



The Sneak Attack on Restaurant Workers, Parking Attendants, Hotel Maids, and Other Workers Who Depend on Tips

The U.S. House of Representatives approved an increase in the minimum wage on July 29. The increase, to phase up from the current \$5.15 an hour to \$7.25 in June 2009, is long overdue. The last increase occurred in 1997. Since then, Congress has raised its own pay 9 times, for a total of \$31,600 in raises.

But the bill that raises the federal minimum wage takes pay away from some workers who depend on tips. These include some of the lowest-paid workers in America. The bill does this essentially by overriding states that have chosen to require employers to pay the same minimum wage for tipped workers that any other worker receives. The upshot is that in seven states that have required employers to pay the full minimum wage, workers will earn a lot less and employers will get a windfall. Here's how:

How does current federal minimum wage law treat tips? The federal law requires employers to pay workers who receive tips no less than \$2.13 an hour, assuming tips add enough to at least equal the federal \$5.15 minimum wage. (If the worker's tips are insufficient to get to \$5.15, the employer must pay the difference.) States may raise their total minimum wage above the federal \$5.15; they are also free to require employers to pay more than \$2.13 to tipped workers, or to eliminate the "tip credit" to employers altogether by requiring them to pay the same minimum wage other workers receive.

What states require employers to pay tipped workers more by prohibiting the use of the "tip credit"? Seven states and Guam, with their minimum wage rates as of June 2006: Alaska (\$7.15), California (\$6.75), Minnesota (\$6.15), Montana (\$5.15), Nevada (\$5.15), Oregon (\$7.50), and Washington state (\$7.63). In these states, the employer pays the full minimum wage; instead of making up part of the minimum wage, tips are additional.

How does the House minimum wage proposal (H.R. 5970) restrict states' authority in their treatment of workers who rely on tips? H.R. 5970 would prevent any state from enforcing a state minimum wage that requires employers to pay the full minimum wage to tipped workers (in other words, when the state prohibits tip credits for employers). Unless or until a state changed its law to allow a tip credit, employers would not have to pay more than the federal \$2.13, unless tips were less than the amount needed to add up to the federal minimum wage. In Washington state, employers now paying \$7.63 an hour would pay \$5.50 less an hour if H.R. 5970 became law. Assuming full-time, year-round work, an employee would lose more than \$10,400 in a year. In Montana, employers would pay \$3.02 less an hour, a loss of nearly \$6,300 for a full-time, year-round worker. These are gigantic pay cuts,

acted upon by the House literally in the middle of the night with hardly any attention paid to the consequences to low-wage workers. Of course, the employee's loss is the employer's gain. Restaurant owners also benefit elsewhere in H.R. 5970, through tax breaks from faster depreciation of restaurant property worth \$418 million in FY 2007 and \$5.7 billion over the next 10 years.

Who is affected by the proposed change in the minimum wage for workers with tips? More than 1.1 million workers in occupations usually involving tip income live in the seven states without tip credits, out of about 5.7 million in these occupations nationwide. Restaurant wait staff make up about 40 percent of the national total. According to the U.S. Bureau of Labor Statistics, nearly 72 percent of wait staff are women. They earn well below median (typical) levels for their states. Here are earnings levels for wait staff in the seven states, compared with the statewide median:

	Wait Staff Number	Wait Staff Median	Statewide Median (hourly wage)
Alaska	3,590	\$8.13	\$17.30
California	225,920	\$7.91	\$15.80
Minnesota	46,880	\$6.62	\$15.74
Montana	8,600	\$6.32	\$11.86
Nevada	36,360	\$7.51	\$12.14
Oregon	26,830	\$8.88	\$14.50
Washington	43,860	\$8.59	\$16.30

Source: Bureau of Labor Statistics, State Employment and Wage Estimates, May 2005

In addition to the sneak attack on low-wage workers, what else is threatened? The authority of states to improve labor standards beyond the federal minimum. By state legislative act or by voters deciding on ballot questions, states have increasingly been willing to exceed the federal minimum wage (not surprising, since it has not been raised since 1997). H.R. 5970 sets limits on states' authority to set standards more helpful to workers.

What should be done? Congress ought to enact an increase in the minimum wage to at least \$7.25 an hour, with no intrusion on states' authority to improve wages and work standards beyond the federal minimum. The minimum wage increase should not be tangled up with drastic cuts in the estate tax, other tax reductions for the wealthiest among us, or backdoor handouts to powerful business interests. The minimum wage increase deserves a clean vote, now.