



**STATEMENT OF SARU JAYARAMAN,
CO-FOUNDER AND PRESIDENT OF ONE FAIR WAGE**

**PENNSYLVANIA HOUSE COMMERCE COMMITTEE
TESTIMONY ON THE IMPACT OF A MINIMUM WAGE INCREASE ON COMMERCE**

February 11, 2021

My name is Saru Jayaraman. I am the Co-founder and President of One Fair Wage, a grassroots advocacy organization of restaurant workers and other Americans affected by the subminimum wage laws in the United States. I am also Director of the Food Labor Research Center at University of California, Berkeley and a Professor at UC Berkeley's Goldman School of Public Policy. I have authored and co-authored over 70 policy reports and 3 books on the restaurant industry based on government data analysis and over 10,000 surveys of workers and 2,000 interviews with employers over the last 20 years. My work was featured in two recent documentary films: **Waging Change** by Peabody Award-winning documentarian Abby Ginzberg, and the **Great American Lie** by the First Partner of California, Jennifer Siebel Newsom.

I want to thank Chairman Roae, Democratic Chair Galloway, and the other Members of the Pennsylvania House Commerce Committee for this opportunity to provide testimony. Thank you all for interest in understanding why now is the time to raise the minimum wage, end the subminimum wage - a vestige of slavery - and why this is good for commerce. We commend your efforts to find solutions that work for tipped service workers and business alike at this critical time for hundreds of thousands of Pennsylvania tipped workers. We thank you for realizing that a new way forward is essential to getting businesses, workers, and public health moving together on behalf of a successful and sustainable economy, industries, and businesses in Pennsylvania.

Nationally, One Fair Wage has nearly a quarter million restaurant worker members, nearly 1000 business owner members, including Tom Colicchio and other well-known chef/restaurant owners, and thousands of consumer members across the country. In Pennsylvania, nearly 10,000 One Fair Wage worker members are joined by hundreds of restaurant owners calling for an end to the subminimum wage for tipped workers and

raising the minimum wage to a liveable wage for all.

The restaurant industry is in crisis, and it is heartbreaking to hear employers losing their dreams and losing their businesses. It is sad for consumers to lose their favorite neighborhood restaurants. But this crisis is life threatening for these over half million Pennsylvania restaurant workers who, beyond losing their dreams and their work, are losing their homes, their ability to feed their children, their ability to pay for heat and other utilities this winter. This is a dire, life-threatening situation for workers who have been increasing the ranks of homelessness. These issues are mirrored for tipped service workers in travel, hospitality, beauty, valet, delivery and other industries suffering excruciating loss of employment in addition to the most extreme poverty. However, I will focus on the restaurant industry which represents such a high percentage of tipped service workers and restaurant business owners in Pennsylvania.

The impact of the subminimum wage for tipped restaurant workers includes the highest levels of poverty for full time workers, institutional racial discrimination, sexual harassment, wage theft, and public health calamity.^{1,2} In addition, these problems have shifted business burdens to taxpayers in the form of poverty relief, massive discrimination and sexual harassment response, and public health costs for workers and consumers alike through COVID-19. The impacts for Pennsylvania of ending the subminimum wage and increasing the minimum wage for all pale by contrast.

The restaurant industry, prior to the pandemic, was in crisis for workers. We were the nation's second-largest and fastest-growing employer, but with the absolute lowest-paying wages of any employer in the United States.³ And that is due to the sub-minimum wage for tipped workers, which is a literal legacy of slavery.

The restaurant industry trade lobby at Emancipation demanded the right to hire newly-freed slaves, not pay them anything, and have them live entirely on tips, which was a mutation of the original concept of tipping, which was always intended to be an extra, or a bonus on top of the wage. Slavery in the United States was the practice that created the sub-minimum wage for tipped workers -- and made tipping a replacement for a wage,

¹ One Fair Wage. (August 2020). A Persistent Legacy of Slavery: Ending the Subminimum Wage for Tipped Workers as a Racial Equity Measure. https://onefairwage.site/wp-content/uploads/2020/11/OFW_LegacyOfSlavery_USA-1.pdf

² One Fair Wage. (December 2020). Take off your mask so I know how much to tip you: Service Workers' Experience of Health & Harassment During COVID-19. https://onefairwage.site/wp-content/uploads/2020/12/OFW_COVID_WorkerExp-1.pdf

³ Semuels, Alana et al. (August 2019). Low Wages, Sexual Harassment and Unreliable Tips. This Is Life in America's Booming Service Industry. Time Magazine. <https://time.com/5658442/tipped-restaurant-workers-american-economy/>

rather than an extra or a bonus on top of the wage. Thanks to the power of the National Restaurant Association lobby, we went from a zero dollar wage at Emancipation to a \$2.83/hour wage in Pennsylvania for tipped workers today, less than a \$3 increase in over 150 years.⁴

Prior to the pandemic, that ridiculously low wage led to home insecurity, food insecurity, and economic insecurity.⁵ Tipped service workers in the restaurant industry faced the highest rate of poverty in the nation. Tipped restaurant workers faced the highest rates of wage theft and mistakes managing tipped wage credits that have resulted in 84% of tipped workers not receiving the pay to which they are entitled.⁶ (The subminimum wage laws were deemed unenforceable by an intensive Labor Department investigation, with the recommended solution being elimination of the subminimum wage.) The extremely low wage also shifts the burden from businesses to taxpayers when low-wage tipped workers, 40% of whom are single parents, have to turn to public assistance to make ends meet, despite the fact that so many are often disqualified because they work full time.⁷

The restaurant industry has the highest rates of sexual harassment of any industry in the United States, as a largely female workforce has to tolerate inappropriate customer behavior to feed their families in tips because of the subminimum wage.⁸ Since the pandemic, sexual harassment has risen dramatically, where servers are being challenged by customers to remove their masks and subject to obscenities if they don't as a condition for being tipped.⁹ (See Data Table below.)

Much as we celebrate the diversity of this industry, diversity is different from equity, and restaurant workers of color an industry with the the most severe racial segregation and discrimination. They are segregated into lower-paying restaurants, casual and fast food restaurants. They are segregated into lower-paying positions. They work in -- as bussers and runners and dishwashers and cooks, rather than as servers and bartenders in fine

⁴ One Fair Wage. (February 2021). Ending A Legacy of Slavery: How Biden's COVID Relief Plan Cures the Racist Subminimum Wage. https://onefairwage.site/wp-content/uploads/2021/02/OFW_EndingLegacyOfSlavery-2.pdf

⁵ Allegretto, Sylvia et al. (July 2014). Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage. Economic Policy Institute. <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>

⁶Hatic, Dana. (September 2018). How Restaurants Get Away With Stealing Millions From Workers Every Year. Eater. <https://www.eater.com/2018/9/25/17886990/how-restaurants-steal-from-workers-wage-theft>

⁷ Roy, Katica. (August 2020). Gender economist Katica Roy: The U.S. style of tipping hurts the economy--and especially women--amid COVID-19. NBC News. <https://www.nbcnews.com/your-value/feature/gender-economist-katica-roy-u-s-style-tipping-hurts-economy-ncna1238451>

⁸ Johnson, Stefanie K. et al. (January 2018). Sexual Harassment Is Pervasive in the Restaurant Industry. Here's What Needs to Change. Harvard Business Review. <https://hbr.org/2018/01/sexual-harassment-is-pervasive-in-the-restaurant-industry-heres-what-needs-to-change>

⁹ See note 2

dining restaurants.¹⁰

Workers of color have long been tipped less than white workers, but the differential is enormous: a \$5-per-hour wage gap between Black women and White men as a result of segregation, historical legacies of slavery, and customer biases in tipping. But it is the subminimum wage that locks this discrimination in place.¹¹ In addition, any supports for PPP, paid sick leave, and more has a disproportionately higher impact on workers of color. They have less savings, less ability to turn to family and friends for support, are more likely to be home insecure, food insecure, and are much more likely to have family members impacted by the pandemic.

These unjust conditions were serious before COVID-19. With the pandemic, it has become an issue of life or death.

Ending the subminimum wage that improves all these concerns - and that has been time-tested in seven diverse states that ended the subminimum wage and provided One Fair Wage with tips on top decades ago: California, Oregon, Washington, Nevada, Minnesota, Montana, and Alaska. These states have been booming by every measure, and have suffered less through the pandemic.¹² These facts have been obfuscated by industry disinformation efforts to perpetuate the subminimum wage. Unlike the 43 states with a subminimum wage for tipped workers, One Fair Wage states have enjoyed:

- Higher industry job growth rates
- Higher levels of both small and large business growth
- Higher sales growth
- Higher rates of tipping
- Lower levels of worker poverty
- Roughly 50% lower rates of sexual harassment.¹³

On the whole, the seven states that require One Fair Wage experienced exactly the same rate of restaurant closures during the pandemic as the 43 states with a subminimum wage - indicating that paying workers a full minimum wage does not increase restaurant closures. And four of the seven states that require One Fair Wage (a full minimum wage with tips on top) - MT, NV, MN, and WA - experienced less

¹⁰ ROC United. (2015). Ending Jim Crow in America's Restaurants: Racial and Gender Occupational Segregation in the Restaurant Industry. New York, NY: ROC United. <https://laborcenter.berkeley.edu/pdf/2015/racial-gender-occupational-segregation.pdf>

¹¹ Ibid.

¹² ROC United. (February 2018). Better Wages, Better Tips: Restaurants Flourish with One Fair Wage. New York, NY: ROC United. https://chapters.rocunited.org/wp-content/uploads/2018/02/OneFairWage_W.pdf

¹³ Ibid.

restaurant closures than Pennsylvania during the pandemic¹⁴.

In these states, workers impacted by the pandemic are faring better because they can more easily access benefits than those working at a subminimum wage. By contrast, in the 43 states with a sub-minimum wage for tipped workers, our calculations, based on 220,000 workers who initially applied to us for relief, are that **60 percent of tipped workers were unable to access unemployment insurance**, because they were told that their sub-minimum wage plus tips was too low to qualify for benefits in their states.¹⁵ This widespread phenomenon has occurred in Pennsylvania, as in other states that continue to pay a subminimum wage. Workers were also largely unable to access federal relief checks when state unemployment denials made it difficult to then access federal funding coming through state systems.

Thousands of Pennsylvanians in the restaurant industry have been paid nothing since the pandemic and are destitute. You have seen reports of workers now living on the streets or their cars. 40% of restaurant workers are parents. This has not changed since thousands were called back to work at their sub-minimum wage of \$2.83/hour - but with tips down 50 to 75 percent and restaurants serving at 50% capacity and less.¹⁶

In addition, the situation has become a public health crisis. The same workers who are being asked to enforce social distancing and mask rules as we switched to indoor dining, are being made to rely on tips from those very same customers whose tips they need in order to feed their families. So one of two things have happened. Either workers enforce the rules, and lose tips they need to feed their families or they don't enforce the rules because they need the tips in order to live, at health risk to them and their customers.¹⁷

The CDC has reported the severity of this public health crisis: that you are twice as likely to get COVID-19 from eating in a restaurant.¹⁸ If we expect these workers to enforce social distancing, we need to make sure they have the pay that they need to enforce those social distancing rules, so they can rely on their wage and forego tips to protect their health and the health of their customers.

¹⁴ Harvard University, Opportunity Insights Economic Tracker, <https://tracktherecovery.org>

¹⁵ One Fair Wage. (May 2020). Locked Out By Low Wages: Service Workers' Challenges With Accessing Unemployment Insurance During COVID-19. https://onefairwage.site/wp-content/uploads/2020/11/OFW_LockedOut_UI_COVID-19_-FINALUPDATE.pdf

¹⁶ See note 2

¹⁷ Ibid.

¹⁸ Fisher, K. A. , Tenforde, M. W., Feldstein, L. R., et al. Community and Close Contact Exposures Associated with COVID-19 Among Symptomatic Adults ≥18 Years in 11 Outpatient Health Care Facilities — United States, July 2020. MMWR Morb Mortal Wkly Rep 2020;69:1258–1264. DOI: <http://dx.doi.org/10.15585/mmwr.mm6936a5>

It is not just hundreds of thousands of workers who are calling to end the subminimum wage. Horrific stories of what tipped workers are enduring are not going unnoticed by employers. There are, literally, at this point, thousands of employers are coming together to say this is the time, when we are rethinking every aspect of our business, to restructure compensation in our industry. The National Restaurant Association's own trade magazine, Nation's Restaurant News in November headlined that "Pandemic is Forcing the Industry to Rethink Tip Credit and Wages."¹⁹ A \$2.83 subminimum wage has never supported workers in the industry with the highest level of workers in poverty before the pandemic, displacing support to taxpayers for the minority of workers able to qualify. But it has been disastrous during the pandemic. We have got to build back better. We can't go back to the day before the pandemic.

Hundreds of restaurants are changing practices on their own voluntarily, some because they can't get their workers to come back. Workers are saying, "I don't want to go back, expose my family and myself to the virus for a \$2.83/hour wage, when tips are down 50-75%, I'm getting harassed for enforcing public health requirements and losing my remaining tips for doing so."

This is a momentous opportunity to create sustainable solutions that help employers and workers alike. We do not recommend transferring all liability for having an economically sustainable business in the restaurant industry at this challenging moment. Growing numbers of employers can benefit from ending the subminimum wage and moving to a liveable minimum wage for all workers, with very minimal support, from:

- Strong tax credits, and an earned income tax credit, for restaurants now to support the transition. Extending payroll tax credits.
- A multi-year phase-in from the subminimum wage to a full liveable minimum wage.
- Support to businesses for the first years of phase-in. This business support is no longer at the expense of workers or consumers, but a win for all since it is largely offset by the increase in payroll taxes collected by the state of Pennsylvania.
- Leveling the playing field for all employers, which supports the growing numbers of employers moving to One Fair Wage or the majority that want to.
- Reduced payroll complexity and legal exposure for noncompliance with subminimum wage payroll requirements - let alone the impact on workers - facing 84% of restaurant businesses.
- A raise in wages during an economic downturn when everyone is struggling and consumers across the board can help support the transition, with a quarter to a

¹⁹ Luna, Nancy. (2020). Compensation: Pandemic forces restaurant industry to rethink wages, tip credit. Nation's Restaurant News. <https://www.nrn.com/workforce/compensation-pandemic-forces-restaurant-industry-rethink-wages-tip-credit>

dollar more on their bill being echoed everywhere.

- Being leaders in COVID protection, when workers can enforce public health guidelines with customers because they can afford to forego a tip.
- The economic stimulus that benefits the economy in general and immediately benefits the restaurant industry in specific. When workers in poverty earn a little more, that money is directly spent within the local economy - and restaurant workers are known to spend extra income at restaurants.

We applaud you for recognizing this opportunity to restructure for a better today and tomorrow for employers, consumers, and tipped workers alike. There is so much you can do to support restaurant owners across Pennsylvania, move to a full minimum wage for tipped workers, and build a sounder footing for now and the future. Millions of employers and tipped workers depend on this transition and shedding the vestiges of slavery. Thank you.

COVID-19 Health and Customer Harassment Impacts on Restaurant Workers in PENNSYLVANIA					
Restaurant Employee Exposure to COVID-19	Nat'l	PA	POC	BLA CK	WHI TE
Has personally contracted COVID-19	13%	9%	28%	28%	17%
Employees who report that one or more employees at their restaurant has contracted COVID-19	53%	49%	84%	79%	74%
Employees are within 6 feet of an unmasked person at least once during their shift	84%	88%	78%	72%	58%
Employees are within 6 feet of an unmasked person 30 or more times during their shift	33%	32%	21%	20%	36%
Employees interact with 10 or more unmasked people during their shift	52%	56%	48%	32%	53%
Employees interact with 30 or more unmasked people during their shift	31%	30%	15%	12%	32%
Employer Implemented COVID-19 Safety Protocols					

Employer has not conducted a mandatory training about COVID-19 prior to reopening for dining or other customer-facing services	39%	34%	32%	27%	34%
Employer consistently follows all COVID-19 safety protocols	30%	40%	45%	50%	37%
Encourage reservations to prevent crowds from gathering. Timing of reservations allows sufficient time to disinfect customer seating areas	51%	57%	61%	69%	55%
Employee Safety Protocols Instructed by Employer					
Employer consistently instructs employees to follow all COVID-19 safety protocols	21%	30%	35%	37%	29%
If an employee reports COVID-19 symptoms or has a fever at or above 100.4 °F [38 °C], supervisor or employer will immediately send them home, and require them to quarantine and get tested before returning to work.	75%	78%	78%	87%	80%
Employer encourages employees who have possible exposure to COVID-19 to quarantine and get tested before returning to work.	74%	77%	73%	82%	82%
Employer gives employees who have possible exposure to COVID-19 paid time off to quarantine and pays for them to get tested before returning to work.	28%	36%	40%	48%	34%
Customer Harassment and Impact on Tipping					
Report that tips have decreased since COVID-19	94%	95%	97%	96%	94%
Report that tips have decreased since COVID-19 by at least 50% or more	75%	81%	83%	79%	79%
Experienced or witnessed hostile behavior from customers in response to staff enforcing COVID-19 safety protocols	79%	88%	91%	90%	85%
Experienced or witnessed hostile behavior on a weekly basis from customers in response to staff enforcing COVID-19 safety protocols	57%	50%	41%	39%	55%
Felt reluctant to enforce COVID-19 safety protocols upon customers out of concern that customer would tip less	58%	61%	57%	57%	63%

On a weekly basis has received a decreased tip from a customer in response to enforcing COVID-19 safety protocols	65%	52%	51%	47%	52%
Has experienced or witnessed a noticeable change in overall levels of unwanted sexualized comments from customers	42%	44%	45%	41%	43%

Source: One Fair Wage Tipped Worker - COVID-19 Public Health Survey. Data collected from 10/20 to 1/28