



Legislation Details (With Text)

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Title: Labor and Employment - City Minimum Wage
FOR the purpose of setting Baltimore City's minimum wage rate for the years 2016 through 2021; setting the formula to determine Baltimore City's minimum wage rate from 2021 onward; defining certain terms; setting the terms and qualifications for Wage Commission members; requiring the production and posting of multilingual posters summarizing Baltimore City's minimum wage laws; setting Baltimore City's tipped minimum wage rate through 2025; eliminating the lower tipped minimum wage rate from 2025 onward; limiting the withholdings employers may make from employee wages; allowing any person to make a complaint to the Wage Commission; changing the Wage Commission's procedures for responding to complaints; repealing the prohibition of bad faith employee complaints to the Wage Commission; establishing certain penalties; clarifying and conforming related provisions; and generally relating to the minimum wage to be paid to employees in Baltimore City.

Sponsors: Mary Pat Clarke, Bill Henry, Brandon M. Scott, Robert Curran, Sharon Green Middleton, Edward Reisinger, Carl Stokes, William "Pete" Welch, President Young, Warren Branch, Eric T. Costello, Helen L. Holton

Indexes: City, Labor and Employment, Minimum Wage

Code sections:

Attachments: , , , , , , ,

Date	Ver.	Action By	Action	Result
9/20/2016	0	Labor Committee	Amended	Pass
9/12/2016	0	Labor Committee	Worksession	
8/15/2016	0	City Council	Re-referred to Committee	
8/8/2016	0	City Council	3rd Reader, for final passage	
8/8/2016	0	Labor Committee	Recommended Favorably with Amendment	
7/28/2016	0	Labor Committee		
7/21/2016	0	Labor Committee	Conducted Public Hearing	
7/19/2016	0	Labor Committee	Conducted Public Hearing	
7/18/2016	0	Labor Committee	Worksession	
6/20/2016	0	Labor Committee	Worksession	
6/20/2016	0	Labor Committee	Worksession	
6/15/2016	0	Labor Committee	Conducted Public Hearing	
5/16/2016	0	Labor Committee	Scheduled for a Public Hearing	
4/21/2016	0	The City Council	Refer to Baltimore Development Corporation	

4/21/2016	0	The City Council	Refer to Mayor's Office of Employee Development
4/21/2016	0	The City Council	Refer to Dept. of Finance
4/21/2016	0	The City Council	Refer to City Solicitor
4/21/2016	0	The City Council	Refer to Wage Commission
4/21/2016	0	The City Council	Refer to Dept. of Human Resources
4/18/2016	0	City Council	Assigned
4/18/2016	0	City Council	Introduced

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL

Introduced by: Councilmembers Clarke, Henry, Scott, Curran, Middleton, Reisinger, and Stokes

A BILL ENTITLED

AN ORDINANCE concerning

Labor and Employment - City Minimum Wage

FOR the purpose of setting Baltimore City's minimum wage rate for the years 2016 through 2021; setting the formula to determine Baltimore City's minimum wage rate from 2021 onward; defining certain terms; setting the terms and qualifications for Wage Commission members; requiring the production and posting of multilingual posters summarizing Baltimore City's minimum wage laws; setting Baltimore City's tipped minimum wage rate through 2025; eliminating the lower tipped minimum wage rate from 2025 onward; limiting the withholdings employers may make from employee wages; allowing any person to make a complaint to the Wage Commission; changing the Wage Commission's procedures for responding to complaints; repealing the prohibition of bad faith employee complaints to the Wage Commission; establishing certain penalties; clarifying and conforming related provisions; and generally relating to the minimum wage to be paid to employees in Baltimore City.

BY repealing and reordaining, with amendments

Article 11 - Labor and Employment

Section(s) 1-1, 1-2, 2-2, 2-5, 2-6, 3-1, 3-2, 3-4 to 3-6, 3-8, 4-1 to 4-3, 4-5 to 4-10, 5-1, 5-2, and 6-2

Baltimore City Code
(Edition 2000)

BY repealing and reordaining, without amendments

Article 11 - Labor and Employment

Section(s) 1-3
Baltimore City Code
(Edition 2000)

BY adding
Article 11 - Labor and Employment
Section(s) 1-4, 1-5 and 2-7 to 2-9
Baltimore City Code
(Edition 2000)

BY repealing
Article 11 - Labor and Employment
Section(s) 5-6
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 11. Labor and Employment

Division 1. Minimum Wage law

Subtitle 1. Definitions; General Provisions

11. Definitions.

(a) In general.

The terms hereinafter set forth, wherever used in this Division I, are defined as follows.

(b) Employ.

Employ means to permit to work.

(c) Employer.

(1) Employer means any person, individual, partnership, association, corporation, business trust, or any other organized group or successor of an individual, partnership, association, corporation, OR trust of persons employing [2] 1 or more [persons] EMPLOYEES in the City of Baltimore.

(2) Employer [shall] DOES not include the United States, any State, or any political subdivision thereof, EXCEPT FOR THE CITY OF BALTIMORE.

(3) EMPLOYER INCLUDES THE CITY OF BALTIMORE.

(d) Employee.

(1) Employee means any person [permitted or instructed to work or be present by an employer] WHO WORKS FOR AN EMPLOYER, OR IS EXPECTED TO WORK FOR AN EMPLOYER, FOR 25 HOURS OR MORE IN A CALENDAR YEAR WITHIN THE GEOGRAPHIC BOUNDARIES OF THE CITY OF BALTIMORE.

(2) Employee [shall] DOES not include:

(i) persons engaged in the activities of an educational, charitable, religious, or other nonprofit organization where the services rendered to such organization are on a voluntary basis, or in return for charitable aid conferred upon such person;

(ii) [persons employed in a bona fide executive, supervisory, or professional capacity] PERSONS EXEMPT FROM THE MINIMUM WAGE AND MAXIMUM HOURS REQUIREMENTS UNDER 213(A) (1) OF THE FAIR LABOR STANDARDS ACT (29 U.S.C. 201 [219]); OR

(iii) persons employed by any member of their immediate family[;].

[(iv) persons compensated upon a commission basis only; or]

[(v) persons employed as domestics within a home, only to the extent that such persons have been exempted from the Federal Fair Labor Standards Act as amended and as hereafter amended.]

(E) TIPS.

TIPS MEANS A VERIFIABLE SUM PRESENTED BY A CUSTOMER AS A GIFT OR VOLUNTARY GRATUITY IN RECOGNITION OF SOME SERVICE PERFORMED FOR THE CUSTOMER BY THE EMPLOYEE RECEIVING THE TIP.

(F) TIPPED EMPLOYEE.

TIPPED EMPLOYEE MEANS AN EMPLOYEE WHO:

(I) CUSTOMARILY AND REGULARLY RECEIVES MORE THAN \$30 A MONTH IN TIPS;

(II) HAS BEEN INFORMED BY THE EMPLOYER IN WRITING ABOUT THE TIP NOTICE PROVISIONS REQUIRED BY THIS SUBTITLE; AND

(III) RETAINS ALL TIPS OR SPLITS TIPS WITH OTHER TIPPED EMPLOYEES IN VALID TIP POOL.

12. Findings; policy.

(a) Findings of fact.

The Mayor and City Council, after [conducting an investigation of] CONSIDERING employment conditions AND THE COST OF LIVING in the City of Baltimore, hereby find:

- (1) that many persons employed in Baltimore are paid wages which, in relation to the cost of living in the City and the income necessary to sustain minimum standards of decent living conditions, are insufficient to provide adequate maintenance for themselves and their families;
- (2) that the employment of such persons at such wages:
 - (i) impairs the health, efficiency, and wellbeing of the persons so employed and of their families;
 - (ii) reduces the purchasing power of such persons;
 - (iii) diminishes and depresses business, trade, and industry in the City;
 - (iv) threatens the stability and wellbeing of the City's economic life;
- [(v) fosters and contributes toward slum conditions and housing evils;]
- [(vi)] creates conditions of want and deprivation tending to weaken and undermine family life and breed crime and juvenile delinquency;]
- (V) [(vii)] threatens the health, welfare, and wellbeing of the people of the City; and
 - (VI) [(viii)]injures the City economically.

(b) Declaration of policy.

- (1) Accordingly, it is the declared policy of the Mayor and City Council that such conditions be eliminated as rapidly as practicable without substantially curtailing opportunities for employment or earning power.
- (2) To that end, legislation is necessary in the public interest in order to end these conditions so inimical to the public health, safety, and welfare of the citizens of Baltimore, to establish minimum wage standards for all employees as herein defined at a level consistent with their health, welfare, and general wellbeing.

13. Severability.

If any provision of this Division I or the application thereof to any person or circumstances is held invalid, the remainder of the Division I and the application thereof to other persons or circumstances shall not be affected thereby.

1-4. OTHER LEGAL REQUIREMENTS. THIS DIVISION I PROVIDES MINIMUM REQUIREMENTS AND SHALL NOT BE CONSTRUED TO PREEMPT, LIMIT, OR OTHERWISE AFFECT THE APPLICABILITY OF ANY OTHER LAW, REGULATION, RULE, REQUIREMENT, POLICY, OR STANDARD THAT PROVIDES FOR GREATER PROTECTIONS TO EMPLOYEES.

1-5. NO EFFECT ON MORE GENEROUS POLICIES.

NOTHING IN THIS DIVISION I SHALL BE CONSTRUED TO DISCOURAGE OR PROHIBIT THE ADOPTION OR RETENTION OF A WAGE POLICY MORE GENEROUS THAN THAT WHICH IS REQUIRED HEREIN.

Subtitle 2. Wage Commission

22. Members.

(a) In general.

The Commission comprises 5 persons of integrity and experience, who shall be appointed by the Mayor subject to the approval of the City Council, INCLUDING:

- (1) 2 REPRESENTATIVES FROM THE LABOR COMMUNITY;
- (2) 2 REPRESENTATIVES FROM COMMUNITY-BASED ORGANIZATIONS; AND
- (3) 1 REPRESENTATIVE FROM THE BUSINESS COMMUNITY.

(B) TERM.

COMMISSION MEMBERS ARE APPOINTED FOR TERMS OF 2 YEARS.

(C) [(b)] Vacancies.

If a vacancy occurs on the Commission, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(D) [(c)] Oath.

Each member of the Commission, within 10 days after appointment, shall take an oath of office that so far as it devolves upon him or her, she or he will diligently and honestly administer the affairs of the Commission, and the oath shall be subscribed to by the member making it and certified by the Mayor before whom it is taken.

(E) [(d)] Compensation; expenses.

The Commission members shall serve without compensation, but shall be reimbursed for all expenses necessarily incurred.

25. General powers and duties.

The Commission is authorized to and shall have the power to:

- (1) formulate and carry out a comprehensive educational and action program designed to eliminate the payment of substandard wages to employees in the City of Baltimore;

- (2) receive, investigate, and take action as herein provided on all complaints of payment of less than the minimum wage required by this Division I;
- (3) conduct such investigations on its own initiative as it deems proper to effectuate the purposes of this Division I;
- (4) monitor and assist in the fulfillment of any agreements negotiated with employers to effect their compliance with this Division I;
- (5) make appropriate findings as a result of any of its investigations; [and]
- (6) in carrying out its powers and duties, inspect payroll AND EMPLOYMENT records of any business without prior notice;
- (7) ISSUE SUBPOENAS;
- (8) EXAMINE WORKPLACES;
- (9) INTERVIEW EMPLOYEES AND FORMER EMPLOYEES IN PRIVATE AND OFF THE EMPLOYERS PREMISES; AND
- (10) PUBLICIZE ONLINE AND IN OTHER MEDIA THE NAMES OF EMPLOYERS THAT VIOLATE THIS DIVISION I.

26. Rules and regulations.

- (a) Commission may adopt.

The Commission is authorized to and shall have the power to adopt such rules and regulations as it may deem necessary to:

- (1) effect compliance with this Division I;
- (2) govern its procedures; and
- (3) execute the duties and responsibilities imposed on it herein.

[(b) Scope.]

[Such rules and regulations may include, but are not limited to:]

- [(1) those further defining:
 - (i) persons engaged in voluntary service to a nonprofit organization;
 - (ii) persons employed in a bona fide executive, supervisory, or professional capacity;
 - (iii) persons employed by any member of their immediate family; and

(iv) persons compensated upon a commission basis; and]

[(2) those:

(i) establishing deductions in allowance for the reasonable value of uniforms, board, lodging, or other facilities, items, or services supplied by the employer;

(ii) defining students and employees customarily receiving tips; and

(iii) defining handicapped persons, for the purposes of 32 of this Division

I.]

(B) [(c)] Publication.

All rules and regulations [so] adopted [shall] UNDER THIS SECTION MUST be:

(1) published by the Commission as soon as possible after their adoption; and

(2) made available ON THE CITY'S WEBSITE AND ON PAPER, without charge, to any persons requesting them.

27. MULTILINGUAL POSTERS.

(A) POSTER TO BE PROVIDED.

THE COMMISSION MUST PRODUCE, AND FURNISH TO ALL EMPLOYERS WITHOUT CHARGE, A POSTER CONTAINING A SUMMARY OF THIS DIVISION I.

(B) POSTER LANGUAGES.

THE COMMISSION MUST MAKE THIS POSTER AVAILABLE IN:

(1) ENGLISH;

(2) SPANISH; AND

(3) ANY OTHER LANGUAGES SPOKEN BY MORE THAN FIVE PERCENT (5%) OF THE WORKFORCE IN THE CITY OF BALTIMORE.

28. INTERAGENCY COOPERATION.

THE COMMISSION MUST TAKE STEPS TO ENSURE OPTIMAL COLLABORATION AMONG ALL CITY AGENCIES AND DEPARTMENTS, AS WELL AS BETWEEN THE CITY AND STATE AND FEDERAL LABOR STANDARDS AGENCIES, IN THE ENFORCEMENT OF THIS DIVISION I.

29. OUTREACH PARTNERSHIP.

THE COMMISSION MUST ESTABLISH AN EDUCATION AND OUTREACH PROGRAM IN PARTNERSHIP WITH COMMUNITY-BASED ORGANIZATIONS FOR PURPOSES OF IMPLEMENTING THIS DIVISION I. THIS PROGRAM MAY INCLUDE, BUT IS NOT LIMITED TO, CONTRACTING WITH 1 OR MORE COMMUNITY-BASED ORGANIZATIONS TO PROVIDE ANY OR ALL OF THE FOLLOWING:

- (1) EDUCATION AND OUTREACH TO EMPLOYEES AND EMPLOYERS REGARDING THEIR RIGHTS AND OBLIGATIONS UNDER THIS DIVISION I;
- (2) ASSISTANCE FOR EMPLOYEES WHO WISH TO FILE COMPLAINTS;
- (3) ASSISTANCE FOR EMPLOYEES WHO HAVE FILED COMPLAINTS TO FACILITATE THE RESOLUTION OF COMPLAINTS AND INVESTIGATIONS; AND
- (4) SUPPORT FOR THE COMMISSIONS INVESTIGATIONS, WORKSITE MONITORING, AND OTHER ENFORCEMENT INITIATIVES.

Subtitle 3. Wage Requirements

31. Minimum wage required.

(a) Employers must pay.

Subject to the other provisions of this Division I, every employer operating and doing business in Baltimore City [shall] MUST pay wages to each employee in the City at a rate not less than the minimum wage required by [the Federal Fair Labor Standards Act, as amended] THIS SECTION.

(B) MINIMUM WAGE.

THE MINIMUM WAGE SHALL BE AN HOURLY RATE DEFINED AS FOLLOWS:

- (1) STARTING JULY 1, 2016, \$8.75;
- (2) STARTING JANUARY 1, 2017, \$10.00;
- (3) STARTING JULY 1, 2017, \$10.50;
- (4) STARTING JULY 1, 2018, \$12.00;
- (5) STARTING JULY 1, 2019, \$13.50;
- (6) STARTING JULY 1, 2020, \$15.00; AND
- (7) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2021, AND EACH SUBSEQUENT 12-MONTH PERIOD, THE MINIMUM WAGE WILL BE SET IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

(C) ANNUAL COST OF LIVING ADJUSTMENT.

(1) TO PREVENT INFLATION FROM ERODING ITS VALUE, BEGINNING ON JULY 1, 2021, AND ON JULY 1 OF EACH SUBSEQUENT YEAR, THE MINIMUM WAGE SHALL INCREASE BY AN AMOUNT CORRESPONDING TO THE PRIOR YEARS INCREASE IN THE COST OF LIVING AS MEASURED BY THE PERCENTAGE INCREASE, IF ANY, AS OF MARCH OF THE IMMEDIATELY PRECEDING YEAR OVER THE LEVEL AS OF MARCH OF THE PREVIOUS YEAR OF THE NON-SEASONALLY ADJUSTED CONSUMER PRICE INDEX (URBAN WAGE EARNERS AND CLERICAL WORKERS, U.S. CITY AVERAGE FOR ALL ITEMS) OR ITS SUCCESSOR INDEX AS PUBLISHED BY THE U.S. DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY, WITH THE AMOUNT OF THE MINIMUM WAGE INCREASE ROUNDED TO THE NEAREST MULTIPLE OF 5 CENTS.

(2) THE ADJUSTED MINIMUM WAGE MUST BE DETERMINED AND ANNOUNCED BY THE COMMISSION BY MAY 1 OF EACH YEAR, AND BECOMES EFFECTIVE AS THE NEW MINIMUM WAGE ON JULY 1 OF EACH YEAR.

(D) EFFECT OF MARYLAND OR FEDERAL MINIMUM WAGE INCREASE.

(1) IN THE EVENT THAT THE MARYLAND OR FEDERAL MINIMUM WAGE IS INCREASED ABOVE THE LEVEL OF THE MINIMUM WAGE THAT IS IN FORCE UNDER THIS SUBTITLE, THE MINIMUM WAGE UNDER THIS SUBTITLE SHALL BE INCREASED TO MATCH THE HIGHER MARYLAND OR FEDERAL WAGE, EFFECTIVE ON THE SAME DATE AS THE INCREASE IN THE MARYLAND OR FEDERAL MINIMUM WAGE, AND SHALL BECOME THE NEW CITY MINIMUM WAGE IN EFFECT UNDER THIS SUBTITLE.

(2) THE NEW CITY MINIMUM WAGE SET BY PARAGRAPH (1) OF THIS SUBSECTION IS THEN SUBJECT TO AN ANNUAL COST OF LIVING ADJUSTMENT UNDER SUBSECTION (C) OF THIS SECTION ON JULY 1 OF THE CALENDAR YEAR FOLLOWING ANY INCREASE IN THE MARYLAND OR FEDERAL MINIMUM WAGE, AND IN EACH SUBSEQUENT YEAR.

(E) OPPORTUNITY WAGE FOR YOUTH JOB PROGRAMS.

YOUTH PARTICIPANTS IN THE CITY'S YOUTHWORKS SUMMER JOBS PROGRAM OR THE CITY'S HIRE ONE YOUTH PROGRAM MAY BE PAID 85% OF THE MINIMUM WAGE SET BY THIS SECTION WHEN EMPLOYED IN THE ELIGIBLE PROGRAM.

(F) [(b)] Violations.

It is a violation of this Division I for any employer to pay any employee a wage less than the minimum wage required by this Division I, and it is a separate violation each time an employee is not paid the wage required by this Division I at the time the employee is entitled to be paid.

[32] Exceptions.]

[(a) Allowance for employer-supplied items or services.

(1) For purposes of this Division I, wages shall include the reasonable value, as determined by the Wage Commission, of uniforms, board, lodging, or other facilities, items, or services furnished such employee by the employer.

(2) Provided that the Wage Commission is empowered to determine such value by reference to the average cost to the employer or to groups of employers similarly situated.]

[(b) Fulltime students.

(1) Any employee who is a fulltime student in a primary or secondary school, as such term is further defined by the Wage Commission, may be paid 85% of the minimum wage prescribed herein.

(2) Provided, however, that such students may not be employed for more than 28 hours per week while attending school.

(3) It shall be a violation of this Division I for any employer to employ such a fulltime student for more than 28 hours per week while school is in session.]

[(c) Workstudy programs.

Students enrolled in an approved workstudy program shall be exempt from the limitations of subsection (b) of this section and from the minimum wage requirements of this Division I. Work study programs must be approved by the Wage Commission.]

[(d) Employees customarily receiving tips.

(1) With respect to any employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips, the employer shall pay wages in the amount not less than the amount required to be paid a tipped employee under the Federal Fair Labor Standards Act, as amended.

(2) It is the employers obligation to provide evidence of any amount claimed by him as being received by his employee as tips.]

[(e) Employees with disabilities.

(1) The Wage Commission may, in its discretion, recognize certificates issued by the State of Maryland for payment of less than the minimum wage to persons who are mentally or physically handicapped, or the Commission may issue its own certificates.

(2) Provided, that the Commissions said recognition or certification may be upon such terms and for such period of time as the Commission deems appropriate.]

[(f) Opportunity wages.

An employer may pay an opportunity wage (i.e., a wage below the minimum wage) to any employee, but only under the conditions and limitations authorized for opportunity wages by the Federal Fair Labor Standards Act, as amended.]

32. EXCEPTION TIPPED EMPLOYEES.

(A) TIP CREDIT.

(1) UNTIL JULY 1, 2025, AN EMPLOYER MAY CONSIDER TIPS AS PART OF WAGES OF A TIPPED EMPLOYEE, IF:

(I) THE EMPLOYER DEMONSTRATES THAT THE TIPPED EMPLOYEE RECEIVED AT LEAST THE MINIMUM WAGE ESTABLISHED BY 3-1 WHEN THE TIPS RECEIVED AND RETAINED BY THE TIPPED EMPLOYEE ARE COMBINED WITH THE MINIMUM CASH WAGE PAID DIRECTLY BY THE EMPLOYER; AND

(II) THE EMPLOYEE HAS BEEN INFORMED IN WRITING BY THE EMPLOYER OF THE PROVISIONS OF THIS SUBTITLE.

(2) STARTING ON JULY 1, 2025, AN EMPLOYER MAY NOT CONSIDER TIPS AS PART OF WAGES OF A TIPPED EMPLOYEE FOR PURPOSES OF COMPLYING WITH THIS SUBTITLE.

(B) MINIMUM CASH WAGE RATE FOR TIPPED EMPLOYEES.

PROVIDED THAT AN EMPLOYEE ACTUALLY RECEIVES TIPS IN AN AMOUNT AT LEAST EQUAL TO THE DIFFERENCE BETWEEN THE CASH WAGE PAID AND THE MINIMUM WAGE AS PROVIDED BY 3-1 OF THIS SUBTITLE, THE MINIMUM CASH WAGE THAT EMPLOYERS MUST PAY TO TIPPED EMPLOYEES BEFORE TIPS SHALL BE AN HOURLY RATE OF NOT LESS THAN THE WAGE RATES DEFINED AS FOLLOWS:

(1) UNTIL JANUARY 1, 2017, \$3.63, OR AN AMOUNT EQUAL TO THE STATE MINIMUM WAGE IN EFFECT UNDER STATE LABOR AND EMPLOYMENT ARTICLE 3-413(C) MINUS THE MAXIMUM TIP CREDIT IN EFFECT UNDER STATE LABOR AND EMPLOYMENT ARTICLE 3-419 (C), WHICHEVER IS HIGHER;

(2) STARTING JANUARY 1, 2017, \$4.50;

(3) STARTING JULY 1, 2017, \$5.25;

(4) STARTING JULY 1, 2018, \$6.00;

(5) STARTING JULY 1, 2019, \$7.50;

(6) STARTING JULY 1, 2020, \$9.00;

(7) STARTING JULY 1, 2021, \$10.50;

(8) STARTING JULY 1, 2022, \$12.00;

(9) STARTING JULY 1, 2023, \$14.00;

(10) STARTING JULY 1, 2024, \$15.00; AND

(11) STARTING JULY 1, 2025, THE MINIMUM CASH WAGE REQUIRED TO BE PAID BY ANY EMPLOYER IN THE CITY TO ANY EMPLOYEE WHO RECEIVES TIPS WILL BE NOT LESS THAN

THE MINIMUM WAGE SET BY 3-1 OF THIS SUBTITLE.

(C) TIP POOLS.

(1) ALL TIPS RECEIVED BY TIPPED EMPLOYEES ARE THE SOLE PROPERTY OF THE TIPPED EMPLOYEE AND SHALL BE RETAINED BY THE TIPPED EMPLOYEE.

(2) THIS SECTION DOES NOT PROHIBIT A VALID TIP POOL UNDER WHICH TIPS ARE POOLED AND DISTRIBUTED AMONG TIPPED EMPLOYEES.

(3) IF AN EMPLOYEE PARTICIPATES IN A VALID TIP POOL, ONLY THE AMOUNT ACTUALLY RETAINED BY EACH EMPLOYEE IS CONSIDERED TO BE A PART OF THAT EMPLOYEES WAGES FOR PURPOSES OF THIS SECTION.

34. Withholding.

(a) Required consent.

No employer [shall] MAY withhold any part of the wages or salary of any employee, except for those deductions:

(1) REQUIRED BY LAW;

(2) [in accordance with] EXPRESSLY ALLOWED BY law, AND MADE WITH THE [without] written and signed authorization of the employee; OR

(3) ORDERED BY A COURT OF COMPETENT JURISDICTION.

(b) Violations.

It shall be a violation of this Division I for any employer to make any such prohibited withholding from the pay of any employee, and it shall be deemed a separate violation when any such prohibited withholding is made from any paycheck of any employee.

35. Wages due on termination of employment.

It shall be a violation of this Division I for any employer to FAIL TO OR refuse to pay to any employee who is terminated, resigns, retires, or who otherwise ends or suspends his employment, all wages due and owing to said employee on the next regular payday that said wages would otherwise have been paid.

36. Posting summary of law.

(a) Employer to post.

Every employer subject to this Division I [shall keep] MUST POST EACH OF THE POSTERS MADE AVAILABLE BY THE COMMISSION UNDER 27 {MULTILINGUAL POSTERS} OF THIS DIVISION containing a summary of this Division I [, furnished by the Commission without charge, posted] in a

conspicuous place ACCESSIBLE TO ALL EMPLOYEES on or about the premises [wherein] WHERE any person subject to this Division I is employed.

(b) Violations.

Failure to so post [said summary shall be deemed] THE POSTERS REQUIRED TO BE POSTED BY SUBSECTION (A) OF THIS SECTION IS a violation of this Division I.

38. Payroll records.

(a) Required information; maintenance period.

(1) Every employer subject to this Division I shall keep, for a period of not less than 3 years, a true and accurate record of the:

(i) name[.];

(ii) social security number[.];

(iii) address at time of employment[.];

(iv) occupation[.];

(v) time worked each day[.]; and

(vi) rate of pay

for each of his employees.

(2) Any employer who fails to maintain such records shall be in violation of this Division I, and it shall be deemed a separate violation thereof as to each employee for whom records are not fully maintained.

(b) Right of inspection.

(1) The Commission or its authorized representative [shall have] HAS the right, at all reasonable times, to enter upon the premises of any employer to inspect [such] THE records REQUIRED TO BE KEPT BY SUBSECTION (A) OF THIS SECTION to ascertain whether the provisions of this Division I have been complied with.

(2) AN EMPLOYER MUST ALLOW AN EMPLOYEE TO INSPECT THE RECORDS REQUIRED TO BE KEPT BY SUBSECTION (A) OF THIS SECTION PERTAINING TO THAT EMPLOYEE AT A REASONABLE TIME AND PLACE.

(3) [(2)] It [shall be] IS a violation of this Division I to prevent, obstruct, or to attempt to prevent or obstruct [such] THE entries and inspections ALLOWED BY THIS SUBSECTION.

(C) EFFECTS OF FAILURE TO MAINTAIN RECORDS.

IF AN EMPLOYER FAILS TO CREATE AND RETAIN CONTEMPORANEOUS WRITTEN OR ELECTRONIC RECORDS DOCUMENTING ITS EMPLOYEES WAGES EARNED, OR DOES NOT ALLOW THE COMMISSION REASONABLE ACCESS TO ITS RECORDS, IT SHALL BE PRESUMED THAT THE EMPLOYER HAS VIOLATED THIS DIVISION I, AND THE EMPLOYEES REASONABLE ESTIMATE REGARDING HOURS WORKED AND WAGES PAID SHALL BE RELIED ON, ABSENT CLEAR AND CONVINCING EVIDENCE OTHERWISE.

Subtitle 4. Enforcement Procedures

41. Complaints by employee OR OTHER PERSON.

(a) [Filing with] COMPLAINTS TO THE Commission.

[Any person claiming to be aggrieved by an alleged payment of a wage of a lesser amount than required by] AN EMPLOYEE OR ANY OTHER PERSON MAY MAKE A COMPLAINT BY REPORTING ANY SUSPECTED VIOLATION OF this Division I [may, by himself or his attorney, within 1 year after the occurrence of the alleged unlawful act, make, sign, and file with] TO the Commission WITHIN 3 YEARS OF THE SUSPECTED VIOLATION [a complaint in writing, under oath].

(b) Contents.

The complaint shall state the name and address of the employer alleged to have paid the unlawful wage (hereinafter referred to as the respondent) and the particulars thereof, and contain such other information as may be required by the Commission.

(C) COMPLAINTS TO BE ACCEPTED IN WRITING, ONLINE, OR BY TELEPHONE.

THE COMMISSION MUST ESTABLISH A SYSTEM TO RECEIVE COMPLAINTS REGARDING NONCOMPLIANCE WITH THIS DIVISION I IN WRITING, ONLINE, AND BY TELEPHONE IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE SPOKEN BY MORE THAN 5% OF THE BALTIMORE CITY WORKFORCE.

42. Complaints by Commission.

The Commission [shall have] HAS the right, acting upon its own initiative and without any complaint from an employee, to [file] INITIATE a complaint against an employer whenever the Commission has reasonable cause to believe that [such] THE employer is or has been in violation of the provisions of this Division I.

43. Investigation for probable cause.

(A) IN GENERAL.

After the [filing] INITIATION of any [such] complaint, [either by a person claiming to be aggrieved as set forth in 41 or by the Commission,] the Commission shall:

- (1) investigate the facts alleged [therein]; and
- (2) make a finding of probable cause for the [said] complaint or lack of it.

(B) TIMELY INVESTIGATIONS.

(1) THE INVESTIGATIONS REQUIRED BY THIS SECTION SHALL BE UNDERTAKEN IN A TIMELY MANNER.

(2) FOR A COMPLAINT MADE BY AN EMPLOYEE OR OTHER PERSON, THE COMMISSION MUST MAKE EVERY EFFORT TO:

(I) CONCLUDE ITS INVESTIGATION WITHIN 120 DAYS FROM RECEIPT OF THE COMPLAINT; AND

(II) SETTLE, REQUEST AN ADMINISTRATIVE HEARING, OR INITIATE A CIVIL ACTION UNDER THIS DIVISION I WITHIN 1 YEAR FROM RECEIPT OF THE COMPLAINT.

(3) THE FAILURE OF THE COMMISSION TO MEET THESE TIMELINES IS NOT GROUNDS FOR CLOSURE OR DISMISSAL OF THE COMPLAINT.

(C) NOTIFICATIONS.

(1) THE COMMISSION MUST:

(I) PROVIDE TIMELY NOTIFICATION OF A COMPLAINT, INCLUDING ALL ALLEGED FACTS RELEVANT TO THE COMPLAINT, TO THE RESPONDENT, AND

(II) REQUEST THAT THE RESPONDENT MAKE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN 15 DAYS FROM THE DATE OF THE NOTIFICATION .

(2) THE COMMISSION MUST KEEP COMPLAINANTS AND THEIR ATTORNEYS OR REPRESENTATIVES REASONABLY NOTIFIED REGARDING THE STATUS OF THE PENDING OR ONGOING INVESTIGATION OF THE COMPLAINANTS COMPLAINT.

(D) FULL INVESTIGATION OF EMPLOYER.

WHERE THE COMMISSION RECEIVES OR INITIATES A COMPLAINT, IT SHALL HAVE A POLICY THAT IT INVESTIGATE ANY OTHER VIOLATIONS OR SUSPECTED VIOLATIONS BY THAT EMPLOYER.

45. [Dismissal for lack] FINDING of probable cause.

(A) PROBABLE CAUSE FOUND.

IF, AFTER THE INVESTIGATION REQUIRED BY 43 {INVESTIGATION FOR PROBABLE CAUSE} OF THIS SUBTITLE, THE COMMISSION FINDS THAT THE COMPLAINT HAS PROBABLE CAUSE, THE COMMISSION MUST:

(1) NOTIFY THE RESPONDENT AND COMPLAINANT THAT PROBABLE CAUSE HAS BEEN FOUND; AND

(2) PROVIDE THE RESPONDENT AND COMPLAINANT WITH THE TIME AND DATE WHEN THE CONFERENCE REQUIRED BY 46 {PROBABLE CAUSE CONFERENCE; SETTLEMENT AGREEMENT} OF THIS SUBTITLE WILL BE HELD.

(B) PROBABLE CAUSE NOT FOUND.

[If the finding of the Commission is] IF, AFTER THE INVESTIGATION REQUIRED BY 43 {INVESTIGATION FOR PROBABLE CAUSE} OF THIS SUBTITLE, THE COMMISSION FINDS that the complaint lacks probable cause, then it [shall] MUST dismiss [said] THE complaint and mail copies of its finding to THE respondent and complainant.

46. Probable cause conference; settlement agreement.

(a) Conference.

If the Commission finds probable cause for the complaint, the Commission shall attempt, by means of conference, to PERSUADE RESPONDENT TO:

(1) [persuade respondent to] cease and desist its illegal action;

(2) commence paying [complainant such] THE IMPACTED EMPLOYEE OR EMPLOYEES THE lawful wages [as are] required by this Division I; [and]

(3) reimburse [complainant] ALL IMPACTED EMPLOYEES for the difference between what [he] THEY had been receiving as wages and what [he] THEY should have lawfully received; AND

(4) PAY ANY FINES OR PENALTIES ASSESSED BY THE COMMISSION PURSUANT TO THIS DIVISION I.

(b) Settlement agreement.

Any such agreement reached between respondent and the Commission shall be reduced to writing and a copy thereof furnished to complainant and respondent.

47. Final order.

(a) In general.

If:

(1) the Commission and the respondent shall fail to reach agreement, or

(2) the respondent shall fail to meet his obligations under such agreement:

(i) within 30 days thereof, or

(ii) within such other time as may be specified therein,

the Commission shall make such final order in the proceedings as it deems appropriate. [to:]

(B) CONTENTS OF ORDER.

A FINAL ORDER ISSUED UNDER THIS SECTION WILL:

(1) [(3)] require the payment of all wages due TO the respondents employees [hereunder] UNDER THIS DIVISION I and ALL FINES DUE TO THE CITY UNDER SUBTITLE 6 OF THIS DIVISION 1; AND

(2) [(4)] direct the cessation of all practices by the respondent which are contrary to the provisions of this Division I and/or rules and regulations of the Commission.

(C) TIME FOR ISSUANCE OF ORDER.

(1) THE COMMISSION MUST MAKE EVERY EFFORT TO ENTER FINAL ORDERS NO LATER THAN 90 DAYS AFTER THE FIRST DATE ON WHICH:

(I) THE PARTIES ATTEMPTS AT SETTLEMENT FAIL; OR

(II) THE RESPONDENT FAILS TO MEET ITS OBLIGATIONS UNDER ANY SETTLEMENT AGREEMENT.

(2) THE FAILURE OF THE COMMISSION TO MEET THIS TIMELINE IS NOT GROUNDS FOR CLOSURE OR DISMISSAL OF THE COMPLAINT.

(D) [(b)] Service of order.

A copy of [such] THE order [shall] MUST be furnished TO the respondent by registered mail within 3 days of its passage.

48. [Judicial] ADMINISTRATIVE, JUDICIAL, and appellate review.

(A) IN GENERAL.

IF THE COMMISSION ISSUES A FINAL ORDER UNDER 47 {FINAL ORDER} OF THIS SUBTITLE, THE COMMISSION MUST PROVIDE THE RESPONDENT WITH NOTICE OF THE FINAL ORDER AND AN OPPORTUNITY FOR A HEARING BEFORE COMMISSION.

(B) PROCEDURES.

IN ITS RULES AND REGULATIONS, THE COMMISSION MUST ESTABLISH PROCEDURES TO GOVERN THE CONDUCT OF HEARINGS HELD UNDER THIS SECTION.

(C) DETERMINATION.

IF A RESPONDENT REQUESTS A HEARING BEFORE THE COMMISSION UNDER THIS SECTION, THE COMMISSION MUST:

- (1) GRANT THE HEARING IN ACCORDANCE WITH ITS RULES AND REGULATIONS;
- (2) CONSIDER ALL OF THE EVIDENCE PRESENTED AT THE HEARING; AND
- (3) MAKE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW ON EACH ALLEGED VIOLATION.

(D) FINDINGS.

- (1) IF THE COMMISSION DETERMINES THAT THE FINAL ORDER ISSUED UNDER 47 IS SUPPORTED BY ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT ORDER MUST BE CONFIRMED BY THE COMMISSION.
- (2) IF THE COMMISSION DETERMINES THAT THE RESPONDENT HAS VIOLATED THIS DIVISION I, BUT THAT THE FINAL ORDER ISSUED UNDER 47 IS NOT SUPPORTED BY ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COMMISSION MUST ISSUE A NEW FINAL ORDER THAT CONFORMS WITH ITS FINDINGS.
- (3) IF THE COMMISSION DETERMINES THAT THE RESPONDENT HAS NOT VIOLATED THIS DIVISION I, THE COMMISSION MUST WITHDRAW THE FINAL ORDER AND DISMISS THE COMPLAINT.
- (4) THE COMMISSION MUST PROMPTLY NOTIFY THE COMPLAINANT AND RESPONDENT OF ANY ACTION TAKEN UNDER THIS SUBSECTION.

(E) [(a)] Judicial review.

A respondent aggrieved by an order of the Commission ISSUED OR CONFIRMED UNDER SUBSECTION (D) OF THIS SECTION may seek judicial review of that order by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(F) [(b)] Appellate review.

A party to the judicial review may appeal the courts final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

49. Referral to Solicitor.

If, within 30 days of the [passage of such order] ISSUANCE OF A FINAL ORDER UNDER 47 {FINAL ORDER} OR 48 {ADMINISTRATIVE, JUDICIAL, AND APPELLATE REVIEW}, the respondent shall have failed to comply [therewith] WITH THE ORDER, the Wage Commission [may] MUST certify [such] THE proceedings to the City Solicitor and request that [he] THE SOLICITOR petition the Circuit Court of Baltimore City to enforce the [said] order and direct payment OF ALL WAGES AND PENALTIES DUE UNDER THIS DIVISION I [to the aggrieved employee].

410. Confidential information.

- (a) Employers payroll.

The records of the Commission in any proceeding or investigation made pursuant to the provisions of this Division I shall be kept confidential to the extent that they disclose the payroll of any employer, except for the use of a complainant employee, THE COMMISSION IN THE INVESTIGATION OF OTHER VIOLATIONS OR SUSPECTED VIOLATIONS, or [other] ANOTHER public agency.

- (b) Identity of complainant.

(1) Neither the Commission nor any of its employees may be compelled in any hearing before the Commission or other administrative proceeding, to disclose the identity of any person filing a complaint with the Commission under the provisions of this Division I.

(2) The Commission shall, however, have the right in its sole discretion to make such disclosure in any instance where the Commission deems it appropriate to do so.

Subtitle 5. Other Prohibited Conduct

51. By employer - retaliation against employee.

- (A) FAMILY MEMBER DEFINED.

IN THIS SECTION, FAMILY MEMBER MEANS A SPOUSE, PARENT, SIBLING, CHILD, UNCLE, AUNT, NIECE, NEPHEW, COUSIN, GRANDPARENT, OR GRANDCHILD RELATED BY BLOOD, ADOPTION, MARRIAGE, OR DOMESTIC PARTNERSHIP, OR ANY OTHER INDIVIDUAL RELATED BY AFFINITY WHOSE CLOSE ASSOCIATION WITH THE EMPLOYEE IS THE EQUIVALENT OF A FAMILY RELATIONSHIP.

- (B) [(a)] In general.

[It shall be unlawful, and a violation of this Division I, for any employer to discharge or reduce the compensation of any employee for:

- (1) making a complaint to the Wage Commission;
- (2) participating in any of its proceedings; or
- (3) availing himself of any of the civil remedies provided herein.]

(1) IT IS UNLAWFUL AND A VIOLATION OF THIS DIVISION I FOR AN EMPLOYER, OR ANY OTHER PARTY, TO DISCRIMINATE IN ANY MANNER OR TAKE ADVERSE ACTION AGAINST ANY PERSON IN RETALIATION FOR EXERCISING OR ATTEMPTING TO EXERCISE ANY RIGHT PROVIDED BY THIS DIVISION I.

- (2) PROHIBITED DISCRIMINATION OR RETALIATION UNDER THIS SUBSECTION INCLUDES

ANY RECOMMENDED, THREATENED, OR ACTUAL ADVERSE ACTION, INCLUDING:

- (I) TERMINATION, DEMOTION, SUSPENSION, OR REPRIMAND;
- (II) INVOLUNTARY TRANSFER, REASSIGNMENT, OR DETAIL TO AN ASSIGNMENT THAT A REASONABLE PERSON WOULD FIND LESS FAVORABLE;
- (III) FAILURE TO PROMOTE, HIRE, OR TAKE OTHER FAVORABLE PERSONNEL ACTION;
- (IV) REPORTING, OR THREATENING TO REPORT, THE ACTUAL OR SUSPECTED CITIZENSHIP OR IMMIGRATION STATUS OF AN EMPLOYEE, FORMER EMPLOYEE, OR FAMILY MEMBER OF AN EMPLOYEE TO A FEDERAL, STATE, OR LOCAL AGENCY; OR
- (V) ENGAGING IN ANY CONDUCT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM ENGAGING IN ACTIVITIES PROTECTED BY THIS DIVISION I.

(3) THE PROTECTIONS OF THIS SECTION APPLY TO ANY PERSON WHO MISTAKENLY BUT IN GOOD FAITH ALLEGES A VIOLATION OF THIS DIVISION I.

(C) RIGHTS PROTECTED.

RIGHTS UNDER THIS DIVISION I PROTECTED BY THIS SECTION INCLUDE, BUT ARE NOT LIMITED TO:

- (1) REQUESTING PAYMENT OF THE MINIMUM OR OVERTIME WAGE;
- (2) MAKING OR FILING A COMPLAINT TO THE COMMISSION, OR IN COURT, FOR ALLEGED VIOLATIONS OF THIS DIVISION I;
- (3) PARTICIPATING IN ANY OF THE COMMISSIONS PROCEEDINGS OR IN ANY ADMINISTRATIVE OR JUDICIAL ACTION REGARDING AN ALLEGED VIOLATION OF THIS DIVISION I;
- (4) MAKING USE OF ANY OF THE CIVIL REMEDIES PROVIDED IN THIS DIVISION I; OR
- (5) INFORMING ANY PERSON OF HIS OR HER POTENTIAL RIGHTS UNDER THIS DIVISION I.

(D) REBUTTABLE PRESUMPTION.

TAKING ADVERSE ACTION AGAINST A PERSON WITHIN 90 DAYS OF THE PERSONS EXERCISE OF RIGHTS PROTECTED UNDER THIS DIVISION I SHALL RAISE A REBUTTABLE PRESUMPTION OF HAVING DONE SO IN RETALIATION FOR THE EXERCISE OF THOSE RIGHTS.

(E) [(b)] Restitution or reinstatement with backpay.

In [such] a case ARISING OUT OF A VIOLATION OF THIS SECTION, the Wage Commission may, pursuant to the procedures provided in Subtitle 4 hereof, order appropriate restitution [or]

INCLUDING:

(1) the reinstatement of [such] THE employee with backpay to the date of violation; AND

(2) UNPAID WAGES.

~~52.~~ By employer - violation of rule or regulation.

It [shall be] IS unlawful, and a violation of this Division I, for any employer to violate the rules and regulations of the Commission.

~~[56. By employees.]~~

[It shall be unlawful, and a violation of this Division I, for any employee to:

(1) make any groundless, unfounded, or malicious complaint to the Commission; or

(2) in bad faith, institute or testify in any proceeding before the Commission under the provisions hereof.]

Subtitle 6. Penalties and Fines

~~62.~~ Fines.

Any employer [or employee] who violates this Division I shall forfeit and pay to the City of Baltimore a penalty as follows:

(1) for a 1st offense, [~~\$250~~] \$300 for each violation;

(2) for a 2nd offense, [~~\$500~~] \$550 for each violation; and

(3) for each subsequent offense, \$1,000 for each violation.

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

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