

Issue: Economy

## The Virginia Minimum Wage Should Apply to Tipped Employees

The new Virginia minimum wage law does not cover tipped employees. A tipped employee will still earn only \$2.13 per hour plus tips with their minimum wage as little as \$7.25 per hour, while most non-tipped workers must now be paid a minimum of \$9.50 per hour, increasing to \$15 per hour by 2026 (if the Legislature remains in Democratic hands). Tipped workers are also subject to racial discrimination and sexual harassment as most of their income is reliant on customers for tips.

The tipped minimum wage is the lowest amount an employee can earn per hour. This is comprised of a basic cash wage paid by the employer plus tips. If the basic cash wage plus tips does not add up to the minimum wage, the employer must make up the difference. The supplemental payment that is owed the employee is called a tip credit.<sup>1</sup> However, tipped employees must ask their employers for the tipped credit, making the obligation difficult to enforce. For example, a US Department of Labor investigation of almost 9,000 restaurants from 2010-2012 found 1,170 tip credit infractions worth nearly \$5.5 million and found that five out of six restaurants had a wage violation of some kind.<sup>2</sup> A tipped employee may thus end up making as little as \$2.13 per hour if employers do not follow through on their obligations.

Federal law sets the minimum basic cash wage at only \$2.13 per hour for tipped employees. Many states mandate a higher level, and in some of these states, employers must pay tipped employees the full state minimum wage before tips.<sup>3</sup> In Virginia, however, tipped employees are still subject to the federal minimum cash wage.

### Lower Minimum Wage for Tipped Worker Perpetuates Inequities

According to the Economic Policy Institute, “research indicates that having a separate, lower minimum wage for tipped workers perpetuates racial and gender inequities, and results in worse economic outcomes for tipped workers. Forcing service workers to rely on tips for their wages creates tremendous instability in income flows, making it more difficult to budget or absorb financial shocks.”<sup>4</sup> Tipped workers are generally low wage workers and experience poverty at higher rates than non-tipped workers.<sup>5</sup>

Furthermore, research has also shown that the practice of tipping is often discriminatory, with white service workers receiving larger tips than black service workers for the same quality of service.<sup>6</sup> The reliance of some jobs on tipping for pay has its roots in racial discrimination. Tipping first became popular in the United States in the aftermath of emancipation, when “employers in the hospitality sector hired newly freed slaves with an expectation of servility to white patrons who would tip in lieu of wages.”<sup>7</sup> By 1880, African-Americans made up 43% of hotel and restaurant workers, commonly working long hours for low pay which was at the whim of customers.<sup>8</sup> Unsurprisingly, tipping encouraged racist treatment of employees of color.<sup>9</sup>

Later, tipped workers were excluded from the first minimum wage law, the Fair Labor Standards Act of 1938 (FLSA). The FLSA was not amended until more than a century after the Civil War, in 1966,

when tipped employees were finally guaranteed a base wage for their work. However, the tipped minimum was set at only half the regular minimum wage at the time.<sup>10</sup> In 1996, the regular minimum wage was severed from the tipped minimum wage, which only made matters worse. While the regular minimum wage in the US has not been raised since 2009, when it was set at \$7.25, the tipped minimum has been stuck at \$2.13 since 1991. It has lost almost half its value to inflation over the past 30 years.<sup>11</sup> While tipped employees were losing ground, the average hourly wage for top earners, those in the 90-99<sup>th</sup> percentile of incomes, grew by 158% from 1991-2018—a 43% increase after accounting for inflation.<sup>12</sup>

The low wage rate for tipped employees reflects not only embedded racism, but sexism as well. Reliance on tips subjects workers to the control of their customers for their earnings and livelihood. Women, who represent two-thirds of the tipped workforce, have frequently reported sexual harassment by customers.<sup>13</sup> The largest number of sexual harassment charges filed with the federal Equal Employment Opportunity Commission between 2005 and 2015 were brought by food service and hospitality industry workers.<sup>14</sup> A study from the Restaurant Opportunities Center (ROC) found that female tipped workers in states with a \$2.13 minimum wage reported experiencing sexual harassment twice as often and were told by management to wear “sexier” clothing three times as often as workers in states without a tipped minimum.<sup>15</sup>

Workplace sexual harassment and racial discrimination did not stop for tipped employees during the current pandemic. Reports include restaurant customers asking tipped workers to remove their masks so they can decide how much to tip them.<sup>16</sup> Seventy-eight percent of all tipped workers, but 88% of Black tipped workers, said they received less in tips during the pandemic than before. Additionally, the percentage of Black tipped employees who have reported being penalized by customers for trying to enforce social distancing and mask mandates is higher than for tipped employees in general. (Different studies have resulted in slightly different numbers with a range of 73% to 76% of Black employees reporting being penalized, while only 62% to 66% of all tipped employees report lower tips.)<sup>17</sup> Such harassment came on top of other pandemic-related problems for tipped workers, including job losses and a heightened risk of contracting COVID-19, often exacerbated by lacking health insurance.<sup>18</sup> At one point, state unemployment agencies were rejecting applications for unemployment assistance from over 40% of tipped employees for having earned too little in the quarter prior to applying.<sup>19</sup>

If Virginia eliminates the separate tipped minimum wage, it will reduce poverty rates for some of its lowest-paid employees. Studies have shown that the states which have already eliminated the tipped minimum wage have less poverty among workers in tipped industries.<sup>20</sup> Reducing poverty in tipped professions will help narrow the gap in poverty rates between people of color and white people, as well as between men and women.<sup>21</sup>

## Republicans' Arguments against Increasing the Tipped Minimum Wage Don't Hold up to Scrutiny

Republicans argue against raising the tipped minimum. One argument is based on the current pandemic. Republicans and an industry group, the National Restaurant Association, claim that the pandemic makes this a bad time to force restaurant owners to pay their employees a much higher minimum wage. They point out that the pandemic has been particularly hard on the restaurant industry.<sup>22</sup> However, such arguments ignore the positive effects of higher wages on employees and on the local economy. Restaurants, like other small businesses, can be expected to benefit from

higher worker productivity and lower staff turnover. In particular, one of the first types of spending to increase when workers get raises is dining—an effect that is likely to provide relief to the struggling restaurant industry.<sup>23</sup>

Opponents of paying tipped employees a regular minimum wage further claim that customers will respond to better hourly pay for tipped workers by tipping less—although there is no evidence that this occurs. An analysis by the Center for American Progress finds that, although rates of tipping vary to an extent from state to state, the average is about 16%, regardless of whether the state has retained, raised, or eliminated altogether the tipped minimum wage. Additionally, the percentage of customers who tip at all was about the same on average across these groups of states.<sup>24</sup>

Perhaps the most common argument against an increase in the minimum wage for tipped employees is that it will hurt employment, either by causing businesses to close, lay off, or hire fewer workers. Again, this has not turned out to be the case. A comparison of total employment in key tipped industries in states which have either retained, raised, or eliminated the tipped minimum wage, from the second quarter of 2011 to the first quarter of 2016, found no substantial differences in employment levels.<sup>25</sup> The claim that small businesses could not absorb paying higher wages to tipped employees has also been contradicted by the data. Small businesses in better-paying states in fact saw faster employment growth in key tipped industries during the above 2011-2016 time period, as compared with lower-paying states.<sup>26</sup> Restaurant sales were higher in better-paying states as well.<sup>27</sup>

## Conclusion

Democratic control of the legislature made it possible for the increase in the minimum wage this past year. Maintaining Democratic control of the legislature will be essential if there is to be any possibility that the the new minimum wage increase will be expanded to include Virginia's lowest-paid and most vulnerable workers, those still earning poverty wages from tips.

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<sup>1</sup> <https://www.dol.gov/agencies/whd/fact-sheets/15-flsa-tipped-employees/>

<sup>2</sup> <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>

<sup>3</sup> <https://www.minimum-wage.org/>

<sup>4</sup> <https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/>

<sup>5</sup> <https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>

<sup>6</sup> <https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/>

<sup>7</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>;

[https://onefairwage.site/wp-content/uploads/2021/02/OFW\\_EndingLegacyOfSlavery-2.pdf](https://onefairwage.site/wp-content/uploads/2021/02/OFW_EndingLegacyOfSlavery-2.pdf)

<sup>8</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>;

[https://onefairwage.site/wp-content/uploads/2021/02/OFW\\_EndingLegacyOfSlavery-2.pdf](https://onefairwage.site/wp-content/uploads/2021/02/OFW_EndingLegacyOfSlavery-2.pdf)

<sup>9</sup> <https://www.politico.com/magazine/story/2019/07/17/william-barber-tipping-racist-past-227361/>;

<https://www.forbes.com/sites/rakeenmabud/2019/02/12/the-racist-roots-of-tipping-reappearing-in-the-gig-economy/?sh=53d76b426a66>

<sup>10</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>;

[https://onefairwage.site/wp-content/uploads/2021/02/OFW\\_EndingLegacyOfSlavery-2.pdf](https://onefairwage.site/wp-content/uploads/2021/02/OFW_EndingLegacyOfSlavery-2.pdf)

<sup>11</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>

<sup>12</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>

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- <sup>13</sup> <https://rocunited.org/wp-content/uploads/sites/7/2020/02/TakeUsOffTheMenuReport.pdf>;  
<https://nwlc.org/wp-content/uploads/2019/10/RTWA-FS-2021-v3.pdf>
- <sup>14</sup> <https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/>
- <sup>15</sup> [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>16</sup> [https://onefairwage.site/wp-content/uploads/2020/12/OFW\\_COVID\\_WorkerExp-1.pdf](https://onefairwage.site/wp-content/uploads/2020/12/OFW_COVID_WorkerExp-1.pdf)
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- <sup>18</sup> <https://theconversation.com/covid-19-is-hitting-tipped-workers-hard-141515>
- <sup>19</sup> <https://www.cbsnews.com/news/unemployment-benefits-dont-qualify-full-time-worker/>
- <sup>20</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>
- <sup>21</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>
- <sup>22</sup> <https://restaurant.org/news/pressroom/press-releases/raise-the-wage-act-is-the-wrong-bill-at-the-wrong>
- <sup>23</sup> <https://www.americanprogress.org/issues/economy/reports/2021/02/25/496355/small-businesses-get-boost-15-minimum-wage/>
- <sup>24</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>
- <sup>25</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>
- <sup>26</sup> <https://www.americanprogress.org/issues/poverty/reports/2021/03/30/497673/ending-tipped-minimum-wage-will-reduce-poverty-inequality/>
- <sup>27</sup> [https://chapters.rocunited.org/wp-content/uploads/2018/02/OneFairWage\\_W.pdf](https://chapters.rocunited.org/wp-content/uploads/2018/02/OneFairWage_W.pdf)