

December 20, 2021

Bryan Smolock, Director
Bureau of Labor Law Compliance
Department of Labor & Industry
651 Boas Street, Room 301
Harrisburg, PA 17121

Re: Regulation #12-114: Minimum Wage — IRRC Number 3322

Director Smolock,

As the trade organization that represents the entirety of the restaurant and hospitality industry, we write to express our comments on the proposed rulemaking concerning amendments to 34 Pa. Code, Chapter 231 regarding Tipped Employees and Regular Rate. While our association understands the desire to update the current standards, these regulatory changes will impact our members and we believe strongly that such significant changes ought to be reserved for the legislature.

Pennsylvania is a broad and complex state. Businesses located in suburban or city areas are considerably different from those in more rural locations. We feel confident that the legislature would be best suited to consider these changes and the most appropriate body to handle such substantive policy change in the first place. Going through the legislative process allows for broader and more reliable input from stakeholders across the state. Pennsylvanians have relationships with their local legislators, and they look at their State Representatives and Senators to help navigate potential changes like the ones being considered on this subject. Such changes ought to be left to a legislative body that accurately represents the public.

Many of the updates suggested, especially around the tipped wage, are industry standard and already best practice. In fact, we appreciate the Administration's acknowledgment and commitment to preserving the tipped wage — especially when some criticize the industry as one that takes advantage of its employees. Anyone who works in this industry knows that is not the case. This is a validation of the tipped wage.

Updating the definition of "tipped employee" to adjust for inflation since 1977 is understandable given significant changes to the economy. Many operations in Pennsylvania and nationwide do go above and beyond to educate customers on the use of service charges. The industry is familiar with the rules and regulations around tip pooling. And in terms of deducting a credit card

transaction from an employee's tip if that tip was left on a credit card – this is something that many of our members have told us they already do not do. It appears as if a bulk of this is codifying and standardizing certain practices already in place at the federal level. We do not necessarily oppose those changes, and other similar changes, as mentioned above. What we do oppose, and we feel is important to note, is making such sweeping and significant changes unilaterally through the Executive branch.

Most people do not read such proposals to change regulations. It is a nuanced process and challenging to traverse. This is especially true right now, as many of our members are facing new challenges due to COVID-19, like staffing shortages, rising costs on raw materials, and supply-chain issues. These types of changes should be reserved for the legislature and should be vetted via a valid legislative process that solicits genuine feedback from the public. That would help avoid administrative confusion and would more reliably lead to the feedback needed to shape these considerations. Nevertheless, our objection is with that — the process.

We appreciate your consideration of these comments and hope to continue an open dialogue on this subject as changes are considered.

Regards,



Bill Covaleski
Chairman of the Board



John Longstreet
President & CEO