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BILL ANALYSIS



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Senate Bill 1171 (as introduced 11-8-18)
Sponsor: Senator Dave Hildenbrand
Committee: Government Operations

Date Completed: 11-27-18

CONTENT**The bill would amend the Improved Workforce Opportunity Wage Act to modify its language pertaining to the hourly minimum wage for tipped employees.**

Currently, under the Workforce Opportunity Wage Act (WOWA), for an employee who receives gratuities in the course of his or her employment, the minimum wage is 38% of the standard minimum wage, if all of the following conditions are met:

- The employer pays any shortfall if the gratuities plus the minimum wage do not equal or exceed the standard minimum wage.
- The gratuities are proven gratuities as indicated by the employee's declarations for purposes of the Federal Insurance Contributions Act.
- The employee was informed by the employer of these provisions.

"Gratuities" mean tips or voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered to that guest, patron, or customer and that the employee reports to the employer for purposes of the Federal Insurance Contributions Act.

Effective 91 days after the 2018 Regular Session adjourns sine die, the Improved Workforce Opportunity Wage Act supersedes the WOWA. Under the Improved Workforce Opportunity Wage Act, the minimum wage for an employee who receives gratuities in the course of his or her employment applies if all of the following conditions are met:

- The gratuities equal or exceed the difference between the tipped employee minimum wage and the standard minimum wage prescribed under the initiated law.
- The gratuities are proven gratuities as indicated by the employee's declarations for purposes of the Federal Insurance Contributions Act.
- The entirety of the gratuities are retained by the employee who receives them, except as voluntarily shared with other employees who are directly or indirectly part of the chain of service and whose duties are not primarily managerial or supervisory.
- The employee was informed by the employer of these provisions in writing, at or before the time of hire, and gave written consent.

The Act retains the 38% rate through December 31, 2018, and increases the minimum wage as follows:

- Beginning January 1, 2019: 48%.
- Beginning January 1, 2020: 60%.

- Beginning January 1, 2021: 70%.
- Beginning January 1, 2022: 80%.
- Beginning January 1, 2023: 90%.
- Beginning January 1, 2024: 100%.

Gratuities will remain property of the employee who receives them, except under a valid and voluntary tip sharing agreement, regardless of whether the employer pays the lower tipped hourly wage or the standard minimum hourly rate established under the initiated law. Gratuities and service charges paid to an employee are in addition to, and may not count towards, wages due to the employee. An employer will have to provide employees and consumers written notice of its plan to distribute service charges, and will have to keep records showing compliance with tipped employee minimum wage provisions for at least three years from the date of employee's last pay period.

The bill would amend the Improved Workforce Opportunity Wage Act to modify its language pertaining to the minimum wage for tipped employees to be substantially the same as the WOVA's language.

MCL 408.932 & 408.934d

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on the wages paid directly or indirectly by the Department of Health and Human Services (DHHS) to Adult Home Help (AHH) and behavioral health workers. The proposed language would make changes in regard to gratuities and employer payment of any shortfall between the minimum hourly wage and gratuities. At this time, there are no known employees who receive gratuities from direct or indirect DHHS wage payments, so there is no fiscal impact on the State.

There could be a more general secondary effect if the changes under the bill resulted in an effective minimum wage decrease relative to the initiated law that takes effect on the 91st day after the Legislature adjourns sine die. Any change in the minimum wage could have an implication on income qualifications for cash assistance. The Family Independence Program (FIP) has an income disregard, so if changes in the calculation of the minimum hourly wage with gratuities results in a recipient's income decreasing, his or her FIP payment could increase, leading to a possible increase in FIP costs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.