



No Rights, Low Wages, No Service

**How Increased Violations of
Workers' Rights in 2021,
Coupled with High Harassment
and Low Wages and Tips,
Have Pushed Workers to
Leave the Service Sector**

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I. EXECUTIVE SUMMARY



With the onset of the COVID-19 pandemic in 2020, thousands of service workers reported experiencing elevated levels of hostility and harassment for enforcing COVID-19 safety measures, all while facing diminishing tips. These conditions can be directly traced to the persistence of the subminimum wage, which remains only \$2.13 an hour at the federal level.

In 2021, with the onset of the COVID variants and the end of most pandemic relief programs, tipped workers report finding themselves facing more risks and even worse conditions than the first year of the pandemic. Not only have health and safety risks remained prevalent in 2021, but workers also report that wage theft has increased, even while tips have reduced even further and sexual harassment has increased since last year. This brief documents findings of tipped workers' experience of working throughout the ongoing pandemic, the prevalence of wage theft in the tipped industry as a whole and whether these experiences have gotten better or worse compared to last year.

KEY FINDINGS

- 1. In general, over a third (34%) of workers report experiencing more violations of their rights in 2021, the second year of the pandemic, compared to 2020.** Wage theft is estimated to impact over 2.4 million workers annually costing them \$8 billion in minimum wage violations.¹ Previous estimates suggest wage theft is particularly common in the restaurant industry, with 84% of investigated restaurants having some type of minimum wage violation.²
- 2. Over a third (35%) of tipped workers report their tips and additional wages did not bring them up to their state's minimum wage.** Nearly one third (32%) report this violation of their rights occurred more in 2021 than in 2020.
- 3. Some violations impacted men more than women;** nearly half (47%) of tipped workers report not being compensated for "time and a half" when they work overtime — women were 10% more likely to report not being paid for overtime.
- 4. Overall, workers report that the decline in tips and increase in sexual harassment and customer hostility experienced by tipped workers has gotten worse in 2021, even more so than in 2020.** Three quarters (75%) of tipped workers report their tips have decreased more this year and over half (54%) report an increase in hostility and harassment related to enforcing COVID-19 safety protocols. More than one in five (21%) reported that they were more likely in 2021 to receive less in tips due to their race, gender, or sexual orientation.

5. All of these factors have contributed to over half (54%) of all workers saying they are leaving the industry. Nearly 8 in 10 workers (78%) say they will only stay if they receive a full, livable wage with tips on top.

This report is based on a survey of 238 tipped workers conducted online, telephone and in-person from August 31 to September 14, 2021 across the country. We emailed surveys to the 260,000 applicants to the One Fair Wage Emergency Fund on August 31, 2021 and collected responses until September 14, 2021, by which over 300 workers had already responded. Of those who responded, 200 reported that they were currently employed as tipped workers, and were thus able to answer most of the questions. Another 38 survey responses were collected by telephone and in-person.

NATIONAL TOTAL RESPONSES: 238 | 9/14 | 12:38PM ET

TABLE 1 How Tipped Workers Fared in 2021 Compared to 2020 Source: One Fair Wage Survey 08/21 - 9/21

75%	Tips have decreased more this year	30%	Felt more reluctant to enforce COVID-19 safety protocols this year out concern customers would tip less
54%	Hostility or harassment related to enforcing COVID-19 safety protocols has increased this year	31%	Overall unwanted sexualized comments from customers has increased this year

TABLE 2 Tipped Workers' Experience of Wage Theft Source: One Fair Wage Survey 08/21 - 9/21

35%	Tips and additional wages from employer do not bring them up to the minimum wage in the state%	46%	Employer does not compensate for "time and a half" when working overtime (beyond 40 hours)
Wage Theft in 2021 Compared to 2020			
32%	Tips are more likely to not bring my wage up to the state minimum wage this year	21%	I have increasingly received lower tips based on my race, gender, and/or sexual orientation this year
28%	I'm more likely to not get 'time and a half' when I work overtime (more than 40 hours) this year	34%	I've experienced more violations of my rights this year

TABLE 3 Tipped Workers Leaving the Industry Source: One Fair Wage Survey 04/21 - 9/21

54%	Since the pandemic, have considered leaving their job		
Reasons for Leaving Job			
76%	Wages and tips are too low	22%	Concerns about hostility and harassment from coworkers and/or management
58%	Concerns about COVID-19 safety	30%	ransitioning to a different industry
41%	Concerns about hostility and harassment from customers		
What Would Make Them Stay			
78%	A full, stable, livable wage	34%	Better COVID-19 safety protocols and enforcement
38%	Increased hours	37%	Health insurance or benefits
48%	Paid sick leave	37%	Less hostility / improved working environment

II. INTRODUCTION

OVERALL COMPARISON OF 2020 VS 2021

Last year's devastation of the restaurant workforce as a result of the coronavirus outbreak continues to impact workers and employers in the service sector. Workers and employers are now having to deal with ongoing staffing crisis in the restaurant and service sector as a whole, the COVID-19's more contagious variants causing surges in cases and hospitalizations across the country, and the inconsistencies in safety protocols and mandate enforcement across the country. All these burdens fall particularly hard on tipped workers, who more often than not are on the frontlines of enforcing health and safety as the general public returns to their normal outings in restaurants, coffee shops, hotels, entertainment centers, and bars. Understaffed and overworked, restaurant workers are now facing the additional burdens of policing vaccination and masking rules while facing increased customer hostility and harassment and violations of their rights.



III. WAGE THEFT AMONGST TIPPED WORKERS



BACKGROUND

The Federal Labor Standards Act (FLSA) of 1938 established basic worker protections and set a federal minimum wage with provisions for overtime pay.³ Although there have been a variety of amendments to the FLSA in the past decade, none have been sufficient enough to keep pace with the dynamics of today's workforce.⁴ This is largely due to waning investment in federal and state agencies responsible for investigating minimum wage violations.⁵ In 2015, the Wage and Hour Division of the U.S. Department of Labor employed roughly the same number of investigators as it did nearly 70 years ago, despite the workforce growing from 22.6 million to 135 million during this period.⁶ Furthermore, states have varying levels of labor protections and coverage; as a result, it is difficult for the average worker to know what their rights are and what options they have to report violations from their employers.

Because government investigations into employers are rare, workers often bear the burden of enforcing their own labor protections. Laws typically require workers to come forward and report violations, either through complaints or lawsuits filed with the state or federal court.⁷ This system is particularly challenging for low wage workers, who are more likely than workers overall to report wage theft or workplace violations.⁸ Women, people of color, and immigrant workers are significantly more likely to report experiencing wage theft from their employers — largely due to their heavy concentration in minimum wage and below minimum wage occupations.⁹ Tipped workers receive a subminimum wage under the FLSA; as result, they are especially vulnerable to wage violations and face far greater economic insecurity.¹⁰ In 43 states, employers of tipped workers are allowed to credit workers' tips against their state's minimum wage. For example, in Alabama, employers can pay tipped workers only \$2.13 per hour as long as their workers' tips over the course of a week raise their effective hourly pay to at least \$7.25. If tips are inadequate, the employer is required to pay workers the difference. However, according to a report by the Wage and Hour Division of the U.S. Department of Labor, as many as 84% of investigated restaurants reported having some type of wage violation with regard to the two-tiered wage system and ensuring that workers' tips bring them to the full minimum wage.¹¹ Even if employers are found to have illegally underpaid workers, they are typically only required to pay back a portion of the stolen wages.¹² Nationally, this has amounted to as many as 16,000 employers getting away with \$20.3 million in unpaid wages since 2005, according to the Center for Public Integrity.¹³

It is more than evident that reform is needed to effectively ensure millions of workers, especially those who rely on tips, are compensated for their work and have meaningful regulation to enforce their rights.

NEW FINDINGS

Wage Theft For Service Workers Worsened in 2021



Wage theft disproportionately harms low wage workers and especially workers that earn a subminimum wage.¹⁴ These workers are those least likely to be able to afford the loss of income, especially in the context of a global health and economic crisis. In May 2020, as many as 86% of service workers reported being unsure or unable to pay their rent or mortgage and 56% report only being able to afford groceries for up to two weeks or less.¹⁵ Despite the unprecedented attention on the inequities of service and tipped workers exposed by the COVID-19 pandemic, these workers continue to struggle for their rights in the workplace.

In 2021, instances of wage theft have only gotten worse for tipped workers. Overall, over a third of workers reported that violations of their rights increased in 2021. Our survey found that over a third (34%) of tipped workers report their tips and additional wages fail to bring them up to their state’s minimum wage. In addition, nearly the same proportion (32%) of tipped workers report it has only gotten worse this year, even more so than in 2020.

Moreover, our survey found that wage theft particularly impacts the lives of women. Nearly half of all workers (46%) and over half (51%) of women reported their employer failed to compensate them for “time and a half” when working overtime or beyond 40 hours a week. Women were also more likely to report receiving less in tips based on their race, gender, and sexual orientation.

TABLE 4 Tipped Workers’ Experience of Wage Theft Source: One Fair Wage Survey 08/21 - 9/21

35% Tips and additional wages from employer do not bring them up to the minimum wage in the state%

46% Employer does not compensate for “time and a half” when working overtime (beyond 40 hours)

Wage Theft in 2021 Compared to 2020

32% Tips are more likely to not bring my wage up to the state minimum wage this year

21% I have increasingly received lower tips based on my race, gender, and/or sexual orientation this year

28% I’m more likely to not get ‘time and a half’ when I work overtime (more than 40 hours) this year

34% I’ve experienced more violations of my rights this year

IV. SEXUAL HARASSMENT AMONGST TIPPED WORKERS

BACKGROUND

The restaurant industry is well known for having the highest rates of sexual harassment of any industry.¹⁶ These high levels can be directly attributed to subminimum wage for tipped workers, who are overwhelmingly women and disproportionately people of color. A nationally representative survey of women in the restaurant industry found that as many as 71% of restaurant workers report being sexually harassed at least once during their time in the industry. Tipped workers were found to be harassed at a significantly higher rate than their non-tipped counterparts and were sexually harassed more frequently.¹⁷ By comparison, tipped workers in the seven states that have ended the subminimum wage experience half the rate of sexual harassment reported by tipped workers in states that maintain the federal subminimum wage.¹⁸ Because tipped workers in the 43 subminimum wage states are reliant on tips for the majority of their income, they are forced to tolerate inappropriate and degrading customer behavior in order to make a living.

The pandemic has further exacerbated the power dynamic of tipped workers. Last year, thousands of workers reported that their tips had declined significantly, making them even more dependent on tips and therefore even more vulnerable to have to tolerate sexual harassment.¹⁹ By December 2020, 41% of service workers reported an increase in levels of sexual harassment and hundreds of workers shared their stories of customers telling them to remove their masks in order to determine how much to tip them.²⁰

NEW FINDINGS

Customer Hostility and Sexual harassment Worsened in 2021

Nearly a third (31%) of tipped workers overall and 34% of female tipped workers reported that customer hostility and sexual harassment from customers has gotten worse this year, compared to only 22% of their male counterparts. Women were also more likely than men to report their tips declined even further in 2021 than in 2020. To the detriment of public health, particularly in regions that are requiring restaurants to check customer proof of vaccination, nearly one third of workers (31%) and more than one third of women (34%) reported that they were reluctant to enforce COVID-19 safety protocols out of concern that they would receive less money in tips.

TABLE 5 How Tipped Workers Fared in 2021 Compared to 2020 Source: One Fair Wage Survey 08/21 - 9/21

75% Tips have decreased more this year	30% Felt more reluctant to enforce COVID-19 safety protocols this year out concern customers would tip less
54% Hostility or harassment related to enforcing COVID-19 safety protocols has increased this year	31% Overall unwanted sexualized comments from customers has increased this year

V. RESTORING WORKER PROTECTIONS — ENDING THE SUBMINIMUM WAGE

LABOR SHORTAGES POST-PANDEMIC

Employee turnover has been a longstanding issue for the restaurant industry, even prior to the pandemic. In 2018, the National Restaurant Association estimated the annual turnover rate of restaurants to be as high as 74.9%.²¹ Although various studies confirm the fact that one of the main reasons restaurant workers leave their jobs to pursue higher wages, efforts to increase the minimum wage are continuously stymied at the state and federal level by elected officials and lobbying groups arguing that raising wages would hurt businesses and the economy. These arguments have persisted despite evidence that the seven states that have ended the subminimum wage for tipped workers experience higher employment, sales, and establishment growth.²²



Considering the pre-existing low wages, high levels of sexual harassment, and wage theft, compounded with the high risks and economic insecurity workers faced working throughout the pandemic, it is not surprising that restaurant employee turnover rates have only worsened with the pandemic. Our May 2021 survey of nearly 3,000 service workers found that over half (54%) are considering leaving their jobs and the majority (76%) are leaving because their wages and tips are too low. Not only are they leaving because their wages are too low, but over half (58%) are also concerned about COVID-19 health and safety risks.

This past summer, governors and state officials representing nearly half the country moved forward with prematurely ending federal unemployment insurance benefits for millions of workers, believing that it would force workers to return to low wage service jobs. However, with or without unemployment insurance, workers report they are leaving the industry. Among unemployed individuals in states where benefits were prematurely cut, 57% still report they are not considering returning to the service industry and the vast majority (79%) report their main reason for leaving is because wages and tips are too low.²³ In addition to this, data shows that prematurely ending unemployment insurance had little impact on overall job growth in these states.²⁴

WHAT TIPPED WORKERS WANT FROM EMPLOYERS

By far the most common factor that would make workers stay in the industry is having a full, stable, livable wage. Over three quarters (76%) of workers chose a full, stable, livable wage as the factor that would make them stay in the industry — 30 percentage points higher than any other incentive. Many

workers are realizing that they want more out of their jobs and have used their experiences of the pandemic to demand more from their employers. In return, many employers have begun to increase wages for tipped workers to address the staffing shortage prevalent in a recovering industry.²⁵

TABLE 3 Tipped Workers Leaving the Industry Source: One Fair Wage Survey 04/21 - 9/21

54% Since the pandemic, have considered leaving their job

Reasons for Leaving Job

76% Wages and tips are too low

58% Concerns about COVID-19 safety

41% Concerns about hostility and harassment from customers

22% Concerns about hostility and harassment from coworkers and/or management

30% Transitioning to a different industry

What Would Make Them Stay

78% A full, stable, livable wage

38% Increased hours

48% Paid sick leave

34% Better COVID-19 safety protocols and enforcement

37% Health insurance or benefits

37% Less hostility / improved working environment

VI. CONCLUSION: WHY STRONGER LABOR AND WAGE PROTECTIONS ARE NEEDED

The U.S. economy cannot fully recover or rebuild without effectively protecting all workers. This is especially important for tipped workers, who are essential to enforcing ongoing COVID-19 safety measures in restaurants and are especially vulnerable to high levels of wage theft and harassment from the customers and employers that rely on them. Using the unprecedented momentum brought on by the inequities exposed by the pandemic and consequent staffing crisis this year in the service industry, workers themselves have begun to demand more from both their employers and policymakers to change the industry for the better. Over 150,000 workers have signed on to the petition calling for One Fair Wage – a full minimum wage with tips on top.

ENDNOTES

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