

The Raise the Wage Act: **The Gradual Elimination of the Unfair Subminimum Wage for Tipped Workers**

As the Fight for \$15 continues to grow from coast to coast, Congress is joining in the call for stronger action to raise wages. Led by Senators Patty Murray and Bernie Sanders in the Senate, and Representatives Bobby C. Scott and Keith Ellison in the House, congressional leaders are introducing **the Raise the Wage Act**. It calls for raising the federal minimum wage to \$15 an hour by 2024. Equally significant, it also calls for gradually eliminating the outdated and unfair subminimum wage for tipped workers. This fact sheet provides background on this long overdue reform, which would help combat poverty wages and pay inequality for this struggling, majority female workforce.

There is growing national momentum for raising pay for the nation's millions of tipped workers such as restaurant servers, food delivery workers, and many others at the heart of industries like tourism and hospitality. Under current federal law, their minimum wage has been frozen at a meager \$2.13 per hour since Bill Clinton was president.¹ While employers are supposed to make up the difference when tips are not enough to bring a worker up to the full minimum wage, in practice such tracking is difficult and compliance is spotty.

That's why seven states have done away with the subminimum wage for tipped workers. Instead they guarantee that tipped workers earn the same minimum wage as other workers—with tips an addition to, not a replacement for, a decent base wage.² The restaurant industries in these "One Fair Wage" states are thriving—showing that improved pay for tipped workers can go hand in hand with strong economic growth.³

As the country moves closer to a \$15 minimum wage, tipped workers will be left behind if they continue to be excluded from the basic minimum wage protections given to other workers. The Raise the Wage Act is an opportunity to guarantee fair pay for the nearly six million tipped workers across the country,⁴ and to address the economic insecurity—and the pressure to tolerate behavior such as sexual harassment—that workers face when so much of their income depends on tips left by customers.

What Would the Raise the Wage Act Do for Tipped Workers?

- The Raise the Wage Act would gradually phase out the subminimum wage for tipped workers by:
 - Initially increasing the tipped wage to \$3.15 in the first year;
 - Increasing the tipped wage by \$1.05 each subsequent year;
 - The tipped and regular minimum wage would reach parity over a period of approximately 15 years.
- Raise the regular minimum wage to \$15 by 2024.
- Gradually phase out the much criticized subminimum wages for young workers and workers with disabilities.
- Adjust the minimum wage each year in the future, starting in 2025, to keep up with increases in the typical worker's wages.

Who are the Tipped Workers Who Would Benefit?

- There are currently 5,900,550 tipped workers in the U.S.⁵
- Of these, 65 percent are women.⁶
- The single largest tipped occupation is restaurant servers (44 percent).⁷
- Other tipped workers are also employed as food delivery drivers, nail salon workers, car wash workers, airport wheelchair service workers and others in the restaurant and hospitality industries.

Why Do We Need One Fair Wage for Tipped Workers?

- ***Eliminating the Subminimum Wage Would Reduce Poverty:***
 - While a small number of tipped workers are employed at high-end restaurants where they earn a significant amount in tips that translate into higher incomes, most tipped workers earn very modest hourly wages. According to the Bureau of Labor Statistics, the median wage for tipped waiters and waitresses in the U.S. is just \$9.61 per hour, including tips.⁸
 - Just 7 percent of all workers in U.S. live in poverty, but tipped workers experience poverty at over twice the rate (15 percent). These workers earn widely fluctuating incomes which leave them and their families economically vulnerable.⁹
- ***Women Would Especially Benefit from Eliminating the Subminimum Wage:***
 - The outmoded subminimum tipped wage promotes poverty wages and unstable incomes for a tipped workforce that is 65 percent female.¹⁰
 - In states that have a subminimum wage for tipped workers, two-thirds of whom are women,¹¹ these workers are twice as likely to live in poverty as the non-tipped workforce.¹²
 - Conversely, in states that don't have a subminimum wage for tipped workers, the poverty rate for tipped workers is dramatically lower. Poverty among restaurant

servers and bartenders is 28 percent lower in states where tipped workers get the regular minimum wage than in states where they are paid the federal \$2.13 subminimum wage for tipped workers.¹³

- Because tipped workers depend almost entirely on tips for their income, they are forced to tolerate inappropriate behavior from customers in order to make a living, and from coworkers and management in order to keep their jobs. In fact, women restaurant workers in states with a subminimum tipped wage of \$2.13 per hour are twice as likely to experience sexual harassment as women in states that do not have a subminimum tipped wage.¹⁴

- ***Tipped Workers of Color Would Greatly Benefit:***

- Workers of color feel the impact of the tipped subminimum wage more sharply than white workers.
- Seventeen percent of tipped workers of color in the U.S. live in poverty, compared to 14 percent of white tipped workers.¹⁵

- ***One Fair Wage for Tipped Workers Would Increase Compliance with Labor Laws and Reduce Wage Theft:***

- Under the current system, employers are required to monitor employee wages and tips so that they can make up the difference between an employee's earnings and the full minimum wage if tips fall short.
- This requires extensive tracking and accounting of tip flows, which is burdensome and difficult for employers, and allows for a portion of tips to be shared with other restaurant workers, leaving tipped workers open to wage theft.
- The complexity of the tipped subminimum wage system makes enforcement difficult and results in high rates of noncompliance by employers.¹⁶

- ***The Restaurant Industry Is Thriving in the States That Have Already Adopted One Fair Wage for Tipped Workers, Showing That Higher Pay and Strong Growth Can Go Hand in Hand:***

- The restaurant industry in One Fair Wage states is strong and projected to continue to grow stronger over the next ten years, according to the National Restaurant Association.¹⁷ This demonstrates that it is economically feasible to phase out the subminimum tipped wage without harming restaurant jobs or sales.
- Restaurant sales for 2017 are expected to grow by an average of 5.13 percent for the seven One Fair Wage states, a rate that exceeds the national average sales growth rate of 4.35 percent for the same period.¹⁸
- At the local level, cities like San Francisco and Seattle, which are implementing high minimum wages and which are in states that prohibit a subminimum tipped wage, are seeing their restaurant industries thrive.¹⁹

Endnotes

1. U.S. Department of Labor, Wage and Hour Division, *Minimum Wage for Tipped Workers*, January 1, 2017, <https://www.dol.gov/whd/state/tipped.htm>.
2. Ibid.
3. Restaurant Opportunities Centers-United (ROC-United) and National Employment Law Project (NELP), *The Case for Phasing Out Maine's Subminimum Wage for Tipped Workers*, October 2016, <http://www.nelp.org/content/uploads/Maine-Sub-Minimum-Wage-Report.pdf>.
4. ROC-United analysis of Bureau of Labor Statistics (BLS), May 2016 State Occupational Employment and Wage Estimates (OES), available at http://www.bls.gov/oes/current/oes_nat.htm. This fact sheet considers the following BLS occupations "customarily tipped occupations:" Massage Therapists; Bartenders; Counter Attendants, Cafeteria, Food Concession, and Coffee Shop workers; Waiters and Waitresses; Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop; Food servers, Non-restaurant; Dining Room and Cafeteria Attendants and Bartender Helpers; Barbers; Hairdressers, Hairstylists, and Cosmetologists; Miscellaneous Personal Appearance Workers (including Manicurists and Pedicurists; Shampooers; Makeup Artists, Theatrical and Performance; and Skincare Specialists); Baggage Porters, Bellhops, and Concierges; Taxi Drivers and Chauffeurs; and Parking Lot Attendants.
5. Ibid.
6. ROC-United analysis of American Community Survey, 2015, examining data for individuals employed in customarily tipped occupations (see note 4 for a list of "customarily tipped occupations"), or other occupations, as noted, based on Ruggles et al., Integrated Public Use Microdata Series: Version 6.0 [dataset]. Minneapolis: University of Minnesota, 2015.
7. Ibid.
8. U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, *May 2016 National Occupational Employment and Wage Estimates*, https://www.bls.gov/oes/current/oes_nat.htm.
9. See note 4.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. ROC-United and Forward Together, *The Glass Floor: Sexual Harassment in the Restaurant Industry*, October 7, 2014, http://rocunited.org/wp-content/uploads/2014/10/REPORT_TheGlassFloor_Sexual-Harassment-in-the-Restaurant-Industry.pdf.
15. See note 6.
16. The National 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>.
17. National Restaurant Association, *Projected Restaurant Sales Growth in 2017*, http://www.restaurant.org/Downloads/PDFs/News-Research/2017_Restaurant_outlook_summary-FINAL.pdf (last viewed April 26, 2017).
18. Ibid. Does not include Maine, which adopted a One Fair Wage system in November 2016.
19. ROC-United and NELP, op. cit.

© 2017 National Employment Law Project. This report is covered by the Creative Commons "Attribution-NonCommercial-NoDerivs" license fee (see <http://creativecommons.org/licenses>). For further inquiries, please contact NELP (nelp@nelp.org).