



February 4, 2015

2013-2015 Vol. 17

GENERAL SESSION

January 28, 2015

Program Topic: Minimum Wage Act Amendment & Cash Wage Obligation for Tipped Employees Amendment

Presented by: Business and Labor Committee

Director: Suzanne Mulet

Co-Chair: Brandy Farmer

**Speakers: Rep. Justin Miller (D) Dist. 40 – Salt Lake County
Sen. Todd Weiler (R) Dist. 23 – Davis, Salt Lake Counties
Steve White – AFL-CIO, Legislative & Political Director
Melva Sine – Pres. & CEO, Utah Restaurant Association**

Rep. Miller began by commending WSLC for its 95 years of service to the state of Utah. He is a happy to be sponsoring a bill, as yet unnumbered, to address a minimum wage issue for tipped employees. These workers make a salary of \$2.13/hour, a wage that hasn't be adjusted for 23 years. He laid the groundwork for this issue by offering a definition of the "Tip Wage Credit." Under this provision of the labor law, an employee must earn at least the state's minimum wage (in this case, \$7.25) when tips and wages are combined or the employer is required to increase the wage to meet that threshold. This ensures that all

tipped employees earn at least the minimum wage. Rep. Miller pointed out that when there is a slow day, the employee must request the difference, which is often problematic in itself.

Offering statistics, Rep. Miller said 2/3 of tipped workers are women. When these women are also subjects of domestic violence, the inconsistent paychecks often will often exacerbate their vulnerability at home. He cited a recent study by the National Women's Law Center that indicated elimination of the Tip Wage Credit could decrease the poverty rate for women by 37%. His bill would remove this credit and

replace it with a straight minimum \$7.25 wage.

Acknowledging that increasing the minimum wage for tipped workers will increase costs, Rep. Miller said he believes the price to be well worth it. "Is it worth the extra cost to you personally," he asked, "to assist your server to be somewhat lifted out of poverty?" Basic fairness dictates that anyone who puts in a 40-hour workweek shouldn't have to live in poverty.

Rep. Miller also said he will run what he called a "breastfeeding bill" which will require employers to provide reasonable accommodation (meaning a particular place set aside) and a reasonable amount of time allotted for breastfeeding or pumping breast milk in the workplace. He said our towns and cities should have this policy in place before the issue actually arises in the state via an employee lawsuit.

Responding to questions, Rep. Miller said there is a compelling argument to tie the minimum wage to the rate of inflation. If it were, he stated, we wouldn't need to be having this same conversation every couple of years.

There is also a persuasive line of reasoning regarding the creation of "tip free" restaurants. They would certainly eliminate red tape and paperwork. This type of restaurant is often found back east, but not yet in Utah. He doesn't know how Utah diners stack up against tippers in

other states. It is difficult to get solid information on the number of servers in Utah who don't receive the \$7.25/hour, since the information is channeled to the tax commission.

Rep. Miller would be glad to find a Republican co-sponsor for his bill in the Senate. He believes a number of his colleagues in the House are already supportive.

Sen. Weiler, speaking in opposition to the bill, began by noting what he sees as a difference between Republicans (who favor equality of opportunity) and Democrats (who favor equality of outcome). The philosophy of equality of opportunity is what guides his approach to the minimum wage issue.

The federal Congress has mandated a minimum wage. Some states have raised that wage higher still. Interestingly, the states that raised the minimum wage the highest (Connecticut, New Jersey and New York), experienced the lowest job growth.

Sen. Weiler offered statistics indicating that each time the minimum wage has been raised, the number of workers has decreased. Citing an example of good intentions yielding bad results, he spoke of then-President Clinton famously raising the tax on luxury yachts. That industry, he said, "simply packed up and left the U.S."

He also argued that the most vulnerable of employees, including the disabled, are the first fired when costs increase with a minimum wage hike. McDonald's and other fast food chains have increasingly gone to automation in order to replace costlier workers.

The minimum wage is specifically for entry-level workers. If a new 16 year-old worker at Lagoon can make \$10/hour to start, he posited, what incentive does he have to work harder to move up?

Responding to questions. Sen. Weiler said he isn't vehemently opposed to a minimum wage hike. However, he noted that if a tipped employee is really making only \$2.31/hour, he or she is doing something wrong. He himself was a tipped employee and, with tips, cleared closer to \$12-\$15/hour. His best guess is that the minimum wage won't be going up in Utah until the federal government raises it again.

Steve White, speaking in support of the bill, said the *American Federation of Labor–Congress of Industrial Organizations* (AFL-CIO) has become increasingly concerned with the minimum wage issue. Using statistics from the Economic Policy Institute to add to the discussion, he said a tipped employee is defined as any employee engaged in an occupation in which he or she regularly receives more than \$30/month in tips.

There are 33 million tipped employees in the U.S. It's estimated that two and a half million fathers and four and a half million mothers would see an increase in pay if the minimum wage were increased. Two out of three tipped employees are women, and six out of ten such workers are 20+ years old.

The last tipped employee wage increase occurred in 1991. It raised the wage from \$2.09 to \$2.13, which is currently only 25% of the minimum wage. Mr. White believes we should do better by these workers.

The practice of tipping in our country has changed from one of a show of gratitude for good service to one of public subsidy. The poverty rate for tipped employees is 12.8%. For non-tipped minimum wage workers, it is 6.5%.

Mr. White said we really pay twice for tipped employees: Once for the gratuity itself, and a second time for a worker's frequent reliance on public services for the poor. He agreed that it's almost impossible to track how many employees actually receive the \$7.25 from the employer tax credit.

Responding to questions, he said the Dept. of Labor allows tip sharing between restaurant employees, but does not require it. Busboys are typically part of tip sharing policy. 45% of female tipped employees would usually qualify for at least one

of the social service subsidies (housing assistance, food stamps, etc.)

Mr. Miller feels Utah could go to a no-tip restaurant policy and offer instead a living wage. Most salon workers (hairstylists, aestheticians, etc.) generally qualify as tipped employees. However there is a grey area (think newspaper carriers) that needs to be better clarified in many of these industries.

Melva Sine, speaking in opposition to the bill, said the state restaurant industry has 100,000 workers and is a strong addition to our local economies. The Utah Restaurant Association offers a “Pro-Start” program that trains high school students to enter the industry workforce as skilled workers able to make a meaningful wage, often while financing their own continuing education. The program also teaches workplace safety, workplace etiquette, and workplace ethics.

Ms. Sine said when workers are asked whether they would rather make \$7.25/hour or \$2.13 plus tips, they almost universally prefer the lower

wage plus tips. Their actual take home pay is the reason. Workers in medium scale restaurants average \$7-10/hour in tips. Higher end restaurant employees make \$16-17/hour in tips. Servers in fine dining restaurants average \$20-\$22/hour in tips.

Responding to questions, Ms. Sine said banquet servers are usually not tipped employees. They receive a high-end wage, while the 18-20% service charge goes to the employer. The practice of tip pooling used to have many problems. Now the pool is sponsored by employers, who keep it more uniform and fair.

Tipped employees make well over minimum wage once their tips are factored in. Ms. Sine said raising the minimum wage would actually lower the take home pay of tipped employees. Currently, they must report tips or the IRS will exact penalties against the restaurant.

For more information from the Utah Restaurant Association, go to www.utahdineout.com

Reported by Pam Grange

**THIS BULLETIN IS A PUBLICATION OF
THE WOMEN’S STATE LEGISLATIVE COUNCIL OF UTAH, INC.**
<http://www.wslcofutah.org>

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*Printed by AlphaGraphics
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Salt Lake City, UT 84101*