# 2
# One Fair Wage

## Supporting Restaurant Workers and Industry Growth

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In 2016, for the first time on record, Americans spent more money on food prepared outside the home than they did on food prepared inside the home (Economic Research Service 2016).[1] This marked shift in consumption patterns over the past six decades demonstrates the durability of a new economy, marked by longer work hours, the multiple job holder, and the two-breadwinner household. This new economy is fueled by the labor of food preparation and serving workers, and the fortunes of the restaurant industry have risen on this tide. Over the past decade, the industry has grown to occupy nearly 10 percent of the total private sector workforce and is on a trajectory to supplant manufacturing as the nation's fourth-largest employer by the end of the decade (Bureau of Labor Statistics 2017a).[2] Yet that growth has not led to increased prosperity for its workforce. Restaurant workers represent the plurality of minimum wage workers and the vast majority of workers earning below the minimum wage, and they live in poverty at over twice the rest of the workforce (Bureau of Labor Statistics 2016).[3] Over one-third of all workers live in states where the subminimum wage for tipped restaurant workers is only $2.13 an hour, and nearly three-quarters live in a state where the subminimum wage falls below the federal minimum wage of $7.25. In these states, federal law requires that when the hourly wage, subsidized by tips, does not equal the minimum wage, employers must pay workers the difference, although in practice employers often fail to comply with the law. Only 19 percent of all restaurant workers work in one of the seven states where there is no subminimum wage below the state minimum wage. Yet those 19 percent fare better economically, depend less on government assistance when gainfully employed, and work in an industry equally or more vibrant than that of their peers in other states.[4] These seven states represent a natural experiment demonstrating that “one fair wage” for all workers, where there is no subminimum wage for tipped employees, is a desirable policy pathway to improve the lives of a sizable and growing economic mainspring dedicated to nourishing the rest of the workforce.

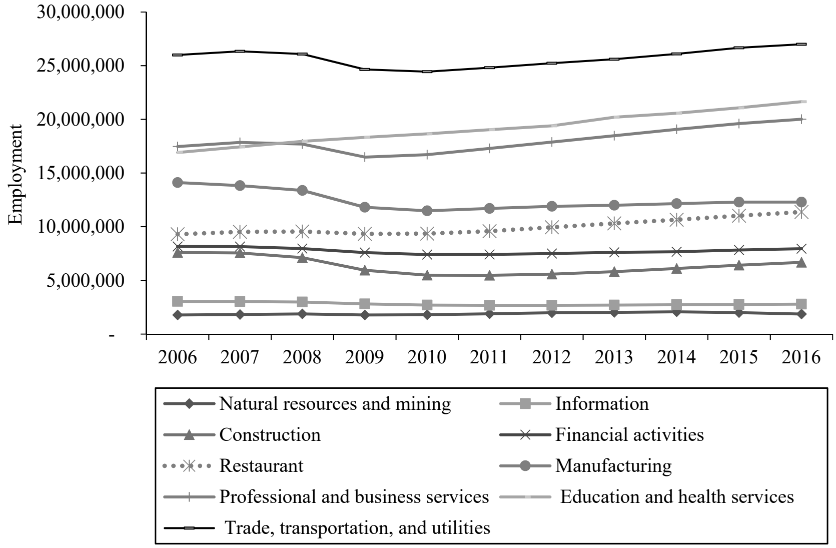
## AN ECONOMY IS BUILT ON ITS KITCHENS

The percentage of the family food budget that is spent in restaurants has grown from 20 percent in 1961 to 44 percent in 2016, accompanied by a growing reliance on food prepared outside the home to be eaten at home (Economic Research Service 2016).[5] Longer hours and precarious working conditions have, paradoxically, meant that Americans increasingly look outside the home for nourishment. In turn, this growth has benefitted the restaurant industry.

The restaurant industry is one of the fastest growing sectors of the U.S. economy. Over 11 million workers are directly employed in food preparation and serving occupations, in over 613,000 establishments around the country. Over the past decade, the industry has grown from 8.3 percent to 9.4 percent of the total private sector workforce (Bureau of Labor Statistics 2017a).[6] The industry is currently the fifth-largest private sector employer in the country and is poised to overtake manufacturing to become the fourth-largest employer overall (see Figure 2.1). In states such as New York, and in major metropolitan areas such as Boston and the Bay Area, the restaurant industry has already overtaken manufacturing as a primary employer. Only the education and health services sector has seen a faster growth rate than the restaurant industry, and even though restaurants saw a small drop in employment at the start of the Great Recession, the industry quickly regained its rapid growth trajectory while other industries continued to languish for years (see Figure 2.2) (Bureau of Labor Statistics 2017a).[7]

Yet much of the industry’s growth has not been to the benefit of its workforce. Ten of the 20 lowest-paying jobs are in the restaurant industry, and 5 of these are tipped occupations (Bureau of Labor Statistics 2017b).[8] Restaurant workers comprise 27 percent of all workers

**Figure 2.1 Private Sector Employment by Major Industry since 2006**



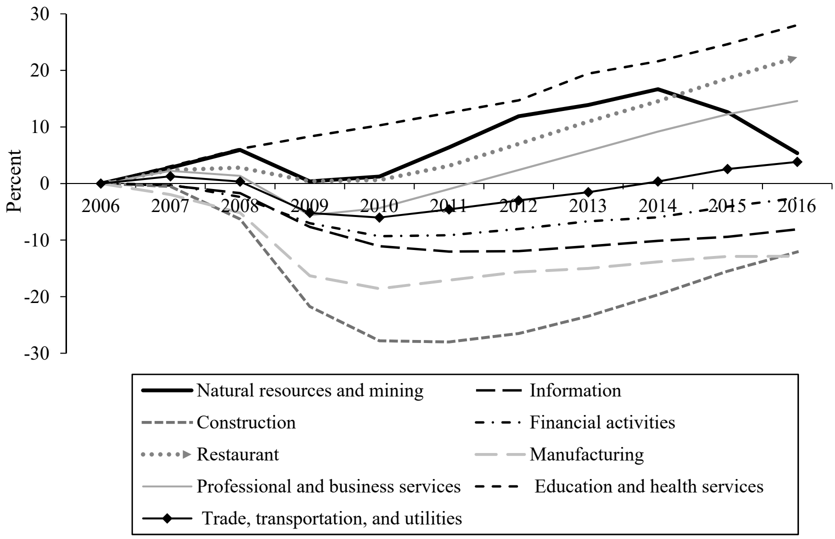

SOURCE: Analysis of Quarterly Census of Employment and Wages, 2006–2016. Bureau of Labor Statistics.

who earn the minimum wage, and 64 percent of all workers who earn below the minimum wage. Combined, 52 percent of all workers at or below the minimum wage are in the restaurant industry, yet restaurant workers make up only 15 percent of all workers in all occupations earning an hourly wage (Bureau of Labor Statistics 2016). In practice, this means that gainfully employed restaurant workers live in poverty at over twice the rate of the rest of the workforce (19.2 percent compared to 7.9 percent).[9]

## HISTORY

Poverty and economic insecurity have a long history in the restaurant industry, in part tied to the tipped subminimum wage. Although tipping as a practice existed in the hospitality industry prior to the Civil

**Figure 2.2 Change in Private Sector Employment since 2006 in the Nine Sectors with the Largest Number of Employees**




SOURCE: Analysis of Quarterly Census of Employment and Wages, 2006–2016. Bureau of Labor Statistics.

War, it proliferated after the war, when the Pullman Company, famous for building and operating sleeper railcars with African American porters—some of the preeminent leaders of the civil rights movement—and the restaurant and hospitality industry took advantage of emancipation and hired newly freed slaves without paying them a wage (Azar 2004). Instead of paying a set wage, the industry left it to patrons to provide compensation. By 1880, 43 percent of all workers employed in hotels and restaurants were African Americans. In 1900, 37 years after emancipation, 25 percent of all African Americans engaged in nonagricultural labor were employed as servants and waiters. Nearly 75 percent of these workers (345,386 out of 465,787) were women. In northern cities such as Philadelphia, over 90 percent of all African American women were employed as servants and waiters (Wright 1913). Although this figure encompasses domestic labor, 43 percent of hotel and restaurant employees were women.[10]

Mass movements opposing tipping grew at the turn of the twentieth century, citing it as an affront to human dignity, and several states banned tipping entirely. However, by 1926 all of these laws had been repealed—either by courts ruling they were discriminatory for barring workers but not employers from receiving tips, or by legislatures responding to service industry pressure and the persistence of tipping as a practice (Needleman 1937).

When a national minimum wage was established under the Fair Labor Standards Act (FLSA) in 1938, restaurant workers were excluded. Only establishments that were engaged in interstate commerce were required to abide by the FLSA. The administrator of the Wage and Hour Division at the Department of Labor, created to administer the implementation of the FLSA, ruled that in the case of "chain-store systems" with subsidiaries in multiple states, each individual unit would be considered a separate establishment, excluding all restaurants, hotels, gas stations, and retail stores from the law (Douglas and Hackman 1939). It was not until 1966 that tipped workers were allowed any wage at all through the codification of a subminimum wage for workers that "customarily and regularly receive tips." As the FLSA was amended, the tipped subminimum wage was set between 50 and 60 percent of the full minimum wage, with the remainder to be paid in tips, until 1991, when it reached $2.13, or 50 percent of $4.25 (Allegretto and Cooper 2014). In 1996 Congress revisited the minimum wage, and the National Restaurant Association, under the leadership of pizza magnate and erstwhile presidential candidate Herman Cain, successfully lobbied Congress and the Clinton administration to freeze the subminimum wage at the level of $2.13 (Liddle 1996). Congress has raised the minimum wage four times since then, yet the subminimum wage has remained frozen at $2.13 per hour. Tipped workers have not seen an increase to the federal subminimum wage since 1991.

Although the law requires employers to make up the difference when tips are not sufficient to reach the minimum wage, in practice employers often fail to comply with the law. A federal review of 9,000 full-service restaurants in 2010–2012 found that nearly 84 percent had committed wage and hour violations, including 1,170 cases where tipped wages were calculated improperly, and led to $5.5 million in back pay and $2.5 million in penalties (Fletcher 2015).

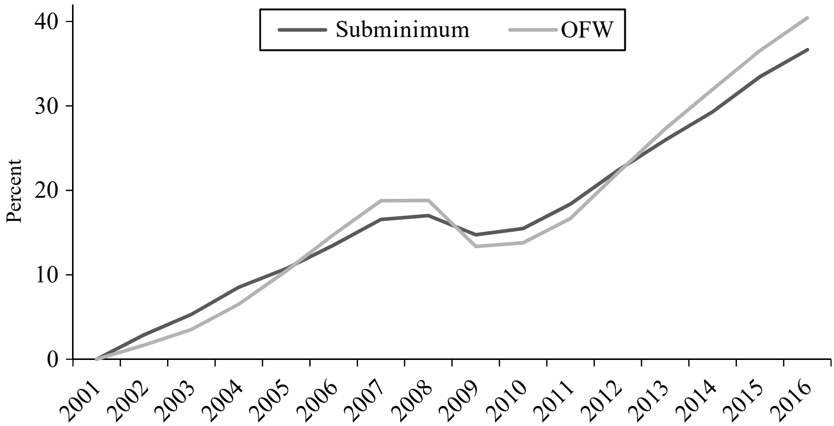
## NATURAL EXPERIMENT

Restaurant industry representatives often claim that the industry would not be able to absorb the cost of raising the minimum wage and eliminating the tipped subminimum wage (for example, see Whatley [2016]). However, not every state follows federal minimum wage guidelines. The federal subminimum wage of $2.13 applies only to workers in 19 states that have not set a higher standard. Twenty-four states have set a subminimum wage higher than the federal subminimum, and four of these states have set the subminimum wage higher than the federal minimum wage but below the state's minimum wage (Wage and Hour Divisions 2017). Seven states—Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington—have eliminated the subminimum wage for tipped workers. These states, here called the seven One Fair Wage states for offering the same base wage to all workers, form a natural experiment that allows us to observe any differences in the restaurant industry associated with the wage region.

Restaurant industry data show that the seven states have had growth rates similar to or higher than that of the rest of the nation. Weighted to adjust for employment levels, restaurant industry sales growth is higher in these states than it is elsewhere. National Restaurant Association (2017) industry forecasts show that, on average, the seven One Fair Wage states will see growth of 5.1 percent in 2017, compared to growth of 4.2 percent in both the $2.13 states and the rest of the country overall. Furthermore, employment in full-service restaurants where tipped workers are concentrated has kept pace with and is even growing faster as minimum wage increases accelerate in the seven One Fair Wage states, compared to subminimum wage states (see Figure 2.3).

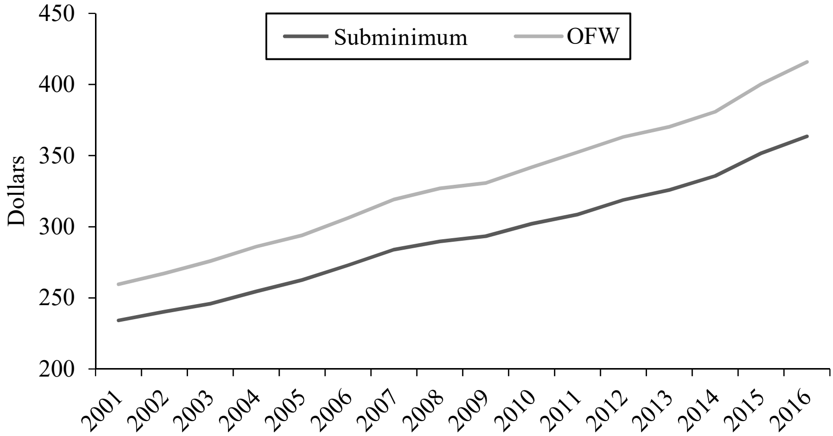
Accordingly, wages are higher and are growing faster in the seven One Fair Wage states than elsewhere (see Figures 2.4 and 2.5). This wage growth has implications for the likelihood that a worker will earn less than poverty-level wages. Among gainfully employed tipped restaurant workers working full time, year round (30 hours or more per week), 14 percent live in poverty and 16 percent rely on food stamps in subminimum wage states, compared to only 9 percent and 11 percent, respectively, in the seven One Fair Wage states. For comparison, only 4 percent of similarly employed workers across all occupations live in

**Figure 2.3 Percent Change in Full-Service Restaurant Employment since 2001 in One Fair Wage and Subminimum Wage Regions**



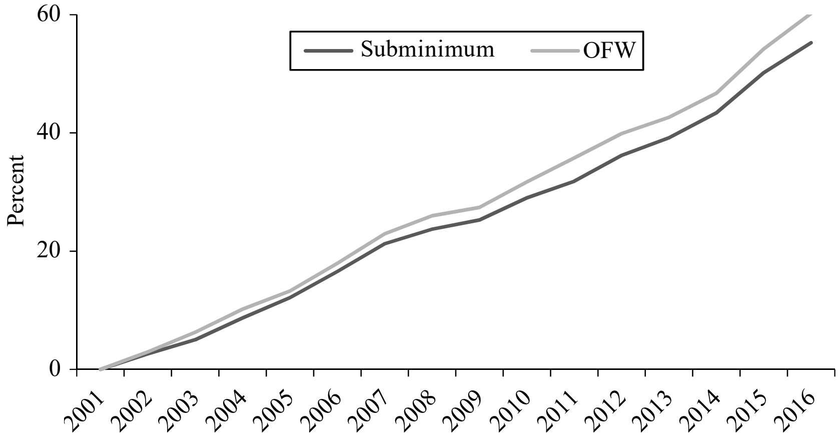

SOURCE: Analysis of Quarterly Census of Employment and Wages, 2001–2016. Bureau of Labor Statistics.

**Figure 2.4 Average Weekly Wage in Full-Service Restaurants in One Fair Wage and Subminimum Wage Regions**




SOURCE: Analysis of Quarterly Census of Employment and Wages, 2001–2016. Bureau of Labor Statistics.

**Figure 2.5 Percent Change in Average Weekly Wage in Full-Service Restaurants in One Fair Wage and Subminimum Wage Regions since 2001**




SOURCE: Analysis of Quarterly Census of Employment and Wages, 2001–2016. Bureau of Labor Statistics.

poverty in both regions, 8 percent rely on food stamps in subminimum wage states, and 7 percent rely on food stamps in the One Fair Wage states. Poverty remains a significant problem among restaurant workers in One Fair Wage states, where tipped workers are twice as likely to live in poverty as all similarly employed workers, but this problem is much more severe in the subminimum wage states, where gainfully employed tipped restaurant workers are nearly four times as likely to live in poverty as their similarly employed counterparts across all occupations.[11]

## SEXUAL HARASSMENT

Although women comprise 47 percent of the total workforce, a majority of restaurant workers—54 percent—are women. However, this number increases considerably when we examine tipped workers.

Over two-thirds (67 percent) of tipped restaurant workers are women. When we further narrow our scope to the most populous tipped occupation, the nation's 2.5 million servers, 70 percent are women, and they earn only 79 percent as much as their male counterparts. Women are disproportionately employed in the lowest-paid occupations in an industry where, according to federal law, a primarily female workforce can be paid a subminimum wage that has not increased in over 25 years. Gainfully employed women servers working full time, year round in subminimum wage states toil in poverty at nearly twice the rate of their peers in One Fair Wage states (17 percent vs. 9.5 percent).[12]

One of the most striking differences between the One Fair Wage states and the states with the $2.13 federal subminimum wage is the difference in the rates of sexual harassment experienced by workers in the two regions. We surveyed 688 restaurant workers around the country and found that, compared to women in One Fair Wage states, women working in tipped occupations in the subminimum wage states are twice as likely to experience sexual harassment, and three times as likely to be told by management to alter their appearance and wear more sexually revealing clothing. Women in $2.13 states are also more likely to be required to wear sexually suggestive uniforms than women in One Fair Wage states, leading to the highest rates of sexual harassment. Women in the subminimum wage states reported that they have to tolerate heavily sexualized cultural expectations, including inappropriate comments and sexual behaviors while at work to ensure a good tip and to simply keep their job. As a result, women in subminimum wage states report higher rates of depression and anxiety compared to women in One Fair Wage states. Tellingly, all workers in states with a $2.13 subminimum wage, including men and nontipped workers, report higher rates of sexual harassment than their One Fair Wage counterparts, suggesting that the overall restaurant work environment is at least partially shaped by the subminimum wage system itself. When women in tipped occupations are required to accept intolerable behavior to ensure their income, it creates a negative culture that impacts all workers (Restaurant Opportunities Centers United and Forward Together 2014; Specker 2017).

## ONE FAIR WAGE

The wide range of minimum wage laws regulating the tipped wage demonstrates that a subminimum wage is not a precondition for a successful restaurant industry. Just over a third (34 percent) of the restaurant workforce can be found in the $2.13 states; 40 percent is employed in the 21 states that have set a subminimum wage higher than the federal subminimum for tipped workers, but below the federal minimum wage of $7.25; and 7 percent is employed in the two states that have set the subminimum wage higher than the federal minimum wage but below the state's minimum wage. Nineteen percent of tipped restaurant employees work in the seven One Fair Wage states (Census Bureau 2015; Wage and Hour Division 2017).[13] Yet, the profitability and employment outcome for the industry is either static or positive in these One Fair Wage states, and the earnings outcomes for employees in the industry is unambiguously positive (National Restaurant Association 2017).[14]

Prior to the adoption of the FLSA, U.S. Women's Bureau surveys from 1934 found that 89 percent of women servers received tips and that their median earnings were $3 less per week than women servers who did not receive tips. Seven states (Colorado, Delaware, Kansas, Minnesota, New Jersey, New Mexico, and Pennsylvania) specifically excluded tips from wages when considering workers' compensation, four states (California, Ohio, Oregon, and Washington) did not consider tips as part of wages under state minimum wage law, and four other states either prohibited or regulated the consideration of tips as wages (Minnesota, New Hampshire, New York, and Wisconsin) (Needleman 1937). Prior to their repeal by the Supreme Court, the National Recovery Administration codes of 1933 did not include tips as wages but did set lower wages for service workers. Then, as now, industry representatives claimed that restaurants could not bear the burden of paying their workers' wages (Needleman 1937). After the inclusion of tipped workers in the FLSA amendment of 1966, there was a flurry of activity at the state level during the 1970s, and six of the One Fair Wage states adopted legislation excluding tips from minimum wage requirements. Montana adopted One Fair Wage legislation in 1987.

The last increase in the federal minimum wage was in 2009, and today the rate of $7.25 seems archaically low as states debate minimum wage laws of up to $15.00 an hour. Twenty-nine states and the District of Columbia have higher minimum wage laws, eight of those states are already at or over $10 an hour, and multiple states are on a path to a $15.00 minimum wage. Similarly, states are slowly moving to redress the subminimum wage. Two states, Hawaii in 2016 and New York in 2017, adopted a subminimum wage higher than the federal minimum wage, and many states have increased the subminimum wage along with their minimum wage (Wage and Hour Division 2017). However, in most of these efforts the subminimum wage remains fixed as a percentage of the minimum wage. In New York State, for example, the gap between the subminimum wage and the minimum wage will grow from a difference of 17 percent to 33 percent, meaning that tipped workers will become "cheaper" over time, increasing perverse incentives in the industry to shift nontipped work onto tipped workers (Restaurant Opportunities Centers United 2016).

Several of the One Fair Wage states have also adopted aggressive minimum wage increases without excluding tipped workers, opening a popular but contentious path toward expanding One Fair Wage. Last November, voters in the state of Maine and in the city of Flagstaff, Arizona, passed ballot measures to phase out the subminimum wage for tipped workers.

Maine would have been the eighth One Fair Wage state and the first on the East Coast. However, state legislators voted to reverse the ballot decision and passed legislation to reinstate the tipped subminimum wage following a vocal campaign by the restaurant industry. The industry argued that it could not absorb the wage increase, and also convinced many workers that they would see a wage decrease, claiming they would lose their tips if the subminimum wage increased (Restaurant Opportunities Centers United 2017). This myth that workers will lose their tips appears pervasive, but restaurant patrons do not adjust their tipping practices as they travel from state to state. San Francisco was one of the first cities to move to a $15.00 minimum wage, and restaurant workers there enjoy one of the nation's highest tipping rates, according to the Golden Gate Restaurant Association (Higgins 2016). Alaska, a One Fair Wage state, has one of the highest tipping rates in the nation, and Arizona, where the subminimum wage increased from

$5.00 in 2016 to $7.00 per hour in 2017, and Colorado, where the subminimum wage increased from $5.29 in 2016 to $6.28 in 2017, both have above-average tipping rates (Johnson 2017; Wage and Hour Division 2017). Restaurant workers in other areas appear to support One Fair Wage policies. Recently in the One Fair Wage state of Minnesota, industry lobby groups failed to mobilize workers against a Minneapolis proposal to raise the minimum wage in that city to $15.00, with no exception for tipped employees. Similar efforts to roll back tipped wage increases failed to materialize in Flagstaff and New York State.

## CONCLUSION

The seven states with no subminimum wage represent a natural experiment demonstrating that One Fair Wage is economically feasible for the restaurant industry and greatly improves the earnings and economic well-being of restaurant workers. Workers in those seven states represent nearly one-fifth of the restaurant workforce and, according to industry data, are employed in the most economically vibrant groups of states. However, the vast majority of workers work in states with a tipped wage below the federal minimum wage, and over a third work in states with a subminimum wage of only $2.13; together they represent the vast majority of all workers earning at or below the minimum wage. Across the country, and across all wage regions, restaurant employment continues to grow and has become one of the country's primary employers. The restaurant industry is an increasingly important economic engine that delivers over half of the nation's nutrition, based on food budget dollars, and is an industry that cannot easily be outsourced. One Fair Wage is a tool that can help ensure the economic success of restaurant workers and benefit the entire economy.

# Notes

1. See, in particular, Tables 3 and 10 from Economic Research Service (2016).
2. Author's calculations of private sector employment by major industry from 2006–2016, and percent change in private sector employment using 2006 as a base year. Restaurant employment (NAICS 722 Food Services and Drinking Places) accounts for three-quarters of employment in the Leisure and Hospitality industry and was examined as a major industry instead of Leisure and Hospitality for the purposes of this article.
3. Analysis based on Ruggles et al. (2015). Poverty, government assistance, and demographic calculations by the author, examining American Community Survey data for all currently employed individuals, individuals employed in all restaurant occupations, and individuals employed in customarily tipped occupations.
4. See Note 3.
5. See Note 1.
6. See Note 2.
7. See Note 2.
8. Author's calculations based on wages sorted by median wage for customarily tipped occupations or other occupations, as noted. Customarily tipped restaurant occupations include bartenders; counter attendants; cafeteria and food concession workers; waiters and waitresses; hosts and hostesses, restaurant, lounge, and coffee shop workers; food servers, nonrestaurant; and dining room and cafeteria attendants and bartender helpers. Other customarily tipped occupations include massage therapists; gaming service workers; barbers; hairdressers, hairstylists, and cosmetologists; miscellaneous personal appearance workers (including manicurists and pedicurists, shampooers, and skin-care specialists); baggage porters and bellhops; concierges; taxi drivers and chauffeurs; and parking lot attendants. Customarily tipped occupations both provide direct service to the customer and must earn a minimum of $30 per month in tips.
9. See Note 3.
10. U.S. Census data, 1850–1920. Analysis based on Ruggles et al. (2015). Calculations by the author, examining data for all employed individuals, individuals employed in all restaurant occupations, and individuals employed in customarily tipped occupations.
11. See Note 3.
12. See Note 3. The gender wage gap was calculated by comparing mean annual wages for full-time, year-round employees by gender.
13. See Note 3 for demographic data by state.
14. See Note 2.

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