



# RAISING THE BAR



A Worker, Employer and  
Consumer Guide to  
Implementation of Chicago's  
New One Fair Wage Ordinance

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FOOD LABOR  
RESEARCH CENTER  
UC BERKELEY



# CHICAGO'S ONE FAIR WAGE LAW IS GOING INTO EFFECT

Here's what it will mean for workers, employers and consumers.

## FOR TIPPED WORKERS



- › Starting July 1 the minimum wage for tipped workers will be \$11.02. Your employer should always ensure that tips bring you from \$11.02 to the full minimum wage of \$16.20 or pay you the difference.
- › You have a right to overtime pay. Hours worked over 40 hours/week or more than 8 hours per day are eligible for overtime pay and must be paid at a rate of \$19.12/hour.
- › You have a right to a workplace free of sexual harassment, wage theft, discrimination, or other forms of mistreatment.

- › Employers, managers, and supervisors are not entitled to keep any portion of the tips workers earn.
- › Your employer cannot retaliate against you for asserting your rights to receive fair pay or work in a workplace free from harassment or discrimination.

**One Fair Wage** is an organization of service workers dedicated to fighting for higher wages and better working conditions, and has a Legal Department that can support you if you feel your rights are being violated. Please contact us for support at (315) 992-8027 or at [legal@onefairwage.org](mailto:legal@onefairwage.org).

## FOR EMPLOYERS



- › Food vendors must clearly and prominently display item prices, service fees, and surcharges at the beginning of the ordering/sales process and must indicate if a charge is mandatory.
- › Food vendors must specify whether a service fee is a set dollar amount or percentage of the bill.

**RAISE High Road Restaurants** provides free training and technical assistance to support restaurants looking to learn how to implement wage increases and increase race and gender equity practices profitably. You can contact us for support at [info@highroadrestaurants.org](mailto:info@highroadrestaurants.org).

## FOR CONSUMERS



- › Service charges must be listed and described and consumers have a right to know the purpose of a service fee/surcharge.
- › Consumers are allowed to tip on top of an implemented service charge and food vendors cannot mislabel a "service fee" as a "tip" or "gratuity."

- › Food vendors must offer customers the option to receive a paper receipt.

Consumers can contact the **City's Business Affairs and Consumer Protection Office** with any questions or complaints by calling 311, going to [311.chicago.gov](http://311.chicago.gov), or downloading the CHI311 app.

# RAISING THE BAR

## INTRODUCTION

In October 2023, the City of Chicago took the historic step of passing the One Fair Wage ordinance, ending a legacy of slavery. This guide provides background information for workers, employers, and consumers about the history and future impacts of the new law.

In July 2024, Chicago's minimum wage workers will see their base pay increase to \$16.20 an hour, and tipped workers who have historically received a subminimum wage will see their cash wage from their employer increase to \$11.02 an hour, after which it will increase by 8 percent each year until it reaches full minimum wage parity in 2028.<sup>1</sup> These raises are important steps in ensuring the economic security of hundreds of thousands of workers and ensuring that Chicago's economy works for everyone. This important step was only possible because of the leadership of Mayor Brandon Johnson and the Chicago City Council, who in October 2023 ushered in fair wage legislation to raise tipped worker wages to at least the full minimum wage with tips on top.<sup>2</sup>



Thanks to the tireless efforts of workers, advocates, and volunteers, Chicago, Illinois will now move from being a jurisdiction that allows a subminimum wage for tipped workers to joining the seven states that have long required restaurants to pay a full minimum wage with tips on top, and Washington, DC which also recently passed fair wage legislation in November 2022. In Chicago, there are nearly 100,000 restaurant workers, 55 percent of whom are people of color, who will benefit from this wage increase, including approximately 35,000 tipped restaurant workers, along with another 9,000 non-restaurant tipped workers who will also benefit from the new law.<sup>3</sup> Of these tipped workers, 47 percent are people of color and 56 percent are women.<sup>4</sup>



In restaurants, the new law will both raise wages for traditionally tipped employees (mostly 'front of house' dining staff) and also increase income for workers who are not traditionally tipped in the kitchen, since federal law allows restaurants to share tips with non-management 'back of house' kitchen staff if all workers are paid at least the full minimum wage with tips on top.<sup>5</sup> In the seven states that require a full minimum wage for tipped workers with tips on top, a majority of 'back-of-house' kitchen staff receive tips to supplement their wages.

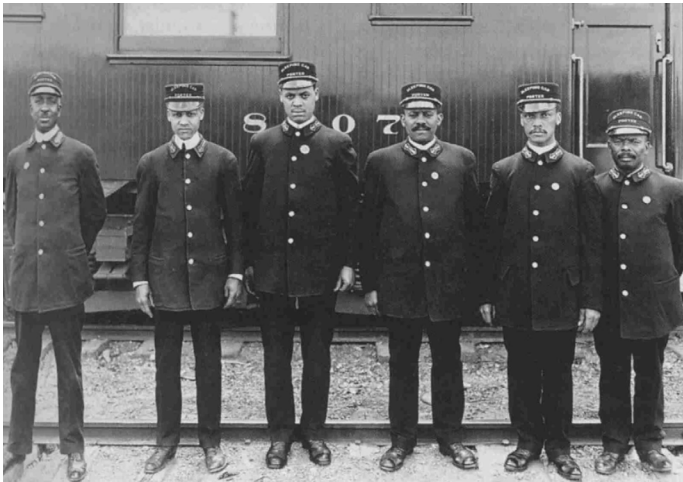
Chicago's raises for tipped workers start one year after Washington, DC began raising tipped worker pay after voters overwhelmingly passed Initiative 82 (I-82) in November 2022. One year after the passage of the bill, restaurants had increased by 10 percent, restaurant jobs had increased by 7 percent, and restaurant workers earnings, including wages and tips, had increased by 6.8 percent.<sup>6</sup>

## 1 BACKGROUND ON SUBMINIMUM WAGES NATIONALLY AND IN CHICAGO, IL

### The History of the Subminimum Wage for Tipped Workers

The subminimum wage for tipped workers is a direct legacy of slavery that was used mainly to suppress the incomes of Black workers after Emancipation. It also has a unique relationship with Chicago's history, both in its creation and in organizing to overcome it. After Emancipation, the restaurant industry sought to hire newly freed Black people without paying them, forcing them to live on tips.<sup>7</sup> This concept was made law, excluding a workforce of mostly Black women from the full minimum wage, even when other workers received the federal minimum wage as part of the New Deal in 1938.<sup>8</sup>

Chicago has a rich and complex history around the starting and ending of the subminimum wage, tied closely with the city's civil rights advancements for Black Americans. In 1862, George Pullman founded the Pullman Company. A pioneer in manufacturing, Pullman's company was one of the first railroad car manufacturing companies to mass-produce



sleeping cars. After the Civil War, Pullman hired thousands of formerly enslaved Black Americans to work on his trains as porters carrying luggage for White Americans but did not pay them a wage, forcing them to live on tips alone. In 1909, Pullman workers attempted to unionize and were met with fierce opposition. It was not until 1925, when the Pullman porter, A. Philip Randolph, led his fellow workers, that they succeeded, and in doing so formed the first Black union with the motto "Fight or Be Slaves."<sup>9</sup> This first Black union in Chicago, the Brotherhood of Sleeping Car Porters, was a vitally important part of the formation of the Civil Rights Movement. In fact, E. D. Nixon, a major organizer of the 1955 Montgomery bus boycott in Alabama, was a former Pullman porter.<sup>10</sup>

However, while these Black Chicagoans won the right to an actual wage, Black women hired by the restaurant industry who were forced to live on tips were not so fortunate. The National Restaurant Association moved its national headquarters to Chicago in 1919 with the express mission of suppressing food workers' wages — and for a century ensured that their workers did not obtain a full minimum wage and were forced to live on tips.<sup>11</sup> Yet, this July 1, is the beginning of reversing a century of mistreatment.

In the 43 states where it persists, the subminimum wage forces a population of tipped workers that is overwhelmingly women and disproportionately women of color to rely on customer tips for the majority of their income, making them more vulnerable than other workers to the race and gender inequities of tipping.<sup>12</sup>

Seven states — CA, OR, WA, NV, MN, MT and AK — have always done this differently — by paying a full minimum wage with tips on top, and have been better off for it.<sup>13</sup> These states have consistently performed better on all economic and industry metrics — better

employee retention, better small business growth rates, dramatically lower rates of reported sexual harassment, and steady or even higher rates of tipping.<sup>14</sup>



## The Pandemic & Tipped Workers

Even before the COVID-19 pandemic, the subminimum wage for tipped workers created major challenges and inequities for restaurant and service workers. During the pandemic, the subminimum wage became unlivable. In thousands of surveys, workers reported that sexual harassment, already at the highest levels in the restaurant industry of any industry in the US, increased dramatically through the pandemic.<sup>15</sup> At the same time, workers reported that overall pay, as a result of declining tips, decreased dramatically through the pandemic.<sup>16</sup> Wage gaps increased between Black and white workers, as a consequence of both occupational segregation and direct discrimination.<sup>17</sup> All of these factors led to workers leaving in record numbers. The restaurant industry is still not at the level of employment that it was prior to the pandemic and currently faces the worst staffing crisis in its history.<sup>18</sup>

## 2 IMPACTS OF THE ONE FAIR WAGE ORDINANCE

### No Impact on Employment Levels

Per a study by the Cornell Institute for Hospitality Labor and Employment Relations, a relatively modest mandated increase in employees' regular and tipped minimum wages in the past twenty years has not had large or reliable effects on the number of restaurant establishments or restaurant industry employment levels, although those increases have raised restaurant industry wages overall.<sup>19</sup> Even when restaurants have raised prices in response to wage increases, those price increases do not appear to have decreased demand or profitability enough to significantly or reliably decrease either the number of restaurant establishments or the number of their employees.<sup>20</sup>

### No Decrease in Demand

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### Reduction in Employee Turnover

The restaurant industry has had one of the highest turnover rates in the country — a widely recognized challenge for restaurant owners.<sup>22</sup> In 2019, the turnover rate for the accommodations and food services industry was 78.6 percent.<sup>23</sup> According to Black Box Intelligence, a marketing and human resources firm, turnover causes employers to lose nearly \$2,000 per hourly employee.<sup>24</sup> High turnover costs are largely due to the constant recruiting, interviewing, and training of replacement workers.

The recruitment pipeline is costly and includes the labor time invested by managers and new-hire training. High turnover costs are also associated with the loss of experienced

employees. Compared to experienced staff, new hires tend to be less productive, provide lower-quality service, and altogether require more attention from other staff for training and development needs.<sup>25</sup>



A majority of the costs associated with turnover can be addressed by paying workers well. A 2014 study by researchers at Cornell University demonstrated that employers can cut their employee turnover almost in half by increasing wages and providing better benefits.<sup>26</sup> The study also found that workers in ‘high road’ restaurants have higher morale, investment, and productivity, and were thus able to provide better service.<sup>27</sup> Underpaid workers are much less likely to be engaged at work and thus less productive, as they tend to view their job as a means of survival until they find a better option. Recent surveys

have confirmed that one of the main reasons employees leave their jobs is to pursue higher compensation.<sup>28</sup> When restaurant workers are taken care of, they stay longer, are more productive, and provide better quality service.<sup>29</sup>

## Increased Resilience to Market Fluctuations

Even amidst the COVID-19 pandemic, businesses in subminimum wage states have closed at higher rates than those in states that mandate a full minimum wage. The seven states that do not have a subminimum wage for tipped workers have had, on average, almost exactly the same rate of decline in open hospitality businesses, as states with a subminimum wage. According to data published by Opportunity Insights, the mean rate of decline in open businesses between January 2020 and January 2021 for the seven states that require a full minimum wage for tipped workers is 49.9 percent, and the mean rate of decline in open hospitality businesses for the other 43 states that allow a subminimum wage for tipped workers is 49.4 percent.<sup>30</sup> Some of these seven states have had the greatest COVID restrictions of almost any state, but still have not experienced a greater decline in open hospitality business rates than other states.<sup>31</sup>

Despite contentious political arguments to the contrary, economic research shows that businesses and workers alike benefit from a higher minimum wage. The increase in low-wage workers’ income generates increased spending in the local economy. The workers who would receive this wage increase are more likely to spend it, compared to higher-earning households.<sup>32</sup> A study by the Federal Reserve Bank of Chicago found that a \$1 raise for a minimum wage worker translates to an additional \$700 in consumer spending by their household over the course of a year.<sup>33</sup> This increased demand will provide some relief to the struggling restaurant industry.

### 3 WHAT YOU SHOULD KNOW ABOUT SERVICE CHARGES

After the passage of One Fair Wage in Washington, DC, the Restaurant Association of Metropolitan Washington, an affiliate of the National Restaurant Association, advised its members to switch from tips, which are the property of workers, to service charges, which are the property of owners, and take a portion of the wage increase from the service charge.<sup>34</sup> Washington, DC consumers reacted very negatively to these actions, given the vague and deceptive language many restaurants used to describe the service charges to consumers.<sup>35</sup> In response, the Washington, DC Attorney General issued guidance to all restaurants requiring them to clearly disclose how they were using the service charge — whether they were passing it on entirely to workers as a gratuity, or using all or some of the service charge to cover their own labor costs.<sup>36</sup> This clarity allowed Washington, DC consumers to know whether to tip on top of the service charge, which they continue to do.<sup>37</sup>

In Chicago, Mayor Brandon Johnson’s Administration has endeavored to get ahead of any deceptive trade practices that occur after the implementation of the One Fair Wage ordinance. Here we provide background information on service charges to give consumers a more in-depth understanding of the issue.

#### Service Charge vs. Tips

A service charge is any fee or charge set by the establishment.<sup>38</sup> It is not a gratuity since it is a set amount rather than something decided by the customer how much they would like to leave as a tip. Beyond being a set amount, service charges are also different from tips in that employers control how they may be used. Since a service charge is not a tip, it is subject to taxation by the Internal Revenue Service. This is because a tip is set by the customer, not the establishment, and is considered a gift directly to the employee and not direct revenue to the establishment.<sup>39</sup>

Tips can only be suggested to customers, not imposed. Legally they are the full property of employees and not employers.<sup>40</sup> In subminimum wage jurisdictions, employers must ensure that tips bring workers up to the full minimum wage. However, the U.S. Department of Labor found that 4 out of every 5 full-service restaurants the department investigated between 2009 and 2015 were violating wage and hour laws with regard to the subminimum wage for tipped workers. The most common violation being the failure to adequately compensate tipped workers.<sup>41</sup>

**TABLE 1.**  
Service Charges v. Tips

	<b>SERVICE CHARGE</b>	<b>TIP</b>
<b>Set By</b>	<b>THE RESTAURANT</b> <i>Does not allow for implicit bias</i>	<b>THE CUSTOMER</b> <i>Allows for implicit bias</i>
<b>Ownership</b>	<b>EMPLOYER</b> <i>May or may not be passed on to workers</i>	<b>WORKER</b> <i>Must be passed on entirely to workers<sup>42</sup></i>
<b>Tax Status</b>	<b>Subject to employer payroll taxes</b>	<b>Not subject to employer payroll taxes</b>
<b>Conditions of Use</b>	<b>Employer must disclose use of service charge to consumer, and use the funds as described</b>	<b>Workers may use tips at their discretion</b>

Service charges, on the other hand, are not necessarily the property of workers. Employers may use the service charges as they choose.

Given the differences between tips and service charges, customers cannot assume a service charge is going to workers exclusively unless an employer clearly discloses on the menu that they are passing the service charge on entirely to workers and then actually does so.

While these charges are allowed, as recent guidance on Chicago’s food vendor rules from Mayor Brandon Johnson’s administration shows, there are things business owners must adhere to so as not to deceive customers or the public. This includes that food vendors must display fees every time they display other prices and immediately prior to a transaction.<sup>43</sup>

## Benefits of Service Charges

If passed on entirely to workers, service charges or commissions can be a critical tool to increase racial equity in the restaurant industry because they eliminate the customer implicit bias in tipping that leads to wage fluctuation and a wage gap between workers of color and white workers.



Implicit biases — the automatic association of stereotypes and attitudes toward particular groups — are prevalent even in places like Chicago where the majority of people may reject explicit racism.<sup>44</sup> Research has shown that people who are consciously egalitarian are particularly likely to engage in “in-group preference” where they treat their own or the dominant group better without holding negative views about other groups.<sup>45</sup> When this involves race, as it often does, it translates into rating white people more positively than people of other races for otherwise identical behavior. This is precisely how tipping can result in differential wages based upon race.

Forcing restaurant workers’ to receive their income directly from customer tips has led to a consistent wage gap between workers of color and white workers, and in particular between Black women and white male workers, when working in the same jobs.<sup>46</sup> White servers and bartenders across all restaurant types earn more tips than most other racial groups, as per an Eater analysis of U.S. Census and Bureau of Labor Statistics data.<sup>47</sup> It has also led to a consistent wage gap between workers, largely due to customer implicit bias in tipping; research has shown that Black women are consistently tipped less than White men even providing the same service in the same role.<sup>48</sup>

While we know that Black women are paid only 58 cents for every dollar paid to white men across the economy, and the wage gap persists regardless of industry, this gap is worse in the restaurant industry as a result of the reliance on tipping. Tipping is even more susceptible to implicit biases than other pay decisions because the adjustments made to tips — increasing or decreasing them — tends to be spontaneous.<sup>49</sup> These differences can be extremely meaningful to people’s lives. Black women in the restaurant industry generally



earn \$2.57 an hour less than their white male counterparts, which can also be understood as \$5,345 of income lost every year. Among ‘front-of-house’ (dining room) occupations that are more subject to the vagaries of tips, this race-gender gap increases to \$6.19 an hour, or \$12,875 annually.<sup>50</sup>


Service charges and/or commissions eliminate implicit bias in tipping by requiring customers to pay a standard amount of gratuity regardless of the race and gender of the server. These biases are extraordinarily difficult to reduce — so policy changes are critical.<sup>51</sup>

**If service charges are treated as gratuities, or if employers implement commission pay and passed these on entirely to workers, they would eliminate the implicit bias in tipping that leads to wage fluctuation and wage gaps.**

## **Challenges With Service Charges: Employer Control and Lack of Transparency**

Given the fact that service charges are the property of the employer, consumers cannot be certain that workers are receiving all of the service charge. Customers may have concerns about whether establishments are spending the fees the way they claim. Chicago requires restaurants to state they have a service charge and how that service charge is used; in addition, service charges must be spent in the manner the establishment claims they will be. As a result of consumer advocacy, Chicago customers and workers have far stronger protections with regard to service charges than other parts of the country.<sup>52</sup>

The only way to ensure businesses follow the law is by strict enforcement and reporting every time you witness non-compliance. If you are concerned that an establishment is not accurately displaying or is misusing service fees, you can contact the City’s Bureau of Consumer Protection with any questions or complaints by calling 311, going to [311.chicago.gov](http://311.chicago.gov), or downloading the CHI311 app.



**Chicago is  
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## **CONCLUSION**

Chicago is taking a historic step. It is the same step that was taken by A. Philip Randolph and the Pullman porters nearly a century ago. In extending the fair wage wins of the Pullman porters now to restaurant and other tipped workers, Chicago is leading the country in ending a legacy of slavery. Everyone can be a part of this historic moment, from workers who have courageously led this struggle for decades, to business owners who raise their employees’ wages and enjoy better retention as a result, to customers who are now empowered to ensure they are informed about how their gratuities are being used. Together, all of Chicago’s restaurant industry stakeholders can create a more inclusive and equitable industry, economy, and City.

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