



**STATEMENT OF SARU JAYARAMAN,  
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**U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS  
HEARING ON THE FUTURE OF THE U.S. RESTAURANT INDUSTRY**

**September 25, 2020**

My name is Saru Jayaraman. I am the Co-founder and President of One Fair Wage, a grassroots advocacy organization of restaurant workers and other Americans affected by the subminimum wage laws in the United States. I am also Director of the Food Labor Research Center at University of California, Berkeley. I have authored and co-authored over 70 policy reports and 3 books on the restaurant industry based on government data analysis and over 10,000 surveys of workers and 2,000 interviews with employers over the last 20 years.

I want to thank Chairman Mike Thompson and Ranking Member Adrian Smith, and Chairman Neal and the other Members of the Committee for the opportunity to discuss the future of our nation's restaurant industry, including the future of the 13.6 million Americans who work as servers, cooks and bussers in our nation's restaurants.<sup>1</sup> Your committee's work on tax credits and stimulus checks to support this workforce has been critical: I would like to share some other possibilities that could support these workers.

This is a bleak time for our industry. An estimated one out of every four Americans who lost their jobs during this unprecedented crisis were working in the restaurant industry.<sup>2</sup> At least 16,000 restaurants nationwide have already closed their doors permanently in the past few months.<sup>3</sup> And

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<sup>1</sup> Bureau of Labor Statistics, February 2019. Employment Projections, 2016-2026.

<sup>2</sup> *Employment Situation News Release—May 2020*. (2020). Bureau of Labor Statistics. <https://www.bls.gov/news.release/archives/empst06052020.htm>

<sup>3</sup> *Yelp: Local Economic Impact Report*. (n.d.). Yelp Economic Average. Retrieved September 22, 2020, from <https://www.yelpeconomicaverage.com/yelp-coronavirus-economic-impact-report>

data suggest that 85% of independent restaurants may go out of business by the end of 2020.<sup>4</sup> It is, indeed, a hard time to be a restaurant owner in America.

Unfortunately, however, restaurant workers have been in crisis for far, far longer. At Emancipation, the restaurant lobby sought to hire newly freed slaves and not pay them anything, forcing them to live entirely on tips. This was a mutation of the original concept of tipping, which was conceived as an extra or a bonus on top of the wage, not the wage itself. Thus, in 1938 when our nation's first minimum wage law was passed under the New Deal, it exempted tipped workers. In fact, that first minimum wage law did not even set a floor for tipped worker wages from their employers. Legally, restaurant owners could pay these workers absolutely nothing and force their workers to pin their hopes for survival on tips.<sup>5</sup> From 1938 until 1991, the minimum wage for tipped workers increased from \$0.00 an hour to \$2.13 an hour, where it has remained, fixed and unchanged even by inflation, for almost three decades.

Today, 70% of tipped workers are women who largely work at casual restaurants like IHOP and Denny's and struggle with the highest rates of economic insecurity and sexual harassment of any industry because they must tolerate inappropriate customer behavior to feed their families in tips.<sup>6</sup> Overall, 45% of restaurant workers are people of color, which might not matter if those workers were hired at the same establishments and tipped at the same rates as their white counterparts.<sup>7</sup> However, research shows only 22% of people of color and 43% of women are employed in the highest paying front of the house positions in fine dining establishments.<sup>8</sup> And even when they do have a chance at higher-tipping establishments, research has shown that, on average, customers tip white servers twice as much as they tip Black servers.<sup>9</sup> Thus, nationwide, tipped restaurant workers who are white men earn fully \$4.79 more per hour than their Black women counterparts.<sup>10</sup>

In these ways, restaurant workers were in crisis *before* the coronavirus. The pandemic and the economic aftermath have only sharpened the existing inequities and injustices in the restaurant industry even further. First, nearly 10 million restaurant and other tipped service workers lost their jobs due to the COVID-19 shutdown, and 60% were unable to access unemployment insurance because they were told by multiple states that their subminimum wage plus tips was too low to

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<sup>4</sup> Eric Amel et. al, "Independent Restaurants Are A Nexus Of Small Business in the United States and Drive Billions of Dollars of Economic Activity That Is at Risk of Being Lost Due to the COVID-19 Pandemic," *Independent Restaurant Coalition*, June 10, 2020, at [https://media-cdn.getbento.com/accounts/cf190ba55959ba5052ac23ba6d98e6de/media/EmH1JsVMRNylmKAeF2FJ\\_Report.pdf](https://media-cdn.getbento.com/accounts/cf190ba55959ba5052ac23ba6d98e6de/media/EmH1JsVMRNylmKAeF2FJ_Report.pdf)

<sup>5</sup> Segrave, K. (2009). *Tipping: An American Social History of Gratuities*. McFarland.

<sup>6</sup> Restaurant Opportunities Centers United, "The Glass Floor: Sexual Harassment in the Restaurant Industry," New York, NY, October 2014.

<sup>7</sup> Restaurant Opportunities Centers United, *The Great Service Divide: Occupational Segregation & Inequality in the U.S. Restaurant Industry* (New York, NY: ROC United, 2014).

<sup>8</sup> *Ibid.*

<sup>9</sup> Lynn et al., (2008). Consumer Racial Discrimination in Tipping: A Replication and Extension. *Journal of Applied Social Psychology*, 38(4), pp.1045–1060.

<sup>10</sup> *A Persistent Legacy of Slavery: Ending the Subminimum Wage for Tipped Workers as a Racial Equity Measure*. (2020). One Fair Wage. [https://onefairwage.com/wp-content/uploads/2020/08/OFW\\_LegacyOfSlavery\\_USA-1.pdf](https://onefairwage.com/wp-content/uploads/2020/08/OFW_LegacyOfSlavery_USA-1.pdf)

qualify to meet the minimum threshold to qualify for benefits.<sup>11</sup> In many instances, even when they were thus not eligible for state unemployment insurance but did qualify for federal unemployment insurance, they still could not access those benefits because they could not reverse state denials to access federal benefits. The lack of benefits resulted in a severe crisis for workers, with millions struggling to feed their families and pay for rent and basic utilities. Of the 220,000 workers who applied to our One Fair Wage Tipped and Service Workers' Emergency Relief Fund, 90% reported that they did not have enough money for two weeks of groceries, and 90% reported that they could not afford to pay the rent.<sup>12</sup> The stimulus checks that you provided were a necessary but short-lived reprieve for these millions of workers.

Now, as restaurants have reopened, tipped workers are being asked to risk exposure to the virus by returning to work for a subminimum wage when reports suggest that tips are down anywhere from 50 to 75%.<sup>13</sup> In places like New York City, with one of the largest restaurant sectors in the country, inside dining is set to reopen next week with restaurants limited to 25% capacity. If workers are still subject to the subminimum wage — as they currently are in New York State — 25% capacity could literally translate to a 75% cut in tips.

One such worker is Kymani Hill, a tipped worker who has worked in Chicago restaurants for the last six years. Kymani lost his job in March with the pandemic but was unable to access unemployment insurance because he was paid too little - \$5 per hour plus minimal tips - and because he was paid in cash. He returned to work in April and was asked to enforce social distancing rules with customers who became angry with him and left without tipping him, resulting in far less income over the last several months. In August, while he was working a 12-hour shift at the restaurant, Kymani's mother passed away after contracting the coronavirus. He is now struggling alone and often does not have enough funds for groceries or gas for his car.

While federal law requires that restaurant owners make up the difference between the subminimum wage and the full minimum wage if tips fall short, Kymani is one of thousands of workers who earn less than the minimum wage with tips and whose employer does not make up the difference. In fact, in investigations of over 9,000 restaurants, the federal Department of Labor found that 84 percent of restaurants were in violation of wage and hour laws and 1,200 of those violations were for failure to bring tipped workers' wages up to the minimum wage.<sup>14</sup> As a result, even before the crisis, restaurant workers relied on food stamps at twice the rate of workers in other industries.<sup>15</sup>

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<sup>11</sup> *Locked Out by Low Wages*. (2020). One Fair Wage. [https://onefairwage.com/wp-content/uploads/2020/05/OFW\\_LockedOut\\_UI\\_COVID-19\\_FINALUPDATE.pdf](https://onefairwage.com/wp-content/uploads/2020/05/OFW_LockedOut_UI_COVID-19_FINALUPDATE.pdf)

<sup>12</sup> Ibid.

<sup>13</sup> See note 10.

<sup>14</sup> Allegretto, Sylvia, and David Cooper. 2014. Twenty-Three Years and Still Waiting for Change. Economic Policy Institute, Briefing Paper #379. <http://www.epi.org/publication/waiting-for-change-tippedminimum-wage/>.

<sup>15</sup> American Community Survey (ACS), 2012-2015. Calculations by the Restaurant Opportunities Centers United (ROC-United) of civilian employed tipped and general population demographics based on Ruggles et al., Integrated Public Use Microdata Series: Version 5.0 [Machine-readable database]. Minneapolis: Minnesota Population Center, 2010

The people who serve the food when we dine out literally cannot afford to put food on their own tables.

In addition, at this time, a shortfall in tips does not just result in economic insecurity for workers - it also results in a public health disaster. The CDC recently reported that Americans with COVID-19 are twice as likely to say they recently ate at a restaurant.<sup>16</sup> So enforcing social distancing and mask wearing is clearly vital. And yet, if restaurant workers are charged with enforcing public health guidelines among the same customers they are relying on to pay their wages through tips, workers will be forced to either not confront customers in order to preserve their tips, or confront customers but risk their tips in order to preserve public health. This is an impossible situation. Restaurant workers were living tip to mouth before this crisis. It was unconscionable to pay them a subminimum wage then. It's unacceptable now.

On the other hand, there are seven states — California, Oregon, Washington, Nevada, Minnesota, Montana, and Alaska — that require all employers in their states to pay One Fair Wage, a full fair minimum wage with tips on top. It's a policy that has proven beneficial for restaurant workers as well as owners and the industry as a whole. The seven states with One Fair Wage have seen higher restaurant industry job growth rates, higher small business restaurant growth rates, and the same or higher rates of tipping as the 43 states that still have a subminimum wage.<sup>17</sup> These seven states also have had half the rate of sexual harassment in among their restaurant workers.<sup>18</sup>

And there's more good news. Stirred by the suffering of their workers during this crisis, we have been approached by hundreds of restaurant owners who have changed their minds and have approached us to collaborate on pushing together for restaurant relief that will save independent restaurants, and One Fair Wage, to save workers. Celebrity chefs like Danny Meyer, Tom Colicchio, David Chang and Will Guidara, together with hundreds of smaller independent restaurants nationwide are vocally, publicly calling for One Fair Wage. Restaurant owners that once vigorously opposed and even funded the opposition to One Fair Wage are suddenly championing One Fair Wage and helping transform the industry. In fact, even the trade magazine of the corporate National Restaurant Association, the lobby that has lobbied to create and maintain the subminimum wage for tipped workers, recently reported that, due to the pandemic, the industry is re-examining the subminimum wage for tipped workers. Their article cited our research on the racial injustice of the subminimum wage and the pay gap between white male servers and Black women.<sup>19</sup> They

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<sup>16</sup> Fisher KA, Tenforde MW, Feldstein LR, et al. Community and Close Contact Exposures Associated with COVID-19 Among Symptomatic Adults ≥18 Years in 11 Outpatient Health Care Facilities — United States, July 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:1258–1264. DOI: <http://dx.doi.org/10.15585/mmwr.mm6936a5>

<sup>17</sup> National Restaurant Association (2017). 2017 National Restaurant Association Restaurant Industry Outlook [Online]. Available at: [https://www.restaurant.org/Downloads/PDFs/News-Research/2017\\_Restaurant\\_outlook\\_summary-FINAL.pdf](https://www.restaurant.org/Downloads/PDFs/News-Research/2017_Restaurant_outlook_summary-FINAL.pdf). Accessed 2/5/2018.

<sup>18</sup> Restaurant Opportunities Centers United, *Forward Together*, (Oct. 2014). *The Glass Floor: Sexual Harassment in the Restaurant Industry*. New York.

<sup>19</sup> *Compensation: Pandemic forces restaurant industry to rethink wages, tip credit*. (2020, September 16). *Nation's Restaurant News*. <https://www.nrn.com/workforce/compensation-pandemic-forces-restaurant-industry-rethink-wages-tip-credit>

understand that if the restaurant industry is to recover, it will take all of us working together — including workers, dedicated restaurant professionals who should be finally, fully compensated for all their hard work.

This committee has advanced important tax relief programs for workers - stimulus checks, the Employee Retention Tax Credit, and an expansive suite of refundable tax credits: the EITC, the Child Tax Credit, the Child and Dependent Care Tax Credit - all of which have been critical for workers' survival, and for which we are deeply appreciative. However, given the imperative of the workers' wage situation, I would encourage you to also consider tax relief specifically for employers who are now voluntarily transitioning to One Fair Wage - a full minimum wage with tips on top. There are thousands of such employers across the country, and providing them with tax relief both allows 'high road' employers to survive and encourages others to follow suit, ultimately resulting in the potential for state and federal policy change on the issue.

This pandemic has illuminated the injustices and inequities of our past, and their grave consequences, but it's also made plain the choices we face going forward. We must save independent restaurants, providing them with cash relief and tax credits, and at the same time allow workers to survive, not only extending their unemployment insurance and tax credits but also requiring that they be paid a full minimum with tips on top - especially if we expect them to protect the public health.

Thank you for the opportunity to testify today and I look forward to your questions.

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One Fair Wage is a community organizing and advocacy organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.