



We Are Not On the Menu

Maryland Tipped Workers Report
Pervasive Sexual Harassment,
Gender Pay Inequity and Wage Theft

INTRODUCTION

The subminimum wage for tipped workers is a direct legacy of slavery, created after Emancipation to allow restaurant owners the ability to hire newly freed Black workers — women in particular — and force them to rely on tips.¹ Codified into law in 1938 as part of the New Deal, the subminimum wage for tipped workers continues to affect a workforce that is still overwhelmingly women and disproportionately women of color.² Seven states had always required a full

minimum wage with tips on top — California, Oregon, Washington, Nevada, Montana, Minnesota, and Alaska — and have the same or higher restaurant industry growth rates, tipping averages, and small business growth rates as Maryland and the 43 states that have persisted with a subminimum wage for tipped workers.³

Maryland workers won a major victory in 2023 — an increase in the minimum wage to \$15 by 2025, joining the ranks of over a dozen states that have adopted a path to a \$15 or higher minimum wage.⁴ While this is great news for the 174,500 workers earning minimum wage, a major demographic, tipped workers, were excluded.⁵

Tipped workers in Maryland still earn a subminimum wage of just \$3.63 an hour. This direct legacy of slavery results in a workforce that is overwhelmingly women and disproportionately women of color earning almost 75 percent less than other workers.⁶ Thus, while the Maryland wage is set to go up

for most workers, close to 105,000 workers will actually see a decrease in their wages relative to others' wages, and relative to the rising cost of living.⁷

As a result of this carve-out, Maryland restaurant owners are receiving a 75 percent wage subsidy from customer tips, a loophole that advantages them over every other industry that has to comply with minimum wage laws. Even though the law stipulates that employers need to ensure that customer tips bring tipped workers up to the minimum wage, or make up the difference, the US Department of Labor has declared the issue unenforceable.⁸

In late 2023 and early 2024, One Fair Wage surveyed 230 Maryland tipped workers on their working conditions.⁹ **These workers continued to tell One Fair Wage of issues of wage theft and sexual harassment and support for ending the subminimum wage. Ninety-five percent of workers said they support a policy requiring their employers to pay at least a full minimum wage with tips on top.**



KEY FINDINGS

1. Gender-based discrimination — including sexual harassment and a gender pay cap — continues to persist for tipped restaurant workers in Maryland. At the same time, neither gender makes enough to make the state’s median rent payment.

A. Earlier studies demonstrate that the subminimum wage for tipped workers results in the restaurant industry having the highest rates of sexual harassment of any industry because a workforce that is majority women must tolerate inappropriate customer behavior to feed their families in tips.¹⁰ In February 2024, nearly half (47 percent) of survey respondents reported experiencing sexual harassment on the job, with nearly a third (29 percent) saying it happened at least monthly.¹¹

B. One Fair Wage analyzed wage data by gender from the American Community Survey (ACS) and found that men in tipped occupations in restaurants on average make \$1,636 a year more than women.¹² This gender pay gap results from customer bias in tipping and occupational segregation of women into lower-tipping restaurants.¹³

C. The average annual income for a man in a tipper restaurant occupation was \$19,218 compared to women making \$17,583.¹⁴ The average wages of both men and women are also thousands of dollars less than the median rental price in Maryland of \$21,600 a year.¹⁵

2. Workers continue to report wage theft. Of over 230 workers surveyed by One Fair Wage, 56 percent reported experiencing wage theft, especially tips and wages not bringing them to the full minimum wage as required by federal law.¹⁶

3. Ninety-six percent of workers said they support a policy requiring their employers to pay at least a full minimum wage with tips on top. When surveyed confidentially without fear of retaliation from their employers as to whether they would like to be paid a full minimum wage with tips on top, tipped workers overwhelmingly support One Fair Wage.¹⁷

1/ Gender-Based Discrimination, Including Sexual Harassment and a Gender Pay Gap, Persists for Tipped Restaurant Workers in Maryland

The subminimum wage for tipped workers continues to affect a workforce that is still overwhelmingly women and disproportionately women of color who largely work in casual restaurants and bars, struggling with the highest rates of poverty and sexual harassment of any industry in the United States.¹⁸ One Fair Wage saw this same trend in Maryland when surveying tipped restaurant workers.

One Fair Wage surveyed Maryland tipped restaurant workers from November 2023 through April 2024. Of those surveyed, nearly half (47 percent) reported experiencing sexual harassment on the job, with nearly a third (29 percent) saying it happened at least monthly.¹⁹ Earlier studies demonstrate that the subminimum wage for tipped workers results in the restaurant industry having the highest rates of sexual harassment of any industry because a workforce that is majority women must tolerate inappropriate customer behavior to feed their families in tips. Research

also shows that in the even states that require a full minimum wage with tips on top (CA, OR, WA, MN, MT, AK, NV), workers report one half the rate of sexual harassment as they do in states that allow employers to pay a subminimum wage for tipped workers; in those states, workers receive a full minimum wage from their employer and are not as dependent on tips (even though tips are the same or higher in those states as they are in subminimum wages).²⁰ As a result of not being dependent on customer tips to make up their base wages, they are more easily able to reject harassment from customers.

The restaurant industry has always had notoriously high gender and racial wage gaps. The original gender pay inequity occurred at Emancipation, when restaurant owners sought to replace a workforce that was previously comprised of mostly men earning full wages with newly-freed Black women to whom they offered no wage, only tips, as a way to continue to access free

Black labor after slavery ended.²¹ The racial and gender wage gap for tipped workers has persisted over decades and across states as a result of customer bias in tipping that determines workers' incomes.²²



Based on 2021 aggregated data, One Fair Wage published a report that showed nationally, Black women in the restaurant industry make \$2.57 an hour less than their white male counterparts, which can also be understood as \$5,345 of income lost every year.²³ Among front-of-house restaurant workers, this increases to \$6.19 an hour, or \$12,875 annually.²⁴ Research shows that the pay gap in the restaurant industry is due to both implicit bias in customer tipping and segregation of Black women into more casual restaurants, where tips are less.²⁵

This pay gap continues in Maryland. One Fair Wage analyzed wage data by gender from the American Community Survey (ACS) and found that men in tipped occupations in restaurants on average make \$1,636 a year more than women.²⁶ The average annual income for a man in a tipper restaurant occupation was \$19,218 compared to women making \$17,583.²⁷

To put these wages into perspective, the average wages of both men and women tipped restaurant workers are thousands of dollars less than the median rental price in Maryland of \$21,600 a year.²⁸ Worse still, the median wage of tipped restaurant workers is \$12,788.50, which means that half of restaurant workers make at least \$8,812 less than the median cost of rent in the state.²⁹

2/ Maryland Tipped Workers Continue to Report Ongoing Wage Theft

Federal law requires employers of tipped workers to ensure that tips bring them to the full minimum wage; if they do not, employers are required to pay workers the difference.³⁰ The restaurant industry has a long history of non-compliance with these legal requirements; the Obama administration conducted a thorough investigation of restaurants on the issue and found an 84 percent non-compliance rate to the legal requirements surrounding the two-tiered wage system.³¹ How-

ever, in earlier surveys, generally, no more than one-quarter of restaurant workers nationally reported that they had not received enough tips to bring them to the full minimum wage.³²

Of over 230 workers surveyed by One Fair Wage in Maryland, over half (56 percent) reported experiencing wage theft, especially tips not bringing them to the full minimum wage.³³

3/ Maryland Workers Overwhelmingly Want One Fair Wage

With the pandemic, there has been a new surge in support for ending this legacy of slavery. Workers in the industry have reported in surveys and polls for years that they support ending the subminimum wage. These same workers have also reported in surveys of the challenges they have faced in receiving unemployment insurance due to their low wages, that their tips declined and that harassment has increased. During the pandemic, 1.2 million workers left the restaurant industry nationally, and 20,000 workers left the Maryland restaurant industry.³⁴ In response, thousands of restaurants nationally have raised wages to recruit staff and this marketplace upheaval has driven greater demand for policy change that will allow workers to afford to work in restaurants.³⁵

Given these conditions, both pre-and post-pandemic, tipped workers surveyed by One Fair Wage across the United States have consistently supported being paid at least the full minimum wage with tips on top. On January 17, pollster Celinda Lake released a summary of polls on

the issue of raising wages and ending the subminimum wage for tipped workers over the last several years and also detailing the polling landscape ahead of the 2024 election. The memo stated “2024 promises to be a very tough election cycle” and “wherever you look, public polls in 2024 will show that inflation and the cost of living are the top issues on voters’ minds.”³⁶

Recent polls of voters of color and youth have confirmed that the cost of living is the top issue on voters’ minds. Lake referenced a November 2023 by Tuft University’s CIRCLE early poll of youth (ages 18-34) ahead of the 2024 presidential election, young people indicated clearly that their primary concern is the economy. Over half (53 percent) chose the cost of living/inflation among their three top issues, followed by jobs that pay a living wage (28 percent).



MSNBC published the results of a poll conducted by UnidosUS and Mi Familia Vota, who asked 3,037 Latinos to pick the most important issues for Congress to address. Inflation and the rising cost of living were named by 54 percent of Latinos and jobs and the economy came in second (44 percent).³⁷

These and other recent polls indicate that there is a ‘Raise the Wage Voter Bloc’ — voters who will turn out to vote if wage increases are on the ballot and who will vote for candidates who support wage increases, and not for those who do not. There is only one policy solution to the rising cost of living: putting more money in people’s pockets, such as through SB 160.

This voter bloc also includes tipped workers; polling shows they consistently support ending the subminimum wage. Lake’s memo outlined that “contrary to restaurant industry attacks, Lake Research Partners has also consistently found very strong support for proposals to raise the tipped minimum wage among restaurant workers across a diverse set of states.”

This included research polling of restaurant workers in:

Washington, DC, in September 2021, 88 percent among workers

New Hampshire, in April 2021, 75 percent of workers supported \$15 with tips on top

Maine, in April 2021, 78 percent support from workers

Delaware, in April 2021, 85 percent support among workers

New York, in December 2019, 88 percent support among workers

However, no group of workers polled has ever reported as high levels of support as Maryland tipped workers in 2024. Compared to these previous polls and other surveys, nearly all 95 percent of Maryland tipped workers surveyed in late 2023 and early 2024 reported supporting a policy to require them to be paid at least the full minimum wage with tips on top.³⁸ This should not be surprising given high levels of wage theft and poverty, national momentum showing successful implementation of the issue including in Maryland and neighboring Washington, DC, and significant, successful pushback against oppositional tactics to confuse consumers on the issue.

CONCLUSION

Across the country and in Maryland, more and more workers are demanding higher wages from their employers and better wage laws from their elected officials and candidates to cover the inflationary pressures they are facing in their communities. Multiple recent 2024 voter polls have shown that the top two issues for young voters and voters of color are the rising cost of living and jobs with living wages.^{39,40}

This demand for wages that cover the cost of living from workers and voters has resulted in more and more cities and states passing legislation requiring a full minimum wage with tips on top nationwide, and a historically high level of demand from tipped workers for One Fair Wage policy in Maryland itself. Maryland leaders should follow the heed of this overwhelming majority of workers and a growing chorus of small business restaurant employers calling for policy to end this legacy of slavery once and for all.

END NOTES

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