



**STATEMENT OF SARU JAYARAMAN,
CO-FOUNDER AND PRESIDENT OF ONE FAIR WAGE**

**ILLINOIS SENATE EXECUTIVE, LABOR, COMMERCE, AND ECONOMIC DEVELOPMENT
COMMITTEES
TESTIMONY ON WAGE EQUITY, WORKERS' RIGHTS, AND CONSUMER PROTECTION**

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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 and a Professor at UC Berkeley's Goldman School of Public Policy. 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. My work was featured in two recent documentary films: **Waging Change** by Peabody Award-winning documentarian Abby Ginzberg, and the **Great American Lie** by the First Partner of California, Jennifer Siebel Newsom.

I want to thank the Committee Chairperson and the other Members of the IL Senate Executive, Labor, Commerce, and Economic Development Committees and the IL Legislative Black Caucus for the opportunity to discuss important COVID impacts on workers' wages and working conditions. I would like to share the particular experiences of workers in the restaurant industry, including the hundreds of thousands of Illinois residents who work as servers, cooks and bussers in our nation's restaurants.¹ Although my comments are geared toward 2021, rather than the current veto session, please note two things. First, many of the specific bills under consideration in the next six weeks are most desperately needed by restaurant workers who face egregious hardships as subminimum wage tipped workers without access to many safety net protections afforded workers earning a full minimum wage or more. These include paid sick leave, paid family and medical leave, worker health and safety, the gig economy bill and enforcement. Secondly, eliminating the subminimum wage in 2021 and moving to One Fair Wage is the centerpost for ending the dramatic vulnerability of tipped service workers in good times and their dramatic plunge into the worst

¹ Bureau of Labor Statistics, February 2019. Employment Projections, 2016-2026.

extremes of poverty, sexual harassment, racial discrimination, and public health disaster since the COVID-19 pandemic began. While I will address the specific needs of tipped restaurant workers, tipped service workers and subminimum wage workers across industries face similar dynamics.

Your Committee's work to support this workforce has been critical, as will a number of bills under current consideration. I will share additional possibilities that experience and data both demonstrate are needed now more than ever.

This is a bleak time for our industry. Since the COVID-19 pandemic began in the U.S., an estimated one out of every four Americans who lost their jobs worked in the restaurant industry.² Unfortunately, restaurant workers have been in crisis 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, tipped workers were excluded, codifying this legacy of slavery. 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.³ 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 30 years.

Today, 70% of tipped workers in Illinois 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.⁴ In Illinois, tipped workers, still subject to a subminimum wage by law, are more than twice as likely to live in poverty and rely on Medicaid compared to the rest of the state workforce.⁵ Over 13% of tipped workers live on food stamps, 1.5 times the rate of other Illinois workers.⁶ The situation is worse for tipped workers of color and women. In Illinois, 40% more tipped workers of color live in poverty compared to white workers; while 25% more tipped women workers live in poverty than men. However, it is Black women who are hit hardest by the subminimum wage. In Chicago, one third of Black women tipped workers live in poverty, one-half depend on food stamps and 45% rely on Medicaid — all three to five times the rate of the general workforce.⁷ Government data on the restaurant industry shows that nearly half of all Illinois tipped restaurant workers are people of color and the majority are women,⁸ largely employed in casual restaurants where wages, and more importantly, tips, are limited.

² *Employment Situation News Release—May 2020*. (2020). Bureau of Labor Statistics. https://www.bls.gov/news.release/archives/empsit_06052020.htm

³ Segrave, K. (2009). *Tipping: An American Social History of Gratuities*. McFarland.

⁴ Restaurant Opportunities Centers United, "The Glass Floor: Sexual Harassment in the Restaurant Industry," New York, NY, October 2014.

⁵ American Community Survey (2013-2017). Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. <https://doi.org/10.18128/D010.V9.0>.

⁶ Ibid.

⁷ American Community Survey (2013-2017). Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. <https://doi.org/10.18128/D010.V9.0>.

⁸ Ibid.

In Chicago, as in most major cities, 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.⁹ 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.¹⁰ Black women in the front of house in restaurants earn a full \$3.55 per hour less than white men in Illinois, just 76% of what white men earn.¹¹

High levels of wage theft in the restaurant industry make matters worse. A U.S. Department of Labor investigation of over 9,000 restaurants found that 84% of investigated restaurants had violated wage and hour laws, including nearly 1,200 violations of wage laws that require tipped workers to earn the minimum wage.¹² In Illinois, where subminimum wages are ubiquitous, this leads to either underpaid unemployment insurance claims or denied claims since many low wage workers are already near the minimum earnings threshold. Over 63% of surveyed One Fair Wage Emergency Fund applicants in Illinois were either unable to obtain unemployment insurance or uncertain if they qualified for unemployment insurance.¹³ Even worse, 79% of Black workers reported these same barriers to accessing unemployment insurance.¹⁴ Even if there were 100% compliance with these rules rather than 16% compliance, the subminimum wage forces a workforce of majority women and disproportionately women of color to tolerate inappropriate customer behavior to feed their families in tips, resulting in the industry having the highest rates of sexual harassment of any industry prior to the pandemic.¹⁵

Since the pandemic and economic aftermath, those inequities and injustices in the restaurant industry worsened. Nearly 6 million restaurant and other tipped service workers lost their jobs due to the COVID-19 shutdown,¹⁶ yet 60% could not access unemployment insurance because their subminimum wage plus tips was too low to meet the minimum threshold to qualify for benefits.¹⁷ Even when they were ineligible for state unemployment insurance but qualified for federal unemployment, many could not reverse state denials necessary to access federal benefits. The lack of benefits resulted in a severe crisis for workers, with millions struggling to feed their families and pay

⁹ Ibid.

¹⁰ Lynn et al., (2008). Consumer Racial Discrimination in Tipping: A Replication and Extension. *Journal of Applied Social Psychology*, 38(4), pp.1045–1060.

¹¹ One Fair Wage analysis of the Current Population Survey Outgoing Rotation Group microdata U.S. Census Bureau CPS-ORG), (2017- 2019). Analysis was done using Stata IC statistical software. Dataset was downloaded from the Center for Economic Policy Research center. Tipped positions include: food service managers, first line supervisors, bartenders, counter attendants, waiters and waitresses, food servers, non-restaurant, bussers and barbacks, and hosts and hostess. We include front of house supervisors, managers and hosts because in many restaurants these positions do receive tips, even if extralegally

¹² 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/>

¹³ *A Persistent Legacy of Slavery: Ending the Subminimum Wage for Tipped Workers in Illinois as a Racial Equity Measure*. One Fair Wage and the UC Berkeley Food Labor Research Center. (August 2020). Berkeley, California. Statistics provided are based on a non-representative sample from the One Fair Wage Fund applicant pool of tipped workers in Illinois. This data is not exhaustive. Data is based on responses to surveys that are administered to applicants. However, for ethical reasons completion of our applicant survey is not required in order to apply.

¹⁴ Ibid.

¹⁵ *The Glass Floor: Sexual Harassment in the Restaurant Industry*. Restaurant Opportunities Centers United. (2014). New York, NY

¹⁶ *Employment Situation News Release*. (2020). U.S. Bureau of Labor Statistics.

https://www.bls.gov/news.release/archives/empst_08072020.htm

¹⁷ *Locked Out by Low Wages*. (2020). One Fair Wage. https://onefairwage.com/wp-content/uploads/2020/05/OFW_LockedOut_UI_COVID-19_FINALUPDATE.pdf

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.¹⁸

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%.¹⁹ Kymani Hill, a tipped worker who has worked in Chicago restaurants for the last six years, lost his job in March with the pandemic. He was unable to access unemployment insurance because he was paid too little - \$5 per hour, less than the \$6 per hour subminimum wage, 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. He was also required to clean or do other chores each shift with no opportunity for tips at all. In August, while on the 12-hour shift he worked six days a week, Kymani's mother passed away after contracting the coronavirus. He is now struggling alone and often without enough 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% 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.²⁰ As a result, even before the crisis, restaurant workers relied on food stamps at twice the rate of workers in other industries.²¹ The people who serve the food when we dine out literally cannot afford to put food on their own tables.

As we've entered cold weather months and resumed indoor dining, a shortfall in tips does not just result in economic insecurity for workers - it also results in a public health disaster. There is clear evidence that restaurants are hotspots for the contraction of COVID-19. The CDC recently reported that Americans with COVID-19 are twice as likely to say they recently ate at a restaurant.²² Enforcing social distancing and mask wearing is clearly vital. Yet compared to a number of other potential exposure activities, the CDC study participants reported that they were less likely to see customers adhering to recommendations such as wearing a mask or social distancing.²³ With Illinois

¹⁸ Ibid.

¹⁹ See note 10.

²⁰ 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/>.

²¹ 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

²² 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>

²³ 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>

now seeing COVID-19 cases spike, restaurant workers are the first line of defense in terms of public compliance with safety regulations.

Charging restaurant workers with enforcing public health guidelines with the same customers they are relying on to pay their wages through tips, already down 50-75%,²⁴ workers are forced to either not confront customers in order to make a substantial portion of their minimum wage, or confront customers but undercut their pay to preserve public health. This is an impossible situation. Restaurant workers were living tip to mouth before this crisis. It was unacceptable to pay them a subminimum wage then. It's unconscionable now - for both workers and the public - and a dynamic that leads to poverty and violence or illness and even death. This brutal tradeoff is shameful in a civilized society and well within legislators' power to stop.

Numerous media reports have covered the very real and dangerous challenge that service professionals face in enforcing public safety protocols. The CDC has published a webpage dedicated to providing training materials on "Limiting Workplace Violence Associated with COVID-19 Prevention Policies in Retail and Service Businesses."²⁵ For service workers of color, particularly Black professionals, whose families and communities are at higher risk of adverse health outcomes and COVID-19 fatality, the decision between one's safety and one's livelihood is even more acute.²⁶ Sexual harassment in these threatening COVID-related encounters is on the rise, according to a One Fair Wage study due for publication next month.

This brutal tradeoff facing tipped service workers - to endure either poverty and violence by enforcing public health rules or illness and even death for their customers or themselves - is shameful in a civilized society. And well within legislators' power to stop. Enacting One Fair Wage — a full minimum wage with tips on top — for tipped service workers would provide a stable base wage before tips. This reduces their dependence on tips and allows them to enforce proper safety protocols with customers, supporting both a livelihood and health. It gives Illinois a chance to keep its restaurant industry well, enable its workers to earn a living, and improve public health by fixing a key weak link in preventing COVID-19 transmission.

David Cooper of the Economic Policy Institute found one policy - ending the subminimum wage - is the lynchpin to address the economic insecurity, sexual harassment and racism facing tipped service workers in good times and bad. During the pandemic, when demand is artificially suppressed, puts the restaurant industry at risk. However, EPI finds suppressed demand is an ideal time to raise wages because it keeps employers on a level playing field. Phasing in One Fair Wage industry-wide won't penalize good actors already paying more. Payroll tax relief can support employers through the phase-in period at no or minimal cost to the state, offset by the increase in payroll taxes. And the public has consistently said since COVID-19 that they'd pay more to support

²⁴Locked Out by Low Wages. (2020). One Fair Wage. https://onefairwage.com/wp-content/uploads/2020/05/OFW_LockedOut_UI_COVID-19_FINALUPDATE.pdf.

²⁵ CDC. (2020, April 30). Communities, Schools, Workplaces, & Events. Centers for Disease Control and Prevention. <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/limit-workplace-violence.html>.

²⁶ Ibid.

restaurant workers. Finally, raising wages for the poor leads to spending that supports small businesses, providing a valuable stimulus when needed most. Minimum wage workers specifically spend on restaurants. So it's a win-win.²⁷

Seven states — California, Oregon, Washington, Nevada, Minnesota, Montana, and Alaska — have eliminated the subminimum wage, and pay One Fair Wage, a full fair minimum wage with tips on top. This policy has benefitted restaurant workers, owners and the industry as a whole. The seven One Fair Wage states 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.²⁸ These seven states also have had half the rate of sexual harassment in among their restaurant workers.²⁹ Their workers have had an easier time collecting unemployment since the pandemic.

And there's more good news. Stirred by the suffering of their workers during this crisis, dozens of Illinois restaurant owners who have changed their minds 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 Rick Bayless and smaller independent restaurants are publicly calling for One Fair Wage. Restaurant owners that once vigorously opposed and even funded the opposition to One Fair Wage are now championing One Fair Wage and helping transform the industry. In fact, even the trade magazine of the corporate National Restaurant Association, the group 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, citing our research.³⁰ They understand that if the restaurant industry is to recover, it will take all of us working together — including finally, fully and fairly compensating workers, the dedicated restaurant professionals on whom their business relies.

Public-private partnerships totaling nearly \$5 million to date are now launching our High Road Restaurant programs in New York City, Boston, Detroit, and major cities in California, while exploring Chicago. Hundreds of independent restaurants are applying to participate and pay One Fair Wage with tips on top, support the community and address racial disparities. This Committee has an opportunity to continue to advance important programs for workers: paid sick leave, paid family and medical leave, worker health and safety, the gig economy bill and enforcement, among others - all of which are critical for workers' survival, and which we heartily support. However, given the imperatives and intersection of workers' livelihood and pandemic protection, I urge you to eliminate the subminimum wage and phase in workers to One Fair Wage in 2021. Payroll tax relief

²⁷ David Cooper. Testimony before the U.S. Senate Committee on Health, Education, Labor & Pensions. October 22, 2020.

²⁸ 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. Accessed 2/5/2018.

²⁹ Restaurant Opportunities Centers United, Forward Together, (Oct. 2014). The Glass Floor: Sexual Harassment in the Restaurant Industry. New York.

³⁰ *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>

specifically for employers voluntarily transitioning to One Fair Wage - a full minimum wage with tips on top - can be a solid first step with no net cost (costs are offset by rising payroll taxes. There are hundreds of such employers in Illinois. Providing them with tax relief both allows 'high road' employers to survive and encourages others to follow suit. One Fair Wage in 2021 will level the playing field for all businesses.

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.

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.