

THE CASE FOR ELIMINATING THE TIPPED MINIMUM WAGE IN WASHINGTON, D.C.

MAY 2016



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“People say a lot of things are not possible.[...] If you think about it too hard, then you’ll never do it. But if you say that this is the right thing to do, you can figure out how and [then] get there.” “The reason why I support minimum wage legislation with elimination of the tipped minimum wage is that it is easier if it is legislated because then it is something that [the whole industry] has to deal with together.”

—IMAR HUTCHINS, OWNER,
FLORIDA AVENUE GRIL,
WASHINGTON, D.C.

As the Fight for \$15 builds momentum from coast to coast, Washington D.C. residents are calling for the District of Columbia to join New York and California, and close to a dozen other cities, that have already raised their minimum wage to \$15 per hour.¹ In response, Mayor Muriel Bowser and members of the Council of the District of Columbia have proposed legislation to raise D.C.’s wage floor to \$15 and increase the subminimum tipped wage to 50 percent of the full minimum wage.²

While an improvement compared to current law, the Mayor’s proposal would nonetheless leave behind a significant number of low-wage workers—namely, the nearly 29,000 workers in D.C. that work in predominantly tipped occupations. Restaurant workers account for the overwhelming majority of workers in this group and they include, for example, servers, bartenders, and food delivery workers.³ Other workers in primarily tipped occupations in D.C. include, among others, hairdressers, nail salon workers, massage therapists, and baggage porters.⁴ Under the current law, employers can pay these workers just \$2.77 per hour, as long as tips cover the difference between the regular minimum wage and the subminimum tipped wage (the “tipped minimum wage”).⁵

This report analyzes the impact of maintaining a lower minimum wage for tipped workers and draws from the experience of other cities that have abolished the tipped minimum wage. It finds that:

- ◆ The outmoded tipped minimum wage promotes poverty wages and unstable incomes for a tipped workforce that is majority-female across the country and disproportionately non-white in D.C.⁶ Contrary to industry claims that most tipped servers earn high incomes, the Bureau of Labor Statistics (BLS) reports that **the median wage for tipped restaurant servers in Washington D.C. (classified as “Waiters and Waitresses” by the BLS), was just \$9.58 per hour, including tips, between 2012 and 2015.**⁷ This median wage was just a little higher than D.C.’s minimum wage during that period—the minimum wage increased from \$8.25 to \$9.50 between 2012 and 2015.⁸ It is also almost one dollar less than D.C.’s current minimum wage of \$10.50 per hour.⁹

- ◆ While a small number of tipped workers are employed at high-end restaurants where they earn significant amounts in tips resulting in higher incomes, **high-earning servers are a small minority and not representative of tipped workers in D.C.**¹⁰
- ◆ D.C.'s tipped workers experience poverty at nearly twice the rate of all D.C. workers.¹¹ And like tipped workers across the country, they must work for **widely fluctuating incomes¹² under the tipped minimum wage system**, which leaves them and their families economically vulnerable.
- ◆ **Tipped workers are disproportionately people of color in D.C.,¹³ and women feel the impact of the tipped minimum wage most acutely—female tipped workers are twice as likely to live in poverty as male tipped workers in D.C.**¹⁴
- ◆ With a base wage of \$2.77 per hour, tipped workers in practice depend entirely on tips for their income. **This forces servers to tolerate inappropriate behavior from customers in order to make a living and also forces them to subject themselves to objectification that makes them vulnerable to co-worker and management harassment.** Workers in states with a tipped minimum wage, such as D.C., are twice as likely to experience sexual harassment as workers in states that do not have a lower tipped minimum wage.¹⁵ Over ninety percent of restaurant workers in D.C. report sexually harassing behavior in their workplace.¹⁶

“I HAVE BEEN KISSED, GRABBED, HUGGED, AND GROPED BY DOZENS OF MALE CUSTOMERS. THIS HAS RANGED FROM CORNERING ME AT THE HOST STAND AND KISSING MY CHEEK TO GRABBING MY ASS WHILE I WAS POURING WINE FOR A TABLE.”

—ABBY DUNN, A SERVER IN WASHINGTON, D.C. , TWO YEARS IN THE RESTAURANT INDUSTRY

- ◆ The nation's top wage enforcement experts at the U.S. Department of Labor report that the complex tipped wage system—whereby 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—is so complicated that it is **difficult to enforce and results in high rates of noncompliance by employers.**¹⁷

- ◆ **Recognition of the harms and pitfalls resulting from a tipped minimum wage has led to a growing movement to abolish it.** Two federal bills to raise the minimum wage would also eliminate the tipped minimum wage.¹⁸ Leaders who support eliminating the tipped minimum wage include President Barack Obama,¹⁹ Secretary Hillary Clinton,²⁰ Senator Bernie Sanders,²¹ and over two hundred members of Congress, including D.C. Congresswoman Eleanor Holmes Norton.²²
- ◆ **The restaurant industry is strong in the seven states with no tipped minimum wage, demonstrating that it is economically feasible to phase out the tipped minimum wage without harming restaurant jobs or sales.**²³ The National Restaurant Association's (NRA) own data show relatively high rates of restaurant industry employment and sales growth in states that do not permit a lower tipped minimum wage compared with states that permit it.²⁴
- ◆ **Cities like San Francisco and Seattle, which are both raising their minimum wage to \$15.00 and do not allow a tipped minimum wage, have strong restaurant industries with growing employment.**²⁵ This robust growth has occurred without a tip credit and while raising wages by 30 percent in San Francisco and by over 53 percent in Seattle since 2004.²⁶
- ◆ **Contrary to opponents' predictions, raising the minimum wage to \$15.00 and prohibiting a lower tipped minimum wage has not led restaurants to abolish tipping and has not led diners to reduce tipping levels.** A small number of high-end restaurants are experimenting with getting rid of tipping, but these experiments are in their infancy, and overall tipping rates are the same, if not higher, in the seven states with no tipped minimum wage. Tipping rates in San Francisco²⁷ and Alaska are among the highest in the country, despite the fact that these jurisdictions have no tipped minimum wage.²⁸
- ◆ **Waiters and bartenders earn about 20 percent more in wages in states where tipped workers must be paid the full minimum wage before tips than in states that allow employers to pay only the federal \$2.13 tipped minimum wage.**²⁹ In Seattle, bartenders at the ninetieth percentile of earnings earn 29 percent more than the same bartenders in D.C., while in San Francisco, top-earning bartenders take home 43 percent more in earnings than top-earning bartenders in D.C.³⁰



1 BACKGROUND: THE TIPPED MINIMUM WAGE HASN'T ALWAYS EXISTED – AND IT IS NOT UNIVERSAL TODAY

Tipping is a nineteenth century practice imported from Europe and originally opposed in the United States as un-American and undemocratic.³¹ However, with encouragement from business interests, tipping eventually proliferated in the aftermath of the Civil War, when the service industry, best exemplified by the Pullman Train Company, adopted a strategy of hiring former slaves who were not paid a wage but instead depended on customers to pay them in tips.³²

Until 1966, there was no federal subminimum wage for tipped workers.³³ With the 1966 expansion of the federal Fair Labor Standards Act (FLSA) to cover hotel, motel, restaurant, and other leisure and hospitality employees who had previously been excluded from the FLSA, the FLSA was amended to allow employers to pay tipped workers a subminimum wage set at 50 percent of the full minimum wage.³⁴ In 1980, Congress raised the tipped minimum wage to 60 percent of the full minimum wage, but returned it to 50 percent in 1991.³⁵

In 1996, bowing to pressure from the restaurant industry, the Republican-controlled Congress froze the tipped minimum wage at \$2.13, decoupling it from the full minimum wage for the first time, and setting up two decades of a frozen minimum wage for tipped workers.³⁶

Notwithstanding federal law, seven states—California, Nevada, Oregon, Washington, Minnesota, Montana, and Alaska—do not have a subminimum wage for tipped workers.³⁷ Tipped workers in those states receive the full minimum wage, and their tips function as a gratuity should—as additional income over and above their wages.

2 THE TYPICAL TIPPED WORKER IN D.C. STRUGGLES ON BARELY MORE THAN THE MINIMUM WAGE AND FACES SIGNIFICANT ECONOMIC INSECURITY

Although some in the restaurant industry claim that most tipped workers earn high incomes, government data show that, in fact, the typical tipped worker in D.C. earns just a little more than the District's minimum wage. While a small number of tipped workers are employed at high-end restaurants where they earn significant amounts in tips that result in high incomes, they are a small minority and not representative of tipped workers in D.C.³⁸ Moreover, tipped workers, as a whole, receive meager wages and experience poor working conditions: eight of the twenty lowest-paid occupations in D.C. are tipped occupations (see Table 1).³⁹

According to 2015 BLS data (covering the period from November 2012 through May 2015), the median wage for tipped restaurant servers in D.C.—base wage plus tips—was just \$9.58 per hour,⁴⁰ the lowest median wage of any occupation in D.C. for which BLS data is available.⁴¹ This median wage for tipped restaurant servers in D.C. is

a staggering 70 percent lower than the corresponding figure for all D.C. workers—the median worker in D.C. earns \$31.75 per hour,⁴² or approximately \$66,000 annually for a full-time worker.

During the period captured in the 2015 BLS data, D.C.'s tipped minimum wage was frozen at a meager \$2.77,⁴³ and the full minimum wage was first \$8.25 and then \$9.50 per hour (see Table 2).⁴⁴ The minimum wage increased to \$10.50 per hour in July 2015, just after the period covered by the 2015 BLS data.⁴⁵ Thus, the typical D.C. server received enough tips to bring their hourly earnings up to just a little more than the full minimum wage—a far cry from the high income that the restaurant industry claims is representative of tipped servers in D.C. The median hourly wage (including wages and tips)

T2 Minimum wage in the District of Columbia, 2012-2015⁴⁷

TIPPED MINIMUM WAGE	
\$2.77	
MINIMUM WAGE	
\$8.25	Jan. 2012–July 2014
\$9.50	July 2014–June 2015
\$10.50	July 2015–Present

T1 Median wages for the 20 lowest-paid occupations in the District of Columbia, 2015 BLS data covering the period from november 2012 through may 2015⁴⁶
TIPPED OCCUPATIONS IN BLUE

	MEDIAN HOURLY WAGE	PERCENT OF MEDIAN HOURLY WAGE FOR ALL OCCUPATIONS
All occupations	\$31.75	100%
Waiters and waitresses	\$9.58	30.2%
Cooks, Fast Food	\$9.59	30.2%
Shampooers	\$9.59	30.2%
Food preparation and serving related workers, all other	\$9.60	30.2%
Pressers, textile, garment, and related materials	\$9.62	30.3%
Dining room and cafeteria attendants and bartender helpers	\$9.68	30.5%
Parking lot attendants	\$9.77	30.8%
Combined food preparation and serving workers, including fast food	\$10.33	32.5%
Telemarketers	\$10.41	32.8%
Cashiers	\$10.50	33.1%
Counter attendants, cafeteria, food concession, and coffee shop	\$10.77	33.9%
Hosts and hostesses, restaurant lounge, and coffee shop	\$10.90	34.3%
Helpers—production workers	\$10.93	34.4%
Food preparation workers	\$11.00	34.6%
Dishwashers	\$11.01	34.7%
Childcare workers	\$11.06	34.8%
Bartenders	\$11.08	34.9%
Packers and packagers, hand	\$11.19	35.2%
Massage therapists	\$11.25	35.4%
Amusement and recreation attendants	\$11.38	35.8%

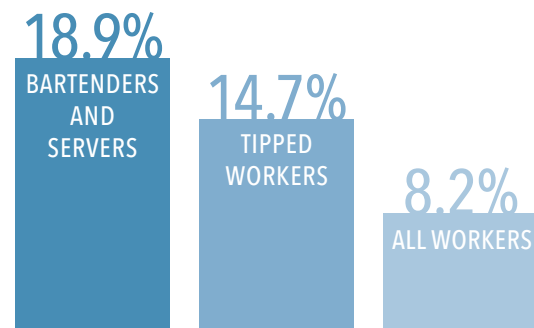
for bartenders in D.C. according to the 2015 BLS data was just slightly higher than that for servers: \$11.08 per hour.⁴⁸ In other words, the typical waiter, waitress, and bartender in D.C. is barely getting by, even after taking tips into account.

Tipped restaurant workers account for over 80 percent of the tipped workforce in D.C., and servers and bartenders, alone, account for 47.5 percent of all D.C. tipped workers.⁴⁹ Outside of the restaurant industry, tipped occupations include massage therapists, barbers, hair dressers, shampooers, manicurists and pedicurists (nail salon workers), baggage porters, bell hops, concierges, parking lot attendants, and car wash workers. In many of these occupations, pay is low and employers often violate employment laws. An in-depth story by *The New York Times* on the nail salon industry in New York found, for example, that even though nail salon workers are considered tipped workers under state law, “interviews with scores of workers revealed rates of pay so low that the so-called tip calculation is virtually meaningless” and “[n]one reported receiving supplemental pay from their bosses, as is legally required when their day’s tips fall short of the minimum wage.”⁵⁰

Tipped work is inherently uneven and often unpredictable. While most of us expect to be paid the same for every day or hour we work, this is often not the case for tipped workers. Restaurant servers may make a substantial amount of money on Friday or Saturday night, but much less on other days. As one worker explained, “nobody likes to work Sunday morning or Monday—but somebody has to do it. When that’s my time, I know I’m not going to make any money. Working Friday night is like working five Sunday mornings.”⁵¹ Bad weather, a sluggish economy, the changing of the seasons, and a host of other factors can also cause sudden drops in tipped income and lead to economic insecurity.

It is no surprise, then, that in D.C., tipped workers face poverty rates that are nearly double those of non-tipped workers, and the poverty rate for servers and bartenders is even higher.⁵² Servers and bartenders in D.C. experience a poverty rate of 19 percent while workers, generally, experience a poverty rate of 8 percent (see Figure 1).⁵³ Tipped workers in D.C. also rely on public assistance to make ends meet at high rates: 14 percent of tipped workers in D.C. use food stamps, and an astonishing 23 percent have insurance through Medicaid.⁵⁴

F1 Bartenders and servers experience poverty at over twice the rate of the overall workforce in the District of Columbia⁵⁵

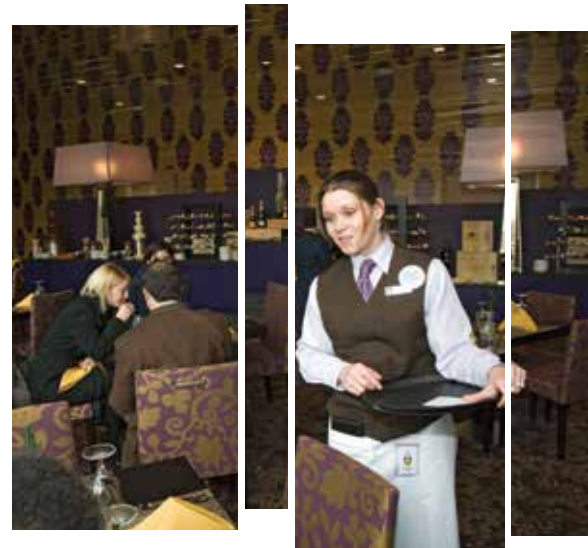


POVERTY RATES IN D.C.

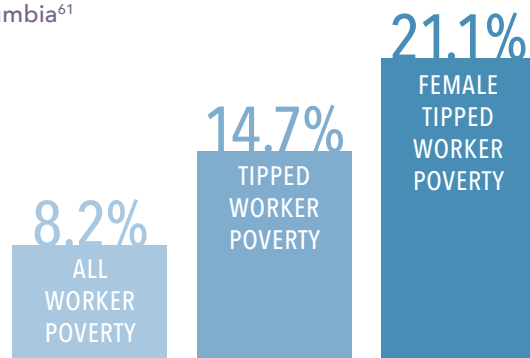
3 D.C.'S TIPPED WORKERS ARE OVERWHELMINGLY ADULTS, DISPROPORTIONATELY PEOPLE OF COLOR, LIKELY TO HAVE AT LEAST SOME HIGHER EDUCATION, AND MORE LIKELY TO LIVE IN POVERTY THAN OTHER WORKERS

Demographically, tipped workers in D.C. are older and more educated than commonly perceived, and they often support families on their tips:

- ◆ 78 percent of D.C. workers in predominantly tipped occupations are adults age 25 or older.⁵⁶
- ◆ Nearly 58 percent of D.C. workers in predominantly tipped occupations have had some amount of higher education.⁵⁷
- ◆ 69 percent of tipped workers in D.C. are people of color, and in D.C., tipped workers experience poverty at nearly twice the rate of all workers.⁵⁸
- ◆ Women feel the impact of the D.C. tipped minimum wage most acutely—women in tipped occupations are twice as likely to live in poverty as men in tipped occupations,⁵⁹ and they are nearly three times more likely to live in poverty than the overall workforce (see Figure 2).
- ◆ Female restaurant servers and bartenders in D.C. have especially low incomes: more than one in four (27 percent) live in poverty, compared to 13 percent of male servers and bartenders.⁶⁰



F2 Women in tipped occupations live in poverty at nearly three times the rate of other workers in the District of Columbia⁶¹



THE TWO-TIERED WAGE SYSTEM LEADS TIPPED WORKERS TO TOLERATE INAPPROPRIATE BEHAVIOR FROM CUSTOMERS, CO-WORKERS, AND MANAGEMENT

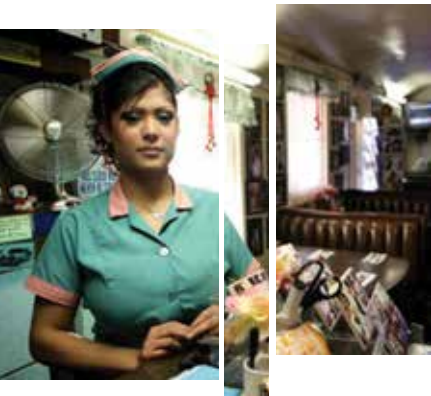
Eliminating the tipped minimum wage could help significantly reduce sexual harassment for D.C.'s tipped restaurant workers. Because tipped workers largely rely on customers for their income, they must often tolerate inappropriate behavior at work. In fact, while only 7 percent of American women work in the restaurant industry, more than a third (37 percent) of all sexual harassment claims to the Equal Employment Opportunity Commission (EEOC) come from the restaurant industry.⁶²

"My negative experiences were always from customers who expected a certain attitude or look from me. I could notice different reactions to me if I was wearing makeup or if I wasn't. I have been ignored by tables while they flirted with my 17 year old coworker. I have had the owner of the restaurant, where I managed, ignore me and only talk to the male staff and treat me as though I have less knowledge of the floor or product. It was so dismissive and sexist." –WOMAN SERVER IN WASHINGTON, D.C.

A 2014 survey of 688 restaurant workers by ROC United and Forward Together showed that women working in customarily tipped occupations in states that have eliminated the two-tiered wage system were less likely to experience sexual harassment than women in states where they must depend on customers' tips for the bulk of their income.⁶³ Women working in tipped restaurant occupations reported that the cultural expectations of their work in terms of appearance and behavior were often more heavily sexualized when they depended on tips to meet their base wage.⁶⁴ Moreover, in states that allow subminimum wages for tipped workers, women reported high rates of having to tolerate inappropriate comments and sexual behaviors while at work to ensure a good tip and to simply keep their job.⁶⁵ Depending entirely or almost entirely on tips for income ultimately pressures tipped workers to endure inappropriate behavior.⁶⁶

"[I] experienced groups of business men making subtle sexual jokes, asking me where I am from, flirting and [expecting me] to play along to get good tips." –WOMAN SERVER IN WASHINGTON, D.C.

Moreover, sexual harassment fueled by the tipped subminimum wage affects all workers. Men and transgender workers report that sexual harassment is widespread in their restaurants.⁶⁷ Forty-six percent of men reported that sexual harassment was an uncomfortable aspect of work life, and a shocking 60 percent of transgender workers reported experiencing "scary" or "unwanted" sexual behavior.⁶⁸ Transgender 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.⁶⁹



F3 Sexual harassment is endemic in the restaurant industry—
92 percent of restaurant workers in the District of Columbia
report sexually harassing behavior at work⁷⁰

75% Sexual teasing, jokes, remarks, or questions

67% Sexually suggestive looks or gestures

47% Pressure for dates

47% Deliberate touching, leaning over, cornering or pinching

43% Comments about your sexual orientation

43% Comments about your gender or your gender identity

31% Inappropriate kissing, patting, fondling, or groping

31% Been told to alter your appearance beyond the restaurant's dress code,
i.e. "be more sexy" by wearing tighter clothing or wearing make-up

29% Been shown sexually suggestive photo (calendars,
magazines, pictures on a phone or computer)

25% Texts of a sexual or inappropriate nature

25% Letters, e-mails, phone calls, or
other materials of a sexual nature

25% Been told to flirt with guests

12% Been told to expose or show any part of your body

12% Witnessed indecent exposure

6% Rape or attempted rape

8% I have never experienced these kinds of behaviors

Have you ever
experienced
any of the
following from
a co-worker,
customer,
owner, manager,
or supervisor
at any
restaurant job?

“When reporting sexual assault I received backlash from other employees. The issue is constant and disturbing.” –WOMAN PASTRY CHEF IN THE D.C. AREA

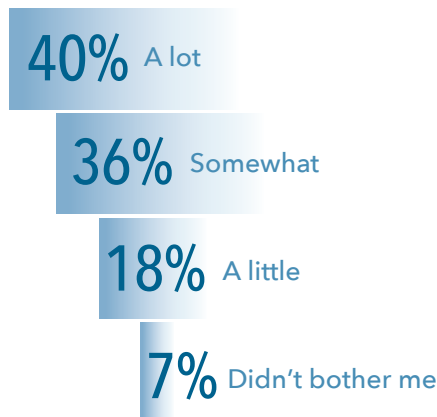
An analysis of D.C. tipped restaurant worker surveys conducted for this report by the Restaurant Opportunities Centers United (ROC - United) finds that restaurant workers in D.C. are forced to work in a highly sexualized environment and experience high rates of sexual harassment on the job.⁷¹

“When I started as a host, I immediately realized my position was hyper-sexualized Every time I entered the back kitchen, I got multiple comments from the BOH [back of the house] staff, which made me very uncomfortable. Even the servers, most of who were older white men from Italy, came up to the host stand, cornering me into talking to them. Some even took the liberty to touch my hair and face. This type of behavior, whether it be from my coworkers, managers, or customers, was very much a part of everyday work. To me, the sexualized environment felt very normalized. Being a woman, I feel like I was also raised by our society to tolerate such behavior: smiling & laughing back, then writing it off as nothing. Yet the discomfort that comes with such experiences really builds up over time, and the ways to address such behavior are unclear and sometimes even scary.” –SOPHIA MIYOSHI, A RECENT BARTENDER AND SERVER IN WASHINGTON, D.C., SEVEN YEARS IN THE RESTAURANT INDUSTRY

Over 90 percent of D.C. restaurant workers surveyed reported experiencing some form of sexualized behavior while at work (see Figure 3), and 93 percent of all workers were bothered by these behaviors (see Figure 4). Fifty-three percent of tipped workers reported that depending on tips had led them to accept inappropriate behaviors that made them nervous or uncomfortable at work, and 39 percent reported that being touched inappropriately is a common occurrence in their restaurant (see Figure 5).

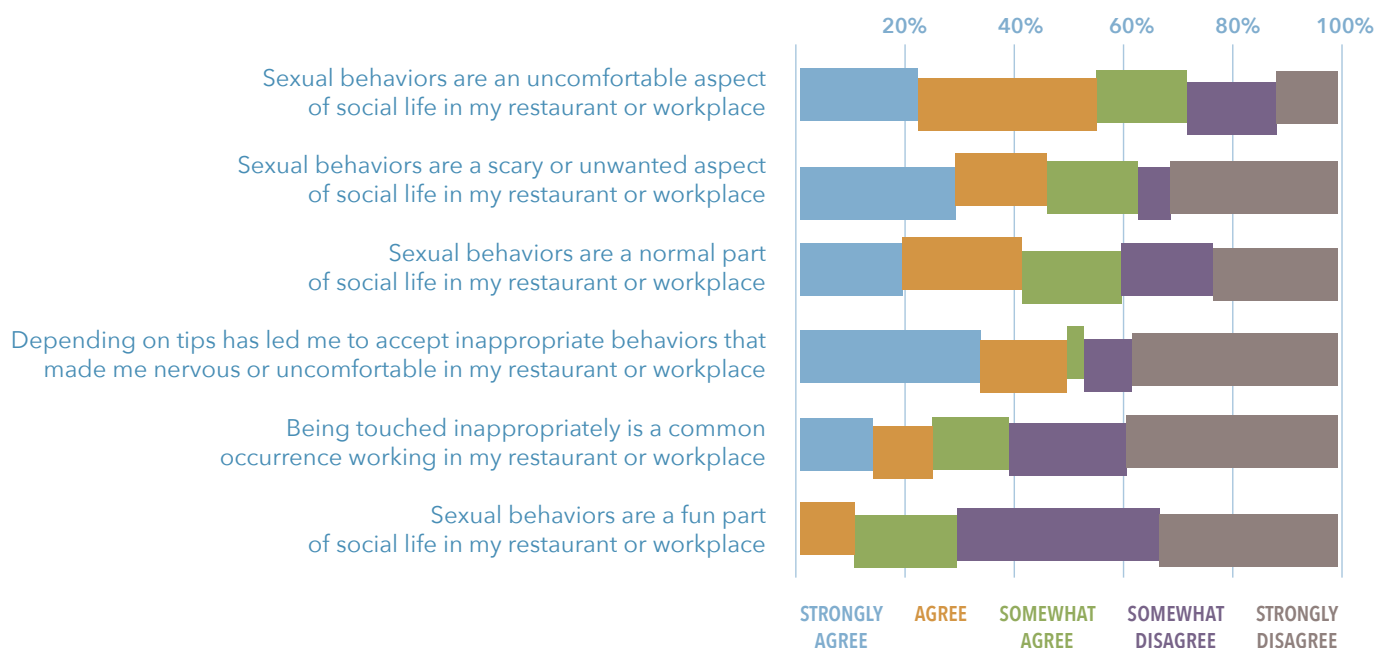
F4 Over 90 percent of workers in the District of Columbia were bothered by sexually harassing behavior while at work⁷²

How much did these behaviors bother you?



“The owner [a man in his mid 50s] asked me to bring my “cute friends” . . . in to apply for a position, I [was] 16 at the time.” –WOMAN HOST IN WASHINGTON, D.C.

F5 Sexual harassment and work environment reported by restaurant workers in the District of Columbia⁷³



“Our bodies are on the menu along with our gender, and sexual orientation. We can do much better.” –JESSICA MARTIN, A SERVER IN WASHINGTON, D.C., TEN YEARS IN THE RESTAURANT INDUSTRY

Seventy-two percent of workers reported that sexual behaviors are an uncomfortable aspect of social life at work, and 63 percent found sexual behaviors to be a scary or unwanted aspect of social life at work (see Figure 5).

“As the bartender at the restaurant, there comes a level of flirtation mixed in with customer service and friendliness. Befriending the regulars at the bar, I initially want to be able to trust them. Yet sometimes the “friend” aspect of the work has its boundaries pushed and the relationship can easily just switch to being creepy. At the bar, I definitely felt the most pressure to accommodate what my customers wanted, especially the regulars. I had more autonomy over my product and space and therefore was able to push/or put up with pushed boundaries because I knew that there was the opportunity for a higher tip. When bartending, every night felt like a hustle and I always felt a certain pressure, a pressure that came from mostly relying on tips.” –SOPHIA MIYOSHI, A RECENT BARTENDER AND SERVER IN WASHINGTON, D.C., SEVEN YEARS IN THE RESTAURANT INDUSTRY

A negative experience with sexual harassment in a restaurant workplace has lingering effects that appear to amplify over time. The 2014 study also surveyed a subset of 233 women who had previously worked in the restaurant industry, and over a third

of those who were tipped workers reported quitting their jobs as a result of unwanted sexual advances. Overall, they reported they were 1.6 times more likely to tolerate harassing behaviors in the workplace than women who were currently employed as restaurant workers, indicating that women who encounter sexual harassment in the restaurant industry are more likely to tolerate sexual harassment in future environments.⁷⁴ Norms of behavior that are amplified by the tipped minimum wage can shape perceptions of what is acceptable behavior in the workplace that workers can shape with them from the restaurant into other workplaces.

Although sexual harassment in the restaurant industry is pervasive, a ROC-United study found that workers in states with a tipped minimum wage, such as D.C., are twice as likely to experience sexual harassment as workers in states that do not have a lower tipped minimum wage.⁷⁵ Thus, eliminating the tipped minimum wage in D.C. would reduce the incidence of sexual harassment for tipped workers and potentially alter workplace norms in a positive way for workers in D.C. and across the country.

5 THE COMPLEX TIPPED MINIMUM WAGE SYSTEM IS DIFFICULT TO ENFORCE AND RESULTS IN WIDESPREAD NONCOMPLIANCE

Some of the nation's top wage enforcement and policy experts, including the U.S. Department of Labor, report that the complex tipped minimum wage system—where employers are supposed to monitor employee wage and tip levels and make up the difference if tips fall short of bringing workers up to the full minimum wage—is so complicated that it is difficult to enforce, resulting in high levels of noncompliance by restaurant employers.

Employers in D.C. are required to make up the difference if a worker's base wage of \$2.77 per hour plus tips does not add up to the full minimum wage.⁷⁶ But this complex system is both difficult to comply with and largely unenforceable for a number of reasons:

- 1 It requires extensive tracking and accounting of tip flows, which is burdensome and difficult for employers.⁷⁷
- 2 Employers are allowed to average tips over the course of the entire work-week and required to “top up” only if an employee's average hourly earnings are less than the full minimum wage.⁷⁸
- 3 Tips are allowed to be pooled among various types of restaurant employees, allowing a portion of the tips that a server receives to legitimately be reallocated to other employees.⁷⁹
- 4 Tipped workers who have experienced tip-stealing or other forms of wage theft are often reluctant to demand what they are owed out of fear of reprisal. Tipped workers are reliant on their supervisors to schedule them for shifts, and make more or less in tips depending on which shifts they are given.

A 2014 report by the White House National Economic Council and the U.S. Department of Labor confirms these challenges: “The rules for tipped workers are complicated and can be confusing for employers and employees alike. One of the most prevalent violations is the failure to keep track of employee tips and therefore the failure to ‘top up’ employees if their tips fall short of the full minimum wage.”⁸⁰

The 2014 report, subtitled, “The Importance of Ensuring a Robust Tipped Minimum Wage,” summarized that, in practice, the requirement that employers “top up” wages if tips run short “is difficult to enforce. When surveyed, more than 1 in 10 workers in predominantly tipped occupations report hourly wages below the full federal minimum wage, including tips. (By comparison, just 4 percent of all workers report hourly wages below the minimum wage.)”⁸¹

Compliance and enforcement challenges aside, under a subminimum tipped wage system, customers are directly responsible for paying the majority of workers’ wages. For many servers in D.C. paid just \$2.77 an hour, zero-dollar paychecks are the norm since their employer-provided wages go almost entirely towards taxes. Thus, rather than a gratuity for good service, the existence of a subminimum tipped wage renders tips a customer-funded wage replacement that lowers labor costs for employers in a few select industries.



6 A GROWING MOVEMENT SEEKS TO ABOLISH THE OUTMODED TIPPED MINIMUM WAGE, AND NATIONAL LEADERS, INCLUDING PRESIDENT OBAMA, SECRETARY CLINTON, SENATOR SANDERS, AND MORE THAN TWO HUNDRED MEMBERS OF CONGRESS, SUPPORT IT

A growing list of national leaders are backing proposals to gradually phase out the outmoded tipped minimum wage. This list includes:

- ◆ President Barack Obama⁸²
- ◆ Vice President Joseph Biden⁸³
- ◆ Secretary Hillary Clinton⁸⁴
- ◆ Senator Bernie Sanders⁸⁵
- ◆ U.S. Secretary of Labor Tom Perez⁸⁶
- ◆ 174 members of the House, including D.C. Representative Eleanor Holmes Norton and all but one of the Democrats in the Maryland and Virginia delegations⁸⁷
- ◆ 33 U.S. Senators, including three of the four Senators from Maryland and Virginia⁸⁸

All of these leaders have endorsed or co-sponsored the federal Raise the Wage Act (H.R. 2150; S. 1150), which would gradually phase out the tipped minimum wage, and raise the federal minimum wage to \$12 by 2020. (A number have also endorsed the Pay Workers a Living Wage Act (H.R. 3164; S. 1832), which would gradually phase out the tipped minimum wage and raise the federal minimum to \$15 by 2020.) Their support highlights a growing national consensus among progressive leaders that it is time to get rid of the unfair and outdated subminimum wage for tipped workers.

7 THE RESTAURANT INDUSTRY IS HEALTHY IN STATES THAT HAVE NO TIPPED MINIMUM WAGE

While some in the restaurant industry argue that eliminating the tipped minimum wage would hurt the restaurant industry and/or restaurant workers, the facts belie those claims. In particular, the restaurant industry is healthy in the states that have no tipped minimum wage, and sales there, on average, are projected to grow at an even faster rate than in many of the states that have retained the tipped minimum wage.

The NRA estimates that in 2016, restaurant job growth will outpace the overall economy, adding more than 300,000 jobs.⁸⁹ Restaurant sales are expected to reach \$783 billion this year, according to the latest NRA Industry Forecast.⁹⁰ In fact, 2015 marked the sixteenth consecutive year in which the restaurant industry’s job growth outpaced the overall U.S. economy.⁹¹ Jobs in the “eating-and-drinking place sector” increased by 38 percent over that sixteen-year period, while jobs in the overall economy increased by only 10 percent.⁹²

Many strong-growth states for restaurant jobs do not allow a tipped minimum wage for tipped workers and must pay tipped workers some of the country’s highest base wage rates. Restaurant employment in California—where the minimum wage is now \$10 per hour and will reach \$15 by 2023,⁹³ and which has no tipped minimum wage—is projected to grow by 10.1 percent during the 2016–2026 period.⁹⁴ In Oregon, where the minimum wage is currently \$9.25 and will increase to between \$12.50 and \$14.75 per hour over the next six years,⁹⁵ and which similarly has no tipped minimum wage, restaurant employment is projected to grow by 13.2 percent during that same period.⁹⁶ And in Washington State, where the minimum wage is \$9.47⁹⁷ and voters will decide in November whether to increase the minimum wage to \$13.50 through ballot initiative,⁹⁸ restaurant employment growth during the same period is expected to grow by 12.6 percent.⁹⁹ According to the NRA’s own projections, restaurant employment in the seven states without a tipped minimum wage will grow in the next ten years at an average rate of 10.7 percent (see Table 3).¹⁰⁰

T3 Comparing District of Columbia projected restaurant employment and sales growth with projected employment and sales growth in states without a tipped minimum wage

	MINIMUM WAGE	TIPPED MINIMUM WAGE? ¹⁰¹	NRA PROJECTED JOB GROWTH, 2016–2026 ¹⁰²	NRA PROJECTED SALES GROWTH, 2016 ¹⁰³
Seven States with No Tipped Subminimum Wage	Varying ¹⁰⁴	No	10.7% (average)	6% (average)
District of Columbia	\$10.50 <small>Set to increase to \$11.50 in July 2016¹⁰⁵ and to \$15 by 2020 under the Mayor’s proposal and pending ballot initiative¹⁰⁶</small>	Yes—\$2.77	7.5%	6%

Restaurant sales data paint a similar picture. Restaurant sales in California in 2016 are expected to grow by 6.6 percent.¹⁰⁷ In Oregon and Washington, the sales growth rate is projected at 6.9 and 7.0 percent, respectively.¹⁰⁸ Sales during 2016 for these seven states are projected to grow by an average of 6 percent, which exceeds the projected national average of 5 percent.¹⁰⁹ D.C. restaurant sales are projected to grow by 6 percent in 2016 as well.¹¹⁰

Moreover, a 2015 *Cornell Hospitality Report* looked at the impact of minimum wage increases on restaurant employment and business growth levels over twenty years across the United States. It found that raising the regular and tipped minimum wage will raise restaurant industry wages but will not lead to “large or reliable effects on full-service and limited-service restaurant employment.”¹¹¹

8 THE RESTAURANT INDUSTRY IS THRIVING IN CITIES LIKE SEATTLE, SAN FRANCISCO, AND SEATAC THAT ARE RAISING THEIR MINIMUM WAGE TO \$15 AND HAVE NO TIPPED MINIMUM WAGE

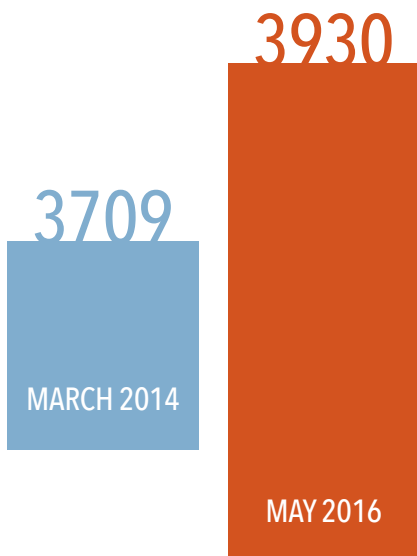
The restaurant industry is thriving in cities such as Seattle, San Francisco, and SeaTac, Washington—all of which have approved a \$15 minimum wage and do not permit employers to pay a lower tipped minimum wage—demonstrating that this combination is manageable for the restaurant industry and does not hurt jobs.

“Raising the wages of the lowest paid workers creates a wave of new consumers who previously weren’t able to spend money at local businesses. Working long hours at multiple jobs doesn’t leave much time for low wage workers to get out into their community and spend time with loved ones. Families struggling to make ends meet can’t afford the luxury of taking their children out for ice cream. Now that Seattle businesses are paying a living wage I look forward to seeing new customers in my shops and welcoming new fans of our products.” –MOLLY MOON NEITZEL, OWNER, MOLLY MOON’S HOMEMADE ICE CREAM WITH SEVEN LOCATIONS THROUGHOUT SEATTLE AND A MEMBER OF THE MAIN STREET ALLIANCE OF WASHINGTON

SEATTLE

In April 2015, Seattle began implementation of its new wage floor, which will reach \$15 by 2021 for all employers.¹¹² Last fall, in a front-page story titled “Apocalypse Not: \$15 and the Cuts that Never Came,” the *Puget Sound Business Journal* reported on “[t]he minimum wage meltdown that never happened,” explaining that Seattle’s restaurant industry has continued to expand and thrive as the \$15 wage phases in.¹¹³ More recent reports confirm that neither the city’s economy nor the restaurant industry has suffered.¹¹⁴ A few months after Seattle began phasing in its minimum wage, the region’s unemployment rate hit an eight-year low of 3.6 percent, significantly lower than the state unemployment rate of 5.3 percent.¹¹⁵ Since Seattle passed its trailblazing \$15 minimum wage, the number of food services and beverage industry business licenses

F6 Total Seattle food services and beverage industry business licenses¹¹⁶



issued in the city has increased by 6 percent (see Figure 6). In Seattle, workers and entrepreneurs agree that the restaurant industry continues to thrive:

"I'm a businessperson from Seattle and was a part of the group that led the Fight for \$15 there. In Seattle, the first city to pass the fifteen dollar minimum wage, most people from outside thought that was some sort of departure from rational economic policy. We already had the highest minimum wage in the country, and we have no tip penalty in our city. So, if people were right that higher wages kill jobs, then we should have no restaurants in Seattle. But that's the really odd thing, not only do we have some restaurants in Seattle, we have a lot of them. In fact, we have more restaurants per capita in Seattle than even New York. According to a Bloomberg analysis, Seattle has the second highest density of restaurants in the country—the only place that outperforms Seattle is San Francisco. So, they say that higher wages kills jobs in the economy and it's just not true." —NICK HANAUER, SEATTLE-BASED ENTREPRENEUR

"I've worked in the restaurant industry in Seattle for about four years. I worked my way out of the dish pit and now I'm a line cook at a super fresh seafood place. Since wages have gone up in the last year in Seattle, my life has improved exponentially. I bought my own car, upped my credit score, chipped at student loan debt, and saved up a good bit of money in case of emergencies. These are all things I could not have imagined doing in the past. The restaurant industry is booming in Seattle. Many of us in the industry had joked about restaurants closing down because of having to pay us more. Although we knew our industry was solid, we didn't expect to see a surge of new restaurants spring up. And these new bars and restaurants aren't even replacing old ones; they're replacing vacant lots and abandoned buildings. Now that all us industry folk have more money, we go spend it at all the new restaurants. Seattle is seeing money trickle up. All in all, I'm doing better financially and the industry keeps getting bigger." —CHASSE GUNTER, SEATTLE, LINE COOK, 4 YEARS IN THE RESTAURANT INDUSTRY

SAN FRANCISCO

Similarly, in San Francisco, where there is no tipped minimum wage and the minimum wage is increasing to \$15, the Golden Gate Restaurant Association reports that, "the metrics show that San Francisco has still seen record restaurant growth."¹¹⁷ In San Francisco, a 2007 study by University of California researchers gathered employment and hours data from restaurants in San Francisco as well as from surrounding counties that were not covered by the higher minimum wage and found that the higher wage had not led San Francisco employers to reduce either their employment levels or employee hours worked.¹¹⁸ A follow-up 2014 study examined the combined impact on San Francisco employers of the city's minimum wage ordinance and of other city compensation mandates that cumulatively raised employment costs 80 percent above the level of the federal minimum wage. The study again found no adverse effect on employment levels or hours, and found that food service

jobs—the sector most heavily affected—actually grew about 17 percent faster in San Francisco than in surrounding counties during that period.¹¹⁹

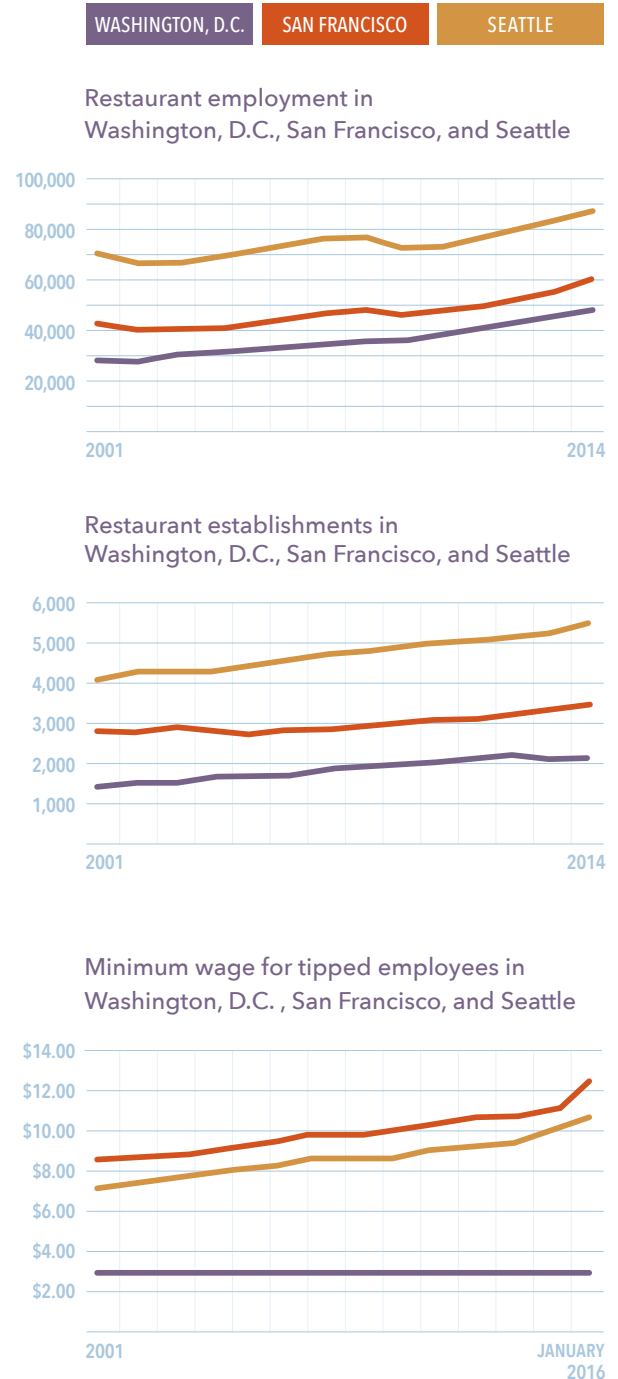
SEA-TAC WASHINGTON

The small suburban city of SeaTac, Washington, which is home to the Seattle airport and many hotels and restaurants, has had a similar experience to Seattle’s. Before this city implemented a minimum wage increase to \$15 in 2014¹²⁰ for workers in the travel and hospitality industry, opponents warned of adverse consequences. Yet, as *The Seattle Times* summarized, “[f]or all the political uproar it caused, SeaTac’s closely watched experiment with a \$15 minimum wage has not created a large chain reaction of lost jobs and higher prices.”¹²¹ *The Washington Post* similarly reported that “[t]hose who opposed the \$15 wage in SeaTac and Seattle admit that there has been no calamity so far,” and highlighted how even though Tom Douglas, a Seattle restaurateur, stated in April 2014 that a \$15 wage could “be the most serious threat to our ability to compete” and that he “would lose maybe a quarter of the restaurants in town,” as of September 2014, he had opened, or announced, five new restaurants that year.¹²²

“I’m a server at a restaurant in Seattle where we are experiencing a restaurant boom. I’ve worked in the restaurant industry for more than seven years and believe that by increasing the minimum wage to \$15, we can put more money in the hands of workers that they can then spend at restaurants. My customers leave 15 to 20 percent in tips on average, and I don’t think that there’s a correlation between my wages and how much I earn in tips.” –NATE MIDGLEY, SEATTLE SERVER, 7 YEARS IN THE RESTAURANT INDUSTRY

Washington, D.C., is similar to both San Francisco and Seattle in both employment growth in the restaurant industry and growth in the number of restaurant establishments, but it lags far behind those cities in compensating its tipped workers (see Figure 7).^{123,124} As shown here, raising wages has had no adverse effect on the vibrant restaurant scene in cities comparable to D.C.; restaurant workers in D.C. would only

F7 Trends in restaurant employment, number of restaurant establishments and minimum wage in the District of Columbia, San Francisco, and Seattle^{125, 126}



SEATTLE: For employers with 500 or fewer employees.
 SEATTLE: The minimum wage will increase to \$15 per hour for all Seattle employees between 2017 and 2021.
 SAN FRANCISCO: The minimum wage will increase to \$15 per hour by 2018

stand to benefit from raising the minimum wage to \$15 and eliminating the tipped minimum wage.

“[A]s a progressive businessman, I welcome efforts to change the way business is conducted here. The \$15-per-hour minimum wage initiative, paid family leave and the One Fair Wage campaign to eliminate tipped wages altogether are long-overdue attempts to close the gap between those at the top and those being left out. These things may seem to be anti-business, but they represent a better and more sustainable way to do business. Such efforts not only will provide a more livable wage to all D.C. workers but also will create a windfall for businesses that will benefit directly from the added money circulating in the community—the proverbial rising tide lifting all boats.” —ANDY SHALLAL, OWNER, BUSBOYS AND POETS AND MULEBONE, WASHINGTON D.C.¹²⁷

9 RESTAURANTS IN CITIES THAT ARE RAISING THE MINIMUM WAGE TO \$15 AND HAVE NO TIPPED MINIMUM WAGE ARE NOT RUSHING TO ABOLISH TIPPING, AND TIPPING RATES HAVE NOT DROPPED SIGNIFICANTLY UNDER SUCH POLICIES

Contrary to predictions by some, raising the minimum wage to \$15.00 and eliminating the tipped minimum wage does not lead restaurants to abolish tipping or lead diners to reduce tipping levels. A small number of mostly high-end restaurants today are experimenting with getting rid of tipping¹²⁸—including in D.C. where the tipped minimum wage is very low. However, tipping continues to be the norm in states like California, Washington, Oregon, and Minnesota where tipped workers receive the full minimum wage before tips. Alaska, a state without a subminimum wage for tipped workers, holds the record for the highest average tips rate among all fifty states.¹²⁹

The Golden Gate Restaurant Association, the voice of the restaurant industry in San Francisco, recently noted that “[d]iners in San Francisco reported an average 19% tip rate,”¹³⁰ even as the City’s minimum wage increases to \$15 by 2018¹³¹ and employers are not permitted to pay tipped workers a lower tipped minimum wage.

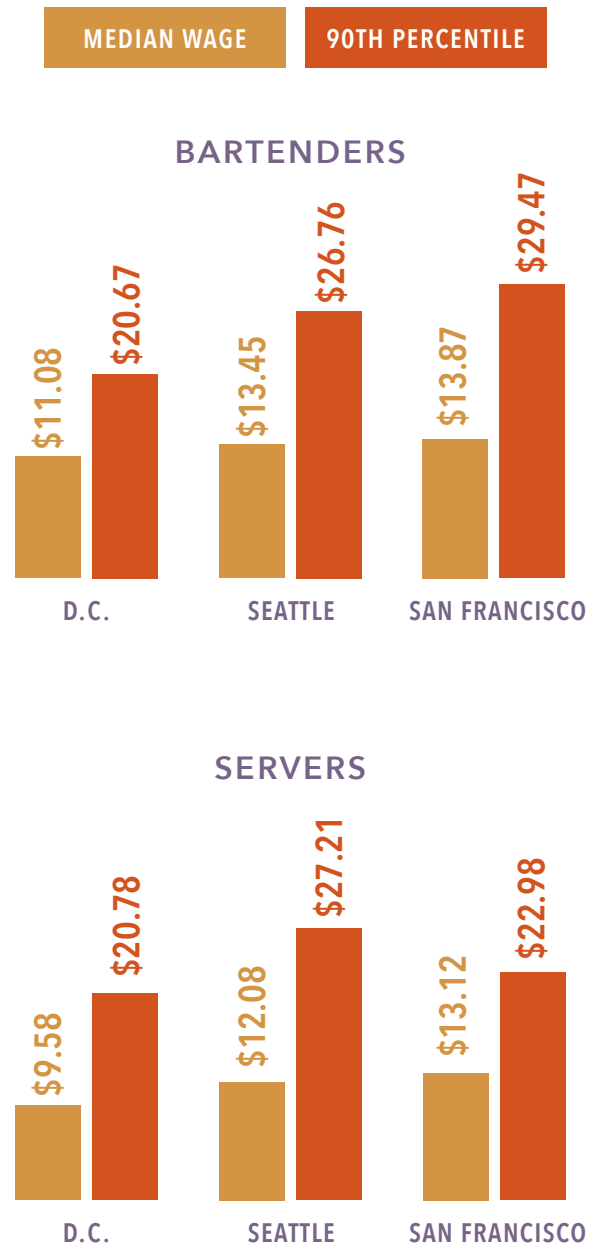
“My former company, Cover, monitors restaurant tipping practices closely as we operate a mobile payments platform for the industry. When cities or states have proposed eliminating the lower tipped wage and/or raising the minimum wage to \$15, some have predicted that it would lead restaurants to abandon tipping or result in significantly lower tipping rates—potentially lowering net pay for wait staff, at least at high end restaurants. But the on-the-ground experiences in cities like San Francisco and Seattle have disproven those predictions. While a small number of restaurants are experimenting with getting rid of tipping in cities across the country, the number and frequency of restaurants dropping tipping is no higher in those cities that have the combination of a high minimum wage and no lower tipped wage. Also, customers in those cities have not significantly reduced

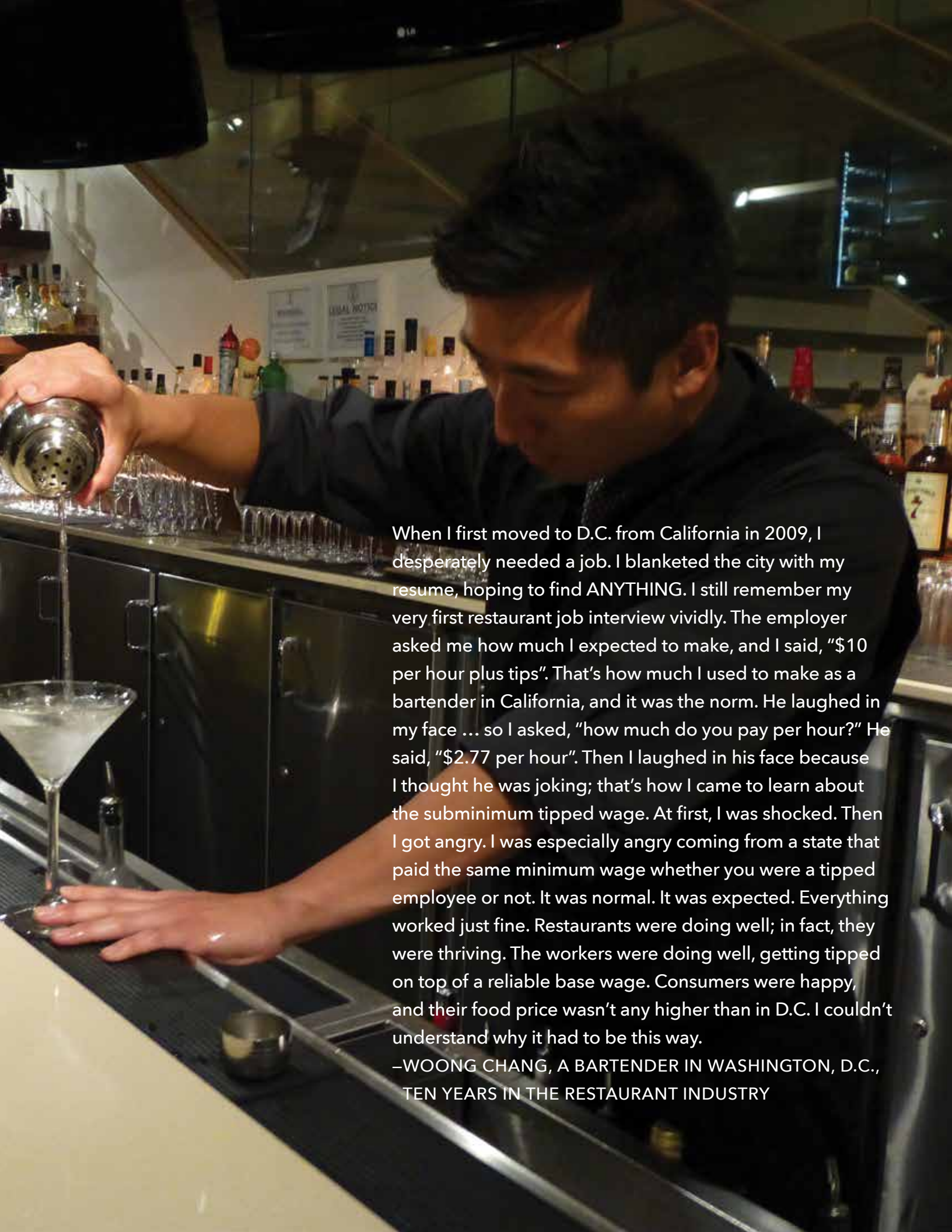
their tips.”—MARK EGERMAN, RESTAURANT INDUSTRY TIPPING EXPERT; CO-FOUNDER OF THE COVER RESTAURANT MOBILE PAYMENTS PLATFORM; AND A SENIOR FELLOW AT THE CENTER FOR AMERICAN PROGRESS¹³²

National data confirm that “raising the tipped wage significantly increases earnings of workers in FSRs [Full-Service Restaurants].”¹³³ An analysis of wages for tipped workers found that, “tipped workers in equal treatment states [with no tipped minimum wage] earn 14.2 percent more than tipped workers in low tipped minimum states.”¹³⁴ Data for waiters and bartenders show that earnings are about 20 percent higher in states where tipped workers must be paid the full minimum wage before tips, than in states that follow the federal \$2.13 tipped minimum wage.¹³⁵ Doing away with the tipped minimum wage raises median wages for tipped workers, but it also raises wages among the highest earners. In Seattle, bartenders at the ninetieth percentile in earnings earn 29 percent more than the same bartenders in D.C., while in San Francisco, top-earning bartenders take home 43 percent more in earnings than top-earning bartenders in D.C. (see Figure 8).

“I am currently working as a bar back in Seattle, and the restaurant industry seems strong to me. Higher wages haven’t changed the way customers tip. The only thing the higher minimum wage did was give you something else to make small talk about with the regulars. People who used to tip still tip the same amount, in my experience. I think tipping is simply part of our culture and nobody here is going to stop tipping because their server makes a decent wage. No one sees better overall pay for low-wage workers as a bad thing.” —TOBIAS COUGHLIN-BOGUE, BAR BACK IN SEATTLE, 10 YEARS IN THE RESTAURANT/HOSPITALITY INDUSTRY

F8 Bartender and server hourly earnings¹³⁶





When I first moved to D.C. from California in 2009, I desperately needed a job. I blanketed the city with my resume, hoping to find ANYTHING. I still remember my very first restaurant job interview vividly. The employer asked me how much I expected to make, and I said, "\$10 per hour plus tips". That's how much I used to make as a bartender in California, and it was the norm. He laughed in my face ... so I asked, "how much do you pay per hour?" He said, "\$2.77 per hour". Then I laughed in his face because I thought he was joking; that's how I came to learn about the subminimum tipped wage. At first, I was shocked. Then I got angry. I was especially angry coming from a state that paid the same minimum wage whether you were a tipped employee or not. It was normal. It was expected. Everything worked just fine. Restaurants were doing well; in fact, they were thriving. The workers were doing well, getting tipped on top of a reliable base wage. Consumers were happy, and their food price wasn't any higher than in D.C. I couldn't understand why it had to be this way.

–WOONG CHANG, A BARTENDER IN WASHINGTON, D.C.,
TEN YEARS IN THE RESTAURANT INDUSTRY

“Even though the minimum wage has been increasing in the past couple years, tipping and gratuities have not been negatively affected. But we still have a long way to go to catch up to a living wage. As a server, I noticed that customers continue to tip as customary. When we reach \$15 an hour in CA, I expect customers to continue tipping at the same levels.” –HUGO ALEMAN, LOS ANGELES SERVER, 23 YEARS IN THE RESTAURANT INDUSTRY

CONCLUSION

The experiences of states and cities with no subminimum wage for tipped workers—and in particular of California, San Francisco, and Seattle, which are also raising their minimum wages to \$15.00—show that such standards are economically manageable for restaurant employers and greatly improve the earnings and economic wellbeing of tipped workers. The bulk of D.C.’s tipped workers struggle to get by on low wages. Unless raising the minimum wage to \$15.00 is combined with gradually phasing out the unfair tipped minimum wage, tipped workers such as waitresses, car wash workers, nail salon workers, and delivery workers will continue to face low wages, fluctuating pay checks, and widespread legal violations that leave them economically vulnerable.

NOTES

- 1 Raise the Minimum Wage, \$15 Laws & Current Campaigns, <http://raisetheminimumwage.org/pages/15-Laws-Current-Campaigns> (last viewed May 13, 2016).
- 2 B21-0712 – Fair Shot Minimum Wage Amendment Act of 2016, *available at* <http://lims.dc-council.us/Legislation/B21-0712?FromSearchResults=true>.
- 3 Tipped restaurant workers account for over 80 percent of the tipped workforce in D.C., and servers and bartenders, alone, account for 47.5 percent of all D.C. tipped workers. See note 49, *infra*.
- 4 Bureau of Labor Statistics, May 2015 State Occupational Employment and Wage Estimates, District of Columbia, *available at* http://www.bls.gov/oes/current/oes_dc.htm. This report 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, Nonrestaurant; Dining Room and Cafeteria Attendants and Bartender Helpers; Gaming Service Workers; Barbers; Hairdressers, Hairstylists, and Cosmetologists; Miscellaneous Personal Appearance Workers (including Manicurists and Pedicurists; Shampoos; Makeup Artists, Theatrical and Performance; and Skincare Specialists); Baggage Porters and Bellhops; Concierges; Taxi Drivers and Chauffeurs; and Parking Lot Attendants.
- 5 District of Columbia Department of Employment Services, Office of Wage and Hour, District of Columbia Minimum Wage Increase, *available at* http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DC%20Minimum%20Wage%20Increase%20-%20DC%20Register%20Public%20Notice.pdf.
- 6 American Community Survey, 2010–2014 merged-five year sample. Calculations by the Restaurant Opportunities Centers United (ROC-United), examining data for individuals employed in customarily tipped occupations (see note 4 for a list of “customarily tipped occupations”), or other occupations, as noted, living in Washington, D.C., based on Ruggles et al., Integrated Public Use Microdata Series: Version 5.0 [Machine-readable database]. Minneapolis: Minnesota Population Center, 2010.
- 7 Bureau of Labor Statistics, May 2015 State Occupational Employment and Wage Estimates, District of Columbia, *available at* http://www.bls.gov/oes/current/oes_dc.htm. The BLS May 2015 estimates are based on responses from six semiannual panels collected over a 3-year period: May 2015, November 2014, May 2014, November 2013, May 2013, and November 2012. Bureau of Labor Statistics, Occupational Employment Statistics, Technical Notes for May 2015 OES Estimates, http://www.bls.gov/oes/current/oes_tec.htm (last viewed May 13, 2016). Because these data were collected over a period of three years (November 2012 to May 2015), median earnings may be lower than the applicable 2015 minimum wage.
- 8 See D.C. Code Ann. § 32-1003 (effective March 11, 2014); D.C. Code Ann. § 32-1003 (effective March 20, 2008 to March 10, 2014).
- 9 District of Columbia Department of Employment Services, Office of Wage and Hour, District of Columbia Minimum Wage Increase, *available at* http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DC%20Minimum%20Wage%20Increase%20-%20DC%20Register%20Public%20Notice.pdf.
- 10 Even D.C. restaurant servers (classified as “Waiters and Waitresses” by the BLS) earning at the seventy-fifth percentile in terms of hourly wages earn only \$11.59 per hour. Those earning at the ninetieth percentile in terms of hourly wages earn \$20.78 per hour. See Bureau of Labor Statistics, May 2015 State Occupational Employment and Wage Estimates, District of Columbia, *available at* http://www.bls.gov/oes/current/oes_dc.htm. A single worker with no children working full-time in D.C. needs to earn at least \$20 per hour to make ends meet; a single worker with one child will require more than \$37 per hour working full-time to make ends meet. See Economic Policy Institute, Family Budget Calculator, <http://www.epi.org/resources/budget/> (last viewed May 21, 2016). Thus, even servers earning at the ninetieth percentile in D.C. are barely making ends meet.
- 11 See *supra* note 6.
- 12 Sylvia A. Allegretto & David Cooper, Economic Policy Institute and University of California, Berkeley, Center on Wage and Employment Dynamics, Twenty-three Years and Still Waiting for Change: Why It’s Time to Give Tipped Workers the Regular Minimum Wage (July 2015) at 19, *available at* <http://www.epi.org/files/2014/EPI-CWED-BP379.pdf> (hereinafter “Allegretto & Cooper (2014)”).
- 13 See *supra* note 6.
- 14 *Id.*
- 15 Restaurant Opportunities Centers United, Forward Together, et al., *The Glass Floor: Sexual Harassment in the Restaurant Industry* (Oct. 2014) at 2, *available at* http://rocnetwork.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf.
- 16 Restaurant Opportunities Centers United (ROC-United) gathered 25 surveys from tipped restaurant workers in Washington, D.C. examining their experiences with sexual behaviors in the workplace for this report to supplement the findings in ROC’s *The Glass Floor* report, see *supra* note 15, with data specific to D.C. The survey avoided the term sexual harassment and instead asked about a range of behaviors experienced at work and how workers felt about those behaviors, and if they were bothered by these behaviors—the technical definition of sexual harassment, see *supra* note 15. To ensure validity of responses, workers were given a range of options to further rate these behaviors, including fun, normal, scary, or unwanted. These figures were combined with 26 surveys of tipped restaurant workers from Washington, D.C. in the original *The Glass Floor* data set, for a combined total of 51 tipped restaurant workers in D.C. All quotes are from the 25 surveys gathered for this report.
- 17 National Economic Council et al., The Impact of Raising the Minimum Wage on Women and the Importance of Ensuring a Robust Tipped Minimum Wage (Mar. 2014), *available at* <http://www.whitehouse.gov/sites/default/files/docs/20140325minimumwageandwom-enreportfinal.pdf>.
- 18 Raise the Wage Act, H.R. 2150; S. 1150, 114th Congress (2015–2016); Pay Workers a Living Wage Act, H.R. 3164; S. 1832, 114th Congress (2015–2016).
- 19 See Tim Devaney, “Top Dems line up behind \$12 minimum wage,” Apr. 30, 2015, *The Hill*, *available at* <http://thehill.com/regulation/labor/240702-obama-administration-backing-12-minimum-wage> (noting that the Obama administration supports the Raise the Wage Act).
- 20 Daniel Marans, “Hillary Clinton Takes a Stand Against ‘Subminimum Wage’ for People with Disabilities,” Mar. 29, 2016, *The Huffington Post*, *available at* http://www.huffingtonpost.com/entry/hillary-clinton-subminimum-wage-people-with-disabilities_us_56faf630e4b083f5c605ef20 (noting that Hillary Clinton supports eliminating the tipped minimum wage).
- 21 Bernie 2016, Sanders Statement on New York and California Minimum Wage Increase, Apr. 4, 2016, *available at* <https://berniesanders.com/sanders-statement-new-york-california-minimum-wage-increase/>.
- 22 See Raise the Wage Act, H.R. 2150; S. 1150, 114th Congress (2015–2016); Pay Workers a Living Wage Act, H.R. 3164; S. 1832, 114th Congress (2015–2016).
- 23 See discussion in Parts 7 and 8, *infra*.
- 24 *Id.*
- 25 Bureau of Labor Statistics, Quarterly Census of Employment and Wages, 2001–2014. Restaurant Opportunities Centers United analysis of employment and number of establishments reports for NAICS 722 Food Services and Drinking Places in King County, WA, San Francisco County, CA, and Washington, D.C., *available at* <http://data.bls.gov/cgi-bin/srgate>.
- 26 Restaurant Opportunities Centers United analysis of increases to the minimum wage for tipped workers in Washington, D.C., Seattle, and San Francisco, from 2004–2015. Seattle wage rates accessed at Washington State Department of Labor & Industries, History of Washington Minimum Wage, <http://www.lni.wa.gov/workplacerrights/wages/minimum/history/default.asp> and Office of the Mayor, \$15 Minimum Wage Schedules, <http://murray.seattle.gov/minimumwage/>. San Francisco wage rates accessed at City and County of San Francisco, Office of Labor Standards Enforcement, Minimum Wage Ordinance, <http://sfgov.org/olse/minimum-wage-ordinance-mwo>, Washington, D.C. wage rates accessed at United States, DOL, Wage and Hour Division, Minimum Wages for Tipped Employees – Historical Tables, <https://www.dol.gov/whd/state/tippedHistory.htm>.
- 27 According to the Golden Gate Restaurant Association, “[d]iners in San Francisco reported an average 19% tip rate.” Samantha Higgins, Golden Gate Restaurant Association, The State of the Industry: An Update from GGRA’s Executive Director (Apr. 2016), *available at* <http://ggra.org/the-state-of-the-industry-an-update-from-ggras-executive-director/>. A 19 percent tip rate exceeds even the highest state tip rate of 17 percent in Alaska. Roberto A. Ferdman, “Which US states tip the most (and least), as shown by millions of Square transactions,” March 21, 2014, *Quartz*, *available at* <http://qz.com/189458/the-united-states-of-tipping/>.
- 28 Roberto A. Ferdman, “Which US states tip the most (and least), as shown by millions of Square transactions,” March 21, 2014, *Quartz*, *available at* <http://qz.com/189458/the-united-states-of-tipping/>.
- 29 Allegretto & Cooper (2014) at 11.
- 30 See Figure 8, *infra*.
- 31 Saru Jayaraman, “Why Tipping is Wrong,” Oct. 15, 2015, *The New York Times*, *available at* http://www.nytimes.com/2015/10/16/opinion/why-tipping-is-wrong.html?_r=0.
- 32 Suzanne Dershowitz et al. *Working Below the Line: How the Subminimum Wage for Tipped Restaurant Workers Violates International Human Rights Standards*. Berkeley, CA: International Human Rights Clinic, University of California, Berkeley, School of Law (Dec. 2015).
- 33 William G. Whitaker, Congressional Research Service, The Tip Credit Provisions of the Fair Labor Standards Act (Mar. 2006) at CRS-3. Tipped workers working for chain establishments and retail stores were nevertheless largely exempt from protections under the FLSA originally in that they were not considered to be engaged in interstate commerce. See Douglas, Paul H. & Hackman, Joseph. The Fair Labor Standards Act of 1938 II, *Political Science Quarterly*, Vol. 54, No. 1 (Mar. 1939), pp. 29-55.
- 34 *Id.*
- 35 *Id.* at CRS-5.
- 36 *Id.* at CRS-6.

- 37 United States Department of Labor, Wage and Hour Division, Minimum Wages for Tipped Employees (Jan. 2016), <https://www.dol.gov/whd/state/tipped.htm> (last viewed May 10, 2016).
- 38 See *supra* note 10.
- 39 See *supra* note 7.
- 40 *Id.*
- 41 *Id.*
- 42 *Id.*
- 43 Compare current D.C. minimum wage law, D.C. Code Ann. § 32-1003 (effective March 11, 2014), with D.C. Code Ann. § 32-1003 (effective March 20, 2008 to March 10, 2014).
- 44 See D.C. Code Ann. § 32-1003 (effective March 11, 2014); D.C. Code Ann. § 32-1003 (effective March 20, 2008 to March 10, 2014).
- 45 District of Columbia Department of Employment Services, Office of Wage and Hour, District of Columbia Minimum Wage Increase, *available at* http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DC%20Minimum%20Wage%20Increase%20-%20DC%20Register%20Public%20Notice.pdf.
- 46 See *supra* note 7.
- 47 See D.C. Code Ann. § 32-1003 (effective March 11, 2014); D.C. Code Ann. § 32-1003 (effective March 20, 2008 to March 10, 2014).
- 48 See *supra* note 7.
- 49 Restaurant Opportunities Centers United analysis of employment figures for tipped restaurant workers. Tipped restaurant workers for this analysis included Bartenders; Counter Attendants, Cafeteria, Food Concession, and Coffee Shop workers; Waiters and Waitresses, Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop; Food servers, Nonrestaurant; Dining Room and Cafeteria Attendants and Bartender Helpers, as found in Bureau of Labor Statistics, May 2015 State Occupational Employment and Wage Estimates. See *supra* note 7.
- 50 Sarah Maslin Nir, "The Price of Nice Nails," *The New York Times*, May 7, 2015, *available at* http://www.nytimes.com/2015/05/10/nyregion/at-nail-salons-in-nyc-manicurists-are-underpaid-and-unprotected.html?_r=0.
- 51 Rajesh D. Nayak & Paul K. Sonn, National Employment Law Project, Restoring the Minimum Wage for America's Tipped Workers (Aug. 2009) at 8, *available at* http://nelp.3cdn.net/f6d-f4ed353601d4c50_x6m6iy650.pdf.
- 52 See *supra* note 6.
- 53 *Id.*
- 54 *Id.*
- 55 *Id.*
- 56 *Id.*
- 57 *Id.*
- 58 *Id.*
- 59 *Id.*
- 60 *Id.*
- 61 *Id.* 10.7% of male tipped workers live in poverty.
- 62 Restaurant Opportunities Centers United, Forward Together, et al., The Glass Floor: Sexual Harassment in the Restaurant Industry (Oct. 2014) at 5, *available at* http://rocnited.org/wp-content/uploads/2014/10/REPORT_The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry2.pdf.
- 63 *Id.* at 3.
- 64 *Id.* at 7, 25.
- 65 *Id.* at 28.
- 66 *Id.* at 7, 27-29.
- 67 *Id.* at 2.
- 68 *Id.*
- 69 *Id.* at 20.
- 70 Restaurant Opportunities Centers United gathered 25 surveys from tipped restaurant workers in Washington, D.C. examining their experiences with sexual behaviors in the workplace for this report to supplement the findings in *The Glass Floor* with data specific to D.C. The survey avoided the term sexual harassment, and instead asked about a range of behaviors experienced at work and how workers felt about those behaviors, and if they were bothered by these behaviors—the technical definition of sexual harassment (see *supra* note 62). To ensure validity of responses, workers were given a range of options to further rate these behaviors including fun, normal, scary, or unwanted. These figures were combined with 26 surveys of tipped restaurant workers from Washington, D.C. in the original *The Glass Floor* data set, for a combined total of 51 tipped restaurant workers in D.C. All quotes are from the 25 surveys gathered for this report.
- 71 *Id.*
- 72 *Id.*
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**THE CASE FOR ELIMINATING
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