



**TESTIMONY TO THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON EDUCATION
AND THE WORKFORCE**

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My name is Saru Jayaraman, and I am the President of One Fair Wage and the Director of the UC Berkeley Food Labor Research Center. On behalf of the 300,000 service workers and over 1000 'high road' restaurant employers who are members of One Fair Wage, I thank you for allowing me to testify regarding tipped workers' needs and conditions.

The restaurant industry, and the service economy in general, is undergoing massive upheaval, with thousands nationwide, raising their wages to at least \$15 an hour plus tips in order to recruit staff at a time when workers are indicating they are unwilling to work for anything less. Policy to raise wages and end the subminimum wage for tipped workers is essential not only because workers are in crisis, but also because independent restaurateurs agree that they will not be able to fully reopen without policy change to raise wages and end the subminimum wage for tipped workers.

Even prior to the pandemic, the subminimum wage was problematic, as a direct legacy of slavery that disproportionately impacts the lives of women and people of color. At Emancipation, the service industry, namely railroad, hotel and restaurant lobbies, sought to hire recently-freed Black people and not pay them anything, forcing them to live entirely on tips.¹ This legacy continues today in 43 states, where tipped workers can earn as little as \$2.13 an hour from their employers based on federal minimum cash wage, and are required to make up the rest in tips.² Nationally, there are 5,500,000 tipped workers who are 69 percent women and 32 percent people of color. Ending this low-wage carve out positively impacts an overall restaurant industry of over 11,500,000 workers nationwide.³

Prior to the pandemic, the restaurant industry was the largest and fastest growing industry in the country - all while being the largest employer of tipped workers, who earn some of

¹ Jayaraman, Saru, *Forked: A New Standard for American Dining*, (Oxford University Press, 2016)

² U.S. Department of Labor. (September 2021). Minimum Wages for Tipped Employees. Wage and Hour Division. <https://www.dol.gov/agencies/whd/state/minimum-wage/tipped>.

³ OFW analysis of American Community Survey data, 2018- 2022 5-Year Sample. Steven Ruggles, Sarah Flood, Ronald Goeken, Megan Schouweiler and Matthew Sobek. IPUMS USA: Version 12.0 [dataset]. Minneapolis,

the lowest wages in the country. Tipped workers, who are more than two thirds majority women who work in casual restaurants earning very little in tips, live in poverty and rely on public assistance at double the rate of the general workforce.⁴ Tipped workers have struggled with twice the poverty rate of other workers and the highest rates of sexual harassment of any industry because they must tolerate inappropriate customer behavior to feed their families in tips.^{5,6}

Women, in particular, faced the highest rates of sexual harassment when compared to all other industries.⁷ Women tipped workers experience even greater rates of sexual harassment than their non-tipped counterparts in the industry: half versus only a quarter (49 percent vs. 26 percent).⁸ The pandemic has only made conditions worse for women and people of color in the industry.

Research has also shown that within the industry racial discrimination from employers and customers has yielded a wage gap between Black women and white men in 'front-of-house', tipped positions of \$6.19 per hour.⁹ As long as these workers must rely on tips to feed their families, they are subject to the biases and harassment of customers.

Finally, the two-tiered wage system has resulted in the restaurant industry having the highest rates of wage theft of any industry in the United States. A 2010 US Department of Labor comprehensive study of restaurants found an 84% violation rate with regard to employers complying with the rules surrounding the two-tiered wage system, including the requirement for employers to ensure that tips are bringing workers to the full minimum wage or paying workers the difference themselves.¹⁰ Our 2023 survey of 2000 restaurant

⁴ Allegretto, S. and Cooper, D. (2014) Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage. Economic Policy Institute.

<https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

⁵ Allegretto, S. et al. (July 2014). Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage. Economic Policy Institute.

<https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

⁶ One Fair Wage. (March 2021). The Tipping Point: How the Subminimum Wage Keeps Income Low and Harassment High. https://onefairwage.site/wp-content/uploads/2021/03/OFW_TheTippingPoint_3-1.pdf.

⁷ Johnson, S.K. and Madera, J. M. (January 2018). Sexual Harassment Is Pervasive in the Restaurant Industry, Here's What Needs to Change. Harvard Business Review.

<https://hbr.org/2018/01/sexual-harassment-is-pervasive-in-the-restaurant-industry-heres-what-needs-to-change>.

⁸ One Fair Wage Robert Wood Johnson Foundation Study (forthcoming). From June 6, 2022 until June 2023, One Fair Wage conducted surveys with over 1000 workers in Illinois who reported that they are current or former tipped workers. The survey asked primarily about working conditions in the restaurant industry since the start of the pandemic. An online version of the survey was sent to a pool of tipped service workers across the country, and an in-person version was utilized by surveyors in Colorado, Michigan, Illinois, Louisiana, Ohio, New York and Puerto Rico. This data is not exhaustive

⁹ One Fair Wage. (September 2022). Intentional Inequality - Black Women's Equal Pay Day.

<https://onefairwage.site/intentional-inequality>

¹⁰ Weil, D. Boston University. (May 2010). Improving Workplace Conditions Through Strategic Enforcement. U.S. Department of Labor. <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/strategicEnforcement.pdf>.

workers nationwide found that 50% reported regularly not receiving enough tips to bring them to the full minimum wage and their employer not making up the difference.¹¹

With such high rates of violations, until we end the subminimum wage for tipped workers, greater regulation and enforcement has been critical to ensure that tipped workers receive at least the basic protections all other workers receive, including the minimum wage. The Trump Administration ended the 80/20 rule, which had for years required employers to ensure that subminimum wage tipped employees interact with customers who could provide tips at least 80% of the time¹². The Biden Administration restored the 80/20 rule, which had been critical to ensure that workers are not being asked to do work that cannot produce tips while being paid a subminimum wage that requires them to get tips in order to earn the minimum wage.¹³ Similarly, given the very high rates of non compliance with these rules, the Biden Harris Administration's increased enforcement of the rules surrounding the two-tiered wage system have been essential to ensure tipped workers earn at least the minimum wage and do not have their tips misappropriated by management or co-workers who should not be in a tip pool¹⁴.

In contrast, in 2017, the Trump Administration attempted to make tips the property of owners rather than workers.¹⁵ We organized 400,000 tipped workers and their allies to submit comments to the US Department of Labor under Trump, resulting in federal legislation passed in 2018 with bipartisan support that made tips the property of workers permanently and guaranteed that employers cannot take workers' tips.¹⁶

The Trump Administration also limited when civil monetary policies could be assessed against employers that stole tips; under these limitations, employers could only be held liable for stealing tips if workers could prove that they had done so willfully and/or

¹¹ One Fair Wage Robert Wood Johnson Foundation Study (forthcoming). From June 6, 2022 until June 2023, One Fair Wage conducted surveys with over 1000 workers in Illinois who reported that they are current or former tipped workers. The survey asked primarily about working conditions in the restaurant industry since the start of the pandemic. An online version of the survey was sent to a pool of tipped service workers across the country, and an in-person version was utilized by surveyors in Colorado, Michigan, Illinois, Louisiana, Ohio, New York and Puerto Rico. This data is not exhaustive

¹² Shierholz H. et al. (December 2017) Employers would pocket \$5.8 billion of workers' tips under Trump administration's proposed 'tip stealing' rule. Economic Policy Institute.
<https://www.epi.org/publication/employers-would-pocket-workers-tips-under-trump-administrations-proposed-tip-stealing-rule/>.

¹³ Federal Register. (October 2021). Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal. National Archives.
<https://www.federalregister.gov/documents/2021/10/29/2021-23446/tip-regulations-under-the-fair-labor-standards-act-flsa-partial-withdrawal>.

¹⁴ Shierholz H. et al. (December 2017) Employers would pocket \$5.8 billion of workers' tips under Trump administration's proposed 'tip stealing' rule. Economic Policy Institute.
<https://www.epi.org/publication/employers-would-pocket-workers-tips-under-trump-administrations-proposed-tip-stealing-rule/>.

¹⁵ Ibid.

¹⁶ U.S. Department of Labor. (Sept 2024). Tip Regulations under the Fair Labor Standards Act (FLSA).
<https://www.dol.gov/agencies/whd/flsa/tips>.

repeatedly - rules that were never in the Fair Labor Standards Act¹⁷. The Biden-Harris Administration fixed this limitation on tipped workers' rights, by making it clear that workers would be able to obtain recompense for stolen tips regardless of the limitations placed on tipped workers' rights by the Trump Administration¹⁸.

A Different Way: 7 Fair Wage States

Seven states have always required a full minimum wage with tips on top - California, Oregon, Washington, Nevada, Minnesota, Montana and Alaska.¹⁹ These states have had the same or higher restaurant sales per capita, small business restaurant growth rates, restaurant industry job growth rates, and tipping averages as the 43 states with a subminimum wage.²⁰

In fact, according to the United States Bureau of Labor Statistics, the number of establishments in subminimum wage states grew from 537,130 to 567,975 or an increase of 5.74 percent. While fair wage states grew at a faster rate at 6.05 percent from 128,613 to 136,405. This is a 5.4 percent difference than subminimum wage states. A gap in business growth that will only continue to naturally widen if left unchecked.²¹

Workers in these 7 states have also reported one half the rate of sexual harassment as the states that allow tipped workers to be paid a subminimum wage as little as \$2.13 an hour.²²

Impact of the Pandemic

During the pandemic, service and tipped workers across the country faced significantly higher rates of job losses and economic insecurity, with losses highly concentrated among women of color.²³ In May of 2020, our survey found that as many as 60 percent of service workers either did not qualify or were unsure if they qualified for unemployment

¹⁷ Shierholz H. et al. (December 2017) Employers would pocket \$5.8 billion of workers' tips under Trump administration's proposed 'tip stealing' rule. Economic Policy Institute. <https://www.epi.org/publication/employers-would-pocket-workers-tips-under-trump-administrations-proposed-tip-stealing-rule/>.

¹⁸ Ibid.

¹⁹ ROC United. (2018). Better Wages, Better Tips: Restaurants Flourish with One Fair Wage. New York, NY: ROC United. https://chapters.rocunited.org/wp-content/uploads/2018/02/OneFairWage_W.pdf.

²⁰ ROC United. (2014). The Great Service Divide: Occupational Segregation & Inequality in the US Restaurant Industry. https://chapters.rocunited.org/wp-content/uploads/2014/10/REPORT_The-GreatService-Divide2.pdf.

²¹ U.S. Bureau of Labor Statistics. (Sept, 2024). Quarterly Census of Employment and Wages. Private, NAICS 722 Food services and drinking places, All States and U.S. 2021- 2023 Annual Averages, All establishment sizes. <https://data.bls.gov/PDQWeb/ew>.

²² National Restaurant Association. (March 2022). Restaurant Owner Demographics Data Brief. <https://restaurant.org/getmedia/ad96e3a8-4fb1-492d-a5ae-0b3dd53a61ef/nra-data-brief-restaurant-owner-demograph-ics-march-2022.pdf>.

²³ Ewing-Nelson, C. (January 2021). All of the Jobs Lost in December Were Women's Jobs. National Women's Law Center. <https://nwlc.org/wp-content/uploads/2021/01/December-Jobs-Day.pdf>.

insurance.²⁴ Many tipped workers returning to work in restaurants experienced sharp declines in tips, increased hostility in response to enforcing COVID-19 safety measures, and increased sexual harassment from customers. By December 2020, 41 percent of workers nationwide reported an increase in sexualized comments from customers.²⁵ Hundreds of women shared stories of male customers asking them to take their mask down so that they could know how much to tip them.²⁶

Workers Have Had Enough - Post Pandemic Recovery

These conditions and the persistence of a subminimum wage have led many tipped and service industry workers in general to leave the industry altogether.²⁷ The pandemic devastated the industry, seeing a sharp decline in both the number of establishments and the number of people willing to work under these conditions. Now, not four years later, the industry is recovering because the very same people who cannot make a living wage still need what little money in their pockets they can receive to live and in turn bolster the economy themselves. From 2021 to 2023, the United States Bureau of Labor Statistics reported in the Quarterly Census of Employment and Wages data of food services and drinking places employment growth in food services and drinking places within fair wage states outpaced subminimum wage states by 4 percentage points – 31 percent difference. While subminimum wage states saw employment in these establishments increased by 13 percent (8,709,708 workers in 2021 to 9,813,752 in 2023), employment increased by 17 percent in fair wage states (1,949,942 workers in 2021 to 2,272,162 in 2023).²⁸

This may lead to the concern of one of the most inaccurate myths about raising the minimum wage, that raising wages leads to job losses. Not only is it an over simplification to equate raising wages would directly lead to a driver in job losses, it also neglects how increased wages drive workers toward open positions and to create more value in their work. Our survey found that over half (53 percent) of restaurant workers were considering leaving the industry and, unsurprisingly, over three-quarters (76 percent) reported their top reason for leaving was due to low wages and tips. This shift in power among tipped and service workers has spurred some restaurant owners and state governors to blame

²⁴ One Fair Wage. (May 2020). Locked Out By Low Wages: Service Workers' Challenges With Accessing Unemployment Insurance During COVID-19. New York, NY: One Fair Wage.
https://onefairwage.site/wp-content/uploads/2020/11/OFW_LockedOut_UI_COVID-19_-FINALUPDATE.pdf.

²⁵One Fair Wage. (December 2020). Take off your mask so I know how much to tip you: Service Workers' Experience of Health & Harassment During COVID-19. New York, NY: One Fair Wage.
https://onefairwage.site/wp-content/uploads/2020/12/OFW_COVID_WorkerExp_MA_4.pdf.

²⁶Ibid.

²⁷ Selyukh, A. (July 20, 2021). Low Pay, No Benefits, Rude Customers: Restaurant Workers Quit At Record Rate. NPR.
<https://www.npr.org/2021/07/20/1016081936/low-pay-no-benefits-rude-customers-restaurant-workers-quit-at-record-rate>.

²⁸ U.S. Bureau of Labor Statistics. (Sept, 2024). Quarterly Census of Employment and Wages. Private, NAICS 722 Food services and drinking places, All States and U.S. 2021- 2023 Annual Averages, All establishment sizes.
<https://data.bls.gov/PDQWeb/ew>.

workers and prematurely cut unemployment benefits, which resulted in little to no effect on employment rates nor workers willingness to return to the industry for subminimum wages^{29, 30}.

In response to the massive staffing crisis that resulted from the pandemic, thousands of restaurants nationwide have risen above the myth and raising wages in order to recruit enough staff to fully reopen.³¹ Since September 2021, we have found more than 7,000 restaurants paying an average wage of \$13.50 plus tips.^{32 33}

Many of these restaurant owners have told us that they cannot do it alone; they need policy that will end the subminimum wage for tipped workers for two reasons: 1) to create a level playing field, in which all employers have to raise wages; and 2) they need policy that will signal to thousands of workers that there will be permanent policy change to raise wages that will make it worth returning to work in restaurants.

National Momentum and Support to Pass One Fair Wage

As a result of the massive upheaval in the restaurant industry, states across the country have been ending the subminimum wage for tipped workers.

With industry-wide wage increases, there is national momentum for change; in November 2022, 76 percent of Washington, DC voters voted to raise the wage for tipped workers from \$5.35 to the full minimum wage of \$16.10 per hour. In September 2023, Chicago City Council voted this bill out of committee 9-3, and they are about to pass One Fair Wage into law on October 4, 2023.³⁴ Finally, the Michigan Supreme Court just made Michigan the eighth state to end the subminimum wage for tipped workers, raising wages for 1.2 million workers statewide.³⁵ One Fair Wage policy is moving on the ballot in Massachusetts and as legislation in, IL MD, NY and many other states.

²⁹Chaney-Cambon, S. and Dougherty, D. (September 2021). States That Cut Unemployment Benefits Saw Limited Impact on Job Growth. Wall Street Journal.

<https://www.wsj.com/articles/states-that-cut-unemployment-benefits-saw-limited-impact-on-job-growth-11630488601>.

³⁰ One Fair Wage. (July 2021). The Impact (or Lack Thereof) of Ending Unemployment Insurance on Restaurant Workers' Willingness to Work for Subminimum Wages. New York, NY: One Fair Wage.

https://onefairwage.site/wp-content/uploads/2021/07/OFW_HelpWanted.pdf.

³¹Black, J. (September 2021). How yo Make an Unloved Job More Attractive? Restaurants Ticker With Wages. New York Times. <https://www.nytimes.com/2021/09/20/dining/restaurant-wages.html>.

³²One Fair Wage. (September 2021). Raising Wages to Reopen: Restaurants Nationwide Raising Wages to Save Their Businesses After COVID-19. New York, NY: One Fair Wage.

https://onefairwage.site/wp-content/uploads/2021/09/OFW_RasingWagesToReopen_3.pdf.

³³ OFW Employer Database

³⁴ Chicago Eater, September 2023.

<https://chicago.eater.com/2023/9/19/23881229/chicago-tipped-minimum-wage-ordinance-one-fair-wage-victory-restaurant-association-saru-jayaraman>

³⁵ Michigan Supreme Court. (July 2024). MOTHERING JUSTICE v ATTORNEY GENERAL.

https://www.courts.michigan.gov/siteassets/case-documents/uploads/opinions/final/sct/165325_115_01.pdf.

President Biden has been a champion of raising the minimum wage and ending the subminimum wage for tipped workers, including this policy in his federal Raise the Wage Act that was part of his initial \$1.9 trillion COVID-19 relief package³⁶. In 2021, while addressing restaurant owners concerns regarding the labor shortage, President Biden urged employers to pay higher wages to workers, and specifically called out the need to pay tipped workers a \$15 minimum wage plus tips³⁷. By passing One Fair Wage, legislators can both align with President Biden's agenda and allow independent restaurant owners across the states to fully reopen, and their workforce to fully recover.

³⁶ Jacobson, L. (January 2021). What's in Joe Biden's \$1.9 trillion American Rescue Plan?.

PolitiFact. <https://www.politifact.com/article/2021/jan/15/whats-joe-bidens-19-trillion-american-rescue-plan/>.

³⁷ Brest, M. (July 2021). Biden tells restaurateurs to pay workers more amid labor shortage. Washington Examiner. <https://www.washingtonexaminer.com/news/biden-restaurant-increase-wages-labor>.