The new gig economy and the threat of subminimum wages

The Gig Is Up

By The Restaurant Opportunities Centers United

With research support from the Food Labor Research Center

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In early 2019, 16 states and the U.S. Congress introduced legislation to require employers to pay all workers, including tipped workers, a full minimum wage plus tips — calling for an end to subminimum wages that are a legacy of slavery. Despite this momentum, the persistence of subminimum wages in 43 states nationwide is threatening to spread to new industries attempting to exploit the concept of consumer tips as a replacement of wages. In particular, tech companies expanding their presence in states like New York, are demanding to pay their delivery workers a subminimum or non-wage. This would leave delivery workers, like restaurant and other tipped workers, dependent on tips to survive. The spread of the subminimum wage to fast-growing tech companies signals a grave threat to workers nationwide; as long as the subminimum wage is allowed to persist, more and more industries will seek to exploit it.

More than 15 million workers around the country work in non-standard work arrangements, including as independent contractors, temporary workers, and on-call workers. More than one-and-a-half million of these are new economy “gig” workers that provide services mediated by an app or online platform. Well-known companies such as GrubHub, Postmates, Uber, Lyft, and TaskRabbit have upended the traditional worker classification system that provided worker protections in the “old economy.” Newer entrants such as Doordash, Instacart, and Amazon Flex have gained attention through their adoption of subminimum wage payment systems.

This new gig economy model is transforming the world of work by converting workers into ‘entrepreneurs,’ removing both worker protections and the capital risk of a traditional workplace. Online platforms treat their workers as consumers of technology and present themselves as intermediaries for independent contractors that provide desired services to an additional line of technology consumers, touting notions of flexibility and independence to their workforce in exchange for foregoing traditional benefits such as health insurance, paid time off, workers’ comp, unemployment insurance, etc. Although the broad economic upheaval promised by this new gig economy has failed to materialize, in part due to a tightening labor market and record-low unemployment levels, it has dramatically structured the terms and conditions of labor for low-wage workers, including taxi and delivery workers. Along with their more traditional erosion of worker protections, these new work platforms, combined with online payment platforms, are exacerbating the subminimum wage system by dramatically expanding the universe of customarily tipped employees, and placing additional burdens on tipped workers who must process, prep, and claim orders while earning a subminimum wage.
Key Conclusions

The new economy has spread dependence on tipping to hundreds of thousands of new workers.

✚ A cursory review of more than 200 new economy platforms found that 10 percent include tips as a required or optional means of compensation.

✚ Major players in the new economy such as Amazon Flex and DoorDash have adopted subminimum wage payment systems, discounting tips from their agreed compensation. Others, including Caviar and Instacart, have reversed subminimum wage practices following lawsuits and consumer backlash.

✚ Subminimum wages in food delivery disproportionately impact Black workers. Black workers account for nearly a quarter of all platform workers providing in-person electronically mediated services, even though they account for only 12 percent of all workers.

✚ The proliferation of mobile payment platforms, combined with the trend-setting example of players such as Amazon, has led to an increase in the use of the subminimum wage among food prep and serving workers and threatens to spread the subminimum wage to retail and fast food establishments and to wholly unexpected sectors such as aviation.

The new economy has placed additional burdens on customarily tipped employees and small businesses.

✚ Delivery worker positions previously hired directly by food establishments are increasingly outsourced to delivery service platforms.

✚ Customarily tipped front-of-the-house staff in restaurants that fall under the umbrella of gig delivery services must receive, enter, and process a growing number of orders while earning a subminimum wage without a tip; in certain cases, staff must claim delivery orders as a portion of their daily sales for which they must claim an IRS mandated percentage of taxable tip income even though they receive no tips on these sales.

✚ Restaurants pay a fee per order to the delivery platforms, reducing their profit margins and leading to greater pressure on staff.
The New Gig Economy and Old Wage Model

The gig economy emerged shortly after the Great Recession, as working families were grappling with the collapse of the housing market and financial system, and the country was gripped by widening income inequality. As the gig economy emerged, like restaurant work, it was cloaked with notions of flexibility and choice that disguised a business model that evaded the traditional responsibilities of employers. Gig work was thought to augur the next wave of work, with certain estimates pegging it at 30 percent of the workforce. More carefully defined estimates find 1.6 million electronically mediated (app platform) workers or one percent of the nation’s total employment, with the share of workers in “contingent” jobs relatively unchanged since 2005. While the share of contingent labor has remained steady, gig work has both created a new subminimum wage workforce and become the new facilitator of food delivery work.

Tech delivery companies like Uber Eats, DoorDash, Instacart, and Amazon Flex, have wagered their future on the gig economy. These companies, much like rideshare apps Lyft and Uber, are using “the tools and rhetoric of technology to blur the line between entrepreneurship, employment, and consumption.” The blurred relationship allows companies to skirt traditional employment obligations by declaring that workers are consumers of their platform technology and as such are merely consuming the platform to secure gigs. By classifying workers as independent contractors these gig economy companies create a disparate and disaggregate workforce and avoid having to adhere to the Fair Labor Standards Act, provide healthcare, pay unemployment, etc.

The gig economy represents a compelling business model for venture-capital investors, since classifying workers as independent contractors allows for lean labor overhead. Many companies that offer platform-based employment have also taken to enacting a subminimum wage compensation model. Under a subminimum wage model, tips comprise the bulk of a worker’s wage. A review of more than 230 tech platforms found that ten percent include tips as a required or optional means of compensation (see Table 2). Delivery companies like DoorDash and Amazon Flex use tips as the basis of payment. DoorDash, for example, guarantees Dashers (their delivery workers) that it will pay them a guaranteed minimum, for example, $2 per delivery, that is set above a base pay of $1 per delivery. If the base pay plus tips less than $2 per delivery, Dashers will receive only $2 per delivery. Dashers keep the tips once the base pay plus tips are more than $2 per delivery. Thus the more a worker earns in tips the less the employer is obligated to pay them. By enacting a tiered wage system, the gig economy has emulated the legacy of exclusion that has plagued the restaurant industry for over a century.

Subminimum Wages in the Restaurant Industry

The restaurant industry is one of the nation’s largest and fastest growing employers in the nation, with over 13 million workers. In 2018 alone, restaurants were projected to ring in $825 billion in sales. Despite industry prosperity, restaurant and tipped jobs are amongst the lowest paid occupations. Eight of the fifteen lowest paid occupations are restaurant jobs and seven of the fifteen are tipped occupations.

Tipped workers are subject to a two-tiered wage system where they are paid a subminimum wage, only $2.13 an hour at the federal level, with the majority of their income paid by the customer in tips.
There are around five million tipped workers across the country, nearly 70 percent of whom are women, in the 43 states that allow a subminimum wage. Tipped workers occupy a uniquely vulnerable position in our nation’s employment landscape. The subminimum wage leaves tipped workers reliant on tips for the majority of their pay. Tips are an unstable source of income; they fluctuate, are seasonal, and are influenced by external factors such as gender and race. Women tipped workers experience the highest levels of sexual harassment of any industry as a result of having to rely on inappropriate behavior by customers to feed their families in tips, and workers of color receive less in tips than white workers. The abandonment of tipped workers by federal and state wage policy has created a workforce that lives in poverty and accesses food stamps at twice the rate of the general US workforce.

Subminimum wages in the restaurant industry disproportionately impact women and workers of color, and this same pattern can be seen in the gig economy as it disproportionately impacts Black workers. Black workers account for 17 percent of platform workers, substantially higher than their share of overall employment at 12 percent. However, Black workers are dramatically overrepresented among in-person electronically mediated workers at 23 percent. Workers of color, in particular, Black workers, receive less in tips when compared to white workers. Since many delivery platforms allow consumers to tip long after a service interaction has occurred, Black workers find themselves at a structural disadvantage and overrepresented in positions where they stand to earn less than their peers.

**Tech and subminimum wages**

Major players in the gig economy, including Doordash, Amazon Flex, and up until recently Instacart, have adopted payment models that rely on tips to comprise a substantial portion of guaranteed compensation. The subminimum wage model employed by tech companies leaves them having to pay as little as a dollar per delivery to its workforce (see Table 1).

Ten percent or more of tech platforms either allow or require tipping, but tipping policies vary widely, from rec-
ommending a minimum tip of $5 on any order at GrubHub to only allowing tipping following a five-star review on Juno (see Table 2). Only half of the platforms that allow tipping make clear that 100 percent of tips are passed on to the worker providing the service. Two platforms, DoorDash and Takl, explicitly state that they do not ensure 100 percent of tips are passed on to the worker providing the service. Amazon Flex notes in its employment agreement that drivers are entitled to 100% of all tips “earned” while delivering with Amazon Flex, and that only Service Fees are guaranteed for the provision of services.

Tech delivery companies have come under scrutiny for their handling of service charges and tips in the past. Instacart and Caviar both settled lawsuits for millions of dollars accusing them of misrepresenting service charges and gratuity charges as tips that were never shared with delivery workers. In November of 2018 Instacart adopted a new policy establishing a subminimum wage by guaranteeing a $10 minimum payment for each order. Workers received earning estimates that no longer itemized tips, and many asserted a decline in earnings. Following a public outcry, Instacart reversed this policy in February, guaranteeing both a minimum payment and 100 percent of tips. Amazon Flex and DoorDash also adopted similar subminimum wage schemes, but unlike Instacart and Caviar, they have publicly committed to maintaining a subminimum wage model.

Amazon Flex

Amazon has been criticized for its low wages, poor working conditions — particularly in warehouses — and the competition that had cities and states across the country battling over who could offer the company the most lucrative Headquarters development package. The criticism led to political pressure that resulted in Amazon pledging to increase the wage of its US workforce to $15 an hour. Amazon announced that the wage increase would NOT be extended to its Amazon Flex workforce as they are categorized as independent contractors.

In an effort to carry out its omnichannel strategy, in 2015 Amazon launched Amazon Flex, which recruits drivers to deliver packages in their own cars. Three years lat-
er, Amazon Flex is in 50 cities and due to Amazon’s purchase of Whole Foods, Flex drivers will soon replace Instacart as Whole Foods delivery drivers.\textsuperscript{27,28} While Amazon’s fleet of drivers has continued to expand, Flex drivers have revealed that they earn far less than the wages advertised, between $18-$25 an hour, often receiving between $5 to $10 an hour.\textsuperscript{29}

Amazon Flex pays its drivers a service fee that collapses payment for the service as well as for expenses incurred — including car usage and claims to pay 100 percent of the tips drivers have earned while delivering. Drivers have long suspected that they do not receive the guaranteed base wage and 100 percent of tips earned.\textsuperscript{30} Drivers describe the work as “demanding and wildly inconsistent... a Flex job can feel a bit like playing the slots,” tips are unpredictable, unstable, and arbitrary — workers whose wages consist of mostly tips contend with financial instability.\textsuperscript{31} To add to the insecurity, the company does not provide drivers with a breakdown of their compensation, beyond showing the total amount they are being paid, citing privacy concerns.\textsuperscript{32} Amazon has publicly acknowledged that it can use “any supplemental earnings” to meet the promised minimum should the company’s own contribution fall short.\textsuperscript{33}

**DoorDash**

Another tech giant DoorDash, valued at $7 billion, is also one of the largest actors in the food delivery industry. Across the US and Canada, the company has a network of 200k Dashers.\textsuperscript{34} Last spring DoorDash launched a partnership with Walmart, another company notorious for its low wages, to begin its venture into grocery delivery.\textsuperscript{35}

DoorDash’s payment structure has come under fire, the company uses tips to comprise the minimum payment it guarantees its delivery workers for each drop-off. The more a user tips, the less the company pays, though the startup does affirm a commitment to at least pay a dollar on each job (the equivalent of 47 percent of the federal subminimum wage).\textsuperscript{36} Resembling the complexity and opaqueness of the restaurant subminimum wage model, delivery workers are left struggling to figure out if they have been paid all the income they are owned, as DoorDash does not disclose how much a user tipped on a given job.\textsuperscript{37} Dashers have taken issue with the composition of their wages, launching a website that called for users to provide tips in cash to help ensure that tips are a reward for good service and do not serve as the basis of their wage.\textsuperscript{38} A class action lawsuit has also been filed in Georgia to challenge the company’s payment model. The lawsuit states that dashers do not receive a DoorDash paid base wage plus 100 percent of customer tips, contrary to the food delivery service’s advertisements to drivers.\textsuperscript{39} In support of the effort of frontline workers, tech developers have come together to declare that they will not work for DoorDash until they pay a base wage of $15 an hour with tips on top and provide pay transparency.\textsuperscript{40} DoorDash’s COO’s assertion that the “democratization of convenience is more important than ever,” does not extend to the Dashers fulfilling this vision.\textsuperscript{41}
Racing for Tips

The elements of a delivery job that are constant are, “nasty weather, dangerous encounters with cars and long hours for wages and tips that can fall well below the minimum wage.” For restaurant tipped workers, the dependence on tips leads workers to tolerate behaviors they otherwise would not, for delivery workers, the reliance on tips often leads them to work during dangerous conditions. Bicycle-based delivery jobs are among the most dangerous jobs. In Boston, a study of bike delivery workers found that “70 percent had suffered an injury resulting in medical attention or lost work, including fractures, sprains, and strains.” If workers are injured during a delivery their status as a private contractor and their reliance on tips often forces them to lean on friends and family members when they cannot ride. Many delivery workers also “depend on the goodwill of bicycle mechanic friends or sympathetic bike shops to keep them working (and thus eating) as their bicycles wear out from near constant use.”

To exacerbate the race for tips, companies like Postmates, Uber, and DoorDash have instituted surge pricing to incentivize delivery workers to go online during ‘peak’ periods. Peak periods are often during moments of inclement weather, rainy days, blizzards, etc. In extreme instances, the consequences of racing for tips, especially during inclement weather, can be fatal. Caviar couriers have shared that during torrential downpours they have received an encouraging “peppy, emoji-adorned message” from the company that reads “when it rains the orders POUR on Caviar!... Go online ASAP to cash in!” On a rainy afternoon in 2018, during a moment of surge pricing, “it only made sense to work when conditions were bad, making an already dangerous job downright treacherous,” a young Caviar delivery worker was racing to drop-off orders when he was struck and killed by a car. Caviar, like other delivery platforms, profit “off the vulnerability of independent contractors much the way... restaurants have long profited off the vulnerability of” tipped workers.

Reclassification

Tech has not only proliferated a subminimum wage through the delivery economy, but mobile payment systems have spread the ubiquity of tipping. Mobile payment systems such as Square, the parent company of Caviar, facilitate the solicitation of a tip at the end of a transaction. The growing adoption of these payment platforms by brick-and-mortar retailers has enabled traditionally non-tipped industries, like flower shops, bakeries, delis, and ice cream shops, to introduce digital tipping. These payment platforms facilitate the adoption of a subminimum wage since employers are able to easily monitor tips as they adjust the wage structure.

Digital tipping, together with the repeal of the ‘80/20 rule’, brings with it the potential to reclassify traditionally non-tipped occupations as tipped roles, leaving those workers earning a subminimum wage. Until late 2018, tipped workers across the country were protected by a United States Department of Labor-mandated service threshold, the ‘80/20 rule’. The ‘80/20 rule’ ensured a tipped worker had to spend at least 80 percent of their time engaging in customer-facing work. Only 20 percent of a tipped worker’s time could be spent engaged in activities that are not customer-facing and thus cannot produce tips, such as polishing silverware, taking out the trash, the etc. If a tipped worker spent more than 20 percent of their time doing non-tipped worker an employer was obligated to pay the full minimum wage for that time. In late 2018, the Trump Administration rescinded
the ‘80/20 rule’. The repeal of tipped worker protections leaves any worker that earns at least $30 a month in tips at risk of earning a subminimum wage.50

In Washington, DC traditionally non-tipped establishments have begun reclassifying workers and reducing their pay rates below the minimum wage. In late 2018, at a coffee and gelato shop in DC, workers arrived to work one day to learn that their wages would drop by $2.75 an hour, leaving some workers earning the same wage they were paid several years prior. Workers were suddenly forced to have to rely on tips to make ends meet.51

The adoption of mobile payment platforms have also spread tipping into such unlikely places as aviation. Flight attendants have traditionally been perceived as “safety professionals” but have increasingly been pushed to become salespeople and service workers. Shortly after the repeal of the ‘80/20 rule,’ Frontier Airlines announced that it would begin to accept tips on its mobile payment devices. In 2016, the Association of Flight Attendants (AFA), the union for Frontier Airlines workers, objected to the introduction of tipping.52 The union claimed that the company’s management “moved forward with a tipping option for passengers... in an effort to shift additional costs to passengers” and avoid providing airline workers with a raise.53

The Gig Economy Burden

Long before the emergence of platform-based food ordering the restaurant industry created the logistics infrastructure necessary to deliver food, menus were slipped underneath doors, people called establishments to place an order, and delivery workers were employees of the restaurants. Over time the food delivery market has grown. In 2015 consumer spending in food delivery was $30 billion, with about $4 billion spent on online ordering.54 In 2018, the online food delivery market grossed over $19 million in revenue and is expected to continue to grow each year, reaching over $23 million by 2023.55

The food delivery market has also changed, delivery drivers have transitioned from being in-store workers to independent contractors, entrenching delivery as a subminimum wage occupation while simultaneously eroding legal protections extended to workers.

The growth of the delivery market has also had implications for tipped workers within restaurants. Tipped workers, including servers, have to take and enter orders, pack and bag deliveries, and pass them off to delivery workers. These tasks are conducted while earning a subminimum wage, and take away from an in-store subminimum wage worker’s potential to earn tips. Employers are required to report a minimum of eight percent of an employee’s gross sales as tips, and workers are at times required to include these delivery orders in their gross sales, meaning that they are liable for taxes on tips that they never receive.56 A recent survey by the Restaurant Opportunities Centers United of over 1,200 restaurant workers across the country, that worked at least 20 hours a week, found that over 31 percent of industry workers were working at restaurants that used delivery platforms like Seamless, DoorDash, etc.

Restaurants are experiencing revenue growth from the implementation of delivery services, with up to a 20 percent increase across the entire industry. While delivery has the potential to add a revenue stream, delivery platforms create an added pressure on restaurants owners. When using
a delivery platform owners have to pay a fee per order to the platforms, reducing their profit margins and leading to greater pressure on staff. Companies like UberEATS charge restaurants 30 percent of the bill and DoorDash charges a commission per order and an advertising commission (see Table 3).

Conclusion

Working as a delivery worker meant facing dangerous working conditions even before the emergence of the gig economy. The gig economy has amplified existing inequalities by adopting and proliferating the subminimum wage while eliminating traditional protections. The tech industry has joined the ranks of subminimum wage employers. Many platform-based workers now depend on tips to make ends meet, with tips at times comprising nearly 100 percent of take-home pay. Traditionally tipped industries have created a model that sectors looking to skirt the traditional responsibilities of an employer have emulated.

In the US there are nearly six million workers that are subject to a subminimum wage, a figure that soars when including platform workers that are forced to rely on tips as the basis of their wage. Federally, tipped workers can earn as little as $2.13 an hour and on platforms, and gig-economy employers pay delivery workers as little as a dollar per delivery. Subminimum wages leave women, people of color, and immigrants at a structural and economic disadvantage. Black workers, in particular, comprise a disproportionate portion of app based workers. These app-based workers grapple with inconsistent hours, unpredictable pay, and concern over whether or not they were paid the entirety of the wages and tips that they are owed.

Tech corporations’ use of the subminimum wage is only the tip of the iceberg. The emerging industry’s embrace of subminimum wages signals the growing use of tips as wage replacement across many sectors. As long as the subminimum wage for tipped workers is allowed to persist, the country runs the risk of seeing new categories of workers enter the subminimum wage universe.

TABLE 3
RESTAURANT COSTS AT SELECT TECH PLATFORM COMPANIES
A comparison of platform company's delivery employer costs
Source: Modern Restaurant Management

<table>
<thead>
<tr>
<th>Platform Company</th>
<th>Cost Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOORDASH</td>
<td>Commission per order, Advertising commission</td>
</tr>
<tr>
<td>UBEREATS</td>
<td>The service fee of 30 percent of the bill</td>
</tr>
<tr>
<td>POSTMATES</td>
<td>Commission based on pre-tax of all products sold</td>
</tr>
<tr>
<td>GRUBHUB</td>
<td>Commission ranging from 5-10 percent</td>
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</tbody>
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Policy Recommendations

✚ Raise the subminimum wage to match the minimum wage. In early 2019, 15 states and the U.S. Congress introduced legislation to phase-in One Fair Wage for tipped workers. The legislation introduced across the country would require employers to pay all workers, including tipped workers, a full minimum wage with tips on top.

✚ Ensure all tips and gratuities belong to workers and are not used to offset wage guarantees. In early 2019, New York City passed a law that would guarantee rideshare drivers a full minimum wage with tips on top. The municipal law stipulates that companies such as Uber and Lyft must pay drivers $15 per hour or more, plus $2.22 for payroll taxes and paid time off.

✚ Strengthen protections to limit the use of misclassification of independent contractors. Misclassification of employees as independent contractors places an undue burden on workers, law-abiding employees, and the economy as a whole.
End Notes


2 Subminimum wage refers to a remuneration model where an employer uses tips to offset their wage liability, thereby allowing them to pay a wage below the minimum.

3 Lowery, A. (Jan. 2019). The Truth About the Gig Economy: Uber and similar companies aren’t driving huge changes in the way that Americans make a living. The Atlantic.


8 See note 3.

9 Based on a review of APPresima’s Gig Economy Company Directory, supplemented with Wonder’s Best Gig Economy Apps: 50 Leading Apps to Find Work and Live the Gig Economy Lifestyle, 2018; Hurdlr’s Top 100 Gig Economy Jobs (like Uber, 2018), and Fit Small Business’ Top Gig Employers Compared: The Definitive 2018 List. A total of 234 gig economy companies were compiled after verifying they were currently operating in the United States.


14 Restaurant Opportunities Centers United analysis of American Community Survey (2017). IPUMS USA, University of Minnesota, www.ipums.org. Customarily tipped restaurant occupations include bartenders; counter attendants, cafeteria, food concession, and coffee shop workers; waiters and waitresses; food servers, non-restaurant; dining room and cafeteria attendants and bartender helpers; and hosts and hostesses, restaurant, lounge, and coffee shop. Other customarily tipped occupations include: massage therapists; gaming services workers; barbers; hairstylists, hairstylists, and cosmetologists; manicurists and pedicurists; shampooers; and skin care specialists; baggage porters, bellhops, and concierges; and parking lot attendants.


17 See note 16.

18 See note 5.

19 Ibid.

20 See note 16.


22 Del Rey, J. (March 2017). Instacart will pay $4.6 million to settle a class action lawsuit with its workers. Recode.

23 Liao, S. (June 2018). Square will pay $2.2 million to settle lawsuit alleging Caviar’s tipping option was fake. The Verge.


28 US News (Dec. 2018). Instacart, Amazon’s Whole Food Relationship to End Next Year.

29 See note 21.

30 Bhuyan, J. (Feb. 2019). Where does a tip to an Amazon driver go? In some cases, toward the driver’s base pay. Los Angeles Times.

31 Bloomberg (Nov. 2018). What it’s really like to gig for Amazon Flex.

32 See note 28.

33 Ibid.


35 Ibid.


37 Ibid.


39 Sortor, E. (Feb. 2019). DoorDash Class Action Says Drivers Don’t Receive 100% of Tips. Top Class Actions.


45 Griswold, A. (July 2017). Uber’s least popular feature is now one of the food delivery apps. Quartz.

46 Ibid.

47 Ibid.


53 Ibid.

54 Statista. Online Food Delivery.

55 Ibid.

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