

Tip Credit Wage Statement FAQs

1. What is a Tip Credit Wage Statement?

A tip credit wage statement is a written or electronic statement that a restaurant employer is required to provide to tip credit employees that shows the effective hourly tip rate of pay which is derived from employer paid cash wages plus all reported tips for tip credit hours worked each workweek of the pay period. This calculation is obtained by taking the sum of total cash wages + total reported tips (for tip credit hours) for that workweek and dividing by the number of tip credit hours worked. For example, if a tip credit employee worked 20 tip credit hours in Week 1 and received \$80 in cash wages and \$500 in tips and worked 22 tip credit hours in Week 2 and received \$88 in cash wages and \$400 in tips, the tip credit wage statement should show an effective hourly tip rate for Week 1 of \$29/hr ($\$580 \text{ total compensation} / 20 \text{ hours} = \$29/\text{hour}$) and an effective hourly tip rate for Week 2 of \$22.18/hr ($\$488 \text{ total compensation} / 22 \text{ hours} = \$22.18/\text{hour}$).

For restaurants that utilize a tip credit (employer pays the employee an hourly cash wage of less than the applicable minimum wage with reported tips making up the difference), the purpose of the tip credit wage statement is to provide an additional notification of a tip credit employee's effective hourly rate of pay with tips included as it relates to the applicable minimum wage. It does not change any existing federal, state or local method of calculating required compensation and should not be used as the sole method of verifying an employer's wage payment obligations. It is not intended to replace other required pay stub/wage statement information or other wage records used to ensure compliance with federal, state and local wage laws and regulations.

2. Why must this be provided to restaurant tip credit employees?

As part of Maryland's 2019 minimum wage law, the Maryland Department of Labor was required to adopt regulations (COMAR 09.12.41.20) to require restaurant employers that utilize a tip credit to provide employees with a written or electronic wage statement that shows the effective hourly tip rate of pay. Under federal, state and local wage laws, if tipped employees do not make enough in hourly cash wages plus tips (for tip credit hours) to earn at least the full applicable minimum wage per hour for the workweek, the employer must make up the difference.

3. If a restaurant pays a tipped employee the full applicable minimum wage (no tip credit is applied to the employee's wages), is a tip credit wage statement required?

No.

4. Do all employers with tipped employees have to provide a tip credit wage statement?

*No. The law only requires that **restaurant** employers furnish employees with a tip credit wage statement. Maryland regulations define a "restaurant" as an establishment primarily engaged in the selling and serving of prepared food and beverages for consumption on the premises with characteristic employee services and dining facilities which contains physical and functional equipment and facilities required for the consumption of a meal. See [COMAR .09.12.41.07D](#).*

5. Can the tip credit wage statement be separate from the employee's pay stub?

Yes. The tip credit wage statement may be separate from the employee's pay stub, or included as part of the pay stub (or as a memo or addendum) as long as it provides the required information.

6. Can my payroll service provider include this information with employee pay stubs/wage statements?

Yes. However, because of the requirement to provide this information for each workweek of the pay period, employers will need to break down payroll information for tip credit employees by workweek when reporting pay period information to payroll service providers if the employer wants the payroll service to include this information with employee pay stubs/statements.

7. Does the tip credit wage statement need to be provided at the same time as the pay stub?
No. The tip credit wage statement does not need to be provided at the same time as the pay stub but it must be provided no later than two weeks following the end of the pay period.

8. Can the tip credit wage statement be provided electronically?
Yes. The tip credit wage statement can be electronic or written.

9. Why do the regulations (COMAR 09.12.41.19) exclude tips in excess of the tip credit from the definition of “regular hourly rate”?
The purpose of excluding tips in excess of the tip credit from the definition of "regular hourly rate" in the regulations is to make clear that an employer is not required to include tips in excess of the tip credit when calculating the overtime rate of pay for tipped employees.

10. How is overtime calculated?

The method for calculating overtime for tipped employees remains the same. For hours worked in excess of forty, employees must be paid an hourly rate equal to 1.5 times the applicable minimum wage less the tip credit. This is consistent with the federal Fair Labor Standards Act.

*Tipped employees must earn at least the minimum wage for all hours worked and any premium portion of overtime pay may not be used to get a tipped employee to the minimum wage for the initial 40 hours worked. Where the employer takes the tip credit, overtime is calculated on the full minimum wage, **not** the lower direct (or cash) wage payment. The employer may not take a larger tip credit for an overtime hour than for a straight time hour.*

The following is an example of how to calculate the overtime rate:

*\$11.00/hr. (applicable Maryland minimum wage) X 1.5 = \$16.50
Subtract hourly tip credit (\$11.00 - \$3.63, or less \$4.00 if in Montgomery County <or cash wage paid>) = \$7.37 Tip Credit
\$16.50 - \$7.37 = \$9.13 Required Overtime Rate*

11. What additional information must employers provide along with the effective hourly tip rate of pay on tip credit wage statements?

The tip credit wage statement should include the hours worked, the rate of employer paid cash wages, reported tips and any other information used by the employer to calculate the effective hourly rate.

12. How long does the tip credit wage statement need to be retained? Does this need to be retained with the employees’ payroll records?

Like other payroll records, the tip credit wage statement should be retained for at least three (3) years.

13. Can you provide an example of what a tip credit wage statement might look like?

See examples below. In the first example, the employee earned sufficient tips to meet the minimum wage. In the second example, the employer provided makeup pay to get the employee to the minimum wage. Keep in mind that the minimum wage is higher in Montgomery and Prince George’s counties.

Example 1:

The information below is not required to be shown on the actual Tip Credit Wage Statement, but is provided only as an example of pay period information used as the basis for the figures on the Sample Tip Credit Wage Statement that follows.

At Maryland's \$11.00/hr. minimum wage, and \$3.63/hr. minimum cash wage for tip credit employees.

WEEK 1

<u>Earnings</u>	<u>Rate</u>	<u>Hours</u>	<u>Pay</u>
Regular (tip credit hours)	\$3.63	40.00	\$ 145.20
Reported Tips			\$ 600.00
<i>Gross Pay</i>			\$ 745.20

WEEK 2

<u>Earnings</u>	<u>Rate</u>	<u>Hours</u>	<u>Pay</u>
Regular (tip credit hours)	\$3.63	35.00	\$ 127.05
Reported Tips			\$ 500.00
<i>Gross Pay</i>			\$ 627.05

TOTALS for a biweekly pay period:

Regular (tip credit hours)	\$3.63	75.00	\$ 272.25
Reported Tips			\$1,100.00
<i>Gross Pay</i>			\$1,372.25

Sample Tip Credit Wage Statement for Example 1

Employee Name: <insert>

Pay Period: <insert>

WEEK 1

<u>Earnings</u>	<u>Rate</u>	<u>Hours</u>	<u>Pay</u>
Tip Credit Hours	\$3.63	40.00	\$ 145.20
Reported Tips			\$ 600.00
TIP CREDIT HOURS AND TIPS		40.00	\$ 745.20

Effective Hourly Tip Rate of Pay (for tip credit hours only) \$ 18.63

WEEK 2

<u>Earnings</u>	<u>Rate</u>	<u>Hours</u>	<u>Pay</u>
Regular (Tip Credit Hours)	\$3.63	35.00	\$ 127.05
Reported Tips			\$ 500.00
TIP CREDIT HOURS AND TIPS		35.00	\$ 627.05

Example 2:

***Make-up Pay:** If tipped employees do not make enough in hourly cash wages plus tips (for tip credit hours) to earn at least the full applicable minimum wage per hour **for the workweek**, the employer must make up the difference.*

The information below is not required to be shown on the actual Tip Credit Wage Statement, but is provided only as an example of pay period information used as the basis for the figures on the Sample Tip Credit Wage Statement that follows.

At Maryland's \$11.00/hr. minimum wage, and \$3.63/hr. minimum cash wage for tip credit employees.

WEEK 1

<u>Earnings</u>	<u>Rate</u>	<u>Hours</u>	<u>Pay</u>
Regular (tip credit hours)	\$3.63	40.00	\$ 145.20
Reported Tips			\$ 275.00
Make-up Pay			\$ 19.80
<i>Gross Pay</i>			\$ 440.00

WEEK 2

<u>Earnings</u>	<u>Rate</u>	<u>Hours</u>	<u>Pay</u>
Regular (tip credit hours)	\$3.63	40.00	\$ 145.20
Reported Tips			\$ 370.00
<i>Gross Pay</i>			\$ 515.20

TOTALS for a biweekly pay period:

Regular (tip credit hours)	\$3.63	80.00	\$ 290.40
Make-up Pay			\$ 19.80
Reported Tips			\$ 645.00
<i>Gross Pay</i>			\$ 955.20

Sample Tip Credit Wage Statement for Example 2

Employee Name: <insert>

Pay Period: <insert>

WEEK 1

<u>Earnings</u>	<u>Rate</u>	<u>Hours</u>	<u>Pay</u>
Tip Credit Hours	\$3.63	40.00	\$ 145.20
Reported Tips			\$ 275.00
Make-up Pay			\$ 19.80

TIP CREDIT HOURS AND TIPS 40.00 \$ 440.00

Effective Hourly Tip Rate of Pay (for tip credit hours only) \$ 11.00

WEEK 2

<u>Earnings</u>	<u>Rate</u>	<u>Hours</u>	<u>Pay</u>
Regular (Tip Credit Hours)	\$3.63	40.00	\$ 145.20
Reported Tips			\$ 370.00

TIP CREDIT HOURS AND TIPS 40.00 \$ 515.20

Effective Hourly Tip Rate of Pay (for tip credit hours only) \$ 12.88
