

Testimony of Yannet Lathrop

National Employment Law Project

In Support of H.1971 / S.1213, An Act Requiring One Fair Wage

*Before the Massachusetts Joint Committee on Labor and
Workforce Development*

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Chairs, Rep. Josh Cutler and Sen. Patricia Jehlen, and members of the Massachusetts Joint Committee on Labor and Workforce Development: Thank you for the opportunity to submit written testimony.

My name is Yannet Lathrop. I am a senior researcher and policy analyst for the National Employment Law Project (NELP). NELP is a non-profit, non-partisan research and advocacy organization with expertise on labor policy. We are based in New York with offices across the country. Our staff are recognized as policy experts on a wide range of workplace issues including the minimum wage. We have worked with dozens of city councils, state legislatures and the U.S. Congress on measures to boost pay for low-wage workers and improve labor standards. We track both, the economic experience of state and local jurisdictions that have increased their wage floor, and the academic research on the minimum wage. As a result, we have developed strong expertise on minimum wage policy.

NELP testifies today in support of H.1971 / S.1213, which would gradually phase out the lower tipped wage in Massachusetts. If the state adopts a single wage floor for all workers, it would take steps towards a more equitable and fair society, and would join seven other states where tipped workers earn to the full minimum wage as their cash wage, with tips on top.

Research shows that tipped workers in those seven “one fair wage” states are less likely to live in poverty and face smaller gender and racial wage gaps. A one fair wage would also help reduce tipped workers’ vulnerability to wage theft, and could lead to long-lasting benefits beyond higher earnings: tipped workers and their families would likely see improvements in their health, educational attainment and general wellbeing.

In addition, research shows that tipped workers and businesses do better in “one fair wage” states than in states with a lower tipped wage; and that the adoption of one fair wage would have minimal impact on prices.

The COVID-19 pandemic has exposed and exacerbated the precarity of tipped work, especially for workers of color. However, H.1971 / S.1213 presents the Joint Committee on Labor and Workforce Development—as well as the broader General Court of the Commonwealth of Massachusetts—with an important opportunity to lessen that precarity and to build a better, healthier, and more equal Massachusetts.

In what follows, I expand on these and other key points.

Eliminating the lower tipped wage would benefit the vast majority of the 94,000 tipped workers in Massachusetts

According to the Economic Policy Institute (EPI), there are 94,000 tipped workers in Massachusetts. EPI's analysis of the federal Raise the Wage Act—which would raise the nation's wage floor to \$15 and phase out the lower tipped wage—finds that the policy would benefit nearly 79,000 tipped workers in Massachusetts (84 percent of the state's tipped workforce).¹ Massachusetts' H.1971 / S.1213 would likely have similar effects.

Tipped occupations in Massachusetts range from restaurant servers and bartenders to personal care workers such as hairdressers and manicurists, and other service occupations such as parking attendants and bellhops. (See Table 1).

The majority of tipped workers are restaurant servers and bartenders (65.3 percent of all tipped workers). As Table 1 shows, these restaurant and bar workers typically earn wages (cash wage plus tips) that barely boost them above the current state minimum wage of \$13.50. Assuming these workers earn the current tipped wage of \$5.55 as their cash wage, Census data shows that servers and bartenders heavily rely on tips for the majority (roughly 61 percent) of their hourly income.

Occupation	Number of Workers	Median Hourly Wage, Including Tips	Median Wage Minus Tipped Wage
Baggage porters and bellhops	620	\$14.95	\$9.40
Barbers	300	\$20.16	\$14.61
Bartenders	14,060	\$14.36	\$8.81
Dining room and cafeteria attendants and bartender helpers	7,300	\$14.28	\$8.73
Hairdressers, hairstylists, and cosmetologists	7,510	\$18.72	\$13.17
Hosts and hostesses, restaurant, lounge, and coffee shop	7,160	\$14.19	\$8.64
Manicurists and pedicurists	2,970	\$14.71	\$9.16
Massage therapists	1,670	\$29.71	\$24.16
Parking attendants	3,210	\$15.42	\$9.87
Shampooers	350	\$13.79	\$8.24
Skincare specialists	870	\$22.69	\$17.14
Waiters and waitresses	46,150	\$14.29	\$8.74
Restaurant servers and bartenders	60,210	As percent of tipped workers	65.3%

NELP analysis of U.S. Bureau of Labor Statistics, *May 2020 State Occupational Employment and Wage Estimates, Massachusetts*, https://www.bls.gov/oes/current/oes_ma.htm.

The lower tipped wage has a long history of racism and exclusion

The history of the lower tipped wage in the United States can be traced back to the years following the Civil War, roughly coinciding with the end of Reconstruction. Its impact can still be felt today.

Although tipping originated in Europe prior to the 17th century, it was imported to the United States in the later part of 19th century, when the restaurant and hospitality industries adopted tipping as a means to subsidize the cost of employing newly freed Black people.² Though initially met with opposition from those concerned with its effect on the nation's democratic project, tipping gradually became accepted at the turn of the century as business leaders (most notoriously, George Pullman) lobbied for its adoption, and as it became apparent that tipping could keep Black people in a condition of servitude—and highly dependent on white people for their survival—long past Emancipation.³

The adoption of federal labor standards in the first half of the 20th century did little to rectify this harm. When the Fair Labor Standards Act (FLSA) was first adopted in 1938, workers in most tipped occupations were excluded entirely from its protections, as the statute excluded industries with significant numbers of tipped workers. Although subsequent amendments to the FLSA expanded federal minimum wage protections to many previously excluded sectors of the economy, including hotels and restaurants, it failed to fully address the practice of subsidizing labor costs through tips. The 1966 FLSA amendment, in fact, created a “tip credit,”¹ which set the tipped wage at 50 percent of the full minimum wage; and the 1996 amendment delinked the tipped wage from the full minimum wage by setting the tipped cash wage at \$2.13 an hour, rather than as a percent of the full minimum wage.⁴

Although Massachusetts' current tipped wage (\$5.55) is higher than the federal, the persistence of a lower tipped wage in the Bay State keeps alive exclusionary labor policies that are a direct legacy of slavery.

The lower tipped wage puts workers at greater risk for poverty and exploitation

Tipped work is precarious work. Tipped workers' take-home pay fluctuates widely depending on the seasons, the weather, the shift they are given, and the generosity of customers.⁵ Tipped work is also underpaid work. As Table 1 shows, the median wage for most tipped occupations falls below \$15 per hour. In fact, prior to the pandemic, eight out of the 15 lowest paid occupations were restaurant jobs. Of these, seven were tipped.⁶

Low pay puts workers and their families at risk of poverty.⁷ It should come as no surprise, then, that tipped workers are more likely to live in poverty than non-tipped workers, since in all but seven states in the country, employers are allowed to pay tipped workers a cash wage below the full state minimum wage, with the expectation that customer tips will bring these workers up to or above the full minimum wage. As Table 1 shows, most tipped workers are typically paid a total hourly wage (cash wage plus tips) of less than \$15.

According to a 2014 analysis by the University of California and the Economic Policy Institute, tipped workers have a poverty rate that is nearly twice that of non-tipped workers. While the poverty rate for *non-tipped workers* was 6.5 percent during the period analyzed (2010–2012), the poverty rate of *tipped workers* was 12.8 percent—6.3 percentage points higher. Restaurant servers and bartenders, who comprise the largest share of all tipped workers, had an even higher poverty rate of 14.9 percent.⁸

However, there is a significant difference in poverty rates in states with a lower tipped wage, and those where tipped workers are guaranteed the full minimum wage as their cash wage. According to a 2021 report by EPI and NELP, between 2017 and 2019, servers and bartenders had a poverty rate of 13.3 percent in states with a \$2.13 tipped wage. But in “one fair wage” states, their poverty rate was substantially lower: 7.7 percent.⁹

¹ A “tip credit” is the amount from employee tips that an employer may count against his requirement to pay the full minimum wage.

The lower tipped wage exacerbates the gender and racial wage gaps

The tipped wage also contributes to the gender and racial wage gaps. Researchers attribute at least some of the causes of the pay gaps to occupational segregation, such as the overrepresentation of women and workers of color in underpaid occupations, including tipped jobs.¹⁰ Women in the overall workforce earn just 82 cents for every dollar men make, a gap that reduces women’s annual median earnings by over \$10,000.¹¹ This gap and its impact on women’s incomes is much greater for women of color: Black, Native Hawaiian, and Pacific Islander women earn 63 cents for every dollar that white non-Hispanic men earn; Native American women earn 60 cents; and Latinas just 55 cents.¹²

The gender wage gap is significantly smaller in one fair wage states, where tipped workers are guaranteed the full minimum wage as their cash wage. According to the National Women’s Law Center, in these states the wage gap shrinks by one-third: Women’s earnings increase from 82 cents for every dollar a man makes to 85 cents. Conversely, the gender wage gap widens significantly in states with a \$2.13 tipped cash wage. In those states, women earn on average just 78 cents for every dollar their male counterparts earn.¹³

Tipped work and the tipped wage contribute to occupational segregation and the racial wage gap, which in turn reinforce structural racism. Analysis by the Center for American progress finds that workers of color make up 48 percent of workers in key tipped industries, far above their share of the overall workforce.¹⁴ A 2020 report by the University of California finds that restaurant workers of color in tipped occupations are concentrated in casual full-service restaurants—such as Denny’s and Applebee’s—and significantly underrepresented in fine dining restaurants, where tips and earnings are higher.¹⁵ Within fine dining establishments, workers of color, especially women, are further segregated into positions (host and hostesses, baristas, barbacks, runners, and bussers) that offer lower pay and tips compared to servers.¹⁶ The University of California report also finds that the barriers that workers of color face to entry into fine dining restaurants start early in the process: White applicants are more likely to receive favorable treatment during the interview process and are 27 percent more likely to be offered a job.¹⁷ Further, the report finds that white customers are significantly more likely to show an unconscious preference for white people.¹⁸ These findings are consistent with previous research on the pervasiveness of racial discrimination in tipped occupations. A 2008 study by Cornell University researchers finds that Black restaurant staff receive less in tips than their white counterparts, and that the perception of the quality of service also negatively affects Black tipped workers.¹⁹ Separate research published in the Yale Law Journal made similar observations of tipping discrimination affecting Black taxi drivers.²⁰

The lower tipped wage is difficult to monitor and enforce, and often leads to wage theft and other forms of noncompliance

Massachusetts minimum wage law requires that employers make up the difference between tipped workers’ hourly earnings and the full minimum wage, if the sum of cash wage plus tips equal less than the full minimum wage²¹ (a practice known as “topping up”). However, for various reasons, ranging from the complexity of the law, to the manner of tipping (cash vs. credit card), compliance is difficult to monitor and enforce, oftentimes resulting in violations.

Research shows that tipped workers are at significant risk for wage theft. A tipped wage gives unscrupulous employers an opportunity to misappropriate a portion of their workers’ income—and many do. A 2009 detailed report by the National Employment Law Project and researchers at academic institutions finds that a significant share of tipped workers (12 percent) experienced wage theft related to stolen tips.²² A 2017 study by the Economic Policy Institute found that wage theft is more likely to occur in bars and restaurants,²³ where the majority of tipped workers are employed.

The complexity of the lower tipped wage poses significant problems for enforcement. While employers are required to top up tipped workers whose tips are not enough to bring them up to the full minimum wage, many employers do not maintain accurate and complete records of tips earned by their tipped employees, as required by law.²⁴ A 2014 report by the Department of Labor found that the lower tipped wage also facilitates other

related violations, such as “failing to pay the full minimum wage when tipped employees are asked to perform non-tipped work such as cooking, cleaning, and stocking in excess of 20 percent of their time.”²⁵

Many instances of tipped wage violations have been documented over the years.²⁶ Notably, from 2010 to 2012, the Department of Labor conducted a compliance sweep of 9,000 restaurants and found that an overwhelming number of them (84 percent) had committed some type of violation, including 1,170 tipped wage violations.²⁷ A particularly egregious case from 2014 in Pennsylvania, illustrates how the difficulty in enforcing tipped wage rules—especially those related to record keeping—can allow employers to knowingly violate the law with little fear of punishment: a chain restaurant was found in violation of the law when it failed to pay over 1,000 of its workers even the low tipped wage of \$2.13 per hour, among other violations.²⁸ That employer was ultimately required to pay over \$6.8 million in back wages and damages. But for every employer who is found in violation of the tipped wage law and forced to make amends, there are many more who continue to take advantage of the complexity of the tipped wage to steal desperately needed earnings from workers who too often live in economic insecurity.

The COVID-19 pandemic has exacerbated the precarity of tipped work, especially for workers of color; however, as the economy improves, some employers are adopting fair pay models

For decades prior to the pandemic, job growth had been skewed towards low-paying occupations, including those in the food service industry where tipped workers are concentrated.²⁹ With the COVID-19 pandemic and recession, the harm of low wages has been compounded, as job losses³⁰—and even rates of infection³¹—have disproportionately impacted workers in low-paying frontline occupations. Women and workers of color, who make up significant shares of frontline workers, have especially been harmed.³²

The economy is improving. From a record high of 14.7 percent in April 2020,³³ the unemployment rate was 4.8 percent in September 2021³⁴—the latest available data. But the data also shows an uneven and racialized recovery. Currently, the unemployment rate of white workers is 4.2 percent,³⁵ a rate below the average for all workers. For workers of color, however, the unemployment rate remains significantly above that average: 7.9 percent for Black workers,³⁶ and 6.3 percent for Latinx workers.³⁷ This points to structural forces at play that existed prior to the pandemic, which harm all workers in underpaid occupations, including tipped occupations, and especially hurt workers of color.

In the hospitality sector, data also suggest improving conditions. According to estimates by the U.S. Commerce Department, sales in food services and drinking places increased by 13.4 percent in February 2021 compared to a month prior, and by 36 percent compared to March 2020.³⁸ More recent estimates of the same data suggest that improving conditions continue, even if at a more moderate pace: September 2021 data shows an increase of 0.3 percent in sales compared to a month prior, and of 29.5 percent compared to September 2020.³⁹

But as unemployment and sales data point to improving conditions in the hospitality sector, a possible worker shortage may be emerging as a new challenge. News reports suggest that this shortage is in part driven by the easing of COVID-19 restrictions, leading to an increase in customers and the need for more workers to staff restaurants and other eating and drinking establishments.⁴⁰ Importantly, the shortage may also be influenced by workers leaving the hospitality sector for jobs in industries with better pay and better working conditions.⁴¹

The staffing challenges in the hospitality sector has led some employers to reconsider their pay models and to adopt business practices that incorporate significantly higher wages and better working conditions, including a rethinking of the lower tipped wage.⁴²

Tipped workers and businesses do better in “one fair wage” states, than in states with a lower tipped wage

In seven states (Alaska, California, Minnesota, Montana, Nevada, Oregon and Washington), tipped workers earn the full state minimum wage as their cash wage, and their employers cannot claim any portion of tips as a credit towards their obligation to pay all workers the full minimum wage.⁴³

The experience of the seven “one fair wage” states demonstrates that businesses can survive and thrive without a lower tipped wage. There is no indication that tipped industries in those states have suffered from the absence of a lower tipped wage. In fact, the opposite is true. Analysis by the Economic Policy Institute finds that from 2011 to 2019, the restaurant industry was stronger in one fair wage states than in states with a lower tipped wage.⁴⁴ Among full-service restaurants, the number of establishments grew by 17.5 percent in one fair wage states, compared with 11.1 percent in states with a lower tipped wage. Similarly, the growth in employment in full-service restaurants was 23.8 percent in one fair wage states, compared with 18.7 percent in states with a lower tipped wage.⁴⁵ These findings are in line with two earlier analyses—a 2014 University of California and EPI study, which found that from 1995 to 2014, leisure and hospitality industries grew significantly faster (43.2 percent) in one fair wage states than in states with a lower tipped wage (39.2 percent),⁴⁶ and a 2018 analysis published by the Federal Reserve of Atlanta, which found that restaurant industries in one fair wage states experienced similar or higher sales and employment growth as states with a lower tipped wage, and that wages also grew at a faster rate.⁴⁷

Tipped workers also benefit from earning the full minimum wage as their cash wage. A 2014 analysis by the University of California and EPI found that “tipped workers in equal treatment states earn 14.2 percent more than tipped workers in low tipped minimum states;” and that earnings for servers and bartenders were 20.6 percent higher in one fair wage states compared with states with a \$2.13 tipped wage.⁴⁸ A more recent analysis by EPI confirms this fact: in one fair wage states, restaurant servers and bartenders earn 21 percent more on average, than their counterparts in states with a \$2.13 tipped wage.⁴⁹ In fact, Alaska—one of the seven states where tipped workers are paid the full state minimum wage as their cash wage—has the highest average tip rate among all fifty states.⁵⁰

The gradual elimination of the lower tipped wage would have minimal impact on prices, and would do away with an unfair subsidy to employers in tipped industries

Eliminating the lower tipped wage would have minimal impact on menu prices. In a 2018 peer-reviewed study, University of California economists analyzed changes in menu prices for restaurants in the San Jose, California area after the city implemented a 25 percent increase in its minimum wage in 2013. (In San Jose and throughout California, employers of tipped workers are required to pay the full state minimum wage as cash wage). The researchers found that the minimum wage increase raised menu prices in full-service restaurants (restaurants with table service and wait staff) by just \$0.44 for every 10 percent increase in the wage floor.⁵¹ That is, the full 25 percent minimum wage increase raised menu prices at full-service restaurants by only \$1.10 on average.⁵² A 2018 analysis, projecting the impact of eliminating the lower tipped wage in New York, suggests that a tipped wage elimination (in addition to a \$15 minimum wage, which had already been approved for New York City, Long Island, and Westchester County) would increase operating costs for full-service restaurants by just 1.2 percent—meaning that a \$10 menu item would increase by mere cents (\$0.83) if restaurants passed the full cost of the tipped wage and minimum wage increase onto customers.⁵³

The public wants tipped workers to be paid fairly. A 2018 public opinion poll commissioned by the National Restaurant Association found overwhelming support (71 percent) for raising the federal minimum wage to at least \$10 per hour, even if doing so increased the cost of food and service at restaurants.⁵⁴ And a 2019 poll commissioned by the National Women’s Law Center found that 81 percent of voters support extending full minimum wage protections to tipped workers.⁵⁵

Eliminating the lower tipped wage in Massachusetts would not only lead to greater fairness for tipped workers, but for employers in non-tipped industries as well. The lower tipped wage serves as an unfair subsidy to employers in restaurants and other hospitality sector industries where the lower tipped wage is most widely used. The tipped wage essentially transfers responsibility for paying a significant portion of tipped workers' wages from employers onto the customers. No other industry is subsidized this way.

The elimination of the lower tipped wage in Massachusetts would not only raise the pay of affected workers, but could have significant health and educational benefits

The gradual elimination of the lower tipped wage in Massachusetts could have very direct and tangible impacts on the lives of affected workers and their families, and could serve as an effective strategy for addressing many of the adverse conditions that tipped workers face. Research shows that when workers' incomes increase, the benefits can be long-lasting and powerful:

- **Decreased poverty:** For workers with the lowest earnings, a study shows that the additional pay can increase their net incomes and lift them and their families out of poverty.⁵⁶
- **Decreased rates of child abuse and neglect:** An analysis of child maltreatment rates found “evidence that increases in minimum wage reduce the risk of child welfare involvement, particularly for neglect reports and especially for young and school-aged children. Immediate access to increases in disposable income may affect family and child well-being by directly affecting a caregiver's ability to provide a child with basic needs.”⁵⁷
- **Improved educational outcomes:** A National Institutes of Health study determined that for children in low-income households, “[a]n additional \$4000 per year for the poorest households increases educational attainment by one year at age 21.”⁵⁸
- **Improved graduation rates:** A study by University of Massachusetts researchers found that high dropout rates among low-income children can be linked to parents' low-wage jobs, and that youth in low-income families have a greater likelihood of experiencing health problems.⁵⁹
- **Improved health and wellbeing:** A California study estimated that an increase in the state's minimum wage to \$13 per hour by 2017 “would significantly benefit [the] health and well-being” of Californians, and that they “would experience fewer chronic diseases and disabilities; less hunger, smoking and obesity; and lower rates of depression and bipolar illness. In the long run, raising the minimum wage would prevent the premature deaths of hundreds of lower-income Californians each year.”⁶⁰

Conclusion

When laws are rooted in racism and other forms of oppression, it is crucial that lawmakers address the problem at that root and explore structural solutions. The elimination of the lower tipped wage—as H.1971 / S.1213 would do—is one such solution, which would put the Commonwealth of Massachusetts on a path toward more equitable and just treatment of the tens of thousands of tipped workers that work and live in the state.

If this pandemic has shown us anything, it is that we are all interconnected. When structural oppression harms some of us, it harms all of us. Likewise, we can only thrive when all of us have what we need. Therefore, it is my hope that the Joint Committee on Labor and Workforce Development—and the broader General Court of the Commonwealth of Massachusetts—will recognize the opportunity it has to begin undoing the stain of systemic racism, and to build a better, healthier, and more equal Massachusetts by passing H.1971 / S.1213 and adopting a one fair wage.

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