



A PERSISTENT LEGACY OF SLAVERY

Ending the Subminimum Wage for Tipped Workers in New York as a Racial Equity Measure

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One Fair Wage
The UC Berkeley Food Labor Research Center







IN 2020, both the COVID-19 pandemic and the uprisings for racial justice catalyzed by the police murder of George Floyd illuminated the repression, precarity, and exclusion facing people of color, particularly Black people, throughout U.S. society. This year has brought to the forefront three major sources of violence and harm to Black communities and communities of color more generally: police violence, health inequities and economic precarity. The nexus of these three forces is acutely felt by one of the largest workforces in the country – tipped service workers.

Women and people of color disproportionately comprise the tipped service sector, the largest share of which comes from the restaurant industry. The restaurant industry is one of the largest and fastest growing industries and also the lowest paid.¹ Indeed, eight of the 15 lowest-paid occupations are restaurant jobs, seven of which are tipped.² As COVID-19 forced the closure of thousands of restaurants in New York and nationwide, as well as other tipped personal service occupations such as nail salon, car wash, airport and parking attendants, and tipped gig workers, this workforce plummeted even deeper into poverty and financial insecurity.

These workers' low pay is a result of the subminimum wage for tipped workers, a legacy of slavery that emerged during the era following Emancipation to exploit recently freed people, particularly Black women. This legacy continues today. In New York, tipped workers, still subject to a subminimum wage by law, are more than twice as likely to live in poverty and rely on Medicaid compared to the rest of the state workforce.³ Nearly 16 percent of tipped workers live on food stamps, almost twice the rate of other New York workers.⁴ These statistics are worse for tipped workers of color and women. The percentage of New York tipped workers of color living in poverty is 65% higher compared to white workers; similarly the percentage of women in poverty is 45% greater than men.⁵

Focusing particularly on the restaurant industry, government data shows that nearly half of all New York tipped restaurant workers are people of color and that more than 60% are women,⁶ largely employed in casual restaurants where wages, and more importantly, tips, are limited.

However, additional research shows that only 32% of people of color and 33% of women are employed in the highest paying front of house positions in fine dining.⁷ It is this overconcentration of workers of color and women in casual restaurants and under concentration in high paid fine dining positions that is leading to a large race and gender wage gap, particularly between Black women and white men.

This report, based both on government data and recent surveys and interviews with New York restaurant workers during the COVID-19 pandemic, indicates that:

- 1** The subminimum wage for tipped workers perpetuates race and gender inequality, resulting in a nearly \$5 per hour differential in wages (including tips) between Black, front-of-house tipped women and white men tipped workers nationally, and a nearly \$8 per hour differential in New York (this \$3 difference represents a 60% increase compared to the rest of the nation)⁸; and
- 2** Workers who are being asked to return to work at restaurants are facing both grave health risks and a subminimum wage for tipped workers at a time when a majority of workers and employers surveyed are reporting that tips are down at least 50%. Workers of color and women of color in particular will be most impacted by this reduction in tips, since they earned less in tips to begin with.



We document how these inequities for people of color, and women of color in particular, are caused by both the subminimum wage for tipped workers and race and gender segregation in the service sector. As the economy re-opens and workers are forced to resume potentially dangerous occupations or lose their unemployment insurance, many will see deeply reduced incomes. Limited restaurant capacity, plummeting tipping rates and customers who refuse to comply with health protocols leave many tipped service workers' lives and livelihoods at grave risk. With so many futures on the line, it is more clear than ever that we must eradicate the subminimum wage for tipped workers and pass One Fair Wage legislation. This legislative change as well as government programs that incentive new corporate policies and practices to end racial and gender discrimination create the clearest pathway to ensure the lives of Black workers, women and all workers are truly valued and protected in the state of New York.

{ 1 } THE RESTAURANT SECTOR'S RACE AND GENDER WAGE GAP

KEY FINDINGS

- › There is a nearly \$8 wage gap between front-of-house tipped restaurant workers in New York who are white men versus Black women. Even more egregious, this New York wage gap is 60% higher than the race and gender gap for these groups of restaurant workers nationally, which stands at \$4.79.¹⁰
 - › Although people of color make up 47% of tipped positions within casual dining restaurants, they comprise only 32% of higher paid tipped positions within fine dining establishments.¹¹ Meanwhile women make up 62% of tipped casual dining jobs but only 33% of top tier positions within fine dining.¹² This overconcentration of people of color and women in lower paying segments and positions most strongly impacts women of color.¹¹
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The subminimum wage allows employers in New York and 42 other states to pay workers below the state's set hourly minimum wage, forcing employees to make up their remaining wages based on tips. This policy is a direct legacy of slavery. At the time of Emancipation, restaurant industry leaders sought to hire newly-freed slaves for little to no pay, instead forcing people to rely on tips. The original concept of tipping, which originated from Europe, always required tips as a bonus on top of a wage, never as a replacement. The restaurant industry seized upon this mutation and incorporated the tipped wage into the nation's first minimum wage laws, thus allowing workers to be paid primarily through customer tips. Due to decades of continued lobbying by the National Restaurant Association, the federal subminimum wage remains trapped at only \$2.13 an hour for tipped workers. Although New York has instituted a subminimum wage above the federal minimum of \$2.13, tipped workers' cash wages are still one third lower than other workers throughout the state.

The subminimum wage for tipped workers both nationwide and in New York disproportionately impacts workers of color and women. Today, over half of tipped workers in New York State are people of color, in New York City that figure rises to 85%.¹³ Women are also overrepresented in the New York tipped sector, where nearly 60% of tipped workers are women and 36% are mothers.¹⁴ Race and gender inequities are rampant throughout the tipped service sector, particularly in restaurants, which claim the largest share of tipped workers. **There is a nearly \$8 wage gap between front-of-house tipped restaurant workers in New York who**

are white men versus Black women.¹⁵ Even more egregious, this New York wage gap is 60% higher than the race and gender gap for these groups of tipped restaurant workers nationally, which stands at \$4.79.¹⁶

These race and gender pay inequities are a direct result of three factors. The first is that women and Black and brown people of color, particularly women of color, are overrepresented in lower paid sectors of the industry such as casual dining establishments like Denny's and Applebees instead of fine dining restaurants in which tips are significantly higher. The second is that the few workers of color who gain entry into fine dining restaurants experience greater levels of occupational segregation between higher and lower paid positions in the 'front of the house' (dining room and supervising staff), which we call Tier I and Tier II positions respectively. Lastly, research shows that people of color, specifically Black workers, receive less in tips than their equally qualified white counterparts regardless of position or restaurant.¹⁷ Both the subminimum wage and racial discrimination in the industry result in a huge wage gap for people of color and women, with Black women feeling the ultimate brunt of structurally racist policies and practices.



The fact that people of color and women are overrepresented in tipped front of house restaurant positions, yet experience a more than \$7 wage gap between Black and Latina women tipped workers and white men tipped workers is partly a consequence of being concentrated in the lowest-tipping segment of the full service restaurant industry – casual dining.¹⁸ Although we do see some underrepresentation of people of color in Tier I positions when looking across all segments (casual to fine dining), and this disparity is particularly strong in fine dining establishments, the wage gap cannot be fully explained by this disparity. Evidence shows that people of color are disproportionately excluded from fine dining establishments, particularly Tier I positions, where tips produce larger incomes.¹⁹ For the few people of color that are hired into fine dining restaurants, heightened occupational segregation in those establishments further exacerbates the wage gap.

A research study observing the racial makeup of Manhattan's fine-dining front of house workers found that 84% of observed management positions were held by white staff.²⁰ In this same study, researchers found that White workers held 68% of other observed Tier I tipped service positions, such as waiters and bartenders, while workers of color held only 32%.²¹ In contrast, workers of color were observed to hold 76% of tier II positions in the front of the house compared to only 24% of white workers.²² Furthermore, for the relatively few Tier II positions held by white workers, 81% were in host positions.²³ As primarily customer facing, hosts tend to experience greater career advancement into other Tier I customer service positions such as servers and bartenders.

In conclusion, people of color are locked out of the highest paid fine-dining positions, Tier I positions. Without state law mandating a full minimum wage at all establishments, women and people of color will never be able to close the wage gap that is a result of their exclusion from fine dining. In addition to One Fair Wage legislation, in order to fully close the wage gap government must incentivize businesses to invest in equitable race and gender hiring and promotion policies in order to counter rampant segregation.

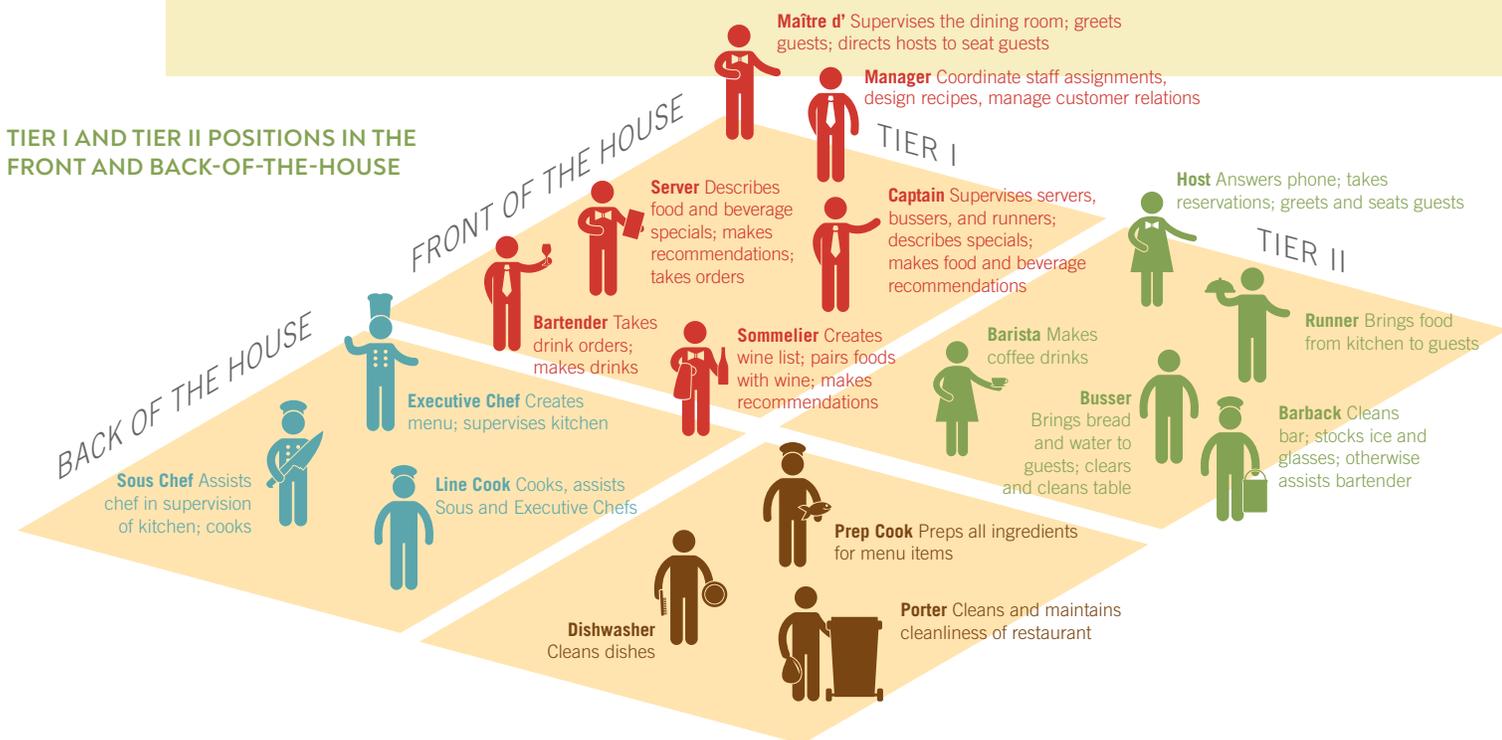
RACIAL SEGREGATION IN THE RESTAURANT INDUSTRY

Our research focuses on front-of-house tipped service positions within the restaurant industry.

One of the most influential factors in a worker's wage within the restaurant industry is the segment of the industry where they work – fast food/quick service, casual dining, or fine dining restaurants. Fast food or quick service provides only limited table service and make up some of the lowest paying jobs in the industry. These establishments often operate without tips or very low tips. Casual dining offers more family style and informal environments for full service dining with tips. This includes both corporate chains like Denny's, Olive Garden and Applebees as well as independently-operated establishments. These workplaces account for the majority of jobs held by people of color. Finally, fine dining is characterized by upwards of a \$40.00 per guest price point. This type of restaurant allows for the greatest income, especially through tips.

Although there is serious wage inequity and segregation by race and gender between the "Back of the House" (kitchen) and the "Front of the House" (dining floor), this report focuses on disparities even within the front of house. Front-of-house positions include Managers and Supervisors, Hosts, Maitre D's, Bussers, Food Runners, Servers, Captains, Bartenders and Barbacks.

We additionally distinguish higher paid "Tier I" positions and lower paid "Tier II" positions within the tipped restaurant section. Tier I positions include Supervisors and Managers, Maitre D, Servers, Captains and Bartenders, while Tier II positions include Food Runners, Hosts, Barback, and Busser.



TABLES



Average wages for New York tipped restaurant workers by gender and white, Black and Latinx racial groups

White men	\$20.68
Black and Latino men	\$17.55
Black men	\$15.78
White women	\$13.84
Black and Latina women	\$13.60
Black women	\$12.94



Average wages for National tipped restaurant workers by gender and white, Black and Latinx racial groups

White men	\$16.48
Black and Latino men	\$14.33
Black men	\$13.72
White women	\$12.00
Black and Latina women	\$12.09
Black women	\$11.69



Racial segregation of tipped restaurant workers overall by tier in NY

	Tier I	Tier II	Total
People of color	42%	47%	43%
White	58%	53%	57%
Total	100%	100%	100%



Racial segregation by restaurant segment and tier for tipped workers in NY

	Casual Full Service	Fine Dining Tier I
POC	47%	32%
White	53%	68%



Gender segregation by restaurant segment and tier for tipped workers in NY

	Casual Full Service	Fine Dining Tier I
Women	62%	33%
Men	38%	67%



Racial segregation by restaurant segment and tier for tipped workers in U.S.

	Casual Full Service	Fine Dining Tier I
POC	42%	22%
White	58%	78%



Gender segregation by restaurant segment and tier for tipped workers in U.S.

	Casual Full Service	Fine Dining Tier I
Women	67%	43%
Men	33%	57%

Source: Analysis of average wages by race and gender are calculated using the Current Population Survey Outgoing Rotation Group microdata U.S. Census Bureau CPS-ORG), (2017-2019).

Gender and racial representation for data by tier and for casual full service are also calculated using the CPS-ORG (2017-2019). Because the CPS does not collect data on fine dining segments, we utilized gender and racial representation from two related studies that used random sampling of fine-dining restaurants in New York and nationally. See endnote for report titles.²⁴

The wage tables specifically compare wages between white, Black and Latino tipped workers, we did not include Asian workers in this comparison. Asian tipped workers who are men hold the highest average wages of any racial group at \$20.79. The difference in average wages for white men and Asian men in New York however is not statistically significant.

Tipped positions include: food service managers, first line supervisors, bartenders, counter attendants, waiters and waitresses, food servers, non-restaurant, Bussers and Barbacks, and Hosts and hostess. We include front of house supervisors, managers and hosts because in many restaurants these positions do receive tips, even if extralegally.



Jaime

Jaime has worked for the last 8 years as a server and bartender in the restaurant industry in New York City, yet the twin forces of the COVID-19 pandemic and the uprising for Black Lives shifted her work like never before. Laid off with the rest of her staff in March, Jamie heard little from her employers until a few weeks ago when she received a letter mandating that she return to work. There were no questions regarding COVID or whether she was sick or at risk, only that she must return or face termination of her unemployment insurance. The re-opening coincided during the peak of the Black Lives Matter movement resurgence.

Jaime had numerous concerns about going back to work, from fears about her health and safety to worries about how she would pay bills at a time when tips are down, capacity is limited and customers are still infrequent. She knew, however, that she did not have a real choice. “If I could collect unemployment benefits and stay safe I would. But we have to accept their terms of employment or lose unemployment benefits,” says Jaime. Under the stress of both a pandemic and the barrage of news stories about the murder of Black people by police, Jamie began her work again as a server.

As a Black woman, Jaime was frustrated and disheartened by the complete lack of care and communication on the part of her employer to address either the pandemic or rising calls for an end to anti-black racism. Within the first couple weeks of re-opening customers were starting to show severe resistance and hostility towards the employees. Jaime recounted a story where a customer refused to wear a mask despite being reoccurringly asked by service staff. One worker was forced to de-escalate the man and he eventually left. Upon exit he yelled that they are what is wrong with America, and if he wanted to risk his life that was his choice. He expressly stated that he would be voting for Trump come November.

This is not Jaime’s first encounter with coded racism and harassment on the part of customers or management while working in the industry. She has seen people fired over racist yelp reviews left by customers. A few years ago she was actually referred to as a “mammy” by her southern manager, a racial slur for Black women

that harkens back to the era of slavery. She reported the incident, but was told that they would not fire the manager. She was given the choice to continue to work with him or move to another restaurant.

Now, at her current workplace, Jaime and her co-workers are organizing to bring greater racial equity to the dining room. Non-management staff, led by people of color, are calling for more Black and brown employees in the front of the house and in management, which currently is almost entirely white. They are asking the restaurant to hire more multilingual managers or at least compensate lower level staff who are often burdened with translating. These actions are perhaps obvious antidotes to patterns of racial segregation and other inequities, but they are so common that often they are met with severe resistance. As of yet, management has refused to take action to update their hiring, promotion and compensation practices.

Although Jaime and her co-workers are calling for change within her institution, she knows that larger transformation needs to happen at the legislative level. “Governor Cuomo gave the One Fair Wage act to everyone except restaurant workers. The tipping system is antiquated and feeds into the idea that we should be grateful for everything that we get. Employers benefit from the fact that we have to serve customers, sometimes nonconsensually, for our wages, instead of getting our wages directly from our employer.” As someone who is an advocate both within her workplace and as a citizen of New York state, Jaime is looking toward holistic solutions. Never has the time been so clear, Black servers deserve safety and dignity at work.

Charles Patrick

“Jim Crow is still real, it never went away. As a restaurant server I have never worked with another black man, ever. They have always been in the back of the house – bussers, dishwashers, the sub of the sub...People of color have always been sub-rated, sub-respected, treated as sub-minimum.”

Charles has worked in the restaurant industry in New York for over 20 years. One of the few Black men working in the front of house as a server in fine dining and cocktail service, he holds an important perspective on the realities of the industry. “Through time it has

become clear to me that I am making a subminimum hourly wage which is being compensated through tipping. It is a model of slavery that still exists today. These experiences have made me want to steer away from being taken advantage of,” he says. Acutely aware of the lack of recourse for workers of color and women in the industry, Charles laments the lack of human resources or accountability processes available to workers who might need to report harassment or discrimination. Charles has witnessed how employees who have experienced harm have to wait up to 90 days for any results. In the meantime owners and managers can be emotionally or psychologically intimidating. For Black workers and other workers of color such as immigrants he has seen how the threat of unemployment has kept people quiet and under social control, sometimes being forced to work overtime without compensation or to accept unwanted verbal harassment.

Before COVID-19 Charles worked at an upscale restaurant in the Tribeca area, a hotbed for international business travel, and therefore a litmus test for the oncoming economic shutdown. By February, his restaurant had already begun cutting back shifts and warning workers of the impending layoffs. Unlike past places of work, Charles’ most recent employer took pains to communicate and care for their staff, but were still forced to lay off nearly everyone. Charles did file for unemployment and eventually received his first check. His state unemployment, however, was capped at only \$90 per week. With the additional \$600 stimulus check he is able to make due, but July is around the corner and when the stimulus dries up, Charles will not be able to live in NYC on only \$90 per week. He mentioned the very necessary rent moratorium to relieve workers like himself from losing their housing.

Despite so many years in the industry, the ubiquitous segregation, discrimination and inequities have not become any less painful or exhausting for Charles. “If I didn’t have a level of humor or touch of wit, I would have never been able to work at these restaurants. How many people of color do you see as head servers? In fact, how many people of color do you even see being served at these restaurants?” he asks. Charles has met many colleagues over the years who feel similarly. He remembers a particular story from a waitress and woman of color who talked about a realization she had one day when serving a high-priced salad at her restaurant. As she rang up the bill for the salad she realized that it cost more than she made in an hour – that the salad was worth more than she was. Charles clarifies his solu-

tion to the issue of systemic injustice in the industry. “We are so diverse in our knowledge of food and alcohol that it allows us to work everywhere, but because of racism and sexism, white men are on top, women are in the middle, and people darker than a paper bag are stuck supporting the actual restaurant. The only way to get beyond it is to make a full state wage that moves us into a psychological place where we feel we can really make a living.”



Tamar

Tamar, a mixed race Black and Indian woman, has worked at her current restaurant for three years as a hostess. She had

always wanted to become a server, both for the desire to progress in the industry and because serving positions are higher paid and generate more tips. Within six months she became a trainer for the host position and was consistently told by colleagues that she should become a server. That opportunity still has not arrived. Tamar told her managers she was interested in becoming a server, to which they responded that she had to move through the ranks, host to server to bartender. However, every time a position opened they hired a light skinned person, often from outside the restaurant. These dynamics are sadly all too common in the industry. Tamar had to watch as mostly white servers, who would often lie about their experience on their resumes, were hired over her.

In March, Tamar lost her job, like most New York restaurant workers. Now as business re-opens she feels deeply worried about her physical safety. “If we get a big party in a small room how will we social distance from them? Are they gonna give us gloves, masks, and plexiglass?” Tamar wonders. She is also acutely aware of the limited hours available to returning servers. As someone who is currently reliant on unemployment, Tamar wonders how she will survive once she is forced to forgo her benefits in exchange for minimal hours and even fewer tips. “As hosts we get only a fraction of the server’s tips. So, if there are no tips we won’t make minimum wage.” This is a challenge so many tipped workers are facing – no safety protocols, no tips and no hours. For lower tier tipped workers like Tamar, not being able to rely on a full minimum wage means there is little security in the future of this struggling industry.

{ II } HOW RACIAL SEGREGATION IN THE RESTAURANT INDUSTRY OCCURS

KEY FINDINGS:

- › Using match pair testing, white applicants were nearly twice as likely to be hired than equally or more qualified applicants of color for fine dining service positions.²⁵
 - › Through Implicit Association testing, researchers found that nearly 40% of white managers and nearly half of managers between 35 and 44 years of age demonstrated a preference for white people over people of color.²⁶
 - › This same test revealed that more than 40% of white consumers showed an unconscious preference for white people.²⁷
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There is clear evidence of racial discrimination and implicit bias on the part of employers throughout the U.S.; this is also true of the restaurant industry in New York. These actions drive the race and gender-based segregation we see both across segments and positions in the restaurant industry. While the government of New York must institute One Fair Wage policy as a means to swiftly close the race and gender wage gap, incentives that pressure employers to adopt active racial equity policies and practices are critical in countering racial discrimination and occupational segregation. A Restaurant Opportunities Centers United research study used match pairs audit testing in order to determine the prevalence of race and ethnic-based discrimination in hiring at Manhattan's fine dining establishments. Using 138 equally matched pairs of white testers and testers of color who were trained to apply for server positions, the study tested whether discriminatory attitudes and actions played a role in racial segregation within the industry. Findings revealed that testers of color were only 54.5% as likely as equally or less qualified white testers to get a job offer.²⁸ **In other words, white applicants were nearly twice as likely to be hired than equally or more qualified applicants of color for a fine dining service position.** White testers were also more likely than testers of color to receive a job interview and a job offer. The two discriminatory effects of experiencing a lower likelihood of receiving a job interview or of receiving a job offer resulted in an overall 30.8% rate of discrimination for testers of color.²⁹

The importance of training and incentives to pressure employers to enact racially equitable



hiring and promotion policies in their restaurants cannot be overstated. Racially focused implicit bias has been found to be a significant feature of the unconscious actions of restaurant owners and managers throughout the US. As defined by the Kirwan Institute for the Study of Race and Ethnicity, implicit bias is the “attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control.” In the fast paced, subjective and often informal decision making environment that restaurant owners and managers operate within implicit bias can have huge impacts on hiring and promotion decisions that unfairly impact workers of color and women.

Using Implicit Association Tests (IAT) that measure in milliseconds our implicit bias reactions, researchers found that **nearly 40% of white managers and nearly half of managers between 35 and 44 years of age demonstrated a preference for white people compared to much smaller percentages for other race and age groups.**³⁰ This study also tested restaurant consumers for levels of race-base implicit bias. Relevant to previous research that shows a significant disparity in higher rates of tipping for White servers over equally qualified Black servers,³¹ **the IAT results reveal that more than 40% of white consumers showed an unconscious preference for white people.**³²

The race and gender wage gap as well as findings around the mechanisms of discrimination and segregation were all present before 2020, the onslaught of the COVID-19 crisis has only worsened the safety and well-being of tipped workers of color. Since the pandemic, the restaurant and service industries have been decimated with unprecedented financial and physical precarity facing workers.

{ III } COVID-19 EXACERBATES INEQUITIES FOR TIPPED WORKERS OF COLOR

KEY FINDINGS:

- › Over 63% of surveyed tipped workers in New York were either unable to obtain unemployment insurance or uncertain if they qualified for unemployment insurance. However, a full 73% of workers of color reported these same barriers to accessing unemployment insurance.³³
 - › Only 52% of surveyed tipped service workers reported that their state unemployment checks were based on their full wage including tips.³⁴
 - › A staggering 93% of Black tipped service workers reported being unable or unsure whether they could afford their rent or mortgage. Eighty-seven percent of Black workers reported only being able to afford groceries for 2 weeks or less.³⁵
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On March 16, 2020 One Fair Wage launched the One Fair Wage Emergency Fund for service workers in order to provide emergency cash relief and resources to service workers across the country. Since then we have received nearly 200,000 applications and heard countless stories of absolute dire circumstances for workers and their families. Given unemployment claim delays or outright denials, many workers have forgone months of rent, run out of food and are even turning to free school lunches to feed their families. For a disease that is supposedly color blind, we know that workers of color are experiencing higher rates of unemployment, and housing and food insecurity.

With over 12,000 applicants from the state of New York, surveys of this workforce are helping to reveal the bleak circumstances for tipped workers in general and tipped workers of color in particular. Sixty-three percent of surveyed applicants are people of color.³⁶ Fifty-two percent are women and 66% take care of dependents.

Of surveyed New York applicants, 86% report being unable or unsure whether they can pay their rent or mortgage. For applicants of color this figure rises to 91% and a staggering 93% for Black applicants. Seventy-nine percent of surveyed applicants can only afford groceries for 2 weeks or less; while 83% of surveyed applicants of color reported this situation and 87% of Black applicants.³⁷

As of June 2020, we have seen a 50% percent decline in the number of food service jobs in

New York State, totaling nearly 348,000 jobs lost.³⁸ Of the 3.1 million unemployment claims filed in New York, the greatest share came from the food service and accommodation industry, with food preparation and service related jobs also reporting the highest percentage of claims.³⁹ Given the fact that workers of color, and Black workers in particular, are overrepresented in the service sector, and the fact that the service sector overall experienced higher levels of dislocation than other sectors, it therefore follows that workers of color, and Black workers in particular, also have experienced higher levels of unemployment in general. According to national data from the Bureau of Labor Statistics the unemployment rate for all Black workers is 16.7%, compared to 14.2% for white workers.⁴⁰ When we consider this reality for Black women, the unemployment rate rises to 16.9% compared to 12.8% for white men.⁴¹ Nearly one in five Latina women are experiencing unemployment.⁴²

Of the 3.1 million unemployment claims filed in New York, the greatest share came from the food service and accommodation industry, with food preparation and service related jobs also reporting the highest percentage of claims. Despite the large number of unemployment insurance claims from tipped workers, we have found that a disproportionate percent of service workers were excluded from unemployment insurance coverage. This is due to three New York state requirements that disadvantage service workers:

- 1 requirement of a social security number,
- 2 requirement of a minimum number of hours worked in a base period, and
- 3 requirement of a minimum earnings threshold over a base period.

Unemployment insurance must be based on a worker's full wage including tips, however, notoriously high levels of underreporting by employers means lower unemployment coverage for employees.

In the U.S. Department of Labor investigation of over 9,000 restaurants, officials found that 84% of investigated restaurants had violated wage and hour laws, including nearly 1,200 violations of wage laws that require tipped workers to earn the minimum wage.⁴³ In New York, where subminimum wages are ubiquitous, this pattern can lead to either underpaid unemployment insurance claims or denied claims since many low wage workers are already near the minimum earnings threshold. In short, when employers exploit subminimum wages during an economic crisis workers can lose access to unemployment because they simply make too little.

Although New York state reports one of the highest rates of processed unemployment claims, surveys with service workers across the state reveal how many are ineligible for compensation. Over 63% of surveyed One Fair Wage Emergency Fund applicants in New York were either unable to obtain unemployment insurance or uncertain if they qualified for unemployment insurance.⁴⁴ Even worse, 73% of workers of color reported these same barriers to accessing unemployment insurance, and for applicants who completed our Spanish language application, that rate rose to 96%.⁴⁵ While this sample cannot be extended to the general population, BLS survey data reveals that the service industry claims the lowest rate of unemployment benefits usage out of any industry, even during economic highs.⁴⁶ **For surveyed applicants to the One Fair Wage fund who did qualify for unemployment, more than 50% had to wait a month or more to receive their check, 35% had to wait eight or more weeks.⁴⁷ Only 52% of surveyed applicants reported that their state unemployment checks were based on their full wage including tips.⁴⁸**

{ IV } SERVICE WORKERS FEARS AS THE ECONOMY RE-OPENS

KEY FINDINGS:

- › Sixty-five percent of service workers are reporting that tips have halved since returning to work, and nearly 40% have lost more than 70% in tips.⁴⁹
 - › Nearly half of service workers who have returned to work since being laid off are working 10 hours or less a week.⁵⁰
 - › The number one concern raised in interviews with New York Service workers is health and safety, including a lack of workplace protocols and non-compliant customers.⁵¹
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As the economy re-opens without the arrival of a vaccine, guaranteed health coverage or a basic social safety net, many restaurant workers will be faced with unimaginable choices between their life or their livelihood, and in many cases, they may risk both. Surveys and interviews with 80 New York restaurant workers reveal an emerging set of fears as restaurants re-open. Of surveyed respondents, 20% have recently returned to work, with nearly half working 10 hours or less.⁵² **Sixty-five percent of workers are reporting that tips have halved since returning to work, and nearly 40% have lost more than 70% in tips.**⁵³

Worker interviews reveal three leading concerns with returning to work:

- 1 lack of health and safety protocols, including non-compliant or hostile customers,
- 2 not enough tips, and
- 3 not enough hours.

With restaurants operating at limited capacity, greater numbers of customers eating at home, and decreased tipping rates for takeout service many restaurant workers are taking home drastically reduced paychecks. Even though the vast majority of restaurant workers do not have health insurance, and people of color face greater risk of death due to COVID-19, workers cannot refuse to return to work without the threat of losing their unemployment. In the current circumstances, workers will be forced to return to potentially unsafe working conditions for vastly less pay.

CONCLUSION 1

SERVICE WORKERS NEED ONE FAIR WAGE NOW

Eliminating the subminimum wage for tipped workers and passing One Fair Wage legislation in New York is the most direct and impactful path to closing an \$8 race and gender wage gap in the restaurant and service sector. As a national progressive leader, New York must rectify these outcomes that are 60% worse than the nationwide average. Raising the subminimum wage in casual and limited service establishments, locations that disproportionately employ workers of color and women of color, will ensure there is a dignified floor for all workers regardless of tips. It is also clear that One Fair Wage legislation provides greater stability for service workers during times of crisis and economic downturn given the fact that a sizable portion of tips are underreported which distorts tipped workers reliance on the unemployment insurance safety net. As the restaurant industry re-emerges from the ashes over the coming months and years, it is likely there will be an ongoing depression in sales and tipping rates, a direct burden upon already low wage workers. One Fair Wage legislation will guarantee a minimum income, supplanting a regressive system that penalizes the lowest paid workers during a recession. For centuries tipped service professionals have been forced to rely on customer whims for the majority of their income. Amid calls for massive restructuring of our most racist institutions we must consider the end to tipping as part of this current evolution.

During the pandemic and also as a result of the national call for racial equity, a surprising number of restaurant employers have indicated their willingness to transition to a One Fair Wage model. One Fair Wage and our RAISE network for responsible employers has been supporting leading employers in transitioning to a more equitable wage structure, as well as hiring and promotion policies. Consistently, however, New York employers cite that state law barring tip sharing between service staff and back of house workers is hampering their ability to institute a sustainable and viable business model. When One Fair Wage is in place, the ability to redistribute tips across all non-management employees is an incredibly effective way to increase racial wage parity between predominantly white tier I service staff and staff of color who work in Tier II dining positions and kitchen positions. Workers and employers have thus collaborated on a relief package for restaurants that would include One Fair Wage legislation, the allowance for tip sharing with back-of-house non-management employees, and payroll tax relief, along with other relief measures. Since workers and employers have worked to reach an agreement, the State of New York should work with these leaders and enact One Fair Wage for all.



CONCLUSION 2

SUPPORT RACIAL EQUITY INCENTIVES FOR EMPLOYERS

Racial Equity initiatives that train and motivate employers to counter implicit bias and discrimination in hiring, promotion and pay will help close the wage gap resulting from occupational segregation. A number of innovative city level programs in NYC are leading the way in a just re-opening that centers the health and financial security of low wage service workers. We need this kind of support at the state as well as city level in order to make sure workers who live outside the city are not left behind.



High Road Kitchens, initiated by One Fair Wage in partnership with Mayor DeBlasio, advances One Fair Wage policy and racial equity and community relief programs while also providing financial backing for employers. High Road Kitchens is a national program leveraging private as well as state and local governments to provide wage subsidies and initial investments to restaurants that commit to paying a full minimum wage with tips on top as well as participating in the One Fair Wage Racial Equity Training Program. As part of High Road Kitchens, NYC restaurants will also convert their kitchens to provide meals on a sliding scale to low-wage workers, health care workers and first responders during this crisis. This program works to support a sustainable path forward for both restaurant workers and responsible restaurant owners. This program, however, could reach a much larger scale if it had support at the state level.

Together, One Fair Wage and statewide racial equity programs can move the New York restaurant industry out of a legacy of systemic racial inequity and into a just and prosperous future.

END NOTES

- 1 Bureau of Labor Statistics, February 2019. Employment Projections, 2016-2026.
- 2 National Restaurant Association, (2019). Restaurant Industry Facts at a Glance. <https://restaurant.org/research/restaurant-statistics/restaurant-industry-facts-at-a-glance>.
- 3 ROC United analysis of American Community Survey (2013-2017). Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. <https://doi.org/10.18128/D010.V9.0>.
- 4 Ibid.
- 5 Ibid.
- 6 Analysis of race and gender representation for casual dining was calculated using occupational codes that account for all tipped service positions in that segment. We also include other front-of-house positions such as first-line supervisors of servers (or captains) and food service managers as these positions often receive tips within the industry. This calculation is an estimate due to the fact that fine dining tipped positions are included. These additions, however, would mean that our claim for the overrepresentation of people of color and women in the casual segment is likely conservative.
- 7 Since the CPS-ORG dataset does not account for representation by segment, in order to calculate fine dining representation by race and gender we utilized figures derived from canvassing a random sample of 133 fine-dining restaurants in the following study. Restaurant Opportunities Centers United, The Great Service Divide: Occupational Segregation & Inequality in the new York City Restaurant Industry (New York, NY: ROC United, 2009).
- 8 See endnote 6.
- 9 To determine the change in tipping percentages since the emergence of COVID-19, we conducted over 80 surveys with service workers throughout the state of New York from July 2, 2020 – July 16, 2020. Additional data points in the survey included information about unemployment insurance and fears about returning to work.
- 10 One Fair Wage analysis of the Current Population Survey Outgoing Rotation Group microdata U.S. Census Bureau CPS-ORG), (2017-2019).
- 11 See endnotes 6 and 7.
- 12 Ibid.
- 13 American Community Survey (2013-2017). Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. <https://doi.org/10.18128/D010.V9.0>.
- 14 Ibid.
- 15 One Fair Wage analysis of the Current Population Survey Outgoing Rotation Group microdata U.S. Census Bureau CPS-ORG), (2017-2019). Analysis was done using Stata IC statistical software. Dataset was downloaded from the Center for Economic Policy Research center.
- 16 Ibid.
- 17 Lynn et al., (2008). Consumer Racial Discrimination in Tipping: A Replication and Extension. *Journal of Applied Social Psychology*, 38(4), pp.1045–1060.
- 18 See endnote 15.
- 19 See endnotes 6 and 7.
- 20 See endnote 7.
- 21 Ibid.
- 22 Ibid.
- 23 Ibid.
- 24 For New York data on gender and race representation in fine dining: Restaurant Opportunities Centers United, The Great Service Divide: Occupational Segregation & Inequality in the new York City Restaurant Industry (New York, NY: ROC United, 2009). For U.S. data on gender and race representation in fine dining: Restaurant Opportunities Centers United, The Great Service Divide: Occupational Segregation & Inequality in the U.S. Restaurant Industry (New York, NY: ROC United, 2014).
- 25 Restaurant Opportunities Centers United, The Great Service Divide: Occupational Segregation & Inequality in the new York City Restaurant Industry (New York, NY: ROC United, 2009).
- 26 Restaurant Opportunities Centers United, Building the High Road to Racial Equity. (New York, NY: ROC United, 2019).
- 27 Ibid.
- 28 See endnote 15.
- 29 Ibid.
- 30 See endnote 16.
- 31 See endnote 17.
- 32 Ibid.
- 33 Statistics provided are based on a non-representative sample from the One Fair Wage Fund applicant pool of tipped workers in New York state. This data is not exhaustive. Data is based on responses to surveys that are administered to applicants. However, for ethical reasons completion of these our applicant survey is not required in order to apply.
- 34 See endnote 9.
- 35 See endnote 33.
- 36 Ibid.
- 37 Ibid.
- 38 New York State Department of Labor Current Employment Statistics. Accessed July 15, 2020.
- 39 Allegretto, Sylvia, and David Cooper. 2014. Twenty-Three Years and Still Waiting for Change. Economic Policy Institute, Briefing Paper #379. <http://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.
- 40 Bureau of Labor Statistics' Current Population Survey. Accessed June 9, 2020.
- 41 Ibid.
- 42 Economic Policy Institute. "Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality." Accessed June 10, 2020. <https://www.epi.org/publication/black-workers-covid/>.
- 43 "News Release: Unemployment Insurance Weekly Claims." U.S. Department of Labor. Accessed July 16, 2020. <https://labor.ny.gov/stats/PDFs/Research-Notes-Initial-Claims-WE-7112020.pdf>.
- 44 See endnote 33.
- 45 Ibid.
- 46 "Economic News Release: Table 2. Unemployment Insurance (UI) Benefit Applicants and Recipients among Unemployed Persons Who Had Worked in the Past 12 Months by Characteristics of Last Job, 2018." U.S. Bureau of Labor Statistics. Accessed April 10, 2020. <https://www.bls.gov/news.release/uisup.t02.htm>.
- 47 See endnote 9.
- 48 Ibid.
- 49 Ibid.
- 50 Ibid.
- 51 Ibid.
- 52 Ibid.
- 53 Ibid.

A PERSISTENT LEGACY OF SLAVERY

Ending the Subminimum
Wage for Tipped Workers
in New York as a
Racial Equity Measure



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