

ONE FAIR WAGE FACTSHEET

NEW YORK



The subminimum wage for tipped workers, still \$2.13 an hour at the federal level, is a legacy of slavery that disproportionately affects women and people of color. It is an economic, racial and gender justice issue that has only worsened since the onslaught of COVID-19. The subminimum wage both nationally and in New York disproportionately impacts workers of color and women. Today, over half of tipped workers in New York State are workers of color and that rate rises in New York City to 85%.¹ With the pandemic, the subminimum wage resulted in tens of thousands of New York State tipped workers being denied unemployment insurance. The subminimum wage is a critical barrier to ensuring public health, many restaurant workers felt compelled to return to work even before they felt safe, were forced to rely on diminishing tips, and fear enforcing safety measures upon the very customers who pay the majority of their wages. It has also become a life-threatening situation for essential women service workers, who are being asked by male customers to remove their masks to judge their looks and their tips on that basis.^{2,3}

We need to fix this. We need One Fair Wage.

The restaurant industry is one of the largest and fastest growing sectors of the NY economy, but also the lowest paying.⁴ That is largely due to the subminimum wage for tipped workers, still \$2.13 an hour at the federal level. Although many states have a subminimum wage that is higher than \$2.13 an hour, New York along with other 42 other states have persisted with a subminimum wage for tipped workers, and nearly 40 of those states have a subminimum wage for tipped workers that is \$5 or less.⁵

At Emancipation, the restaurant lobby sought to hire newly freed slaves, not pay them anything, and have them live entirely on tips – a mutation of the original concept of tips, which were meant to be a bonus on top of wages, not wage replacement.⁶ There are seven states that have rejected this legacy of slavery and have raised the tipped minimum wage to the full minimum wage with tips on top, establishing One Fair Wage. In those states poverty is lower, restaurant receipts are higher, AND tipping is the same, if not higher than everywhere else.⁷ Those seven states also have half the rate of sexual harassment in the restaurant industry as the states with a subminimum wage of \$2.13; the subminimum wage is thus the source of the fact that the restaurant industry has the highest rate of sexual harassment claims in the country.⁸

The Subminimum Wage is a Public Health Crisis

- * Recent research published by the CDC found that adults who tested positive for COVID-19 were approximately twice as likely to have reported dining at a restaurant than were those with negative test results. Furthermore, compared to a number of other potential exposure activities, participants reported that they were less likely to see customers adhering to recommendations such as wearing a mask or social distancing.⁹ Over 80% of workers report being within six feet of at least one person who is not wearing a mask every shift, and more than one third report being within six feet of 30 or more maskless individuals on every shift.¹⁰
- * In New York and numerous states around the country, restaurant workers are reporting that tips are down 50-70%. Nearly 40% of these workers have lost more than 70% in tips.¹¹ Over half of workers report feeling reluctant to enforce COVID-19 safety measures out of concern that customers will tip them less.¹² Nearly 80% of workers surveyed either experienced or witnessed hostile behavior from customers in response to staff enforcing COVID-19 safety protocols.¹³ Paying workers a full minimum wage would mean they are not relying on declining tips for the majority of their wages and thus feel some security in enforcing public health protocols.

One Fair Wage is a Gender and Racial Equity Cornerstone for Restaurant Workers

- * Nearly half of all tipped New York workers are people of color and more than 60% are women largely employed in casual restaurants where wages and tips are limited.¹⁴ Women who work in casual restaurants, in particular, struggle with the highest rates of economic insecurity and sexual harassment of any industry because they must tolerate inappropriate customer behavior to feed their family in tips. In New York, since COVID-19, 41% of workers have reported a noticeable increase in levels of unwanted sexualized comments from customers, and hundreds of essential women service workers reported comments by male customers asking them to remove their masks so they could judge their looks and their tips on that basis. One male customer is quoted saying, "Come on, sweetie. Lemme see that pretty face under there. Take it off for me, will you? Just a quick flash."¹⁵
- * Although workers of color make up 47% of New York tipped positions within casual dining restaurants, they comprise only 32% of higher paid tipped positions within fine dining establishments. Meanwhile women make up 62% of these workers but 33% of the top tier positions within fine dining restaurants. Even when people of color and women are admitted into higher-tip ping establishments, research has shown that, on average, customers tip white servers more than they tip Black servers.¹⁶ There is nearly a \$8 gap between front-of-house tipped restaurant workers in New York who are white men versus Black women; a gap that is 60% higher in New York than it is nationwide. NY and Massachusetts are second only to Alabama in having the highest race-wage gap among tipped workers in the country.¹⁷

During COVID-19 the Subminimum Wage has Further Impoverished Workers

- * Although New York State reported one of the highest rates of processed unemployment claims during the pandemic, surveys with service workers across the state reveal how many are ineligible for compensation. Surveys show that over 63% of tipped New York workers either unable to obtain unemployment insurance or uncertain if they qualified for unemployment insurance; this was especially true for workers of color who were more likely to work in casual restaurants earning cash tips.¹⁸ For workers of color surveyed, 73% reported these same barriers to accessing unemployment insurance and for applicants who completed our Spanish-language application that rate rose to 96%.¹⁹
- * Newly jobless restaurant workers in subminimum wage states were forced to live off of unemployment insur-

Of the millions of workers who lost their jobs as a result of COVID-19, 1 in 4 was a restaurant worker.



ance based on a subminimum wage, plus tips, while workers in One Fair Wage states received unemployment insurance calculated on a full minimum wage, plus tips. In New York, only 52% of surveyed tipped service workers reported that their state unemployment checks were based on their full wages including tips. For those surveyed applicants who did qualify for unemployment, more than 50% had to wait a month or more to receive their check, 35% had to wait 8 or more weeks.²⁰

- * The lack of benefits resulted in a severe crisis for workers, with millions struggling to feed their families and pay for rent and basic utilities. Of the 220,000 workers who applied to our One Fair Wage Tipped and Service Workers' Emergency Relief Fund, nearly 80% reported that they did not have enough money for two weeks of groceries, and 90% reported that they could not afford to pay the rent.²¹

Raising the Tipped Minimum Wage is Good for Employers and Workers

- * Since the COVID-19 pandemic, hundreds of independent restaurant owners have decided to transition to One Fair Wage, per the industry's trade publications *Nation's Restaurant News* and *Full-Service*

ONE FAIR WAGE STATES:

Alaska
California
Minnesota
Montana
Nevada
Oregon
Washington

The restaurant industry is the largest employer of workers who earn less than the minimum wage.



Restaurants Magazine.^{22,23} From New York to New Orleans, celebrity restaurateurs like Jose Andres, Tom Colicchio, Rick Bayless, Danny Meyer, David Chang, and hundreds of small independent restaurateurs are choosing to transition One Fair Wage with tips on top.^{24,25}

- * The seven states that require all employers to pay One Fair Wage – a full minimum wage with tips on top – maintain thriving restaurant industries and strong employment.²⁶
- * Historically, restaurant sales growth is higher in states that require employers to pay the full minimum wage to tipped workers. Restaurant sales in One Fair Wage states grew by 17 percent, according to 2017-2018 restaurant trade lobby estimates, compared to 15.6 percent in subminimum wage states.²⁷ California, a One Fair Wage state, had the highest restaurant sales, topping over \$97 million, reflecting an annual restaurant sales increase of 18 percent.²⁸
- * Restaurant sales per capita are higher in states that require employers to pay the full minimum wage to tipped workers. Restaurant sales in New York were projected to grow by 3.6%, a rate lower than individual rates of six of the seven equal treatment or OFW states.²⁹ In 2018, restaurants in One Fair Wage states saw 2018 average sales of \$1.11 million per eating and drinking establishment, and \$64,000 per employee, compared to sales of \$1.06 million per establishment and \$57,000 per employee in subminimum wage states.³⁰
- * Full-service restaurant employment (FSRE) growth rates are higher in states that require employers to pay the full minimum wage to tipped workers. In California and Nevada, tipped workers in restaurant and service jobs earn a minimum wage of \$13 and \$8.25 an hour before tips, respectively, and those two states have the fastest employment growth.^{31,32} Whereas New York tipped workers in restaurant and service jobs earn a minimum wage of \$8.25 and \$10.46, and the employment growth has remained behind OFW states.³³
- * Tipped workers in all of the One Fair Wage states continue to earn significant income in tips. Before COVID-19 customers left on average around 16 per cent more in tips in both One Fair Wage and subminimum wage regions.³⁴ In states with One Fair Wage, workers experience poverty levels that are 27% lower than in \$2.13 states, 17% lower than other states with a subminimum wage and 10% lower than New York.³⁵

- * Tipping amounts reported by workers do not statistically vary between One Fair Wage and subminimum wage regions. However, among higher earners, servers in equal treatment cities report higher wages and higher tips than their counterparts in unequal treatment states.³⁶ Servers earn the highest tips in San Francisco, higher than in New York City and other major metropolitan areas.³⁷

The Subminimum Wage Opens the Door to Wage Theft

- * Although federal law requires employers to ensure that tips bring workers to the full minimum wage or else pay workers the difference, in investigations of over 9,000 restaurants, the federal Department of Labor found that 84 percent of restaurants were in violation of wage and hour laws and 1,200 of those violations were for failure to bring tipped workers' wages up to the minimum wage.³⁸ As a result, the restaurant industry is the largest employer of workers who earn less than the minimum wage.³⁹
- * Major chains such as Darden routinely settle cases of wage theft for millions of dollars. In a recent case, TGI Friday's agreed to settle a wage lawsuit for \$19.1 million dollars.
- * Even if there were 100% compliance with this rule rather than 16% compliance, the subminimum wage would still force a workforce of mostly women and disproportionately women of color to live off tips as a majority of their income, subjecting them to sexual harassment and racial inequity as described above.



At a time of unprecedented economic and health crisis, we need to protect one of our largest and fastest-growing workforces. One Fair Wage for all workers, regardless of industry, is now critical not only to overcome a legacy of slavery that perpetuates gender and race discrimination, but now also to ensure the survival of this essential frontline workforce.



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END NOTES

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