

117TH CONGRESS  
2D SESSION

# H. R. 8427

To amend the Fair Labor Standards Act of 1938 to repeal the separate minimum wage for tipped employees, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2022

Mrs. HAYES (for herself, Mr. LEVIN of Michigan, Mrs. LAWRENCE, Ms. CHU, Ms. BONAMICI, Mrs. WATSON COLEMAN, Mr. BOWMAN, Mr. NADLER, Ms. JAYAPAL, Ms. NEWMAN, Mrs. CAROLYN B. MALONEY of New York, Mr. DANNY K. DAVIS of Illinois, Mr. MOULTON, Mr. GOMEZ, Ms. BARRAGÁN, Ms. LEE of California, Mr. THOMPSON of California, Mr. MCGOVERN, Mr. TAKANO, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Fair Labor Standards Act of 1938 to repeal the separate minimum wage for tipped employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tipped Worker Protec-  
5 tion Act”.

1 **SEC. 2. SCHEDULED REPEAL OF SEPARATE MINIMUM**  
2 **WAGE FOR TIPPED EMPLOYEES.**

3 (a) IN GENERAL.—

4 (1) REPEAL.—Section 3(m)(2)(B) of the Fair  
5 Labor Standards Act of 1938 (29 U.S.C.  
6 203(m)(2)(A)), as so redesignated by section 3(a)  
7 and as amended by section 3(b) of this Act, is  
8 amended by striking the sentence beginning with “In  
9 determining the wage an employer is required to pay  
10 a tipped employee,” and all that follows through “of  
11 this subsection.” and inserting “The wage required  
12 to be paid to a tipped employee shall be the wage  
13 set forth in section 6(a)(1).”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) RETENTION OF TIPS.—Section  
16 3(m)(2)(C) of the Fair Labor Standards Act of  
17 1938 (29 U.S.C. 203(m)(2)(B)), as so redesi-  
18 gnated by section 3(a) and as amended by sec-  
19 tion 3(e) of this Act, is further amended in  
20 clause (i) of such section 3(m)(2)(C) by striking  
21 “Regardless of whether or not an employer  
22 takes a tip credit, the employer” and inserting  
23 “An employer”.

24 (B) STATUS AS A TIPPED EMPLOYEE.—  
25 Subsection (t) of section 3 of the Fair Labor

1 Standards Act of 1938 (29 U.S.C. 203) is re-  
2 pealed.

3 (C) PENALTIES.—Section 16 of the Fair  
4 Labor Standards Act of 1938 (29 U.S.C. 216),  
5 as amended by this Act, is further amended—

6 (i) in subsection (b), by striking “the  
7 sum of any tip credit taken by the em-  
8 ployer and all such tips unlawfully kept by  
9 the employee” and inserting “the sum of  
10 all such tips unlawfully used or kept by the  
11 employee”; and

12 (ii) in subsection (c), by striking “the  
13 sum of any tip credit taken by the em-  
14 ployer and all such tips unlawfully kept by  
15 the employee” and inserting “the sum of  
16 all such tips unlawfully used or kept by the  
17 employee”.

18 (3) DELAYED EFFECTIVE DATE.—

19 (A) IN GENERAL.—Except as provided in  
20 subparagraph (B), the amendments made by  
21 paragraphs (1) and (2) shall take effect with  
22 the beginning of the first 1-year period de-  
23 scribed in 3(m)(2)(A)(i) of the Fair Labor  
24 Standards Act of 1938 (29 U.S.C.  
25 203(m)(2)(A)(i)), as amended by subsection

1 (b), for which the hourly wage for such 1-year  
2 period would equal or exceed the minimum  
3 wage in effect under section 6(a)(1) as of the  
4 beginning of such 1-year period.

5 (B) SPECIAL RULE FOR TIP POOLS ESTAB-  
6 LISHED OR MAINTAINED DURING TRANSITION  
7 PERIOD.—In any case in which a system to pool  
8 tips is established for the non-supervisory em-  
9 ployees of an employer in accordance with sec-  
10 tion 3(m)(2)(D) of such Act (29 U.S.C.  
11 203(m)(2)(D)) (as added by section 3(d) of this  
12 Act) prior to the beginning of the 1-year period  
13 described in subparagraph (A), the amendments  
14 made by paragraphs (1) and (2) shall apply  
15 with respect to such employer beginning with  
16 the date on which such system is established.

17 (b) MINIMUM WAGE FOR TIPPED EMPLOYEES DUR-  
18 ING TRANSITION PERIOD.—

19 (1) IN GENERAL.—Clause (i) of section  
20 3(m)(2)(B) of the Fair Labor Standards Act of  
21 1938 (29 U.S.C. 203(m)(2)(A)), as so redesignated  
22 by section 3(a) of this Act, is amended to read as  
23 follows:

1 “(i) the cash wage paid such em-  
2 ployee, which for purposes of such deter-  
3 mination shall be not less than—

4 “(I) for the 1-year period begin-  
5 ning on the date of enactment of the  
6 Tipped Worker Protection Act, \$3.60  
7 an hour;

8 “(II) for each succeeding 1-year  
9 period, an hourly wage equal to the  
10 amount determined under this clause  
11 for the preceding 1-year period in-  
12 creased by \$1.50 (but not to exceed  
13 the minimum wage in effect under  
14 section 6(a)(1) as of the beginning of  
15 such 1-year period); and”.

16 (2) DEFINITION OF TIPPED EMPLOYEE.—Sec-  
17 tion 3(t) of such Act (29 U.S.C. 203(t)) is amended  
18 by striking “he customarily and regularly receives  
19 more than \$30 a month in tips” and inserting “the  
20 employee customarily and regularly receives for each  
21 month an amount in tips equal to (or in excess of)  
22 the difference between the total cash wages paid to  
23 the employee under subsection (m)(2)(A)(i) for such  
24 month and the total wages that would have been  
25 paid to the employee for the hours worked in such

1 month pursuant to the minimum wage in effect  
2 under section 6(a)(1) but for subsection (m)(2), ex-  
3 cept that an employee shall not be considered a  
4 ‘tipped employee’ for any workweek in which the em-  
5 ployee spends more than 20 percent of the employ-  
6 ee’s hours of employment performing duties related  
7 to the employee’s occupation for which the employee  
8 does not directly receive tips”.

9 **SEC. 3. REQUIREMENTS RELATING TO RETENTION AND**  
10 **POOLING OF TIPS.**

11 (a) TREATMENT OF CERTAIN AMOUNTS AS TIPS.—  
12 Section 3(m)(2) of the Fair Labor Standards Act of 1938  
13 (29 U.S.C. 203(m)(2)) is amended—

14 (1) by redesignating subparagraphs (A) and  
15 (B) as subparagraphs (B) and (C), respectively; and  
16 (2) by inserting before subparagraph (A), as so  
17 redesignated, the following:

18 “(A) ‘Tip’ includes any discretionary amount paid di-  
19 rectly to an employee by a customer and any portion of  
20 a mandatory charge imposed on a customer by the em-  
21 ployer which is added to the cost of the product or service  
22 in any manner that may reasonably lead the customer to  
23 believe that the amount collected by the employer from  
24 such charge will be paid in full directly to the employee.”.

1 (b) ALL TIPS RETAINED BY EMPLOYEES.—Subpara-  
2 graph (B) of section 3(m)(2) of the Fair Labor Standards  
3 Act of 1938 (29 U.S.C. 203(m)(2)), as redesignated by  
4 subsection (a), is amended by striking “of this subsection”  
5 and all that follows through the end of the subparagraph  
6 and inserting “of this subsection. Any employee shall have  
7 the right to retain, regardless of whether received as part  
8 of a system to pool tips established in accordance with  
9 subparagraph (C), any tips received by such employee.”.

10 (c) NO TIPS RETAINED BY EMPLOYERS.—Subpara-  
11 graph (C) of section 3(m)(2)(C) of the Fair Labor Stand-  
12 ards Act of 1938 (29 U.S.C. 203(m)(2)), as redesignated  
13 by subsection (b), is amended to read as follows:

14 “(C)(i) Regardless of whether or not an employer  
15 takes a tip credit, the employer may not keep tips received  
16 by its employees for any purpose or use such tips for any  
17 purpose other than to facilitate the distribution to employ-  
18 ees of the full amount of all such tips under a system to  
19 pool tips established in accordance with subparagraph (D).

20 “(ii) A violation of clause (i) includes—

21 “(I) allowing managers or supervisors to keep  
22 or use any portion of employees’ tips; and

23 “(II) keeping or using any portion of employ-  
24 ees’ tips to cover the cost of financial transaction  
25 fees, including any fee established, charged, or re-

1       ceived by a payment card network for the purpose  
2       of compensating an issuer for its involvement in a  
3       transaction in which a person uses a debit card or  
4       credit card (as the terms “debit card”, “credit  
5       card”, “issuer, and “payment card network” are de-  
6       fined in section 921(c) of the Electronic Fund  
7       Transfer Act (15 U.S.C. 1693o-2(c))”.”.

8       (d) TIP POOLS.—Section 3(m)(2) of the Fair Labor  
9       Standards Act of 1938 (29 U.S.C. 203(m)(2)), as amend-  
10      ed by this section, is further amended by adding at the  
11      end the following:

12       “(D)(i) In any case in which an employer is provided  
13      with written documentation demonstrating that not less  
14      than 30 percent of all of the non-supervisory employees  
15      of the employer request a vote on whether to establish or  
16      modify a system to pool tips in accordance with this sub-  
17      paragraph, such a system shall be considered to be so es-  
18      tablished or modified if the employer is provided with writ-  
19      ten documentation demonstrating that not less than 51  
20      percent of all such employees vote in favor of establishing  
21      or modifying such a system.

22       “(ii) The employer shall maintain a written record  
23      of any vote to establish or modify a system to pool tips  
24      held pursuant to this subparagraph, including the name  
25      of each employee voting and the vote totals. The employer



1 shall provide a copy of such record to any employee upon  
2 request.

3 “(iii)(I) A system to pool tips established under this  
4 subparagraph shall be administered by the employer, at  
5 the employer’s expense, in a manner ensuring that—

6 “(aa) participation in the system is voluntary  
7 for each employee and determined without coercion  
8 from the employer;

9 “(bb) such tips are shared among all non-super-  
10 visory employees participating in such system;

11 “(cc) funds held in such system are maintained  
12 separately from any other funds; and

13 “(dd) the records of such system are available  
14 to be examined by each such participating employee.

15 “(II) In administering a system to pool tips estab-  
16 lished under this subparagraph, an employer may suggest  
17 reasonable and customary practices.

18 “(III) In any dispute among employees relating to the  
19 administration of a system to pool tips established under  
20 this subparagraph, the employer may mediate and impose  
21 a resolution of the dispute on the employees participating  
22 in the system only if—

23 “(aa) in the case of employees in a restaurant  
24 or similar retail food establishment, no agreement  
25 resolving the dispute can be reached among—

1           “(AA) 50 percent or more of the partici-  
2           pating service employees whose primary job du-  
3           ties include direct interaction with customers;  
4           and

5           “(BB) 50 percent or more of all other par-  
6           ticipating employees; and

7           “(bb) in the case of employees in any other es-  
8           tablishment, no agreement resolving the dispute can  
9           be reached among 50 percent or more of the partici-  
10          pating employees.

11          “(iv) An employer shall not be required to com-  
12          pensate any employee participating in a system to pool  
13          tips established under this subparagraph in any case aris-  
14          ing as a result of another participating employee with-  
15          holding tips from such system.

16          “(v) An employer shall not discharge an employee or  
17          otherwise discriminate against an employee based on the  
18          employee’s vote with respect to, or participation in, a sys-  
19          tem to pool tips established under this subparagraph.

20          “(vi) In this subparagraph, the term ‘non-supervisory  
21          employee’ means any employee who has, at any point in  
22          their typical duties, decision making authority over the  
23          scheduling of other employees, the hiring of other employ-  
24          ees, or the termination of other employees.”.

1 (e) SERVICE CHARGES.—Section 3(m)(2) of the Fair  
2 Labor Standards Act of 1938 (29 U.S.C. 203(m)(2)), as  
3 amended by this section, is further amended by adding  
4 at the end the following:

5 “(E)(i) In any case in which an employer imposes a  
6 mandatory charge on a customer which is added to the  
7 cost of the product or service, the employer shall—

8 “(I) disclose to the customer and to all employ-  
9 ees involved in the sale of such product or delivery  
10 of such service—

11 “(aa) the reason for such charge; and

12 “(bb) the portion of such charge, if any,  
13 which upon its collection will be paid in full by  
14 the employer directly to employees; and

15 “(II) promptly pay to employees upon collection  
16 of such charge any portion identified in the disclo-  
17 sure required under subclause (I)(bb);

18 “(ii) In any case in which an employer represents  
19 that a charge is payable at the discretion of the customer,  
20 the employer may not add such charge to the cost of any  
21 product or service unless first requested by the cus-  
22 tomer.”.

23 (f) PENALTIES.—Section 16(e)(2) of the Fair Labor  
24 Standards Act of 1938 (29 U.S.C. 216(e)(2)) is amend-  
25 ed—

1 (1) by striking “section 3(m)(2)(B)” and in-  
2 serting “any provision of section 3(m)(2)”;

3 (2) by inserting “or used” after “kept”.

4 (g) EFFECTIVE DATE.—The amendments made by  
5 this section shall take effect on the date of enactment of  
6 this Act and shall apply with respect to all tips received  
7 on or after such date.

8 **SEC. 4. SERVICE CHARGES TREATED AS TIPS FOR PUR-**  
9 **POSES OF EMPLOYER CREDIT FOR SOCIAL**  
10 **SECURITY TAXES, ETC.**

11 (a) IN GENERAL.—Section 3121(q) of the Internal  
12 Revenue Code of 1986 is amended by adding at the end  
13 the following: “In the case of any mandatory charge to  
14 which section 3(m)(2)(E) of the Fair Labor Standards Act  
15 applies, the portion of such charge described in subclause  
16 (I)(bb) of such section shall be treated as tips for purposes  
17 of this subsection.”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 this section shall apply to amounts received on or after  
20 the date of the enactment of this Act.

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