



The Glass Floor

Sexual Harassment in the Restaurant Industry

October 7, 2014

BY

The Restaurant Opportunities Centers United
Forward Together

IN COOPERATION WITH

9to5, National Association of Working Women

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EXECUTIVE SUMMARY	1
TIPPED SUB-MINIMUM WAGE	1
INTRODUCTION	5
HISTORY OF THE TIPPED SUB-MINIMUM WAGE	7
UNDERSTANDING SEXUAL HARASSMENT	9
METHODOLOGY	10
SEXUAL HARASSMENT IN THE RESTAURANT INDUSTRY	13
EEOC CLAIMS	15
EXPERIENCE OF HARASSMENT FROM COWORKERS	17
EXPERIENCE OF HARASSMENT FROM OWNERS, MANAGERS, AND SUPERVISORS	19
TRANSGENDER RESTAURANT WORKERS	20
EXPERIENCE OF HARASSMENT FROM GUESTS AND CUSTOMERS	23
UNIFORMS	25
WORKERS RESPONSES TO SEXUAL HARASSMENT	27
PAST AND CURRENT TIPPED WORKERS	29
CONCLUSIONS	30
POLICY RECOMMENDATIONS	31
APPENDIX: SURVEY DEMOGRAPHICS	33
ACKNOWLEDGMENTS	34

Executive Summary

THE RESTAURANT INDUSTRY employs nearly 11 million workers and is one of the fastest-growing sectors of the U.S. economy.¹ Despite the industry's growth, restaurant workers occupy seven of the ten lowest-paid occupations reported by the Bureau of Labor Statistics.² The economic position of women restaurant workers is particularly precarious.³ Women restaurant workers experience poverty at nearly one and one third the rate of men restaurant workers.⁴ Women's greater economic insecurity in the industry is largely attributable to their greater likelihood of being employed as tipped workers. While women are 52% of all restaurant employees, they are two-thirds or 66% of all tipped restaurant workers.⁵ A majority of these tipped workers are employed in casual, family-style restaurants where tips are meager. The median wage for tipped workers hovers around \$9 an hour *including tips*.⁶

Tipped workers occupy a uniquely vulnerable position in our nation's employment landscape. Federal law allows for pay discrimination between tipped and non-tipped workers, permitting employers to pay tipped workers a sub-minimum wage of \$2.13 per hour. As a result, tipped restaurant workers are expected to collect the remainder of their wages from customers' tips, creating an environment in which a majority female workforce must please and curry favor with customers to earn a living. Depending on customers' tips for wages discourages workers who might otherwise stand up for their rights and report unwanted sexual behaviors.

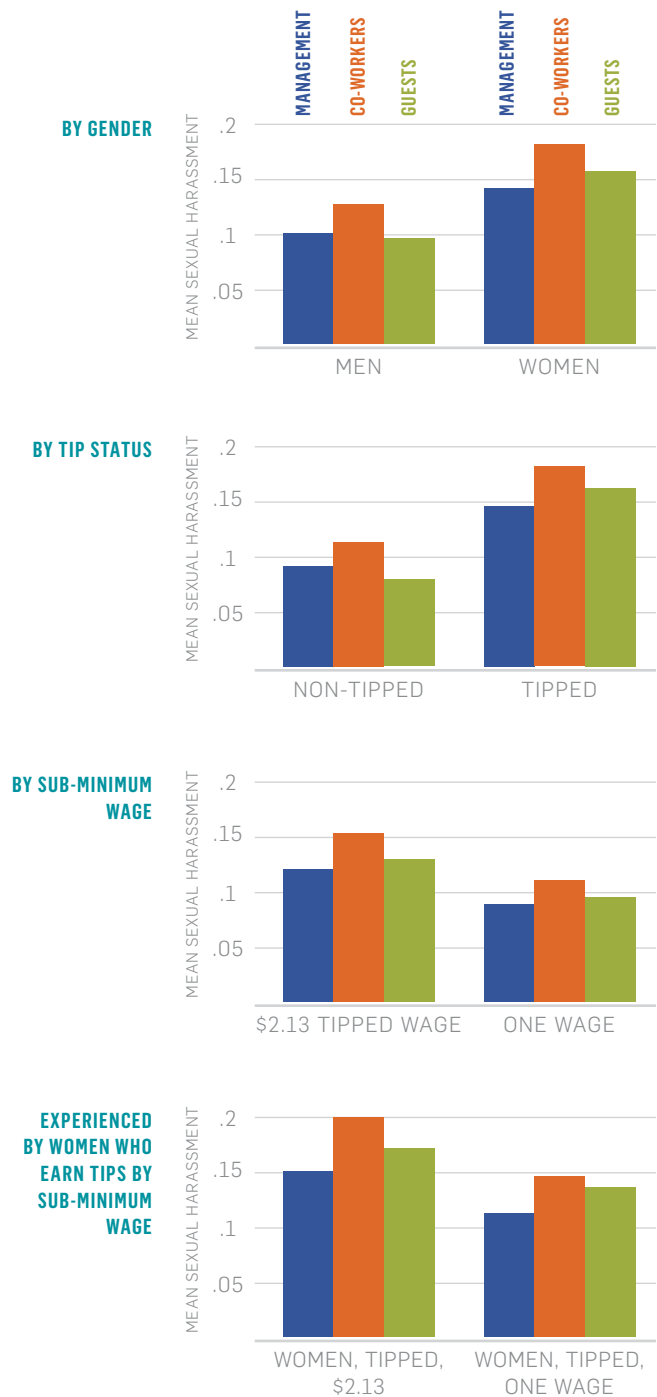
Since women restaurant workers living off tips are forced to rely on customers for their income rather than their employer, these workers must often tolerate inappropriate behavior from customers, co-workers, and management. This dynamic contributes to the restaurant industry's status as the single largest source of sexual harassment claims in the U.S. While seven percent of American women work in the restaurant industry, more than a third (an eye-opening 37%) of all sexual harassment claims to the Equal Employment Opportunity Commission (EEOC) come from the restaurant industry.¹⁰ Even these high levels of complaints to the EEOC may underreport the industry's rate of sexual harassment. Restaurant workers in focus groups gathered through this study noted that sexual harassment is "kitchen talk," a "normalized" part of the work environment and that many restaurant workers are reluctant to publicly acknowledge their experiences with sexual harassment.¹¹

TIPPED SUB-MINIMUM WAGE

Since 1991, the federal tipped sub-minimum wage has been set at \$2.13 per hour. States may establish a minimum wage that is higher than the federal government's. This has resulted in a patchwork of state policies in which, effectively, restaurant workers in 22 states receive the federal sub-minimum wage of \$2.13 per hour, restaurant workers in 20 states receive a slightly higher state sub-minimum wage of between \$2.13 and \$5.00 per hour, and restaurant workers in eight states receive the full minimum wage because those states have chosen to pay an equal wage to both tipped and non-tipped workers.⁷ Poverty rates for tipped workers – particularly for women, who make up 66% of all tipped workers, and for people of color, who make up 40% of the total - are higher in states that pay a \$2.13 sub-minimum wage than in states that pay one minimum wage for tipped and non-tipped workers.^{8,9}

FIGURE A
Sexual harassment from managers, co-workers and guests

Differences in mean sexual harassment from management, co-workers, and guests, by gender, tipped-occupation, and sub-minimum wage, as well as among women who live off tips by sub-minimum wage. Co-workers were responsible for the highest rates of sexual harassment overall, but women in tipped occupations in states where the sub-minimum wage is \$2.13 experienced the highest rates of sexual harassment across all three groups.



The glass ceiling refers to the barrier that keeps women from advancing into the upper levels of positions within organizations. We coin the term glass floor to refer to the system that leaves women and all workers in a state of insecurity because of the intersection of economic precariousness and a sexualized work atmosphere.

To examine the incidence of unwanted sexual behavior and sexual harassment in the restaurant industry, ROC United and Forward Together surveyed 688 current and former restaurant workers across 39 states. The results provide the most accurate picture to date of the rate and types of sexual harassment experienced by restaurant workers.

This study finds sexual harassment in restaurants is widespread and is experienced by all types of workers. The highly sexualized environment in which restaurant workers labor impacts every major workplace relationship, with restaurant workers reporting high levels of harassing behaviors from restaurant management (66%), co-workers (80%), and customers (78%). Sixty percent of women and transgender workers,¹² and 46% of men reported that sexual harassment was an uncomfortable aspect of work life, and 60% of transgender, 50% of women and 47% of men reported experiencing 'scary' or 'unwanted' sexual behavior. Forty percent of transgender, 30% of women, and 22% of men reported that being touched inappropriately was a common occurrence in their restaurant.

One of the most powerful findings of this study is the extent to which the industry's already high levels of sex harassment are exacerbated by systems in which tipped restaurant workers — primarily women — endure legalized pay discrimination in the form of a sub-minimum wage. In states that allow a sub-minimum wage for tipped workers, these workers' hourly wages are so low that they often go entirely to taxes, forcing millions of tipped restaurant workers, the vast majority of whom are women, to live entirely off their tips.

Living off tips makes an industry already rife with sexual harassment even more dangerous. Women restaurant workers living off tips in states where the sub-minimum wage for tipped workers is \$2.13 per hour (hereinafter called '2.13 states') are twice as likely to experience sexual harassment as women in states that pay the same minimum wage to all workers.¹³ Tipped women workers in \$2.13 states reported that they were three times more likely to be told by man-

agement to alter their appearance and to wear 'sexier,' more revealing clothing than they were in states where the same minimum wage was paid to all workers. Conversely, tipped women workers in states that have eliminated the sub-minimum wage were less likely to experience sexual harassment. Importantly, sub-minimum wages impact all workers in the industry — not just tipped workers. **All workers in states with a \$2.13 sub-minimum wage, including men and non-tipped workers, reported higher rates of sexual harassment**, indicating that the overall restaurant work environment is at least partially shaped by the sub-minimum wage system itself.

The high levels of sex harassment experienced by all restaurant workers — and by women and tipped restaurant workers in particular — are even more troubling given that the size of the industry means that many young women in America are introduced to the world of work in a restaurant. A restaurant job is often the first job a young woman obtains, whether she stays in the industry her whole life or moves on to another career.¹⁴ This environment is where many women first learn their worth as workers. Countless young women start out as early as high school working as part-time servers, bussers, hostesses, and dishwashers in casual, family restaurants and fast-food chains that are notorious for low wages, poor sanitary and safety conditions, and sexual harassment. A negative first experience in the restaurant increases the likelihood that women will come to expect sexual harassment in other work environments. In our study, women who had previously worked as tipped workers were 1.6 times as likely to live with harassing behaviors in the workplace as the women who were currently employed as tipped workers.

It is critical to contextualize the concept of 'living with' sexual harassment in the workplace as something different than consent. Our survey and focus group results show that most workers either ignore or put up with harassing behaviors because they fear they will be penalized through loss of income from tips, unfavorable shifts, public humiliation, or even job loss. At the same time, workers are taking steps to address the impact of harassment on their well-being. Seventy-six percent of workers who experienced sexual harassment talked to their families and friends about their experiences, 73% talked to their co-workers, and 44% talked to a supervisor. Eighty-eight percent of workers who experienced sexual harassment reported that they'd be more likely to talk to their supervisor about these experiences if they were part of a group of co-workers.

Together these findings paint a troubling portrait of endemic sexual harassment in the restaurant industry. Widespread harassment, particularly towards women and tipped workers, demonstrates how power is used to exert control over other workers' bodies and livelihoods. Our data shows that all too often the economic insecurity of living off tips contributes to higher levels of physical insecurity being reported by all restaurant workers — and particularly women restaurant workers



— in a workplace rife with sexual harassment. In order to reduce the pressures that increase sexual harassment, we must eliminate the sub-minimum wage for tipped workers while implementing and strengthening policies to educate workers on their rights and reduce rates of sexual harassment. Legislating one fair wage, so all workers are ensured a minimum wage sufficient to cover their basic needs, and eliminating a sub-minimum wage for tipped workers, can give all workers greater personal agency, creating a safer and more equitable workplace.



1 Restaurant Opportunities Centers United (ROC-United) analysis of Bureau of Labor Statistics (BLS), Current Employment Statistics, 2014.
2 ROC-United analysis of Bureau of Labor Statistics (BLS), Occupational Employment Statistics, 2013. National Cross-Industry Estimates sorted by median hourly wage for all Standard Occupational classifications.
3 Throughout, sex descriptors are used rather than gender descriptors to avoid assumptions about individuals' preferred gender.
4 Shierholz, Heidi. (2014, August 21). *Low Wages and Few Benefits Mean Many Restaurant Workers Can't Make Ends Meet*. Washington DC: Economic Policy Institute.
5 Women comprise two-thirds of all restaurant workers as well as all tipped workers. Tipped restaurant workers comprise 63% of all tipped workers. ROC-United, National State of Tipped Workers, 2014.
6 *Ibid.*
7 Hawaii currently pays tipped workers a quarter less than the full minimum wage. However, by January 2018 the tipped minimum wage in Hawaii will increase to \$10.10 for all tipped workers who earn less than \$17.10/hour including tips.
8 Robbins, K. G., Vogtman, J., Entmacher, J. (2014). *States with Equal Minimum Wages for Tipped Workers Have Smaller Wage Gaps for Women Overall and Lower Poverty Rates for Tipped Workers*. Washington DC: National Women's Law Center.
9 ROC-United, National State of Tipped Workers, 2014.
10 ROC-United, 2012. *Tipped Over The Edge: Gender Inequity in the Restaurant Industry*. New York, NY: Restaurant Opportunities Centers United.
11 ROC-United. *Sexual Harassment Focus Groups*. (June, 2014).
12 Transgender refers to gender non-conforming individuals, including people who identified as gender-fluid and gender queer. Eighteen transgender individuals participated in the survey. Due to small sample size, and high variance, the experience of transgender restaurant workers is discussed in a special section of the report.
13 Examining above and below average sexual harassment for all workers in the industry. Odds Ratio: 7.451.
14 *America works here*, National Restaurant Association. Retrieved September 19, 2014, from <http://www.americaworkshere.org/first-job>.

Introduction

The restaurant industry employs nearly 11 million workers and is one of the fastest-growing sectors of the U.S. economy.¹⁵ Despite the industry's economic growth and success, restaurant workers currently occupy seven of the ten lowest-paid occupations reported by the Bureau of Labor Statistics.¹⁶ This is especially concerning for women, who not only constitute a majority of the overall industry but who are also highly concentrated in jobs that pay the least within it.¹⁷ Women, in particular, dominate tipped occupations that by law receive a sub-minimum wage that must be supplemented by tips.¹⁸ As a result, one-fifth of women working in the restaurant industry live below the poverty line, and nearly half (46%) live below twice the poverty line, compared to 40% of men in the restaurant industry, and 20% of women in other industries.¹⁹

As noted above, numerous recent studies have documented the economic challenges facing women in the restaurant industry, but much less research has been done on the pervasive problem of sexual harassment.²⁰ While a recent survey showed that one in four women in the US say they have experienced sexual harassment in the workplace,²¹ the restaurant industry stands out even within this context. The Equal Employment Opportunity Commission (EEOC) has targeted the industry as the "single largest" source of sexual harassment claims,²² and a 2011 MSNBC review of Equal Employment Opportunity Commission (EEOC) data revealed that from January to November 2011, almost 37 percent of all EEOC charges by women regarding sexual harassment came from the restaurant industry.²³

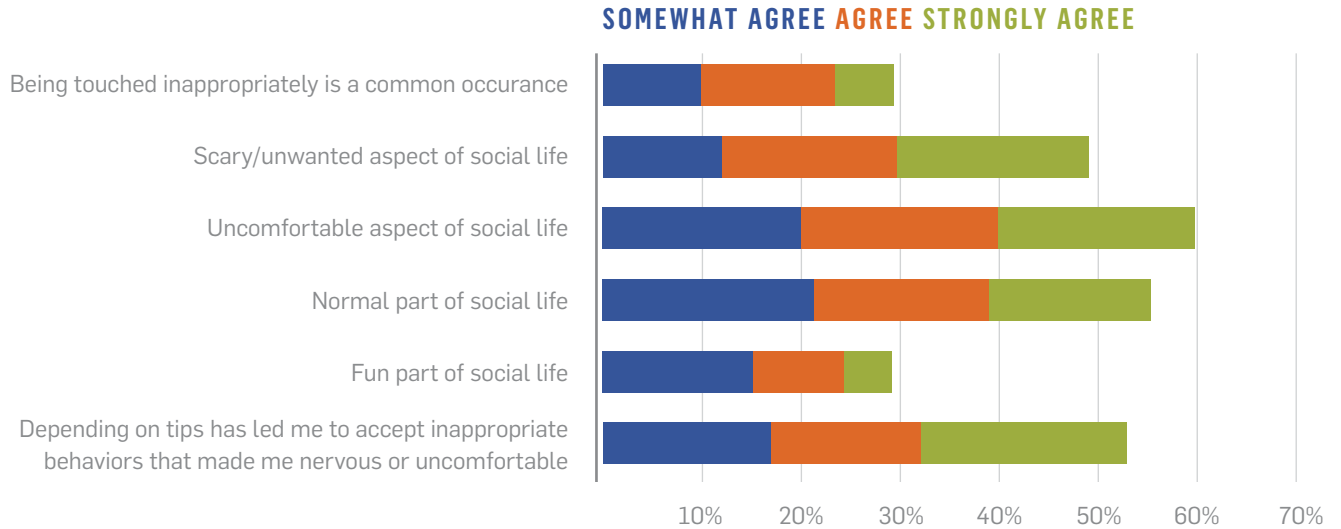
Research for this study carried out by ROC United and Forward Together suggests that these figures, though significant, do not paint a full picture of restaurant workers' experiences of sexual harassment in this industry. In order to get a clear sense of the extent of sexual harassment in the restaurant industry, this report examines sexual harassment experienced by workers across multiple categories:

1. harassment from management, co-workers, and guests,
2. harassment as experienced by women as compared to men,
3. harassment as experienced by tipped workers as compared to non-tipped workers, and
4. harassment as experienced by workers in states that have a sub-minimum wage for tipped workers of \$2.13 an hour as compared to workers in states with one minimum wage for all workers.

Although legal definitions of sexual harassment vary,^{24,25} generally, sexual harass-

FIGURE 1
Sexual harassment reported by women
in the restaurant industry

Women restaurant workers report that inappropriate sexual behavior is a common occurrence in the restaurant industry, and a majority of women in tipped occupations report that depending on tips has led them to endure inappropriate behavior.



ment is understood as “unwelcome sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature.”²⁶ This is the definition of sexual harassment adopted for the purposes of this report.

This report finds that sexual harassment is endemic across the restaurant industry, and is experienced by both women and men, but that the heaviest impact is borne by women, trans people, tipped workers, and workers in states that allow employers to pay tipped workers as little as \$2.13 per hour. Our research for this report finds 60% of women have experienced sexual harassment, and over half say they experience it on at least a weekly basis. Co-workers, management, and customers frequently engage in sexually harassing behaviors. Initiatives to reduce the incidence of sexual harassment will need to address changes across these groups.

Our research also confirms previous findings²⁷ that many restaurant workers who encounter unwanted sexual advances in the workplace do not immediately understand their experiences as sexual harassment.²⁸ Focus groups and interviews with restaurant workers conducted by ROC-United indicate that the gap between the pervasive experience of sexual harassment on the job and the lower rates at which those behaviors are actually reported is partially explained by the way that sexual behaviors in restaurants are normalized and widely considered ‘part of the job.’

Restaurant workers that participated in focus groups with ROC-United affirmed that sexual harassment was an “accepted...part of the culture” in restaurant settings. These workers observed that sexual harassment has deep roots in the heavily gendered work culture of restaurants. Research has shown, for instance, that the way restaurants hire and allocate workers is shaped by gendered assumptions about what constitutes appropriate work for men and women.²⁹ Moreover,

HISTORY OF THE TIPPED SUB-MINIMUM WAGE

Many Americans are unaware that in addition to the regular federal minimum wage there exists a separate minimum wage set specifically for tipped workers. There is no official list of tipped occupations. Instead, under federal law, any worker can be classified as a tipped worker if they receive at least \$30 per month in tips.³⁷

ROC-United estimates there are nearly 3.5 million restaurant workers that qualify for that classification in the United States, including servers, bartenders, bussers, runners, barbacks, and, increasingly, counter attendants.³⁸ Fundamentally, the tipped minimum wage represents a federally-sanctioned arrangement whereby workers' wages in certain industries are paid directly by the customers.

Prior to 1966, tipped workers received the same minimum wage as other workers. In 1966 Congress allowed employers to pay tipped workers a sub-minimum wage that was set at 50% of the full minimum wage. Customers were handed the task of paying for a substantial and growing portion of employee wages.³⁹ 1991 was the last year that the sub-minimum wage saw any increase, to a total of \$2.13. In 1996, as a result of pressure from the restaurant industry, Congress voted to increase the full minimum wage, but kept the tipped minimum wage frozen at \$2.13.⁴⁰ It has remained frozen at \$2.13 ever

since. Employers are required by law to ensure that any tips that an employee receives make up the difference between \$2.13 and the tipped minimum wage. However, this rarely happens. From 2010-2012, the Wage and Hour Division of the Department of Labor conducted nearly 9,000 investigations in the full service sector of the restaurant industry, and found an 84% non-compliance rate. The Wage and Hour Division recovered \$56.8 million in back wages for nearly 82,000 workers and assessed \$2.5 million in civil money penalties.⁴¹ Our current system of allowing a sub-minimum wage for tipped workers encourages this abuse.

Not all tipped workers earn \$2.13. Eight states, employing over 1 million tipped workers, have decided that no worker should earn less than the federal minimum wage. In those states, tipped workers earn the full minimum wage. An additional 20 states have increased the tipped minimum wage above what federal law provides.

The immediate impact of the sub-minimum wage system is to render sexual harassment a pervasive element of the employment experience in the restaurant industry, but the long-term impact may be even more detrimental. Many young women enter the workforce as tipped restaurant workers and acculturate to work life in an environment in which sexual harassment is commonplace and normalized. As the industry grows and assumes more importance as a gateway to the world of work it also serves as a foundational framework for the way women understand sexual harassment and what constitutes typical behavior in their later careers. Our survey data show that women who enter the workforce as tipped workers learn that sexual harassment is common-place, and this leads them to tolerate sexual harassment in their future work environments.

sexual behavior and practices in restaurant settings are not only normalized culturally, but also institutionalized into the industry through policy. Cultural and institutional practices that define gendered roles in the workplace are exacerbated by the policy of allowing employers to pay certain workers sub-minimum wages that must be supplemented by tips, magnifying the power and status imbalances between server and served.

The power imbalances created by the sub-minimum wage system are evident in the fact that many key facets of tipped restaurant workers' employment experiences, from income level to hiring and firing, are dependent upon their relationships and interactions with customers. Living off tips creates incentives for workers to tolerate inappropriate customer behavior. As one New York server explained, "There is a lot of sexual harassment [but] you just kind of brush it off...I just want my tip, I don't want anything to mess up my tip." Tipped women working in restaurants reported to ROC-United that the cultural expectation of their work in terms of appearance and behavior is often 'sexy', deferential and available, "date ready", as one server in Houston described it.³⁰ In restaurants,

the basic and widespread “philosophy of service as pleasing customers, indulging them, and giving them what they want,” intersects with a system that demands that customers pay these workers’ wages in tips and creates an environment in which inappropriate behavior by customers towards service staff becomes commonplace.³¹

The sub-minimum wage system also impacts how managers supervise tipped employees in the restaurant industry. Studies have shown, for example, that this system can impact a worker’s employment; managers interpret poor tips as signs of poor performance, and may also seek to hire workers based on a desire to fulfill customer expectations, such as having attractive staff.³² Customers pay for a sexualized vision of ‘good service,’ owners demand it, and co-workers observe and internalize a system that places the worker in a subservient and vulnerable service role. The sub-minimum wage system shapes the experience of sexual harassment in the workplace by restaurant workers in a number of ways:

1. Since tipped workers who earn a sub-minimum wage depend on customers to provide their wages, customers can feel entitled to treat servers inappropriately.³³ This dynamic is demonstrated by our comparison of the experiences of tipped women workers with those of non-tipped women workers, which shows that the former group are more likely to experience various forms of sexual harassment than their non-tipped counterparts.
2. The system of workers having to obtain their wages from customers has the effect of blurring boundaries, as it becomes difficult for workers to effectively draw lines between providing good service and tolerating inappropriate behavior from customers.³⁴
3. Due to their desire to keep customers happy, management can be unresponsive to, or even indulgent of customer misbehavior.³⁵ Management also at times encourages sexual harassment from customers and co-workers by requiring employees to flirt and dress suggestively.
4. Women workers are often required or feel the need to dress or act in a sexualized manner in order to secure larger checks and tips from customers.³⁶ As a result, women’s bodies are further commoditized.
5. Women restaurant workers often have to tolerate inappropriate comments and sexual harassment while at work in order to ensure their earnings are not impacted negatively and to maintain job security. This is clearly borne out by our survey data gathered for this report, which shows that over half of women restaurant workers found sexual harassment to be a routine aspect of their workplace environment, and nearly 60% were uncomfortable with the sexualized attention they encountered in the workplace. In addition, over 50% of tipped women workers agreed that depending on tips had led them to tolerate inappropriate behaviors that made them nervous or uncomfortable (see Figure 1).
6. Accepting or tolerating sexual harassment in the workplace differs from consent but due to the constraints on workers, few address the harassing behaviors on the job. Instead, workers tend to seek support outside the work environment. Over three quarters of workers who experienced sexual harassment sought support from a friend or family member..

UNDERSTANDING SEXUAL HARASSMENT

During the 1980s and 1990s, women's organizations and feminist academics were part of defining and creating a new dialogue around sexual harassment in the workplace as a form of sex discrimination. In 1986, in *Meritor Savings Bank v. Vinson* the Supreme Court first recognized sexual harassment as a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. By shifting the conversation from one about individual comments (the "she can't take a joke" framework) to one where sexual harassment is also understood as an exercise of power and control, the women's movement was able to make employers accountable for the environment they create and the actions of their employees. In addition, this work helped to create a bright line between consensual sexual behavior between adults, and the normalization and policing of rigid gender roles that occurs through sexual harassment.

And yet, one need only look at high profile cases of sexual harassment to see how victim-blaming plays out in mainstream media. Anita Hill, who testified about the sexual harassment she experienced

from then-Supreme Court Justice nominee Clarence Thomas, essentially faced a public trial by the Senate Judiciary Committee. Shortly after Dominique Strauss-Kahn, the former head of the International Monetary Fund, was publicly accused of sexually assaulting a hotel housekeeper, the housekeeper's immigration status and credibility were viciously attacked in the media. Both the harasser and the very authorities that are supposed to protect from sexual harassment make victims feel that they are to blame. Fear of retaliation—being fired, being passed over for promotions, or increased harassment—is real and often inhibits survivors from seeking justice or support. Feelings of shame, self-blame, and increased anxiety are just a few of the responses that victims of harassment may have as a result of dehumanizing experiences as part of their work life. Solutions to workplace sexual harassment require changes in conditions to end victim blaming and to ensure that survivors can challenge harassment without collateral consequences affecting their dignity or their pocketbook.

15 Restaurant Opportunities Centers United (ROC-United) analysis of Bureau of Labor Statistics (BLS), Current Employment Statistics, 2014.

16 ROC-United analysis of Bureau of Labor Statistics (BLS), Occupational Employment Statistics, 2013. National Cross-Industry Estimates sorted by median hourly wage for all Standard Occupational classifications.

17 Shierholz, H., (2014). *Low Wages and Few Benefits Mean Many Restaurant Workers Can't Make Ends Meet*. Washington DC: Economic Policy Institute.

18 Allegretto, S., & Cooper, D. (2014). *Twenty-three Years and Still Waiting for Change*. Washington DC: Economic Policy Institute.

19 Shierholz, H., (2014).

20 For example, see Allegretto, S. & Coopdr, D. (2014), Robbins, K. G., et al, (2014), and Shierholz, H. (2014).

21 Langer Research Associates. (2011, Nov 16). *One in Four U.S. Women Reports Workplace Harassment*. Retrieved September 13, 2014, from <http://www.langerresearch.com/uploads/1130a2WorkplaceHarassment.pdf>.

22 ROC-United. (2012). *Tipped Over The Edge: Gender Inequity in the Restaurant Industry*. New York, NY: Restaurant Opportunities Centers United.

23 Tahmircioglu, E. (2011, November 1). *Sexual claims common in pressure-cooker restaurant world*. Retrieved September 13, 2014, from http://business.nbcnews.com/_news/2011/11/01/8565198-sexual-claims-common-in-pressure-cooker-restaurant-world.

24 *Sexual Harassment*. U.S. Equal Employment Opportunity Commission. Retrieved September 13, 2014, from https://eeoc.gov/laws/types/sexual_harassment.cfm.

25 *New York State Department of Labor Policy Statement on Sexual Harassment*. New York State Department of Labor. Retrieved September 13, 2014, from <https://labor.ny.gov/formsdocs/DEOD/ga812.pdf>.

26 Berlin, R. *Sexual Harassment in the Workplace Defined* - AllLaw.com. Retrieved September 13, 2014, from <http://www.alllaw.com/articles/employment/article37.asp>.

27 Laabs, J. J. (1995). HR puts its questions on the line about sexual harassment. *Personnel Journal*, 74, 36-45.

28 There appears to be an overall pattern across industry sectors of underreporting sexual harassment claims. When polled, the majority of people who report being sexually harassed say they did not report it. See: National Women's Law Center. (2014). *Reality Check: Seventeen Million Reasons Low Wage Workers Need Strong Protections from Harassment*.

29 Hall, Elaine J. (1993). Smiling, deferring and flirting: doing gender by giving "good service". *Work and occupations* 20, 452-472.

30 ROC-United. *Sexual Harassment Focus Group*. (June 2014). Houston.

31 Yagil, Daniel. (2008). When the customer is wrong: a review of research on aggression and sexual harassment in service encounters. *Aggression and violent behavior* 13, 141-152.

32 Albin, Einate. (2011). A worker-employer-customer triangle: the case of tips.

33 Poulston, J. (2008). Metamorphosis in hospitality: A tradition of sexual harassment. *International Journal of Hospitality Management*, 27(2), 232-240.

34 Matulewicz, K. (2013). Customers, tips, and law: gender and the precariousness of work in BC restaurants. *Labour Law Research Network Inaugural Conference*, June 13-15 2013, Barcelona.

35 Yagil, Daniel. (2008). When the customer is wrong: a review of research on aggression and sexual harassment in service encounters. *Aggression and violent behavior* 13, 141-152.

36 LaPointe, E. (1992) Relationships with waitresses: gendered social distance in restaurant hierarchies. *Qualitative Sociology* 15, 377-393.

37 Department of Labor. 2011. The Fair Labor Standards Act of 1938.

38 American Community Survey, 2012. Calculations by the Restaurant Opportunities Centers United (ROC-United) based on Ruggles et al., *Integrated Public Use Microdata Series: Version 5.0* [Machine-readable database]. Minneapolis: Minnesota Population Center, 2010.

39 Allegretto, S., & Cooper, D. (2014). *Twenty-three Years and Still Waiting for Change*. Washington DC: Economic Policy Institute.

40 Liddel, A. (1996, June 24.) "Associations urge Senate to retain wage provisions." *Nation's Restaurant News*.

41 E-mail communication from the Department of Labor, Wage and Hour Division. For recent examples, see also ROC-United. (2014). *Recipe for Success*. New York, NY: Restaurant Opportunities Centers United.

Methodology

ROC United has gathered over 5,000 surveys of restaurant workers around the country examining wages and working conditions.⁴² Over ten percent of workers surveyed reported that they or a co-worker had suffered from sexual harassment. Our latest survey of workers in Philadelphia found 34% of workers reported they had experienced sexual harassment at their restaurant.⁴³ We know these findings are an undercount, since a third of EEOC complaints arise from the restaurant industry. Thus, we sought to understand both the full extent of sexual harassment in the industry, why it is that workers undercount this experience, and the effect the tipped sub-minimum wage system has on rates and incidence of sexual harassment. Forward Together, ROC United, and K.C. Wagner, at Cornell University's Worker Institute, created a survey tool entitled, 'A Study of Attitudes towards Sexual Behavior in the Restaurant Industry,' that sought to measure the incidence of multiple sexual behaviors that workers were exposed to from owners, managers, and supervisors (management), from co-workers, and from customers (guests).

The survey, to the extent possible, avoided the term sexual harassment, and asked about a range of behaviors from those three groups across four categories:

1. verbal behaviors,
2. behaviors delivered via media,
3. physical behaviors and
4. assault.

Verbal behaviors included sexual teasing, jokes, remarks, and comments about sexual orientation and gender or gender identity, as well as instructions from management such as orders to flirt with customers, to wear tighter or more revealing clothing, and to expose oneself sexually. Behaviors delivered via media included being shown sexually suggestive photos, letters, phone calls, and texts. Physical behaviors included physical pressure for dates, sexually suggestive looks and gestures, deliberate touching, leaning over, cornering, or pinching, inappropriate kissing, patting, fondling, or groping, and indecent exposure. Assault behaviors included sexual assault, rape or attempted rape. These behaviors are shown in Figures 4.1, 5.1, and 6.1.

The survey asked:

1. how often these behaviors were experienced,
2. how individuals responded to the behaviors (for example, ignoring the behavior, keeping it quiet, avoiding the individual, and reporting the individual to the EEOC or to the police), and
3. what individuals believed would happen if they refused to tolerate the behaviors, ranging from no negative consequences to fearing for one's physical safety.



Individuals were asked who they spoke with about their experiences, and what steps they felt they needed to take in response to the harassing behavior, for example, altering their appearance, changing their schedule, or quitting their job. Individuals were asked about the physiological impact of these behaviors, such as changes in sleep, appetite, emotional health, and productivity at work. Individuals were also asked how they perceived the work environment in their restaurant, including:

1. whether sexual behaviors were a normal, uncomfortable, scary or unwanted aspect of the work environment,
2. whether being touched inappropriately is common in the workplace, and
3. whether depending on tips had led individuals to tolerate inappropriate behaviors that made them nervous or uncomfortable.⁴⁴

Additional questions examined:

1. sexual harassment policies in the workplace,
2. what actions management could take to address sexual harassment,
3. uniform policies,
4. child and elder care responsibilities, and
5. access and usage of paid sick days among respondents.

Demographic data gathered included gender, race, age, place of birth, language spoken, and immigration status.

In total, 688 valid surveys were collected from individuals, 455 of who were currently working in the restaurant industry, and 233 of who had recently worked in the restaurant industry. Surveys were gathered from three sources. ROC staff and members collected 273 pencil-and-paper in-person surveys of current restaurant workers in Detroit, Houston, New Orleans, New York, and, together with Wider Opportunities for Women, in New Jersey. Forward Together staff and members collected surveys of 182 current restaurant workers and 233 former restaurant workers. Out of the surveys of current and former restaurant workers collected by Forward Together, 382 were gathered through online surveys and 33 by a Spanish pencil-and-paper survey. Data on workplace location was included in all pencil-and-paper surveys to analyze the effect of state and sub-minimum wage, and was extrapolated from the IP addresses of on-line respondents. A wage region variable was then created based on the sub-minimum wage to compare states that allow employers to pay tipped workers a sub-minimum wage of \$2.13 per hour, and states that offer one wage to both tipped and non-tipped workers. Occupations were combined into tipped and non-tipped occupations, and gender was examined as a binary variable except where otherwise noted. Sexual

harassment did not vary between current and former restaurant workers, and these groups were combined for analysis unless otherwise noted.⁴⁵

A Total Sexual Harassment Index (TSHI) was created from the complete range of sexual behaviors experienced by restaurant workers, with sub-indices based on whether the behavior came from management (SHM), co-workers (SHC), or guests (SHG). In addition, each sexual harassment index had sub-indices for Verbal Sexual Harassment, Media Sexual Harassment, Physical Sexual Harassment, and an Assault Index.⁴⁶ All results reported were significant at the .05 level or below, unless otherwise noted.

In addition to survey collection, focus groups were conducted in four cities: Houston, New York, New Orleans, and Washington, DC. During these focus groups, restaurant workers, primarily women, discussed their experiences with all of the behaviors outlined in this report. Three of the focus groups were conducted by ROC, and one, bringing together transgender Latin@ workers, was conducted by Forward Together. The experiences of gender non-conforming workers are highlighted in a section of the report. The focus groups were analyzed using Dedoose, and allowed for a qualitative component to help explain and provide depth to the quantitative results.

A sampling of consent decrees from the Equal Employment Opportunity Commission were compiled and analyzed to further understand the impact and extent of sexual harassment in the industry. This was combined with data from the Bureau of Labor Statistics, the Current Population Survey, and the American Community Survey to gain a broad understanding of the conditions impacting sexual harassment in the restaurant industry.

⁴² ROC-United analysis of *National Behind the Kitchen Door (BKD) Database*, 2014.

⁴³ ROC-United. (2012). *Behind the Kitchen Door: The Hidden Reality of Philadelphia's Thriving Restaurant Industry*. New York, NY: Restaurant Opportunities Centers United.

⁴⁴ A reverse scored item, asking whether sexual behaviors are a fun aspect of the workplace environment, was also asked to increase validity of these questions.

⁴⁵ $p = 0.557$.

⁴⁶ The behavior from management had a Cronbach's alpha of 0.928, from co-workers of 0.867, and from customers of 0.860, with the response, "I have never experienced these behaviors" reversed for all three groups. Individual items fit the scale with an alpha ranging from 0.846 to 0.875, with composite sub-scale alphas ranging from 0.913 to 0.933. The TSHI alpha was 0.928. Item non-response was marked as zero across experienced behaviors when an individual marked, "I have never experienced these behaviors," for a total of $N = 658$ complete cases. An additional scale, examining how individuals perceived the work environment was excluded from analysis, since it had an alpha of 0.356, however the item, sexual behaviors are a fun part of the work environment was reversed. Intercooled Stata 13.0 was used for statistical analysis. Sexual harassment indices were treated as dependent continuous variables using multiple linear regression to examine statistical differences by region, gender, and tipped occupation, while accounting for stratification of the sample. Predicted levels of sexual harassment were plotted by calculating margins and standard errors for all relevant variables. One-way analyses of variance adjusting for strata were used to examine differences in the means of TSHI related to gender, tipped occupation, and wage region. Differences by those same categories across the SHM, SHC, and SHG were examined using multivariate multiple regression. Differences in individual responses by binary gender or occupation were examined using χ^2 . Differences for transgender individuals were examined using Fisher's exact test.

Sexual Harassment in the Restaurant Industry

Our survey data found that sexual harassment is endemic to the restaurant industry. Two-thirds of women workers and over half of men workers had experienced some form of sexual harassment from management; nearly 80% of women and 70% of men experienced some form of sexual harassment from co-workers; and nearly 80% of women and 55% of men experienced some form of sexual harassment from customers. Two-thirds (66%) of women experienced sexual harassment from management on at least a monthly basis and over half (52%) on at least a weekly basis, compared to 58% and 40% of men, respectively. Three quarters (74%) of women experienced sexual harassment from co-workers on at least a monthly basis and 64% on at least a weekly basis, compared to 58% and 52% of men; and 59% of women experienced sexual harassment from customers on at least a monthly basis, compared to 50% of men. One third (33%) of women restaurant workers experienced sexual harassment from customers on at least a weekly basis, compared to one quarter of men restaurant workers (see Fig. 3.1). As noted above (Fig. 1), nearly 50% of women workers, and also 47% of men respondents found sexual harassment to be a scary or unwanted aspect of the work environment in the restaurant industry. 60% of women and 46% of men found sexual harassment to be an uncomfortable aspect of the work environment, and 29% of women and 22% of men reported that being touched inappropriately was a common occurrence in their restaurant. A majority of women and nearly half of men surveyed had experienced uncomfortable or unwanted sexual behaviors in their workplace.

Although both women and men experienced high rates of sexual harassment, the type and rate of sexual harassment that workers experienced varied by gender, by tipped occupation, and by the worker's state's sub-minimum wage for tipped workers. These variations are analyzed in detail in sections examining behaviors from management, co-workers, and customers, below.

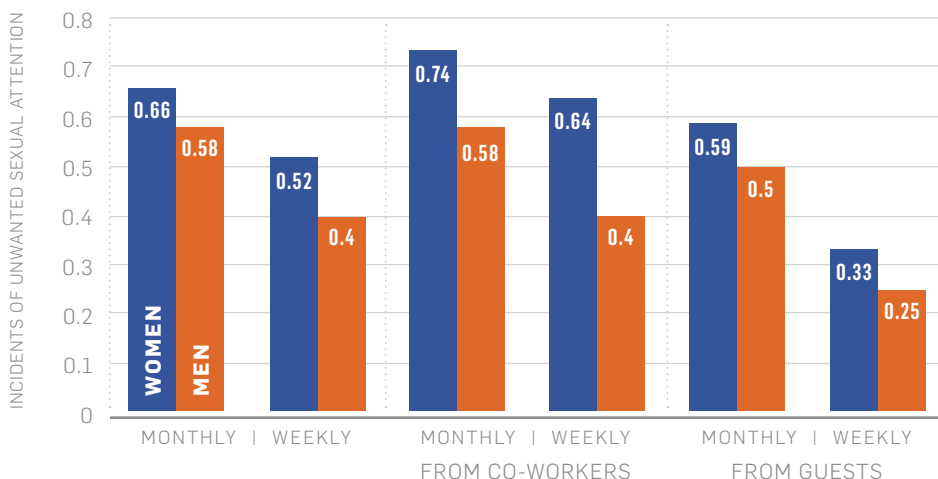


FIGURE 3.1
Source and incidence of sexual harassment

Both women and men experienced high rates of sexual harassment on a regular basis. Women experienced higher rates of sexual harassment than men, from management, co-workers, and guests.

FIGURE 3.2
Incidence of sexual harassment by gender ($\pm 2*SE$)

Sexual harassment varies by gender. TSHI is higher for women than men.⁴⁹



FIGURE 3.3
Incidence of sexual harassment by occupation ($\pm 2*SE$)

Sexual harassment varies by tipped and non-tipped occupations. TSHI is higher for workers in tipped occupations.⁵⁰



FIGURE 3.4
Incidence of sexual harassment by tipped minimum wage ($\pm 2*SE$)

Sexual harassment varies by tipped minimum wage. TSHI is higher where the sub-minimum wage is \$2.13.⁵¹

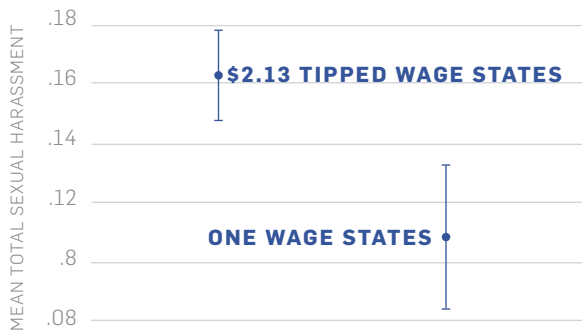
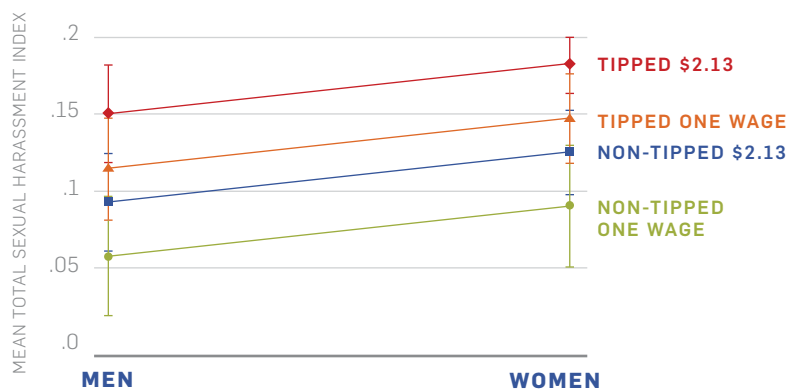


FIGURE 3.5
Differences in sexual harassment by gender, tips and sub-minimum wage

Adjusted predictions of differences in Total Sexual Harassment by gender, tipped occupations, and tipped minimum wage rate with 95% CI. Women in tipped positions, in states where the sub-minimum wage is \$2.13 per hour experience the highest rates of sexual harassment.



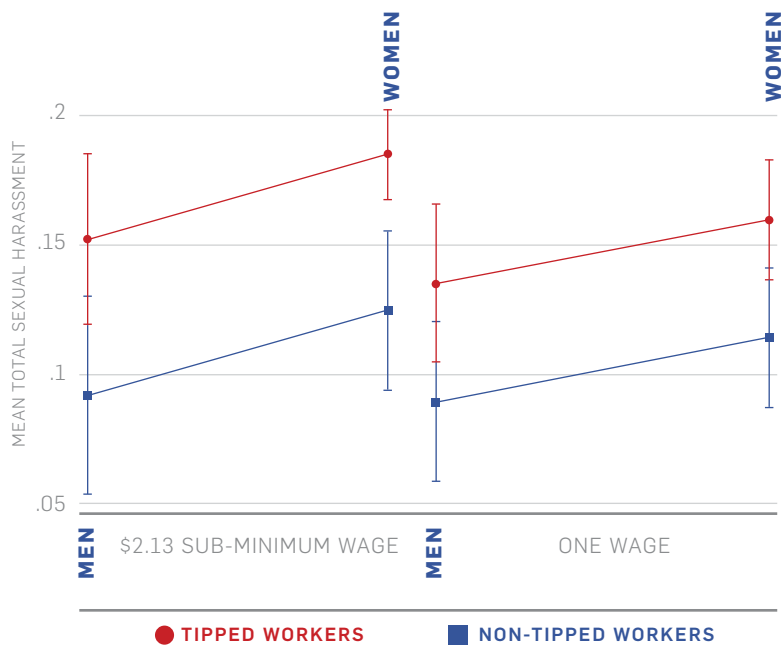


FIGURE 3.6

The effect of gender and tipped occupation on sexual harassment by tipped-minimum wage (95% CIs)

Adjusted predictions of the effect of wage rate on mean Total Sexual Harassment by women and tipped workers with 95% CI. Women and tipped workers tend to experience higher sexual harassment than men workers and non-tipped counterparts. Tipped workers who are women in states where the tipped sub-minimum wage is \$2.13 per hour experience a significantly higher rate of harassment than their non-tipped counterparts.

Differences in Harassment Experienced by Gender, Tipped Workers, and Sub-minimum Wage

One of the key findings of this report is the extent to which the rates of harassment experienced by restaurant workers varied by gender, a worker’s status as a tipped or non-tipped worker, and the sub-minimum wage in the state where the worker is employed.

Women experienced higher rates of sexual harassment than men; workers in tipped occupations experienced higher rates of sexual harassment than workers in non-tipped occupations; and workers in states where the sub-minimum wage is \$2.13/hour experienced higher rates of sexual harassment than workers in states where the sub-minimum wage was higher than \$2.13/hour.⁴⁷ See Figs. 3.2 - 3.5.

The very highest rates of sexual harassment are experienced by women, in tipped occupations, in states where the sub-minimum wage is \$2.13 per hour.⁴⁸ See Fig. 3.6.

EEOC CLAIMS

A review of over 20 EEOC Consent Decrees from 15 states found that during the past 10 years over \$10 million in settlements and damages were awarded to employees in various positions in the restaurant industry. In our sample, Consent Decrees were agreements made between the EEOC (plaintiff) and restaurant owners (defendant) to settle disputes by enforcing policies that prevent future discrimination, by establishing reporting structures, and by deciding values for monetary relief. The Consent Decrees that were reviewed showed that the victims in each situation were subjected to a hostile work environment due to sexual harassment. In some cases, the discrimination also included race and national origin harassment, and retaliation against complaints. Almost all cases involved sexual assault, including indecent exposure, lewd remarks/requests, touching, hugging, groping, grabbing, pressure for dates, unwanted advances and other forms of assault. Some cases involved employees being forced into repeated episodes of simulated rapes, exposure to pornographic images and being dragged kicking and screaming into a refrigerator. These behaviors were carried out by managers, chefs, co-workers, and customers. Major companies such as Cracker Barrel, Cheesecake Factory, Dunkin Donuts, Applebee’s, Popeye’s, McDonald’s, Burger King, Taco Bell, Outback, Sonic, Panda Express, and independent restaurants, had cases filed against them.

FIGURE 3.7
**Sexual Harassment from Managers,
 Co-workers and Guests**

Differences in mean sexual harassment from management, co-workers, and guests, by gender, tipped-occupations, and sub-minimum wage, as well as among women who live off tips by sub-minimum wage. In all cases, women experienced higher rates of sexual harassment than men, tipped workers experienced higher rates of sexual harassment than non-tipped workers, and workers in states with a \$2.13 sub-minimum wage experienced a higher rate of sexual harassment than workers in states with one wage. The highest rates of sexual harassment were experienced from co-workers, but the highest rates of sexual harassment across all three groups were experienced by women in tipped occupations in states with a \$2.13 sub-minimum wage.

Differences in Sexual Harassment from Management, Co-workers, and Customers

Sexual harassment is pervasive throughout the industry. The vast majority of workers experience these unwanted sexual behaviors on a regular basis, and they experience them at high rates from management, co-workers, and customers. The highest incidence of sexual harassment comes from co-workers, although unwanted sexual attention from management and customers is also common. Women in tipped occupations experience the highest rates of sexual harassment from management, co-workers, and customers compared to men and their non-tipped counterparts.

In the sections that follow, this report examines differences in behavior from management, co-workers, and customers in order to understand these differences and what they mean in practice, beginning with the most pervasive source of sexual harassment, co-workers.



47 One-way analyses of variance were used to examine differences in the average rates of sexual harassment by gender, tipped occupation, and wage region as measured by our report's Total Sexual Harassment Index.
 48 Multiple linear regression was used to predict interaction effects in TSHI by gender, tipped occupations, and region, and margins were plotted to outline the results. As hypothesized, TSHI is higher for women than men, but increases for both in tipped occupations, and is highest in tipped occupations in states where the sub-minimum wage is \$2.13 per hour.
 49 $F(2,547) = 5.90, p < 0.003$.
 50 $F(2,654) = 21.50, p < 0.000$.
 51 $F(2,636) = 8.57, p < 0.000$.

Experience of Harassment from Coworkers

When sexual harassment becomes institutionalized as part of the normal job expectations in restaurant work, it exercises a profound influence over interactions between employees. A highly sexualized workplace culture, often found in restaurants, strongly informs both working in such environments as well as their understanding of what constitutes sexual harassment. Gendered power hierarchies are often in operation amongst staff in restaurants: not only do women working in the industry tend to occupy jobs that are considered lower-status compared to 'men's work' — for instance, as waitresses and hostesses as opposed to management or sommeliers in fine dining — but they are also distanced socially from men co-workers through practices such as revealing uniforms, the use of gendered nicknames instead of their actual names, the expectation of flirting and sexual joking as part of their job, and the perception that the work women carry out is less skilled or valuable.⁵² Sexual harassment is both a form of this social distancing, and a result of it. Data from our study captures the pervasiveness of inappropriate sexual banter and touching between employees.

Differences in Experienced Sexual Behavior by Gender

Both men and women co-workers experienced sexual harassment from co-workers on a routine basis — only 21% of women and 29% of men reported never experiencing sexual harassment from co-workers — but the type and rate of harassment differed by sex. Women bore the brunt of most sexual harassment from co-workers. Over two-thirds (69%) of women and half (52%) of men reported sexual teasing, jokes, remarks, or questions from co-workers,⁵³ and nearly twice as many women as men were deliberately touched or pinched (39% vs. 19%)⁵⁴ as well as inappropriately kissed or fondled (21% vs. 12%).⁵⁵ Women were also more likely to receive sexually suggestive text messages from co-workers (19% vs. 18%),⁵⁶ sexually suggestive looks or gestures (45% vs. 23%)⁵⁷ and pressure for dates (36% vs. 15%).⁵⁸ Three times as many women as men were told to alter their appear-

FIGURE 4.1

Co-worker sexual behavior

Differences in sexual behaviors from co-workers experienced by men and women.

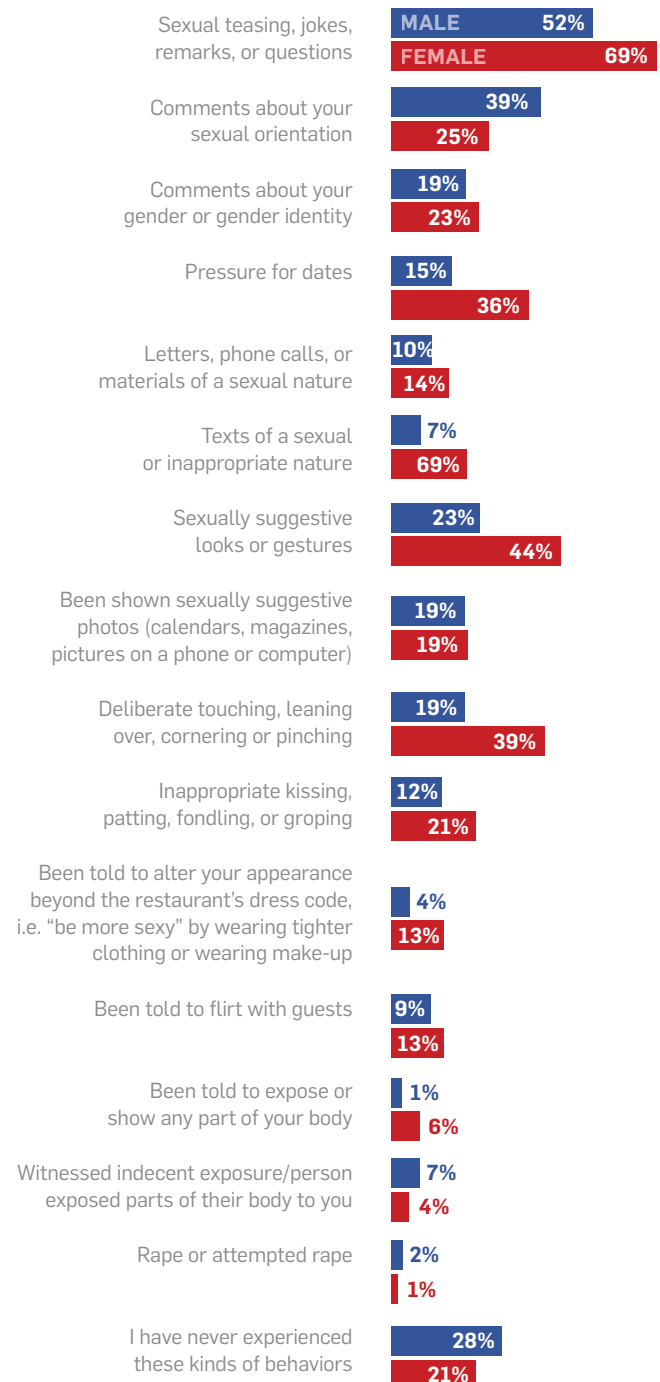


FIGURE 4.2
Did sexual harassment from co-workers bother you?

Women were bothered by co-worker sexual harassment at a higher rate than men.⁶¹

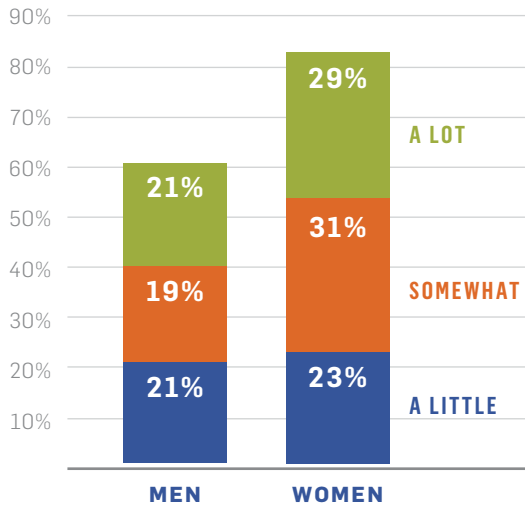
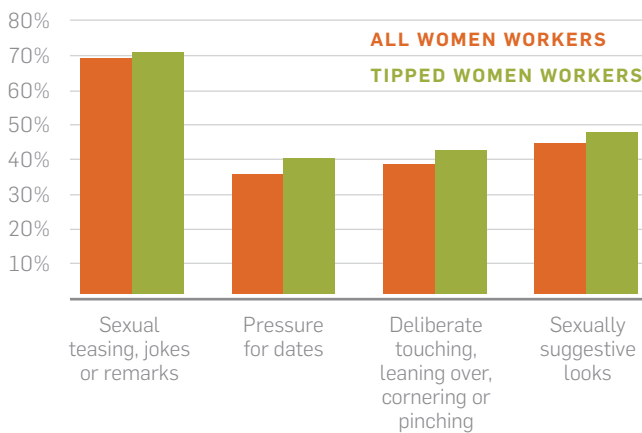


FIGURE 4.3
Experienced sexual harassment from a co-worker

Percentage of women workers who have experienced sexual harassment from co-workers.



ance, or “look sexy” (13% vs. 4%).⁵⁹ In one category, men were the primary focus of sexual harassment: nearly 40% of men experienced comments about their sexual orientation compared to 25% of women.⁶⁰

Discourses that suggest that sexual harassment is ‘just part of the job’ in the restaurant industry obscure the way that this harassment is actually experienced by workers. Our survey data indicates that sexual attention is experienced as unwanted by a majority of both men and women across the industry.

“Unfortunately, it’s just become the societal norm, and we have all accepted it and we all hate it” —Woman bartender, Houston focus group

While majorities of men and women were bothered by sexual advances from co-workers, women were significantly more likely to experience sexual advances in their workplace in a negative light. Four-fifths (83%) of women reported being bothered by co-worker sexual attention, in comparison to 60% of men respondents.

Differences in Experienced Sexual Harassment by Tipped Occupation

Tipped workers experienced higher rates of sexual harassment from co-workers in nearly every category than non-tipped workers. The only categories in which workers did not vary by tipped occupations were in comments about gender and sexual orientation, in being told to look sexy, witnessing indecent exposure, and assault. Tipped workers experience a highly sexualized work environment that is specific to their occupations, and most of these experiences are borne by women.

52 LaPointe, E. (1992) Relationships with waitresses: gendered social distance in restaurant hierarchies. *Qualitative Sociology* 15, 377-393.

53 $\chi^2=10.972, p < 0.015$

54 $\chi^2=15.196, p < 0.000$

55 $\chi^2=4.204, p < 0.04$

56 $\chi^2=8.169, p < 0.004$

57 $\chi^2=16.548, p < 0.000$

58 $\chi^2=16.4, p < 0.000$

59 $\chi^2=7.294, p < 0.007$

60 $\chi^2=8.173, p < 0.004$

61 $\chi^2=20.379, p < 0.000$

Experience of Harassment from Owners, Managers and Supervisors

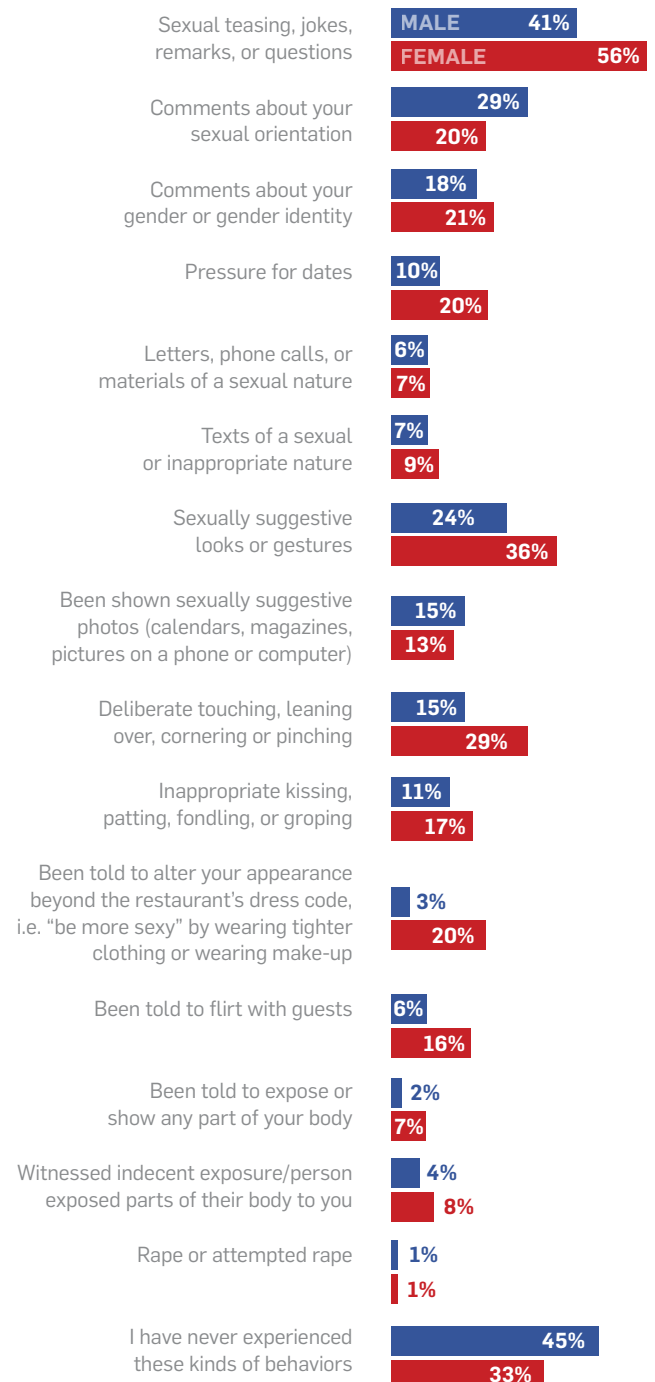
Two-thirds of women and half of men we surveyed had experienced some form of sexual harassment directed at them from a restaurant owner, manager or supervisor. This is of course particularly problematic because in such circumstances it can be extremely hard for the employee to reject management's advances, respond assertively to their behavior, or to report or complain about it for fear of losing their jobs or jeopardizing their livelihoods. Moreover, owners, managers and supervisors all exercise authority when it comes to determining and controlling the norms of workplace culture, including which behaviors are acceptable and which are not. That so many restaurant workers have experienced inappropriate behavior from managers in positions of authority suggests that management is not invested in regulating — and may even encourage — the sexualized culture of the restaurant workplace. Sexual harassment has become a way for management to build a subservient and dependent workforce based on exerting physical and financial control. This is further supported by other research carried out by ROC, which suggests that sexual harassment policies and training in the restaurant industry are widely unenforced or absent and is corroborated by our survey results.⁶²

Differences in Experienced Sexual Harassment from Employers by Gender

As with co-workers, both men and women co-workers experienced sexual harassment from owners, managers, and supervisors on a routine basis, but women experienced sexual harassment from management at a higher rate than men. Nearly half (46%) of men reported never experiencing sexual harassment from management compared to only one-third (33%) of women.⁶³ A majority of women reported sexual teasing, jokes, remarks, or questions from management, compared to less than half of men (56% vs. 41%).⁶⁴ Twice as many women as men were deliberately touched or pinched (30% vs. 15%)⁶⁵ and received pressure for dates (21%

FIGURE 5.1
Management sexual behavior

Differences in sexual behaviors from management experienced by men and women.



TRANSGENDER RESTAURANT WORKERS

“The manager at one of the places I worked early in my transition hired me to work at the door. After I started working there, the same manager removed me from the front of the establishment because ‘who I am’ called too much attention.”

—Transgender focus group participant, former restaurant worker, Washington DC

Transgender⁷⁵ restaurant workers often face specific kinds of harassment due to their gender identity and perceived sexual orientation. In a focus group with transgender current and former restaurant workers, stories of invasive questioning by co-workers and managers, inappropriate groping and touching, as well as outright firing because of one's gender identity were a normal part of the industry environment.

Data about the transgender community is limited, and the total number of transgender individuals working in the restaurant industry is unknown. However, responses gathered in our survey collection show transgender workers face higher levels of certain kinds of harassment than their cisgender⁷⁶ counterparts in the industry:

- Trans survey respondents were nearly three times as likely to report harassing comments about their sexual orientation or gender identity from managers than their cisgender coworkers
- Trans survey respondents were two and a half times more likely to report harassing comments about their sexual orientation or gender identity from customers than their cisgender coworkers

Within the workplace, policies around uniforms and bathrooms clearly create an environment in which sexual harassment of transgender workers is permitted to thrive. Focus group⁷⁷ participants recall being given the wrong uniform, being given a uniform with the wrong name printed on it, or being told they were not allowed to wear the uniform that matched their gender identity — thus forcing them to wear a uniform that corresponded to their sex assigned at birth instead of their gender identity. In addition, transgender restaurant workers describe being told what bathroom to use, or not being allowed to use the bathroom of their gender identity. Much of the conversation around uniforms and bathrooms happened in and around co-workers, creating an environment where the bodies and lives of transgender workers are “up for discussion.”

“Conversations with co-workers and my manager about my transition quickly turned into an invasive ‘intervention’ with many uncomfortable questions. It is important to note that I never asked them for advice nor did I mention I was medically transitioning. This form of unsolicited input from their part was inappropriate.”

—Transgender focus group participant, former restaurant worker, Washington DC

vs. 10%)⁶⁶ from management. Over twice as many women were told to flirt with customers (17% vs. 7%)⁶⁷ or told to expose parts of their bodies (7% vs. 2%)⁶⁸ as men. Women were told to alter their appearance, or “look sexy” at six times the rate experienced by men (20% vs. 3%). One-third of women reported being deliberately touched or pinched by management, and one-fifth received pressure for dates, and were told to “look sexy” at work by management. Over one-third of women (36%) experienced sexually suggestive looks or gestures from management, compared to one-quarter of men.⁶⁹ As was the case in harassment from co-workers, men were the primary focus of comments about sexual orientation from management (30% of men vs. 21% of women).^{70,71}

The unwanted experience of sexual harassment grows more acute when it is received from superiors in the workplace hierarchy. Although strong majorities of both men and women were bothered by sexual harassment from management, women reported being bothered by owner harassment at a much higher rate than men. A vast majority (86%) of women reported being bothered by sexual attention from management, compared to 74% of men respondents. Only a quarter of men, and 14% of women were not bothered by these behaviors from management.

Differences in Experienced Sexual Harassment from Employers by Tipped Occupation

Our research shows that owners, managers, and supervisors often seek to shape interactions between women employees — particularly tipped women employees — and customers in such a way as to enhance the perceived sexual availability and desirability of women staff. Tipped women workers we surveyed were more likely to have been asked by an owner, manager, or supervisor to sexualize their behavior and/or appearance when dealing with customers, including being told to flirt with customers and ‘look sexy,’ (24% of tipped workers vs. 20% of non-tipped workers). Tipped workers also experienced higher rates of sexual teasing, comments about gender, pressure for dates, deliberate touching or pinching, and sexually suggestive looks than their non-tipped counterparts. The higher rate of sexually harassing behaviors experienced by tipped workers underscores the extent to which tipped workers are expected to act sexually available for the benefit of customers and management (see Fig. 5.3).

Management directives to women restaurant workers to sexualize their appearance and interactions with customers speaks

FIGURE 5.2
Did sexual harassment from owners bother you?

Women were bothered by sexual harassment from owners at a higher rate than men.⁷²

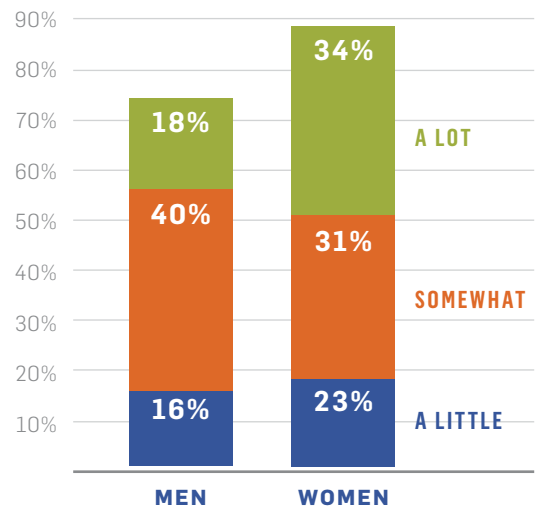
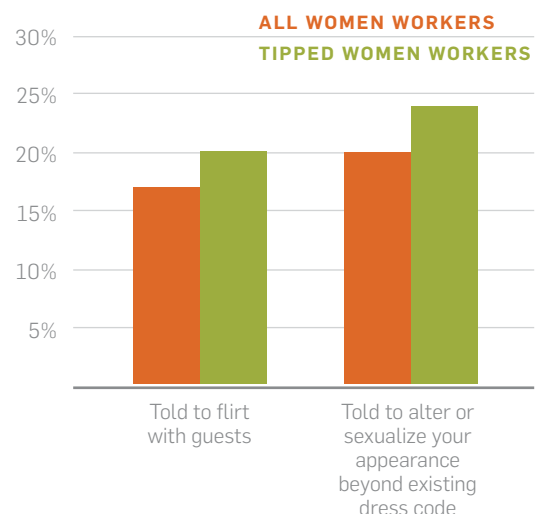


FIGURE 5.3
Sexual harassment from management

Women who worked for tips experienced higher rates of sexual harassment than women overall.



to the 'aesthetic labor' that women in the restaurant industry are expected to perform.^{73,74} 'Aesthetic labor' refers to the desire of employers to hire workers who look and act in a particular way. In the restaurant industry this often translates into women who are 'good-looking' or sexually available. One woman server from Houston explained the hiring criteria considered important by owners and managers, and the specific demands placed on women's appearances:

“[They] wouldn't hire someone over thirty... [They] would say, 'I want this many servers, none of them fat, none of them ugly, I want them all to be 5'3", they have to be light-skinned, or dark-skinned...”

Employers believe that having staff that fit particular aesthetic criteria will not only create an appealing image for their business but will also provide a competitive advantage to generate more customers and income. These aesthetic criteria are institutionalized in training and codes of conduct once women are on the job. Employer's expectations commodify women's bodies, contributing to a workplace culture in which sexual harassment of women staff becomes normalized and commonplace.

62 ROC-United. (2012). *Tipped Over The Edge: Gender Inequity in the Restaurant Industry*. New York, NY: Restaurant Opportunities Centers United.

63 $\chi^2=5.921, p < 0.015$

64 $\chi^2=7.787, p < 0.005$

65 $\chi^2=8.733, p < 0.003$

66 $\chi^2=7.033, p < 0.008$

67 $\chi^2=6.801, p < 0.009$

68 $\chi^2=3.959, p < 0.047$

69 $\chi^2=4.82, p < 0.028$

70 Men received higher rates of comments about sexual orientation compared to women. Trans individuals received higher rates of harassment in this area than men and women combined. See Box on Transgender Workers.

71 $\chi^2=3.938, p < 0.047$

72 $\chi^2 = 9.506, p < 0.023$

73 Gatta, Mary. (2011). In the Blink of an Eye: American High End Retail Business and the Public Workforce System. In *Retail Work*. Basingstoke: Palgrave Macmillan.

74 Warhurst, C., & Nickson, D. (2007). Employee experience of aesthetic labour in retail and hospitality. *Work, Employment & Society*, 21(1), 103-120.

75 Transgender: a term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth.

76 Cisgender: a person whose self-identity conforms with the gender that corresponds to their biological sex.

77 Focus groups with transgender restaurant workers were held by the National Gay and Lesbian Task Force. Translation was provided by National Latina Institute for Reproductive Health. Our thanks to Casa Ruby for hosting the focus group.

Experience of Harassment from Guests and Customers

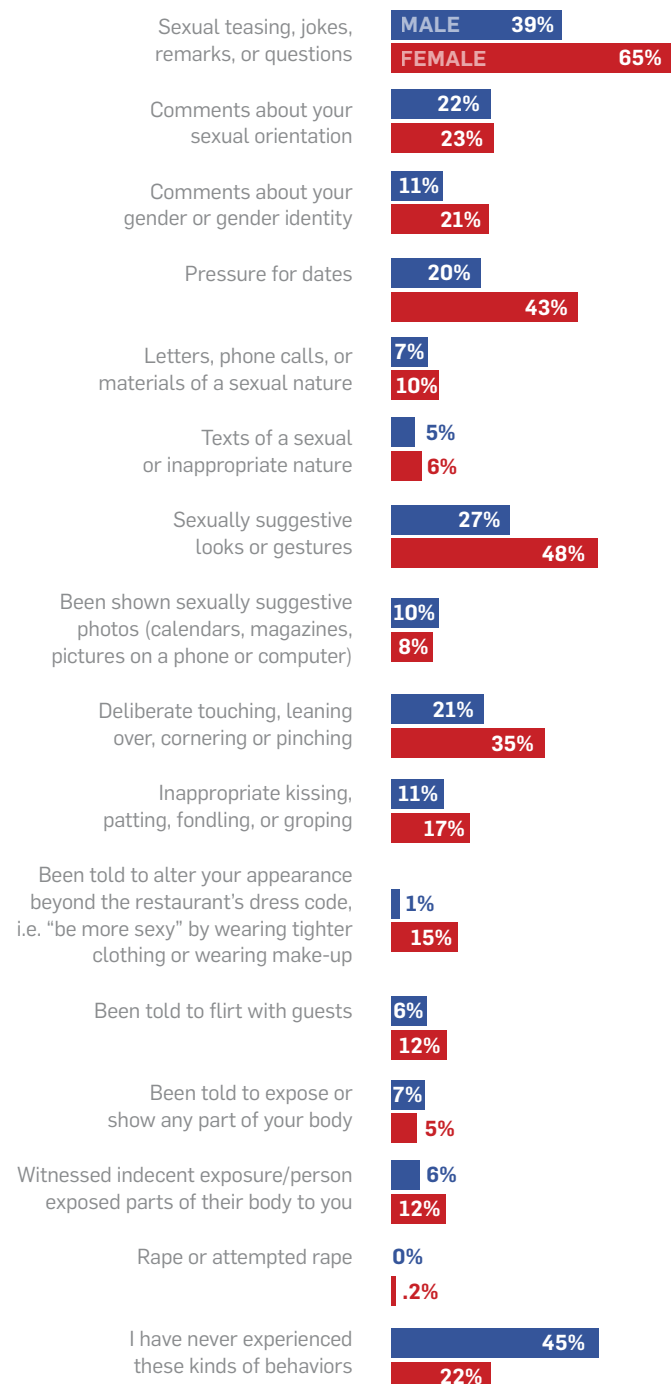
Differences in Experienced Sexual Harassment by Gender

As with harassment from co-workers and owners, both men and women workers experienced sexual harassment from customers on a routine basis; however, women experienced sexual harassment from customers at twice the rate of their men co-workers. Nearly half (45%) of men reported never experiencing sexual behaviors from customers compared to less than one-quarter (22%) of women.⁷⁸ Two-thirds (66%) of women reported sexual teasing, jokes, remarks, or questions from customers, compared to only forty percent of men.⁷⁹ Twice as many women received pressure for dates (43% vs. 20%),⁸⁰ and half-again as many women as men were deliberately touched or pinched, (36% vs. 21%)⁸¹ by customers. Women were told to alter their appearance, or “look sexy” by customers at fifteen times the rate experienced by men (15% vs. 1%).⁸² Over one-third of women reported being deliberately touched or pinched by customers, and over two-fifths received pressure for dates by customers in their workplace. Nearly one-half of women (48%) experienced sexually suggestive looks or gestures from customers, compared to one-quarter (27%) of men.⁸³ Unlike situations involving harassment from co-workers and management, women and men were equally likely to be subjected to comments about sexual orientation in situations involving harassment from customers (23% vs. 22%, n.s.), but women were twice as likely to be subjected to customer comments regarding their gender or gender identity (22% vs. 11%).⁸⁴

Sexual harassment from customers is the most uncomfortable form of sexual harassment for women working in the restaurant industry — with a greater percentage of women reporting discomfort at harassing behaviors from customers than from employers and co-workers. Ninety percent of women reported being bothered by customer behaviors, including 40% who were highly bothered by these behaviors. Two-thirds of men were bothered, including a quarter that were highly bothered, but men were more bothered by behaviors from owners than from customers.

FIGURE 6.1
Guest Sexual Behavior

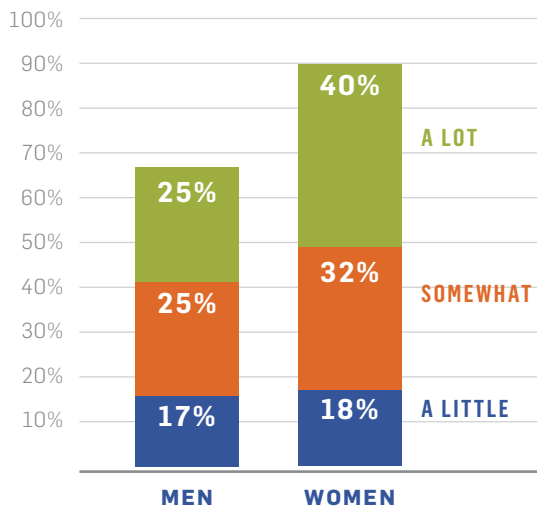
Differences in sexual behaviors from customers experienced by men and women.



"The most disturbing experience I've had was with a guest that started with looks and glances that turned into remarks. Then he started to come into every shift that I worked and when I talked to my manager about it, they basically turned the other way, told me I was imagining it, that it wasn't really happening, or the customer is always right. Then the customer somehow got my number and I was getting text messages with sexual jokes. He would leave me messages at three or four in the morning and he was drunk and would be, like, "where are you, why aren't you here?" And the culmination of all of this was one night, I was riding my bike home and he was following me. So I had to change my route and go to another place that wasn't mine because I didn't want him to know where I lived." —Woman server, Houston focus group

FIGURE 6.2
Did sexual harassment from customers bother you?

Women were bothered by customer behaviors at a higher rate than men.⁸⁵



Differences in Experienced Sexual Harassment by Tipped Occupation

Tipped workers experienced higher rates of harassment via media from customers than non-tipped workers. Tipped workers reported higher rates of inappropriate letters, 'sexts' or texts of a sexual nature, and photos from customers. Tipped workers also reported higher rates of harassing physical behaviors from customers, including pressure for dates, suggestive looks, deliberate touching, and inappropriate kissing. Tipped workers also experienced higher rates of certain verbal harassing behaviors from customers such as sexual teasing and being told to flirt and expose themselves. Customer behaviors towards tipped workers are highly sexualized, and appear geared towards obtaining tipped workers' sexual favors. This is epitomized by customers' higher usage rates of media to establish a sexual connection with tipped workers.

78 $\chi^2=21.236, p < 0.000$
 79 $\chi^2=24.083, p < 0.000$
 80 $\chi^2=18.248, p < 0.000$
 81 $\chi^2=7.698, p < 0.006$
 82 $\chi^2=14.194, p < 0.000$
 83 $\chi^2=14.707, p < 0.000$
 84 $\chi^2=5.965, p < 0.015$

85 $\chi^2 = 25.509, p < 0.000$
 86 $\chi^2=3.942, p < 0.047$
 87 One-way ANOVA, $F(1,238) = 37.3, p < 0.000$
 88 $\chi^2=9.2, p < 0.002$
 89 $\chi^2=5.868, p < 0.015$
 90 $\chi^2=31.476, p < 0.000$

UNIFORMS

The sexualized atmosphere experienced by restaurant workers is reflected in and amplified by management policies requiring women to wear revealing uniforms. Eighty five percent of workers reported that the restaurant where they worked had a uniform policy. Thirty percent of workers reported that men and women were required to wear different uniforms. Three times as many women felt uncomfortable in their uniforms compared to men (40% vs. 13%).⁸⁶ Rates of sexual harassment were highest in restaurants that required men and women to wear different uniforms (see Figure B).⁸⁷

As one woman bartender explained:

“You need to be ‘date ready’... you need to wear more make-up, you need to wear short shorts; you have the assets, you need to flaunt it, kind of deal”.

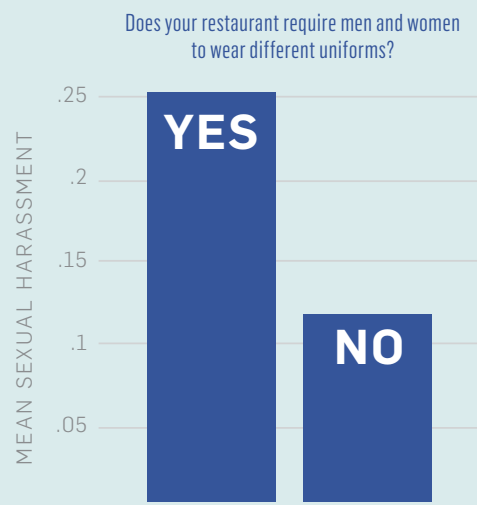
Another woman server, from Houston, added:

“Yeah... when you walk in and it’s like all male bartenders and all female cocktail servers, and all the men are wearing comfortable shoes, slacks, and a button-up shirt, and all the girls are wearing like corsets... and we had to wear pencil skirts [or] shorts, no pants. And we had to wear at least an inch heel shoes.”

Examining survey responses by occupation and wage region, 89% of tipped workers were required to wear uniforms, compared to 72% of non-tipped workers.⁸⁸ Tipped workers uniforms were typically more suggestive, with three-quarters (74%) of tipped workers reporting that women’s uniforms were more suggestive than men’s, compared to a third (36%) of non-tipped workers.⁸⁹ Uniforms also appeared to be more common in states where restaurant workers were living off tips. Ninety-two percent of workers in states where the sub-minimum wage for tipped workers is \$2.13 an hour had a uniform policy, compared to 60% of workers in states with a sub-minimum wage higher than \$2.13.⁹⁰



FIGURE B
Sexual harassment was higher in restaurants that required men and women to wear different uniforms.



Workers Responses to Harassment

Restaurant workers feel pressured to remain silent about the sexual harassment they experience. Two-thirds of women workers felt they would face negative repercussions if they complained about or reported sexual harassment from management, and 46% felt there would be negative repercussions if they complained about or reported sexual harassment from co-workers. 70% felt there would be negative repercussions if they complained about or reported sexual harassment from customers. A significant majority of women workers felt they would experience negative consequences, including financial loss, public humiliation, or job termination if they tried to report sexual harassment from management and customers.

How do women restaurant workers seek to deal with this problem? Figure 7.1 shows the responses of women employees to sexual harassment, in percent, depending on whom the harassment was coming from.

As is evident, the majority of women ignore the harassment, and only a small percentage report this harassment when they experience it, although a third do report harassment from customers to supervisors.

Workers ignore harassment from co-workers and employers for fear of a number of repercussions, as is shown in Fig. 7.2.

Nearly two-thirds (63%) of restaurant workers ignore sexually harassing behaviors from customers. An array of factors comes into play that discourages restaurant workers from reporting harassment from customers. This effect is particularly acute for tipped workers, as shown in Figure 7.3:

As one woman server from Houston put it:

“The one thing that really bothers me, though, is not necessarily co-workers; [in] that interaction I have more freedom to be like, ‘okay, stop it’. But when a guest does it, then I feel a lot more powerless. That’s when I’m like, man, that’s where my money’s coming from...”

FIGURE 7.1

Did sexual harassment from owners bother you?

Women restaurant workers responded to sexual harassment guests, supervisors, and co-workers; the majority tended to ignore sexual harassment.

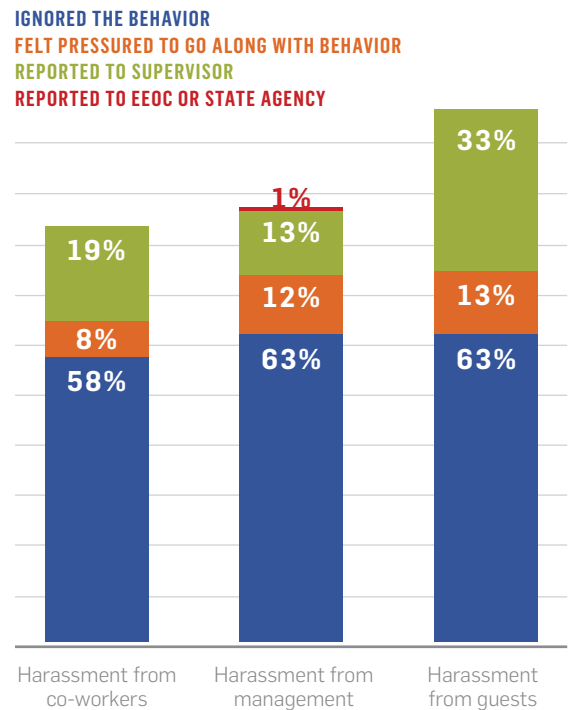
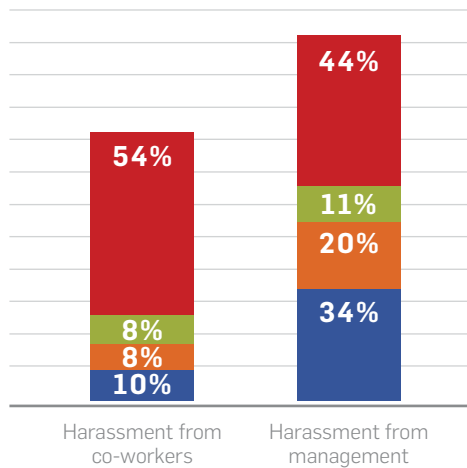


FIGURE 7.2

Women restaurant workers believed they would face greater repercussions if they reported sexual harassment from management than from co-workers.⁹¹

BELIEVED SHIFTS WOULD GET WORSE
BELIEVED WOULD NOT GET PAY INCREASE OR PROMOTION
BELIEVED WOULD LOSE THEIR JOB
DID NOT BELIEVE THERE WOULD BE REPERCUSSIONS



The power customers hold over restaurant workers living off tips is reinforced by management attitudes and directives that the customer is always right and that the server's responsibility is to please the customer. Several interview respondents stated that they had not reported sexual harassment from customers to management because they felt that they would be fired or otherwise penalized before a customer was reprimanded. This is shown by the experiences of one server who experienced inappropriate sexual behaviors from a customer:

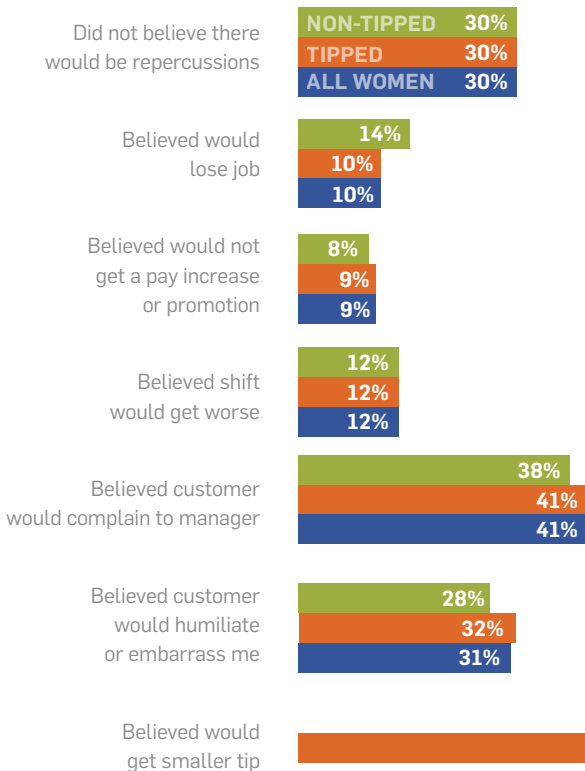
"I said to myself, I can't be putting up with this, let me talk to my boss about it. I was kind of surprised by what my boss said...he said, 'well, those people pay a lot of money for our services and, I mean, would it hurt to smile a little bit, be a little bit more friendly to them?' And I was blown away."

Unwanted sexual attention exercises a profound impact on the emotional well-being of restaurant workers. Thirty-six percent of all respondents reported that their level of depression or anxiety deteriorated after experiencing sexual harassment. Fifteen percent of women respondents reported having to take extra steps to improve their physical safety at work after having been sexually harassed on the job.

Finally, in addition to its impact on workers, sexual harassment may be a strong contributor to the restaurant industry's high turnover rates. Twenty-five percent of all women surveyed reported seeking out new work as a result of unwanted sexual attention in their workplace.

FIGURE 7.3

The majority of women restaurant workers believe they would face multiple repercussions if they reported sexual harassment from guests.



91 Survey respondents were allowed to pick multiple responses to this question, so totals may be higher than one hundred percent.
 92 America works here, National Restaurant Association. Retrieved September 19, 2014, from <http://www.america-works-here.org/first-job>.
 93 $p = 0.609$
 94 Odds Ratio: 3.278

PAST AND CURRENT TIPPED WORKERS

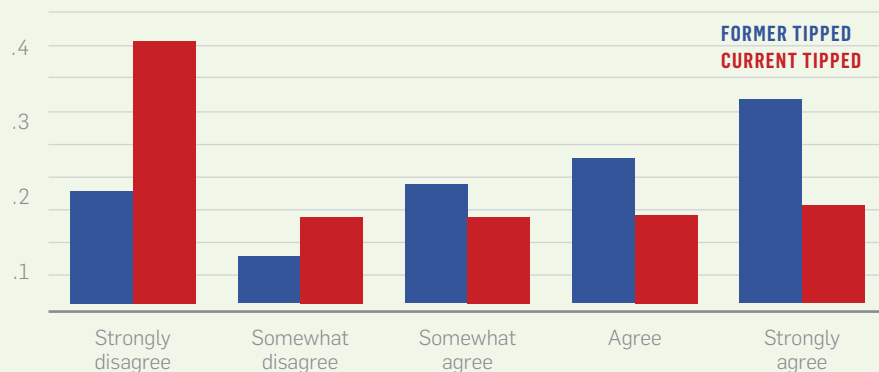
The experience of sexual harassment is something that women carry with them even after they leave work in the restaurant industry; in some cases it is the very thing that forces them to leave it in the first place. Our research found that over a third of women (34%) who were formerly tipped workers, and 30% of those who were tipped workers within the last year, quit their jobs as a result of encountering unwanted sexual behavior in the restaurant workplace.

Sexual harassment is a facet of restaurant industry employment that features clearly in the recollections of many former restaurant employees, even if they have moved on to other jobs in different industries.

This is problematic not just because of what these women have dealt with in the past, but also because it has the potential to affect their future. The restaurant industry, one of the largest and fastest-growing industries, increasingly serves as the gateway for young women to enter the workforce,⁹² and provides both their first employment experience and their first experience with institutionalized sexual harassment. As the industry provides many women with their first introduction to working life, it also establishes cultural norms around sexual behavior that can shape perceptions of what's acceptable behavior in the workplace that workers carry with them long after they've left the restaurant industry.

Current and former women who worked as tipped restaurant workers reported similar rates of sexual harassment.⁹³ However, a greater percentage of women who previously worked as tipped workers (74%) tolerated inappropriate behaviors that made them nervous or uncomfortable in their restaurant or workplace, than women currently employed as tipped workers (46%). Women who had previously worked as tipped workers were 1.6 times as likely to live with inappropriate behaviors in the workplace as the women who were currently employed as tipped workers.⁹⁴ Women who encounter sexual harassment in the restaurant industry are more likely to tolerate sexual harassment in future environments; men and women who have worked in the restaurant industry serve as a vehicle for the cultural transmission of acceptable norms from the restaurant into other workplaces.

Depending on tips has led me to accept inappropriate behaviors that made me nervous or uncomfortable in my workplace



74% of women who were previously tipped workers reported that living off tips led them to accept inappropriate behaviors that made them nervous or uncomfortable in their workplace, compared to 46% of women currently employed as tipped workers.

Conclusions



Sexual harassment is endemic across the restaurant industry. Sexual harassment impacts both men and women restaurant workers, but has a greater impact on women, and its greatest impact on women in tipped occupations in states that have a sub-minimum wage of \$2.13 per hour for tipped workers. Although differences in levels of the tipped sub-minimum wage likely play a role, the entire system of allowing employers to pay a sub-minimum wage to tipped workers and forcing women to depend on the largesse of customer tips, appears to create an environment where women are undervalued not only by customers, but also by management, as well as by their co-workers.

The rampant sexual harassment of women and trans people, particularly tipped workers, highlights the assertion of financial power and control by management and customers. Women are the vast majority of tipped workers, and tipped workers by law depend on customers for their wages. In states with a sub-minimum wage for tipped workers, wages are wholly dependent on the evaluation of a server's worth by the customer. This means that a tipped worker is monetarily evaluated in every social interaction, and a tipped worker receives constant feedback on the evaluated worth of their service. The documented prevalence of sexual harassment is not attributable to a simple desire for sex; rather, it reflects an abuse of power and a structural issue where women's and trans bodies are viewed as expendable commodities that exist merely for someone else's pleasure. By devaluing individual human worth and dignity, and by reinforcing a financial power dynamic that renders workers vulnerable, sexual harassment, and the environment that supports it, opens the door to the sexual violence that some workers reported experiencing.

A key finding from data contained in this report is that in states where sub-minimum wages force restaurant workers to live off of tips, women and tipped workers are evaluated, and self-evaluate, as objects of service. This impacts the behavior of management, co-workers, and customers towards restaurant workers, as well as the behavior that the receiving individual is willing to tolerate. This system creates a culture of sexual objectification that impacts everyone in the industry, reflected in the high rates of sexual harassment reported by all groups of workers, but with the highest rates being report by women in tipped occupations in states with a \$2.13 sub-minimum wage. The industry must adopt far-reaching and systemic changes if it is to address sexual harassment.

Policy Recommendations

Through this examination of sexual harassment experienced by restaurant workers, it is clear that systemic change is necessary for the industry to realize its full potential as a viable economic engine. It is untenable for a growing industry that employs ten percent of the private sector to perpetuate an environment where up to sixty percent of the workforce experiences sexual harassment. The intersections of gender identity, gender expression, sexual orientation and socio-economic status reflected in the demographics of restaurant workers exemplify how power dynamics are used to exert control over other people's bodies. Changing to one fair wage can shift this so that restaurant workers have more agency over their bodies and their workplace since they would no longer depend on other people's whims for their livelihood. It humanizes the working environment and stabilizes the service industry as a whole.

According to the EEOC, the restaurant industry is the largest source of sexual harassment claims. The restaurant industry offers the lowest wages, and the least access to basic benefits such as paid sick days. At the same time, the culinary hospitality industry is one that holds promise for and is loved by many workers who feel called to nourish and improve the lives of customers. The rates of sexual harassment experienced by workers in different tipped minimum wage regions of the country track differences in the poverty rates of tipped restaurant workers across those regions and appear to have an impact on indicators of industry health, such as sales per capita. Workers, in particular women, in states with higher wages and no sub-minimum wage experience lower rates of sexual harassment and reduced poverty, and this is associated with a healthier industry based on projected employment growth.⁹⁵

There are a number of reasons why current complaint-based models of enforcing sexual harassment policy in the workplace have failed restaurant workers. As this study indicates, many workers are afraid of retaliation, uncertain their claims will be taken seriously, or unaware of their rights. One potential solution to this problem emerged in focus group discussions where women workers suggested a need for a worker-led and worksite-based enforcement of sexual harassment policy through "an advocate" that would function "like a foreman" and "like a lawyer" for workers by providing a clear pathway for workers to report violations without fear of retaliation. A worker-led and worksite-based advocate could help standardize policies and procedures around sexual harassment in restaurants by educating workers about their legal rights, identifying the appropriate agency for realizing a particular claim, and helping to coach workers about documentation needed in order to get a fair hearing under the law.

Because of the restaurant industry's importance as an economic engine and the scale of the problem, stakeholders must take action to reform the restaurant industry's more egregious practices.

Policy makers:

- Should take a lead in advocating for One Fair Wage. Increase the minimum wage and eliminate a sub-minimum wage for tipped workers, so that all workers can cover their basic necessities in a dignified manner.
- Strengthen anti-sexual harassment employment laws and enforcement efforts, and require written policies and training on sexual harassment, while strengthening workers' voices on the job to ensure these laws are implemented
- Support the Fair Scheduling Act to prevent management's abuse of scheduling that can be used to punish. Workers' refusal to accept sexualized behavior should not result in the loss of prime shifts
- Support the Fair Employment Protection Act to restore strong protections from sexual harassment by lower-level supervisors, which is common in the restaurant industry⁹⁶
- Support the Healthy Families Act (earned sick days) and the Family and Medical Insurance Leave Act (paid leave) so that women are less economically vulnerable to sexual harassment
- Support job-training programs that provide accessible, quality training to help women gain special skills and advance within the industry
- Support local efforts to raise the minimum wage and eliminate the tipped minimum wage, establish earned sick days and fair scheduling policies, and strengthen protections against sexual harassment and other abuses

Employers:

- Should establish workplace policies such as One Fair Wage so all workers are treated fairly and have equal opportunity to earn a dignified and livable wage.
- Establish and strengthen an anti-harassment policy, regularly train all employees and managers on the policy and on the law, and vigorously enforce the policy
- Emphasize no tolerance for sexual harassment by managers, co-workers or customers, and no tolerance for unlawful retaliation against employees raising issues of harassment or participating in investigations of harassment

- Establish workplace policies such as similar uniforms for men and women that promote an equitable work environment for all. Workers should be allowed to wear the uniform of their gender identity, and should not be required to wear uniforms that are sexually suggestive or put them in danger such as an immediate risk of slipping or long-term risk of back and feet ailments
- Establish workplace policies such as earned sick days and paid family and medical leave so that women are less economically vulnerable to sexual harassment
- Adopt systematic and fair hiring and promotion practices with clear and explicit criteria

Consumers:

- Should speak up and state their support for One Fair Wage and for eliminating the lower minimum wage for tipped workers and for women
- Should speak up and state their support for restaurants that do not tolerate sexual harassment
- Use social media to promote appropriate customer behavior

Workers:

- Know your rights and take action to enforce your rights
- Organize with your coworkers to transform the industry
- Help cultivate a work culture based on zero tolerance of sexual harassment

Resources:

The 9 to 5 Guide to Combating Sexual Harassment: Candid Advice from 9 to 5, the National Association of Working Women, by Ellen Bravo and Ellen Cassedy. Milwaukee: 9 to 5 Working Women Education Fund, 1999. <http://9to5.org/join/9to5-store/>

Employer, Union, and Service Provider's Guide to Ending Street Harassment, by Debjani Roy. New York: Hollaback!, 2013. <http://www.ihollaback.org/resources/hollaback-publications/>

U.S. Equal Employment Opportunity Commission
<http://www.eeoc.gov/employees/charge.cfm>

⁹⁵ ROC-United. (2014). *Recipe for Success*.

⁹⁶ National Women's Law Center. (2014). *Reality check: seventeen million reasons low-wage workers need strong protections from harassment*. Washington DC: National Women's Law Center.

Appendix

Unweighted Survey Demographics | Sample Size = 688

	% OF SAMPLE
GENDER	
Male	19.3
Female	77.4
Other*	3.3
AGE	
Under 20	8.3
21-30	61
31-40	16.5
41-50	8.8
50+	5.4
RESTAURANT SEGMENT	
Fine dining	8.8
Casual full-service	72.6
Quick service	3.8
Bars and other	14.8
WAGE REGION	
\$2.13-\$3.00	54.5
\$3.01-\$5.00	23.3
\$5.01+	22.2

	% OF SAMPLE
RACE/ETHNICITY	
White	46.4
Black	19.8
Latino	18.9
Asian	5.9
Other	8.9
NATIVITY	
Born in the U.S.	89.8
Foreign born	10.2
PRIMARY LANGUAGE	
English	87.8
Spanish	9.3
Other	2.9
POSITION	
Front-of-the-House	91.3
Back-of-the-House	8.7
OCCUPATION	
Tipped	74.6
Non-tipped	25.4
HISTORY	
Current	65.8
Past	34.2

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Primary research, analysis, and writing was by Mike Rodriguez (ROC-U), and Teófilo Reyes, with extensive input from Minsu Longiaru (ROC-U) and Kalpana Krishnamurthy. Ellen Bravo, from Family Values @ Work, Linda Meric, from 9to5, Mary Gatta, at Wider Opportunities for Women, Heidi Hartmann and Jeffrey Hayes, at Institute for Women's Policy Research, K.C. Wagner, and Liz Watson, Julie Vogtman, and Katherine Gallagher Robbins at the National Women's Law Center, provided extensive feedback and guidance.

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None of the images portray nor are meant to imply acts of sexual harassment.

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The Glass Floor Sexual Harassment in the Restaurant Industry



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