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SB 160: Labor and Employment – Payment of Minimum Wage – Tipped Employees

Hearing before the Senate Finance Committee, February 1, 2024

Position: SUPPORT

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project aims to ensure that our state’s low-wage workers receive fair and full payment for their labor, as well as other basic protections on the job. **The PJC supports SB 160 and urges a favorable report.**

SB 160 seeks to remove the “tip credit” from the salary of a tipped worker and hold employers responsible for paying their employees’ minimum wage. There are over 105,000 tipped workers in the state of Maryland, around 65 percent of that workforce is women and 52 percent are people of color¹. These workers face twice the poverty compared to other workers in Maryland and the highest rate of sexual harassment of any other industry. Furthermore, eliminating the subminimum wage would bolster restaurant job growth rates, small business growth rates, and tipping averages. This is a matter of economic, gender, and racial justice.

Tipped workers should be receiving a full minimum wage as a way of protecting them from wage and hour violations. The Public Justice Center’s Workplace Justice Project represents low-wage workers who are the victims of wage theft. Through our litigation and outreach, we know that wage laws are regularly violated. In fact, the restaurant industry is the largest employer of workers who earn less than minimum wage and almost 84 percent of restaurants partake in a wage and hour violation². Even if the law that employers must ensure tips are supplementing their employees’ subminimum wage is being enforced, tipping is still a precarious and unreliable form of income that also subjecting workers to harassment of many forms.

The COVID-19 pandemic is a reminder that the sub-minimum wage system forces workers to rely on unpredictable earnings and abusive behavior from customers. Over 100,000 restaurant workers in Maryland lost their jobs at the beginning of the pandemic, leading 50 percent of those workers unable to access unemployment benefits because their subminimum was too low to qualify to receive assistance³. Workers’ dependency on tips forces them to rely on the uncertainty of how much

¹ “One Fair Wage: Maryland,” available at <https://www.onefairwage.org/maryland>.

² “OFW MYTHS VS. FACTS FACT SHEET,” available at <https://onefiarwage.site/research>.

³ “One Fair Wage: The Key to Saving the Maryland Restaurant Industry Post-COVID 19,” October 26, 2022, available at <https://www.onefairwage.org/factsheets/category/Fact+Sheet>.

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they will earn in tips on any given day, and during the pandemic that uncertainty threatened thousands of workers.

Nationwide, over 4 million workers have returned to the restaurant industry as businesses reopened during the summer of 2020 and the start of 2021; however, nearly 69 percent of workers have noted a decrease in their tips because of low sales and an increase in harassment from customers when the worker tries to enforce safety protocols such as masks and social distancing⁴. Women workers specifically have experienced higher levels of unwanted sexual comments, relying on tips to earn a living wage forces workers into a vulnerable position that makes it difficult to police inappropriate behavior from a customer if it means sacrificing a higher tip.

The growth of the restaurant industry does not depend on workers receiving tips, and it is only just for employers to pay for the cost of the labor they employ. A common myth perpetuated against eliminating the tipped minimum wage is that small businesses will be forced to shut down or lay off employees to raise the minimum wage. Yet, restaurant establishment growth is higher in states (CA, OR, WA, NV, MT, MN, AK) without a subminimum wage. Over 4,000 restaurants nationally, and dozens in Maryland, aren't subsidizing their employees' wages with tips and are maintaining lower turnover rates and seeing higher productivity amongst their workers⁵.

For the reasons mentioned above, the Public Justice Center **SUPPORTS SB 160** and requests a **FAVORABLE** report.

⁴ "One Fair Wage: The Key to Saving the Restaurant Industry Post-COVID 19," available at <https://onefairwage.site/research>.

⁵ "OFW MYTHS VS. FACTS FACT SHEET," available at <https://onefairwage.site/research>.

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