Center on Wage and Employment Dynamics

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Should New York State Eliminate its Subminimum Wage?

Sylvia A. Allegretto

Sylvia A. Allegretto, Ph.D., is an economist and Chair of the Center on Wage and Employment Dynamics at the Institute for Research on Labor and Employment, University of California, Berkeley (allegretto@berkeley.edu). *The author is grateful for funding from the Ford Foundation.*

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Introduction

Low-wage workers and their supporters in New York received good news when the state enacted a new minimum wage bill in 2016. Minimums for New York City and the counties of Long Island and Westchester are now slated to be $15—and will be phased in by 2022 at the latest. The balance of New York State has annual increases scheduled for a final phase-in to $12.50 on the last day of 2020.[1]

Until rather recently, minimum wage policy and debate often left out the subminimum wage workforce that relies on tips as part of their wage.[2] In 2016, New York could have joined the ranks of the seven states that do not allow tipped workers to be paid a sub-wage, but wound up leaving them out of the new policy. In late 2017, however, Governor Cuomo unveiled a proposal to examine how economic justice would be strengthened if the state eliminated the subminimum wage (also known as the tipped minimum wage).[3] As a result, the NYS Department of Labor has scheduled public hearings across the state beginning in spring 2018. This brief examines the merits of such a policy for the State of New York.

First some background. Tipping is a custom imported from aristocratic Europe in the nineteenth century. It was originally opposed by Americans as undemocratic (Segrave 2009). The practice took root after the Civil War when business interests such as the Pullman Train Company hired former slaves and argued that they should not be paid a wage but compensated almost entirely through customers' tips (Bates 2001). While Pullman workers won the right to a standard minimum wage when the first national minimum wage law was enacted in 1938, restaurant and other service workers did not. The law contained an exemption for businesses not engaged in interstate commerce, including restaurants and retail.

The subminimum wage was institutionalized in the 1966 amendment to the Fair Labor Standards Act (FLSA). The 1966 amendment covered more workers under the FLSA umbrella, extending protections to hotel, restaurant, and other service workers who had previously been excluded. However, it also codified a two-tiered split in the nation's wage floor as it allowed for a subminimum wage to be paid to workers who "customarily and regularly receive tips." These workers comprised much of the newly protected workforce. The two-tiered system is dependent upon the tip credit provision—which represents how much of a worker's wage an employer can avoid paying out of pocket as long as customer tips plus the subminimum wage they do pay add up to the regular minimum wage.

The tip credit is the customer-subsidized portion of the wage bill—the difference between the regular minimum and the subminimum wage. At the federal level, the regular minimum wage is $7.25 per hour and the subminimum wage for tipped workers is $2.13 hour. Thus, in the 18 states that use the federal minimum wage, employers can take advantage of a $5.12 tip credit. In 1991, when the federal $2.13 subminimum wage was established, the tip credit amounted to 50 percent of the regular minimum wage. Today, the federal tip credit represents 71 percent of a tipped worker's wage, letting employers rely on customers to pay the bulk of their tipped worker labor costs. The federal minimum wage policy is woefully outdated, which is why a majority of states do not follow it.[4]

On the other end of the spectrum, there are seven states that do not allow for a subminimum wage to be paid to tipped workers (also referred to as a "no-tip credit provision")—and most of these states have regular minimums above $7.25 per hour—including California ($11.00) and Washington State ($11.50). In between, there are the 26 states (including Washington, D.C.) that still have a two-tiered minimum wage policy, but with a subminimum wage higher than $2.13, representing an array of partial-tip credit provisions.[5]

Currently, in Upstate New York the regular minimum wage is $10.40, in Long Island and Westchester it is $11, and in New York City it is $12 for businesses with fewer than 10 employers and $13 for businesses with 10 or more employees. The subminimum wage for most of New York is $7.50 and $8.65 ($8 for smaller restaurants) in New York City—which amounts to a tip credit provision ranging from $2.90 to $4.35. In other words, customer tips subsidize 28 to 33 percent of a tipped worker's hourly pay. In 2022, the tip credit across all of New York is scheduled to be 33 percent of the state's regular minimum wage, which represents a tip credit ranging from $4.15 to $5.00.

States that have set a subminimum wage above the federal $2.13 have many compelling reasons to do so. As reported in Allegretto and Cooper (2014), Robbins, Vogtman and Entmacher (2014), and in several reports by the National Women's Law Center, National Employment Law Project, and Restaurant Opportunities Centers United (2016), tipped workers, especially restaurant workers in the $2.13 states, are overwhelmingly a low-wage workforce that enjoy few workplace benefits and live disproportionately in poverty. Low job quality for tipped workers is often exacerbated by various workplace issues such as sexual harassment, discrimination, and unreliable schedules that can result in large fluctuations in pay.

New York is now considering eliminating the subminimum wage and joining the ranks of Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington. These states have thriving restaurant industries, where diners still tip at rates comparable to those in states where wait staff are paid subminimum wages. In these states, gratuities function as they are often intended to by customers—as a monetary "thank you" for good service, not as a replacement for employer-paid wages.

This paper examines the merits and expectations of eliminating the subminimum wage (e.g., eliminating the tip credit provision) in New York. The two-tiered wage system as described above is not well known or understood by the general public, nor are the unique aspects and challenges faced by those workers who rely on tips to make a living wage. This report delves into those issues, with a focus on the full-service restaurant industry as they employ most of the tipped workforce. The main points of this brief are summarized below.

Highlights

- The two-tiered wage system in all of its variations is not widely known or understood by the general public. At the federal level (followed by 18 states) the regular minimum wage is $7.25 and the subminimum wage for tipped workers is $2.13, which amounts to a tip credit—the portion of wages paid via customer tips—of $5.12 or 71%.
- Currently, Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington do not allow a subminimum wage for tipped workers. Employment growth in the full-service restaurant industry has outpaced private sector growth for each of these states over the past five years—by an average of five percent.
- Tipped workers in New York are typically low-wage earners. The median hourly wage for tipped workers in New York is currently $11.16. Bartenders and servers, who make up the largest share of the tipped workforce, typically earn about $11.00.
- The median age of tipped workers in New York is 35 and the vast majority (77 percent) is at least 25 years old. The tipped workforce across all industries in New York is majority female (52 percent), and of those women more than one in three (37 percent) have children. The tipped restaurant workforce is dominated by women (57 percent).
- Tipped workers live in poverty at more than twice the rate of other working New Yorkers—15 percent compared to 6.2 percent, respectively.
- The average full-time, year-round, female tipped worker is paid 78 percent of what her male counterpart earns. Over the course of a lifetime this amounts to a gender tax of $261,000. Even as most wait staff are female, males are more likely to work at high-end establishments. A higher base pay for tipped workers will help ameliorate this gender-based pay inequity.
- The subminimum wage policy is difficult for regulators to enforce and creates unnecessary liabilities for employers: restaurant wage theft lawsuits comprise approximately 23 percent of the total Fair Labor Standards Act cases in New York City. The figure for Los Angeles, a comparable city that has no subminimum wage, is only eight percent.
- The seven states that do not allow for a subminimum wage have thriving restaurant industries, where diners still tip at rates comparable to those in states where wait staff are paid subminimum wages. In these states, gratuities function as they are often intended to by customers—as a monetary "thank you" for good service, not as a replacement for employer-paid wages.
- The subminimum wage for tipped workers can be eliminated with a minimal impact on the costs of business for full-service restaurant. By the time it has been fully implemented, New York's 2016 minimum wage increase policy will have increased average restaurant operating costs by about 7.1 percent. Had that policy included raising the base pay of the tipped workforce to the full minimum wage (i.e., eliminating the subminimum wage), full-service restaurants would have incurred an additional 1.2 percent increase in operating costs.

Economic Outcomes

To examine the implications of eliminating the subminimum wage for tipped workers in New York, I explore differences in economic outcomes across states that set different base-wages for tipped workers, review the impact of subminimum wages on restaurant businesses, and demonstrate that eliminating the subminimum wage for tipped workers would create substantial benefits for low-wage workers. I conclude that the substantial economic benefits for tipped restaurant workers, a reduction in employer liability for restaurant owners, and the positive effects for the tipped workforce by race and gender make a compelling case for New York to adopt policy that eliminates the subminimum wage for tipped workers.

Full-Service Restaurants

In this section, I evaluate the likely effects of the elimination of the subminimum wage on full-service restaurants. It is often claimed that the industries that employ tipped workers—primarily full-service restaurants and bars—would languish without a subminimum wage, to the detriment of their workforce. However, these claims are inconsistent with the realities observed in the restaurant industry across states with differing tipped wage policies. Successful business models exist in small- and large-tip credit scenarios. Chain restaurant outlets located in states that pay the federal $2.13 are profitable as are those same chains located in states that don't allow a subminimum wage and where the regular minimum wage is much higher than $7.25.

Much of the literature on minimum wages and the restaurant industry has shown that minimum wage increases over the last three decades have had little to no effect on employment (Allegretto et al. 2017). How can wages increase without causing significant layoffs? A careful cost-benefit analysis reveals that the costs to employers of raising the tipped and minimum wages can be offset by a variety of factors, such as a boost in general consumer demand due to higher wages and more disposable income; increased workforce productivity; and employer savings via a decrease in both staff turnover and training costs (Dube et al. 2016). To the extent that the higher labor costs are not offset by these channels alone, employers can pass on some of the remaining costs to customers by raising menu prices by small amounts (Allegretto and Reich 2018).

In 2016, my colleagues and I performed a *prospective* cost-benefit analysis of the original minimum wage increase proposal for New York (Reich et al. 2016). Extrapolation of the results of our study can be used today to gain insight into the potential impacts of completely eliminating the subminimum wage in New York. In Reich et al. (2016) we estimated the costs and benefits of New York's fully phased-in $15 policy, using the assumption that the subminimum wage would be raised to $12.45—or 83 percent of the full $15 minimum wage (as opposed to the $10 subminimum wage policy that was eventually passed).

To review our topline results, at full phase-in, we estimated that 3.16 million workers—just over one in three—would get an average wage increase of $4,900 per year (a 23 percent increase). We estimated that the proposed policy would have no *net* effect on jobs, as the potential losses attributable to higher labor costs would be offset by the increase in consumer spending, lower staff turnover, and higher productivity.

The prospective study also found that, of all industries, restaurants would be the most affected by New York's new policy. Our analysis reported that costs, particularly in restaurants, would increase. However, the often-touted notion that a minimum wage increase of 10 percent will compel a restaurant owner to raise menu prices by 10 percent to compensate is simply not true. For example, only a modest amount of the price of a hamburger is attributable to a restaurant's labor costs; much of the rest of the price reflects a myriad of operating costs such as rent, food, utilities, higher wage labor, advertising, and administrative expenses.

In our 2016 prospective analysis we estimated that *payroll costs* in the restaurant industry would increase by approximately 23.1 percent after fully phasing-in the assumed minimum and subminimum wage increases. Since labor costs as a percent of total operating costs is 30.7 percent in the restaurant industry, it was expected that overall operating costs would increase by about 7.1 percent over the entire phase-in period. If restaurants wanted to pass the entire cost onto customers in the form of menu price increases they would need to increase prices cumulatively over the entire phase-in period by about 7.1 percent.

Extrapolating from this cost-benefit analysis, a complete elimination of the subminimum wage—phasing in an increase of a $15 per hour minimum wage for most workers in New York, including those in tipped industries—would translate to an additional 1.2 percent increase in operating costs for full-service restaurants.[6] Thus, the price of our $10 hamburger would increase to $10.83 if a restaurant wanted to pass its increased costs onto its customers.

Thus, the comprehensive study by Reich et al. (2016) suggests that eliminating the subminimum wage in New York would not have large negative effects on full-service restaurant employment. Any net effects on employment and other economic outcomes would also depend on the duration of the phase-in period to full-elimination, which has not yet been proposed.

In the U.S. and in many countries around the world, restaurants thrive without paying workers a subminimum wage. It does not follow that eliminating the subminimum wage spells the demise of a robust restaurant sector or the end of customer tipping. Employment growth in the full-service restaurant industry in the seven states that do not allow for a subminimum wage has outpaced private sector growth over the past five years by an average of five percent.[7] In the seven states that do not allow for a subminimum wage, restaurants have not abolished tipping and diners have not reduced their tips. In fact, Alaska holds the record for the highest tip average among all 50 states, and the percentage of customers who tip is higher in Washington State than in New York (Ferdman 2014).

Tipped Workers

There are over 324,000 tipped workers working in New York, and 78 percent of them work in the restaurant industry.[8] Tipped workers are often thought of as young workers just getting a foot in the door of employment. The reality is that the typical age of tipped workers in New York is 35 and the vast majority (77 percent) is at least 25 years old. Women comprise the majority of the tipped workforce across all industries in New York (52 percent), and of those women, more than one in three (37 percent) have children. In restaurants, women dominate the tipped workforce (57 percent). While Blacks make up 13 percent of the workforce in New York overall, they are underrepresented as tipped workers—especially as wait staff and bartenders, where they represent just 6 percent.

The median wage for tipped workers in New York is $11.16 including tips. For wait staff and bartenders, who represent the largest segment of the tipped workforce, their median earnings are $10.98.[9] In the U.S., earnings of wait staff and bartenders employed in states that do not have a subminimum wage are, on average, 20 percent and 12.5 percent higher than earnings of wait staff and bartenders in the $2.13 states and partial-tip credit states, respectively (Allegretto and Cooper 2014, p. 13). Despite their higher earnings, it is still the case that tipped workers in the seven no-subminimum wage states are typically low-wage earners.

Tipped workers, especially in the $2.13 states, effectively go home after each shift having earned only the tips they are left with *after* they "tip-out" other staff such as hostesses, bartenders, bar-backs, and bus persons. Moreover, workers owe taxes on tips and their hourly rate of pay, which means they are often without much of a regular weekly or bi-weekly paycheck from their employers. Net pay depends primarily on tips and they vary tremendously by the day of the week and the time of the scheduled shift, as discussed below. Furthermore, the amount a customer tips is often driven by bias, as documented by Lynn et al. (2008) and Jayaraman (2013). Tips vary and can depend on factors such as the attractiveness of the server, the race and gender of the server and the customer, and even the religious affiliation of the customer (Lynn and Katz 2013).

Low earnings translate into difficulties in making ends meet for tipped workers and their families. As noted above, 18 states allow for a $2.13 rate (full-tip credit provision), seven states do not allow for a sub-wage (no-tip credit provision), and 26 states (including Washington, D.C.) use a sub-wage higher than $2.13 (partial-tip credit provision). Average poverty rates of non-tipped workers are very similar across states in the three wage policy scenarios—between 6 and 7 percent. However, poverty rates for tipped workers are inversely correlated—especially for wait staff/bartenders. For wait staff/bartenders, poverty rates in the $2.13 states are 18.5 percent on average. Poverty rates are 14.9 percent in states that allow for a partial-tip credit and 11.1 percent in states that do not allow for a sub-wage (Cooper 2017). In New York, nearly one in seven tipped workers (15 percent) live in poverty—which is almost two-and-a-half times the rate of other working New Yorkers (6.2 percent), and comparable to but higher than the rate in California (13.9 percent), a no-sub-wage state.[10]

The high incidence of low wages and working poverty among tipped workers often means they rely on public assistance programs. It is good policy to aid workers faced with challenging circumstances. However, these programs were not designed to serve as a permanent wage subsidy or part of the business strategy for low-wage employers. The tipped workforce in the U.S. relies more heavily than other workers on an array of publicly provided benefits—such as federal housing and energy subsidies, the earned income tax credit (EITC), school lunch subsidies, Supplemental Nutrition Assistance Program (SNAP) benefits (i.e., "food stamps"), and Supplemental Nutrition Program for Women, Infants, and Children (WIC) benefits—to make ends meet. As reported in Allegretto and Cooper (2014, pp. 15-16), 35.5 percent of non-tipped workers and their families rely on public benefits, compared with 46.0 percent and 46.2 percent, respectively, of tipped workers in general and waiters/bartenders in particular. Tipped workers receiving some public assistance get about $475 more in benefits, on average, than non-tipped workers who receive aid; waiters and bartenders receive over $600 more in benefits, on average, than non-tipped workers receiving aid.

The majority of the tipped workforce is female and sharply impacted by a gender pay gap that is facilitated through laws that permit paying these workers subminimum wages. The average full-time, year-round, female tipped worker is paid 78 percent of what her male counterpart earns. Over the course of a lifetime this amounts to a gender tax of $261,000 in today's dollars, exacerbated by the two-tiered wage system.[11] Even as most wait staff are female, males are more likely to work at high-end establishments where larger tips are possible. Thus, establishing a higher base pay for tipped workers will ameliorate this gender-based pay inequity.

Workers in tipped occupations are overwhelmingly low-wage earners across the U.S. and in New York State.[12] Those workers who do have the more lucrative wait staff jobs are more likely to be male and less likely to be of color. Moreover, the preponderance of evidence shows that workers in this low-earning sector face economic insecurity and they disproportionately live in poverty.

Job Quality

The definition of a good job goes beyond wages; it's about overall job quality—including benefits, conditions, worker voice, and scheduling practices. When workers are members of a union or covered by a union contract, they are able to address many workplace issues through their collective voice and contracts. However, the Bureau of Labor Statistics (2017) reported that just 1.8 percent of workers in the Food Services and Drinking Places category are represented by a union. So, it is not surprising benefits are lacking and there are industry-wide issues in these workplaces. Thus, for tipped workers employed in workplaces with few benefits, the hourly base pay becomes even more important since workers have to self-fund benefits such as vacation days and health care, and face losing pay if they need to take a sick or personal day.

Benefits

In the U.S., wages and the incidence of workplace benefits are positively correlated, which leaves low-wage workers particularly vulnerable. Employer-provided benefits such as paid sick leave, paid vacation, health insurance, childcare, and retirement, are not mandated and thus are offered at the employer's discretion. If a worker does not have even basic benefits it means they must earn enough to pay for them—or forgo them. In previous work, Allegretto and Cooper demonstrated that tipped workers are far less likely to receive even basic benefits such as paid sick leave (Allegretto and Cooper 2014, p. 17). For instance, a sick worker without paid sick leave will not earn any money if they do not go to work—thus they either work when ill or go without pay. This is a serious problem for many workers.

In restaurants where workers handle food this is particularly troubling. Just 35 percent of all workers in the Accommodation and Food Services (AFS) industry have access to paid sick leave compared to 68 percent of the private sector workforce. This figure includes managers and supervisors and thus is assumed to be much lower for tipped wait staff. The figures are similar for paid holidays—77 percent of private sector workers are offered some form of holiday pay while only 34 percent of AFS workers receive that benefit. When businesses close on holidays, most restaurant workers are forced to forgo pay for that day. The share of workers who receive retirement benefits also differs greatly—66 percent and 31 percent of private sector workers and AFS workers, respectively, have access to such benefits (Bureau of Labor Statistics 2017).[13]

Workplace Issues

Sexual Harassment

Workplace conditions are an important aspect of employment for all workers but given that tipped workers are disproportionally female they face some unique challenges. While only 7 percent of American women work in the restaurant industry, more than 14 percent of all sexual harassment claims to the Equal Employment Opportunity Commission (EEOC) come from the restaurant and hospitality industry, the single largest source of sexual harassment charges (Frye 2017).

A 2014 survey of 688 restaurant workers by ROC United and Forward Together found that women working in customarily tipped occupations in states that have eliminated the subminimum wage were half as likely to experience sexual harassment as women in states where they must depend on customers' tips for the bulk of their income. The very highest rates of sexual harassment were reported by women, in tipped occupations, in states where the subminimum wage is $2.13 per hour. In focus groups and interviews conducted by ROC United, tipped workers reported that because they rely on customers for their income, they must often tolerate inappropriate behavior at work (ROC United 2014).

Scheduling

Tipped workers employed in restaurants or bars often contend with unreliable schedules—which is another reason why a strong base wage is so important. Schedules often vary at the whim of an owner or manager without much lead time. As reported in Lambert et al. (2014), 90 percent of food service workers report that their hours varied in the past month, with the range of variation amounting to nearly two-thirds of their usual work hours on average. The variation in scheduling is due, in part, to restaurants and bars that fine-tune their workface on a "just-in-time" (JIT) basis. JIT employment—the scaling of workers based on demand—is often used down to an hourly schedule. JIT employment means that workers cannot rely on the hours of a pre-scheduled shift as managers of tipped workers often use a "first one in, first one out" practice for assignment of shifts.

Unpredictable work schedules have a ripple effect on the lives of tipped workers, causing other problems related to scheduling childcare, planning other family responsibilities, or planning for other responsibilities such as attending college classes. The shortening and/or changing of work hours may result in substantial pay cuts for workers. Workers can also be subject to scheduling changes that may have nothing to do with customer demand, but are simply the result of a manager or owner favoring one worker over another. Shift assignment is especially important for tipped workers given that tips can fluctuate considerably by shift—from a lucrative Friday night, a slow Tuesday afternoon, or in some cases the overnight shift at 24-hour restaurants. Thus, even with a predictable schedule someone has to work the slow shifts. This is why being dependent on tips to earn the bulk of one's income is an unstable way to live.

Employer Liability and Regulation

The rules associated with the subminimum wage and accounting for a tip credit are hard to implement in practice—even for owners and managers who want to do right by their workers and follow the law. The challenges of implementing the law are multifaceted: many tipped workers work irregular schedules; a portion of tips are often given to secondarily-tipped workers such as bus persons; and management is required to have an accounting system to keep track of pay, hours, and actual tips as well as the amount of time a tipped worker spends doing non-tipped side work. The Department of Labor stipulates that monitoring should be done on a 'workweek' basis defined as any fixed and regularly recurring 168-hour period, but it is hard to know what this means in practice given the inconsistency and changing work schedules for many tipped workers. Monitoring workers in a two-tiered wage system is complex and costly to implement correctly.

The larger the tip credit the higher the probability that a subminimum wage plus tips may fall short of the regular minimum wage. In New York, the tipped credit currently ranges from $2.90 to $4.35 based on region; by 2021, it will increase to $5.00 in metropolitan New York and $4.15 in the rest of the state. As the gap between the subminimum wage and the regular minimum wage grows, restaurant employers are increasingly incentivized to shift more non-tipped side work like sweeping floors, washing dishes, and cleaning onto tipped workers because they are the cheaper source of labor.

The phase-in of New York's 2016 minimum wage increase has created a challenging enforcement environment for regulators, employers, and workers alike. Many workers are not aware of the rules related to the law, such as the '80-20 Rule,' which disallows payment of subminimum wages to workers who spend 20 percent or more of their shift doing non-tipped work.[14] Moreover, workers may not feel comfortable confronting management about whether they were shorted on wages, or required to do excessive side work, especially when management determines access to lucrative shifts.

Unfortunately, monitoring is not taking place in many restaurants. This is especially important given that the restaurant industry has a long history of noncompliance and there are an inadequate number of regulators across the country to monitor compliance. However, where there are compliance investigators, there is evidence of widespread noncompliance with labor law. A 2010–2012 compliance sweep of nearly 9,000 full-service restaurants by the U.S. Department of Labor Wage and Hour Division (WHD) found that 83.8 percent of investigated restaurants had some type of labor law violation. In total, WHD recovered $56.8 million in back wages for nearly 82,000 workers and assessed $2.5 million in civil money penalties. Violations included 1,170 tip credit infractions that resulted in nearly $5.5 million in back wages. While these investigations demonstrate that more enforcement of wage and hour laws is needed, unfortunately most states lack the capacity to adequately monitor compliance.[15]

The significant record-keeping and compliance rules made necessary by the tip credit provision are both difficult for regulators to enforce and difficult for employers to properly comply with. Restaurant owners in New York face significant legal liabilities compared to employers in states like California that do not allow for a subminimum wage. A survey of federal lawsuits filed in the Southern District of New York, covering the New York City (NYC) area, and in the Central District of California, covering the Los Angeles (LA) area, show that restaurant wage lawsuits made up approximately 23 percent of the total in NYC versus 8 percent of the total in the LA area (ROC United 2016).

Final Thoughts

Efforts to phase-out the subminimum wage for tipped workers have recently gained momentum. In November of 2016, voters in Maine, and Flagstaff, AZ, overwhelmingly approved eliminating the tipped subminimum wage at the ballot, even though the Maine legislature subsequently voted to repeal the measure. Other localities are currently considering similar legislation. In Calumet City, IL, 83 percent of voters supported an advisory referendum to eliminate the subminimum wage.

In Washington, D.C., the Board of Elections has qualified a referendum on phasing out the subminimum wage that will appear on the June 19, 2018 ballot. In Michigan, the One Fair Wage of Michigan coalition received approval from the state Board of Canvassers to collect signatures for a November 2018 ballot measure that would raise the minimum wage to $12 per hour by 2021 while simultaneously phasing out the tipped subminimum wage by 2024.

Should New York be the next state to eliminate the subminimum wage for tipped workers? The example set by the seven states without it makes it clear that the restaurant industry can still thrive while paying its workforce a fair base wage. Many chain restaurants, such as Denny's, Outback Steakhouse, and Olive Garden, have successful locations across the U.S. They range from states that pay the lowest subminimum wage to states that don't allow a subminimum wage *and* have a regular minimum wage far above the federal $7.25 (e.g., California ($10.50) and Washington State ($11.50). Clearly, their business models are working, despite higher labor costs in some states.

Eliminating the subminimum wage is a much-needed policy change. Recent decades of wage stagnation combined with widening economic inequality have created an imperative to increase pay, benefits, and overall job quality for our low-wage workforce. This is especially so for tipped workers who are among the lowest paid workers in the country, are subject to unpredictable and fluctuating pay, lack employer-provided benefits, have uncertain just-in-time work shifts, and work in industries that are rampant with wage theft and sexual harassment.

New York's current minimum wage increase policy is benefiting millions of low-wage workers and their families, but it has left 324,000 tipped workers still dependent on unreliable tips and their customers on the hook for a third of their wages. Moving away from a subminimum wage model of business to one of dependable and fair wages for all workers, as Governor Cuomo is now considering, would be a bolder and fairer policy and address many of the workplace problems experienced by tipped workers.

Endnotes

[1] After reaching $12.50 a review will determine if this minimum will ultimately increase to $15 and determine how it will be phased-in.

[2] While the New York legislature raised the wage for tipped workers (phasing to $10 by 2022 in all but rural New York where it will be $8.35), they also increased the gap between the regular and subminimum minimum wage, from a difference of 17% to one of 33%.

[3] Governor Andrew M. Cuomo, 2018 State of the State, p.92. Summary here: http://on.ny.gov/2HcYaqz

[4] See Allegretto, Sylvia and David Cooper (2014) for more details.

[5] Hawaii recently passed legislation that set minimum wages for all workers at $10.10 per hour—and only in the case that tipped workers earn at least $17.10 per hour can an employer claim a $0.50 tip credit.

[6] A re-estimated effect using the Reich et al. (2016) methodology that further eliminated the $2.55 tip credit that was originally included in our 2016 prospective report.

[7] Author's analysis of Quarterly Census of Employment and Wages 2011-2016 data, the most recent annual data available.

[8] There is no definitive count of tipped workers in the U.S. The Current Population Survey does not have a unique identifier for such a distinction—no such survey exists. The CPS includes a variable that identifies persons who usually receive "overtime pay, tips or commissions" and in past work this has been used to 'guesstimate' the tipped worker workforce. See Allegretto and Cooper (2014) for further details—these methods were also utilized in the report on minimum wages from the White House (2014).

[9] Author's analysis of May 2016 State Occupational Employment and Wage Estimates.

[10] Author's analysis of Current Population Survey Annual Social and Economic Supplement microdata, 2011-2015. IPUMS-CPS, University of Minnesota, www.ipums.org.

[11] Calculation assumes the same wage gap for a 40-year career based on a 40-hour workweek, 52 weeks per year. ACS, 2015. IPUMS-USA, University of Minnesota, www.ipums.org.

[12] For another source see the White House (2014) report on U.S. wage floors.

[13] Bureau of Labor Statistics, Employee Benefits Survey: https://www.bls.gov/ncs/ebs/benefits/2017/

[14] See, for example, Subpart § 146-2.9. "Working at tipped and non-tipped occupations on the same day," in Part 146 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, NYCRR § 146, available at www.labor.ny.gov/formsdocs/wp/CR146.pdf; and "Dual Jobs" in United States Department of Labor, Wage and Hour Division, Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA), per C.F.R. Title 29 § 531.56, available at https://www.dol.gov/whd/regs/compliance/whdfs15.htm.

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Center on Wage & Employment Dynamics

Institute for Research on Labor & Employment

University of California, Berkeley
2521 Channing Way #5555
Berkeley, CA 94720-5555

http://www.irle.berkeley.edu/cwed
(510) 643-7080