

TIPPED OVER THE EDGE

Gender Inequity in the Restaurant Industry

BY THE RESTAURANT OPPORTUNITIES
CENTERS UNITED

AND

FAMILY VALUES @ WORK

HERvotes COALITION

INSTITUTE FOR WOMEN'S POLICY RESEARCH

MOMSRISING

NATIONAL COALITION ON BLACK CIVIC PARTICIPATION'S
BLACK WOMEN'S ROUNDTABLE

NATIONAL COUNCIL FOR RESEARCH ON WOMEN

NATIONAL ORGANIZATION FOR WOMEN FOUNDATION

NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES

NATIONAL WOMEN'S LAW CENTER

WIDER OPPORTUNITIES FOR WOMEN

WOMEN OF COLOR POLICY NETWORK, NYU WAGNER

9TO5, NATIONAL ASSOCIATION OF WORKING WOMEN

February 13, 2012



RESEARCH SUPPORT

The Ford Foundation

The Moriah Fund

The Open Society Foundations

The Rockefeller Foundation

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EXECUTIVE SUMMARY

INDUSTRY OVERVIEW: UNJUST CONDITIONS, UNMET POTENTIAL

The restaurant industry employs over 10 million workers¹ in one of the largest and fastest-growing sectors of the United States economy.² The majority of workers in this huge and growing sector are women.³ Despite the sector's growth and potential to offer opportunities to advance women's economic security, restaurant workers' wages have not kept pace with the industry's economic growth.

The restaurant industry offers some of the nation's lowest-wage jobs, with little access to benefits and career advancement. In 2010, seven of the ten lowest-paid occupations were all restaurant occupations.⁴ The restaurant industry has one of the highest concentrations of workers (39 percent) earning at or below the minimum wage.⁵ Moreover, low wages tell only part of the story; workers also lack access to benefits and career mobility. These challenges create a disproportional burden for women.”

GENDER COMPOSITION OF NON-TIPPED RESTAURANT WORKERS WITH \$7.25 FEDERAL MINIMUM WAGE

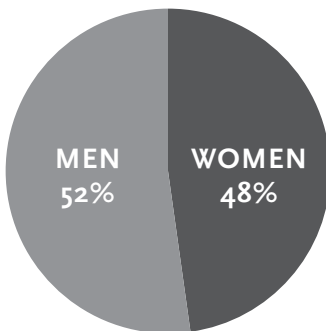
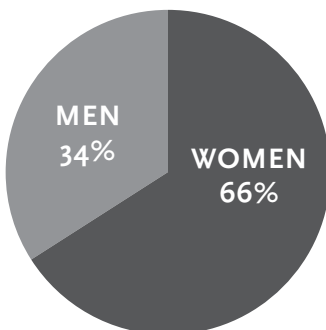


FIGURE A
The large majority of workers in tipped occupations impacted by the subminimum wage of \$2.13 are women.¹¹



GENDER COMPOSITION FOR TIPPED RESTAURANT WORKERS WITH \$2.13 FEDERAL SUBMINIMUM WAGE

THE SUBMINIMUM WAGE FOR TIPPED WORKERS: EXPLANATION AND IMPACT

The federal subminimum wage for tipped workers has been frozen at \$2.13 since 1991, losing 40 percent of its value in real terms.⁶ Employers are allowed by law to pay \$2.13 per hour to tipped employees as long as tips make up the difference between \$2.13 and \$7.25. However, survey and interview data gathered by the Restaurant Opportunities Centers United (ROC-United) indicate that employers frequently ignore this requirement.⁷

Servers, who are 71 percent female, comprise the largest group of all tipped workers,⁸ and experience almost three times the poverty rate of the workforce as a whole.⁹ Consequently, servers rely on food stamps at nearly double the rate of the general population.¹⁰ Essentially, many of the workers who serve America its food cannot afford to eat.

The restaurant industry is one of the only sectors in which predominately male positions have a different minimum wage than predominately female positions: non-tipped workers (52 percent male) have a federal minimum wage of \$7.25, while tipped workers (66 percent female) have a federal subminimum wage of \$2.13 (see Figure A). **In many sectors, lower wages for women are often a product of discriminatory employer practices but in the restaurant industry, lower wages for women are also set by law.**

¹ Restaurant Opportunities Centers-United (ROC-United) analysis of Bureau of Labor Statistics (BLS), Occupational Employment Statistics, 2010. 2010 OES for Food Prep and Serving (350000) NAICS 722 employees, plus 35-0000 occupations in industries such as amusement parks, spectator sports, and gambling. This method excludes Food Prep and Serving Related Occupations in institutions such as prisons and schools.

² ROC-United analysis of BLS, *Quarterly Census of Employment and Wages Data* (QCEW), 2001 to 2010. NAICS 722 Food Services and Drinking Places.

³ BLS, *Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity* (Table 11), 2010. Food preparation and serving related occupations, <http://bls.gov/cps/cpsaat11.pdf> (January 2012).

⁴ BLS, OES, 2010. National Cross-Industry Estimates sorted by median hourly wage for all Standard Occupational Classifications, <http://bls.gov/pub/special.requests/oes/oesm1onat.zip> (January 2012).

⁵ BLS, *Characteristics of Minimum Wage Workers*, 2010. Table 4, Employed wage and salary workers paid hourly rates with earnings at or below the prevailing Federal minimum wage by major occupation group, 2010 annual averages, Food preparation and serving related occupations, <http://www.bls.gov/cps/minwage2010tbls.htm#4> (January 2012).

⁶ The tipped minimum wage should be worth \$3.54 in 2011 dollars to equal \$2.13 in 1991 dollars. National Women's Law Center (NWLC) calculations from BLS CPI calculator, http://www.bls.gov/data/inflation_calculator.htm.

⁷ ROC-United, *Behind the Kitchen Door: A Multi-Site Study of the Nation's Restaurant Industry* (BKD), 2011.

⁸ Institute for Women's Policy Research (IWPR) analysis of Current Population Survey data provided by the Center for Economic and Policy Research. 2011. CPS ORG Uniform Extracts, Version 1.6. Washington, DC.

⁹ Allegretto, Sylvia, and Kay Filion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, 2011. Economic Policy Institute & Center on Wage and Employment Dynamics Briefing Paper #297, http://www.epi.org/publication/waiting_for_change_the_213_federal_subminimum_wage/ (January 2012).

¹⁰ ROC-United calculations of CPS, 2010. "Food stamps" refers to Supplemental Nutrition Assistance Program.

¹¹ ROC-United calculations based on BLS, *Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity* (Table 11), 2010. Food preparation and serving related occupations, separated into tipped and non-tipped occupations.

CENTRAL CHALLENGES FOR WOMEN WORKERS

The negative effects of the restaurant industry's central challenges—low and poverty-level wages, lack of benefits, discrimination, occupational segregation, sexual harassment, and lack of schedule control—fall disproportionately on women.

A. GENDER PAY INEQUITY

Gender pay inequity is present in many industries, but is particularly harmful in the restaurant industry where wages are so low that the gender wage gap can mean the difference between living below or above the poverty line for women and their families.

FEMALE RESTAURANT WORKERS ARE PAID LESS

The typical full-time, year round, female restaurant worker is paid 79 percent of what her male counterpart earns.¹² Within servers, the industry's largest occupational category, full time, year round, female servers are paid 68 percent of what their male counterparts are paid (\$17,000 vs. \$25,000 annually). Black female servers are paid only 60 percent of what male servers overall are paid, costing them a deficit of more than \$400,000 over a lifetime.¹³

WHY ARE FEMALE RESTAURANT WORKERS PAID LESS?

Female restaurant workers are paid less than their male counterparts for two primary reasons. First, they are concentrated in lower-paying segments such as quick-serve and family style,¹⁴ and second, they are not able to access the highest-paying positions in the industry. Women fill only 19 percent of chef positions,¹⁵ one of the highest paying restaurant positions with a median wage of \$19.23.¹⁶ And at the lowest end of the pay scale, women are highly concentrated in four of the ten lowest paid occupations of any industry: host, counter attendant, combined food prep and serving worker, and server.¹⁷

THE LOWER TIPPED MINIMUM WAGE EXACERBATES HARDSHIP FOR WOMEN

The low federal subminimum wage contributes to disproportionate hardship for women in the overall workforce. **Despite having the same poverty rate for the overall workforce of 6.7 percent, states that follow the federal tipped subminimum wage have a much higher poverty rate for servers than states without a subminimum wage (19.4 percent vs. 13.6 percent).**¹⁸ Because servers are 71 percent female,¹⁹ this poverty burden falls disproportionately on women.

Raising the tipped minimum wage is a simple step to address both the inadequacy and the inequity of pay for women working in the restaurant industry. Indexing the federal subminimum wage for tipped workers at 70 percent of the normal minimum wage of \$7.25 would set the tipped minimum wage's ratio to the overall minimum wage at 10 percentage points higher than it was during the 1980s, yet far less than the 100 percent ratio set by states as varied as Alaska, California, Minnesota, and Montana. These states have eliminated the subminimum wage for tipped workers all together. **An increase in the subminimum wage to \$5.08 would give immediate relief to nearly 837,200 workers and their families (630,000 of whom are female tipped workers and many of whom live below the poverty line) while also raising the wage floor for over 10 million restaurant workers.**²⁰

Raising the subminimum wage to \$5.08 would also decrease the gender pay equity gap within the occupation by a fifth. When taking into consideration that full-time year-round female servers are paid \$17,000 annually and that their male counterparts are paid \$25,000,²¹ raising the minimum wage for tipped workers earning \$2.13 would reduce the gender wage equity gap from 68 percent to 74 percent.²² Because women are paid so much less and because they represent a larger share of the workers, the increase would benefit women much more than men, and help to close the gender wage gap.

¹² NWLC calculations of CPS, 2011.

¹³ Ibid. Assumes the same wage gap for a 40-year career.

¹⁴ ROC-United analysis of *National BKD Database*.

¹⁵ BLS, Table 11, 2010.

¹⁶ BLS, *Occupational Employment Statistics, National Cross-Industry Estimates*, 2010.

¹⁷ Ibid.

¹⁸ Allegretto and Filion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, 2011. Table 6: Poverty rates of all workers, tipped workers, and waiters by level of tipped minimum wage, p.9.

¹⁹ BLS, Table 11, 2010.

²⁰ Institute for Women's Policy Research (IWPR) analysis of Center for Economic and Policy Research, CPS ORG Uniform Extracts, Version 1.6, 2011.

²¹ NWLC calculations of CPS, 2011.

²² ROC-United calculation based on a 40-hour workweek, 52 weeks per year.

B. LACK OF HEALTH CARE AND PAID SICK LEAVE

These wage inequities are exacerbated by lack of benefits that prevent restaurant workers from properly caring for their health and their families. Of the more than 4,300 restaurant workers ROC surveyed across the country, 90 percent lack paid sick days and 90 percent do not receive health insurance through their employers.²³ One third of all female restaurant workers (33.4 percent) lack any kind of health care, whether provided by their employer or otherwise.²⁴ More than a quarter (26.8 percent) of all female restaurant workers are mothers, and more than one in ten are single mothers,²⁵ so the lack of paid sick leave and workplace flexibility creates an additional burden for women in the industry.

Workers report that they have gone to work sick because they couldn't risk income or job loss.²⁶ Female restaurant workers report going to work and cooking, preparing, or serving food while sick at a higher rate than male workers: 70 percent versus 66.6 percent.²⁷ When workers are forced to come to work sick, they risk aggravating their own sickness and infecting those around them, including customers and coworkers.

C. SEXUAL HARASSMENT

More than one in ten of the more than 4,300 restaurant workers ROC surveyed nationwide reported that they or a co-worker had experienced sexual harassment in their restaurant.²⁸ This is very likely an undercount. A recent MSNBC review of Equal Employment Opportunity Commission (EEOC) data revealed that from January to November 2011, almost 37 percent of all EEOC charges by women regarding sexual harassment came from the restaurant industry,²⁹ even though less than 7 percent of employed women work in the restaurant industry.³⁰ In fact, the EEOC has targeted the restaurant industry as the "single largest" source of sexual harassment claims.³¹ Focus groups with female restaurant workers in New York³² and a review of EEOC verdicts,³³ paint a picture of pervasive and inappropriate verbal and sexual harassment and assault, with unenforced or absent sexual harassment policies and training.

²³ ROC-United, BKD, 2011.

²⁴ NWLC calculations of CPS, 2011. This only includes mothers who have children at home.

²⁵ Ibid.

²⁶ ROC-United analysis of National BKD Database. These findings are consistent with findings from the IWPR and the National Partnership for Women & Families.

²⁷ ROC-United, BKD, 2011.

²⁸ ROC-United, BKD, 2011.

²⁹ Tahmincioglu, Eve, "Sexual Claims Common in Pressure Cooker Restaurant World," *The Bottom Line Blog on msnbc.com*, November 1, 2011, http://bottomline.msnbc.msn.com/_news/2011/11/01/8565198-sexual-claims-common-in-pressure-cooker-restaurant-world (January 2012). Review of data from Equal Employment Opportunity Commission.

³⁰ BLS, Table 11, 2010.

³¹ Stumer, Mark, "Restaurants Served with Sexual Harassment Lawsuits," *New York Restaurant Lawyer Blog*, May 10, 2009.

³² ROC-United, *Waiting on Equality: The Role and Impact of Gender in the New York City Restaurant Industry*, 2010. Focus groups with female restaurant workers.

³³ National Partnership for Women & Families and ROC-United non-exhaustive review of EEOC sexual harassment verdicts and complaints gathered by the Bureau of National Affairs, 2008-2011

METHODOLOGY

This report draws upon government data from the Current Population Survey (CPS), American Community Survey (ACS), and the Occupational Employment Statistics (OES), as well as from numerous secondary sources. In addition, the report includes information from Wider Opportunities for Women's Basic Economic Security Tables™ (BEST) Index to measure the basic needs and assets that workers require for economic security throughout a lifetime and across generations (see appendix for details). The data were gathered and analyzed by the thirteen organizations who co-authored this report: Restaurant Opportunities Centers United (ROC-United), Family Values @ Work, HERvotes Coalition, Institute For Women's Policy Research, MomsRising, National Coalition on Black Civic Participation's Black Women's Roundtable, National Council for Research On Women, National Organization for Women Foundation, National Partnership For Women & Families, National Women's Law Center, Wider Opportunities For Women, Women Of Color Policy Network, NYU Wagner, and gto5, National Association of Working Women. Interspersed throughout the report are profiles of restaurant workers drawn from members of ROC-United and MomsRising. There is also one profile of an employer with exemplary practices drawn from one of the ROC Restaurant Industry Roundtables

D. LACK OF SCHEDULE CONTROL

Scheduling and the lack of schedule control in the restaurant industry are a significant challenge, especially for women who support family members. The restaurant industry often demands workers work evenings, nights, and weekends. Restaurant workers also routinely experience volatile workplace scheduling, meaning that a worker may have to work different hours and different days each week with no consistent days off.³⁴ If restaurant workers must work late, they must find someone to care for their children—a scenario that is extremely challenging as childcare centers are rarely open at these hours.³⁵ Further, the low tipped subminimum wage sometimes encourages managers to keep servers staffing a restaurant when customer traffic slows, sending home “more expensive” hosts or cooks, who are paid the normal minimum wage or higher. Servers are left to oversee a sparse restaurant with few or no tips and just \$2.13 per hour.³⁶



- ³⁴ Gatta, Mary, *Literature Summary on Restaurant Work and Schedule*, WOW, 2011.
³⁵ See, e.g., California Child Care Resource & Referral Network, 2011 Child Care Portfolio, 2011, <http://www.rnnetwork.org/rr-research-in-action/2011-portfolio/2011-statewide-portfolio-page.pdf> (January 2012).
³⁶ Gatta, Mary, “Balancing Trays and Smiles: What Restaurant Servers Teach Us About Hard Work in the New Economy,” in *Work Matters: Critical Reflections on Contemporary Work*, ed. Bolton, S.C. and Houlihan, M. (London, 2009).

POLICY RECOMMENDATIONS

Policymakers should:

1. **Raise and index the federal minimum wage for tipped workers** to 70 percent of the regular minimum wage, and raise and index the federal minimum wage for all workers as well.
2. **Establish a national standard** that allows workers to earn seven to nine job-protected paid sick days each year to be used to recover from routine illness, access preventive care or provide care for a sick family member.
3. **Adopt legislation** that would provide incentives or mandate employers to provide regular, on-going sexual harassment training to all their employees, including managers.
4. **Support job-training programs** that provide accessible, quality training to help women gain special skills and advance within the industry.
5. **Protect workers** from violations of federal, state and local equal employment opportunity laws.
6. **Enact legislation** that would ease the burden on workers regarding their lack of schedule control.
7. **Publicly support collective organizing among restaurant workers.**
8. **Initiate and support further study and dialogue on discrimination.** More detailed information is needed regarding the public cost of discrimination and the true economic profitability of responsible business practices in the restaurant industry.

ABOUT THE REPORT

COAUTHORS

Restaurant Opportunities Centers (ROC) United is a national nonprofit restaurant worker organization with over 9000 members in 19 states. ROC has published 15 reports on issues that confront restaurant workers and has passed local legislation and championed federal legislation to better working conditions in the restaurant industry.

Family Values @ Work is a national network of 16 state and local coalitions helping spur the growing movement for family-friendly workplace policies such as paid sick days and family leave insurance.

HERvotes is a coalition of women's organizations, representing millions of women, countering the attacks on women's economic and health security through a new multi-organization effort. The goal is to mobilize women voters in 2012 around preserving women's Health and Economic Rights (HER rights.)

The Institute for Women's Policy Research (IWPR) conducts rigorous research and disseminates its findings to address the needs of women and their families, promote public dialogue, and strengthen communities and societies. IWPR is a 501(c)(3) tax-exempt organization that also works in affiliation with the women's studies and public policy programs at George Washington University.

MomsRising is a multicultural, non-partisan, online and on-the-ground grassroots organization of more than a million people working to achieve economic security for all families. We focus our advocacy on paid family leave, flexible work options, affordable childcare, and an end to wage and hiring discrimination, that penalizes women and mothers.

National Coalition on Black Civic Participation's Black Women's Roundtable comprises a diverse group of Black women civic leaders of international, national, regional and state-based organizations and institutions. Together, the BWR membership represents the issues and concerns of millions of Americans and families.

The National Council for Research on Women is a network of U.S.-based research, policy, and advocacy centers working to advance rights and opportunities for women and girls, nationally and globally. The Council is a major source of knowledge, analysis, and best practices for transformative change.

The National Organization for Women Foundation is devoted to achieving full equality for women through education and litigation. The Foundation addresses economic justice, pay equity, racial discrimination, women's health and body image, women with disabilities, reproductive rights, family law, rights of same-sex couples, media representation of women, and global feminist issues.

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care, and policies that help women and men meet the dual demands of work and family.

The National Women's Law Center, www.nwlc.org, is a nonprofit organization that has been working since 1972 to advance and protect women's equality and opportunity. It focuses on major policy areas of importance to women and their families including economic security, education, employment, and health, with special attention given to the concerns of low-income women.

Wider Opportunities for Women (WOW) works nationally and in its home community of Washington, DC to build pathways to economic independence for America's families, women, and girls. WOW has a distinctive history in changing the landscape of women and work.

Women of Color Policy Network at NYU Wagner is the nation's only research and policy institute focused on women of color, their families and communities at a top ranked school of public affairs. The Network conducts research and policy analysis at the intersections of race, class, and gender to inform public policy at all levels.

9to5, National Association of Working Women is a national membership-based organization of low-wage women building a movement to achieve economic justice by improving policies on workplace and safety net issues that directly affect them.

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CHAPTER 1

RESTAURANT INDUSTRY CHALLENGES AND GENDERED POLICIES

INTRODUCTION

The restaurant industry employs over 10 million workers³⁷ in one of the largest and fastest-growing sectors of the United States economy.³⁸ The majority of workers in this huge and growing sector are women.³⁹ Despite the sector's potential to offer opportunities to advance women's economic security, restaurant workers' wages are falling behind the industry's economic growth—and women bear the brunt of these low wages. Moreover, women restaurant workers face issues of occupational segregation, lack of career mobility, discrimination, sexual harassment, lack of benefits, and lack of schedule control. All of these issues are explored in this report, with particular emphasis given to the effects of the low federal subminimum wage of \$2.13 for tipped workers. Chapter 1 provides a brief overview of the restaurant industry and describes the methodology used in this study. Chapter 2 delves into the many challenges that female restaurant workers face in the workplace. Chapter 3 finishes by providing concrete policy recommendations for legislators, employers, and consumers to promote equity, dignity, and prosperity in the restaurant industry.

METHODOLOGY

This report draws upon government data from the Current Population Survey (CPS), American Community Survey (ACS), and the Occupational Employment Statistics (OES), as well as from numerous secondary sources. Data were also drawn from the focus groups, interviews, and over 4,300 surveys of restaurant workers detailed in previous reports by ROC-United, including *Behind the Kitchen Door* and *Waiting on Equality* (see *Appendix for details*). In addition, the report includes information from Wider Opportunities for Women's Basic Economic Security Tables™ (BEST) Index to measure the basic needs and assets that workers require for economic security throughout a lifetime and across generations (see *Appendix for details*). The data were gathered and analyzed by the thirteen organizations who co-authored this report: Restaurant Opportunities Centers United (ROC-United), Family Values @ Work, HERvotes Coalition, Institute For Women's Policy Research, MomsRising, National Coalition on Black Civic Participation's Black Women's Roundtable, National Council For Research On Women, National Organization for Women Foundation, National Partnership For Women & Families, National Women's Law Center, Wider Opportunities For Women, Women Of Color Policy Network, NYU Wagner, and 9to5, National Association of Working Women.

³⁷ ROC-United analysis of BLS, OES, 2010. Food Prep and Serving (350000) NAICS 722 employees, plus 35-0000 occupations in industries such as amusement parks, spectator sports, and gambling. This method excludes Food Prep and Serving Related Occupations in institutions such as prisons and schools.

³⁸ BLS, QCEW, NAICS 722 *Food Services and Drinking Places*, 2001-2010.

³⁹ BLS, Table 11, 2010.

INDUSTRY OVERVIEW: UNJUST CONDITIONS, UNMET POTENTIAL

Over half of Americans eat out at a restaurant at least once per week,⁴⁰ and 20 percent eat out two or more times per week, driving the restaurant industry's continued growth in the midst of the current economic crisis.⁴¹ The restaurant industry provides millions of job opportunities to American women each year while many other sectors continue to stagnate or decline.⁴²

TABLE 1

National Cross-Industry Estimates
Ten Lowest-Paid Occupations, 2010

Restaurant Occupation Tipped Occupation	Title	Hourly Median Wage
<input checked="" type="checkbox"/> <input type="checkbox"/>	Combined Food Preparation and Serving Workers, Including Fast Food	8.63
<input checked="" type="checkbox"/> <input type="checkbox"/>	Cooks, Fast Food	8.70
<input type="checkbox"/> <input checked="" type="checkbox"/>	Gaming Dealers	8.70
<input checked="" type="checkbox"/> <input type="checkbox"/>	Dishwashers	8.73
<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	Dining Room and Cafeteria Attendants and Bartender Helpers	8.75
<input type="checkbox"/> <input checked="" type="checkbox"/>	Shampooers	8.78
<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	Waiters and Waitresses	8.81
<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	8.83
<input checked="" type="checkbox"/> <input type="checkbox"/>	Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	8.87
<input type="checkbox"/> <input type="checkbox"/>	Amusement and Recreation Attendants	8.87

Bureau of Labor Statistics, Occupational Employment Statistics, National Cross-Industry Estimates, 2010. National Cross-Industry Estimates sorted by median hourly wage for all Standard Occupational Classifications.

However, the restaurant industry offers some of the nation's lowest-wage jobs, with little access to benefits and career advancement. In 2010, seven of the ten lowest-paid occupations were all restaurant occupations (*see Table 1*).⁴³ The median wage for restaurant workers in 2010 was \$9.02,⁴⁴ meaning that well over half of these workers earned less than the wage of \$10.75 that a family of four needs to remain out of poverty (hereafter referred to as the “poverty wage” or “poverty line”).⁴⁵ Indeed, people who earn the minimum wage or less are highly concentrated in the restaurant industry. Thirty-nine percent of all workers making minimum wage or less are in the restaurant industry. Of all workers earning below the minimum wage, almost half (49 percent) are restaurant workers (*see Figure 1*).⁴⁶

Low wages tell only part of the story; workers also lack access to benefits and career mobility. Ninety percent of restaurant workers surveyed nationwide by ROC-United reported not having access to paid sick days. Similarly, 90 percent reported no health benefits through their employer. Under such conditions, it is not surprising that two-thirds of workers surveyed (66.6 percent) reported cooking, preparing, and/or serving food while sick.⁴⁷ Workers also reported a pervasive lack of career mobility; as will be discussed in greater detail in Chapter 2, occupational segregation and discrimination keep women and workers of color from advancing to the industry's highest-paying jobs.

⁴⁰ Rasmussen Reports, *National Survey of 1000 Adults*, July 21-22, 2011.

⁴¹ BLS, *QCEW, NAICS 722 Food Services and Drinking Places*, 2001-2010.

⁴² BLS, OES, *National Cross-Industry Estimates*, 2010.

⁴³ *Ibid.* Sorted by median hourly wage for all Standard Occupational Classifications.

⁴⁴ BLS, OES, *Occupational Employment & Wages*, May 2010 (food preparation & serving-related occupations).

⁴⁵ *Federal Register*, Vol. 76, No. 13, January 20, 2011, p.36737-8. Hereafter, unless otherwise stated, “poverty line” or “poverty wage” refers to the income below which a family of four falls into poverty as defined by 2011 HHS Poverty Guidelines. A poverty wage of \$10.75 assumes full-time, year-round work.

⁴⁶ BLS, *Characteristics of Minimum Wage Workers*, Table 4, 2010.

⁴⁷ ROC-United, *Serving While Sick: High Risks & Low Benefits for the Nation's Restaurant Workforce, and Their Impact on the Consumer*, 2010.

**COMPOSITION OF WORKERS
BELOW MINIMUM WAGE**

**COMPOSITION OF WORKERS
AT OR BELOW MINIMUM WAGE**

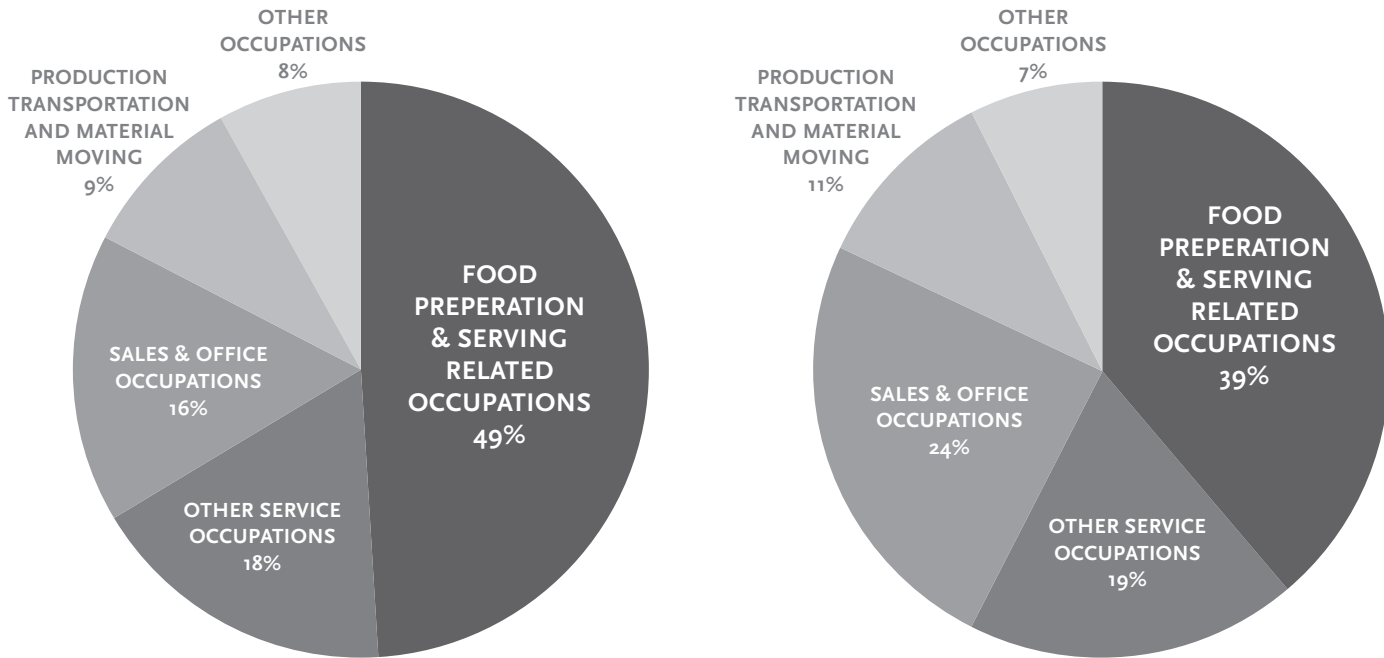


FIGURE 1

Restaurant workers are the largest category within workers earning at or below minimum wage.

Source: Bureau of Labor Statistics. Characteristics of Minimum Wage Workers, 2010. Derived from Table 4. Employed wage and salary workers paid hourly rates with earnings at or below the prevailing Federal minimum wage by major occupation group, 2010 annual averages, Food preparation and serving related occupations. Food preparation and serving is a sub-category of all service occupations.

THE SUBMINIMUM WAGE FOR TIPPED WORKERS: IMPACTS AND ORIGINS

Many people do not know that there is a separate subminimum wage for tipped workers. Many diners assume that the tips they give their servers are a supplement to their wages, rather than to compensate for a lack of wages. This section explains how the subminimum wage functions, how it affects workers, and how this law came into being.

The federal subminimum wage for tipped workers allows employers to pay as little as \$2.13 per hour to all employees that receive more than \$30 in tips per month. The law states that employers must ensure that tips make up the difference between \$2.13 and \$7.25.⁴⁸ However, survey and interview data gathered by ROC-United indicate that employers frequently ignore this requirement, allowing tipped workers to earn less than \$7.25 total per hour.⁴⁹ This lapse helps explain why 19 percent of restaurant workers earn below the general minimum wage.⁵⁰ More troubling still are the instances in which employers misappropriate workers' tips. Among "front-of-the-house" workers surveyed, 13.2 percent reported having their tips misappropriated by employers. For example, tips may be inappropriately shared with managers or owners or other non-tipped workers, and inappropriately withheld for illegal deductions.⁵¹

"I was a server for 15 years and raised four kids on a server's wages plus tips. Depending on other people to tip you... can be the most stressful part of being a server. There were many nights that I didn't even make enough to pay my babysitter... What most people don't realize is that servers don't make the minimum wage like most people."

—RITA, Indian Rock Beach, Florida

⁴⁸ Fair Labor Standards Act - FLSA - 29 U.S. Code Chapter 8, sec. 203 (m,t).

⁴⁹ ROC-United, BKD, 2011.

⁵⁰ BLS, *Characteristics of Minimum Wage Workers*, 2010.

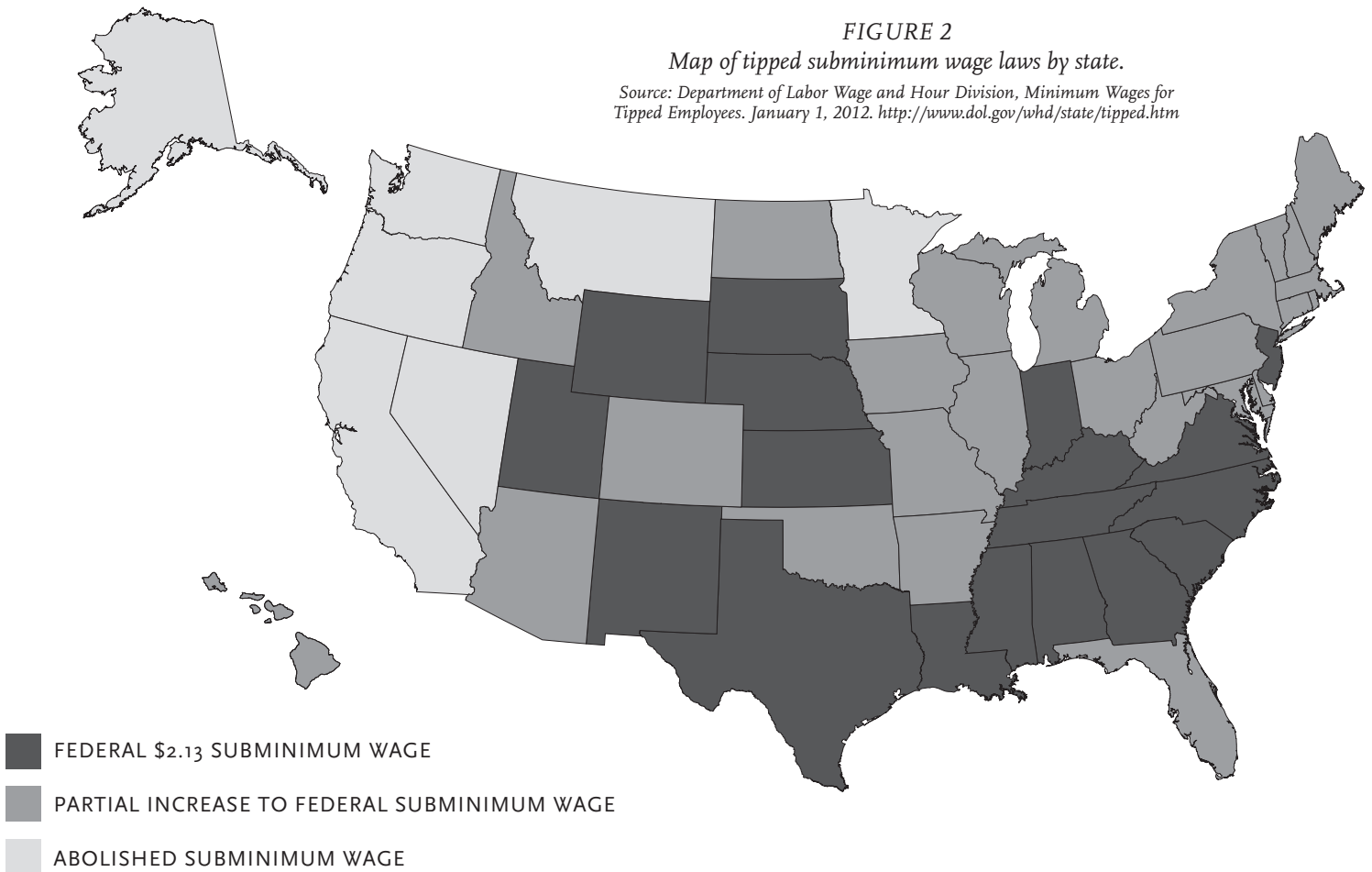
⁵¹ ROC-United, BKD, 2011.

In the absence of federal action, many states have passed laws to protect tipped workers. When state and federal minimum wage laws conflict, local employers must follow the higher standard. Seven states have eliminated the subminimum wage for tipped workers, mandating that tips must be paid in addition to the normal minimum wage. Twenty-six states have passed subminimum wages that are higher than \$2.13. In 18 states, mainly in the South, tipped workers are still subject to the federal subminimum wage.⁵²

FIGURE 2

Map of tipped subminimum wage laws by state.

Source: Department of Labor Wage and Hour Division, *Minimum Wages for Tipped Employees*. January 1, 2012. <http://www.dol.gov/whd/state/tipped.htm>



There are 5 million workers in tipped occupations. While they include occupations such as hair and nail salon workers, car wash workers, gaming dealers, and taxi drivers, restaurant workers make up two out of three workers in tipped occupations.⁵³ Two-thirds of restaurant workers in tipped occupations are women (see Figure 4).⁵⁴

⁵² Allegretto and Filion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, 2011.

⁵³ NWLC calculations of CPS, 2011.

⁵⁴ ROC-United calculations based on BLS, *Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity* (Table 11), 2010. Food preparation and serving related occupations, separated into tipped and non-tipped occupations

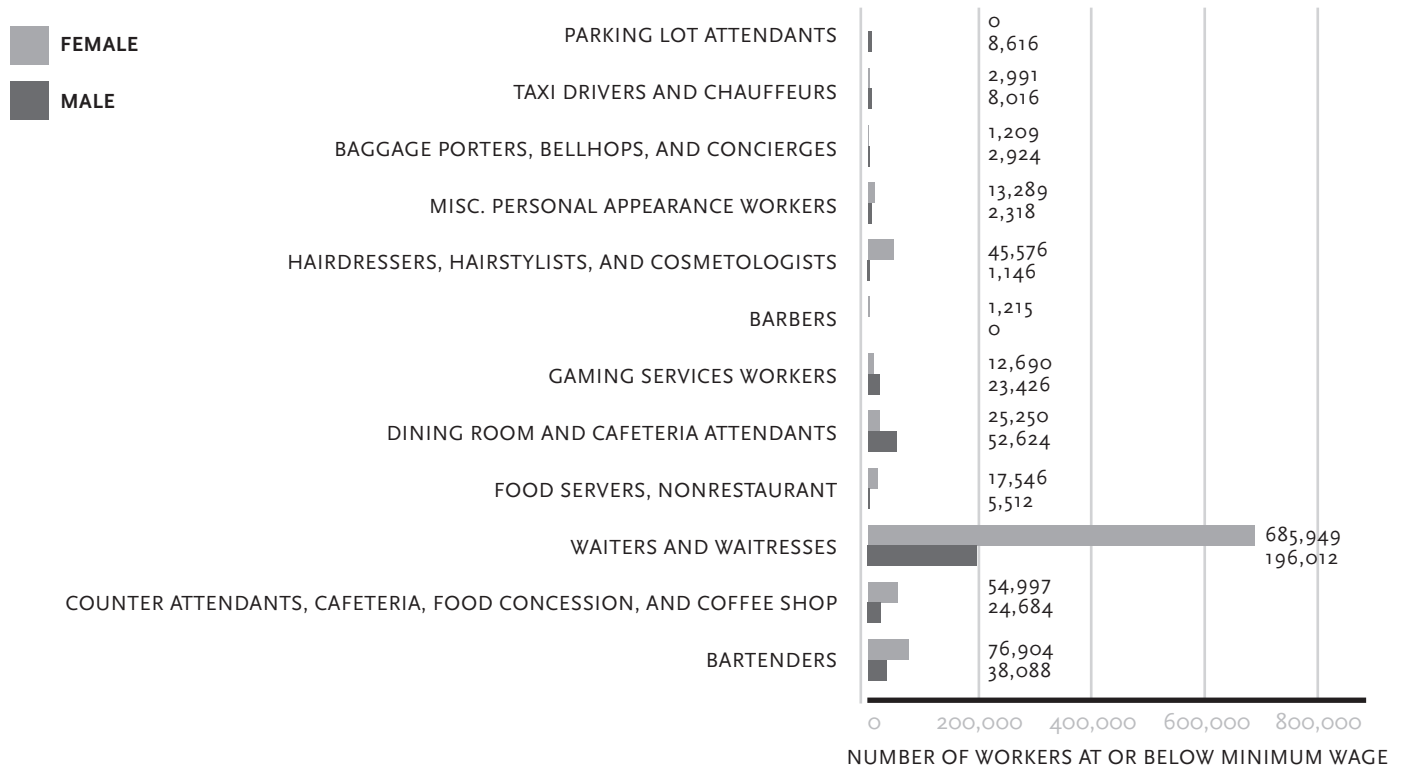


FIGURE 3
Waiters and waitresses (servers) represent two-thirds of workers in tipped occupations paid wages at or below the minimum (\$7.25).

Source: Institute for Women's Policy Research analysis of Current Population Survey data provided by the Center for Economic and Policy Research. 2011. CPS ORG Uniform Extracts, Version 1.6. Washington, DC.

The federal subminimum wage of \$2.13 helps explain why tipped workers are among the lowest earners nation-wide. Five out of the nation's ten lowest paid occupations are tipped positions in the restaurant industry (see Table 1). Servers, 71 percent female and the largest group of all tipped workers,⁵⁵ represent the seventh-lowest paid occupation of the country's lowest-paid jobs, with a median hourly wage of \$8.81,⁵⁶ well below the poverty wage. Not surprisingly, servers experience almost three times the poverty rate of the workforce as a whole.⁵⁷ Many of these workers are supporting families.⁵⁸ Since their take-home pay is mostly dependent on tips, their paychecks can fluctuate widely, impeding these workers' ability to adequately provide for their families on a consistent basis. Servers rely on food stamps at nearly double the rate of the general population.⁵⁹ In a sad irony, many of the same workers who serve America its food cannot afford to eat.

Since the vast majority of tipped workers are female, issues affecting tipped workers are also matters of gender justice. In fact, the restaurant industry is one of the only sectors with a bifurcated minimum wage: non-tipped workers have a federal minimum wage of \$7.25, while the predominately female tipped workers have a federal subminimum wage of \$2.13. **In many sectors lower wages for women are partly the product of discriminatory employer practices, but in the restaurant industry lower wages for women are also a product of direct public policy.**

⁵⁵ Ibid.

⁵⁶ BLS, OES, *National Cross-Industry Estimates*, 2010.

⁵⁷ Allegretto and Fillion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, 2011. Poverty rate is calculated based on Census Bureau poverty thresholds, which vary from the HHS poverty guidelines used above to calculate the poverty wage.

⁵⁸ WOW calculations of ACS, 2009.

⁵⁹ ROC-United calculations of CPS, 2010. "Food stamps" refers to Supplemental Nutrition Assistance Program.

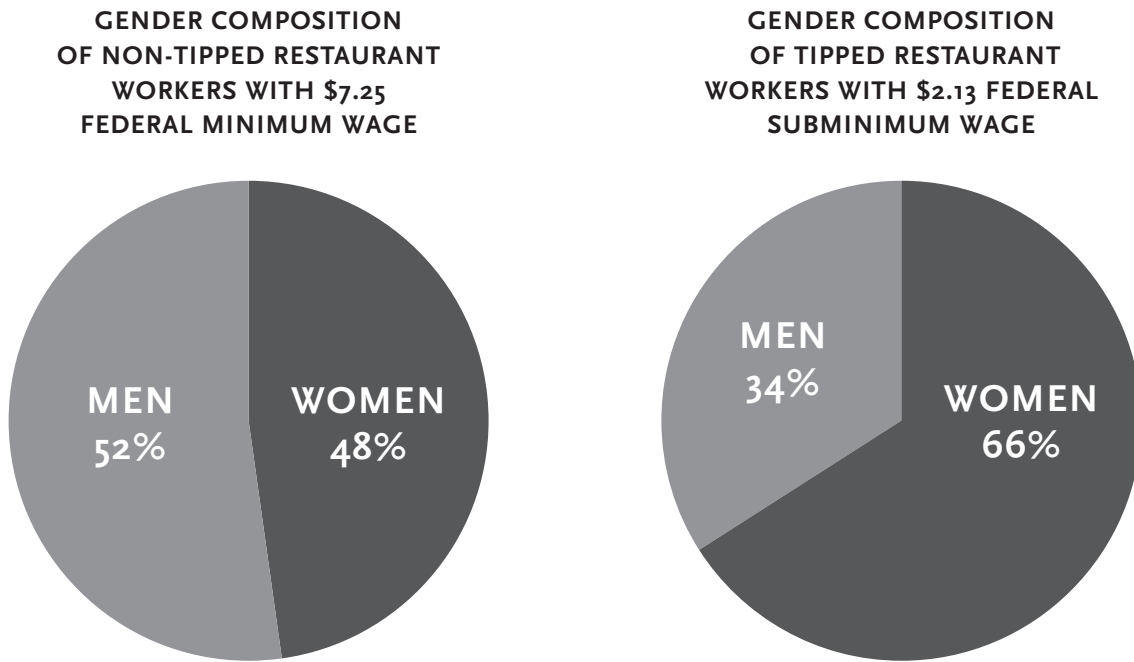


FIGURE 4
The large majority of workers in tipped occupations impacted by the subminimum wage of \$2.13 are women.

Source: ROC-United calculations based on BLS, Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity (Table 11), 2010. Food preparation and serving related occupations, separated into tipped and non-tipped occupations.

THE RESTAURANT LOBBY AND THE EXCLUSION OF TIPPED WORKERS

The National Restaurant Association (NRA) is the industry lobby group that represents over 380,000 restaurant companies in America.⁶³ According to the restaurant trade publication *Nation's Restaurant News*, in 1996 the NRA successfully lobbied to delink the tipped minimum wage from the normal minimum wage. The House Committee on Education and Workforce passed an amendment to deny a wage increase to tipped workers, “at the behest of the NRA.... [giving] industry trade groups much of what they wanted.”⁶⁴ The NRA gave over \$90,000 to committee members during the 1994 and 1996 election cycle.⁶⁵ NRA allies appeared in major newspaper articles across the country criticizing an increase to the minimum wage.⁶⁶

Additionally, issues of race compound issues of gender amongst tipped workers. While a sizeable percentage of all servers live below the poverty level, poverty rates are higher for African American and Latino servers. Nearly 24 percent of African American servers and 22.1 percent of Latino servers live in poverty, in contrast with 17.7 percent of white servers.⁶⁰

It is important to note that the subminimum wage has not always been at its current low level relative to the general minimum wage. In 1991, the subminimum wage was still indexed to the normal minimum wage—that is, when the normal minimum wage increased in 1991, the subminimum wage increased for tipped workers as well, as it had since 1966. Throughout the 1980s, the subminimum wage stood at 60 percent of the normal minimum wage. In 1996, however, federal legislators amended the Fair Labor Standards Act to de-link the subminimum wage for tipped workers from changes in the standard minimum wage.⁶¹ The minimum wage has increased several times over the last 20 years, while the last time the subminimum wage changed was in 1991. In that time the subminimum wage’s value has fallen 40 percent in real terms, making it a wildly outdated pay rate for working families across the country.⁶²

⁶⁰ NWLC calculations of CPS, 2011. White servers exclude Hispanics.

⁶¹ Fair Labor Standards Amendments of 1977, Pub. L. No. 95-151, § 3, 91; Stat. 1249 (1977) (codified as amended at 29 U.S.C. § 203(m)) (raising the tipped worker minimum wage to 60% of the full minimum wage in 1980). Fair Labor Standards Amendments of 1996, Pub. L. No. 104-188, § 2105(b), 110 Stat. 1929 (1996) (codified as amended at 29 U.S.C. § 203(m) (tipped subminimum wage de-linked from the normal minimum wage)).

⁶² The tipped minimum wage should be worth \$3.54 in 2011 dollars to equal \$2.13 in 1991 dollars.” National Women’s Law Center (NWLC) calculations from BLS CPI calculator, http://www.bls.gov/data/inflation_calculator.htm.

TERMINOLOGY

SEGMENT

The restaurant industry is segmented into three categories that vary significantly with respect to wages, working conditions, and workforce composition. Both the segment in which one works, as well as the position one holds, significantly determine earnings.

In this report, we categorize those segments as “**quick service**,” “**family style**,” and “**fine dining**.”

- At one end of the spectrum, **quick service** restaurants provide limited table service and are often characterized by low wages and high employment of workers of color and youth.
- **Family style** restaurants include those establishments with moderate price points and informal environments and include chain restaurants and franchises, as well as smaller, independently owned or family owned establishments.
- At the other end of the spectrum lie **fine dining** restaurants. Fine dining is often defined by a price point of \$40.00 or more per guest, including beverages but excluding gratuity. Restaurants within this segment are also known for high quality service and chefs or owners with name recognition or notoriety.

POSITION

There is also a distinction in this report between workers in the “**front of the house**” and the “**back of the house**”.

- **Front-of-the-house** workers include all servers, bartenders, bussers, runners, hosts and other waitstaff that directly interact with customers in the serving area of the restaurant.
- **Back-of-the-house** workers include all staff, such as cooks, chefs, and dishwashers, that mainly work in the kitchen and do not regularly interact with customers.

The exclusion of tipped workers in the final minimum wage bill of 1996 was the result of a successful lobbying effort by the restaurant industry to pay restaurant workers lower wages (*see sidebar, The Restaurant Lobby and the Exclusion of Tipped Workers*). Undoing the damage that has been done to tipped workers and women would start by relinking the subminimum wage for tipped workers to the normal minimum wage. Over 872,500 restaurant workers, 75 percent of them women, would receive a raise if the federal tipped minimum wage were indexed to 70 percent of the normal minimum wage of \$7.25 (or roughly \$5.08).⁶⁷ Furthermore, increasing the wages for these workers would provide upward pressure on wages for the more than 10 million workers in the restaurant industry. The next chapter delves deeper into specific issues that women in the industry face.

⁶³ National Restaurant Association, About Us, <http://www.restaurant.org/aboutus/> (January 2012).

⁶⁴ Liddle, A. (1996, June 24) “Associations urge Senate to retain wage provisions.” *Nation’s Restaurant News*. http://findarticles.com/p/articles/mi_m3190/is_n25_v30/ai_18440459/ (accessed July 27, 2011).

⁶⁵ This is only a portion of the NRA’s total contributions during this time period. The NRA spent nearly three quarters of a million dollars on Congressional races during the 1994 election cycle. During the 1996 cycle, the NRA spent over one million dollars for all candidates. In addition to campaign contributions, the NRA also pays for political lobbying. 1996 expenditures are not available, but the NRA spent almost 1.4 million dollars on lobbying in 1998, the latest year available after the 1996 minimum wage vote. ROC-United analysis of *Center for Responsible Politics data*, <http://www.opensecrets.org> (January 2012).

⁶⁶ Jacobson, Louis. “Tanks on the Roll,” *National Journal*, 8 July 1995. (accessed from American Rights at Work, http://www.american-rightsatwork.org/the-anti-union-network/center-for-union-facts/page_3.html accessed 7/27/11)

⁶⁷ Institute for Women’s Policy Research analysis of Center for Economic and Policy Research. CPS ORG Uniform Extracts, Version 1.6, 2011.

PROFILE

CLAUDIA MUÑOZ



Claudia Muñoz is one of ROC's leaders and has fought low wages and wage theft in the restaurant industry. The youngest of nine children, she is a young immigrant from a poor family in the foothills of Monterrey, Mexico. Claudia worked her way through high school at a national pancake chain restaurant in Texas. She earned \$2.13, the minimum wage for tipped workers. Tips rarely made up the difference between the tipped worker minimum wage and the full minimum wage, and the managers used to chastise her for it. Claudia was told to report more tips than she actually earned, so the restaurant would not have to pay the difference between \$2.13 and the minimum wage.

She often worked over 40 hours a week, but she was never paid for overtime. "They told me to clock out before doing side work. I was always scheduled to work 5pm to 12am, and exactly at midnight... I had to clock out. Sometimes I'd stay two more hours. Late at night they'd only keep one or two people, and we had to do all the side work—make silverware packets, clean coffee pots, orange juice pots, soda machine, re-fill the butter, syrup, ketchup,... sugar, salt, and pepper. I had to make sure the supply room was clean, organized and labeled. I had to make sure the stock room was refreshed, and cut lemons myself."

Claudia made about \$30-\$40 a day in tips, 5-6 days a week. The \$2.13 she earned in wages amounted to a weekly paycheck of about \$10 after taxes. So in total, she earned about \$160-\$250 per week. These minimal wages made it difficult for Claudia to get by or get ahead. Worst of all, she couldn't afford to eat. "I had to eat less than \$6.50 for the employee meal.... I could only afford pancakes. If you were on the schedule for only 5 hours, you couldn't get a meal. There were days when I wouldn't eat all day."

On the weekends, the restaurant was open 24 hours. One night, Claudia was one of three servers on a slow night. Claudia was told to roll silverware into napkins for two hours straight, not taking any customers except for one table. Claudia knew she wouldn't make any tips, and she'd still be asked to report that she made the minimum wage in tips. Meaning, with taxes, she'd have worked for free. After two hours, Claudia approached the manager, saying, "I'm done with the silverware, and other servers are getting tables. Can I serve a table now?" The manager berated Claudia on the dining floor. She told her to punch out and go home, and to tell her table that someone else would serve them.

The next weekend, the manager had Claudia stay alone the entire night. It happened to be the night of a football party. "I was alone... for four hours, and some people walked out without paying their bill. That night I had to stay until 7am.... At the end of my shift, the manager... talked to me about the people who walked out. They owed a bill of \$90. She told me that it was my fault, and I that I'd have to pay the bill. I had made \$80 in tips that night. After tipping out the busser and the dishwasher, they took all my tips, and told me I still owed them \$18. I worked from 10pm until 9am—even though I clocked out at 7am—and instead of paying me anything, I had to pay them." Claudia walked out to her car in the parking lot and cried. "I felt like I was being robbed." She had to pay to work, rather than being paid anything at all.

Later, Claudia realized how the workplace conditions impacted her coworkers. "There were a lot of older people—women in their 50's. They had children, families, some were single mothers... and \$2.13 plus tips was all they had.... It really opened my eyes. It was Latinos cooking, white women working graveyard shifts, men working during the day. I saw the racism, sexism, and low wages in the industry. Everything I remember from that place was horrible."

CHAPTER 2

CENTRAL CHALLENGES FOR WOMEN IN THE RESTAURANT INDUSTRY

As introduced in previously, the effects of many of the restaurant industry's central challenges fall heavily on women. Low and poverty-level wages, occupational segregation, lack of mobility, discrimination, sexual harassment, lack of benefits, and lack of schedule control are all issues of gender justice that are pervasive in the restaurant industry.

A. GENDER PAY INEQUITY IN THE RESTAURANT INDUSTRY

While issues of gender pay inequity are present in many industries, they are particularly harmful in the restaurant industry, in which wages are already low. In the following pages, the gender pay gap, its consequences, and its causes are outlined.

FEMALE RESTAURANT WORKERS ARE PAID LESS

“My mother worked as a server at a chain restaurant for almost 20 years. In that time, she has never made more than \$2.13/hr.... Despite all this, she raised four children on her own, stretching every penny as far as it would go.... She has worked long hours to make ends meet and had to sacrifice participating in many of the events of our childhood just to keep food on the table and utilities paid. It is a terrible decision to make whether to spend time with your children... or to work long hours away from your family to be able to offer them the most basic necessities.”

—CHELSEA, Chicago, IL

The vast majority of tipped workers in the restaurant industry are women.⁶⁸ As these tipped workers are subject to an explicit subminimum wage of \$2.13, **the restaurant industry has become the only sector in which a lower wage for women is a matter of public policy.**

The typical full-time, year-round restaurant worker is paid 79 percent of what her male counterpart is paid.⁶⁹ This inequity is unfair, but it is not unusual: the gender pay gap for all full-time, year-round workers is 77 percent.⁷⁰ What is particularly painful about gender pay inequity in the restaurant industry is that it happens in a context of already low industry wages. Restaurant wages are so low that the gender wage gap may mean the difference between living below or above the poverty line for women and their families. Median annual earnings for women in the restaurant industry are about half those of all full-time, year-round working women.⁷¹

Within the restaurant industry's largest occupational category, servers, the gender pay equity gap is higher than within the overall industry. The typical full-time, year-round female server is paid just 68 percent of what her male counterpart is paid (\$17,000 vs. \$25,000 annually).⁷² The gender pay gap is even larger for women of color. Black female

⁶⁸ BLS, Table 11, 2010.

⁶⁹ NWLC calculations of CPS, 2011. Figures compare median annual earnings.

⁷⁰ NWLC, *Poverty among women and families*, September 2011, <http://www.nwlc.org/sites/default/files/pdfs/povertyamongwomenandfamiliesin2010.pdf>.

⁷¹ NWLC calculations of CPS, 2011.

⁷² NWLC calculations of CPS, 2011.

ECONOMIC SECURITY IN THE RESTAURANT INDUSTRY

Basic economic security includes the ability to afford housing, utilities, food, transportation, childcare, health care, emergency and retirement savings, and other personal expenses. Individuals who are not paid enough to meet these basic needs must pick and choose which needs are met daily. Emergency expenses become tremendous strains, and basic expenses such as food and electricity can become a burden. Wider Opportunities for Women (WOW) developed the Basic Economic Security Tables™ Index (BEST) to have a clearer understanding of economic insecurity, and found 45 percent of all Americans live in households that lack economic security.

The BEST Index illuminates the extremely high levels of economic insecurity in the restaurant industry. Eighty-eight percent of adult servers who worked in the last 12 months had individual earnings below the BEST for their family types. Of these individuals, 83 percent are women. Ninety percent of female servers who worked in the last 12 months had individual earnings below the BEST, meaning **nine out of ten female servers were not paid enough to enjoy basic economic security**. Among males, this figure is 74 percent.

Accounting for total household income, 73 percent of adult servers lived in households with earnings below the BEST for their family types. Eighty one percent of these individuals are women. **Eight out of ten servers living in households without basic economic security are women.**

Eighty-one percent of households headed by an adult server have total household income below the BEST. Women head 80 percent of these households; 51 percent are headed by single women, and 26 percent are headed by single moms. **The vast majority of women servers are unable to provide basic economic security to themselves and their families, meaning they must routinely choose what necessities their families will forego as they struggle to make ends meet.**⁷⁵

servers, for example, are paid only 60 percent of what all male servers are paid.⁷³ The gender pay gap costs women, and women of color in particular, an enormous economic deficit over their lifetime. All female servers lose more than \$320,000 in wages over a lifetime, and black female servers lose more than \$400,000.⁷⁴ When wages are so low, lifetime earnings losses of this magnitude can mean a female restaurant worker is unable to buy a home, car, or other basic necessities.

“I just had my first baby, and her father is not in the picture right now, so I’m having to do everything myself.... It’s nearly impossible to pay rent, car payment, utilities, car insurance, and the cell phone bill on the pittance I’m making.... I can’t afford to get health insurance for myself and my baby through my job because my paycheck, even when I’m working 40+ hours a week, isn’t enough to cover it. I’m very lucky to have family and friends that are willing to watch my baby girl free of charge while I’m at work... But I suspect that not all working moms are so lucky.”

– SARAH, Texas

WHY ARE FEMALE RESTAURANT WORKERS PAID LESS?

While dynamics that affect earnings are certainly complex, gender directly correlates with economic outcomes. Accounting for differences in language ability, education, work experience, race, and position (between server and bartender), female restaurant workers averaged \$1.53 per hour less than male restaurant workers, according to data from the U.S. Census Bureau. This gender tax was found to be \$1.67 per hour when examining only the two largest tipped positions, servers and bartenders, and controlling for the same factors as well as difference between the two positions.⁷⁶

Segregation, in two major forms, is a major contributor to the restaurant industry’s gender pay equity gap. The first form of segregation is by restaurant segment. The industry’s highest earning jobs are concentrated in fine dining. Extensive survey research in cities across the country by ROC-United has found median wages in fine dining

⁷³ Ibid.

⁷⁴ Ibid. Assumes the same wage gap for a 40-year career.

⁷⁵ WOW calculations of ACS, 2009.

⁷⁶ ROC-United calculations of ACS, 2007-2009.

GENDER IN FRONT OF HOUSE POSITIONS

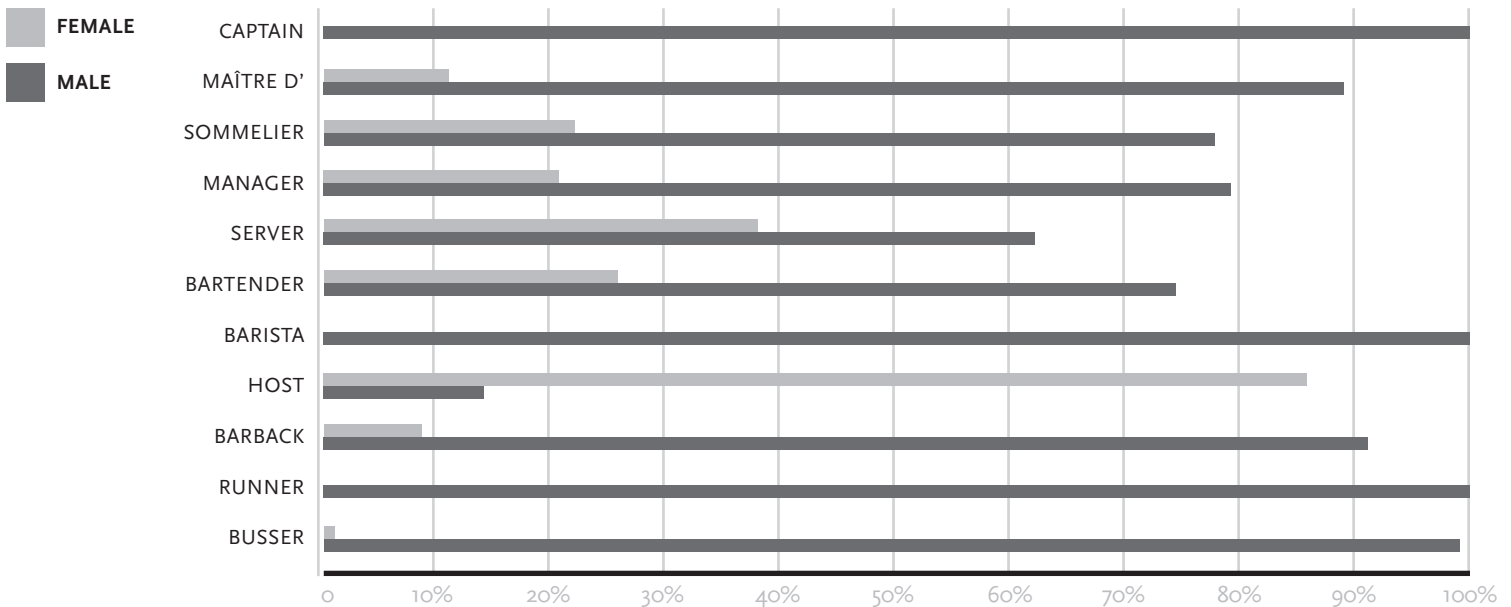


FIGURE 5

The highest paid positions in fine dining restaurants are disproportionately occupied by men. Positions are ranked from highest-to lowest-paid.

Source: Restaurant Opportunities Centers United canvassing of Manhattan fine dining establishments. *Waiting on Equality*, 2010.

are 24 percent higher than in family style and 76 percent higher than in quick serve.⁷⁷ However, women, and in particular women of color, are more highly concentrated in fast food and family style restaurants than in fine dining restaurants, where higher wages are found. Nationally, women comprise more than 61 percent of “combined food preparation and serving workers,” which is a position held almost exclusively in quick serve establishments.⁷⁸ Research by ROC-United found that among fine dining bartenders surveyed, 59 percent were male. However, among bartenders in family style restaurants, a position with much lower earnings, almost the reverse was true: 55 percent were female.⁷⁹

The second major form of gender segregation in the restaurant industry is by position. Women are under-represented in the industry’s highest-paying positions, and overrepresented in many of the lowest. For example, women account for only 19 percent of chefs,⁸⁰ one of the highest paying restaurant positions with a median wage of \$19.53.⁸¹ And at the lowest end of the pay scale, nearly 85 percent of hosts, almost 66 percent of counter attendants, 61 percent of combined food prep and serving workers, and 71 percent of servers are women.⁸² All four positions are among the ten lowest-paid occupations in America (see Table 1).⁸³ Moreover, women who are able to obtain employment in fine dining establishments rarely work in the most lucrative positions within the segment, such as bartending positions.⁸⁴

⁷⁷ ROC-United analysis of *National BKD Database*.

⁷⁸ BLS, Table 11, 2010. BLS information specialist confirmed that Combined Food Prep and Serving, including Fast Food is almost exclusively a fast food occupation.

⁷⁹ ROC-United analysis of *National BKD Database*.

⁸⁰ BLS, Table 11, 2010.

⁸¹ BLS, OES, *National Cross-Industry Estimates*, 2010.

⁸² BLS, Table 11, 2010.

⁸³ BLS, OES, *National Cross-Industry Estimates*, 2010.

The segregation of women in lower-paid fine dining occupations was borne out in research conducted in New York City, where ROC-United canvassed 45 Manhattan fine dining restaurants in 2007 (see *Appendix for methodology*). As shown in Figure 1, the results were consistent with our findings that women are under-represented in the highest-paid positions, such as bartenders, managers, maître d’s, sommeliers, and captains. Men held 67 percent of observed highest-paying front-of-the-house positions, while women held only 32 percent. Men held 79 percent of observed front-of-the-house management positions, while women held only 21 percent.⁸⁵

This observation of 45 Manhattan dining rooms further suggests that the more elite the establishment, the fewer women occupy the highest-paying front-of-the-house positions. American Community Survey data from 2005-2009 confirm this observation. During this period, only about 10 percent of front-of-the-house workers in Manhattan restaurants were paid \$40,500 or more. However, the front-of-the-house workers earning more than \$40,500 per year were more than twice as likely to be male.⁸⁶

One barrier that prevents women from obtaining higher-level positions is the lack of job training provided to women in restaurants. Sixty percent of women in ROC’s national survey reported not receiving training necessary to advance to higher-level positions.⁸⁷

⁸⁴ ROC-United analysis of *National BKD Database*.

⁸⁵ ROC-United, *Waiting on Equality*, 2010.

⁸⁶ NWLC calculations of ACS, 2005-2009. Ruggles, Steven, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew B. Schroeder, and Matthew Sobek, *Integrated Public Use Microdata Series: Version 5.0* [Machine-readable database], Minneapolis: University of Minnesota, 2010.

⁸⁷ ROC-United analysis of *National BKD Database*. The rate for women was slightly higher than for men at 60.4 percent vs. 58.1 percent.

PROFILE

MAYA PALEY



Maya Paley started restaurant work at age 17 as a hostess in a family style chain restaurant and has worked for 12 years in various Washington, DC fine dining restaurants. At 29, despite her love for the work, Paley has been frustrated by discriminatory practices in her efforts to move up a career ladder in the restaurant industry.

Paley has actively tried to utilize her experience to better herself and move into a management position. On several occasions, white males were promoted over her, despite her superior qualifications and her requests to be promoted. On one such occasion, Maya describes: “I was a hostess there at night and I was a manager on weekends. So I was there maybe a month shy of two years. I knew that restaurant like the back of my hand. I told my general manager, ‘I’m ready to take on more responsibility. I’m manager on the weekends and I have all of this other experience. Can you at least make me an assistant manager, or sales, or something related?’ He turned around and hired someone that had no fine dining experience... instead of hiring from within. He knew I was interested and I was clearly capable because I ran the restaurant when he was out having surgery! [The manager] goes and hires someone else [for another assistant manager position]. And those two people that were assistant managers, I had to train them to tell me what to do!” Both assistant managers were white men.

Feeling frustrated, Paley left to work at another restaurant where she hoped to find an opportunity to be promoted to management. “I sent in my resume to this really nice steakhouse in Washington [for the maître d’ position]. My resume at that point was amazing.... I spoke with the general manager for like five minutes and we really hit it off, so it was really promising. In my mind, I knew I got the job. So I get into the restaurant and the general manager is like, ‘You’re Maya?’ He was really taken aback by my appearance when he saw me, even though I was very well dressed.... He told me, ‘You don’t have the look to be a maître d’, but I can hire you as a hostess.’ The person that he eventually hired for the maître d’ position was a tall white man and I had way more experience than him. I was extremely disappointed.”

Paley, who is African American, eventually left this restaurant as well. “I felt like I need to go buy a tall white-man suit. Maybe then I could get promoted. I guess in this industry [experience and skill] don’t really matter.”

THE LOWER TIPPED MINIMUM WAGE EXACERBATES HARDSHIP FOR WOMEN

When the federal subminimum wage for tipped workers was delinked from the regular minimum wage and frozen at \$2.13, policymakers inadvertently gave license to gender inequity. The severely low federal subminimum wage contributes to gender inequity in two ways. First, as outlined at the end of Chapter 1, these predominately-female tipped occupations have been singled out for an abjectly low subminimum wage. Servers, predominately female, are subject to much higher levels of poverty than the rest of the population. The best way of illustrating the impact of the federal subminimum wage is to compare the poverty rates of servers in the 18 states that are subject to the federal subminimum wage, to the seven states that have taken action to do away with the subminimum wage, where servers receive the normal minimum wage plus tips. There is no difference between the overall poverty rate; both sets of states have a poverty rate of 6.7 percent. However, there is a dramatic difference in poverty outcomes for servers. In states subject to the federal subminimum wage, the poverty rate for servers is high, at 19.4 percent. In states that have done away with the subminimum wage, the poverty rate among servers drops to 13.6 percent. **Servers in states that follow the federal subminimum wage have a poverty rate 43 percent higher than in states without, despite having no difference in overall poverty rates** (see Figure 6).⁸⁸ Because servers are 71 percent female,⁸⁹ this poverty burden falls disproportionately on women. And because female servers typically are paid 68 cents on the dollar compared to their male counterparts,⁹⁰ the poverty burden is even greater for women in the industry.

The second form of gender pay inequity happens at a lower level between workers in the same industry or occupation. As stated earlier, female restaurant workers are subject to a 79 percent pay gap, and the gender pay gap for female servers, who are paid 68 cents on the dollar compared to their male counterparts, is even more exaggerated.⁹¹ With such low base wages and little regulation to verify that tips make up the difference, factors such as segregation by position or segment and discrimination in the workplace can have a substantial impact on workers' incomes.

Raising the tipped minimum wage is a simple step to address both the inadequacy and the inequity of pay for women working in the restaurant industry. Indexing the federal subminimum wage for tipped workers at 70 percent of the normal minimum wage of \$7.25 is a common-sense policy solution. At this rate, the tipped minimum wage's index would be only 10 percentage

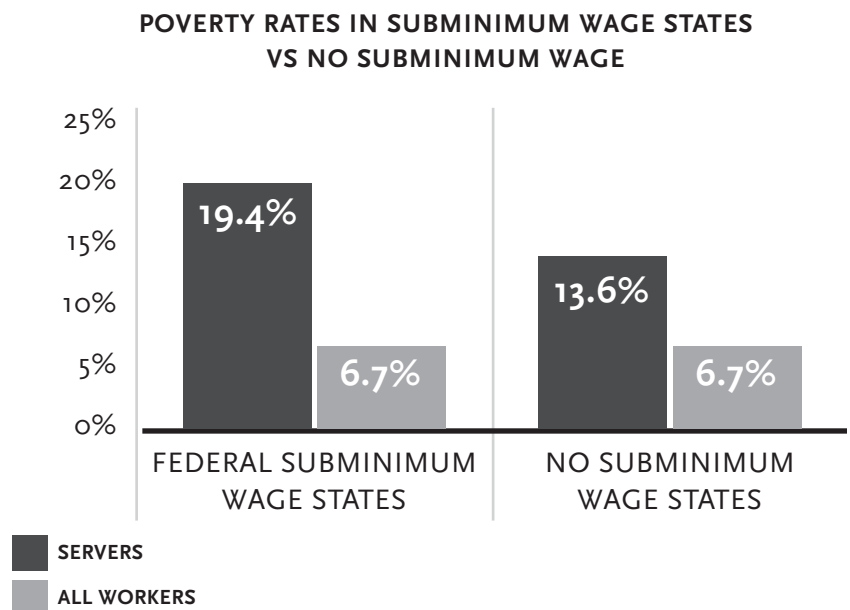


FIGURE 6
Servers in states that follow the federal subminimum wage have a poverty rate 43 percent higher than in states without, despite having no difference in overall poverty rates.

Source: Allegretto, S. and Kay Fillion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, 2011. Table 6: Poverty rates of all workers, tipped workers, and waiters by level of tipped minimum wage, p. 9.

⁸⁸ Allegretto and Fillion, *Waiting for Change: The \$2.13 Federal Subminimum Wage*, 2011. Table 6: Poverty rates of all workers, tipped workers, and waiters by level of tipped minimum wage, p. 9.

⁸⁹ NWLWC calculations of CPS, 2011.

⁹⁰ Ibid.

⁹¹ Ibid.

**WORKERS THAT WOULD RECEIVE
A RAISE WITH TIPPED SUBMINUM WAGE
INCREASE TO \$5.08**

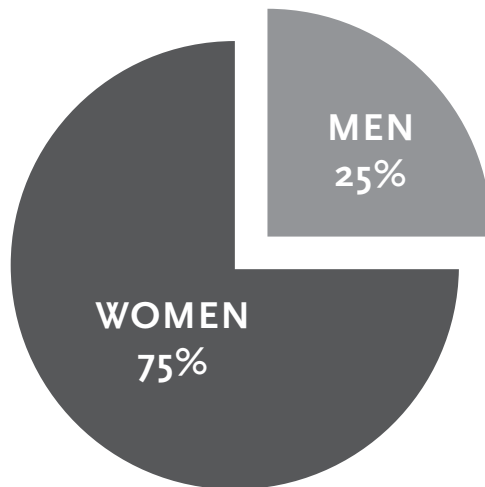


FIGURE 7
*Raising the Tipped Minimum Wage to \$5.08
Would Raise Wages for More Than 837,000
Workers and Three out of Four Would Be Women.*

*Source: Institute for Women's Policy Research analysis
of Current Population Survey data provided by the Center
for Economic and Policy Research. 2011. CPS ORG
Uniform Extracts, Version 1.6. Washington, DC.*

"I was a dinner house waitress [in Oregon and California] for over 20 years and made [the full] minimum wage, PLUS tips. If I had not made the state minimum wage I would not have been able to raise my 3 children adequately. Because my tips were on top of a decent hourly wage I was able to keep my head above water and have a decent life."

—CASEY, Silverton, CO

points higher than its index to the regular minimum wage during the 1980s, and far lower than the 100 percent index in states as varied as Alaska, California, Minnesota, and Montana, which have eliminated the subminimum wage all together. **An increase in the subminimum wage to \$5.08 would immediately boost incomes for nearly 837,200 workers and their families, 630,000 of whom are female tipped workers and many of whom live below the poverty line.**⁹² These raises would also provide upward pressure on wages for the more than 10 million workers in the restaurant industry as a whole.

Furthermore, raising the subminimum wage to \$5.08 would decrease the gender pay equity gap within industry and occupation. When taking into consideration that full-time, year-round female servers are typically paid \$17,000 compared to the \$25,000 paid to their male counterparts,⁹³ raising the minimum wage for tipped workers earning the federal subminimum wage of \$2.13 would reduce the gender wage equity gap by a fifth, from 68 percent to 74 percent.⁹⁴ The increase would add another \$6,136 to both male and female servers' base earnings annually,⁹⁵ but because women are paid so much less and because they represent a larger share of the workers, the increase would benefit women much more than men, and help to close the gender wage gap in the restaurant industry.

B. LACK OF HEALTH CARE AND PAID SICK LEAVE

Wage inequities and discrimination are exacerbated by a lack of benefits that prevents restaurant workers from caring for their own health and the health of their families. Extensive survey research of over 4,300 restaurant workers across the country conducted by ROC-United has found that approximately 90 percent of restaurant workers lack paid sick days and 90 percent do not receive health insurance through their employers. While both male and female restaurant workers rarely receive these benefits, female restaurant workers often have greater family care responsibilities. More than a quarter (26.8 percent) of all female restaurant workers are mothers, and more than one in ten are single mothers with children under 18 living with them at home. Female restaurant workers are more than three more likely to be single parents than are male restaurant workers.⁹⁶ It is important to note that many women without health insurance through their employer also fall through the social safety nets, unable to attain coverage through a family member or a public plan and unable to afford a private plan.

⁹² IWPR analysis of Center for Economic and Policy Research, CPS ORG Uniform Extracts, Version 1.6, 2011.

⁹³ NWLC calculations of CPS, 2011.

⁹⁴ ROC-United calculations based on a 40-hour workweek, 52 weeks per year.

⁹⁵ Ibid.

⁹⁶ NWLC calculations of CPS, 2011.

Current Population Survey (CPS) data reveal that one third of all female restaurant workers (33.4 percent) lack any kind of health care, from their employer or otherwise.⁹⁷

Low wages, lack of paid sick days, and lack of health insurance make it unaffordable for many workers, particularly mothers with child-rearing expenses, to obtain timely medical care, to stay home sick or to stay home to take care of a child. Female restaurant workers surveyed reported going to work and cooking, preparing, or serving food while sick at a higher rate than male workers: 70 percent versus 66.6 percent.⁹⁸ In interviews, workers reported that they have gone to work sick because they could not risk income or job loss. Workers reported that, without job-protected paid sick days, restaurant workers are often fired simply for becoming ill.⁹⁹

Working sick has alarming consequences for workers, their coworkers, managers, owners and restaurant customers. When workers are forced to come to work sick, they can risk aggravating their own sickness and infecting those around them, including the public.

“I was a waitress as a young single mother because waiting tables offered flexible hours so I could generally be home with my daughter... I can’t tell you how many times I made less than \$20-\$40 a day during the lunch rush... LOTS. And I was a good waitress! Polite, fast, and I paid attention to detail. I don’t understand how restaurants get away with not paying their employees minimum wage...”

—CHRISTINE, Fort Worth, Texas

C. SEXUAL HARASSMENT

More than one in ten of the more than 4,300 restaurant workers ROC-United surveyed nationwide reported that they or a co-worker had experienced sexual harassment in their restaurant.¹⁰⁰ This figure is very likely an undercount. A recent MSNBC review of Equal Employment Opportunity Commission (EEOC) data revealed that from January to November 2011, almost 37 percent of all EEOC charges by women regarding sexual harassment came from the restaurant industry,¹⁰¹ even though less than 7 percent of women work in the restaurant industry.¹⁰² In fact, the Equal Employment Opportunity Commission has targeted the restaurant industry as the “single largest” source of sexual harassment claims.¹⁰³

Focus groups ROC-United conducted with female restaurant workers in New York and interviews with female restaurant workers nationwide indicate that sexual harassment is an even more pervasive problem in the restaurant industry than official statistics suggest. Workers affirmed that sexual harassment was an “accepted... part of the culture,” and that workers had to learn to accept and cope with witnessing or experiencing unwanted advances. One worker said, “It’s inevitable. If it’s not verbal assault, someone wants to rub up against you.”

⁹⁷ NWLC calculations of CPS, 2011.

⁹⁸ ROC-United, *BKD*, 2011.

⁹⁹ ROC-United analysis of *National BKD Database*. These findings are consistent with findings from IWPR and the National Partnership for Women and Families.

¹⁰⁰ ROC-United, *BKD*, 2011.

¹⁰¹ Tahmincioglu, “Sexual Claims Common in Pressure Cooker Restaurant World.”

¹⁰² BLS, Table 11, 2010.

¹⁰³ Stumer, “Restaurants Served with Sexual Harassment Lawsuits.”

PROFILE

JUNE LINDSEY



June Lindsey, 48 years old, is a proud mother of nine and a 30-year veteran of Detroit quick serve restaurants. She first entered this line of work when she was “17 years old and looking for a job. One of the few businesses nearby was a McDonald’s and they hired me, and I have been in the industry ever since.” She has never stopped struggling to support her children despite terrible working conditions. Her story illustrates the health effects of these working conditions on both workers and the greater public.

“It was an extremely hot day and I was working in the front counter at Popeye’s. There was no AC in the restaurant. Sweat was running down my face and I had to... assist customers with their food order and cashiering at the same time. I am so thirsty but I can’t drink in the front because the manager tells me I’m not allowed to drink in front of customers.... And when I try to go to the back and get a drink, the manager tells me again that I can’t leave the counter and go back for a drink. I said ‘I am really thirsty. I feel dizzy. My vision is blurry. My ears are popping and something is wrong. I need something to drink.’ The manager threatens me [that] if I go to the back I might as well just go home.”

“After about an hour the pain started to get worse and worse and I asked if I can leave and go to the ER. She refused again and threatened me.... I told her, ‘[I] am really sick. I need this job; I have children to feed at home.’ She refused, so I chose to go to the ER not knowing if I was going to have my job or not. At the ER I found out that... I was dehydrated.... The next day I went back to work with the ER documents and went to the GM and explained my situation. I ended up keeping my job but with a hostile attitude from the manager that didn’t want to let me go or have a drink of water.”

“[Another time] I was working at the same job. I had a really bad cold. My nose was running, I was sneezing, [and] I had a bad cough and a fever. I could not call in sick because no work meant no money, and I couldn’t afford it at that time. My kids were very young, so I went to work to see if I can make it through the day. Halfway through the day, the sneezing, coughing and runny nose got worse. I asked the manager, “I am really sick and need to go because I could make others sick.” She laughed and told me ‘try not to cough then’.

“I felt angry and just wanted to leave but I couldn’t because I needed this job to support my family. I felt like a slave! To add insult to injury, I am almost 50 years old and being disrespected by a manager that was half my age. It’s not my fault I got sick, and it’s just not fair!”

Young women working in the industry are the most frequent targets and the least likely to be equipped to deal with the harassment. Several workers witnessed male co-workers trying to “kiss,” “pinch,” “slap,” and “brush up against” young female workers.

Reports from workers identified that managers were often the perpetrators of the harassment, and women said that in workplaces where their co-workers engaged in harassing behaviors, managers did so as well. Several women spoke about their managers inappropriately touching them, making remarks about their body parts to them or to other workers, and soliciting them into relationships. They were also encouraged to “be more sexy,” by wearing tighter clothing, wearing makeup, and flirting with guests.

Female restaurant workers interviewed by ROC-United reported that many employers fail to adequately respond to complaints of harassment, often ignoring the complaint, or allowing other workers to ridicule or retaliate against the person complaining. Management will shift responsibility to the person suffering harassment by, for example, discouraging her from entering the kitchen to avoid unwelcome encounters. When women resist inappropriate behavior, their own behavior is scrutinized. Many women said that when they complained, they were told that they were being “overly sensitive” or “too emotional.” Others said that complaints resulted in fewer shifts or removal from the schedule.¹⁰⁴

Many workers were not able to identify sexual harassment policies in their workplaces, and nobody was able to recall an orientation or training on the policy. When a policy existed, there was no adherence or enforcement. As one woman put it, “They supposedly had a zero-tolerance [policy], but I say they had 100 percent tolerance because... it [happened] every day.”¹⁰⁵

“The guys used to sexually harass me and other women working in the kitchen. They would pass vulgar and offensive remarks in front of the chef or manager. And the manager would do nothing. I had to quit my job because of that. Even my managers had no respect for me and would touch me inappropriately.”

– FEMALE COOK

SEXUAL HARASSMENT CASES

A review¹⁰⁶ of the last four years of EEOC sexual harassment settlements and verdicts in the restaurant industry found over 25 major cases from 18 states in every region of the country, leading to \$15.4 million in settlements and damages awarded to over 219 women workers. All of the cases involved sexual harassment and a hostile working environment, and 50 percent of the cases involved some form of sexual assault, including pulling hair, groping, biting, hugging, kissing, and other forms of unwelcome sexual contact. Two of the cases, one at a Taco Bell, the other at a Hometown Buffet, involved multiple instances of rape. Cases were filed primarily against well-known quick serve and family style chains, including McDonald's, KFC, Sonic, IHOP, Applebee's, Cracker Barrel, Ruby Tuesday, and Denny's. McDonald's was named in 16 percent of the cases, including possibly the most egregious one, where an 18-year-old employee was strip-searched and assaulted for several hours by staff and management at the behest of a caller impersonating a police officer. Eighty-eight percent of the cases involved abuse and harassment by management, and co-workers were cited in 24 percent of the cases. In most instances, workers were abused and harassed on a daily basis and faced some form of retaliation for complaining.

¹⁰⁴ ROC-United, *Waiting on Equality*, 2010. Focus groups with female restaurant workers.

¹⁰⁵ *Ibid.*

¹⁰⁶ National Partnership for Women & Families and ROC-United non-exhaustive review of EEOC sexual harassment verdicts and complaints gathered by the Bureau of National Affairs, 2008-2011

EMPLOYER PROFILE

DIEP TRAN

Chef-Owner, Good Girl Dinette, Los Angeles, CA



Chef-owner Diep started working in her family’s Vietnamese restaurant when she was nine years old. She worked for ten years as a community organizer in Southeast Asian communities around HIV/AIDS issues and women’s health issues, before returning to her restaurant roots in 2003. By 2009, Diep had opened Good Girl Dinette, an American diner serving contemporary Vietnamese comfort food that pays fair wages and serves food that is local, sustainable, and seasonal. As Diep notes, her employment practices reflect her values:

“When I interview someone I tell them right off the bat, ‘We don’t tolerate homophobia, sexism, racism, or any kind of harassment and if you have a problem with that, then this is not the place for you. This place is not like 90 percent of the other restaurants you’ve worked in.’ I’ve had conversations where I’ve corrected someone for saying something out of line and offending someone. And I’ve had to let one person go because they wouldn’t modify their behavior.... I think not tolerating ignorant, sexist, or racist comments, and other forms of sexual harassment, has made this a lot better place to work. People feel safer.... Before opening my own restaurant, I worked in a few kitchens and I would hear people say things that are absolutely unacceptable. I was usually the only woman in the kitchen too. They learned not to mess with me, but other women stayed away, which they shouldn’t have to do.... I think that putting a stop to that type of behavior is better for everyone... even those that might otherwise be the ones doing it. It’s like they have these expectations put on them to say these disgusting things and act this way, and when you take those expectations away they feel better too in the long run.

“One thing that I’m working on now is to make these rules formal and in writing. I have never had an employee manual. As an owner-operator, I’ve always been working like crazy just to keep the business going. If it’s not one emergency it’s another. I love it, but it’s a lot of work and it’s not like I have a [human resources] department like a corporate restaurant would to help me on stuff like this.... I’m working with ROC-LA [Restaurant Opportunities Center of Los Angeles] to help make [an employee manual]. It’s going to show my employees that this is a fair workplace—with a fair process for complaints and for me to let them know when positions are available...—but this is also for me. I want to make sure everyone understands the rules and procedures because this will prevent unnecessary battles that would hurt both me and the employees.”

D. LACK OF SCHEDULE CONTROL

Directly related to low pay for female restaurant workers are scheduling practices that are characteristic of the industry. Many female restaurant workers, like women throughout our labor market, are responsible for caring for children and other family members; many of these women are single parents and sole caregivers for their families. However, the ways that schedules are often determined create significant challenges for workers. First, the restaurant industry often demands workers work evenings, nights, weekends, and other non-traditional hours, as these tend to be busy times at the restaurants.

Second, restaurant workers routinely experience volatile workplace scheduling—a situation where both the number of hours and the timing of those hours can change day-to-day, week-to-week, and season-to-season at the discretion of management. Compounding this challenge is the fact that schedules are often posted with little advance notice. For instance, restaurants often post schedules on the Thursday or Friday of the week, and this upcoming schedule begins just a day or so later on Sunday.¹⁰⁷ One study found that among shift workers, 30 percent of workers report variable start and end times, and 10 percent do not have a weekly schedule.¹⁰⁸ And managers can make last-minute changes to the work schedule once it is posted if it appears that customer traffic may be higher or lower than anticipated. For example, managers may send a worker home if the establishment is not busy, or add on shifts if it looks like it will be busy. Participant observation research of restaurant servers has found that many servers are scheduled as “BD” shifts. This means that their workday ends at the discretion of management, when “business declines.” If there are no or few customers, servers are cut early; if the restaurant remains busy, workers will be expected to stay at work. As one server told her daughter: “I only know when I am to come into work, not when I am going to leave.”¹⁰⁹ This unpredictability and “just-in time” scheduling¹¹⁰ means that a worker may have to work different hours and different days each week with no consistent days off.¹¹¹

“My mom was a restaurant worker solely supporting two children. My mom would count her tips at the end of the day and whether I could sign up for after school activities [or buy new tennis shoes] would depend on the generosity of her customers. Often, I would have to watch myself after school.... Some days her customers were generous. Many days they were not... My mom deserved the same minimum wage as any other citizen. Her children deserved the guarantee of a minimum wage.”

—CAUSE, Seattle, WA

Scheduling practices translate into significant challenges for workers.

If restaurant workers are forced to work late, they must have someone available to care for their children or provide needed medication to a parent—a scenario that is almost never a reality for many women in the restaurant indus-

¹⁰⁷ Lambert, S. J., “Passing the buck: Labor flexibility practices that transfer risk onto hourly workers,” *Human Relations* 61(9): 1203–1227, 2008.

¹⁰⁸ Golden, L., “Flexible work schedules: Which workers get them?” *American Behavioral Scientist*, 44(7), 1157–1178, 2001. doi: 10.1177/00027640121956700

¹⁰⁹ Gatta, Mary L., *Juggling Food and Feelings: Emotional Balance in Restaurant Work* (Lexington Press: Lanham, MD, 2002); Gatta, “Balancing Trays and Smiles,” 2009.

¹¹⁰ Williams, J. C. & Huang, P. (2011). *Improving work-life fit in hourly jobs: An underutilized cost-cutting strategy in a globalized world*, 2011. The Center for Worklife Law, <http://worklifelaw.org/pubs/ImprovingWorkLifeFit.pdf> (January 2012).

¹¹¹ Gatta, *Literature Summary on Restaurant Work and Schedule*, 2011.



try. And even if a worker is scheduled for an end time of her shift, it does not mean that the end time will be realized. If customers remain, workers may be required to stay longer. At other times, workers are required to work only if the establishment is busy.¹¹²

Flexibility is a great boon to management's "just-in-time scheduling" practices,¹¹³ but the unpredictable schedules create significant, if not impossible, challenges for child care, and any family obligations. Child care centers rarely accommodate non-traditional work hours; for example, in California, only two percent of licensed child care centers offer care during evenings, weekends, or overnight, and less than half of licensed family child care homes offer care during these hours.¹¹⁴ Many restaurant workers facing erratic schedules must patch together child care from a combination of center-based programs, friends, and family members, and the resulting arrangements may not be affordable¹¹⁵ or reliable.¹¹⁶ In turn, unstable child care can both jeopardize a parent's job in the restaurant industry and negatively impact a child's well-being.¹¹⁷ These challenges disproportionately affect women workers.

These scheduling practices also have a drastic economic impact on these workers who are often not guaranteed a minimum number of hours, and may be given only part-time hours when full-time hours are desired. Consequently, workers with fluctuating schedules cannot plan on having a consistent income each week or month, thereby exacerbating the difficulty of living on low wages. And when workers are placed on call or sent home early, they may still be responsible for paying for child care or other care arrangements that were scheduled in case they had to be at work. Further, the lower tipped minimum wage may provide an incentive for managers to keep servers staffing the restaurant, and sending home "more expensive" hosts or even cooks, who are paid minimum wage or higher, at times when the establishment is not very busy. This arrangement then allows restaurants to have staff coverage with servers who are earning just \$2.13 an hour. However, as tips are the mainstay of servers' incomes, no customers means no tips. It is then quite possible for a server to work a shift and wait on very few or even no customers, leaving with very little income for the day.¹¹⁸

¹¹² Gatta, *Juggling Food and Feelings*, 2002.

¹¹³ Williams & Huang, *Improving work-life fit in hourly jobs*, 2011.

¹¹⁴ California Child Care Resource & Referral Network, 2011 Child Care Portfolio, <http://www.rnetwork.org/tr-research-in-action/2011-portfolio/2011-statewide-portfolio-page.pdf>.

¹¹⁵ The average fee for full-time child care ranges from \$3,600 to \$18,200 annually, depending on where a family lives, the type of care, and the age of the child. NWLC, *State Child Care Assistance Policies 2011: Reduced Support for Families in Challenging Times*, October 2011, http://www.nwlc.org/sites/default/files/pdfs/state_child_care_assistance_policies_report2011_final.pdf. This is a tremendous cost to bear for families supported by typical restaurant industry wages, and the child care assistance available to low-income families is often inadequate. See *ibid*.

¹¹⁶ See, e.g., Adams, Gina & Monica Rohacek, *Child Care Instability: Definitions, Context, and Policy Implications*, October 2010. Urban Institute, <http://www.urban.org/uploadedpdf/412278-child-care-instability.pdf>.

¹¹⁷ See generally Adams & Rohacek, *supra* note --. See also Chaudry, Ajay, et al., *Child Care Choices of Low-Income Working Families*, 2011. Urban Institute, <http://www.urban.org/uploadedpdf/412343-Child-Care-Choices.pdf>.

¹¹⁸ Gatta, "Balancing Trays and Smiles," 2009.

CHAPTER 3

POLICY RECOMMENDATIONS

Our research demonstrates that the restaurant industry, one of the largest and fastest-growing sectors of the U.S. economy, has the potential to provide women with livable wages and opportunities to support themselves and their families. Unfortunately, with notable exceptions, the industry as a whole is not currently meeting this potential. While some responsible employers provide livable wages, benefits, and opportunities for advancement for women, on the whole, women are highly underrepresented in the industry's few livable-wage jobs and face hostile working conditions which bar them from gaining economic self-sufficiency and equality. While employers must be committed to raising workplace standards in order to ensure fairness and equality, additional public policy measures are needed to advance women and to help the industry fulfill its potential. Government and regulatory agencies must also commit to leveling the playing field by supporting responsible employers and setting higher standards for the industry.

POLICYMAKERS SHOULD

- 1 Raise and index the federal subminimum wage for tipped workers to at least 70 percent of the regular minimum wage, and raise and index the federal minimum wage for all workers as well.** Raising the federal tipped minimum wage and indexing it to the overall federal minimum wage would both reduce the gender wage equity gap in the restaurant and immediately raise wages for millions of workers. Raising the minimum wage for all workers would help draw many more workers, men and women, out of poverty.
- 2 Establish a national standard that allows workers to earn seven to nine job-protected paid sick days each year to be used to recover from their own routine illness, access preventive care, or provide care for a sick family member.** The lack of benefits such as paid sick days has a greater negative impact on women than men. Requiring paid sick days of all employers would level the playing field for responsible employers who currently provide these important benefits. Similarly, national health care reform is essential to allow women working in the restaurant industry to care for themselves and their families and not incur unsustainable medical debt.
- 3 Adopt legislation that would provide incentives or mandate employers to provide regular, ongoing sexual harassment training with all their employees, including managers.**
- 4 Support job-training programs that provide accessible, quality training to help women gain special skills needed to advance within the industry.**
 - Provide incentives to employers that provide on-the-job or off-premise training of this nature.
 - Fund training programs for underrepresented populations to obtain skills necessary to advance to living-wage positions within the industry.



5 Protect workers from violations of federal, state, and local equal employment opportunity laws.

- Assist advocates engaged in anti-discrimination campaigns through intervention and mediation, encouraging employers to change their discriminatory practices.
- Support penalties against employers who violate anti-discrimination laws.
- Work with advocates to provide educational materials and hold events to educate employers on complying with local, state, and federal anti-discrimination laws.
- Ensure that employers understand their liability with regard to equal employment laws and the consequences of engaging in illegal discriminatory practices.

6 Enact legislation that would ease the burden on workers regarding their lack of schedule control.

For example, several states have passed ‘show-up’ pay legislation, which requires employers to pay workers a few hours when they show up to work and are told they are not needed that day, a common practice in the restaurant industry. State child care assistance policies could allow parents to keep their children in a regular child care arrangement even if the parent’s work hours vary, rather than only providing assistance to cover those hours the parent works in a particular week—which can make it difficult to retain a child care slot.

7 Publicly support collective organizing among restaurant workers. Governments, employers, and non-governmental social sector organizations should foster and support organizing among restaurant workers to improve wages and working conditions in their workplaces and publicize the public benefits of these collective actions.

8 Initiate and support further study and dialogue. Discrimination is a complex and intricate issue, and it deserves ongoing discussion and participation from workers, employers, and policymakers alike. More detailed information is needed regarding the public cost of discrimination and the true economic profitability of responsible business practices in the restaurant industry.

EMPLOYERS SHOULD

1 Adopt systematic and fair hiring and promotion practices. These practices must have clear and explicit criteria as well as structured and uniform tools for interviewing, formal and transparent protocols for current workers to find out about open positions, and performance evaluations to encourage workers to improve performance and obtain advancement.

2 Adopt and clearly communicate company policies and procedures, including anti-discrimination and harassment policies, to protect the well being of all workers. Provide all employees with regular, on-going training on sexual harassment. Establish an effective complaint or grievance process that is clearly outlined in employee manuals, and maintain records of all grievances or complaints. Provide training to supervisory employees on proper handling of grievances.

3 Adopt benefits, such as paid sick days, that would allow employees to care for themselves and their families. In addition to being ethical, these policies make business sense because they decrease the risk of spreading disease between employees, which in turn increases employee productivity, job satisfaction, and loyalty while reducing turnover costs.

4 Permanently enhance job quality by increasing wages and benefits. Not all workers will be able to move to higher-paid positions. Employers should ensure that workers in all positions can support themselves and their families. Ultimately, enhancing job quality with respect to higher wages and benefits is an essential way to increase productivity and retention. In addition, employers can help provide more advance notice of schedules and develop best practices in developing schedules that meet both employers' and workers' needs.

5 Understand and follow equal opportunity laws and techniques that successful restaurant employers use to implement livable wages, benefits, scheduling control, and career ladders for women. ROC-United has acted as a resource to provide legal advice and technical assistance to employers. Furthermore, ROC-United has provided forums for successful, responsible restaurant employers to share their expertise with others and support each other. More information can be found at www.rocunited.org.

CONSUMERS SHOULD

1 Support responsible restaurant owners who are providing livable wages, benefits, and opportunities for women to advance. Many of these restaurants have been awarded the Gold and Silver Prizes in the Restaurant Opportunities Centers' National Diners' Guide (www.rocunited.org/dinersguide).

2 Speak to employers every time you eat out and let them know you care about livable wages, benefits, and opportunities for women to advance in the restaurant industry. To initiate these discussions, ROC can provide you with 'Tip Cards', available for download at www.rocunited.org/dinersguide.

3 Where workers have filed legal charges against restaurant employers who are violating the law, call the company to let them know that you won't support such illegal practices.

APPENDIX

METHODOLOGY

ROC UNITED REPORTS

This report draws in part on original data from eight comprehensive restaurant industry studies—each titled *Behind the Kitchen Door*—conducted by the Restaurant Opportunities Center (ROC) in eight metropolitan regions across the country. The *Behind the Kitchen Door* studies were conceived of and designed by Restaurant Industry Coalitions in New York, Southeast Michigan, Chicago, New Orleans, Washington, DC, Los Angeles, Miami, and Maine, from 2005 until the present. In each location, these coalitions consist of academics, policy analysts, worker advocates, worker organizers, unions, and others, and included participation from restaurant workers and restaurant industry employers. This document includes summary data from the *Behind the Kitchen Door* report from those eight locations, with pooled survey data weighted for position, industry segment, and local workforce size. In each locality, *Behind the Kitchen Door* is one of the most comprehensive research analyses of the restaurant industry conducted in that region's history. The multi-site *Behind the Kitchen Door* is thus the most comprehensive national research analysis of the health needs and working conditions of restaurant workers conducted to date.

Each of the eight *Behind the Kitchen Door* reports uses data from more than 500 worker surveys, approximately 30 one-hour interviews with restaurant workers, and 30 one-hour interviews with restaurant employers in each region. Thus, ROC has data from 4,323 worker surveys—the largest in-depth survey sample of restaurant workers ever conducted nationwide—and more than 240 employer interviews and 240 worker interviews, which were recorded, transcribed, and coded. The surveys contain questions regarding job hazards, wages and benefits, working conditions, injuries, abuse, wage theft and other employment law violations. Demographic stratification techniques were used to attain a representative sample based on the ethnic and gender demographics of the local restaurant industry as detailed in the US Census Bureau's American Community Survey. In each locality, the results of this primary research are supplemented by analysis of industry and government data, as well as a review of existing academic literature, to produce the full *Behind the Kitchen Door* report.

This report also draws on an additional 500 worker surveys and 20 employer interviews focused on the health care needs of restaurant workers, that combined with the over 4,300 *Behind the Kitchen Door* surveys to produce *Serving While Sick: High Risks and Low Benefits for the Nation's Restaurant Workforce, and Their Impact on the Consumer*.

Finally, this report draws upon some of the original findings from the Restaurant Opportunities Center of New York's *Waiting on Equality* report, and in particular from focus groups with women and demographic canvassing conducted for that report. That report was based in part on seven focus groups conducted with different subsets of women in the industry, including young women ages 18-25 and women working in the kitchen. And in order to measure the extent of visible occupational segregation in fine dining restaurants, ROC-NY conducted demographic canvassing. Here, 15 research assistants were sent to observe workers' demographics in the front of the house at 45 fine dining Manhattan restaurants. Canvassers tabulated the number of male and female workers they observed in various front-of-the-house positions.

WOW BASIC ECONOMIC SECURITY TABLES™ (BEST)

The national BEST Index measures the local costs (at the county level) of basic expenses (housing, food, transportation and more) and the cost of saving (for emergencies, retirement, home ownership, and post secondary education) for over 420 different family types. To further improve understanding of worker expenses and income needs, the BEST calculates separate income requirements for workers with and without access to employment-based benefits. The BEST Index provides an improved understanding of what families of different types need to earn in their local communities to meet basic expenses and save for the future. BEST data increases awareness of the challenges faced by the typical American worker, and suggests leverage points and policy that can help them overcome the obstacles to economic security. In this way, the BEST is used in this report to highlight even further the wage inadequacy of tipped workers and the sizable challenge these workers face in achieving economic security. For more information, visit www.wowonline.org/usbest.

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