



Policy solutions that work for low-income people

Committee of the Whole
Council of the District of Columbia
Suite 410 of the John A. Wilson Building,
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004.

September 21, 2018

Re: Written Testimony for DC Council Committee of the Whole Hearing: Bill 22-913,
Tipped Wage Workers Fairness Amendment Act of 2018

Dear Chairman Mendelson and Members of the Committee of the Whole:

The Center for Law and Social Policy (CLASP) strongly opposes Bill 22-913, inaptly named the “Tipped Wage Workers Fairness Amendment Act of 2018.” This bill will hurt tipped workers in the District, who are predominantly people of color. As discussed in more detail below, Initiative 77 is critical to lifting tipped workers out of poverty and removing the structural vestiges of gender and race discrimination in our labor laws.

CLASP is a national anti-poverty organization that works to improve the lives of low-income people by developing and advocating for federal, state, and local policies that strengthen families and create pathways to education and work. We advocate for and conduct research and analysis on job quality policies, including paid sick days, paid family and medical leave, and fair scheduling. Further, we work with community and government partners to promote effective implementation and enforcement of labor standards policies.

As you know, Initiative 77 eliminates the tip credit in D.C., which allowed employers to pay tipped workers a subminimum wage of just \$3.33 an hour if that amount plus the workers’ tips equaled the District’s full minimum wage. In practice, far too many employers don’t cover the difference. As the Economic Policy Institute (EPI) has rightly noted, “tipped work is low-wage work, even in D.C.,” and these positions usually have low job quality.¹ Initiative 77 will gradually eliminate the two-tiered wage system by 2026.

Tipped workers in D.C. are three times as likely to live in poverty

Initiative 77 could lift many workers out of poverty. Living on tips does not provide sufficient, predictable income or economic security to workers. Nationally, tipped workers experience a

poverty rate nearly twice that of other workers.² **In the District, tipped workers are three times as likely to be in poverty as nontipped workers.**³ Black tipped workers have the highest poverty rate of any group, and EPI has found that **nearly one in five Black tipped workers in the District is in poverty.**⁴ In the District, people of color make up 70 percent of the tipped workforce.⁵ Median hourly wages for tipped workers in D.C. are 34 percent of the median annual earnings of nontipped workers.⁶ Currently, the median hourly wage for servers in the District is only \$11.86⁷ and for tipped workers overall is \$14.41.⁸ The annual median wage for servers is approximately \$25,000.⁹ The MIT Living Wage Calculator, which considers regional costs of living, estimates that a District worker with two children must make \$32.50 per hour, or \$68,000 annually, to adequately provide for her family—more than two and a half times what a median server makes.¹⁰ Even with tips, many industry workers still cannot make ends meet. Financial insecurity impacts not just workers but also their families. More than a quarter of tipped workers in the District have children and ten percent are single parents.¹¹

Tipped workers experience wage theft and discrimination

The two-tiered wage system is confusing and invites mistakes and abuse. More than 1 in 10 surveyed workers in predominantly tipped occupations reported that their hourly wages, including tips, were below the national minimum wage.¹² While there are certainly bad actors who take advantage of their employees, some underpayment likely stems from an overly complicated wage scheme that invites abuse. Tipped workers may not be aware that legally their base wage and tips must equal at least the regular minimum wage, or that they are entitled to overtime based on the full minimum wage. Even if they are aware, many do not want to risk losing their job by confronting a supervisor about their pay. Relying on customer tips also exposes workers to sexual harassment or discrimination by the very customers they depend on for tips.¹³ This business model lets employers off the hook for wage discrimination by relying on customers to supply wages (through tips) to restaurant workers. Wage theft and employer noncompliance persist in the District, even with the robust wage and worker protection laws D.C. has been a leader in enacting.

Subminimum wages perpetuate historical racial and gender inequities

In addition to aggravating harassment and discrimination, D.C.'s tip credit perpetuates racial and gender inequities that have been built into our labor laws. When Congress passed the 1938 Fair Labor Standards Act (FLSA) and created the United States' first minimum wage law, Southern legislators sought to exclude Black workers upon whose exploitation their regional economies depended for agriculture, service, and domestic work. Congress therefore left several categories of workers—including retail workers, service workers, agricultural workers, and domestic workers—out of the FLSA's protections. These sectors are predominated by women and people of color.

Congress added the tip credit provision in 1966 when it expanded the FLSA to cover leisure and hospitality employees. This codified a 1942 Supreme Court decision that exempted railroad companies from having to pay railway porters, who were primarily African American, the full minimum wage, allowing the railroads to count their tips towards their wages. Before passage of the FLSA, the railway porters had worked exclusively for tips and the railroad did not

consider them employees. Three justices dissented in the case, disagreeing with the premise that tips provided by customers could be considered wages.

Between the 1960s and the mid-1990s, the federal tipped subminimum wage increased when the regular minimum wage was raised. However, in 1996, the National Restaurant Association successfully lobbied to separate the two wages so that the federal tipped minimum wage has stayed the same (\$2.13) despite modest increases to the regular federal minimum wage, which is currently \$7.25 per hour. When D.C. separated its minimum wage from the federal minimum wage, it carried over the tradition of the tip credit. D.C. currently has the largest gap in the country between the tipped and full minimum wage.¹⁴

D.C.'s election results for Initiative 77 showcased race and class divisions, with predominantly white, wealthy neighborhoods voting against the initiative. Voters strongly supported Initiative 77 in areas where they were more likely to live in poverty and where voters are predominantly Black.

Initiative 77 will not hurt D.C.'s restaurant industry

The Restaurant Association of Metropolitan Washington led the fight against Initiative 77 using the same alarmist arguments of job loss and businesses fleeing the District as when they challenged D.C.'s smoking ban in 2006 and D.C.'s paid family and medical leave law in 2016. Little evidence substantiates that paying tipped workers the full minimum wage will hurt employment growth.¹⁵ Eight states require employers to pay tipped workers at least the regular minimum wage. In recent years, these states have had faster growth rates than states with a lower tipped sub-minimum wage. Cities like San Francisco and Seattle, which are both raising their minimum wage to \$15.00 an hour, have strong restaurant industries with growing employment. EPI found that servers and bartenders in San Francisco earn 21 percent more per hour than their counterparts in D.C. and servers and bartenders in Seattle earn 7 percent more per hour than their counterparts in D.C., causing them to conclude that “[t]ipped workers are unambiguously better off in cities that have eliminated their lower tipped minimum wages.”¹⁶

D.C. has a burgeoning restaurant scene that continues to add jobs. However, for these jobs to put District residents on the path to the middle class, they need to pay living wages. Contrary to restaurant industry claims, Initiative 77 provides workers a higher base wage *plus* any tips from patrons, a system that can result in higher total earnings for tipped workers. Initiative 77 is an important move to address pervasive inequities and improve the economic security of D.C.'s tipped workers and their families. We urge you not to overturn the will of the voters.

Sincerely,

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¹ Elise Gould and David Cooper, *Seven facts about tipped workers and the tipped minimum wage*, Economic Policy Institute, 2018, <https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/>.

² White House Report, *The Impact of Raising the Minimum Wage for Women: And the Importance of Ensuring a Robust Tipped Minimum Wage*, 2014,

<https://obamawhitehouse.archives.gov/sites/default/files/docs/20140325minimumwageandwomenreportfinal.pdf>.

³ Id.; David Cooper, *Why D.C. should implement Initiative 77*, Economic Policy Institute Policy Center, 2018, available at epi.org/154391. EPI's report states that the "poverty rate of tipped workers in D.C. is 13.7 percent—more than three times the poverty rate of nontipped workers (4.5 percent)." Black tipped workers in the District have a poverty rate of 18.5 percent.

⁴ Cooper, *Why D.C. should implement Initiative 77*.

⁵ Id.

⁶ Id.

⁷ Bureau of Labor Statistics May 2017 State Occupational Employment and Wage Estimates District of Columbia, https://www.bls.gov/oes/current/oes_dc.htm.

⁸ *Why D.C. should implement Initiative 77*, analyzing American Community Survey (ACS) hourly wage data.

⁹ Bureau of Labor Statistics Occupational Employment Statistics, May 2017, 35-3031 Waiters and Waitresses, <https://www.bls.gov/oes/current/oes353031.htm>.

¹⁰ Massachusetts Institute of Technology, "Living Wage Calculation for District of Columbia," <http://livingwage.mit.edu/counties/11001>. MIT defines the living wage as the hourly rate an individual must earn to support their family, if they are the sole provider and are working full-time. The calculations consider local costs of typical expenses, including food, child care, medical, housing, transportation, as well as local tax rates.

¹¹ Cooper, *Why D.C. should implement Initiative 77*.

¹² White House Report, *The Impact of Raising the Minimum Wage for Women*.

¹³ Sylvia Allegretto and David Cooper, *Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage*, Economic Policy Institute, 2014, <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

¹⁴ Kathryn Casteel, "The Minimum Wage Movement Is Leaving Tipped Workers Behind," *FiveThirtyEight*, Feb. 7, 2017, <https://fivethirtyeight.com/features/the-minimum-wage-movement-is-leaving-tipped-workers-behind/>.

¹⁵ Allegretto and Cooper, *Twenty-Three Years and Still Waiting for Change*.

¹⁶ Cooper, *Why D.C. should implement Initiative 77*.