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Disrespecting the Minimum Wage: How States Limit the Opportunity for Restaurant Workers to Support Themselves

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Abstract

This paper examines the inequality in the restaurant industry in America. It focuses specifically on the tipped minimum wages in different states compared to the real minimum wage and looks into the gender and racial inequality present in restaurants. The first section analyzes the history of tipping and what it has become in the United States. The paper then moves to describe different struggles that tipped workers in the restaurant industry have to face. The paper also discusses different arguments to raising the tipped minimum wage and compares states with a tipped minimum wage and states without a tipped minimum wage. The paper looks at a Massachusetts state law specifically to analyze how the state is trying to protect tipped workers but is actually contributing to inequality among workers and the ethnic and gender minority cycle in tipped work. The final section describes different movements restaurant workers have started and the battles they have won as well as restaurant owners who have decided to join in the restaurant reform movement. The paper concludes with suggestions for consumers to help the fight and explains why the livelihood of tipped workers in the restaurant industry should and does matter to all American customers. This paper examines the inequality in the restaurant industry in America. It focuses specifically on the tipped minimum wages in different states compared to the real minimum wage and looks into the gender and racial inequality present in restaurants. The first section analyzes the history of tipping and what it has become in the United States. The paper then moves to describe different struggles that tipped workers in the restaurant industry have to face. The paper also discusses different arguments to raising the tipped minimum wage and compares states with a tipped minimum wage and states without a tipped minimum wage. The paper looks at a Massachusetts state law specifically to analyze how the state is trying to protect tipped workers but is actually contributing to inequality among workers and the ethnic and gender minority cycle in tipped work. The final section describes different movements restaurant workers have started and the battles they have won as well as restaurant owners who have decided to join in the restaurant reform movement. The paper concludes with suggestions for consumers to help the fight and explains why the livelihood of tipped workers in the restaurant industry should and does matter to all American customers.

Keywords

minimum wage, tipped workers, restaurant workers, minimum wage laws, tipping, restaurant reform movements

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This paper examines the inequality in the restaurant industry in America. It focuses specifically on the tipped minimum wages in different states compared to the real minimum wage and looks into the gender and racial inequality present in restaurants. The first section analyzes the history of tipping and what it has become in the United States. The paper then moves to describe different struggles that tipped workers in the restaurant industry have to face. The paper also discusses different arguments to raising the tipped minimum wage and compares states with a tipped minimum wage and states without a tipped minimum wage. The paper looks at a Massachusetts state law specifically to analyze how the state is trying to protect tipped workers but is actually contributing to inequality among workers and the ethnic and gender minority cycle in tipped work. The final section describes different movements restaurant workers have started and the battles they have won as well as restaurant owners who have decided to join in the restaurant reform movement. The paper concludes with suggestions for consumers to help the fight and explains why the livelihood of tipped workers in the restaurant industry should and does matter to all American customers.

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Introduction

The minimum wage in the United States was originally created to ensure that people were guaranteed a decent wage to maintain a certain standard of living for themselves and their family (Roosevelt, 1933). The model was designed to support a family of four, but this type of financial security from the minimum wage is unheard of today. The minimum wage in most cities or states is not enough for an individual to live off of comfortably, let alone a whole family. Individuals should be able to live without worrying about whether they will have enough money for rent or food for the month. The federal minimum wage has not improved in years despite the fact that the cost of living in most places has increased dramatically over time. States and local governments are able to create their own minimum wage laws, but most are still not enough to support workers and they do not increase alongside the rate of inflation. The minimum wage for tipped workers in America is even less. The average minimum wage for tipped workers is \$2.13 an hour while the federal minimum wage for all workers is \$7.25 an hour (United States Department of Labor, 2017). Tipped workers have an extremely hard time because the majority of states do not require employers to pay the full minimum wage to their tipped workers as tips are “included” in the wage. The idea of tipping will persist in being misunderstood and the lives of thousands of workers in the United States will continue to suffer from a simple, outdated belief.

Recognizing how the idea of tipping got started in America is crucial to understanding the impact this outdated form of payment has on communities throughout the country. The origin and meaning of the word tip is debated to either be “to insure promptness” or old thief slang for “to give,” but the

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practice of tipping is agreed to have come from the wealthy in Europe. European aristocrats would “tip” their hosts’ servants and rich Americans brought this practice home in the mid-1800s to show off the knowledge they had of other cultures (Oatman, 2016). Oatman quotes Jayaraman and says restaurants and rail operators were the first to embrace tipping because it allowed them to “[hire] newly freed slaves to work for tips alone” (2016, p. 17). For nearly 100 years this was the common practice in the United States. Minorities, or colored people, were hired for tipped jobs because it allowed their employers to get around paying them. Eventually the Fair Labor Standards Act was created in 1938 and along with it came minimum wage laws (Eisenberg & Williams, 2015). Tipped work was not included in the minimum wage laws originally and was not recognized officially until 1966. In the 1800s workers in these fields relied entirely on tips for their income and not much has changed for workers in tipped industries in 2016. Today, the tipped minimum wage is \$2.13 an hour and employers are supposed to make up the amount of the real minimum wage that workers do not make in tips. Seventeen states have employers pay the tipped minimum wage, 26 states, and Washington D.C., require employers to pay above the tipped minimum wage, and only seven states (Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington) require employers to pay the full minimum wage (United States Department of Labor, 2016). In 2011 the restaurant industry in America employed around nine million people as well as half of the wage workers who earn less than the federal minimum wage (Even & Macpherson, 2014). Tipped workers are also about three times as likely to depend on food stamps (Tipped Workers, n.d.), so restaurants employ about half of the wage workers who will more than likely end up on food

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stamps. Thousands of workers in the United States will be affected if people continue on the same path. This paper criticizes those states that have different minimum wages for tipped workers in order to ensure that all workers in America are given the opportunity to support themselves.

Background

There are huge inequalities that tipped workers have to overcome in the work force in order to support themselves. There are only seven states in America that require their employers to pay their workers the full minimum wage in addition to the tips earned by those workers. The other 43 states believe that requiring employers to pay the full minimum wage will force restaurant owners to lessen the amount of jobs they have or to close down their restaurant completely. The Economic Policy Institute found “that tipped workers are more than twice as likely as other workers to fall under the federal poverty line” (Liebelson, 2014, para. 2). The economy and growth of the seven states that are paying their workers the full minimum wage have done very well. Tipped workers are doing much better in these states too—they are 25% less likely to fall under the poverty line nationally when they are paid a full wage (Tipped Workers, n.d.). When tipped workers receive even less than the minimum wage, it becomes nearly impossible for them to survive. The amount of tips they receive rarely amounts to being paid the full minimum wage per hour over the full course of time they work and despite the fact that federal law requires employers to make up the wage difference they almost never do. The \$5.12 credit allowed by the current law leads to tipped workers being paid poverty-level wages while also experiencing wage theft. A typical restaurant worker will earn only \$15,000 a year according to Eric Schlosser, “roughly one-third the annual income of the

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average American worker” (Jayaraman, 2013, p. x). Additionally, restaurant workers are often denied sick days and any type of benefits. Restaurant workers are over all treated terribly as they are given poverty level wages and are forced to work excessive hours, even when they are sick, if they want to survive.

The Problems with Tipping Practices

Along with these hardships, in certain restaurants tipped workers are required to “tip out” or contribute to “tip pooling”: sharing a portion of their tips with the workers in the back, or splitting all tips in one night among the total tipped workers. These two practices are very controversial because they can be unfair and are nearly impossible to regulate. Tipping out is difficult to ensure equality because it is hard to monitor the amount of tips that each server is giving the rest of the workers. The practice also questions fairness in the industry—should servers have to give a portion of their tips away? Some states have narrowed the description of a tipped worker and only allow this narrow description to receive any tips at all. Tipping out to the dish washers, managers, and other staff is illegal in these states, but the laws are often times broken. Tip pooling is meant to ensure long term consistency for workers because the idea is everyone will have good nights and bad nights. But if one server always has bad nights and another always has good nights, is it fair for the better server to give up a portion of their income every shift to a worker who does not do as good of a job? Tip pooling also becomes a problem when a customer specifically requests their tip go to one or two people. Does the customer’s tip still go in to the tip pool? Or have the specific workers earned the right to keep their entire tip? Deutsch says, “It is not the guest’s responsibility to know the tipping policy of the

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restaurant” but whether they do or do not know the policy, their request should be followed. It should not be this complicated for a customer to determine whether or not they want to tip, how much they want to tip, or who they want to tip (2014, p. 28). Most lawsuits regarding tipping also focus on two questions: who gets to share the tips and what should servers be paid if they are not serving (Brooks, 2014). The inconsistency among policies in individual restaurants and states overall creates even more inequality and uncertainty for tipped workers across the United States.

Gendered Restaurant Work

A large proportion of the tipped workers in society are single mothers. Women make up 71 % of tipped servers in the restaurant industry (Oatman, 2016) and these women are forced to work long hours while being harassed at work to barely make ends meet, if they are lucky. Women already have to overcome a tremendous amount in the work place and adding an even lower salary makes it almost impossible for them to support themselves and their children. Sexual harassment in the restaurant world prevents women from leaving their abusive jobs and makes it extremely difficult to earn a promotion based on their own skill. Kitchen bosses threaten to ruin women’s careers if they try to leave due to sexual harassment and verbal abuse, and many request sexual favors from a woman if she wants a promotion. One woman went to the Restaurant Opportunities Centers United to report “when she’d asked her manager for a promotion from server to bartender, he’d asked her what she’d be willing to *do* for a promotion” (Jayaraman, 2013, p. 131). This is not an uncommon situation in the restaurant industry and with little to no promotional opportunities for these workers, women are forced to stay in the same social class and deal with the same

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sort of abuse and harassment everywhere they go. This continuous struggle leads to fewer possibilities for their children which prolongs the unacceptable cycle even more.

Ethnic Restaurant Work

In addition to this work being gendered it is also largely ethnically based. A “behind the scenes” job, like a dishwasher, is one of the most popular jobs for undocumented immigrants, and these immigrants make up “40 percent of New York City[’s] restaurant workers” (Jayaraman, 2013, p. 3). These behind the scenes workers almost never make it to being a real server but do more work for the customer than tipped employees. They get paid low wages and are rarely compensated for the work they do with tips. Minority workers are more likely to experience discrimination in the restaurant world in multiple ways, including being “less likely to hold tipped positions... receiv[ing] substantially lower tips... and are more likely to be ‘stiffed’ (not tipped at all)” (Wang, 2014, p. 103). In certain restaurants, being a tipped worker is a great profession and is capable of supporting the worker and their family—but these opportunities are minimal in the restaurant industry and are dominated almost entirely by white males. Majority of the states that only pay tipped workers \$2.13 an hour are southern states, or former slave states. It is interesting to think about tipped work as a way to keep not only restaurant workers, but also certain ethnicities, at poverty levels. Women and minority workers are the backbone of the restaurant industry and yet they are treated as if they mean nothing. These workers do not get sick days, they do not get benefits, and they do not get paid a living wage. These inequalities make it impossible for them to support themselves or their families.

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Restaurant Reform Movement Opponents

Opposition to the reform movement to lessen inequality in restaurants is ultimately hurting workers and their families. Many people believe that requiring employers to pay the full minimum wage to their workers while having tips as an additional source of income will result in less jobs because employers will not be able to afford it.

Wessels (1997) said the following:

As the restaurant hires more servers, factor demand theory tells us that marginal and average revenues per server will fall. The falling average revenue means each server earns less in tips. To retain its work force, the restaurant must then raise its hourly wage. So each restaurant faces a rising supply curve of labor and is a monopsony—even if it is fully competitive in the labor market (p. 334).

Wessels believes that initially an increase in the wage paid by employers will result in more jobs in a restaurant but will eventually lead to a decrease of jobs overall. Those against a modification to the system believe that a change this drastic will hurt the restaurant owners so much that they could be forced out of business due to the immense cost. Most people who share this mentality are not even open to a discussion on simply raising the tipped minimum wage to cover a larger percentage of the regular minimum wage. They are set on the current standard, which has not even been adjusted to inflation since 1991. \$2.13 an hour is the absolute most that employers can afford to pay their workers.

Restaurant Reform Movement Proponents

There are many who are fed up with the current system and this outdated mentality and have fought for equality for

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tipped workers. Tipped employees have allowed a loophole for employers to protect themselves instead. Those that want a legal change, such as Jayaraman, to defend tipped workers encourage the public to look at the states that are currently requiring employers to pay the full minimum wage to their tipped workers and allowing workers to keep their tips in addition to their paychecks. These seven states have grown economically and have created better circumstances for their tipped workers. President Barack Obama and other leaders in congress have fought for equality and opportunities for workers across the country. They have tried to raise the minimum wage to \$10.10 per hour, with yearly adjustments to accurately represent the changing cost of living, and have fought for tipped employees to get paid 70% of the minimum wage with tips added to that (Tipped Workers, n.d.). These advocates are doing all that they can to reform the industry, but individual states need to make the biggest change—requiring their restaurant owners to pay tipped workers the full minimum wage.

State Assessments

The states that have required employers to pay their tipped employees the full minimum wage are doing consistently better and have provided better economic opportunities for their workers. Of the 26 states (and Washington D.C.) that have “higher” minimum wages for tipped workers but do not meet the full amount, only seven have tipped minimum wages above \$5.00 an hour. The other twenty states have wages ranging from \$0.10 more than the federal tipped minimum wage to \$4.92 more an hour. Looking at statistics from National Restaurant Association, the states that have higher tipped minimum wages have an overall more consistent ratio between restaurant locations, annual income, and employment percentage. The

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annual mean wage of restaurant workers, including dish washers, servers, and cooks, is much better in those states that pay higher minimum wages than those that do not (Bureau of Labor Statistics, 2016). In a zoomed out picture the overall state wages do not seem to differ that greatly; on a scale of one to four many of the states are a two or higher. Zooming in to the different regions in each state gives a much more accurate representation of the true annual mean wages. Most of the “twos” show having one or two small areas of high annual wages that balance out the extremely low “one” sections. For each profession, dishwashers, servers, and cooks, the zoomed in images show a lot more regions falling in the lowest annual mean wage category than the zoomed out images. The federal minimum wage law states if an employee does not make up the wage credit in tips, the employer is mandated to make up the difference. If employers were making up this difference there would not be such a large gap between the different states’ annual mean wages for employees. There are strong correlations between the lowest annual mean wages of restaurant workers and those states that pay their tipped workers less than \$5.00 an hour, and the highest annual mean wages of restaurant workers and those states that pay their tipped workers the full minimum wage or close to it.

Massachusetts State Law Analysis

Massachusetts requires restaurant employers to pay their employees more than the federal tipped minimum wage—\$3.75 an hour (United States Department of Labor, 2017). Massachusetts also closely regulates tips and has created laws outlining “tip sharing procedures” (Tanner, 2014). Massachusetts General Law 149 Section 152A illustrates tipping pools and bans any worker with a managerial title or managerial job description, as well as all non-wait staff employees, from receiving any tips

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from a tipping pool. There was a law suit in 2014, *Matamoros v. Starbucks Corp*, where a group of baristas sued Starbucks over their unlawful distribution of tips according to Massachusetts state law (Tanner, 2014). Starbucks tried to argue that there was a difference between a shift supervisor and a shift manager, as their supervisors spent “90% of their time serving customers and only about 10% of their time directing the work” (Rand, 2012, para. 2), but the First Circuit Court of Appeals said they were still managers and taking from the tip pool violated the state law. It is a common practice for managers to obtain tips from tip pools that were earned by hard working servers in some states, and Massachusetts created this “Tips Act” to help protect the average worker. Unfortunately the world of tipping is extremely complicated and there is no clear cut way to ensure tipped workers are receiving their fair share of tips without potentially taking from another employee. Massachusetts General Law 149 Section 152A might help certain workers but it creates even more problems in the long run. In a restaurant like Starbucks, this law could deter people from wanting to be promoted. If a worker knows they will only be getting a pay increase to the real minimum wage, or slightly above it, while doing practically the exact same job with extra responsibilities and will not be allowed to take any tips at the end of their shift, they most likely will not want the promotion. It is common practice for white males to earn a significant amount more than white females and all people of color in the work place. With this in mind, white male workers would more than likely be the ones to take supervisor jobs in restaurants like Starbucks because they will have the most to gain from a promotion. Becoming a shift manager would boost their initial hourly income and their gender and skin color would probably result in higher pay increases overtime. While a

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law such as this is meant to help tipped workers, it also contributes to the restaurant hierarchy and system that keeps women and minorities down.

The Impact on Society

The minimum wage for tipped workers is so important today because Americans spend an enormous amount of time in restaurants and tipped jobs contribute to such a large section of jobs in the workforce in general. There is a huge percentage of the population that has worked, is working, or will work in a restaurant or tipped job environment and the quality of their lives is important. Americans need to care about the thousands of workers struggling to make ends meet and the additional thousands that have already fallen below the poverty line. Aside from moral reasons, there are many economic benefits of employees being paid a minimum wage. If the workers are being paid more, they have more money that they can contribute into the economy which will continue to circulate and create more jobs and more workers who are able to give back to the economy. If consumers work together to get tipped workers a real minimum wage they will no longer be dependent on government services and will be able to support themselves and their families. If the workers support themselves then the rest of the population's tax dollars can be used for other public services like maintaining libraries, parks, and schools. Americans should also care about how workers are treated because it affects their quality of service and food. Jayaraman says, "restaurants that [mistreat] their workers [are] more likely to engage in unsafe food-handling practices that sicken customers" (2013, p. 9) which makes sense because if an owner does not care about the wellbeing of their employees, there is a good chance that they do not care about the wellbeing of their customers. An owner like

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this only cares about the profit, and in many cases they will continue to receive a profit as long as they treat their workers badly and keep the customer outbreaks to mild illnesses.

Restaurant Worker Movements

In response to this poor treatment, workers in the restaurant industry have decided to fight to change the system and they have made big advancements. Saru Jayaraman and Fekkak Mamdouh co-founded the Restaurant Opportunities Centers United. This organization has defended workers' rights and worked with restaurant employees directly to help fight for their wages and benefits. The first win for the Restaurant Opportunities Centers United was representing restaurant workers from Windows on the World. This restaurant was located at the top of the World Trade Center and was destroyed during the terrorist attack on September 11, 2001. The owner of the restaurant attended a memorial for the workers that had died and "promised all of his former employees that he would hire them when he opened a new restaurant" (Jayaraman, 2013, p. 2). In reality he refused to hire most of his old workers when his new restaurant was opened because they "were not qualified to work in his new place" (Jayaraman, 2013, p. 4). The workers went to Jayaraman and Mamdouh for help and, through media attention, the newly founded organization was able to get the owner to hire back most of his previous workers (Jayaraman, 2013). Other big name restaurant chains have joined the restaurant reform movement and those workers fighting for a change. One restaurant owner in New York City, Danny Meyer, is contributing to the battle by paying his workers a decent wage and banning all tipping at his restaurants (Nicks, 2015). Meyer is planning on making this switch in one of his main restaurants in the near future while switching the others over gradually

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within the next couple of years. While there have been many positive changes in the restaurant industry there is still a lot more to be done and the employees and restaurant workers groups cannot succeed on their own.

Consumer Involvement

Tipped workers do not have to fight this battle alone and consumers can greatly contribute to helping win restaurant employees justice. Along with the movements taking place to guarantee the tipped worker to have full rights such as being paid a minimum wage, guaranteed sick days, etc. consumers can contribute in various ways. Consumers can make a huge difference by asking questions. While eating out at a restaurant a consumer can ask the manager or restaurant owner about worker benefits, promotional opportunities, minimum wages, and wage thefts. If an owner knows that people in the community care how the tipped employees are being treated, they will more than likely make an effort to change how the workers are cared for at work. Consumers can also boycott restaurants that are known to mistreat their employees and choose places where tipped workers are treated well. Another big thing consumers can do that is often forgotten about is educate others. There has been so much attention drawn to raising the minimum wage and work place equality for women and non-white workers, but the tipped worker is almost never mentioned in those arguments. The majority of Americans do not know that tipped workers have different standards than non-tipped workers. Even some employees do not quite understand the current law and why their paychecks are so low. There was a waitress working in Washington D.C. whose paycheck was oftentimes zero, and “she had no idea that her employer was supposed to make up the difference in tips” (Liebelson, 2014, para. 7). She was still being

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taxed for the full minimum wage despite never making the full amount. This proves education will be one of the biggest tools that consumers can use to help raise awareness and create a positive change in the restaurant industry.

Conclusion

Compared to much of the industrialized world, America is very far behind in terms of tipping. In most European countries restaurants automatically include the gratuity in the bill which eliminates variation between customer and server; In Australia, China, Denmark, Japan, and Iceland tipping has been abolished completely (Jewell, 2008). Neglecting to pay tipped workers in the United States a full minimum wage is hurting the public both economically and socially. Tipping, in general, has become such an outdated practice and has been eliminated by much of the industrialized world. In addition, setting separate standards for tipped workers and non-tipped workers is creating an environment for employers to take advantage of their already defenseless employees. Tipped workers deserve to be paid the full minimum wage so that they do not have to wonder whether or not they will be able to pay their bills for the month, or if they will be able to feed their children. Tips have created an environment for workers to be oppressed without even realizing there is something wrong. While 26 states, and Washington D.C., say they pay above the tipped minimum wage, most only pay a few cents or a couple of dollars more. None get anywhere close to the full minimum wage which hurts not only the workers, but the state's growth as well. To ensure the best circumstances for both workers and states, restaurant customers need to join in the fight. The trend of tipping is an outdated practice and should be eliminated in the United States because it creates inequality across gender, race, restaurants, and states.

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