2029: Tip credits are prohibited, so tipped employees must be paid the full minimum wage.

### **Q#8: HAVE OTHER STATES ELIMINATED THE TIP CREDIT? WHAT HAVE THOSE BUSINESS OWNERS DONE TO MITIGATE THE EFFECTS?**

A: Yes, legislatures across the country have moved to eliminate the tip credit granted to businesses with tipped employees to fulfill their minimum wage requirements. In general, to avoid significant raises in menu or service prices, businesses in states where the tip credit has been eliminated have implemented or considered implementing mandatory service charges.

We have also seen a few restaurants across the country implement a commission model of compensation, which involves paying employees based on sales. The employees are then paid an hourly wage plus commission. An employee receives wages based on commission of items sold, usually determined by a set percentage of sales.

This model may still involve service charges to supplement rising costs, and is a very tricky area to navigate successfully. The service charge will help pay for labor and benefits for all employees and, among other things, must be disclosed as being the property of the business, not the employees.

*\*Information as of August 9, 2024. pg. 4*

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### **Q#9: WHAT IS A SERVICE CHARGE?**

A: A service charge is an automatic fee added to guests' or customers' bills. It does not typically go to the service employee — the business collects the money. Businesses may charge service fees for extra services related to delivering food, providing room service, or catering an event, for example.

To be legal, service charges **must** be clearly listed as a service charge that must be paid and the customer should be made aware that it does not go to the employee. It will be considered taxable income to the business.

If the fee does not specifically say “service charge” or “administrative fee” (or something similar), can be removed from a bill, or has the word “gratuity,” the customer could get confused and think it an optional amount and that it goes directly to the employee. In that case, it will be considered a **tip** for legal purposes, which is property of the employee.

### **Q#10: WHAT IS THE DIFFERENCE BETWEEN A SERVICE CHARGE AND AUTO-GRATUITY?**

A: A service charge is typically a set amount added to a guest check; it is not discretionary. An automatic gratuity is a set amount, such as for a party of 6 or more, a buy-out or banquet, though it often still passed onto the employee. And a true tip/gratuity is an actual discretionary amount left by the guest for the service employees.

According to the IRS, service charges that are distributed directly to employees (often referred to as "auto-gratuities", such as when there is an automatic 20% gratuity for parties of 6 or more) are non-tip wages to the employees. This means that amount is subject to social security tax, Medicare tax, and federal income tax withholding.

Be sure to properly designate service charges as a non-discretionary percentage of the bill that is the property of the employer and not the employee, and make clear that the service charge is in no way a gratuity or tip.

*\*Information as of August 9, 2024. pg. 5*

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## **Q#11: DO SERVICE CHARGES PAID OUT DIRECTLY TO AN EMPLOYEE COUNT TOWARDS THE EMPLOYER'S OBLIGATION TO PAY THE EMPLOYEE MINIMUM WAGE?**

**A:** Michigan's Wage Act provides that "gratuities and service charges paid to an employee are in addition to, and may not count towards, wages due to the employee." This means that if a service charge is directly paid out to the employee (like an automatic gratuity), the employer may not use that amount towards the minimum wage requirement.

The Act also states that "Employers must provide employees and consumers written notice of their plan to distribute service charges." This means that any restaurant wishing to utilize service charges to offset the cost of rising minimum wages and the elimination of the tip credit must provide written notice to both employees and customers that the service charge will not go directly to the employee as wages, but will be the property of the employer.

## **Q#12: WHAT WOULD A COMMISSION MODEL LOOK LIKE?**

**A:** This is not an area to dabble in and you should certainly secure expert employment law assistance if you are considering this option. You will also need to draft a clear and concise commission policy providing the rate of pay, the time when commissions will be paid, and clear standards for how commissions will be paid after termination.

At its core, the model is simple: pay an employee a base wage (likely per hour) plus a commission on the employee's food and alcohol sales in a period determined by the employer (i.e., in a shift, in a week, etc.). The employee still **must** make at least the Michigan minimum wage. That means in a given pay period, if the employee's commissions do not bring his or her base wage up to minimum wage, the employer must make up the difference.

*\*Information as of August 9, 2024. pg. 6*

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### **Q#13: WHAT IF MY BUSINESS DOES NOT COMPLY WITH THESE REQUIREMENTS?**

**A:** The employee affected by the violation, at any time within 3 years, may do any of the following:

- Bring a civil action for the recovery of the difference between the amount paid and the amount that, but for the violation, would have been paid the employee and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as are allowed by the court.
- File a claim with the State, who will investigate the claim.

If, in the latter case of the State investigation, the State determines there is reasonable cause to believe that the employer has violated the act and is unable to obtain voluntary compliance within a reasonable period of time, the commissioner must bring a civil action.

A contract or agreement between the employer and the employee or any acceptance of a lesser wage by the employee can't avoid the State's civil action.

In addition to the above, an employer who fails to pay the minimum hourly wage is subject to a civil fine of not more than \$1,000.00.

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