



Division of Legislative Services

ISSUE BRIEF

Subminimum Wages for Tipped Employees

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OVERVIEW

Tipped employees, defined under the Fair Labor Standards Act ([FLSA](#))¹ as employees who receive more than \$30 a month in tips, play a critical role in our economy. According to estimates from the Budget Lab at Yale, tipped employees make up 2% of the labor force in the U.S.² or 4 million workers in tipped occupations in 2023. In 2023, tipped employees earned an average of \$538 weekly (inclusive of tips) while non-tipped workers earned on average \$1,000 weekly. The difference in weekly pay between tipped and non-tipped employees' rests on a myriad of factors with the most consequential being income instability.

Income instability faced by tipped employees arises from the structure or system governing how tipped employees are paid, which varies across states and, in some cases ([New York](#)), even between counties. In Delaware, tipped employees are paid a subminimum wage of \$2.23 per hour. The subminimum wage is a rate set by the state which is below the federal or state minimum wage. Under this structure, it is assumed that consumers will cover the difference to set employees at, or over, the minimum wage set by the state or federal wage. When tipped employees do not earn at or over the minimum wage set by the state, the employer is mandated to makeup the difference.

[Proponents](#) for this income structure contend that this guarantees that tipped employees will make at or over the minimum wage as non-tipped employees. Additionally, proponents argue that the subminimum wage helps increase employment for tipped workers and allows restaurants and other tipped occupational industries to remain within budget constraints, given their narrow profit margins. However, [advocates](#) that call for a phase out of the subminimum wage or entirely eliminating this income structure for tipped employees argue that tipped employees are at risk and unfairly vulnerable to fluctuations in customer generosity, and that gratuity received from customers often varies across different tipped occupations, seasons, and even working hours. Furthermore, advocates also point to the increase in the standard of living and inflation for reasons to increase the stagnant 34 years old federal subminimum wage (established in 1991 federally and [1989 in Delaware](#)).

There are currently [19 states with a minimum wage of \\$7.25](#), of these states, 13 have a subminimum wage of \$2.13. Delaware's minimum wage was recently increased to \$15.00, however, Delaware's subminimum wage is only 10 cents higher than the federal subminimum wage of \$2.13. Delaware legislators could consider policy approaches to address this disparity by either increasing the subminimum wage, phasing out the subminimum wage, or creating exemptions for certain employers based on gross revenue or number of employees.

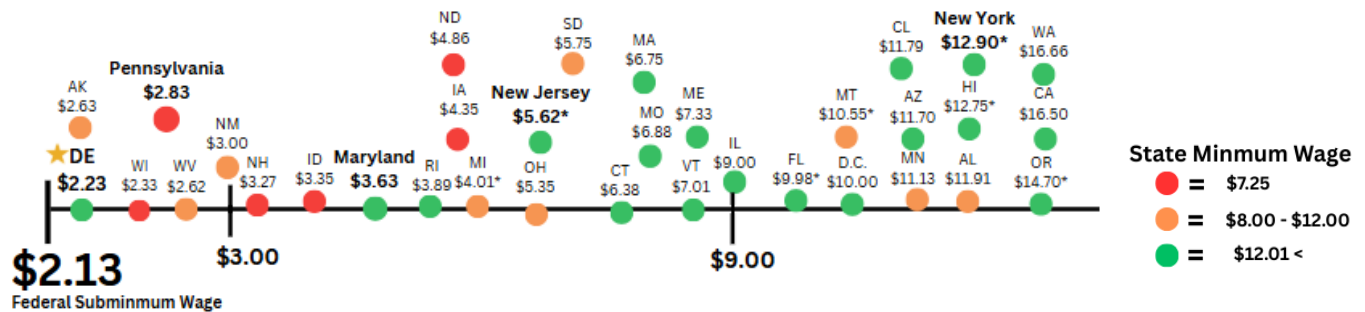
¹ Establishes federal minimum wage, overtime pay and sets employment standards among setting other labor regulations.

² [The "No Tax on Tips Act": Background on Tipped Workers | The Budget Lab at Yale](#)

STATE'S SUBMINIMUM WAGE COMPARED TO STATE MINIMUM WAGE³

Delaware is the only state with a statewide minimum wage of \$15.00 that offers a subminimum wage less than \$3.00.

*All with a subminimum wage of \$2.13, Alabama, Georgia, Indiana, Kansas, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Utah, Wyoming, Oklahoma, Nebraska, Virginia



ADVANTAGES OF CHANGING SUBMINIMUM WAGE

Better aligns Delaware's subminimum wage with neighboring states. Maryland, New Jersey, Pennsylvania, Washington, D.C., currently have a higher subminimum wage than Delaware.

Provides income security for tipped employees. According to the [MIT living wage calculator](#), the living wage in Delaware is \$23.43 for one adult with zero children. Given that the poverty rate for tipped employees, [10.3%](#), is more than double the rate of workers overall, this would ensure tipped workers have a more stable income.

In One Fair Wage States⁴, states that pay tipped workers the regular state minimum wage, compared to states with a subminimum wage of \$2.13, median earnings for tipped workers are more than \$7,000 higher, and poverty rates for tipped workers overall [are more than 30% lower](#).

CHALLENGES OF CHANGING SUBMINIMUM WAGE

Stakeholder opposition. The [National Restaurant Association](#) (NRA) opposes increases

to the subminimum wage, arguing that despite a recent wage increase among restaurants to attract employees, "many restaurants are not recruiting or bringing back new talent." In addition, the [NRA](#) argues that tipped servers take home a median of \$27 an hour on a national level.

CONSIDERATIONS FOR DELAWARE LEGISLATORS

Aligning policy with Delaware's tipped workforce and industries. Delaware legislators can take various policy approaches that address the disparities associated with the current tipped wage structure while also safeguarding small business that could be impacted as a result of a change in the subminimum wage.

Ohio sets a subminimum wage of \$5.35 for employers with annual gross receipts of \$394,000 or more and \$7.25 state minimum wage for employers with less than \$394,000 in annual gross receipts.

New Jersey sets a minimum wage of \$14.53 per hour for employers who employ fewer than 6 people and employees engaged in seasonal employment.

³ [Minimum Wages for Tipped Employees | U.S. Department of Labor](#)

⁴ Alaska, California, Minnesota, Montana, Nevada, Oregon, Washington