

Testimony on the Tipped Minimum Wage



Background on the tipped minimum wage:¹

For nearly the first 30 years of the existence of a federal minimum wage in the U.S. there was no separate “tipped” subminimum wage. When the Fair Labor Standards Act (FLSA) was expanded in 1966 to cover previously excluded workers such as hotel and restaurant employees, it set their minimum at 50% of the minimum wage. This was raised to 60% in 1980, but then returned to 50% in 1991.

In 1996 the tipped minimum wage decoupled from the minimum wage and frozen at \$2.13, where it has remained nationally up to the present. Seven states—California, Nevada, Oregon, Washington, Minnesota, Montana, and Alaska—have passed their own legislation eliminating the subminimum wage for tipped workers. In those states such workers receive the full minimum wage and their tips function as a gratuity should—as additional income over and above their wages. Additionally, Hawaii allows a subminimum wage of only 50 cents less than the full minimum wage to be paid only to a small pool of high earning tipped workers. New York recently increased its tipped minimum wage to \$7.50— more than 83 percent of the state’s full minimum wage—making it the first state with a low tipped wage to increase it significantly. Individual state action has created a norm for ¼ of the US population whose tipped workers earn the full minimum wage or close to it.

Some basic facts on the tipped minimum wage in Vermont:

Waiters, waitresses and bartenders make up the majority (59%) of tipped workers in VT.²

- Waiters and waitresses, alone, comprise 43.8% of all tipped workers.
- Waiters and waitresses in Vermont earn \$14.03 per hour in *base wage plus tips*, which was just between \$4.43 and \$6.67 above the minimum wage rates in 2013 and 2016 (when the BLS data was collected)³
- This means that restaurant servers depend heavily on tips:
 - In **2013**, the tipped wage in Vermont was \$4.17, which is just 30% of their estimated median wage of \$14.03. Tips made up the other 70% of their earnings.
 - In **2016**, the tipped wage in Vermont was \$4.80, which is just 34% of their estimated median wage of \$14.03. Tips made up the other 64% of their earnings.⁴

This means that restaurant servers in Vermont are especially vulnerable to the precarious nature of tipped work (i.e., unpredictable schedules due to seasons or weather, and the resulting changes in income), and are more likely than workers in non-tipped occupations to endure sexual harassment from customers, employers and coworkers (Nationally, ⅔ of tipped workers are women).⁵

¹ <http://www.nelp.org/content/uploads/Basics-Tipped-Minimum-Wage.pdf>

² Citation: NELP analysis of BLS, May 2016 Occupational Employment and Wage Estimates

³ NELP analysis of Bureau of Labor Statistics, May 2016 Occupational Employment and Wage Estimates; and U.S. Department of Labor, Changes in Basic Minimum Wages in Non-Farm Employment Under State Law: Selected Years 1968 to 2016

⁴ Citation: NELP analysis of BLS, May 2016 Occupational Employment and Wage Estimates; and DOL, Minimum Wage for Tipped Employees (historic tables)

⁵ Sylvia A. Allegretto and David Cooper, “Twenty-Three Years and Still Waiting For Change: Why It’s Time to Give Tipped Workers the Regular Minimum Wage,” Economic Policy Institute and UC Berkeley Center on Wage and Employment Dynamics, July 10, 2014, <http://www.epi.org/publication/waiting-for-change-tipped-minimumwage/>

Table 1. Hourly wages for select tipped occupations in Vermont

Occupation	Median Wage	Average Wage	90 th Percentile
<i>All occupations</i>	\$18.23	\$22.90	\$38.85
Waiters and waitresses	\$14.03	\$15.27	\$23.53
Bartenders	\$11.81	\$14.88	\$26.35
Hosts & hostesses, restaurant, lounge, & coffee shop	\$11.54	\$12.47	\$17.32
Counter atnd., cafeteria, food concession & coffee shop	\$9.87	\$10.99	\$13.89
Dining room & cafeteria attendants & bartender helpers	\$10.82	\$11.73	\$15.05
Food servers, non-restaurant	\$10.81	\$12.58	\$21.03

Source: Bureau of Labor Statistics, May 2016 Occupational Employment and Wage Estimates.

Table 2. Most restaurant servers in Vermont earn only slightly above the minimum wage

Minimum Wage	Server Wage	Difference
\$8.60 (November 2013)	\$14.03 (median wage)	\$5.43
	\$15.27 (average wage)	\$6.67
\$9.60 (May 2016)	\$14.03 (median wage)	\$4.43
	\$15.27 (average wage)	\$5.67

NELP analysis of Bureau of Labor Statistics, May 2016 Occupational Employment and Wage Estimates; and U.S. Department of Labor, Changes in Basic Minimum Wages in Non-Farm Employment Under State Law: Selected Years 1968 to 2016.

Why we should gradually move away from the tipped sub-minimum wage in Vermont

Although minimum wage opponents in the restaurant industry often claim that most tipped workers earn high incomes and do not need a raise, Bureau of Labor Statistics (BLS) data shows that **the typical tipped worker in Vermont earns just a few dollars above the state minimum wage**. According to the most recent BLS data, between November 2013 and May 2016, the median wage for restaurant servers in Vermont was \$14.03 per hour

including tips, and the average was \$15.27 per hour, also including tips.⁶ During the period covered by the BLS data, the applicable minimum wage in Vermont was between \$8.60 and \$9.60 per hour,⁷ meaning that servers in the state earned between \$4.43 and \$6.67 above Vermont's wage floor—hardly the type of high incomes that the restaurant industry claims to be typical.

Tipped work is inherently uneven and often unpredictable. While most of us expect to be paid the same for every day or hour we work, for tipped workers this is often not the case. For example, restaurant servers can earn substantially more on Friday or Saturday nights, but much less on other days of the week. Bad weather, a sluggish economy, the changing of the seasons, a less generous customer, and a host of other factors can also cause sudden drops in their tipped income and lead to economic insecurity. Not surprisingly, **tipped workers face poverty at twice the rate of non-tipped workers**, with waiters and bartenders at even higher risk of poverty.⁸

Tipped workers across the country are also significantly more likely to rely on public assistance to make ends meet. Close to half (46 percent) of tipped workers and their families rely on public benefits compared with 36 percent of non-tipped workers.⁹ Ultimately, shifting the responsibility to pay workers' wages to customers under the tipped sub-minimum wage system allows employers in a few select industries to benefit from a customer-funded subsidy at the expense of workers' economic security.

The Complex Sub-Minimum Wage System for Tipped Workers Is Difficult to Enforce and Results in Widespread Noncompliance

The sub-minimum tipped wage system is complex, difficult to implement and plagued by noncompliance. For example, both employers and employees find it difficult to track tip earnings, a task that is often complicated by tip sharing arrangements amongst workers. In addition, when tipped workers' earnings fall short of the full minimum wage, many will forego asking their employers to make up the difference—as employers are legally required to do—for fear that the employer may retaliate by giving more favorable shifts to workers who do not make such demands.¹⁰

Given the implementation challenges inherent in the subminimum wage system, it is not surprising that a 2014 report by the Obama Administration's National Economic Council and the U.S. Department of Labor found that one of the most prevalent violations amongst employers is failing to properly track employees' tips and make up the difference between an employee's base pay and the full minimum wage when tips fail to fill that gap.¹¹ A survey found that more than 1 in 10 workers employed in predominantly tipped occupations earned hourly wages below the full federal minimum wage, including tips.¹²

⁶Bureau of Labor Statistics, U.S. Department of Labor, *May 2016 State Occupational Employment and Wage Estimates, Vermont*, revised March 31, 2017, https://www.bls.gov/oes/current/oes_vt.htm.

⁷Wage and Hour Division, U.S. Department of Labor, *Changes in Basic Minimum Wages in Non-Farm Employment Under State Law: Selected Years 1968 to 2016*, revised December 2016, <https://www.dol.gov/whd/state/stateMinWageHis.htm>.

⁸Sylvia A. Allegretto and David Cooper, *Twenty-three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage*, Economic Policy Institute, July 2014, <http://www.epi.org/files/2014/EPI-CWEDBP379.pdf>. According to this analysis, "the poverty rate of non-tipped workers is 6.5 percent, while it is 12.8 percent for tipped workers in general and 14.9 percent for waiters and bartenders."

⁹Ibid.

¹⁰ROC and NELP, *The Case for Eliminating the Tipped Minimum Wage in Washington, D.C.*, op. cit.

¹¹National Economic Council, the Council of Economic Advisers, the Domestic Policy Council, and the Department of Labor, *The Impact of Raising the Minimum Wage on Women and the Importance of Ensuring a Robust Tipped Minimum Wage*, March 2014, <https://obamawhitehouse.archives.gov/sites/default/files/docs/20140325minimumwageandwomenreportfinal.pdf>.

¹²Ibid.

Vermont's Restaurant Industry is Strong, and Can Afford to Adapt to a \$15 Minimum Wage without a Tip Credit

While restaurant industry lobbyists often argue that eliminating the tipped sub-minimum wage would hurt restaurants and its workers, the facts belie those claims. In particular, the restaurant industry in One Fair Wage states is strong and projected to grow faster than in many of the states that have retained a sub-minimum tipped wage system.

According to projections by the National Restaurant Association (NRA), **restaurant sales are expected to reach \$799 billion this year, a 4.3 percent increase over 2016.**¹³ In Vermont, restaurant sales are expected to reach \$1 billion this year. Restaurant and food service jobs currently make up 10 percent of employment in the state, and are expected to grow by a healthy 7.1 percent over the next ten years.¹⁴

Many of the states with the strongest restaurant job growth do not allow a tipped minimum wage for tipped workers, and require employers to pay tipped workers some of the country's highest base wages. For example, restaurant employment in California—which has no subminimum wage for tipped workers and is phasing in a \$15 minimum wage—is projected to grow by 10.6 percent during the 2017–2027 period.¹⁵ In California, the minimum wage is now \$10 per hour for small employers (25 or fewer employees) and \$10.50 for large employers (26 or more employees), and the minimum wage will reach \$15 for all employers by 2023.¹⁶ In Oregon, where the minimum wage is currently between \$10 and \$11.25 and will increase to between \$12.50 and \$14.75 by 2022,¹⁷ and which has no tipped sub-minimum wage, restaurant employment is projected to grow by 13.2 percent during that same period.¹⁸ And in Washington State, where the minimum wage is \$11.00¹⁹ and will increase to \$13.50 by 2020,²⁰ restaurant employment growth during the same period is expected to grow by 11.8 percent.²¹ According to the NRA's own projections, restaurant employment in the seven states without a tipped minimum wage will grow in the next decade at an average rate of 10.7 percent.²²

Moreover, a 2015 Cornell Hospitality Report looked at the impact of minimum wage increases on restaurant employment and business growth levels over twenty years across the United States. It found that raising the minimum wage (including the tipped wage) will raise restaurant industry wages but will not lead to “large or reliable effects on full-service and limited-service restaurant employment.”²³

¹³National Restaurant Association, *2017 National Restaurant Association Restaurant Industry Outlook*, (last viewed September 16, 2017) http://www.restaurant.org/Downloads/PDFs/News-Research/2017_Restaurant_outlook_summary-FINAL.pdf.

¹⁴National Restaurant Association, *Vermont Restaurant Industry at a Glance*, (last viewed September 28, 2017), http://www.restaurant.org/Downloads/PDFs/State-Statistics/2016/VT_Restaurants2016.pdf.

¹⁵National Restaurant Association, *California Restaurant Industry at a Glance*, (last viewed September 16, 2017), http://www.restaurant.org/Downloads/PDFs/State-Statistics/2016/CA_Restaurants2016.

¹⁶Department of Industrial Relations, State of California, *Minimum Wage*, December 2016, https://www.dir.ca.gov/dlse/faq_minimumwage.htm.

¹⁷Bureau of Labor and Industries, State of Oregon, *Oregon Minimum Wage*, (last viewed September 16, 2017), <http://www.oregon.gov/boli/WH/OMW/Pages/Minimum-Wage-Rate-Summary.aspx>.

¹⁸National Restaurant Association, *Oregon Restaurant Industry at a Glance*, http://www.restaurant.org/Downloads/PDFs/State-Statistics/2016/OR_Restaurants2016 (last viewed September 16, 2017).

¹⁹Washington State Department of Labor and Industries, *Minimum Wage*, (last viewed September 16, 2017), <http://www.lni.wa.gov/WorkplaceRights/Wages/Minimum/default.asp>.

²⁰Washington State Department of Labor and Industries, *Initiative 1433: An Overview of the New Minimum Wage and Paid Sick Leave Requirements*, (last viewed September 16, 2017), <http://www.lni.wa.gov/WorkplaceRights/Wages/Minimum/1443.asp>.

²¹National Restaurant Association, *Washington Restaurant Industry at a Glance*, (last viewed September 16, 2017), http://www.restaurant.org/Downloads/PDFs/State-Statistics/2016/WA_Restaurants2016.

²²ROC and NELP, *The Case for Eliminating the Tipped Minimum Wage in Washington, D.C.*, op. cit. Refers to the period, 2016-2026.

²³Michael Lynn and Christopher Boone, *Have Minimum Wage Increases Hurt the Restaurant Industry? The Evidence Says No!*, Cornell Hospitality Report, Vol. 15, No. 22 (2015), <http://scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1000&context=chrreports>.
