



38 Hungerford Street – Hartford, CT 06106 – [www.ctrestaurant.org](http://www.ctrestaurant.org)  
Phone: (860) 278-8008

**Testimony Before the Labor & Public Employees Committee  
February 16, 2016**

**SB 39 AN ACT CONCERNING THE MINIMUM FAIR WAGE AND EMPLOYEES WHO CUSTOMARILY AND REGULARLY  
RECEIVE GRATUITIES**

The Connecticut Restaurant Association represents over 600 restaurants and affiliated businesses across the state. Our members range from quick serve to casual to fine dining establishments. The Connecticut hospitality industry employs an estimated 145,000 people, making up 9% of our states' workforce. Restaurants are a driving force in the state's economy and generate tremendous tax revenue. The CRA opposes SB 39, AAC The Minimum Fair Wage and Employees Who Customarily and Regularly Receive Gratuities.

Congress has for decades defined "wages" under Section 203(m) of the Fair Labor Standards Act (FLSA) to include not just cash, but certain other credits and benefits that employees receive as a result of their employment, including tip income. Tip-earning employees can be among the industry's higher-earning employees, earning a median of \$12 to \$17 an hour in tips, according to recent National Restaurant Association research. Employees and employers pay taxes on those tipped wages. That's why section 203(m) of the FLSA lets employers apply a limited portion of the tip earnings employees receive because of their employment towards the employer's obligation to pay tipped employees the minimum wage. This is called taking a "tip credit." Employers may take a tip credit only under strict conditions.

Connecticut law currently permits employers to pay a tipped employee a minimum cash wage of at least \$6.06 an hour and take a tip credit of up to \$3.54 an hour (i.e., the difference between the \$9.60 minimum wage and the \$56.06 cash wage.) If an employee's tips fall below the maximum possible tip credit- the employer is responsible for making up the difference by paying any additional cash wages needed to bring the employee up to the required minimum wage. Thus, a tipped employee will never be paid below the minimum wage.

In addition to being poor policy, passing a bill eliminating the tip credit in Connecticut could actually have damaging financial consequences for servers and bartenders, the precise opposite of what proponents of the bill claim it will accomplish.

Restaurant patrons are not required to tip. Similarly, there is no requirement for a restaurant to allow tipping. Restaurants are free to adopt no tipping policies and assess a service charge on patrons at whatever percentages and on whatever terms they choose.

A service charge is not a gratuity or tip under the law, because it is not voluntarily contributed directly from a patron to an employee for service rendered. Rather, it is a mandatory charge assessed by the restaurant. As such, servers, bartenders and other employees do not have any entitlement to a service charge. The service charge belongs to the house, and the house can keep it or decide to distribute all or part of it to employees in whatever manner it chooses.

For instance, a restaurant may decide to distribute the service charge proportionally to all employees on a given shift. Alternatively, a restaurant may decide to distribute the service charge to only back of the house employees. Or, a restaurant may simply decide to keep the service charge and use it to offset the substantial increase to its payroll costs resulting from elimination of the tip credit.

Restaurants faced with potentially crippling increases to their overhead resulting from elimination of the tip credit will likely make the transition to service charges. The net result of this switch is that servers and bartenders will likely suffer a substantial decrease in earnings – a classic unintended consequence.

Connecticut's current minimum (\$9.60) and tipped (\$6.06) wages are amongst the highest in the country. These wages are scheduled to increase again on 1/1/17 to \$10.10 and \$6.38 respectively.

### **TIPPED EMPLOYEES' WAGES: MYTHS & FACTS**

Myth #1: Tipped Employees are Paid a "Subminimum Wage" of \$6.06 an Hour.

**FACT: There is no subminimum wage.** The minimum wage for tipped employees is the exact same as the minimum wage for every other employee in Connecticut: \$9.60. The employer must ensure that the tipped employee earns at least \$9.60 an hour, between the employee's tip earnings and the employer-paid cash wage. It is not legal for any employee to earn only \$6.06 per hour.

Myth #2: Customers are Subsidizing Restaurant Employees' Wages.

**Fact: Restaurant employers invest in their businesses to provide the conditions that enable employees to earn tips.**

The tip credit system was created and its safeguards put in place decades ago because lawmakers recognized that tipped employees receive tips due to the jobs their employers provide for them. Tipped employees receive additional wages in the form of tips given to them by their employers' guests. This money is NOT given to other employees. That's why the law treats tipped and non-tipped employees differently for wage purposes.

Myth #3: Tipped Employees Earn Poverty-Level Wages.

**Fact: Most tipped employees are far from minimum-wage earners.** Server positions in restaurants provide opportunity, flexibility and, often, very competitive pay. Recent National Restaurant Association research shows that on a national level, restaurant servers earn a median hourly wage of between \$16 and \$22, counting both tips and employer-paid cash wages. Looking at tip income alone, entry-level servers earn a median of \$12 an hour in tips, with more experienced servers earning a median of \$17 an hour in tips, according to the research. NOTE: These figures represent overall averages; the hourly earnings of servers vary significantly based on the type of establishment and the average per-person check size.

Myth #4: Employers Abuse Wage-And-Hour Rules When They Pay Tipped Employees

**Fact: Employers risk costly wage-and-hour lawsuits, significant back-pay requirements and stiff penalties if they take a tip credit without meeting all the legal requirements for doing so.** There will always be a few who violate any law imposed on citizens or companies. However, most restaurant employers are not willing to break the law or jeopardize their businesses by failing to take the required steps for claiming a tip credit. The vast majority of restaurant operators follow the rules, designed as safeguards for tipped employees.