



## **TESTIMONY TO THE MARYLAND STATE LEGISLATURE**

In Support of SB 160, sponsored by Senator Ellis and Senator McCray

**By Saru Jayaraman, President of One Fair Wage  
& Director of the University of California Berkeley Food Labor Research Center**

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My name is Saru Jayaraman, and I am the President of One Fair Wage and the Director of the UC Berkeley Food Labor Research Center. On behalf of the 13.6 million restaurant workers nationwide and the 300,000 restaurant and service workers and over 2500 'high road' restaurant employers who are members of One Fair Wage, I thank you for allowing me to testify in support of SB 160, a bill for One Fair Wage in Maryland.

With the pandemic, the issue of the subminimum wage for tipped workers has changed dramatically in a historic way, with conditions for workers becoming unlivable. The restaurant industry, and the service economy in general, is undergoing massive upheaval, with hundreds of restaurants in Maryland, and thousands nationwide, raising their wages to at least \$15 an hour plus tips in order to recruit staff at a time when workers are indicating they are unwilling to work for anything less. Senate Bill 160 is essential not only because workers are in crisis, but also because independent restaurateurs agree that they will not be able to fully reopen without policy change to raise wages and end the subminimum wage for tipped workers.

Even prior to the pandemic, the subminimum wage was problematic, as a direct legacy of slavery that disproportionately impacts the lives of women and people of color. At Emancipation, the service industry, namely railroad, hotel and restaurant lobbies, sought to hire recently-freed Black people and not pay them anything, forcing them to live entirely on tips.<sup>1</sup>

This legacy continues today in 43 states, including Maryland, where tipped workers in the state can earn as little as \$3.63 an hour from their employers, and are required to make up the rest in tips, to get to the state minimum wage of \$15 per hour.<sup>2</sup>

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<sup>1</sup> Jayaraman, Saru, *Forked: A New Standard for American Dining*, (Oxford University Press, 2016).

<sup>2</sup> U.S. Department of Labor. (September 2021). Minimum Wages for Tipped Employees. Wage and Hour Division. <https://www.dol.gov/agencies/whd/state/minimum-wage/tipped>.

Even as the minimum wage of Maryland increased to \$15 per hour on 1st January 2024, the tipped wage stayed frozen, thus increasing the gap between tipped and non tipped workers. In other words, the restaurant industry is getting away with paying 75 percent less in wage costs than every other industry.

In Maryland, there are 105,000 tipped workers who are 65 percent women and 52 percent people of color. Many marginalized communities are overrepresented in subminimum wage positions including immigrants and members of the LGBTQ community.<sup>34</sup> This majority-female workforce continues to suffer the highest rates of sexual harassment and economic instability of any industry as a result.<sup>5</sup> Ending this low-wage carve out positively impacts an overall restaurant industry of over 185,000 workers in Maryland.<sup>6</sup>

Prior to the pandemic, the restaurant industry was the largest and fastest growing industry in the country - all while being the largest employer of tipped workers, who earn some of the lowest wages in the country. Tipped workers, who are more than two thirds majority women who work in casual restaurants earning very little in tips, live in poverty and rely on public assistance at double the rate of the general workforce.<sup>7</sup> Tipped workers have struggled with twice the poverty rate of other workers and the highest rates of sexual harassment of any industry because they must tolerate inappropriate customer behavior to feed their families in tips.<sup>8</sup>

Women, in particular, faced the highest rates of sexual harassment when compared to all other industries.<sup>9</sup> Women tipped workers experience even greater rates of sexual harassment than their non-tipped counterparts in the industry: over three quarters versus over half (76 percent vs. 52 percent).<sup>10</sup>

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<sup>3</sup> OFW (June 2022) “No Pride In Subminimum Wages”

[https://onefairwage.site/wp-content/uploads/2022/06/OFW\\_LGBTQ\\_RestaurantWorkers.pdf](https://onefairwage.site/wp-content/uploads/2022/06/OFW_LGBTQ_RestaurantWorkers.pdf).

<sup>4</sup> OFW (January 2023) “New York Fact Sheet”

[https://onefairwage.site/wp-content/uploads/2022/10/OFW\\_FactSheet\\_NYS\\_2.pdf](https://onefairwage.site/wp-content/uploads/2022/10/OFW_FactSheet_NYS_2.pdf).

<sup>5</sup> Allegretto, S. et al. (July 2014). Twenty-Three Years and Still Waiting for Change: Why It’s Time to Give Tipped Workers the Regular Minimum Wage. Economic Policy Institute.

<https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

<sup>6</sup> OFW analysis of American Community Survey data, 2016- 2020 5-Year Sample. Steven Ruggles, Sarah Flood, Ronald Goeken, Megan Schouweiler and Matthew Sobek. IPUMS USA: Version 12.0 [dataset]. Minneapolis,

<sup>7</sup> Allegretto, S. and Cooper, D. (2014) Twenty-Three Years and Still Waiting for Change: Why It’s Time to Give Tipped Workers the Regular Minimum Wage. Economic Policy Institute.

<https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

<sup>8</sup> One Fair Wage. (March 2021). The Tipping Point: How the Subminimum Wage Keeps Income Low and Harassment High. [https://onefairwage.site/wp-content/uploads/2021/03/OFW\\_TheTippingPoint\\_3-1.pdf](https://onefairwage.site/wp-content/uploads/2021/03/OFW_TheTippingPoint_3-1.pdf).

<sup>9</sup> Johnson, S.K. and Madera, J. M. (January 2018). Sexual Harassment Is Pervasive in the Restaurant Industry, Here’s What Needs to Change. Harvard Business Review.

<https://hbr.org/2018/01/sexual-harassment-is-pervasive-in-the-restaurant-industry-heres-what-needs-to-change>.

<sup>10</sup> One Fair Wage. (March 2021). The Tipping Point: How the Subminimum Wage Keeps Income Low and Harassment High. New York, NY: One Fair Wage.

[https://onefairwage.site/wp-content/uploads/2021/03/OFW\\_TheTippingPoint\\_3-1.pdf](https://onefairwage.site/wp-content/uploads/2021/03/OFW_TheTippingPoint_3-1.pdf).

Research has also shown that within the industry racial discrimination from employers and customers has yielded a wage gap between Black women and white men in 'front-of-house', tipped positions of \$6.19 per hour.<sup>11</sup> This is a result of both occupational segregation and implicit bias in customer tipping. As long as these workers must rely on tips to feed their families, they are subject to the biases and harassment of customers. Allowing workers wages to be dependent on customers has led to a consistent wage gap between Black women and white male workers, for the same job. White servers and bartenders across all restaurant types make more in tips than most other racial groups, as per an Eater analysis of U.S. Census and Bureau of Labor Statistics data.<sup>12</sup>

Unlike Maryland, seven states have always required a full minimum wage with tips on top - California, Oregon, Washington, Nevada, Minnesota, Montana and Alaska.<sup>13</sup> These states have had the same or higher restaurant sales per capita, small business restaurant growth rates, restaurant industry job growth rates, and tipping averages as Maryland and the 43 states with a subminimum wage.<sup>14</sup>

In fact, California has had a larger small business growth rate in the restaurant industry than Maryland. California has experienced a 11 percent increase in small business restaurants, compared to Maryland experiencing a growth rate of 6 percent since January 2020.<sup>15</sup> Further, in California, a majority of restaurants are people of color-owned businesses (58 percent), compared to 54 percent of restaurants in Maryland.<sup>16</sup>

Workers in these 7 states have also reported one half the rate of sexual harassment as the states that allow tipped workers to be paid a subminimum wage as little as \$2.13 an hour.<sup>17</sup>

### **Impact of the Pandemic**

With the pandemic, the subminimum wage for tipped workers became unlivable: 6 million workers lost their jobs and  $\frac{2}{3}$  reported that they could not obtain unemployment insurance because they were told their wages were too low. Workers reported tips went down,

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<sup>11</sup> One Fair Wage. (September 2022). Intentional Inequality - Black Women's Equal Pay Day.

<https://onefairwage.site/intentional-inequality>

<sup>12</sup> <https://www.eater.com/a/case-against-tipping>

<sup>13</sup> ROC United. (2018). Better Wages, Better Tips: Restaurants Flourish with One Fair Wage. New York, NY: ROC United. [https://chapters.rocunited.org/wp-content/uploads/2018/02/OneFairWage\\_W.pdf](https://chapters.rocunited.org/wp-content/uploads/2018/02/OneFairWage_W.pdf).

<sup>14</sup> ROC United. (2014). The Great Service Divide: Occupational Segregation & Inequality in the US Restaurant Industry. [https://chapters.rocunited.org/wp-content/uploads/2014/10/REPORT\\_The-GreatService-Divide2.pdf](https://chapters.rocunited.org/wp-content/uploads/2014/10/REPORT_The-GreatService-Divide2.pdf).

<sup>15</sup> Chetty, Friedman, Hendren, Stepner, and the OI Team. (2022). Opportunity Insights Economic Tracker. <https://www.tracktherecovery.org/>.

<sup>16</sup> National Restaurant Association. (March 2022). Restaurant Owner Demographics Data Brief. <https://restaurant.org/getmedia/ad96e3a8-4fb1-492d-a5ae-0b3dd53a61ef/nra-data-brief-restaurant-owner-demograph-ics-march-2022.pdf>.

<sup>17</sup> Ibid.

harassment went up, and when they were asked to enforce COVID protocols on the same people from whom they had to get tips to survive, they left.<sup>18,19</sup>

During the pandemic, service and tipped workers across the country faced significantly higher rates of job losses and economic insecurity, with losses highly concentrated among women of color.<sup>20</sup> In May of 2020, our survey found that as many as 60 percent of service workers either did not qualify or were unsure if they qualified for unemployment insurance.<sup>21</sup> Many tipped workers returning to work in restaurants experienced sharp declines in tips, increased hostility in response to enforcing COVID-19 safety measures, and increased sexual harassment from customers. By December 2020, 41 percent of workers nationwide reported an increase in sexualized comments from customers.<sup>22</sup> Hundreds of women shared stories of male customers asking them to take their mask down so that they could know how much to tip them.<sup>23</sup>

### **Workers Have Had Enough - Leaving the Industry**

These conditions and the persistence of a subminimum wage for tipped workers have led many tipped and service industry workers in general to leave the industry altogether<sup>24</sup>. Restaurants have had to face an unprecedented reckoning in the form of a massive staffing crisis. To date, the U.S. Bureau of Labor Statistics reports that over 1.2 million restaurant workers nationwide and nearly 100,000 restaurant workers in Maryland left their jobs by the end of 2022, representing an all time high since BLS began data collection in 2000.<sup>25,26</sup>

Our survey found that, even post-pandemic, over half (53 percent) of restaurant workers were considering leaving the industry and, unsurprisingly, over three-quarters (76 percent)

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<sup>18</sup> Allegretto, S. et al. (July 2014). Twenty-Three Years and Still Waiting for Change: Why It's Time to Give Tipped Workers the Regular Minimum Wage. Economic Policy Institute.  
<https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

<sup>19</sup> One Fair Wage. (March 2021). The Tipping Point: How the Subminimum Wage Keeps Income Low and Harassment High. [https://onefairwage.site/wp-content/uploads/2021/03/OFW\\_TheTippingPoint\\_3-1.pdf](https://onefairwage.site/wp-content/uploads/2021/03/OFW_TheTippingPoint_3-1.pdf).

<sup>20</sup> Ewing-Nelson, C. (January 2021). All of the Jobs Lost in December Were Women's Jobs. National Women's Law Center. <https://nwlc.org/wp-content/uploads/2021/01/December-Jobs-Day.pdf>.

<sup>21</sup> One Fair Wage. (May 2020). Locked Out By Low Wages: Service Workers' Challenges With Accessing Unemployment Insurance During COVID-19. New York, NY: One Fair Wage.  
[https://onefairwage.site/wp-content/uploads/2020/11/OFW\\_LockedOut\\_UI\\_COVID-19\\_-FINALUPDATE.pdf](https://onefairwage.site/wp-content/uploads/2020/11/OFW_LockedOut_UI_COVID-19_-FINALUPDATE.pdf).

<sup>22</sup> One Fair Wage. (December 2020). Take off your mask so I know how much to tip you: Service Workers' Experience of Health & Harassment During COVID-19. New York, NY: One Fair Wage.  
[https://onefairwage.site/wp-content/uploads/2020/12/OFW\\_COVID\\_WorkerExp\\_MA\\_4.pdf](https://onefairwage.site/wp-content/uploads/2020/12/OFW_COVID_WorkerExp_MA_4.pdf).

<sup>23</sup> Ibid.

<sup>24</sup> Selyukh, A. (July 20, 2021). Low Pay, No Benefits, Rude Customers: Restaurant Workers Quit At Record Rate. NPR.  
<https://www.npr.org/2021/07/20/1016081936/low-pay-no-benefits-rude-customers-restaurant-workers-quit-at-record-rate>.

<sup>25</sup> Cheng, M. (October 13, 2021). US restaurant workers are quitting in record numbers. Quartz.  
<https://qz.com/2073439/us-restaurants-workers-are-quitting-their-jobs-in-record-numbers/>.

<sup>26</sup> U.S. Bureau of Labor Statistics and Federal Reserve Bank of St. Louis. (May, 2022). All Employees: Leisure and Hospitality: Food Services and Drinking Places in Massachusetts.  
<https://fred.stlouisfed.org/series/SMU25000007072200001SA>.

reported their top reason for leaving was due to low wages and tips. This shift in power among tipped and service workers has spurred some restaurant owners and state governors to blame workers and prematurely cut unemployment benefits, which resulted in little to no effect on employment rates nor workers willingness to return to the industry for subminimum wages<sup>27, 28</sup>.

In response to the massive staffing crisis, thousands of restaurants nationwide, and dozens in Maryland, have been raising wages in order to recruit enough staff to fully reopen.<sup>29</sup> Since September 2021, we have found more than 6,000 restaurants posting on Indeed.com that workers can earn far above the subminimum wage for tipped workers and the minimum wage at their establishments; many on that list have even clarified that they are offering workers a full minimum wage with tips on top - signaling a real shift in an industry in which everyone was paying the subminimum wage for tipped workers pre-pandemic.<sup>30</sup>

In Maryland, we have identified several dozen restaurants clearly offering at least the full minimum wage plus tips on top to servers, bartenders, and other front-of-house workers.<sup>31</sup>

Many of these restaurant owners have told us that they cannot do it alone; they need policy that will end the subminimum wage for tipped workers for two reasons: 1) to create a level playing field, in which all employers have to raise wages; and 2) they need policy that will signal to thousands of workers that there will be permanent policy change to raise wages that will make it worth returning to work in restaurants.

### **National Momentum and Support to Pass One Fair Wage**

As a result of the massive upheaval in the restaurant industry, states across the country have been ending the subminimum wage for tipped workers and paying a full minimum wage with tips on top.<sup>32</sup>

With industry-wide wage increases, there is national momentum for change; in November 2022, 76 percent of Washington, DC voters voted to raise the wage for tipped workers from \$5.35 to the full minimum wage of \$16.10 per hour. In October 2023, Chicago City Council

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<sup>27</sup> Chaney-Cambon, S. and Dougherty, D. (September 2021). States That Cut Unemployment Benefits Saw Limited Impact on Job Growth. Wall Street Journal.

<https://www.wsj.com/articles/states-that-cut-unemployment-benefits-saw-limited-impact-on-job-growth-11630488601>.

<sup>28</sup> One Fair Wage. (July 2021). The Impact (or Lack Thereof) of Ending Unemployment Insurance on Restaurant Workers' Willingness to Work for Subminimum Wages. New York, NY: One Fair Wage.

[https://onefairwage.site/wp-content/uploads/2021/07/OFW\\_HelpWanted.pdf](https://onefairwage.site/wp-content/uploads/2021/07/OFW_HelpWanted.pdf).

<sup>29</sup> Black, J. (September 2021). How To Make an Unloved Job More Attractive? Restaurants Ticker With Wages. New York Times. <https://www.nytimes.com/2021/09/20/dining/restaurant-wages.html>.

<sup>30</sup> One Fair Wage. (September 2021). Raising Wages to Reopen: Restaurants Nationwide Raising Wages to Save Their Businesses After COVID-19. New York, NY: One Fair Wage.

[https://onefairwage.site/wp-content/uploads/2021/09/OFW\\_RaisingWagesToReopen\\_3.pdf](https://onefairwage.site/wp-content/uploads/2021/09/OFW_RaisingWagesToReopen_3.pdf).

<sup>31</sup> OFW Employer Database

<sup>32</sup> NBC News. Jan 2024. At least five states are considering requiring full minimum wages for tip earners this year. <https://www.nbcnews.com/business/economy/tipped-workers-minimum-wage-rcna132172>

voted to end the subminimum wage for tipped workers altogether, with a vote of 36-10.<sup>33</sup> One Fair Wage legislation is now moving in 13 states nationwide - 9 states via legislation, including CT and NY, and 4 states where One Fair Wage will be on the ballot in November, including MI, OH, AZ, and MA<sup>34</sup>. It's a historic moment: for the first time since Emancipation that millions of workers are rejecting the subminimum wage for tipped workers, and employers must pay One Fair Wage in order to survive.

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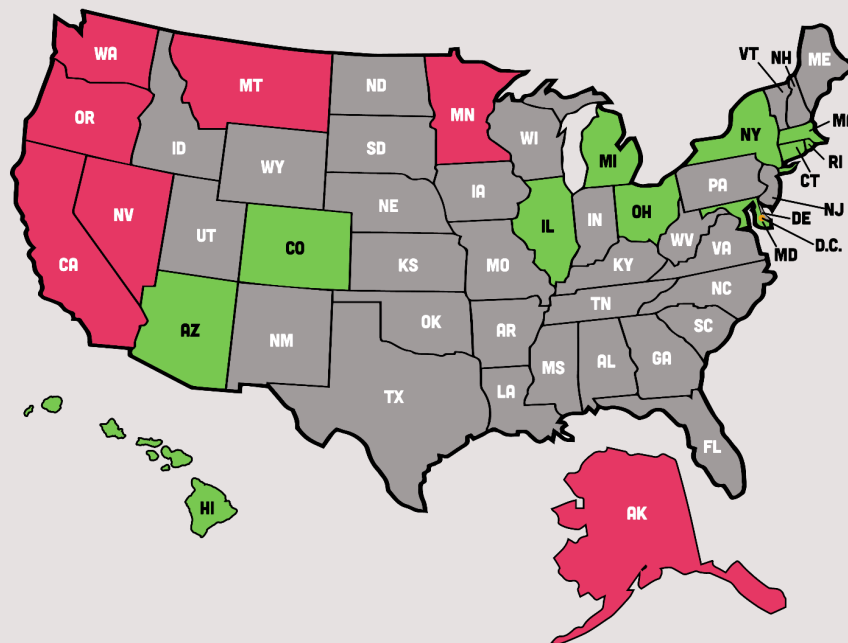
<sup>33</sup> Chicago Eater, September 2023.



<https://chicago.eater.com/2023/9/19/23881229/chicago-tipped-minimum-wage-ordinance-one-fair-wage-victory-restaurant-association-saru-jayaraman>

<sup>34</sup> NBC News. Jan 2024. At least five states are considering requiring full minimum wages for tip earners this year. <https://www.nbcnews.com/business/economy/tipped-workers-minimum-wage-rcna132172>

# ONE FAIR WAGE ACROSS THE NATION

## PROGRESS AND ORGANIZING MAP



-  - states that already have OFW
-  - states where OFW is organizing



With Maryland's subminimum wage for tipped workers at \$3.63 per hour, Maryland restaurants will face an even greater staffing crisis than they have already faced if Maryland does not follow this national trend to end the subminimum wage for tipped workers.

President Biden has been a champion of raising the minimum wage to \$15 an hour and ending the subminimum wage for tipped workers, including this policy in his federal Raise the Wage Act that was part of his initial \$1.9 trillion COVID-19 relief package<sup>35</sup>. In 2021, while addressing restaurant owners concerns regarding the labor shortage, President Biden

<sup>35</sup> Jacobson, L. (January 2021). What's in Joe Biden's \$1.9 trillion American Rescue Plan?. PolitiFact. <https://www.politifact.com/article/2021/jan/15/whats-joe-bidens-19-trillion-american-rescue-plan/>.

urged employers to pay higher wages to workers, and specifically called out the need to pay tipped workers a \$15 minimum wage plus tips.<sup>36</sup>

Now with the critical 2024 elections, the issue has become even more critical: the cost of living is at the top of every poll, especially polls of the most disinterested voters.

Recent polls of voters of color and youth have shown that cost of living is the top issue on voters' minds. The poll conducted for UnidosUS and Mi Familia Vota, 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% of Latinos and jobs and the economy came in second (44%).<sup>37</sup> As per CIRCLE's early poll of youth (ages 18-34) ahead of the 2024 presidential election, young people are sending a clear message that their primary concern is the economy. 53% chose the cost of living/inflation among their three top issues, followed by jobs that pay a living wage (28%).<sup>38</sup>

This means 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 don't. There is only one policy solution to the rising cost of living: putting more money in people's pockets, such as through SB 160.

As per MIT's Living Wage calculator, the living wage for a family of two working adults with two children in Maryland is \$27.32 per hour, well above the current minimum wage<sup>39</sup>.

By passing One Fair Wage, Maryland legislators can end a legacy of slavery, diminish racial inequity and sexual harassment in the restaurant industry, align with President Biden's agenda, engage unlikely voters and allow independent restaurant owners across the states to fully reopen, and their workforce to fully recover.

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<sup>36</sup>Brest, M. (July 2021). Biden tells restaurateurs to pay workers more amid labor shortage. Washington Examiner. <https://www.washingtonexaminer.com/news/biden-restaurant-increase-wages-labor>.

<sup>37</sup> NBC News. Suzanne Gamboa. Large Latino poll finds cost of living and economy top voters' concerns <https://www.msn.com/en-us/news/politics/large-latino-poll-finds-cost-of-living-and-economy-top-voters-concerns/ar-A1kJc9x>

<sup>38</sup> Peter de Guzman, Alberto Medina (November 2023). Youth and the 2024 Election: Likely to Vote and Ready to Drive Action on Key Political Issues.

<https://circle.tufts.edu/2024-election-youth-poll#diverse-issue-priorities,-like-climate,-shape-youth-votes-and-action>

<sup>39</sup> MIT Living Wage Calculator Maryland <https://livingwage.mit.edu/states/24>