



On election day Massachusetts voters were given the opportunity to vote on the Fair Wage for Tipped Workers Act, a ballot measure, referred to as Question 5, that would have gradually increased pay for tipped workers until it met the state minimum wage of \$15 an hour in 2029. Voters rejected the ballot measure by a nearly 30% margin.

The measure was met with significant attention from employer groups and employee advocates. Proponents of the measure argued that service employees struggle to make a living due to the inconsistent nature of their pay, and the measure would lead to pay increases and stabilization. However, opponents of the measure warned the proposal would lead to higher labor costs that would be passed on to consumers in the form of increased prices or the introduction of service fees. Opponents also suggested that increased labor costs would result in less

hiring.

Question 5 would have required employers to pay tipped workers 64% of the state minimum wage on January 1, 2025, 73% of it on January 1, 2026, 82% of it on January 1, 2027, 91% on January 1, 2028, and 100% on January 1, 2029. Each year employers would have been required to make up the difference between the \$15 general minimum wage and the amount a tipped worker makes in wages plus tips until the hourly wage matched the general state minimum wage—which was set to occur in 2029. The measure would have also allowed employers to decide whether their non-tipped employees could participate in a tip pool, meaning tips could have been distributed to non-service workers like dishwashers, hosts, and cooks.

The defeat of the measure allows Massachusetts employers to continue operating under the existing tip credit system. Accordingly, employers may continue to pay tipped employees a subminimum wage of \$6.75 an hour, as long as the combination of the base wage and tips equals or exceeds the minimum wage. If tips don't reach that mark, employers must cover the difference. Additionally, tip pooling is still limited to employees who customarily receive tips, like servers, food runners, busboys, and bartenders.

Next Steps

Although employers can continue operating under the existing tip credit system, the attention brought to this issue highlights the importance of compliance. Employers should conduct regular audits to ensure adherence, provide training to educate management, ensure wage statements contain all required information, and calculate overtime compensation by applying the appropriate rates and including all eligible earnings.

Question 5 was rejected, but discussions around tipped wages and fair compensation may lead to future legislative proposals. Employers should remain cognizant of potential changes to ensure compliance with evolving wage laws.

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