



November 2018

In Washington DC, Employers Face New Training, Notice, and Reporting Obligations

By Carolyn D. Richmond, Glenn S. Grindlinger, and Jason B. Jendrewski

Employers in Washington DC now face a comprehensive set of new training, notice, and reporting obligations ranging from wage and hour matters to sexual harassment issues.

The Tipped Wage Workers Fairness Amendment Act of 2018 was signed into law by Mayor Muriel Bowser on Oct. 23 and is subject to a 30-day congressional review period. It repeals a voter-approved ballot initiative that would have eliminated the tip credit in the District of Columbia.

However, the law goes beyond merely reinstating the tip credit. Under the law, Washington employers will now be required to notify employees of their rights under the District's labor and anti-discrimination laws, including wage and leave laws.

The law also specifically requires employers of tipped workers in Washington to:

- provide certain written notices;
- provide itemized wage statements;
- retain third-party administrators to prepare payroll;
- provide wage and hour training;
- provide sexual harassment training; and
- comply with certain reporting obligations.

Below is a summary of the law's key provisions.

Notifying Employees of Their Rights

Informational Website

The Mayor is mandated under the law to create and maintain a website that provides "easily accessible," "user-friendly," and "printer-friendly" information about employees' rights and benefits under 11 separate District labor and anti-discrimination laws. The website also must include information regarding how individuals may submit complaints for violations of the statutes, a listing of resources for individuals who believe that their rights have been violated, and information regarding a new reporting system for reporting violations.

Employer Posting and Documentation Requirements

Employers are required to display a poster (provided by the Mayor) that will contain:

- the address of the website discussed above (including an electronic or digital link to the website);
- a list of the District's labor and anti-discrimination laws and identification of those laws that provide greater benefits or protections than federal law;
- the current hourly minimum wage; and
- the current hourly tipped minimum wage.

The poster will need to be displayed in a "conspicuous place" that is accessible to all

employees, including in each breakroom or time clock location, if applicable.

Moreover, employers will be required to compile printed copies of all information posted on the website into a single source (such as a binder) and make the documents available to employees at every location where the poster is posted. Employers must ensure that the documents are up to date on a monthly basis. Employers that do not meet the new requirements will be subject to a fine of \$100 per day.

Public Awareness Campaign and Violation Tip Line

The Mayor is mandated to launch a public education campaign to raise awareness and educate the public about the rights of tipped workers under District law. The campaign must begin within 180 days after the law takes effect and include the preparation and distribution of written materials detailing the rights of tipped workers. Employers of tipped employees will be required to distribute the materials to all of their employees once the District makes them available.

The Mayor must also create a reporting system for the public to report violations of the labor and anti-discrimination laws. The reporting system must be accessible to the public by the internet and telephone. The Mayor is charged with reviewing all reports on a weekly basis and has the authority to investigate alleged violations of the law.

Sexual Harassment

Training

For employers of tipped employees, the law implements sexual harassment prevention training requirements for all employees as well as the managers, owners, and operators of

those businesses. The District's Office of Human Rights will provide a sexual harassment training course for employees or certify a list of providers that provide such training. New employees generally will be required to receive the training in person or online within 90 days of hire, while existing employees will have two years to participate in such training. Additionally, managers and owners or operators of businesses are required to receive such training every two years (managers must attend in-person training). If the training is provided by a certified provider (and not the Office of Human Rights), employers are required to submit certifications to the Office of Human Rights for each individual who complete the required training within 30 days of the training. The Office of Human Rights will maintain records of each trainee for at least five years.

Reporting

Employers of tipped employees are required to document instances of sexual harassment reported to management.

By July 1, 2019, employers will be required to:

- file with Office of Human Rights their sexual harassment reporting policy
- distribute their sexual harassment policy to employees
- post their sexual harassment policy in a conspicuous place accessible to all employees
- report to the Office of Human Rights the number of instances of sexual harassment reported to management and the classification of the reported harassers (e.g., whether the reported harassers were non-managerial employees, managerial employees, owners, or operators).

The reporting obligation continues annually thereafter.

Tip Notices

Employers may not take the tip credit against tipped employees' wages unless employers comply with certain written notice requirements. Specifically, in addition to the written information already required to be provided to all employees at the time of hiring and whenever the required information changes, employers must notify their tipped employees in writing of the tipped minimum wage and the requirement that employees receive gratuities in an amount equal to the difference between the tipped minimum wage paid and the regular minimum wage (otherwise, employers must pay the difference). If tips are shared or pooled among employees, then the notice must contain the employer's tip sharing/pooling policy, which employers also are required to post (note that the policy cannot be revised without first sharing the new proposed policy with employees). If tips are not shared or pooled, then employers are required to notify employees that tipped employees retain all tips that they receive. Employers also are required to provide notice of any percentage by which credit card tips are reduced to account for credit card processing fees.

Payroll Notices, Administration, Reporting, and Training

Wage Statements

Employers are required to provide employees with itemized wage statements with each payment of wages. The wage statement must include, among other things:

- Date of the wage payment;
- Gross wages paid;
- Deductions from and additions to wages (gratuities must be listed on a separate line);
- Net wages paid;

- Hours worked during the pay period; and
- The employee's tip-declaration form showing cash tips and credit-card tips.

Third-Party Payroll Administrators

With the exception of hotels, all employers of tipped employees are required to use third-party payroll businesses to prepare their payroll beginning Jan. 1, 2020.

Quarterly Wage Reporting

Employers (including hotels) of tipped employees must submit quarterly reports to the Mayor within 30 days of the conclusion of each quarter. The report must certify that each employee was paid at least the required minimum wage, including gratuities. As of Jan. 1, 2020, the third-party payroll businesses are required to submit these quarterly reports for non-hotel employers. The report must include the employee's name, the number of hours worked each week during the quarter, the total pay (including gratuities) received by the employee each week during the quarter, the average weekly wage for the employee during the quarter, and the employer's current tip-out policy.

Training

Owners, operators, and managers of businesses that employ tipped employees will be required to attend training annually regarding the requirements of the Minimum Wage Act Revision Act of 1992. Managers are required to attend the training in person, while owners and operators have the option to participate in online training. Additionally, employers of tipped employees are required to offer their employees the opportunity for in-person or online training at least once annually. By Dec. 31 of each year, employers of tipped employees must certify to the District's

Department of Employment Services that the training requirements have been fulfilled.

The legislation does not provide any further guidance on the contents of the required training, although we anticipate that the District will be providing such guidance in the coming months.

Tipped Workers Coordinating Council

Finally, the law establishes the Tipped Workers Coordinating Council, which is a partnership of tipped workers, employers, and public agencies that is charged with responding to tipped-worker cases of wage theft and unfair labor practices. The Council will work on improving the coordination and functioning of tipped worker policies, conducting regular and anonymous case reviews of tipped worker wage violations, and developing a protocol to ensure that feedback and recommendations from case reviews are incorporated into the District's Department of Employment Service's policies and procedures.

For more information about this alert, including the applicability of the Tipped Wage Workers Fairness Amendment Act of 2018 and any possible exceptions to the requirements discussed herein, please contact Carolyn D. Richmond at 212.878.7983 or crichmond@foxrothschild.com, Glenn S. Grindlinger at 212.905.2305 or ggrindlinger@foxrothschild.com, or any member of the firm's Hospitality Practice Group.

Attorney Advertisement

© 2019 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication. www.foxrothschild.com