



Stop Leaving Us Out

Seventy-Three Years of New York State Minimum Wage Increases Excluding Women — Especially Women of Color

For years now I have heard the word “Wait!” It rings in the ear of every Negro with piercing familiarity. This “Wait” has almost always meant “Never.” We must come to see, with one of our distinguished jurists, that “justice too long delayed is justice denied.”

—Rev. Dr. Martin Luther King, Jr.,

Letter from a Birmingham Jail, April 16, 1963





INTRODUCTION

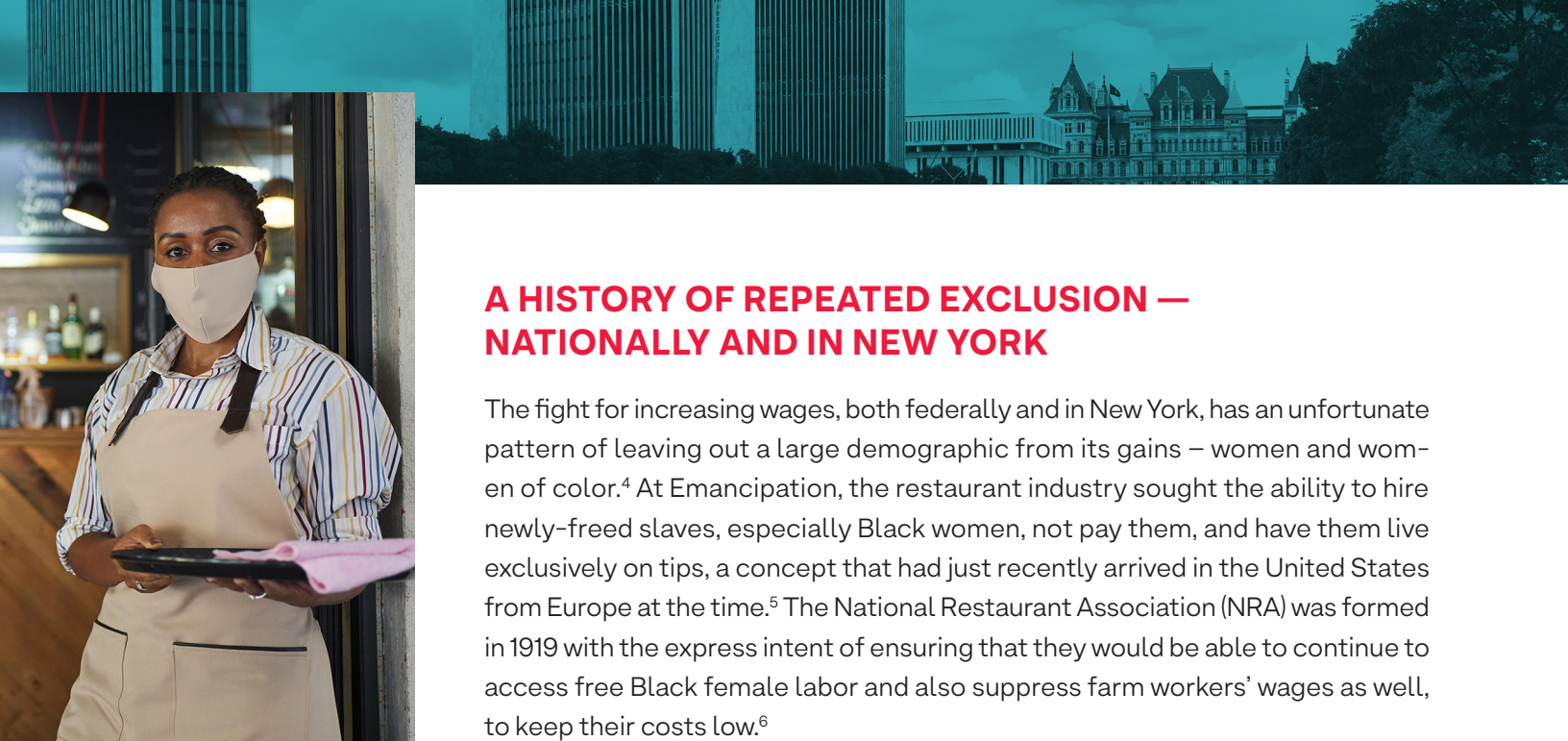
The movement to increase the New York State minimum wage has made great gains for some workers. However, tipped restaurant workers, who have been overwhelmingly women and disproportionately women of color since they were first excluded from the federal minimum wage in 1938, have been repeatedly negotiated out of minimum wage increases since the inception of a minimum wage in New York State in 1960. These women, particularly women of color, have been repeatedly told to wait for a full minimum wage that has never materialized — with dire consequences for the future of the New York State restaurant industry.

This brief documents the history of minimum wage increases in New York and repeated exclusion of women and especially women of color who work as tipped restaurant workers, often as a result of negotiations between legislators, advocates, and the National Restaurant Association's New York-based affiliates, the New York State Restaurant Association and the New York City Hospitality Alliance. It also details the impacts of these workers' exclusion on these workers themselves and on the New York restaurant industry's ever-increasing inability to find enough staff to work in restaurants.



KEY FINDINGS

- 1) Since 1938 at the federal level and 1960 in New York State, tipped workers, especially tipped restaurant workers, who are overwhelmingly women and disproportionately women of color and single mothers, have been repeatedly excluded from minimum wage increases by legislators due to lobbying from the National, NY State and NYC Restaurant Associations.¹
- 2) From 2015 to 2023, while all other workers saw an increase to \$15 and now potentially to a \$21 minimum wage, women of color tipped restaurant workers served as the leverage for these negotiations, and received a decrease from 85 percent of the wage to 66 percent of the wage — **a 25 percent decrease in their wages** — while all other workers received significant increases.²
- 3) In 2019, even as other tipped workers — car wash workers, nail salon and hair salon workers, parking attendants — went up to 100% of the wage, tipped restaurant workers remained frozen at 66 percent of the wage due to the lobbying of the National, NY State and NYC Restaurant Associations.³



A HISTORY OF REPEATED EXCLUSION — NATIONALLY AND IN NEW YORK

The fight for increasing wages, both federally and in New York, has an unfortunate pattern of leaving out a large demographic from its gains — women and women of color.⁴ At Emancipation, the restaurant industry sought the ability to hire newly-freed slaves, especially Black women, not pay them, and have them live exclusively on tips, a concept that had just recently arrived in the United States from Europe at the time.⁵ The National Restaurant Association (NRA) was formed in 1919 with the express intent of ensuring that they would be able to continue to access free Black female labor and also suppress farm workers' wages as well, to keep their costs low.⁶

The NRA succeeded in its mission in 1938, when the United States first passed the first federal minimum wage legislation as part of the New Deal, but farm workers, domestic workers and hospitality workers were excluded.⁷ Tipped restaurant workers, overwhelmingly women, were given no wage and made to live exclusively on tips.⁸ It was not until several decades later, in 1966, that these women were given any wage at all, but they were given a subminimum wage — a percentage of the minimum wage.⁹ Thirty years later their fate was further sealed. In 1996, the federal subminimum wage for tipped workers was set at \$2.13 an hour and subsequently frozen. There has been no increase in the federal minimum wage for tipped workers ever since.¹⁰

To this day, tipped workers federally are 66.6 percent women and disproportionately women of color.¹¹ Tipped workers, overwhelmingly women and women of color, thus went from having no entitled wages to having a subminimum wage.

THREE STRIKES FOR NEW YORK

New York has been no less exclusionary, following the federal example of denying these women a full minimum wage each time the minimum wage increased in the state.¹² New York State's minimum wage was first enacted in 1960.¹³ Each time the minimum wage was increased, legislators excluded tipped workers — who are overwhelmingly women and disproportionately women of color.

Today, tipped restaurant workers in New York State are 57 percent women and disproportionately women of color who largely work in very casual restaurants.¹⁴ In fact, many marginalized communities are overrepresented in subminimum wage positions and the restaurant, including women, people of color and members of the LGBTQ people.^{15,16} The restaurant industry has the highest concentration of single mothers of any industry (9 percent).¹⁷ These workers suffer from three times 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.¹⁸

While the gap between subminimum wages for these tipped workers, who are overwhelmingly women, and all other minimum wage workers, who are not, has always existed, it has grown over time. The closest New York came to paying a fair wage to tipped workers was in 2015–2016, when the subminimum wage was 85 percent of the state’s overall minimum wage. In 2016, as New York led the nation in passing a \$15 minimum wage, the Restaurant Association succeeded in striking a deal with legislators to decrease tipped workers’ percentage of the overall minimum wage to 66 percent of the wage (see Table 1). The subminimum wage for tipped workers thus decreased by 25 percent, and has remained frozen at two thirds of the wage ever since. This was strike one.

TABLE 1

Comparison between New York Minimum Wage & Subminimum Wage*

Year	Minimum Wage	Subminimum Wage*	Difference between Minimum & Subminimum Wage*	Gap
2000	\$5.15	\$3.30	\$1.85	64%
2003	\$5.15	\$3.30	\$1.85	64%
2004	\$5.15	\$3.30	\$1.85	64%
2005	\$6.00	\$3.85	\$2.15	64%
2006	\$6.75	\$4.35	\$2.40	64%
2007	\$7.15	\$4.60	\$2.55	64%
2008	\$7.15	\$4.60	\$2.55	64%
2009	\$7.25	\$4.65	\$2.60	64%
2010	\$7.25	\$4.65	\$2.60	64%
2011	\$7.25	\$5.00	\$2.25	69%
2012	\$7.25	\$5.00	\$2.25	69%
2013	\$7.25	\$5.00	\$2.25	69%
2014	\$8.00	\$5.00	\$3.00	63%
2015	\$8.75	\$7.50	\$1.25	86%
2016	\$9.00	\$7.50	\$1.50	83%
2017	\$11.00	\$7.50	\$3.50	68%
2018	\$13.00	\$8.65	\$4.35	67%
2019	\$15.00	\$10.00	\$5.00	67%
2020	\$15.00	\$10.00	\$5.00	67%
2021	\$15.00	\$10.00	\$5.00	67%
2022	\$15.00	\$10.00	\$5.00	67%

*For food service workers, in New York City for large employers over 11 people.

Source: Department of Labor, Minimum Wages for Tipped Employees – Historical Tables
<https://www.dol.gov/agencies/whd/state/minimum-wage/tipped/History>

In December 2017, Governor Cuomo publicly announced that he would conduct a review to end the subminimum wage for tipped workers as a way to address sexual harassment in the restaurant industry — since the tipped restaurant workers face the highest levels of sexual harassment of any workforce.¹⁹ However, in December 2019, after two years of hearings and advocacy on the issue, Governor Cuomo issued an executive order to end the subminimum wage for all other tipped workers such as car wash workers, who are overwhelmingly men, but excluded the large majority of tipped workers who are women who work in the restaurant industry.²⁰ This too was a missed opportunity to correct this legacy of slavery for tipped restaurant workers. This was strike two.

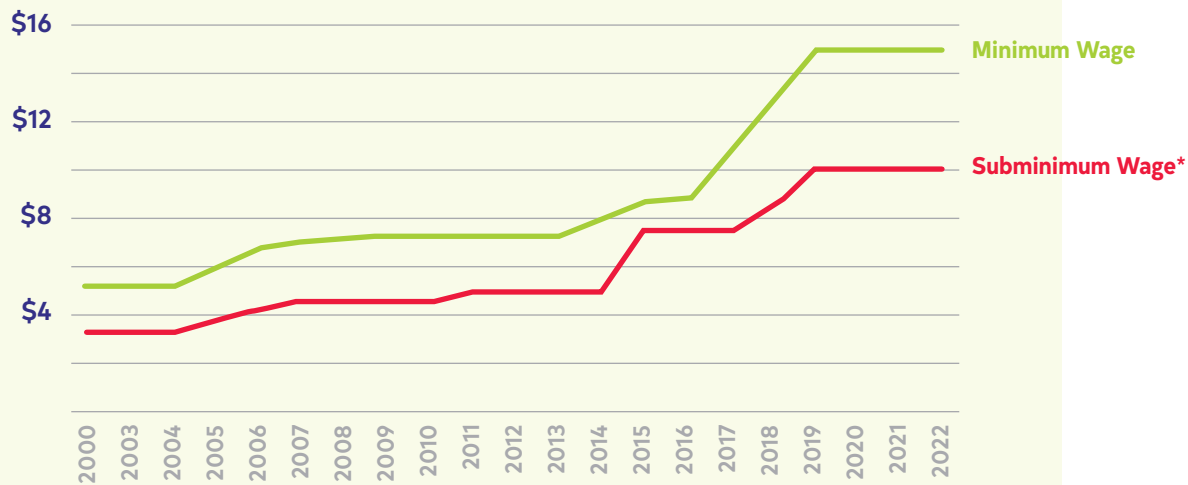
Now, in 2023, New York State legislators are considering two pieces of legislation. The first bill would finally end the subminimum wage for tipped workers (S5567 (Jackson) / A10710 (Gonzalez-Rojas)). The second bill would raise the state’s minimum wage to \$21.25 an hour (S1978(Ramos) / A2204(Joyner)). If the second bill passes, and the overall minimum wage is raised to \$21.25, but if the first bill does not pass, and there is no phase out of the subminimum wage, tipped

workers will continue to experience a 25 percent decline in their wages since 2015, while all other workers experience more than a 33 percent increase in their wages. We must avoid this third strike.

If New York chooses to once again raise the minimum wage and leave tipped workers behind, they will be repeating a long history of deal-making at the expense of the state's most vulnerable, low-income workers: women who are disproportionately women of color and single mothers raising their children on tips.

CHART 1

Decrease in % of Subminimum Wage* and Subsequent Freezing

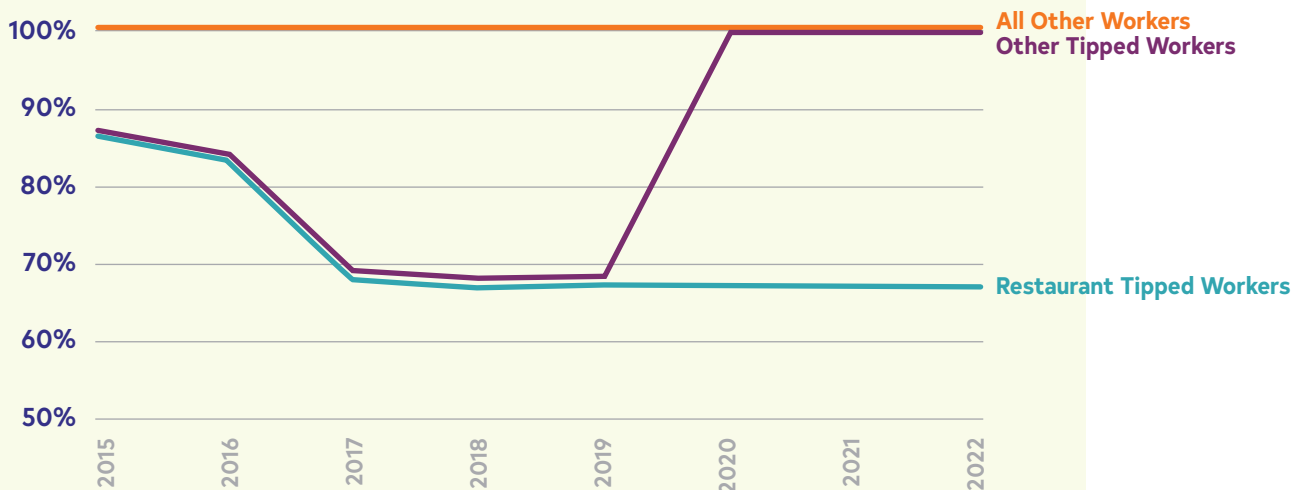


*For food service workers, in New York City for large employers over 11 people.

Source: Department of Labor, Minimum Wages for Tipped Employees - Historical Tables
<https://www.dol.gov/agencies/whd/state/minimum-wage/tipped/History>

CHART 2

Projected Increase in Minimum Wage Without Phase-Out of Subminimum Wage



Source: Department of Labor, New York State



Chanta Hunter

“They tried to hire me for less and I just declined to work there. I am gifted enough to not have to work for pennies and blessed enough to be able to hold out for the pay I want.”

Chanta is a bartender in New York City. Prior to the COVID-19 pandemic she worked at Olive Garden for 15 years. With the pandemic, she became aware of the austerity of the restaurant industry wages across the US, and is one of a growing number of workers who are demanding a full minimum wage with tips on top in order to work in restaurants. Chanta knows what she is worth, and that having economic stability is critical. She has found what many workers are now finding — that they can demand more and get it, especially given the restaurant staffing crisis. But Chanta wants everyone to be able to have the wages they deserve, especially women of color, which is why she is fighting for One Fair Wage — policy to require that all workers receive a full minimum wage with tips on top.



Silvia Gaston

“I am a mother, I am a fighter and I am the full supporter of my children and I continue to reinvent myself to support both of my children who are now in college. My dream is to own a restaurant that has dignified wages and working conditions and good food.”

Silvia is a former restaurant worker in New York City who is a survivor of women trafficking, sexual abuse, and the foster care system. She has been working since she was about 16 years old and is a mother of two. She worked and learned how to speak and write in Spanish on her own because she was never able to go to school. She has worked as a server and a hostess. When the pandemic happened the economy went down and restaurants closed down and got involved with organizations working to end the subminimum wage. Silvia joined the movement after leaving the industry and its low wages. She does this advocacy not just for herself, but because she knows that to provide for her family, she has to fight to ensure her fellow tipped workers are not left behind again, yet again.

THE IMPACT OF EXCLUDING WOMEN AND WOMEN OF COLOR: INCREASED ECONOMIC INSTABILITY AND RACIAL AND GENDER INEQUITY

By continuing to exclude tipped restaurant workers from full minimum wage increases, New York State is exacerbating economic, racial, and gender inequities faced by this workforce.

With regard to economic inequality, as other workers receive minimum wage increases, and

tipped workers do not, their relative position in the economy decreases.²¹ The evidence of this inequity is greatest when comparing New York to the seven states that have required a full minimum wage with tips on top for decades — CA, OR, WA, NV, MN, MT, and AK. In those states, there is no subminimum wage for tipped workers, and tipped workers have lower rates of poverty.²² These states also have the same or higher restaurant sales per capita, small business growth rates, and tipping averages as New York.²³ In other words, these 7 states have reduced economic inequality and poverty for tipped workers while maintaining or increasing growth for the restaurant industry, and especially for small businesses.



Second, with regard to racial and gender inequity, the subminimum wage for tipped workers forces a population of the state's most vulnerable workers to tolerate customer biases and harassment in order to earn their income in tips. Black women tipped workers in New York earn \$3.01 per hour less than their white male counterparts, as a result of both customer bias in tipping and racial segregation by occupation — women and people of color being segregated into lesser-tipping positions (bussers instead of servers and bartenders) and more casual restaurants where tips are less.²⁴ In addition, forcing a workforce that is mostly women to rely on customer tips has resulted in the restaurant industry having the highest rates of sexual harassment of any industry in the United States, since these women must tolerate inappropriate behavior to obtain tips.²⁵ The evidence that this harassment is directly related to the subminimum

wage for tipped workers lies in the seven states that require a full minimum wage with tips on top, where tipped restaurant workers report one half the rate of sexual harassment as they do in states that allow a subminimum wage for tipped workers.²⁶ Because they can count on a wage from their employer, women in these states are not as reliant on customers for tips, and are thus able to reject harassment from customers more regularly. Ensuring that tipped workers in New York State receive a full minimum wage could thus cut sexual harassment in half — in the industry with the highest rates of harassment.

AS A RESULT OF BEING REPEATEDLY EXCLUDED, TIPPED WORKERS ARE LEAVING NEW YORK STATE'S RESTAURANT INDUSTRY *EN MASSE*

With the COVID-19 pandemic, nearly half a million New York restaurant workers lost their jobs.²⁷ Two thirds of New York State tipped workers surveyed reported to One Fair Wage that they faced great challenges accessing unemployment insurance because they were told that their subminimum wage was too low.²⁸ Many returned to work in summer of 2020 and reported that tips had significantly decreased, because sales had significantly decreased, and sexual harassment, which was already the highest in restaurants of any industry, had significantly increased.²⁹ Hundreds of New York's women restaurant workers reported that they were regularly asked to remove their masks so that customers could judge their looks and their tips

on that basis.³⁰ When they were asked to enforce COVID protocols on the same customers from whom they had to receive tips to make up their base wage, these workers started leaving the industry *en masse*.³¹

Over one million restaurant workers left the industry nationally since 2019, and 50,000 workers have left the industry in New York State.³²

New York's rate of restaurant worker exodus was higher than any other state in the United States – while 1 in 10 workers left the industry nationally, 1 in 5 workers left New York State's industry, creating the worst staffing crisis in the history of the industry.³³
And the exodus is not over.



Of the workers who remain, 50 percent of those who remain in the NY restaurant industry reported that they are considering leaving; 90 percent say the only thing that will make them stay or return to working in restaurants is a full livable wage with tips on top.³⁴

In response, thousands of restaurants nationally and at least over 500 restaurants in New York have voluntarily transitioned to paying a full minimum wage with tips on top.³⁵ Many of these restaurant owners are now calling for state policy that will create a level playing field, so that all restaurants raise wages together and none is at a competitive disadvantage, and will also signal to thousands of workers that wage increases will be permanent and it is worth returning to work in New York State restaurants.



CONCLUSION

New York legislators have the opportunity in 2023 to finally right the wrongs of the last 160 years since Emancipation, when tens of thousands of Black women were first excluded from a minimum wage and told to live on the mercy and largesse of customers. Instead of raising the minimum wage for all other workers and blocking increases for tipped restaurant workers, New York legislators can raise the minimum wage for all workers with no exclusions. Instead of telling women of color to wait once again, New York legislators can once and for all grant what they have granted to all other workers, including all other tipped workers — **the right to a full, fair minimum wage from their employer, with tips on top.**

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