119TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
119–420

TIPPED EMPLOYEE PROTECTION ACT

DECEMBER 30, 2025.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALBERG, from the Committee on Education and Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2312]

The Committee on Education and Workforce, to whom was referred the bill (H.R. 2312) to amend the Fair Labor Standards Act of 1938 to revise the definition of the term "tipped employee", and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tipped Employee Protection Act".

SEC. 2. TIPPED EMPLOYEES.

Section 3(t) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(t)) is amended—

(1) by striking "(t)" and inserting "(t)(1)";

(2) by striking "engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips." and inserting ", without regard to the duties of the employee, who receives tips and other cash wages for a work period described in paragraph (2) at a rate that, when combined with the cash wage required under subsection (m)(2)(A)(i), is not less than the wage in effect under section 6(a)(1).."; and

(3) by adding at the end the following:

"(2) A work period described in this paragraph is a work period that is determined by the employer of the employee, such as a work period of 1 day, 1 week, every 2 weeks, every 28 days, or every pay period.".

PURPOSE

To amend the *Fair Labor Standards Act of 1938* to revise the definition of the term "tipped employee."

COMMITTEE ACTION

117TH CONGRESS

Second Session—Legislative Action

On December 13, 2022, Representative Steve Womack (R–AR) introduced H.R. 9523, the *Tipped Employee Protection Act of 2022*, which was referred to the Committee on Education and Labor.

118TH CONGRESS

First Session—Legislative Action

On March 14, 2023, Representative Womack introduced H.R. 1612, the *Tipped Employee Protection Act of 2023*, with Representative Pete Sessions (R–TX) as an original cosponsor. The bill was referred to the Committee on Education and the Workforce.

Second Session—Hearing

On September 18, 2024, the Subcommittee on Workforce Protections held a hearing entitled "Examining the Biden-Harris Attacks on Tipped Workers," which included discussion of how the Biden-Harris administration was limiting the hours that employers could credit employee's tips towards the federal minimum wage. Witnesses were Mr. Tom Boucher, Owner, Great NH Restaurants, Inc., Bedford, New Hampshire, on behalf of the National Restaurant Association; Mr. Paul DeCamp, Member, Epstein, Becker and Green, P.C., Washington, D.C.; Ms. Simone Barron, Co-Founder, Full-Service Workers Alliance, Seattle, Washington; and Ms. Saru Jayaraman, President, One Fair Wage, New York, New York.

119TH CONGRESS

First Session—Hearing

On March 25, 2025, the Subcommittee on Workforce Protections held a hearing entitled "The Future of Wage Laws: Assessing the FLSA's Effectiveness, Challenges, and Opportunities," which included discussion of unworkable regulations on tipped workers. Witnesses were Ms. Tammy McCutchen, Senior Affiliate, Resolution Economics, New Market, Tennessee; Ms. Paige Boughan, Senior Vice President and Director of Human Resources, Farmers and Merchants Bank, Hampstead, Maryland, on behalf of the Society for Human Resource Management; Mr. Andrew Stettner, Director of Economy and Jobs, The Century Foundation, Washington, D.C.; and Mr. Jonathan Wolfson, Chief Legal Officer and Policy Director, Cicero Institute, Richmond, Virginia.

First Session—Legislative Action

On March 24, 2025, Representative Womack introduced H.R. 2312, the *Tipped Employee Protection Act of 2025*, which was referred to the Committee on Education and Workforce. On November 20, 2025, the Committee considered H.R. 2312 in legislative session. Representative Michael Baumgartner (R–WA) offered an

amendment in the nature of a substitute making technical changes to the bill. The amendment was adopted by voice vote. The Committee then reported the bill favorably, as amended, to the House of Representatives by a recorded vote of 19 to 15.

COMMITTEE VIEWS

INTRODUCTION

H.R. 2312, the Tipped Employee Protection Act of 2025, replaces the outdated definition of tipped employee with a simpler and more realistic definition that removes compliance burdens for businesses and workers. Under the bill, anyone who receives tips and other cash wages that together add up to the federal minimum wage is defined as a tipped worker, without regard to how much time he or she spends on specific tasks. This bill is designed to eliminate confusing and harmful federal requirements that are nearly impossible to enforce.

TIPPED WORKERS

According to the Internal Revenue Service, there are roughly 6 million tipped workers nationwide, each of whom may earn a base wage under the federal minimum wage of $7.25, depending on state law.[1] The Fair Labor Standards Act (FLSA)—the primary federal statute outlining wage-and-hour law—allows an employer to "credit" a portion of an employee's tips toward the employer's obligation to pay the federal minimum wage. Eligible employees may be paid less than the federal minimum wage so long as each employee earns a weekly average wage of at least the federal minimum wage when base wages and tips are combined. Eligible tipped employees may be paid a base wage of as low as $2.13 per hour.[2]

States may set a higher base wage and minimum wage than those required under the FLSA. For example, Washington state requires all employees, regardless of whether the employee receives tips, to be paid a minimum of $16.28 per hour plus tips, while California requires $16 per hour plus tips. Minnesota, Montana, Nevada, Oregon, and Alaska have also prohibited employers' utilization of the tip credit to satisfy the states' minimum wage laws.[3]

80/20 TIMEKEEPING STANDARD

In 1988, The Department of Labor (DOL) revised its internal Field Operations Handbook (Handbook) to clarify relevant activities for tipped workers: (1) tip-producing work, (2) activities related to tip-producing work, and (3) unrelated activities.[4] The Handbook indicated that an employer may not take a tip credit for time spent on unrelated activities. For one category of "related activities," the

---

[1] https://www.irs.gov/newsroom/treasury-irs-provide-guidance-for-individuals-who-received-tips-or-overtime-during-tax-year-2025.

[2] https://www.dol.gov/agencies/whd/state/minimum-wage/tipped.

[3] *Id*.

[4] Paul DeCamp & Kathleen A. Barrett, *Federal Appeals Court Vacates Department of Labor's "80/20/30 Rule" Regarding Tipped Employees*, WAGE & HOUR DEFENSE BLOG, Aug. 26, 2024, https://www.wagehourblog.com/federal-appeals-court-vacates-department-of-labors-80-20-30-rule-regarding-tipped-employees; DOL, FIELD OPERATIONS HANDBOOK ch. 30 § 30d (date last modified Dec. 20, 2012) (tips, tip credit, and tipped employees), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch30.pdf.

employer could not use the tip credit if an employee totals over 20 percent of a workweek on related (i.e., non-direct) tip-producing work.[5] The Handbook thus implemented the 80/20 standard for the first time, whereby a tipped employee may not spend more than 20 percent of his or her time on nontipped tasks and for no more than 30 minutes at a time.

In 2007, a federal district court, for the first time, allowed a claim to proceed past the summary judgment stage on the basis of the 80/20 guidance.[6] In 2009, DOL at the end of the George W. Bush administration issued a rule to abandon the 80/20 guidance,[7] but the Obama administration subsequently restored the 80/20 guidance.

2020 TRUMP TIP RULE

On December 30, 2020, the first Trump administration DOL published a final rule on tip regulations.[8] Among other regulatory changes, this rule prevented supervisors or managers from keeping tips earned by employees except for services the supervisor or manager directly provides to the customer. The rule clarified the circumstances that an employer may claim the tip credit when workers perform both tipped and non-tipped duties. This rule also largely abandoned the 80/20 standard.

2021 BIDEN TIP RULE

In October 2021, the Biden DOL issued a final rule on "dual jobs" and tip regulations (2021 tip rule), which went into effect in December 2021.[9] Under the rule, DOL set restrictions on the amount of time tipped employees could spend performing work that is not "tip-producing work" and still be paid at the reduced cash wage ($2.13 per hour) applicable to tipped employees under the FLSA. The rule also limited employers to utilizing the tip credit for the hours when an employee is working on tip-producing activities or tasks that directly support such activities, so long as the 80/20 standard is followed. Under the 80/20 standard in the rule, employers may not take a tip credit unless employees spend less than 30 continuous minutes on secondary duties that do not generate tips. The rule also rolled back parts of the 2020 Trump administration rule that aimed to provide more clarity and flexibility to employers and to increase pay for back-of-the-house workers such as cooks and dishwashers.[10] The 2021 tip rule was set aside by the U.S. Court of Appeals for the Fifth Circuit in 2024.[11]

ENDING REGULATORY WHIPLASH

H.R. 2312, the *Tipped Employee Protection Act*, changes the definition of a "tipped employee" from employees who "customarily and regularly" receive over $30 a month in tips to employees who receive tips plus wages that meet or exceed the minimum wage. Cur-

---

[5] Paul DeCamp & Kathleen A. Barret, *supra* note 4.
[6] *Id.*
[7] https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2009_01_16_23_FLSA.pdf.
[8] Tip Regulations Under the Fair Labor Standards Act, 85 Fed. Reg. 85,756 (Dec. 30, 2020).
[9] Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal, 86 Fed. Reg. 60,114 (Oct. 29, 2021).
[10] https://www.dol.gov/newsroom/releases/whd/whd20201222-3.
[11] Restaurant Law Center v. DOL, 2024 WL 3911308 (5th Cir. Aug. 23, 2024), https://www.ca5.uscourts.gov/opinions/pub/23/23-50562-CV0.pdf.

rent reporting requirements for tipping are confusing and burdensome for both workers and job creators. While court interventions have temporarily provided relief to businesses grappling with these burdens, H.R. 2312 clarifies the issue in the FLSA and makes it easier for workers to earn more by getting rid of unclear federal rules and regulations. Among other problems, the 80/20 standard has been difficult to enforce and essentially impossible to monitor for at least the last 30 years.

At the March 25, 2025, Subcommittee on Workforce Protections hearing, Mr. Jonathan Wolfson, former Assistant Secretary for Policy at DOL, discussed in his testimony the *Tipped Employee Protection Act*:

> The Tipped Employee Protection Act clarifies that an employer may pay a tipped wage to any worker whose total wages and tips for a day, week, or pay period exceeds the federal minimum wage. Under the FLSA, an employer should be able to pay a tipped wage to any worker who receives at least $30 per month in tips. Rather than follow the letter of the statute, WHD has developed a complicated scheme that requires employers to track a tipped workers' time in minute detail, only allowing employers to count certain activities as "tipped work" and requiring the employers to pay a higher wage for all "untipped work."
>
> Unfortunately, this means that businesses that employ workers who earn tips are often caught in the crosshairs of WHD investigations not because they violate the letter of the statute, nor because their workers are paid less than the federal minimum wage per hour, but because they neglect to pay their workers a higher wage for portions of an hour when the tipped worker is engaged in a task the bureaucrats at DOL do not consider to be "tipped work."
>
> This bill removes the outdated $30 threshold and uproots the tedious tracking requirements in DOL regulations by simply clarifying that a worker who receives tips and other wages must earn at least the federal minimum wage for all hours worked. This simple change will save compliance costs and numerous headaches for businesses and still ensure that tipped workers receive the wages they deserve.[12]

CONCLUSION

H.R. 2312 allows restaurants and other industries that rely on tipped workers to have predictability when making business decisions. The bill also helps employees bring home higher paychecks, and it reduces compliance costs that could threaten their jobs. Under the bill, states may still set higher minimum wages, than the FLSA, including for tipped workers.[13]

H.R. 2312 SECTION-BY-SECTION SUMMARY

Section 1 identifies the bill's short title as the "Tipped Employee Protection Act."

---

[12] https://edworkforce.house.gov/uploadedfiles/wolfson_testimony.pdf (p. 6).
[13] https://womack.house.gov/news/documentsingle.aspx?DocumentID=407036.

Section 2 strikes FLSA section 3(t) defining a "tipped employee" as "any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips." Section 2 replaces this definition in FLSA section 3(t) so that a tipped employee is any employee, without regard to the duties of the employee, who receives tips and other cash wages for a work period at a rate that, when combined with the cash wage required under the FLSA's definition of "wage," is not less than the FLSA minimum wage. Section 2 also specifies that a work period is at the discretion of the employer, such as one day, one week, every two weeks, every 28 days, or every pay period.

EXPLANATION OF AMENDMENTS

The amendment in the nature of a substitute is explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

H.R. 2312 amends the *Fair Labor Standards Act* to revise the definition of "tipped employee," including for eligible employees of the legislative branch under the *Congressional Accountability Act*.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93–344 (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4), the Committee traditionally adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the Congressional Budget and Impoundment Control Act of 1974. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 2312.

EARMARK STATEMENT

H.R. 2312 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House rule XXI.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 11/20/2025

COMMITTEE ON EDUCATION AND WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 2 Bill: H.R. 2312 Amendment Number: N/A

Disposition: Motion to Report Bill, as amended (19y-15n)

Sponsor/Amendment: Rep. Womack (AR); Sponsor of ANS: Rep. Baumgartner (WA)

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. WALBERG (MI) (Chairman)	X			Mr. SCOTT (VA) (Ranking)		X	
Mr. WILSON (SC)	X			Mr. COURTNEY (CT))		X	
Mrs. FOXX (NC)	X			Ms. WILSON (FL)		X	
Mr. THOMPSON (PA)	X			Ms. BONAMICI (OR)		X	
Mr. GROTHMAN (WI)	X			Mr. TAKANO (CA))		X	
Ms. STEFANIK (NY)	X			Ms. ADAMS (NC)		X	
Mr. ALLEN (GA)	X			Mr. DESAULNIER (CA)		X	
Mr. COMER (KY)	X			Mr. NORCROSS (NJ)		X	
Mr. OWENS (UT)	X			Ms. MCBATH (GA)		X	
Ms. MCCLAIN (MI)			X	Ms. HAYES (CT)		X	
Mrs. MILLER (IL)	X			Ms. OMAR (MN)		X	
Ms. LETLOW (LA)	X			Ms. STEVENS (MI)		X	
Mr. KILEY (CA)	X			Mr. CASAR (TX)			X
Mr. RULLI (OH)			X	Ms. LEE (PA)		X	
Mr. MOYLAN (GU)	X			Mr. MANNION (NY)		X	
Mr. ONDER (MO)	X			Ms. GRIJALVA (AZ)		X	
Mr. MACKENZIE (PA)	X						
Mr. BAUMGARTNER (WA)	X						
Mr. HARRIS (NC)	X						
Mr. MESSMER (IN)	X						
Mr. FINE (FL)	X						

TOTALS: Ayes: 19 Nos: 15 Not Voting: 3

Total: 37 / Quorum: 35 / Report: Passed

(21 R - 16 D)

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House of Representatives rule XIII, the goal of H.R. 2312, the *Tipped Employee Protection Act*, is to amend the *Fair Labor Standards Act* to revise the definition of "tipped employee."

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2312 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

REQUIRED COMMITTEE HEARING

In compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives the following hearing held during the 119th Congress was used to develop or consider H.R. 2312: On March 25, 2025, the Subcommittee on Workforce Protections held a hearing on "The Future of Wage Laws: Assessing the FLSA's Effectiveness, Challenges, and Opportunities."

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, a cost estimate was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2312. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the Committee has requested a cost estimate for the bill from the Director of the Congressional Budget Office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

FAIR LABOR STANDARDS ACT OF 1938

* * * * * * *

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

(v) in the Library of Congress, or

(vi) the Government Printing Office;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(4)(A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(5) The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private nonprofit food banks and who receive from the food banks groceries.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Producer" means produced, manufactured, mined, handled, or in any manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner

working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virture of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m)(1) "Wage" paid to any employee includes the reasonable cost, as determined by the Secretary of Labor, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided,* That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further,* That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee.

(2)(A) In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to—

(i) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on the date of the enactment of this paragraph; and

(ii) an additional amount on account of the tips received by such employee which amount is equal to the difference be-

tween the wage specified in clause (i) and the wage in effect under section 6(a)(1).

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(B) An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips, regardless of whether or not the employer takes a tip credit.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided,* That the sale is recognized as a bona fide retail sale in the industry.

(o) HOURS WORKED.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r)(1) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) that it will have the exclusive rights to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

(2) For purposes of paragraph (1), the activities performed by any person or persons—

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physicially handicapped or

gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(C) in connection with the activities of a public agency.

shall be deemed to be activities performed for a business purpose.

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

[(t)**]** *(t)(1)* "Tipped employee" means any employee **[**engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.**]**, *without regard to the duties of the employee, who receives tips and other cash wages for a work period described in paragraph (2) at a rate that, when combined with the cash wage required under subsection (m)(2)(A)(i), is not less than the wage in effect under section 6(a)(1).*

(2) A work period described in this paragraph is a work period that is determined by the employer of the employee, such as a work period of 1 day, 1 week, every 2 weeks, every 28 days, or every pay period.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

* * * * * * *

MINORITY VIEWS

INTRODUCTION

H.R. 2312, the *Tipped Employees Protection Act* (TEPA), would amend federal minimum wage and overtime law with regard to tipped employees, whose tips can be counted as part of their wage, by broadening the definition of tipped employee and increasing employers' power to move workers in and out of tipped employee status. The bill would create more instability and unpredictability for low-wage workers throughout the economy. The bill is opposed by the AFL–CIO, Center for Law and Social Policy, and Economic Policy Institute.

BACKGROUND

Underlying Law

The *Fair Labor Standards Act of 1938* (FLSA) is the core federal workplace standards law governing the minimum wage, overtime, oppressive child labor, and other fundamental workplace standards.[1] FLSA includes many exemptions[2] and special provisions for particular workplaces.[3]

Among the workplace arrangements given special consideration in FLSA is tipped work. As first passed in 1938, the FLSA did not reference tips or tipped workers,[4] and "retail and service establishments,"[5] in which there are many tipped workers, were not covered under the statute.[6] In 1942, the Supreme Court held in *Williams v. Jacksonville Terminal Co.*[7] that an employer could count an employee's tips as a credit against the employer's full obligation to pay the minimum wage.[8]

Congress eventually brought tipped work into FLSA coverage. The 1966 FLSA amendments expanded coverage to hotels and restaurants and limited the employer's use of the tip credit to 50 percent of the minimum wage at that time.[9] The 1974 amendments added that an employer may take a tip credit for an employee only if "such employee has been informed by the employer of the provi-

---

[1] Pub. L. No. 75–718, 52 Stat. 1060 (1938) (codified at 29 U.S.C. § 201 *et seq.*).

[2] *See, e.g., id.* §§ 13(a)(1) (minimum wage and overtime exemption for bona fide executive, administrative, and professional employees), 13(b) (overtime exemption for interstate transportation workers).

[3] *See, e.g., id.* §§ 7(j) (permitting hospital and care facilities to apply overtime on a 14-day rather than seven-day work period), 14(c) (authorizing subminimum wages for workers with disabilities in sheltered workshops).

[4] Fair Labor Standards Act of 1938, Pub. L. No. 75–718, 52 Stat. 1060 (1938) (codified as amended at 29 U.S.C. § 201 *et seq.*).

[5] *Id.*

[6] *Id.*

[7] 315 U.S. 386 (1942).

[8] *Id.* at 407.

[9] Fair Labor Standards Amendments of 1966, Pub. L. No. 89–601, 80 Stat. 830 (1966).

sions of this subsection, and all tips received by such employee have been retained by the employee." [10]

In the aftermath of these and subsequent amendments, a tipped employee—someone who is engaged in an occupation in which he regularly and customarily earns at least $30 a month in tips [11]—is eligible for a version of the minimum wage in which the tips count toward the wage. The employer must pay at least $2.13 per hour (but may pay more) and may apply the tipped worker's tips to make up the difference between the base pay and the minimum wage (currently $7.25).[12] If the tips earned in a workweek do not sufficiently cover that difference, the employer is required to increase the amount paid accordingly.[13] Employers may not otherwise keep tips for their own use or to compensate managers,[14] but they may organize tip pools for distributing tips among employees who customarily and regularly receive tips.[15]

Dual Jobs

Policy determining the extent to which tipped employees can be engaged in work that does not produce tips (such as a restaurant server who spends time rolling silverware into napkins, or a hotel employee who spends some time as a bellhop and some as a maintenance engineer) has been a merry-go-round of guidance and rules as a recent legal opinion attests:

> In 1967[,] DOL issued its "dual-jobs" regulation, which addressed situations where an employee regularly engages in distinct occupations for the same employer. For example, "where a maintenance man in a hotel also serves as a waiter," that employee "is a tipped employee only with respect to his employment as a waiter. He is employed in two occupations." The regulation contrasted this example with that of "a waitress who spends part of her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses." For the latter employee, "[s]uch related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips."
>
> Presumably concerned that employers might exploit the tip credit to "subsidize non-tipped work and pay employees less across the board," DOL issued several opinion letters from 1979 to 1985 interpreting the dual-jobs regulation to more significantly restrict the tip credit's availability. In 1988, DOL published its so-called 80/20 guidance in its sub-regulatory Field Operations Handbook. The 80/20 guidance provided that a maximum of 20 percent of an employee's time could be spent on non-tipped activities related to the tipped occupation—for example, a waitress setting tables or making coffee—for the employer to claim the full tip credit.

---

[10] Fair Labor Standards Amendments of 1974, Public Law 93–259, § 13(e), 88 Stat. 55 (1974).
[11] 29 U.S.C. § 203 (t).
[12] *Id.* at (m)(2)(A).
[13] *Id.*
[14] *Id.* at (m)(2)(B).
[15] *Id.* at (m)(2)(A).

> DOL's 80/20 guidance persisted uninterrupted until 2009, when DOL's interpretation of the dual-jobs regulation began to oscillate with every change in presidential administration. First, in early 2009, a DOL opinion letter briefly rescinded the guidance. This opinion letter, in turn, was quickly withdrawn in the early days of the Obama Administration. Then, in 2018, the Trump Administration reissued the 2009 opinion letter, thereby doing away with the 80/20 guidance once again. And in 2020, DOL issued a final rule set to take effect in March 2021 that would have . . . permitted employers to claim the tip credit for all non-tipped duties that its tipped employees performed, so long as those duties were related to the employee's tipped occupation and were performed reasonably contemporaneously with tipped duties. But the rule never took effect.
>
> Instead, another change in presidential administration swept in another change in DOL policy. In December 2021, DOL issued a different final rule after notice and comment that effectively codified its longstanding 80/20 guidance.[16]

The Biden Administration's 2021 rule did not, however, survive court scrutiny. The U.S. Court of Appeals for the Fifth Circuit, newly empowered by the Supreme Court's *Loper Bright* decision[17] to construe FLSA without deferring to DOL's interpretation of it, concluded that the rule was arbitrary and capricious and was not supported by FLSA.[18]

Although the 80/20 clarification is now null and void, in their decision the Fifth Circuit did not strike down the longstanding dual jobs rule.[19] As a result, an employee who works for an employer in more than one distinct occupation—such as a hotel employee who spends some hours as a maintenance engineer and others as a tip-earning bellhop—is entitled to the full minimum wage for time spent in the non-tipped occupation, while the tipped credit rules may apply to the time spent in the tip-earning occupation.

Tipped Work and Precarity

Any policy change with respect to tipped work will be felt throughout the economy. There are estimated to be roughly four million tipped workers in the United States.[20] The tipped workforce is nearly two-thirds female, disproportionately composed of women of color, and disproportionately made up of single parents.[21] Most tipped workers are employed in food service,[22] but tipped workers also include manicurists, hair dressers, and bartenders,

---

[16] Rest. L. Ctr. v. U.S. Dep't of Lab., 120 F.4th 163, 166–67 (5th Cir. 2024) (internal citations omitted).

[17] Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).

[18] 120 F.4th at 404–09.

[19] *Id.* at 407.

[20] *Low Wage Workforce Tracker,* ECON. POL'Y INST., https://www.epi.org/low-wage-workforce/ (last visited Nov. 18, 2025).

[21] Nina Mast, *Tipping Is a Racist Relic and a Modern Tool of Economic Oppression in the South,* ECON. POL'Y INST. (June 18, 2024), https://www.epi.org/publication/rooted-racism-tipping/.

[22] Sylvia Allegretto & David Cooper, *Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage,* ECON. POL'Y INST. (July 10, 2014), https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/.

among other jobs.[23] Geographically, four out of every 11 tipped employees nationwide work in the South, where tipping became popular after the Civil War as a means to deny formerly enslaved Black workers relegated to service jobs an hourly wage.[24]

Tipped work is associated with low wages and deficient benefits. The typical tipped worker was paid an estimated $15.81 per hour in recent years, less than two-thirds the hourly wage of the typical worker in the economy overall who was paid roughly $24.95 per hour over the same time span, according to a recent analysis by the Economic Policy Institute (EPI).[25] Not surprisingly, tipped workers are more likely to live in poverty. An estimated 11.3 percent of tipped workers live in poverty, relative to 4.9 percent of non-tipped workers.[26] Beyond wages, tipped workers are also less likely to have access to benefits such as paid sick leave, health care, short-term disability, life insurance, and paid vacation.[27]

In addition, wage theft, which costs workers billions every year, disproportionately impacts tipped workers.[28] Although tipped workers are legally owed the full minimum wage by their employer, if their tips fail to make up the difference between the tipped minimum wage of $2.13 and the full minimum wage, workers are often responsible for confronting their employer for this difference (often referred to as a "tip credit") and keeping detailed logs of their hours and earnings to detect abnormalities in the paychecks.[29] In recent years, the importance of the tip credit has increased as states have increased state regular minimum wages without complimentarily adjusting the tipped minimum wage, leaving tipped workers in those states vulnerable to having that larger "tip credit" pocketed by unscrupulous employers.[30] Without sufficient funding for worker protection agencies, unscrupulous employers can retaliate against workers with impunity if workers attempt to call out wage theft or organize with other workers to push back against employers who pocket tips.[31]

Because tipped workers are disproportionately female, policy changes impacting tipped workers also disproportionately impact female workers. For example, the Trump Administration proposed a rule on December 5, 2017, that would have allowed employers to legally pocket the tips earned by the workers they employ, which could have led to employers pocketing as much as $5.8 billion in

---

[23] Justin Schweitzer, *Ending the Tipped Minimum Wage Will Reduce Poverty and Inequality: One Fair Wage States Are Better for Workers in Tipped Industries,* CTR. FOR AMER. PROGRESS (Mar. 30, 2021), https://www.americanprogress.org/article/ending-tipped-minimum-wage-will-reduce-poverty-inequality/.

[24] Mast, *supra* note 21.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year: Survey Data Show Millions of Workers Are Paid Less Than the Minimum Wage, at Significant Cost to Taxpayers and State Economies*, ECON. POL'Y INST. (May 10, 2017), https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year.

[29] Sylvia Allegretto, *Customer Tips Are Providing the Lion's Share of Wages to Tipped Workers*, CTR. FOR ECON. & POL'Y RSCH. (Mar. 27, 2024), https://www.cepr.net/report/customer-tips-provide-lion-share-of-wages-to-tipped-workers/.

[30] *Id*.

[31] Emnet Getahun, *Which Costs More: Shoplifting or Wage Theft? The Answer Might Surprise You*, ECON. OPPORTUNITY INST. (Jan. 17, 2024), https://www.opportunityinstitute.org/blog/post/organized-retail-theft-wage-theft/.

tips earned by workers each year.[32] An estimated $4.6 billion (79%) of those stolen tips would have otherwise gone to female workers, if the "tip-stealing" rule had been finalized.[33]

Critics of eliminating the tipped minimum wage often suggest that the restaurant industry will not be able to increase prices to pay tipped workers the full regular minimum wage, suggesting that restaurants will have to lay off staff. Research suggests that where the tipped minimum wage has been eliminated, there has not been a significant effect on employment in full-service restaurants.[34]

SHORTCOMINGS OF THE LEGISLATION

H.R. 2312 proposes a small amendment with significant consequences. It would amend section 3(t) of FLSA, which defines "tipped employee," as follows:

Current Law	*Amended*
''Tipped employee'' means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips..	(1) ''Tipped employee'' means any employee, without regard to the duties of the employee, who receives tips and other cash wages for a period described in paragraph (2) at a rate that when combined with the [required $2.13 subminimum] is greater than or equal to the [minimum wage]. (2) The period described in this paragraph may be (as determined by the employer) a period of 1 day, 1 week, every other week, every pay period, or 1 month.

In this one short provision,[35] the bill would make three significant changes to FLSA's current treatment of tipped work:

(1) It would drop the limitation of tip credit rules to employees who regularly and customarily receive significant tips.

(2) It would undermine the dual jobs rules protecting workers who alternate time in distinct tip-producing and non-tipped occupations.

(3) It would empower employers to arbitrarily reclassify workers as tipped or non-tipped employees during any time period ranging from one month to a single day.

Taken together, these changes would empower employers to pocket money earned by their employees, make earnings less predictable for many workers, and apply the tipped credit to workers currently covered by the standard minimum wage protections.

Affecting Irregular and Intermittent Tips

Workers who receive tips only occasionally and intermittently would be at risk of losing income. Take, for example, hotel housekeepers. A recent TD Ameritrade survey of tipping culture in America found that only 35 percent of respondents reported tipping

---

[32] Heidi Shierholz et al., *Employers Would Pocket $5.8 Billion of Workers' Tips Under Trump Administration's Proposed 'Tip Stealing' Rule*, ECON. POL'Y INST. (Dec. 12, 2017), https://www.epi.org/publication/employers-would-pocket-workers-tips-under-trump-administrations-proposed-tip-stealing-rule/.

[33] Heidi Shierholz et al., *Women Would Lose $4.6 Billion in Earned Tips if the Administration's 'Tip Stealing' Rule Is Finalized*, ECON. POL'Y INST. (Dec. 17, 2018), https://www.epi.org/publication/women-would-lose-4-6-billion-in-earned-tips-if-the-administrations-tip-stealing-rule-is-finalized-overall-tipped-workers-would-lose-5-8-billion/.

[34] Sylvia Allegretto & Carl Nadler, *Tipped Wage Effects on Earnings and Employment in Full-Service Restaurants*, 54 INDUS. RELS. 622 (2015).

[35] H.R. 2312, § 2, 119th Cong. (2025) [hereinafter TEPA].

hotel workers.[36] Other research has likewise found low rates of tipping for housekeepers.[37] Under current law, a hotel housekeeper who does not regularly receive tips of at least $30 per month would be exempt from the tip credit rules, and any tips earned would in effect be an occasional boost to her pay. Between the bill's extension of the tipped worker definition to intermittent tip earners and the flexibility it gives an employer to apply the tip credit for any period of working time, H.R. 2312 would empower her employer to lay claim to her tips by crediting them to her wage, even if she only earned tips for a single day in a month.

Many service workers who do not receive tips on a regular basis are offered special tips during the end-of-year holidays.[38] For example, the famed etiquette advice of Emily Post recommends a tip of up to one week's pay for an au pair or live-in nanny; $25–70 for each day care center staff member who works with a given child; and $10–30 for a garage attendant.[39] H.R. 2312 would empower employers to exploit their customers' holiday generosity by converting their employees to tipped employee status during the expected holiday tipping season, slash their wage to the $2.13 subminimum wage, and pay more only if the tips fail to bring the workers up to the full minimum wage. What would be a welcome holiday gift under current law would, under this bill, be just part of the workers' wages.

Perverse Incentives

H.R. 2312 would also incentivize employers to exploit the tip credit to lower wages in jobs that never earn tips. By rendering an employee's duties irrelevant to the applicability of the tip credit, the bill would encourage employers to hire workers into hybrid jobs with time spent in both tip-earning and non-tip-earning occupations.

For example, a restaurant could hire an employee as a line cook with occasional shifts as a waiter. Under the dual jobs rule, the restaurant would be required to pay at least the full minimum wage for the employee's line cook shifts and could elect the tip credit only for any shifts as a server. Under this bill, by contrast, the employer could disregard the employee's duties and apply the tip credit across the entire amount of time the employee works, not just the table service shifts.

Power Over Time

The bill also contains a confusing provision empowering employers to decide who is a tipped employee for any period of time, from one day to an entire month.

Current law governing tipped employees refers to two time periods, which are applied for different purposes:

---

[36] Christopher Zara, *A Shocking Percentage of Restaurant Patrons Say They Don't Leave Tips for Waitstaff*, FAST COMPANY (Feb. 6, 2020), https://www.fastcompany.com/90460928/a-shocking-percentage-of-restaurant-patrons-say-they-dont-leave-tips-for-wait-staff.

[37] Tammy La Gorce, *Tipping May Be the Norm, but Not for Hotel Housekeepers*, N.Y. TIMES (Oct. 30, 2017), https://www.nytimes.com/2017/10/30/business/hotel-housekeeper-tipping.html.

[38] Brian Vines, *CR's Holiday Tipping Cheat Sheet*, CONSUMER REPORTS (Nov. 8, 2025), https://www.consumerreports.org/money/tipping/tipping-during-holiday-season-how-much-to-tip-a1159032398/.

[39] *Holiday Tipping Guide*, EMILY POST ETIQUETTE, https://emilypost.com/advice/holiday-tipping-guide (last visited Nov. 19, 2025).

(1) The current FLSA definition of tipped employee refers to a typical *month*. The relevant provision, referring to an employee who "customarily and regularly receives more than $30 a month in tips,"[40] in essence identifies which employees may be paid in accordance with the tip credit rules. It is categorical: if an employee does not meet the definition, then an employer cannot opt to take advantage of occasional, irregular, or typically low tips to satisfy the minimum wage or overtime obligations of FLSA.[41]

(2) FLSA's minimum wage and overtime provisions, meanwhile, refer to a *workweek*.[42] These provisions answer a different question: how to calculate the amount of money an employer is required to pay an employee for a period of work. No matter what pay period an employer uses (weekly, biweekly, etc.), the employer's obligations with respect to the minimum wage and overtime are calculated on a workweek basis.[43]

In each case, employers have some flexibility to adapt the relevant unit of time to their distinctive administrative practices. The month for determining whether an employee could be categorized as a tipped employee need not be tied to the calendar month, as long as it is a "recurring monthly period beginning on the same day of the calendar month"[44] Likewise, a workweek "need not coincide with the calendar week but may begin on any day and at any hour of a day," provided that it is "a fixed and recurring period of 168 hours—seven consecutive 24-hour periods."[45] Employers do not have freewheeling power to manipulate the start and stop of each time period throughout a year, but they can use an administrative calendar that works for their distinctive operations. For example, a Tuesday-Monday week in a month that always starts on the fifth day in a fiscal year that starts in September is valid provided the employer regularly and consistently applies these months and workweeks for purposes of their FLSA obligations.

This bill would effect a bizarre change with respect to the time basis used in defining tipped employees. In relevant part, the FLSA definition of tipped employee would be amended to apply to "any employee . . . who receives tips sufficient to reach the minimum wage when combined with the subminimum] for a period [which] may be (as determined by the employer) a period of 1 day, 1 week, every other week, every pay period, or 1 month."[46]

At first glance, this rewritten reference to time periods in the definition seems intended to eviscerate the current law's limitation of the subminimum wage to only those workers who regularly earn tips. Upon closer inspection, however, it appears to create an ambiguity that could affect the application of the minimum wage and

---

[40] FLSA § 3(t) (emphasis added).

[41] 29 C.F.R. § 531.56(a) ("An employee employed . . . in an occupation in which he or she does not receive more than $30 a month in tips customarily and regularly is not a 'tipped employee' within the meaning of the Act and must receive the full compensation required by the provisions of the Act in cash or allowable facilities without any deduction for tips received under the provisions of section 3(m)(2)(A)."); *id.* § 531.57 ("[A]n employee who only occasionally or sporadically receives tips totaling more than $30 a month, such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee.").

[42] FLSA §§ 6–7.

[43] 29 C.F.R. § 551.104.

[44] 29 C.F.R. § 531.56(b).

[45] *Id.* § 551.104.

[46] TEPA § 2 (amending FLSA § 3(t)).

overtime. It is not immediately clear how an employer could apply the flexible time period in the bill's definition: as a period in which an employer could reclassify a worker as a tipped or non-tipped employee, or as a period for calculating the amounts of tips earned for purposes of applying the tip credit.

If the latter interpretation holds, this bill would give employers enormous power to game the calendar in order to claim as much in tips as possible to apply to their workers' wages, when the math works in their favor. For example, an employer who sees a worker earning a substantial amount of tips in one good week of an otherwise bad month could opt to dilute the value of that week by deciding to assess the tip credit over the whole month. The same employer could switch to a week-by-week assessment at other points in the calendar year when the math works in his favor. Jobs that are already economically precarious would become even more so.

A BETTER WAY

A better approach to the problems of tipped work is possible. Committee Democrats have proposed bills that value work and workers rather than make more jobs vulnerable to low pay and wage theft.

For example, the *Raise the Wage Act*, led by Ranking Member Bobby Scott (D–VA), would increase the minimum wage substantially for all workers, and it would phase out the tip credit so that tipped workers could enjoy a stable, predictable minimum wage with tips on top.[47]

Likewise, Rep. Jahana Hayes (D–CT) has introduced, with support from several other Committee members, the *Tipped Worker Protection Act*, legislation designed to ensure millions of American workers receive their full tips in addition to the federal minimum wage and increase transparency for service charges that may or may not be paid directly to employees.[48]

Last Congress, Committee Democrats introduced the *Labor Enforcement to Securely Protect Workers Act*, or the *LET'S Protect Workers Act*, to increase civil monetary penalties for tip theft to the same level as penalties for other forms of wage theft, which collectively would be raised significantly.[49]

If Congress seeks to take meaningful action to protect tipped employees, these bills should be prioritized, not H.R. 2312.

CONCLUSION

In the Committee Report accompanying H.R. 2312 the Majority suggests this bill will end "regulatory whiplash;" however, to the extent that is a real problem, the bill solves it by clearly tipping the scales in favor of employers at the expense of tipped employees. If H.R. 2312 becomes law, it would spur its own statutory whiplash as Congress would need to quickly repeal it. For the reasons stated above, Committee Democrats unanimously opposed H.R. 2312 when the Committee on Education and Workforce considered it on

[47] H.R. 2743, 119th Cong. (2025).
[48] H.R. 5112, 119th Cong. (2025).
[49] H.R. 9137, 118th Cong. (2024).

November 20, 2025. We urge the House of Representatives to do the same.

ROBERT C. "BOBBY" SCOTT,
Ranking Member.
MARK DESAULNIER,
ADELITA GRIJALVA,
Members of Congress.

○