



The Subminimum Wage for Tipped Workers as Public Health Crisis

How the Subminimum Wage
Disincentivizes COVID-19 Safety
Enforcement in Restaurants

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Thanks to strong state and local leadership, New York City was able to significantly reduce the spread of the COVID-19 virus earlier this summer. However, there is a severe new threat to the potential resurgence of the virus this fall and winter. Just as New York City reopens for indoor dining, the Centers for Disease Control reported that adults testing positive for SARS-coV-2 were approximately twice as likely to have eaten at a restaurant than were those with negative results. Restaurant or cafe dining was found as the only significant recent exposure clearly related to COVID-19 risk.

In order to prevent the spread of the virus, restaurant workers will be the first line of defense in enforcing state public health mandates. However, in New York, tipped service professionals earn a subminimum wage that forces workers to obtain a substantial portion of their income from customer tips. After months of unemployment, severe economic hardship and a trend in decreased overall tipping, workers will be forced to enforce public health measures upon the very people who pay their wages. This disincentive stands to pose grave risk not only to the 700,000 restaurant workers around New York, but also to the broader public.



COVID-19 EXACERBATES ALREADY DIRE SITUATION FOR TIPPED WORKERS

Prior to the economic fallout from the COVID-19 pandemic, at a time when the restaurant industry was still one of the largest and fastest growing industries, tipped workers held 7 of the 15 lowest paid occupations in the country.¹ This is in large part due to the subminimum wage for tipped workers. In New York and in 43 states nationwide, tipped workers receive a subminimum wage.² These low wages affect a workforce that is majority women and disproportionately people of color.³ Alongside these low wages, workers in the industry experience higher than average levels of sexual harassment and poverty. Indeed tipped workers in New York

and other states that have a subminimum wage are over twice as likely to live in poverty and rely on Medicaid compared to the rest of the workforce.⁴ They are also twice as likely to experience sexual harassment compared to states that pay all workers a full minimum wage.⁵

High levels of race and gender-based occupational segregation are present throughout the industry as well. Even though people of color comprise 47% of restaurant workers, only 32% of people of color and 33% of women are employed in the highest paying front of the house positions in fine dining establishments.⁶ In contrast, the majority of women, particularly women of color, are overrepresented at casual chain restaurants such as IHOP or Denny's, where wages, and more importantly tips, fall far below what their white male counterparts receive.⁷ In fact, research analyzing current population survey data on tipped and customer facing positions within restaurants demonstrate a \$7.74 wage gap between Black women and white men in New York, which is 60% higher than the \$4.79 national wage gap.⁸ For the small fraction of people of color who are able to enter the fine dining industry, access to larger tips still does not result in equitable outcomes between servers; as evidence shows that customers tip white servers at higher rates than their equally qualified Black co-workers.⁹ The economic and social reality facing the tipped workforce has only declined since the onset of the pandemic.



Over the last six months of the pandemic, nearly 1 in 4 workers who lost their jobs worked in the restaurant industry.¹⁰ Despite massive layoffs, surveys with tipped workers revealed higher than average rates of employment insurance denial or delay. Sixty-three percent of tipped workers surveyed in New York reported being either unable to access unemployment insurance or unsure whether they could access unemployment.¹¹ In follow up interviews with workers, many reported that their subminimum wage plus tips fell under the minimum threshold to qualify for benefits, thus resulting in a denial of benefits.¹² High levels of wage theft may play an outsized role in this outcome. In a U.S. Department of Labor investigation of over 9,000 restaurants, officials found that 84% of investigated restaurants had violated wage and hour laws, including nearly 1,200 violations of wage laws that require tipped workers to earn the minimum wage.¹³ Even if there were 100% compliance with

these rules rather than 16% compliance, the subminimum wage in New York forces a workforce of majority women and disproportionately women of color to tolerate inappropriate customer behavior to feed their families from tip-based income, resulting in the industry having the highest rates of sexual harassment of any industry prior to the pandemic.¹⁴ Now this harassment is compounded by harassment from customers for workers attempting to protect the public health.

The human toll of this failing policy cannot be overstated. The lack of unemployment benefits resulted in a severe crisis for workers, with millions struggling to feed their families and pay for rent and basic utilities. Of the over 12,000 workers who applied to our One Fair Wage Tipped and Service Workers' Emergency Relief Fund in New York state, 79% reported that they did not have enough money for two weeks of groceries, and 86% reported that they could not afford to pay the rent.¹⁵ These numbers are significantly higher for Black workers.

Now as restaurants increasingly re-open across the country, returning workers are saddled with the false choice to either enforce health protocols upon customers or provide for their families through acquiescing to those non-compliant customers who pay their wages.

THE SUBMINIMUM WAGE IS A PUBLIC HEALTH CRISIS

As we enter autumn of 2020, many states that have previously prohibited indoor dining in order to stem the incidence of COVID-19 are beginning to relax their policies. In New York City, which has one of the largest restaurant industries in the country, September 30th marked the resumption of indoor service.¹⁶ However, policymakers should proceed with extreme caution; there is clear evidence that restaurants are hotspots for the contraction of COVID-19. Recent research published by the CDC found that adults who tested positive for SARS-CoV-2 were approximately twice as likely to have reported dining at a restaurant than were those with negative SARS-CoV-2 test results.¹⁷ 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.¹⁸ To protect the public health from a resurgence of COVID in New York City, restaurant workers will be the first line of defense in terms of public compliance with safety regulations. As Damani Varnado, a veteran restaurant professional in Manhattan stated, "As servers we're being asked to be both nurses and health marshals, all for a subminimum wage."

For many restaurant workers who desperately need to return to work, a continued reliance on tips for a substantial portion of their wages presents an obvious conflict. With the pandemic, the subminimum wage has become a critical barrier to ensuring public health, as restaurant workers forced to rely on diminishing tips fear enforcing safety measures upon the very customers who



pay a substantial portion of their wages. In numerous states around the country, restaurant workers are reporting that tips are down 50-70%.¹⁹ This extreme loss of income directly counters a worker's incentive to enforce COVID-19 safety measures upon their customers, from whom they rely on tips to make up their minimum wage. In addition, many restaurants have implemented surcharges in order to cover increased costs from PPE, cleaning protocols and capacity restrictions. Yet in a survey of 1,000 customers, 27% reported that they would likely tip service staff less as a result.²⁰ Paying workers a full minimum wage so that they are not relying on declining tips for a substantial portion of their wages and thus feel some security in enforcing public health protocols has become an urgent public health issue.

Numerous media reports have covered the very real and dangerous challenge that service professionals face in enforcing public safety protocols. The CDC has published a webpage dedicated to providing training materials on “Limiting Workplace Violence Associated with COVID-19 Prevention Policies in Retail and Service Businesses”.²¹ In Colorado, a customer attacked a service worker for attempting to enforce the state's mask order.²² Restaurant owners in Michigan have reported online harassment and physical confrontation in response to safety protocols.²³ A Los Angeles restaurant was even forced to close out of concern for the safety of their employees. As the owner stated in an interview, “Our taco stands are exhausted by the constant conflicts over guests refusing to wear masks. Staff have been harassed, called names, and had objects thrown at them. A mask isn't symbolic of anything other than our desire to keep our staff healthy.”²⁴ For service workers of color, particularly Black professionals, whose families and communities are at higher risk of adverse health outcomes and COVID-19 fatality, the decision between one's safety and one's livelihood is even more acute.²⁵

RECOMMENDATIONS

To enable restaurant workers to act as public health guardians, **we recommend that states enact One Fair Wage — a full minimum wage with tips on top — in the restaurant industry.** As we enter the winter season, with a concomitant increase in indoor dining and a possible resurgence of COVID-19 spread, providing service workers with a stable base wage before tips that reduces their dependence on tips and thus allows them to properly enforce proper safety protocols with customers is essential. In addition, **we recommend New York City require that One Fair Wage be paid in all restaurants that add a COVID surcharge so that workers are not financially penalized by customers who decrease their tips in response.** Together, these two measures will give workers an improved level of support without jeopardizing their health and their livelihoods and will provide New York with a better chance to avoid a COVID-19 resurgence.

ENDNOTES

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- 8 See note 6.
- 9 Lynn et al., (2008). Consumer Racial Discrimination in Tipping: A Replication and Extension. *Journal of Applied Social Psychology*, 38(4), pp.1045-1060.
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- 12 *Ibid*.
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