

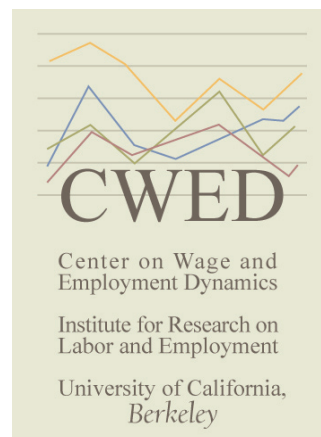
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# BRIEFING PAPER

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## **WAITING FOR CHANGE** **The \$2.13 Federal Subminimum Wage**

BY SYLVIA A. ALLEGRETTO AND KAI FILION



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# WAITING FOR CHANGE

## The \$2.13 Federal Subminimum Wage

BY SYLVIA A. ALLEGRETTO AND KAI FILION

The minimum wage has been one of the most investigated and debated labor market topics among economists, politicians, business entities, and the public. Much less attention has been paid to the subminimum wage received by tipped workers (referred to as the “tipped minimum wage”). The two-tiered minimum wage system is unknown to many and the existence of the subminimum wage is often a surprise. Did you know that a waiter at a restaurant in Indiana probably earns a base wage of \$2.13 per hour; \$4.34 for a server in the Colorado Rockies; and \$8.67 for wait staff near Olympia National Park in the state of Washington? These pay disparities are created by an obscure and often misunderstood federal provision called a ‘tip credit,’ which allows employers to pay tipped workers below the binding federal or state minimum wage.

This brief seeks to shed light on the subminimum wage, its wide differences from state to state, and its impact on workers and labor markets. First, we present the history and mechanics of the subminimum wage and the tip credit provision along with state-level variations. Second, we provide a demographic portrait of waiters and other workers in tipped occupations, who are subjected to the subminimum wage floor. Finally, we analyze labor market outcomes, such as wages and poverty rates, for the country overall and by state; in the latter case focusing on policy differences regarding each state’s allowable tip credit.

The salient points of this brief include:

- When the subminimum wage was decoupled from the federal minimum and frozen at its current level in 1996, it was 50% of the regular minimum. Today the subminimum wage is at the lowest share of the regular minimum on record—just 29.4%.
- Like the regular minimum wage some states have adopted higher subminimum wages: 30.8% of the workforce are in states that have a \$2.13 subminimum, 50.5% are in states that have a subminimum above \$2.13 but below the minimum wage, and 18.7% are in states where the subminimum and regular minimum is the same.

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- Tipped workers are overwhelmingly women (72.9%) and disproportionately young; however, one in four are at least 40 years old.
- Tipped wage policies have real impacts on workers. Tipped workers are more than twice as likely (and waiters almost three times as likely) to fall under the federal poverty line. With regard to poverty, the benefits of a high minimum wage for tipped workers are clear: poverty rates of tipped workers and waiters fall steadily as the tipped minimum wage increases.

## The subminimum wage and the tip credit provision

Most people associate the minimum wage with the federal minimum, which is currently \$7.25 per hour. Some people may be aware that many states have set minimum

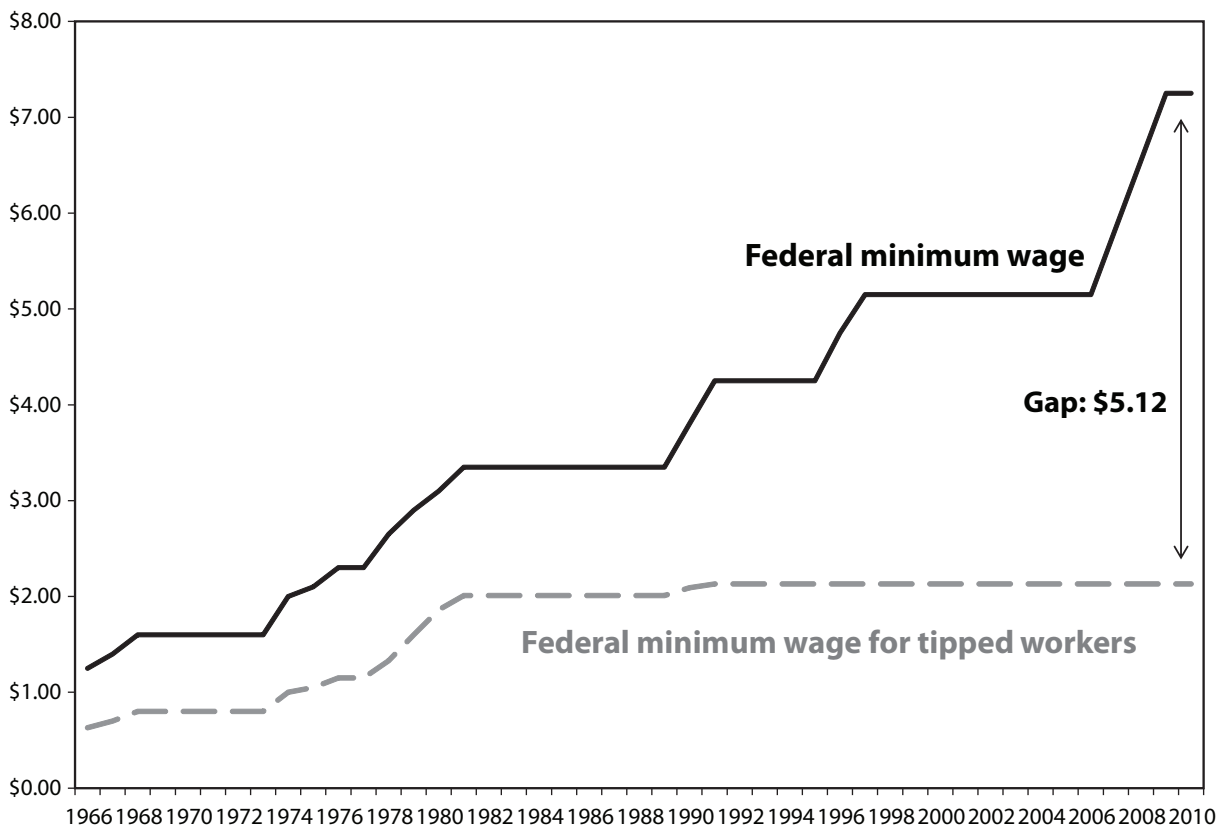
wages above the federal level, such as Washington (\$8.67), California (\$8.00), and Michigan (\$7.40). But few know that there is a subminimum wage for workers who receive tips—and people are especially surprised to learn that the federal tipped minimum wage is just \$2.13 per hour.

The rationale for the lower federal minimum wage for tipped workers is that expected income from tips can be converted into a ‘tip credit’ for employers. At the federal level, the tip credit allows an employer to pay workers an hourly wage of \$2.13 as long as this base wage combined with additional tipped income equates to the actual minimum wage.<sup>1</sup> Thus, the maximum federal tip credit is \$5.12, which is the difference between the \$2.13 tip wage and the federal minimum wage of \$7.25.

Why \$2.13? Originally, tipped workers received the same minimum wage as all other workers. The policy of paying tipped workers a subminimum wage was first

FIGURE A

### Tipped minimum wage relative to federal minimum wage, 1966-2010



SOURCE: Authors' analysis of Fair Labor Standards Act and amendments.

enacted in 1966, when employers were required to pay tipped workers at least 50% of the federal minimum wage (Elder 1978). The proportion of the tipped minimum to the federal minimum varied over the next 30 years, rising to as high as 60%, but never falling below 50% (Whittaker 2006).<sup>2</sup> As shown in **Figure A**, the link between the minimum wage and the subminimum wage has since been severed—but why?

The relatively proportional relationship ended with the Minimum Wage Increase Act of 1996. Signed into law by President Clinton, the act increased the federal minimum wage from \$4.25 to \$4.75 an hour, but froze the tipped minimum wage at \$2.13 per hour (Nelson 1997). The \$2.13 rate, originally instituted in 1991, has now been in place for about two decades. In 1996 and 2007, Congress

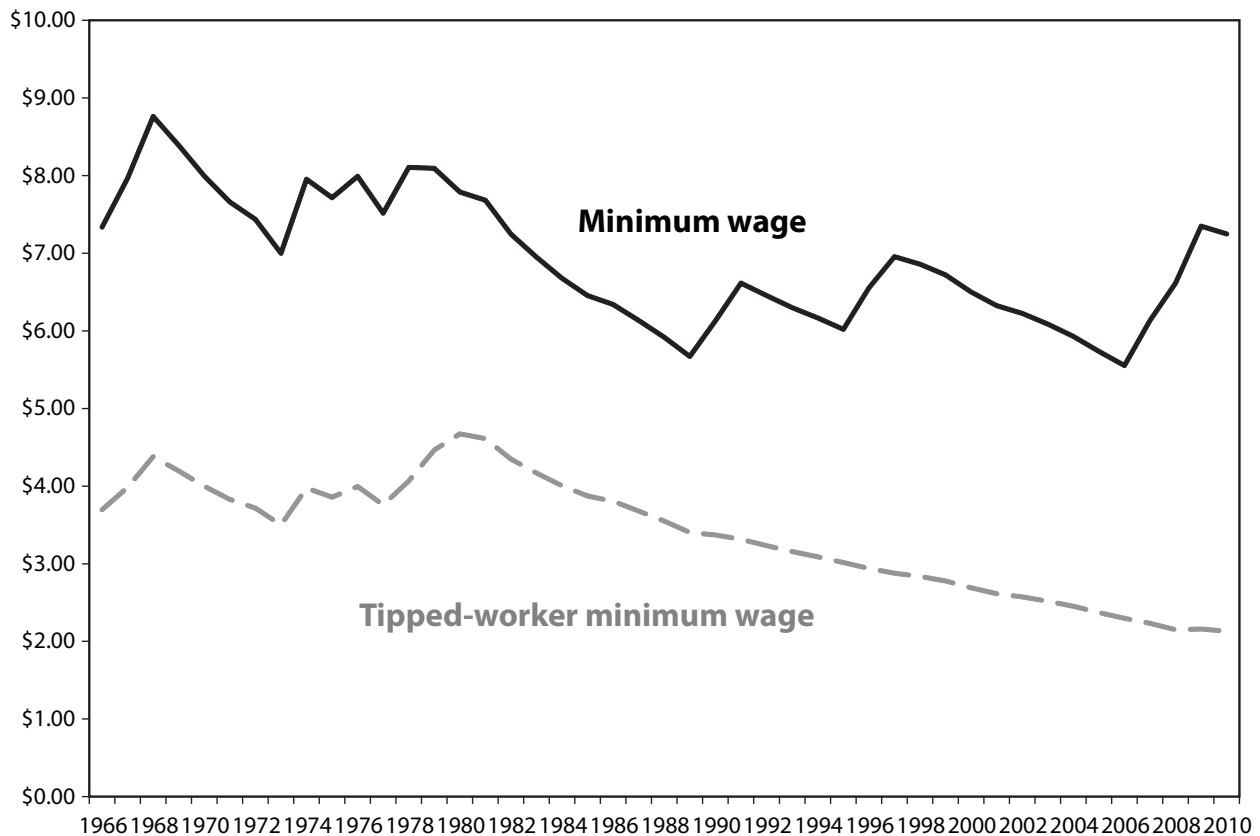
passed legislation increasing the minimum wage but not the tipped minimum wage. Inflation has eroded the purchasing power of the tipped minimum wage; as a result, the real value of the tipped minimum wage is at its lowest level since it was established in 1966 (see **Figure B**).

The 1996 action that froze the tipped wage at \$2.13 initiated a long period of continual erosion of the federal tipped minimum wage as a ratio of the federal minimum wage; it fell from 50% in 1966 to just 29.4% in 2011—more than a 20 percentage-point slide. The subsidy afforded employers (\$5.12) is now more than twice as much as the base wage given to tipped workers.

Unfortunately, although there are several legal requirements that apply to tipped employees, the two most relevant do little to ensure that tipped workers receive a

**FIGURE B**

**Real value of minimum wage and tipped-worker minimum wage, 1966-2010**



**NOTE:** As of December 31 of each year, in 2010 dollars.

**SOURCE:** Authors' analysis of Fair Labor Standards Act and amendments.

steady income. First, legislation originally enacted in 1966 required that a worker had to customarily and regularly earn at least \$20 a month in tips to qualify for the tip credit. This was raised to \$30 a month in 1978. Adjusted for inflation, that \$20 minimum should now be about \$115. Because the strength of this protection has eroded over time, a worker's paycheck can now vary wildly depending on the fluctuations of customer tips.

Second, if an employee's tips combined with employer-paid wages of at least \$2.13 an hour do not equal the minimum wage of \$7.25 per hour in a work week, the employer must cover the difference. This requirement is very difficult to enforce, and the lack of enforcement constitutes one of many minimum wage and tipped worker violations (Bernhardt et al. 2009).

Many tipped workers are unaware that their tips and hourly wages must add up to at least the minimum wage. At the same time, employers are unlikely to ensure that their workers are paid appropriately—it is up to the employees to know and understand this law. In practice, workers would need to keep track of exactly how much they received in tips during a work week and how many hours they worked—and if they were short they would have to ask their employer for additional wages. Even when employees file official complaints, employers rarely change their practices. In 2009 only 30% of employers that had violated the Fair Labor Standards Act were in compliance by a later investigation (U.S. Department of Labor 2009). The Department of Labor's Wage and Hour division, which is responsible for enforcing these laws, recently was criticized for leaving "low wage workers vulnerable to wage theft" as a result of "inadequate investigations and poor complaint intake process" (Kutz and Meyer 2009).

## States act in light of federal inaction

Just as individual states can set binding state minimum wages that are higher than the federal minimum wage, they can establish tipped minimum wages that are higher than the federal floor. Many have, producing a range of subminimum base wages for tipped workers across the country which also changes the tip credit amount that employers are allowed to claim.

Basically, the tip credit is an employer subsidy provided by customers through their tips which decreases labor costs. The tip amount that may be 'credited' toward an employee's wage—the tip credit—depends on two factors. First, whether an employer is located in a state that has a full-, partial- or no-tip credit provision. *Full-tip credit* states take advantage of the maximum allowable tip credit, thus enabling payment of the lowest subminimum wage (\$2.13 per hour, the federal tipped minimum wage), as long as that wage plus tips add up to the binding state or federal minimum wage. A *partial-tip credit* state has a subminimum wage that is above the \$2.13 federal tipped minimum but below the binding state or federal minimum wage, thus tapping less than the allowable tip credit. States that require employers to pay tipped workers the binding regular minimum wage are referred to as *no-tip credit* states. The second factor that determines the size of a tip credit is whether the binding regular minimum wage is the federal minimum wage or a higher state minimum wage.

The scenarios are always changing as federal and state minimum wages and state tipped-minimum wages change. **Table 1** depicts the six possible categories (three tip-credit and two minimum wage possibilities) and how many states fall into each category. **Figure C** provides a spatial depiction of the three tip credit scenarios. As of January, 2011, the \$7.25 federal minimum wage was in effect in the overwhelming majority of states (35), and just 16 states had higher binding minimum wages<sup>3</sup>. In 2011, there are 18 full-tip credit states, 26 partial-tip credit states, and seven no-tip credit states.<sup>4</sup>

Just six states have both no-tip credit laws and minimum wages set above the federal minimum wage. Of the 26 partial-tip credit states (shown in light gray in Figure C), 11 had minimum wages above the federal level, and 15 did not. New Mexico was the only full-tip credit state that had a binding state minimum wage.

The state examples presented at the beginning of this brief illustrate the various scenarios. Indiana mirrors the federal policy: It is a full-tip credit state—the binding minimum wage is the federal floor (\$7.25) and the minimum tipped wage is \$2.13, providing a tip credit of \$5.12 to employers. Colorado is a partial-tip credit state—the state minimum wage of \$7.36 is binding, and the tipped

**TABLE 1**

**States by minimum wage level and tip-credit law 2011**

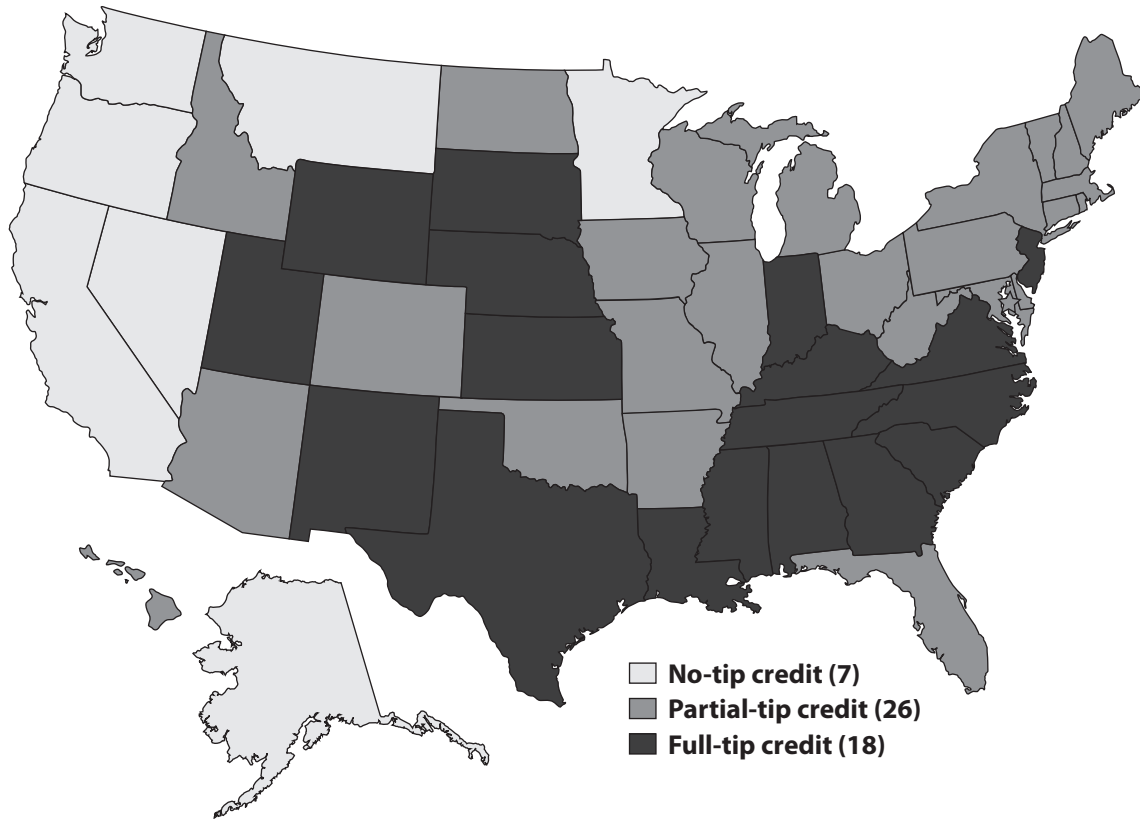
|  | Tip-credit law in state |      |         |    |
|--|-------------------------|------|---------|----|
|  | All                     | Full | Partial | No |
| All states                                 | 51                      | 18   | 26      | 7  |
| State minimum wage set to federal level    | 35                      | 17   | 17      | 1  |
| State minimum wage set above federal level | 16                      | 1    | 9       | 6  |

**NOTE:** Totals reflect 50 states plus the District of Columbia for the first quarter of 2011.

**SOURCE:** Authors' analysis of U.S. Department of Labor data.

**FIGURE C**

**Tip credit laws by state**



**NOTE:** States and tip credit amounts are listed in Table A2.

**SOURCE:** Authors' analysis of U.S. Department of Labor data.

wage is \$4.34, providing employers with a \$3.02 tip credit. Washington is a no-tip credit state and has the highest state minimum (thus tipped-minimum) wage of \$8.67. Other examples include:

- Connecticut is a partial-tip credit state with a state minimum wage of \$8.25 and a tipped wage of \$5.69, which provides an employer tip credit of \$2.56. The tipped wage is 69% of the state minimum wage.

- Oklahoma adheres to the federal minimum wage of \$7.25, but the tipped wage—\$3.63—is kept at 50% of the minimum wage, thus it automatically increases when the minimum wage is increased.
- Colorado, Connecticut, and Washington have tipped wages that are 59%, 69%, and 100% of their state minimum wages, respectively (see Appendix Table A2 for a complete list of states).

## Who are tipped workers?

We use the 2008 and 2009 Current Population Surveys to analyze the demographics of tipped workers (see Appendix Table A1 for details). Our definition of tipped workers includes waiters, bartenders, gaming service workers, barbers, hairdressers, and other personal appearance workers. By this definition, there are approximately 3.3 million tipped workers in the United States, roughly 2 million of which are waiters.<sup>5</sup> **Table 2** compares the demographic distribution of the overall workforce with tipped workers and specifically with waiters. We single out waiters

because they make up more than 60% of all tipped workers and because most waiters are tipped workers.

As the table indicates, tipped workers are more likely to be less educated, young, and female, compared with the overall workforce. About 39% of the overall workforce lacks more than a high school education, compared with around 47% of tipped workers and of waiters. Only 4% of the overall workforce is under 20 years old, compared with 12% of tipped workers and 18% of waiters. Although tipped workers, especially waiters, are disproportionately young, one in three waiters are at least 30 years old. More than 70% of tipped workers are women, compared with just under half of the overall workforce. Tipped workers, especially waiters, are less likely to be black, a demographic group that is under-represented in this line of work compared with its representation in the overall workforce.

Not only are the 3.3 million tipped workers a substantial share of the workforce, their numbers have grown steadily over the past 10 years and even over the 2007-2009 recessionary period.<sup>6</sup> From 2007 through

**TABLE 2**

### Distribution of all workers, tipped workers, and waiters by demographic groups

|                  | Demographic           | Total workforce | Tipped workers* | Waiters |
|------------------|-----------------------|-----------------|-----------------|---------|
| <b>Sex</b>       | Female                | 48.6%           | 72.9%           | 72.4%   |
|                  | Male                  | 51.4            | 27.1            | 27.6    |
| <b>Age</b>       | Under 20              | 4.0             | 12.0            | 18.1    |
|                  | 20 to 29              | 21.9            | 43.1            | 48.5    |
|                  | 30 to 39              | 22.1            | 19.3            | 14.5    |
|                  | 40 to 49              | 23.7            | 14.3            | 11.2    |
|                  | 50 or older           | 28.3            | 11.4            | 7.7     |
| <b>Education</b> | Less than high school | 10.2            | 13.9            | 17.2    |
|                  | High school           | 28.6            | 33.1            | 30.2    |
|                  | Some college          | 29.5            | 40.6            | 41.0    |
|                  | Bachelor's or higher  | 31.7            | 12.3            | 11.5    |
| <b>Race</b>      | White                 | 68.0            | 67.0            | 69.6    |
|                  | Black                 | 11.1            | 7.8             | 6.9     |
|                  | Hispanic              | 14.4            | 13.6            | 15.3    |
|                  | Other                 | 6.5             | 11.6            | 8.2     |

\* Tipped workers as defined in Table A1.

**SOURCE:** Authors' analysis of 2008-2009 Current Population Survey.



TABLE 3

### Median wage of all workers, tipped workers, and waiters by demographic groups

|                  | Demographic           | All workers | Tipped workers | Waiters |
|------------------|-----------------------|-------------|----------------|---------|
|                  | All                   | \$15.59     | \$9.87         | \$9.22  |
| <i>Sex</i>       | Female                | 14.24       | 9.72           | 9.04    |
|                  | Male                  | 17.25       | 10.22          | 9.87    |
| <i>Age</i>       | Under 20              | 7.90        | 7.78           | 7.77    |
|                  | 20 to 29              | 12.07       | 9.90           | 9.72    |
|                  | 30 to 39              | 17.13       | 10.40          | 9.99    |
|                  | 40 to 49              | 18.34       | 10.76          | 10.13   |
|                  | 50 or older           | 17.87       | 10.52          | 9.67    |
| <i>Education</i> | Less than high school | 9.69        | 8.00           | 7.93    |
|                  | High school           | 13.18       | 9.82           | 9.17    |
|                  | Some college          | 14.77       | 10.04          | 9.65    |
|                  | Bachelor's or higher  | 24.56       | 12.62          | 12.18   |
| <i>Race</i>      | White                 | 17.01       | 9.97           | 9.23    |
|                  | Black                 | 13.14       | 9.88           | 8.35    |
|                  | Hispanic              | 12.16       | 9.22           | 9.11    |
|                  | Other                 | 17.16       | 9.84           | 10.03   |

SOURCE: Authors' analysis of 2008-2009 Current Population Survey.

2009, the economy lost more than 5 million jobs but the number of tipped workers grew by about 140,000 and the number of waiters grew by about 68,000. Since 2000, the number of tipped workers has increased 15.5% and the number of waiters increased 7.5%—increases which far exceeded the 1.8% growth in the overall workforce.

The Bureau of Labor Statistics projects that the occupation sector of Food Preparation and Serving will add over a million jobs—one of the largest projected occupational increases across occupations—from 2008 to 2018. Of the top 20 growth sectors, the Food Preparation and Serving sector had the lowest median wages—just \$16,430 annually in 2008 (U.S. Department of Labor 2011).

## Labor market outcomes of tipped workers

In addition to their different demographic characteristics, tipped workers are paid much less on average than other workers, as shown in **Table 3**. The table depicts worker

earnings including tips—if tips were excluded, their hourly wages would actually be far lower than what is reported here. The typical tipped worker earns \$9.87 an hour compared with \$15.59 for the typical worker overall. Differences remain even among workers of similar education, age, or race. Although women make up the majority of tipped workers they earn, on average, \$0.50 less per hour than male tipped workers and \$0.83 less than male waiters.

Low wages for tipped workers in part derive from the lower minimum wages applied to tipped workers. A comparison of workers from states with varying levels of mandated tipped minimum wages shows that tipped wage policies have real impacts on workers. **Table 4** depicts the distribution of the working-age population in the United States by the level of the minimum wage for tipped workers by state. In this and following tables, states are slotted into one of three categories: states in which the federal minimum for tipped workers is binding (\$2.13) are counted in the “low” tipped wage group; states

**TABLE 4**

**Distribution of workers by level of tipped minimum wage**

| Minimum wage for tipped workers |  |                                       |
|---------------------------------|--|---------------------------------------|
| <i>Low (\$2.13)</i>             | <i>Medium (\$2.13+ to below regular)</i> | <i>Equal treatment (= to regular)</i> |
| 30.8%                           | 50.5%                                    | 18.7%                                 |

**NOTE:** Percentages reflect 50 states and the District of Columbia.

A tipped minimum wage level of *low* means the tipped minimum wage is \$2.13 (the federal tipped minimum wage), regardless of the level of the binding regular minimum wage applicable in the state; *medium* includes tipped minimum wages that are greater than \$2.13 but less than the binding regular minimum wage; and *equal treatment* refers to tipped minimum wages that are equal to the binding regular minimum wage.

**SOURCE:** Authors' analysis of 2008-2009 Current Population Survey.

that offer employers a partial tip credit—in which workers earn more than \$2.13 but less than the binding minimum wage—are counted in the “medium” tipped wage group; and states that have the same minimum wage for tipped workers as for the rest of the workforce (states that don’t offer employers a tip credit) are considered “equal treatment” states (see Appendix Table A3 for details). The vast majority of workers, more than 80%, work in states where the subminimum wage for tipped workers is below the binding regular minimum wage. Less than one in five

workers are in states that require the tipped and regular minimum wages to be equal.

Tip credit and tipped minimum wage laws have a measurable impact on the wages of tipped workers. As **Table 5** shows, tipped workers in states with the lowest tipped minimum wage earn much less (\$9.31) than tipped workers in states with equal treatment (\$10.80). This earnings disadvantage also holds true for waiters, who earn just \$8.77 an hour in states with the lowest tipped minimum wage, compared with \$10.27 in equal

**TABLE 5**

**Median wage of all workers, tipped workers, and waiters by level of tipped minimum wage**

|                       | Tipped minimum wage |  |                                       |
|-----------------------|---------------------|--|---------------------------------------|
|                       | <i>Low (\$2.13)</i> | <i>Medium (\$2.13+ to below regular)</i> | <i>Equal treatment (= to regular)</i> |
| <b>All workers</b>    | \$14.93             | \$15.67                                  | \$16.92                               |
| <i>Female</i>         | 13.34               | 14.31                                    | 15.29                                 |
| <i>Male</i>           | 16.62               | 17.37                                    | 18.42                                 |
| <b>Tipped workers</b> | 9.31                | 9.88                                     | 10.80                                 |
| <i>Female</i>         | 9.09                | 9.80                                     | 10.10                                 |
| <i>Male</i>           | 9.91                | 10.06                                    | 12.10                                 |
| <b>Waiters</b>        | 8.77                | 9.14                                     | 10.27                                 |
| <i>Female</i>         | 8.51                | 9.02                                     | 9.95                                  |
| <i>Male</i>           | 9.21                | 9.68                                     | 11.78                                 |

**NOTE:** States grouped by tipped minimum wages are listed in Table A3.

A tipped minimum wage level of *low* means the tipped minimum wage is \$2.13 (the federal tipped minimum wage), regardless of the level of the binding regular minimum wage applicable in the state; *medium* includes tipped minimum wages that are greater than \$2.13 but less than the binding regular minimum wage; and *equal treatment* refers to tipped minimum wages that are equal to the binding regular minimum wage.

**SOURCE:** Authors' analysis of 2008-2009 Current Population Survey.

**TABLE 6**

**Poverty rates of all workers, tipped workers, and waiters by level of tipped minimum wage**

|                | Tipped minimum wage |              |                                   |                                |
|----------------|---------------------|--------------|-----------------------------------|--------------------------------|
|                | All                 | Low (\$2.13) | Medium (\$2.13+ to below regular) | Equal treatment (= to regular) |
| All workers    | 6.3%                | 6.7%         | 6.0%                              | 6.7%                           |
| Tipped workers | 14.5                | 16.1         | 14.6                              | 12.1                           |
| Waiters        | 16.7                | 19.4         | 16.2                              | 13.6                           |

**NOTE:** Percentages reflect 50 states and the District of Columbia; states grouped by tipped minimum wages are listed in Table A3.

A tipped minimum wage level of *low* means the tipped minimum wage is \$2.13 (the federal tipped minimum wage), regardless of the level of the binding regular minimum wage applicable in the state; *medium* includes tipped minimum wages that are greater than \$2.13 but less than the binding regular minimum wage; and *equal treatment* refers to tipped minimum wages that are equal to the binding regular minimum wage.

**SOURCE:** Authors' analysis of 2007-2009 March Current Population Survey.

treatment states. The table also shows that wages for all workers are higher in equal treatment states than in low tipped minimum wage states. However, the relative gains for tipped workers and waiters in equal treatment states are larger than gains for all workers in those states. For example, tipped workers in equal treatment states earn 16% more than in low tipped minimum states compared with a 13% gain for all workers. Looking at the gains separately for men and for women; male tipped workers and waiters actually gain more from higher tipped minimum wages than female workers. Male tipped workers in equal treatment states earn about 22% more per hour than male tipped workers in low tipped minimum wage states, but female tipped workers earn only about 11% more. Similarly, male waiters earn about 28% more in equal treatment states while female waiters earn 17% more.

The low wages paid to tipped workers correspond to relatively high poverty rates. As **Table 6** shows, only 6.3% of workers in the United States fell under the federal poverty line compared with 14.5% of tipped workers and 16.7% of waiters. However, the poverty rates for tipped workers varied widely depending on their state's tipped minimum wage. Poverty rates for tipped workers were lower in equal treatment states, which have higher base wages for tipped workers. The poverty rate for tipped workers in states with equal treatment was 12.1%, compared with 16.1% in states with the lowest tipped minimum wage. This trend

holds for waiters; the poverty rate for waiters in states with equal treatment was 13.6%, compared with 19.4% in low tipped minimum wage states. With regard to poverty, the benefits of a high minimum wage for tipped workers are clear: although the poverty rate for all workers remains fairly constant regardless of the tipped minimum wage, the poverty rates of tipped workers and waiters falls steadily as the tipped minimum wage increases.

Although they have much lower poverty rates and higher wages than low and medium tipped minimum wage states, equal treatment states have similar levels of tipped workers and waiters. **Table 7** shows that tipped workers represent 2.5% of the total workforce in low tipped minimum wage states, 2.6% in medium tipped minimum wage states, and 2.7% in equal treatment states. The share of waiters (1.6%) is identical across all three tipped wage scenarios. These results suggest that providing equal wage treatment to tipped workers does not hurt their employment opportunities.

In addition to low pay and the greater likelihood of being in poverty, tipped workers also are much less likely to have many workplace benefits. The Bureau of Labor Statistics National Compensation Survey (NCS) reports benefits for all private sector workers and benefits by various establishment and worker characteristics, including a breakout for "Accommodation and Food Services."<sup>77</sup> The NCS reports that 71% of private sector workers have

**TABLE 7**

**Number and share of tipped workers by level of tipped minimum wage**

|                         | Tipped minimum wage |  |                                       |
|-------------------------|---------------------|--|---------------------------------------|
|                         | <i>Low (\$2.13)</i> | <i>Medium (\$2.13+ to below regular)</i> | <i>Equal treatment (= to regular)</i> |
| <i>All workers</i>      | 38,993,086          | 63,959,835                               | 23,687,476                            |
| <i>Tipped workers</i>   | 977,424             | 1,663,784                                | 635,589                               |
| <i>Waiters</i>          | 626,393             | 1,012,661                                | 367,356                               |
| <i>% Tipped workers</i> | 2.5%                | 2.6%                                     | 2.7%                                  |
| <i>% Waiters</i>        | 1.6                 | 1.6                                      | 1.6                                   |

**NOTE:** States grouped by tipped minimum wages are listed in Table A3.

A tipped minimum wage level of *low* means the tipped minimum wage is \$2.13 (the federal tipped minimum wage), regardless of the level of the binding regular minimum wage applicable in the state; *medium* includes tipped minimum wages that are greater than \$2.13 but less than the binding regular minimum wage; and *equal treatment* refers to tipped minimum wages that are equal to the binding regular minimum wage.

**SOURCE:** Authors' analysis of 2008-2009 Current Population Survey.

access to some type of health care, compared with just 37% of workers in food services. Although 62% and 77% of private sector workers have access to paid sick leave and paid vacations, respectively, only 29% of food services workers get paid sick leave and only 50% get paid vacations. Retirement benefits are provided for 65% of private sector workers but for just 32% of workers in food services (U.S. Department of Labor 2010). While the percent of workers in the broad category of Accommodation and Food Services (which includes managers, supervisors, etc.) who have access to these benefits is very low, the percent of tipped workers or waiters with access is likely even lower (if such data were available).

**Conclusion**

This brief explored the history and rationale for the sub-minimum wage earned by workers who receive tips for their services. The federal tipped minimum wage was originally 50% of the regular minimum wage. Today, as the past two decades, the subminimum wage is \$2.13 an hour and it has eroded to just 29.4% of the current minimum wage paid to all other workers. However, though the federal tipped minimum wage is \$2.13, many states have subminimums that surpass \$2.13. This state level variation shows us that tipped workers receive higher wages and have lower levels of poverty where the tipped minimum wage is relatively high.

Often, discussion and action surrounding the minimum wage ignores or excludes tipped workers and the sub-minimum wage they receive. Yet this is a growing occupational sector and effective policy could transform the low-wage, high-poverty jobs in the sector into better quality jobs. A lot of tipped worker employment is the epitome of “just-in-time” employment—adjusting employee levels on an immediate basis in response to customer flows. While this is good for the employer, it is far less beneficial for workers because it may produce extremely unpredictable work hours, and thus pay. Wage volatility is further exacerbated by workers’ reliance on tips from customers, which also vary considerably.

Effective policy would improve the lives of the low-wage workers in the sector of tipped workers, who overwhelmingly are women. A first step would be to increase the federal subminimum wage as proposed in the WAGES Act introduced by Rep. Donna Edwards of Maryland and endorsed by Restaurant Opportunities Centers United—a national restaurant workers’ organization.<sup>8</sup> This Act would increase the tipped minimum wage from \$2.13 to 70% of the regular minimum wage by 2012; the tipped minimum wage would increase to \$5.08, based on the current minimum wage of \$7.25. Though this measure itself would not guarantee quality jobs for all tipped workers, an increase in the base wage would affect a significant number of workers and it would

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help to keep some of them above the poverty threshold. The tipped wage should be pegged to at least 70% of the federal minimum wage.

The National Employment Law Project outlines several other policy recommendations, such as strengthening protections against tip stealing and girding to defeat attempts to erode job quality and roll back wages and protections (Nayak and Sonn 2009). As an example of threats to tipped worker wages, Gov. Tim Pawlenty of Minnesota pledged to veto minimum wage increases unless lawmakers implement a tip credit, which would amount to a pay cut for tipped workers (Duchscherer 2008). Although Minnesota hasn't yet passed such a tip credit bill, many other states are considering similar bills that would reduce the wages of some of our country's lowest paid workers.

Workplace benefits of tipped workers should also be enhanced. There is no reason that tipped workers shouldn't get the same workplace benefits provided to

workers in other occupations. That philosophy underpins, for example, the Healthy Families Act. The act would ensure that tipped workers, and almost all other workers, are able to earn paid sick time, further increasing their economic security. Policies that recognize and address the instabilities and inequities of this two-tiered wage system should be considered.

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## Appendix Table A1: Occupations

The Current Population Survey does not explicitly identify tipped workers. Rather, there is a variable that indicates workers who regularly receive tips, overtime, or commissions. In order to identify workers who are likely to be tipped, we first looked at all occupations which had a high share receiving tips, overtime, or commissions. From this group, we selected those occupations which were most likely to receive tips, as shown in the table below.

TABLE A 1

### Occupations of tipped workers

| Occupation  | All workers in occupation | Percent of total |
|---|---------------------------|------------------|
| <b>All tipped workers</b>                             | <b>3,276,797</b>          | <b>100%</b>      |
| <i>Massage therapists</i>                             | 73,116                    | 2.2              |
| <i>Bartenders</i>                                     | 374,066                   | 11.4             |
| <i>Waiters and waitresses</i>                         | 2,006,409                 | 61.2             |
| <i>Gaming services workers</i>                        | 114,535                   | 3.5              |
| <i>Barbers</i>  | 41,011                    | 1.3              |
| <i>Hairdressers, hairstylists, and cosmetologists</i> | 476,657                   | 14.5             |
| <i>Miscellaneous personal appearance workers</i>      | 191,002                   | 5.8              |

SOURCE: Authors' analysis of 2008-2009 Current Population Survey.

## Appendix Table A2: State tip credits

**TABLE A2**

### Tip credit to employers by state, as of Jan. 1, 2011

| State                       | Tipped minimum wage | Regular minimum wage | Ratio of tipped to regular | Tip credit    |
|-----------------------------|---------------------|----------------------|----------------------------|---------------|
| <b>United States</b>        | <b>\$2.13</b>       | <b>\$7.25</b>        | <b>29.4%</b>               | <b>\$5.12</b> |
| <i>Alabama</i>              | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>Alaska</i>               | 7.75                | 7.75                 | 100.0                      | 0.00          |
| <i>Arizona</i>              | 4.25                | 7.25                 | 58.6                       | 3.00          |
| <i>Arkansas</i>             | 2.63                | 7.25                 | 36.3                       | 4.62          |
| <i>California</i>           | 8.00                | 8.00                 | 100.0                      | 0.00          |
| <i>Colorado</i>             | 4.34                | 7.36                 | 59.0                       | 3.02          |
| <i>Connecticut</i>          | 5.69                | 8.25                 | 69.0                       | 2.56          |
| <i>Delaware</i>             | 2.23                | 7.25                 | 30.8                       | 5.02          |
| <i>District of Columbia</i> | 2.77                | 8.25                 | 33.6                       | 5.48          |
| <i>Florida</i>              | 4.23                | 7.25                 | 58.3                       | 3.02          |
| <i>Georgia</i>              | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>Hawaii</i>               | 7.00                | 7.25                 | 96.6                       | 0.25          |
| <i>Idaho</i>                | 3.35                | 7.25                 | 46.2                       | 3.90          |
| <i>Illinois</i>             | 4.95                | 8.25                 | 60.0                       | 3.20          |
| <i>Indiana</i>              | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>Iowa</i>                 | 4.35                | 7.25                 | 60.0                       | 2.90          |
| <i>Kansas</i>               | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>Kentucky</i>             | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>Louisiana</i>            | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>Maine</i>                | 3.75                | 7.50                 | 50.0                       | 3.75          |
| <i>Maryland</i>             | 3.63                | 7.25                 | 50.1                       | 3.62          |
| <i>Massachusetts</i>        | 2.63                | 8.00                 | 32.9                       | 5.37          |
| <i>Michigan</i>             | 2.65                | 7.40                 | 35.8                       | 4.75          |
| <i>Minnesota</i>            | 7.25                | 7.25                 | 100.0                      | 0.00          |
| <i>Mississippi</i>          | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>Missouri</i>             | 3.63                | 7.25                 | 50.1                       | 3.62          |
| <i>Montana</i>              | 7.35                | 7.35                 | 100.0                      | 0.00          |
| <i>Nebraska</i>             | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>Nevada</i>               | 7.25                | 7.25                 | 100.0                      | 0.00          |
| <i>New Hampshire</i>        | 3.27                | 7.25                 | 45.1                       | 3.98          |
| <i>New Jersey</i>           | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>New Mexico</i>           | 2.13                | 7.50                 | 28.4                       | 5.37          |
| <i>New York</i>             | 4.65                | 7.25                 | 64.1                       | 2.60          |
| <i>North Carolina</i>       | 2.13                | 7.25                 | 29.4                       | 5.12          |
| <i>North Dakota</i>         | 4.86                | 7.25                 | 67.0                       | 2.39          |

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**TABLE A2 (CONT.)**

**Tip credit to employers by state, as of Jan. 1, 2011**

| <b>State</b>          | <b>Tipped minimum wage</b> | <b>Regular minimum wage</b> | <b>Ratio of tipped to regular</b> | <b>Tip credit</b> |
|-----------------------|----------------------------|-----------------------------|-----------------------------------|-------------------|
| <i>Ohio</i>           | \$3.70                     | \$ 7.40                     | 50.0 %                            | \$3.70            |
| <i>Oklahoma</i>       | 3.63                       | 7.25                        | 50.1                              | 3.62              |
| <i>Oregon</i>         | 8.50                       | 8.50                        | 100.0                             | 0.00              |
| <i>Pennsylvania</i>   | 2.83                       | 7.25                        | 39.0                              | 4.42              |
| <i>Rhode Island</i>   | 2.89                       | \$ 7.40                     | 39.1                              | 4.51              |
| <i>South Carolina</i> | 2.13                       | 7.25                        | 29.4                              | 5.12              |
| <i>South Dakota</i>   | 2.13                       | 7.25                        | 29.4                              | 5.12              |
| <i>Tennessee</i>      | 2.13                       | 7.25                        | 29.4                              | 5.12              |
| <i>Texas</i>          | 2.13                       | 7.25                        | 29.4                              | 5.12              |
| <i>Utah</i>           | 2.13                       | 7.25                        | 29.4                              | 5.12              |
| <i>Vermont</i>        | 3.95                       | 8.15                        | 48.5                              | 4.20              |
| <i>Virginia</i>       | 2.13                       | 7.25                        | 29.4                              | 5.12              |
| <i>Washington</i>     | 8.67                       | 8.67                        | 100.0                             | 0.00              |
| <i>West Virginia</i>  | 5.80                       | 7.25                        | 80.0                              | 1.45              |
| <i>Wisconsin</i>      | 2.33                       | 7.25                        | 32.1                              | 4.92              |
| <i>Wyoming</i>        | 2.13                       | 7.25                        | 29.4                              | 5.12              |

**NOTE:** For states that do not have a minimum wage or a minimum wage that is less than the federal minimum, we assigned the federal standards because most workers in these states are legally required to be paid the federal rates due to restrictions; the state laws exclude from coverage any employment that is subject to the Federal Fair Labor Standards Act when the federal rate is greater than the state rate.

**SOURCE:** Authors' analysis of U.S. Department of Labor data.



## Appendix Table A3: States grouped by tipped minimum wage

In grouping states by their tipped minimum wage, we combined data from several years in order to get large sample sizes. For the demographic and wage tables, we used 2008-2009 data, and for the poverty tables—which use a different source—we used 2007-2009 data. During this time, the minimum wage laws in some states changed. We chose to assign states to a group based on what their tipped minimum wage was for the majority of this time period. For example, North Carolina decreased their tipped minimum wage from \$3.13 in 2007 to \$2.13 in 2009, but we put them in the medium tipped minimum wage group. We also chose to assign Hawaii to the equal treatment category, because their minimum wage for tipped workers (\$7.00) is almost exactly the minimum for other workers (\$7.25).

**TABLE A3**

### States grouped by level of tipped minimum wage

| Tipped minimum wage as of January 1 |                       | 2008   | 2009   | 2010   | 2011   |
|-------------------------------------|-----------------------|--------|--------|--------|--------|
| <b>Group 1: Low (\$2.13)</b>        | <i>Alabama</i>        | \$2.13 | \$2.13 | \$2.13 | \$2.13 |
| <b>18 states</b>                    | <i>Georgia</i>        | 2.13   | 2.13   | 2.13   | 2.13   |
| <b>Full-tip credit</b>              | <i>Indiana</i>        | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Kansas</i>         | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Kentucky</i>       | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Louisiana</i>      | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Mississippi</i>    | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Nebraska</i>       | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>New Jersey</i>     | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>New Mexico</i>     | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>North Carolina</i> | 2.43   | 2.13   | 2.13   | 2.13   |
|                                     | <i>South Carolina</i> | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>South Dakota</i>   | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Tennessee</i>      | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Texas</i>          | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Utah</i>           | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Virginia</i>       | 2.13   | 2.13   | 2.13   | 2.13   |
|                                     | <i>Wyoming</i>        | 2.13   | 2.13   | 2.13   | 2.13   |

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**TABLE A3 (CONT.)**

**States grouped by level of tipped minimum wage**

| <b>Tipped minimum wage as of January 1</b>        |                             | <b>2008</b> | <b>2009</b> | <b>2010</b> | <b>2011</b> |
|---|-----------------------------|-------------|-------------|-------------|-------------|
| <b>Group 2: Medium (\$2.13+ to below regular)</b> | <i>Arizona</i>              | \$3.90      | \$4.25      | \$4.25      | \$4.25      |
| <b>26 states</b>                                  | <i>Arkansas</i>             | 2.63        | 2.63        | 2.63        | 2.63        |
| <b>Partial-tip credit</b>                         | <i>Colorado</i>             | 4.00        | 4.22        | 4.26        | 4.34        |
|   | <i>Connecticut</i>          | 5.41        | 5.52        | 5.69        | 5.69        |
|   | <i>Delaware</i>             | 2.23        | 2.23        | 2.23        | 2.23        |
|   | <i>District of Columbia</i> | 2.77        | 2.77        | 2.77        | 2.77        |
|   | <i>Florida</i>              | 3.77        | 4.19        | 4.23        | 4.23        |
|   | <i>Hawaii</i>               | 7.00        | 7.00        | 7.00        | 7.00        |
|   | <i>Idaho</i>                | 3.35        | 3.35        | 3.35        | 3.35        |
|   | <i>Illinois</i>             | 4.50        | 4.65        | 4.80        | 4.95        |
|   | <i>Iowa</i>                 | 4.35        | 4.35        | 4.35        | 4.35        |
|   | <i>Maine</i>                | 3.50        | 3.63        | 3.75        | 3.75        |
|   | <i>Maryland</i>             | 3.08        | 3.28        | 3.63        | 3.63        |
|   | <i>Massachusetts</i>        | 2.63        | 2.63        | 2.63        | 2.63        |
|   | <i>Michigan</i>             | 2.65        | 2.65        | 2.65        | 2.65        |
|   | <i>Missouri</i>             | 3.33        | 3.53        | 3.63        | 3.63        |
|   | <i>New Hampshire</i>        | 2.95        | 3.27        | 3.27        | 3.27        |
|   | <i>New York</i>             | 4.60        | 4.60        | 4.65        | 4.65        |
|   | <i>North Dakota</i>         | 3.92        | 4.39        | 4.86        | 4.86        |
|   | <i>Ohio</i>                 | 3.50        | 3.65        | 3.65        | 3.70        |
|   | <i>Oklahoma</i>             | 2.93        | 3.28        | 3.63        | 3.63        |
|   | <i>Pennsylvania</i>         | 2.83        | 2.83        | 2.83        | 2.83        |
|   | <i>Rhode Island</i>         | 2.89        | 2.89        | 2.89        | 2.89        |
|   | <i>Vermont</i>              | 3.72        | 3.91        | 3.91        | 3.95        |
|   | <i>West Virginia</i>        | 5.24        | 5.80        | 5.80        | 5.80        |
|   | <i>Wisconsin</i>            | 2.33        | 2.33        | 2.33        | 2.33        |
| <b>Group 3: Equal treatment (= to regular)</b>    | <i>Alaska</i>               | \$7.15      | \$7.15      | \$7.75      | \$7.75      |
| <b>7 states</b>                                   | <i>California</i>           | 8.00        | 8.00        | 8.00        | 8.00        |
| <b>No-tip credit</b>                              | <i>Minnesota</i>            | 6.15        | 6.55        | 7.25        | 7.25        |
|   | <i>Montana</i>              | 6.25        | 6.90        | 7.25        | 7.35        |
|   | <i>Nevada</i>               | 6.33        | 6.85        | 7.25        | 7.25        |
|   | <i>Oregon</i>               | 7.95        | 8.40        | 8.40        | 8.50        |
|   | <i>Washington</i>           | 8.07        | 8.55        | 8.55        | 8.67        |

**SOURCE:** Authors' analysis of data from the U.S. and individual state departments of labor.

## Endnotes

1. Other restrictions apply, such as the worker must make at least \$30 per week in tips; for additional information see: <http://www.dol.gov/esa/whd/state/tipped.htm>.
2. The 1938 Fair Labor Standards Act was amended in 1966 to require that the tipped wage be at least 50% of the minimum wage. This ratio varied from 50% to 60% over the following 30 years.
3. Here and elsewhere in the paper we include District of Columbia as a state. The number of states with higher minimum wages is much lower than in the recent past. Federal minimum wage increases of 70 cents in 2007, 2008, and 2009 “caught up” to many state minimums and changed the distribution dramatically. For example, prior to the federal increase in 2007, 30 states had minimum wages higher than the federal minimum of \$5.15, which had been at \$5.15 for a decade.
4. In the six states that index their minimum wages annually, information on 2011 changes can be found here: <http://www.wageandhourcounsel.com/2010/10/articles/minimum-wage/state-minimum-wages-in-2011/>
5. It is important to keep in mind that not all tipped workers have been identified because the Current Population Survey does not have a unique identifier for such a distinction. The CPS includes a variable that identifies persons who usually receive “overtime pay, tips or commissions.” Likely tipped workers were identified using this variable along with additional analysis. There are other workers, especially in the restaurant industry or food service occupations, such as bussers, delivery workers, and runners that may also be tipped workers—even though their tips may come indirectly, from wait staff, instead of directly from customers.
6. The recession was officially from December 2007 to June 2009. Figures in this paragraph for tipped workers (as defined in this brief) come from authors’ analysis of 2007-2009 CPS data.
7. The industry sector of Accommodation and Food Services captures many tipped workers but also non-tipped workers such as managers.
8. WAGES: Working for Adequate Gains for Employment in Services H.R. 2570.

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