

New Employment Requirements for All D.C. Employers on the Horizon, Including Extensive Obligations for Employers of Tipped Workers

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On October 23, 2018, District of Columbia Mayor Muriel Bowser approved the Tipped Wage Workers Fairness Amendment Act of 2018, [D.C. Act 22-489](#) (“Act”), which repeals an initiative that would have eliminated the tip credit. At the same time, the Act creates wide-ranging obligations for employers of tipped workers, including the tracking and reporting of sexual harassment complaints. New notice and posting requirements for all employers are also required by the Act.

Although the Act formally takes effect following a 30-calendar-day congressional review period and publication in the *D.C. Register* (prerequisites for the passage of most D.C. legislation under the [Home Rule Act](#)), nearly all of the new requirements will only apply once their fiscal effect is included in an approved budget and financial plan, which likely will not occur until next summer.

New Posting and Notice Requirements for All Private D.C. Employers

The Act establishes universal notice requirements applicable to all private D.C. employers. Also, the Act requires the mayor to create and maintain a website that states employees’ rights and benefits under D.C.’s labor and anti-discrimination laws. These laws include, but are not limited to, the Living Wage Act, the Human Rights Act, the D.C. Family and Medical Leave Act, the Parental Leave Act, the Accrued Sick and Safe Leave Act, the Minimum Wage Act Revision Act of 1992 (“Minimum Wage Act”), and the Wage Payment and Collection Act. The website must also provide information on how to report alleged violations of these laws and list other resources. In addition, the mayor must provide all private D.C. employers with a poster (or printable electronic version) containing the new website address, a list of the laws, minimum wage and tipped minimum wage information, and other information.

Once created, all private D.C. employers must post this poster in a conspicuous place accessible to all employees, including in all breakrooms and near all time clocks. Employers are also required to print all the website information and compile it into a single source, such as a binder, and place it at each location that the poster is posted. Employers must review and update the information, if necessary, at least monthly. This posting obligation replaces existing individual posting requirements under the listed laws.

Employers will be subjected to \$100 fine per day if they violate these posting and notice obligations.

Employers of Tipped Workers

The Act [repeals Initiative No. 77](#)—the Minimum Wage Amendment Act of 2017—which would have revoked the tip credit and increased the minimum wage for tipped workers. Instead, the Act mandates a public awareness campaign to educate tipped workers of their rights under labor and anti-harassment laws, such as the minimum wage, wage payment, and paid sick leave laws. Additionally, the Act creates a new Internet and telephone reporting system (tip line) through which alleged violations of these laws may be reported and investigated by the mayor.

The Act imposes other numerous and extensive responsibilities on employers of tipped workers, including:

A. Mandatory Workplace Training, Sexual Harassment Policy, and Reporting Requirements

Employers of tipped workers must provide a sexual harassment training course—either developed by the D.C. Office of Human Rights (“OHR”) or presented by an OHR-certified provider—as follows:

- Each employee must receive in-person or online training within 90 days of employment, unless the employee has participated in training within the past two years.
- Current employees must receive in-person or online training within two years after the training requirement goes into effect.
- Owners and operators must receive in-person or online training every two years.
- Managers must receive in-person training every two years.

Certifications of training completed by each individual from a certified provider must be submitted to OHR within 30 business days of completion and must be maintained by OHR for five years. While the specific contents of the training have yet to be developed, the Act mandates that the training include how to respond to, intervene in, and prevent sexual harassment by co-workers, management, and patrons.

Presumably, the training requirement will not be enforceable until after OHR has developed a course and/or certified providers, which it likely will not do until this section becomes applicable by inclusion of the financial effects in a budget plan, as referenced above.

By July 1, 2019, employers of tipped workers must distribute to employees a sexual harassment policy, which must include methods of reporting sexual harassment to management and to OHR, conspicuously post the policy in the premises, and provide a copy to OHR. Once the Act becomes effective, employers must document instances of sexual

harassment reported to management, including whether the reported harasser is a non-manager, a manager, an owner, or an operator. By July 1, 2019, and on an annual basis thereafter, employers must also report to OHR the number of sexual harassment complaints received by management, as well as the total number of reported harassers who were non-managers, managers, owners, and operators.

B. Minimum Wage Act: New Reporting and Training Requirements

To take advantage of the tip credit, employers of tipped workers, except for hotel employers, must inform employees whether or not tips will be shared and, if so, provide their employees with their tip-sharing policy, and note the percentage by which tips paid by credit card will be reduced by credit card fees. Moreover, employers must provide employees for each pay period an itemized statement containing specific wage and hours worked information, as well as a new “tip-declaration form” or “tip sheet” that identifies the amount or percentage of tips shared by the employee.

In addition, employers of tipped workers must use a third-party payroll provider by January 1, 2020. The third-party payroll provider is required to report certain wage data, including an employer’s tip-out policy, on a quarterly basis to the Department of Employment Services (“DOES”); employers are required to do this directly prior to January 1, 2020.

A hotel employer must submit a quarterly report to the mayor no later than 30 days after the end of each quarter certifying that each employee was paid at least the required minimum wage, including gratuities. The report should include total pay, hours worked per week, the average weekly wage, and the employer’s tip-out policy. This requirement apparently does not only apply to tipped employees. All reports should be submitted online, but if such submission creates a hardship, the reports may be submitted in hard-copy form.

Owners, operators, and current employees must receive mandatory in-person or online training on the Minimum Wage Act annually. Managers must receive in-person training annually. Note that these provisions will take effect without regard to budgetary considerations. Certifications of compliance must be sent to the DOES by December 31 of each year.

What All D.C. Employers Should Do Now

- Once the new employee rights poster is made available, post a copy in a conspicuous place accessible to all employees, including in all break rooms and near all time clocks.
- Print and compile all information from the new website regarding applicable labor and anti-discrimination laws, place it next to the poster wherever it is posted, and ensure at least a monthly review of the information.

Additional Obligations for Employers of Tipped Workers

- To the extent not already done, develop a compliant sexual harassment policy, and, by July 1, 2019, be prepared to post and distribute it internally and to submit it to OHR.

- Once OHR issues a training course or certifies third-party providers of such training, provide sexual harassment training to all new employees within 90 days; to current employees within two years; and to owners, operators, and managers every two years thereafter.
- Begin tracking instances of sexual harassment reported by employees, and be prepared to report to OHR, by July 1, 2019, and annually thereafter, the number of such alleged instances and the total number of reported harassers who were non-managerial employees, managerial employees, owners, or operators.
- By January 1, 2020, for employers of tipped workers other than hotels, identify and contract with a third-party payroll provider, and ensure that the payroll provider reports certain wage data to DOES on a quarterly basis.
- Provide training regarding the Minimum Wage Act and its amendments to all owners, operators, managers, and employees annually.
- Provide written notice to tipped workers regarding certain rights under the law, such as information about tip-sharing, and credit card payments, including by supplying a tip-out sheet every pay period.

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