

## An Order of Fair Pay:

### How a “Wage Order” Eliminating New York’s Sub-Minimum Wage for Tipped Workers Will Deliver Fair Pay for Workers, Women, and the State’s Economy

#### Introduction

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Low wages, high poverty, and unstable paychecks are a common way of life for thousands of tipped workers throughout New York. A major factor fueling the economic insecurity faced by New York’s estimated 229,000 tipped workers is the state’s outdated and inadequate tipped sub-minimum wage: with an employer-paid minimum wage of just \$5.00 per hour for restaurant workers (the state’s largest group of tipped workers), these workers must rely substantially on tips to make ends meet, dragging down pay across tipped industries and leaving tipped workers vulnerable at all times to sudden, unpredictable drops in pay as tips fluctuate from shift to shift and season to season.

Raising pay standards for tipped workers in New York remains an urgent priority for the state’s economy, particularly as the restaurant industry and other service industries that employ tipped workers are projected to rank among the largest growth sectors in the state over the next decade. And with women making up the vast majority of the tipped workforce, ensuring fair pay for tipped workers is an important step in addressing the persistent gender pay gap in New York.

This year, Governor Cuomo’s administration has an opportunity to dramatically improve pay and job quality for tipped workers through an administrative “wage order” establishing a new rate for the state’s tipped sub-minimum wage. In this report, we review the experiences of other states, U.S. Census Bureau data, and the economic literature on tipped workers and the minimum wage, and **recommend that the administration eliminate New York’s tipped sub-minimum wage and guarantee all tipped workers the full state minimum wage of \$9.00 paid directly by employers:**

- **A Proven Model:** Seven states currently require employers to pay tipped workers the full minimum wage directly, with tips being in addition to – instead of a substitute for – their wages. **As a result, tipped workers are already being paid \$9.00 or more in California, Washington and Oregon, and will soon be getting raises to over \$9.00 in Minnesota, Hawaii and Alaska.** This model policy has proven effective in reducing poverty among tipped workers, *without* slowing job growth or reducing employment in the restaurant industry. **In fact, in all of the states that require employers to directly pay the full minimum wage to tipped workers, restaurant jobs are growing faster than in New York.**
- **A More Substantial and Reliable Wage:** Guaranteeing tipped workers the full minimum wage of \$9.00 per hour paid directly by their employer will provide tipped workers a stable and readily enforceable base income to help offset wide fluctuations in pay and reduce the risk that workers will not earn enough in tips to bring them to the full minimum wage.
- **Fair Pay for Working Women:** Women are hurt most by New York’s tipped sub-minimum wage, as they make up more than 70 percent of all tipped workers. Eliminating the tipped sub-minimum wage

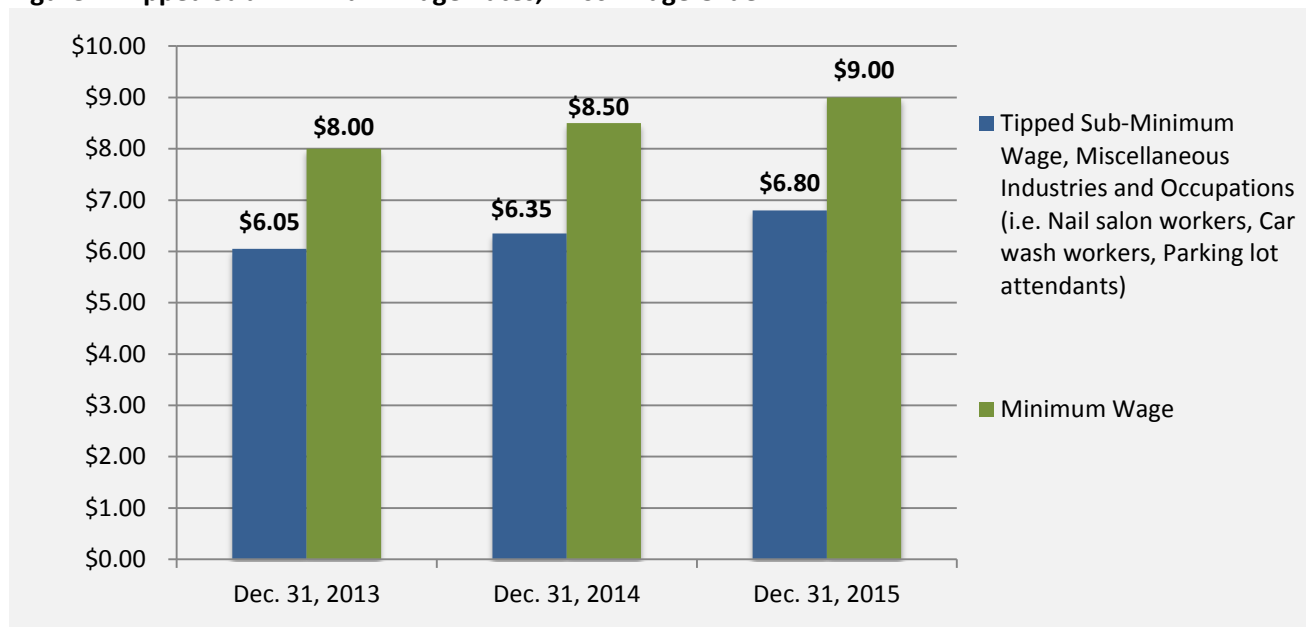
will help address the persistent gender pay gap in New York, where women are paid just 83 cents for every dollar that men are paid.

- **Toward a Living Wage:** A more substantial base wage paid directly by employers will also help transition tipped jobs into those that pay closer to a living wage – a critically important priority for tipped workers, who are more than twice as likely to live in poverty as other workers.

## 1. Background on New York’s Tipped Sub-Minimum Wage

Under legislation signed by Governor Cuomo in April 2013, New York’s minimum wage will rise in three steps to \$9.00 per hour by December 31, 2015. Typically, under state law, the tipped minimum wage automatically rises in proportion to the full minimum wage whenever the latter is raised, and this bill preserved this usual process for workers covered by New York’s “Miscellaneous Wage Order” (i.e. non-hospitality tipped workers, such as nail salon workers, parking lot attendants, and car wash workers). Thus, as the state’s minimum wage rises to \$9.00 per hour, the tipped sub-minimum wage for workers covered by the Miscellaneous Wage Order will remain equal to 75 percent of the full minimum wage (see Figure 1 below).

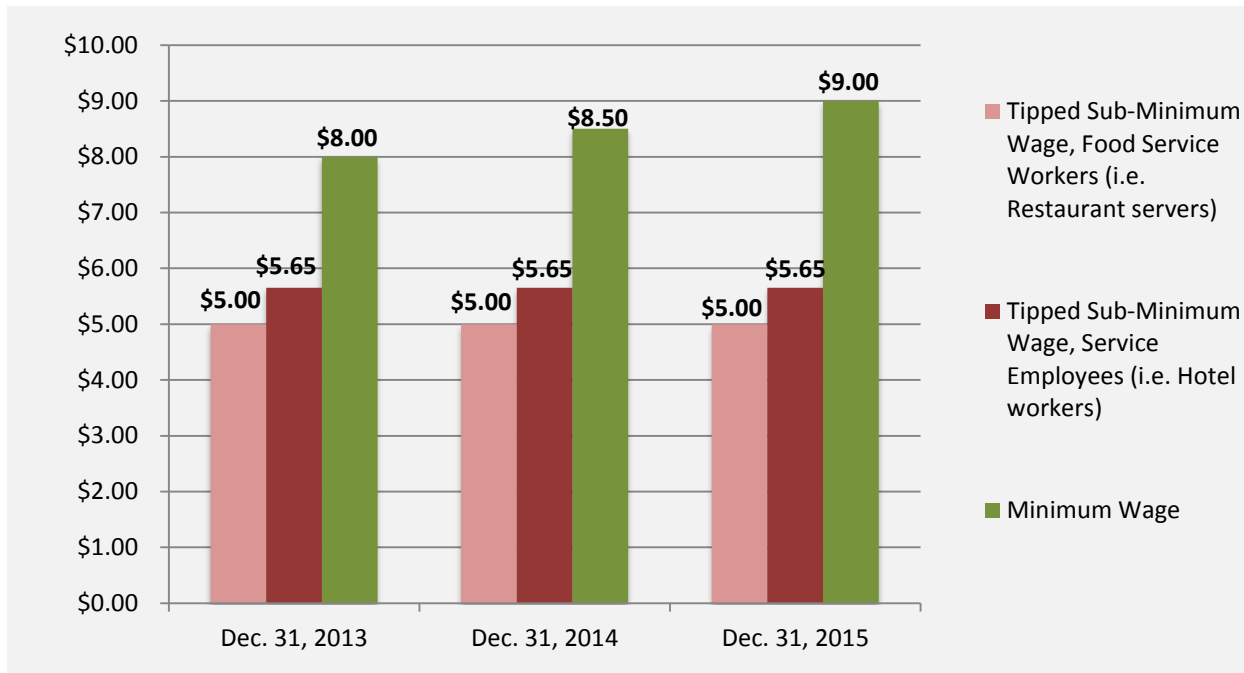
**Figure 1. Tipped Sub-Minimum Wage Rates, Misc. Wage Order**



Source: New York State Department of Labor<sup>1</sup>

However, the legislation signed by Governor Cuomo last year carved out tipped workers covered under New York’s “Hospitality wage order” (i.e. food service workers and service employees in the hospitality and restaurant industry) from this automatic adjustment to their tipped minimum wage. The Republican Senate leadership had wanted to freeze the tipped minimum wage and deny tipped workers any raise at all; instead, as a compromise, the final deal instructed the Department of Labor to use a “wage board” to determine whether such workers will get a raise, and if so, by how much. Until the Department of Labor issues a new “wage order,” the tipped minimum wage for restaurant and hotel workers across the state will remain frozen at just \$5.00 per hour and \$5.65 per hour, respectively (see Figure 2 below).

**Figure 2. Tipped Sub-Minimum Wage, Hospitality Wage Order**



Source: New York State Department of Labor<sup>2</sup>

## **2. Eliminating the Tipped Sub-Minimum Wage Would Provide Workers a More Substantial and Readily Enforceable Base Income Paid Directly by Employers to Offset Wide Fluctuations in Tips**

New York’s tipped sub-minimum wage requires tipped workers to rely heavily on tips alone, as they lack a strong base income paid directly by their employers. Without a significant and stable base income, tipped workers are vulnerable to sudden drops in pay as tips are notoriously erratic, varying from shift to shift and season to season.

Tips can vary significantly even during a normal week. One worker explained that at his restaurant, “Nobody likes to work Sunday morning or Monday—but someone has to do it. When that’s my time, I know I’m not going to make any money. Working Friday night is like working five Sunday mornings.”<sup>3</sup> Eliminating the tipped sub-minimum wage in New York would cushion the economic shock of unpredictable fluctuations in pay that can prevent tipped workers from providing for themselves and their families.

Furthermore, it is especially important that workers be protected by a high base wage that is paid by their employers because it is widely recognized that, because of its complexity, there are significant levels of employer non-compliance with the tip credit system.

Under New York’s wage rules, when tips are not enough to bring a worker’s average wage up to the full minimum wage, the employer is supposed to make up the difference by “topping up” the employee. But this complex system requires extensive tracking and accounting of tip flows. That process is complicated by the fact that: (1) employers are allowed to average tips over the course of the entire work-week and required to “top up” only if an employee has enough bad shifts over the course of the week that the employee averages less than the full minimum wage overall; and (2) tips are allowed to be pooled among various categories of restaurant employees such that a portion of the tips that a waitress or waiter receives can legitimately be

reallocated to other employees. As a result of this complex system, it is widely recognized that many employers, whether through oversight or deliberately cutting corners, fail to top up employees when their tips fall short:

- A 2014 report by the White House National Economic Council, the U.S. Department of Labor, and other agencies recently addressed this issue. Subtitled, “**The Importance of Ensuring a Robust Tipped Minimum Wage**,” the White House report explained that “The rules for tipped workers are complicated and can be confusing for employers and employees alike. **One of the most prevalent violations is the failure to keep track of employee tips and therefore the failure to “top up” employees if their tips fall short** of the full minimum wage.”<sup>4</sup>
- The 2014 White House report continued, “**In practice, [the requirement that employers must “top up” tipped workers if their tips run short] is difficult to enforce.** When surveyed, more than 1 in 10 workers in predominantly tipped occupations report hourly wages below the full Federal minimum wage, including tips. (By comparison, just 4 percent of all workers report hourly wages below the minimum wage.)”

By contrast, **the base tipped wage – which appears directly on the employee’s pay stub and may easily be verified by the employee – is more readily enforceable and more consistently complied with.**

Moreover, tipped workers who have experienced tip stealing or other forms of wage theft are often reluctant to speak up for what they are owed out of fear of rocking the boat. Many tipped workers are reliant on their supervisors to be scheduled for shifts, and make more or less in tips depending on which shifts they are given. Guaranteeing all tipped workers the full minimum wage paid directly by employers would simplify the complex rules surrounding the tipped sub-minimum wage and provide tipped workers a more substantial base income that is less susceptible to abuse.

### 3. Eliminating the Tipped Sub-Minimum Wage Would Improve Job Quality for Tipped Workers, Who Face Low Wages, High Poverty, and Unstable Paychecks

Ensuring that tipped workers have a substantial base income paid directly by their employer remains an important priority particularly given the low wages and high rates of poverty faced by tipped workers in New York State. While some tipped workers do earn enough in tips to bring their hourly earnings well above the minimum wage, U.S. Census Bureau data make clear that the vast majority of tipped workers in New York earn just slightly above the minimum wage, even after tips.

**Table 1. Occupations and Median Hourly Wages of Tipped Workers in New York**

| Occupation                                     | New York Workers in Occupation | Median Hourly Wage |
|--|--------------------------------|--------------------|
| Waiters and waitresses                         | 144,140                        | \$9.14             |
| Bartenders                                     | 37,840                         | \$9.15             |
| Barbers  | 1,720                          | \$9.27             |
| Hairdressers, hairstylists, and cosmetologists | 24,590                         | \$10.51            |
| Massage therapists                             | 3,760                          | \$23.38            |
| Misc. personal appearance workers              | 17,880                         | \$10.17            |
| <b>All tipped workers</b>                      | <b>229,930</b>                 | <b>\$9.60</b>      |

Source: NELP analysis of 2013 Occupational Employment Statistics data

As shown in Table 1 above, the median hourly wage for the estimated 229,930 tipped workers in New York is just \$9.60 per hour. Notably, restaurant servers – the single largest category of tipped workers in New York – earn the lowest median hourly wage of all tipped workers in the state. At \$9.14 per hour, restaurant servers earn a median hourly wage that is 53% less than the median hourly wage for workers in New York overall (see Table 2 below).

**Table 2. Restaurant Servers vs. Workers Overall in New York**

| Occupation                         | Median Hourly Wage |
|------------------------------------|--------------------|
| All workers in New York            | \$19.45            |
| Waiters and waitresses in New York | \$9.14             |

Source: 2013 Occupational Employment Statistics data

Given the low wages faced by tipped workers, it is unsurprising to find that the tipped workforce experiences much higher rates of poverty than workers overall. Nationally, tipped workers are more than twice as likely to be in poverty, and restaurant servers are nearly three times as likely to experience poverty. As noted in Table 3 below, however, tipped workers experience poverty at substantially lower rates in states that have eliminated the tipped sub-minimum wage, even while these states do not show lower poverty rates for workers overall.

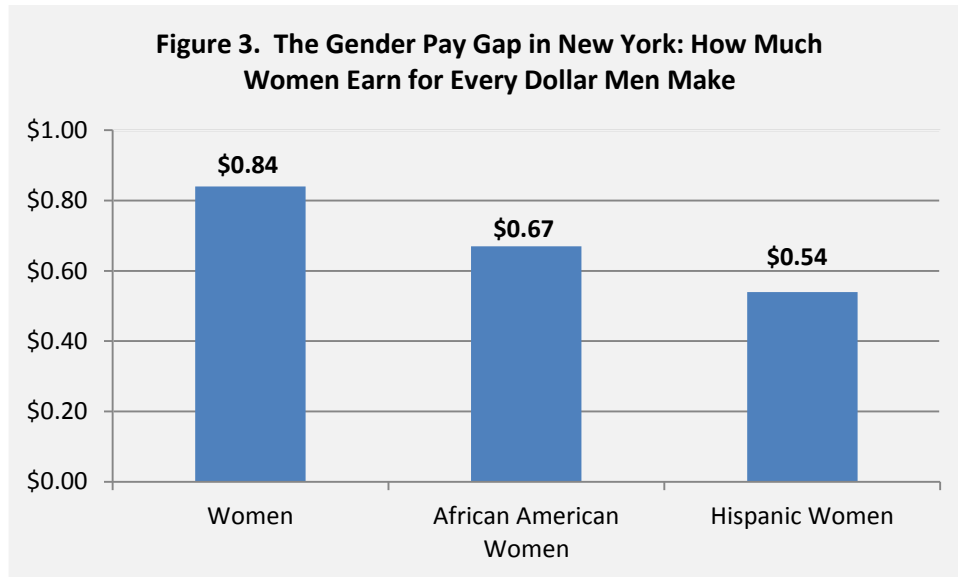
**Table 3. Poverty Rates for All Workers, Tipped Workers, and Restaurant Servers**

|                        | Poverty rate - national | Poverty rate – States With No Tip Credit |
|------------------------|-------------------------|--|
| All workers            | 6.3%                    | 6.7%                                     |
| Tipped workers         | 14.5%                   | 12.1%                                    |
| Waiters and waitresses | 16.7%                   | 13.6%                                    |

Source: 2011 Economic Policy Institute analysis<sup>5</sup>

#### 4. Eliminating the Tipped Sub-Minimum Wage Would Help Secure Fair Pay for Working Women, Who Make Up the Vast Majority of Tipped Workers in New York

The tipped sub-minimum wage remains an under-appreciated factor in the unequal pay that working women continue to receive across the economy today. Census data show that, in New York, women are paid just \$0.84 for every dollar that men are paid, and this gender pay disparity is compounded by the effect of racial pay inequality for women of color: the data show that African American women are paid just \$0.67, and Hispanic women just \$0.54, for every dollar made by white non-Hispanic men.



Source: National Women’s Law Center, 2014<sup>6</sup>

A primary reason for the persistence of the gender pay gap today is that women make up the majority of workers in low-wage occupations -- and women are the vast majority of workers in low-paying tipped occupations such as restaurant servers, nail salon workers, and other tipped service occupations. Table 4 below provides the gender break-down for the major tipped occupations in New York.

**Table 4. Demographic Characteristics of Tipped Workers**

| Tipped Occupation                              | Percent Female |
|--|----------------|
| Waiters and waitresses                         | 70.4%          |
| Bartenders                                     | 58.0%          |
| Hairdressers, hairstylists, and cosmetologists | 94.8%          |
| Misc. personal appearance workers              | 85.1%          |
| Massage therapists                             | 82.0%          |
| Barbers  | 19.2%          |

Source: U.S. Census Bureau, 2013 Current Population Survey (figures refer to national shares of total employment)

Eliminating the tipped sub-minimum wage and guaranteeing tipped workers the full minimum wage paid directly by their employers would have a disproportionately positive impact on the earnings and economic security of working women across New York state and help alleviate the gap in pay between men and women.

## 5. Employers of Tipped Workers In New York Can Afford to Pay the Full Minimum Wage Directly

Real-world experiences, as well as studies of states and cities that have raised the minimum wage for tipped workers, consistently confirm that employers can adjust to paying a higher base wage without reducing employment or slowing job growth.

In fact, according to projections by the National Restaurant Association in their 2014 Industry Forecast, **all of the states that guarantee the full minimum wage to tipped workers are expected to have greater restaurant job growth than New York in the next decade – in most cases, much greater.** These projections highlight how job growth is driven not by how high or low the state’s tipped minimum wage is, but by a range of other macroeconomic factors.

**Table 5. State Restaurant Industry Projected Employment Growth**

| <i>State</i> | <i>Under Current Law Tipped Minimum Wage Rates by State (by 2016)</i>       | <i>Projected Restaurant Industry Employment Change, 2014-2024</i> |
|--------------|---|---|
| CA           | \$10.00   | 9.1%  |
| WA           | \$9.70  | 9.8%  |
| OR           | \$9.45  | 11.7%   |
| NV           | \$8.25  | 14.7%   |
| AK           | \$9.75  | 14%   |
| MN           | \$9.50  | 6.6%  |
| MT           | \$8.20  | 7.3%  |
| NY           | \$5.00 (food service), \$5.65 (service employees), \$6.05 (misc. employees) | 6.0%  |

Source: National Restaurant Association 2014 Industry Forecast

Raising pay standards in the restaurant industry remains an important priority for the state’s economy, as the food services sector is projected to rank among the largest growth sectors in every major region of the state over the next decade. According to the New York State Department of Labor, Food Services and Drinking Places ranks in the top five largest growth sectors in nine of the 10 major regions of the state, including in lower-cost regions.

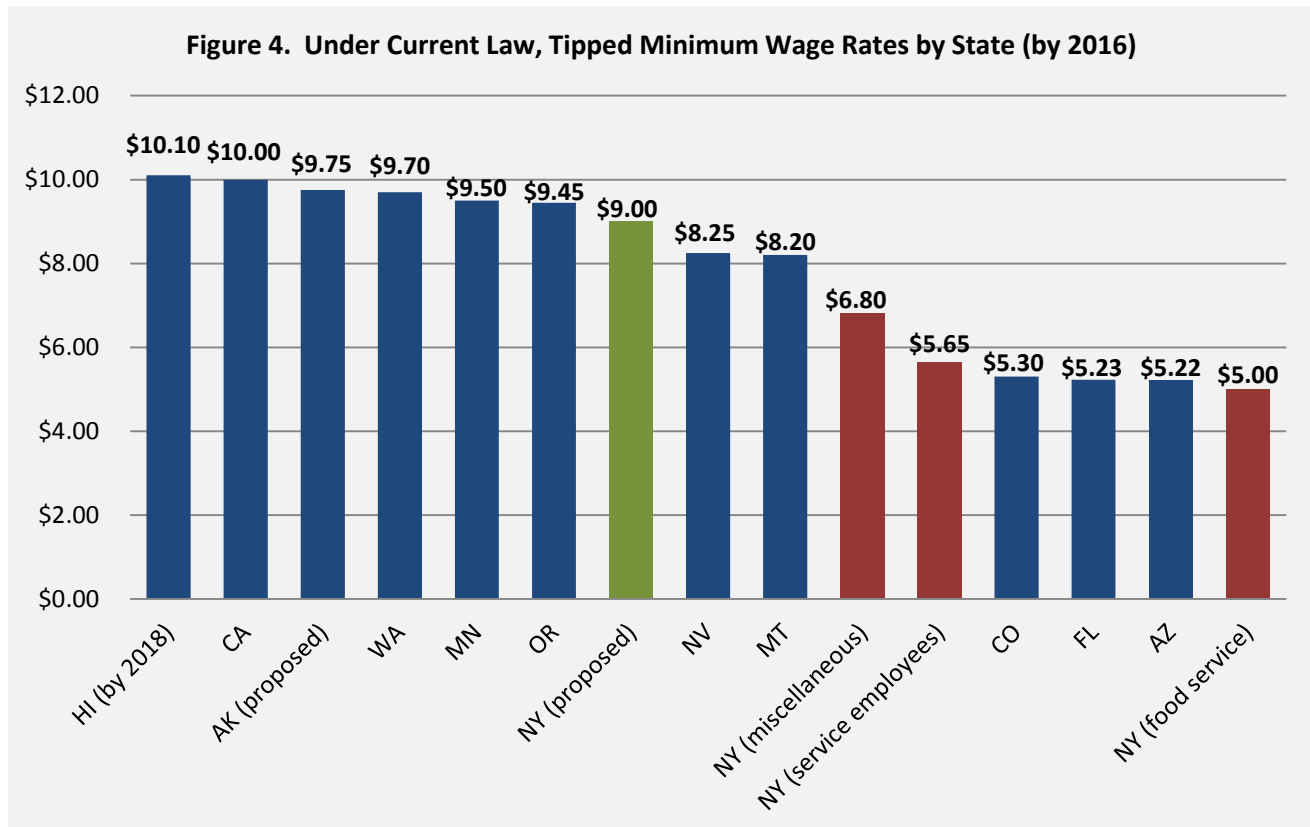
**Table 6. Projected Growth of Food Service and Drinking Places Industry by Region, 2010-2020**

|                      | <i>Projected Net Change in Food Service Industry Employment, 2010-2020</i> | <i>Food Service Industry's Ranking Among Largest Growth Sectors</i> |
|----------------------|--|---|
| Western NY Region    | 6,030  | #2  |
| Southern Tier Region | 1,640  | #2  |
| North Country Region | 740  | #5  |
| New York City Region | 26,500   | #6  |
| Mohawk Valley Region | 1,530  | #4  |
| Long Island Region   | 9,340  | #3  |
| Hudson Valley Region | 6,140  | #5  |

|                     |       |    |
|---------------------|-------|----|
| Finger Lakes Region | 4,320 | #4 |
| Central Region      | 3,030 | #3 |
| Capital Region      | 3,750 | #5 |

Source: NELP analysis of New York State Department of Labor data

Under current law, New York’s minimum wage is scheduled to rise to \$9.00 per hour by December 31, 2015; if the state were to require employers to pay the full \$9.00 minimum wage directly to tipped workers, this rate would still rank behind the minimum wage that employers in other states such as California, Washington, and Minnesota will be required to pay tipped workers by 2016 (see Figure 4 below).



Source: U.S. Department of Labor. Estimates of tipped wage rates for states with annual inflation indexing based on Congressional Budget Office projections of CPI-U for 2014-2024.

The real-world evidence cited above is supported by the findings of the most rigorous, state-of-the-art economic research, which finds that increases in the tipped minimum wage and the minimum wage more generally do not slow growth in the restaurant industry or reduce employment.

- For example, a 2013 analysis from the University of California-Berkeley examines every increase in the tipped minimum wage on the state level since 1990 and concludes that “the evidence...does not indicate that there are significant negative effects of tipped wages or regular minimum wages at the levels experienced in the U.S. since 1990 in full-service establishments.”<sup>7</sup>
- A new book-length meta-study, surveying the findings of the past three decades of research on the employment impact of raising the minimum wage, further supports the current economic consensus that minimum wage increases do not slow job growth or reduce employment. Analyzing the 23 most rigorous studies on the topic – including 439 distinct estimates – this meta-study finds that the median



estimate shows a small and statistically insignificant impact of minimum wage increases on employment and hours. When controlling for estimates based in the U.S., the estimates find an even smaller impact that remains statistically insignificant.<sup>8</sup>

- Based on these findings, the authors conclude that “if negative effects on employment are present, they are too small to be statistically detectable. Such effects would be too modest to have meaningful consequences in the dynamically changing labor markets of the United States.”<sup>9</sup>

Restaurants and other employers of tipped workers are able to pay higher wages without reducing employment due to a range of factors, including higher productivity and reductions in employee turnover that reliably result from minimum wage increases.

- There are significant savings that result from paying higher wages – including reduced employee turnover and increased productivity – and these savings help offset the cost to employers of a minimum wage increase. A recent survey of over 1,000 restaurant employers found that higher wages cut turnover in half, which in turn reduces recruitment and training costs.<sup>10</sup>
- When workers are more secure financially and on the job longer, they can be more productive and effective employees.
- Putting more money directly into the pockets of workers who are struggling financially boosts spending in local economies – including at restaurants.

## Conclusion and Recommendations

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The successful experiences of other states show that eliminating the sub-minimum wage for tipped workers reduces poverty and delivers more stable incomes for the growing, mostly female tipped workforce. And far from hurting employers, all of the states with \$9.00 or higher tipped wages are projected to enjoy stronger restaurant job growth than New York. Following this proven model, New York should **eliminate New York’s tipped sub-minimum wage and guarantee all tipped workers the full state minimum wage of \$9.00 paid directly by employers.**

## Citations

<sup>1</sup> See NYS DOL Miscellaneous Wage Order: <http://www.labor.ny.gov/formsdocs/wp/CR142.pdf>

<sup>2</sup> See NYS DOL Hospitality Wage Order: <http://www.labor.ny.gov/formsdocs/wp/CR146.pdf>

<sup>3</sup> Rajesh D. Nayak and Paul K. Sonn “Restoring the Minimum Wage for America’s Tipped Workers,” National Employment Law Project, August 2009, available at: [http://nelp.3cdn.net/f6df4ed353601d4c50\\_x6m6iy650.pdf](http://nelp.3cdn.net/f6df4ed353601d4c50_x6m6iy650.pdf)

<sup>4</sup> “The Impact of Raising the Minimum Wage on Women and the Importance of Ensuring a Robust Tipped Minimum Wage,” The White House, March 2014, available at: <http://www.whitehouse.gov/sites/default/files/docs/20140325minimumwageandwomenreportfinal.pdf>

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<sup>5</sup> Sylvia Allegretto and Kai Filion, "Waiting for Change: The \$2.13 Federal Subminimum Wage," Economic Policy Institute, February 2011, available at: <http://s1.epi.org/files/page/-/BriefingPaper297.pdf>

<sup>6</sup> "The Wage Gap, State By State," National Women's Law Center, available here: <http://www.nwlc.org/wage-gap-state-state>

<sup>7</sup> Sylvia Allegretto, "Waiting for Change: Is It Time to Increase the \$2.13 Subminimum Wage?" Institute for Research on Labor and Employment, University of California-Berkeley, 2013, available at: <http://irle.berkeley.edu/workingpapers/155-13.pdf>

<sup>8</sup> Dale Belman and Paul J. Wolfson. 2014. "The New Minimum Wage Research." *Employment Research*. 21(2): 4-5. [http://research.upjohn.org/empl\\_research/vol21/iss2/2](http://research.upjohn.org/empl_research/vol21/iss2/2)

<sup>9</sup> Ibid

<sup>10</sup> Rosemay Batt, Jae Eun Lee, and Tashlin Lakhani, *A National Study of Human Resource Practices, Turnover, and Customer Service in the Restaurant Industry*, Restaurant Opportunities Center United, 2014, available here: <https://www.ilr.cornell.edu/workerinstitute/initiatives/upload/National-Study-of-Human-Resource-Practices-High-Turnover-and-Customer-Service-in-the-Restaurant-Industry.pdf>