

# NELP

**National Employment  
Law Project**

TESTIMONY  
OF  
TSEDEYE GEBRESELASSIE  
NATIONAL EMPLOYMENT LAW PROJECT

ON  
A-2708: MINIMUM WAGE FOR TIPPED WORKERS

BEFORE THE  
NEW JERSEY ASSEMBLY  
LABOR COMMITTEE

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Good afternoon Chairman Egan, and Members of the Assembly Labor Committee, and thank you for the opportunity to testify today on A. 2708, which would finally put New Jersey in line with the 42 states that set a base employer-paid wage for workers who receive tips.

My name is Tsedeye Gebreselassie, and I am a staff attorney at the National Employment Law Project. The National Employment Law Project is a non-profit, non-partisan research and advocacy organization specializing in employment policy. We are based in New York with offices across the country, and we partner with federal, state and local lawmakers on a wide range of workforce issues.

Across the country, our staff are recognized as policy experts in areas such as unemployment insurance, wage and hour enforcement, and, as is relevant for today's hearing, minimum wages. We have worked with dozens of state legislatures across the country and with the U.S. Congress on measures to restore a strong minimum wage.

The low minimum wage for tipped workers, which forces these employees to subsist almost entirely on tips, has been a key factor behind increased poverty rates and growing economic insecurity for workers in tipped industries. Guaranteeing tipped workers a strong minimum wage that is paid directly by their employer is crucial to raise living standards and increase the consumer spending that will help our economy recover. In my testimony I will address some of the key policy and economic questions raised by this proposal, and respond to some of the arguments that opponents of the proposal are likely to make. In an effort to make it as accessible and useful as possible, my written testimony is presented in bullet point format.

I am also attaching to my written testimony a 2009 NELP report, *Restoring the Minimum Wage for America's Tipped Workers*, that examines these issues in depth. And I would also like to mention as a resource for the legislature our website on the minimum wage, [www.raisetheminimumwage.org](http://www.raisetheminimumwage.org), which is a central location on the web for the latest research news and policy development related to the minimum wage.

***New Jersey, Which Has No Wage Requirement for Tipped Workers Under Its Minimum Wage Law, Is Far Outside the Mainstream***

- Tipped workers make up a significant portion of our low-wage workforce. They work as parking attendants, car wash workers, nail salon workers, baggage porters and bellhops. The largest numbers are employed in food service, such as waitresses, waiters, bussers, and food delivery workers.
- New Jersey is just one of a handful of states that have *no* minimum wage for tipped workers under state law.
- Five states in the South – Alabama, Louisiana, Mississippi, Tennessee and South Carolina – have no state minimum wage law, so no tipped minimum wage requirement. But of the rest of the 45 states that have a state minimum wage law – only Georgia and Virginia join New Jersey in not even requiring a baseline cash wage for tipped workers under its state law.<sup>1</sup>
- Under New Jersey law, then, tipped workers can in theory be paid no wages at all and forced to work entirely for tips. Now, federal law requires that those tipped workers covered by federal law be paid \$2.13 per hour. But that is a paltry sum – and one that has been frozen for more than 20 years.
- By contrast – seven states (Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington) require that tipped workers be paid the *full* minimum wage, with any tips received being in addition to, not instead of, the minimum wage. These includes states like Washington and Oregon, that not only have the highest minimum wages in the country – at \$9.04 and \$8.80 respectively – but also index their minimum wages to increase each year with inflation. In other words, a waitress in Washington currently receives a base cash wage of at least \$9.04 per hour before tips, and can expect an increase next year.

- And many other states establish a minimum wage for tipped workers somewhere between 50 and 100 percent of the full minimum wage. New York and Connecticut, for example, require that tipped workers be paid approximately 69% of the full minimum wage.
- These states recognize that it is bad policy to force workers to work just for tips or pay them a paltry \$2.13 per hour. Therefore, they have raised their tipped minimum wages to levels that have successfully reduced poverty rates among tipped workers in those states while having absolutely no negative impact on job creation or economic growth.

***Tipped Workers Are Mainly Adults, Disproportionately Female, and Three Times More Likely to Live in Poverty than the Workforce as a Whole***

- The vast majority of tipped workers are adults: 88% of all tipped workers – and 82% of waiters and waitresses, are over the age of 20.<sup>2</sup>
- Tipped workers are disproportionately female: 72% of all tipped workers, and 72.4% of waiters and waitresses, are women.<sup>3</sup>
- While opponents of a decent tipped minimum wage sometimes suggest that tipped workers earn good incomes after tips are included, that is simply not the case for the vast majority of tipped workers.
  - According to BLS data, the median wage for a tipped worker is \$9.87 per hour.<sup>4</sup>
  - In states where the tipped minimum wage is as low as the federal tipped minimum wage of \$2.13, the median wage is even lower at \$9.31, and \$8.77 for waitresses and waiters.<sup>5</sup>

- As a result of these low wages, the family poverty rate for tipped workers is three times the family poverty rate for the workforce as a whole.<sup>6</sup>
- Not surprisingly, the poverty rate is worse for tipped workers in those states where the tipped minimum wage is as low as the federal \$2.13 per hour. The poverty rate for waiters and waitresses in those states is 19.4%, as compared to 13.6% in states that require the full minimum wage for tipped workers, and 6.3% for the U.S. workforce as a whole.<sup>7</sup>
- These poverty wages are especially troubling in a place like New Jersey. This is because while New Jersey ranks near the bottom in terms of ensuring a decent wage for tipped workers, New Jersey's cost of living is among the highest in the nation.<sup>8</sup>

### ***Tipped Workers Need Strong Protections to Offset Great Uncertainty***

- Working for tips creates great uncertainty for low-wage workers. Not only are tips notoriously erratic by their very nature, they are also susceptible to misappropriation. For this reason, tipped workers need a strong minimum wage paid directly by their employers to cushion them against wide swings in their paychecks.<sup>9</sup>
- Tips vary depending on broader economic trends, from season to season, and from shift to shift. Tipped workers are hit especially hard by economic downturns because of fewer customers and smaller tips, and the current economic climate underscores why it is so important to have a decent tipped minimum wage.
- Even in stronger economies, tips can vary significantly from shift to shift and from season to season. Although technically employers must make up the difference if a worker does not receive enough tips to bring him or her up to the full minimum wage, the reality is that this requirement is very difficult to enforce. Tracking tips is

complex because tips fluctuate widely, are often paid in cash, and are frequently “pooled” or shared among staff.<sup>10</sup> Under such complex conditions, law-abiding employers can have trouble keeping track. And as numerous recent lawsuits have shown, less ethical employers can take advantage of this system to skim off the top a portion of a worker’s tips.<sup>11</sup>

- Furthermore, the widespread problems with tipped minimum wage compliance and enforcement are well documented. A NELP study of 4,387 low-wage workers in New York, Chicago and Los Angeles, found that 30 percent of the tipped workers surveyed were not paid the tipped worker minimum wage. In addition, 12 percent experienced tip stealing by their employer or supervisor.<sup>12</sup>
- This reality underscores the importance of a strong tipped minimum wage to guarantee tipped workers a dependable base income that is not subject to fluctuation or vulnerable to cheating.

***Research and Real-World Experience Shows that a Strong Tipped Minimum Wage Does Not Slow Job Growth***

- Regardless of the economic climate, opponents typically argue that raising the minimum wage – either in general or for tipped workers – will cost jobs. However, real world experiences, as well as studies of states and cities that have raised their tipped worker minimum wages, have consistently found no evidence that doing so leads to job losses or slows business growth.
- For example, according to projections by the National Restaurant Association in their 2012 Industry Forecast, all but one of the states that guarantee the full minimum wage to tipped workers are expected to have greater restaurant job growth than New Jersey in the next decade – in most cases, much greater.<sup>13</sup> Specifically, while the NRA projects 6.8% restaurant job growth for New Jersey in

the next decade, it projects the following for the seven states that guarantee tipped workers the full minimum wage:

- Alaska: 15.3%
  - California: 10.1%
  - Minnesota: 7.5%
  - Montana: 6.4%
  - Oregon: 12.6% (where the minimum wage is \$8.00 and indexed)
  - Nevada: 15.4% (where the minimum wage is \$8.25 and indexed)
  - Washington 11.1% (where the minimum wage is \$9.04 and indexed)
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- This shows that the tipped minimum wage is not remotely a significant factor affecting job growth in the industry, and certainly is not killing jobs.
  
  - A 2006 study by the Fiscal Policy Institute examined job growth between 1998 and 2003 in the ten states and the District of Columbia that had minimum wages higher than the federal rate at that time – Alaska, California, Connecticut, Delaware, Hawaii, Massachusetts, Oregon, Rhode Island, Vermont and Washington. The study compared job growth in those states with the forty states that did not have higher minimum wages. All ten of the high minimum wage states examined in the study also had tipped worker minimum wages higher than the federal \$2.13 – in fact, four of these ten states guarantee tipped workers the full state minimum wage, and Hawaii’s tipped minimum wage is just 25 cents less than the full state minimum wage. The study found that these ten states actually had *faster* job growth among small businesses than the other forty states.<sup>14</sup>
  
  - This experience highlights how job growth is driven overwhelmingly by other factors in a state’s economy – not by how high or low the state’s minimum wage, or tipped minimum wage is.

- These results are consistent with the most rigorous academic research on the minimum wage more generally, which finds that minimum wage increases increase workers' income without reducing employment of low-wage workers.
- This research, examining dozens of minimum wage increases over the past two decades, compare job growth trends in neighboring counties across state lines with different minimum wages, has found that higher minimum wages do not result in job losses. Significantly these trends are the same for minimum wage increases implemented even during weak economic periods.
- This important body of research was pioneered more than 15 years ago by economists Alan Krueger, now the Chair of President Obama's Council of Economic Advisors, and David Card at Princeton University, when they found increases in New Jersey's minimum wage, when neighboring Pennsylvania did not raise its minimum wage, did not reduce employment among low-wage workers in New Jersey.<sup>15</sup>
- A 2010 study in the prestigious Review of Economics and Statistics builds upon this research, carefully analyzing minimum wage impacts across state borders. It compared employment patterns in the more than 250 pairs of neighboring counties in the U.S. that had different minimum wage rates at any time between 1990 and 2006, and found no difference in job growth rates in the neighboring counties despite the different minimum wages, and no evidence that states' with higher minimum wages had pushed businesses across the state line.<sup>16</sup>
- And a 2011 study published in the Journal Industrial Relations examined every minimum wage increase over the past two decades—including increases that took place during protracted periods of high unemployment, such as the Great Recession of 2007 to 2009—and found that higher minimum wages boost incomes without reducing employment or slowing job creation, even for teen workers.<sup>17</sup>



- Indeed, as Crain’s New York Business recently explained, a higher minimum wage does not put one state at a competitive disadvantage compared with neighboring states because “Businesses employing many minimum-wage workers tend to be in the service sector and must set up shop near their customers.”<sup>18</sup>
- Another important contribution of these two recent studies is that they also demonstrate how previous research relied on by corporate interests failed to control for key variables, resulting in faulty conclusions. That erroneous research failed to control for basic differences in population and job growth trends across regions of the country, such as population shifts from the Rust Belt to the Sun Belt. The new research shows that when those trends are controlled for – for example, by focusing on neighboring counties (which by their nature have similar economies) with different minimum wage rates – any correlation between higher minimum wages and slower job growth vanishes. Detailed summaries of this and other new research can be found on our website, [www.RaiseTheMinimumWage.org](http://www.RaiseTheMinimumWage.org).

***The Tipped Workforce Is Growing in This Economy, Making A Strong Tipped Minimum Wage More Important Than Ever to Families and the State’s Economy***

- The tipped workforce has grown steadily over the past 10 years, even over the 2007-2009 recessionary period.<sup>19</sup>
- According to the Economic Policy Institute, from 2007-2009, while the economy lost more than 5 million jobs, the number of tipped workers grew by 140,000 and the number of waiters grew by 68,000.<sup>20</sup>
- Since 2000, the number of tipped workers has increased 15.5% and the number of waiters increased 7.5% -- increases which far exceeded the 1.8% growth in the overall workforce.<sup>21</sup>

- Indeed, the National Restaurant Association (NRA) itself projects that the restaurant industry will add jobs at rate of 2.4% in 2012, compared with the 1.8% expected for the national economy.<sup>22</sup>
- And the Bureau of Labor Statistics projects that the occupations sector of “Food Preparation and Serving” will add over a million jobs – one of the largest projected occupational increases across occupations – from 2008 to 2018.<sup>23</sup>
- Yet of the top 20 growth sectors, the Food Preparation and Serving Sector has the lowest median wages – just \$16,430 annually – in 2008.<sup>24</sup>
- Meanwhile, as NELP analysis shows, while the majority of jobs lost during and after the recession were in mid-wage occupations like manufacturing and construction, job growth since the recession has been disproportionately concentrated in low-wage occupations like food prep.<sup>25</sup>
- Thus, more workers in New Jersey, and nationally, are spending their careers in low-wage industries, including those with large concentrations of tipped workers.
- This means that a strong tipped minimum wage – and a strong minimum wage in general – will play a bigger role in the state’s economy, since it is one of the major factors shaping pay scales in these low-wage jobs.

***A Strong Tipped Minimum Wage Will Boost the Consumer Spending that New Jersey’s Economy Needs in Order to Grow***

- Consumer spending drives our economy, making up 70 percent of GDP. But consumer demand remains weaker than we need it to be, as too many workers across New Jersey and the nation are either out of work, or have found new work at lower pay than in the sectors where job growth is not concentrated.

- Economists and business owners from across the political spectrum have been stressing the seriousness of this problem:
  - “Small business-owners are worried because sales are falling and there’s no pickup in sight” (*The Wall Street Journal*, Sept. 13, 2011)
  - “An increase in consumer spending would be the best imaginable stimulus right now” (National Federation of Independent Businesses, Oct. 11, 2011)
  - A Wall Street Journal survey of 53 economists showed that 65 percent cited lack of demand as the primary impediment to increased hiring. (*The Wall Street Journal*, July 11, 2011)
  
- Raising wages for the nation’s lowest-paid workers, like tipped workers, is a key way of boosting consumer demand. It puts money into the pockets of working families who spend it on necessities at neighborhood businesses, pumping it back into the economy.
  
- For example, according to an analysis by the Economic Policy Institute, raising the federal minimum wage from \$7.25 to \$10 in three steps over the next three years would generate more than \$25 billion in additional GDP and create the equivalent of more than 100,000 full-time jobs.
  
- This research highlights how, far from killing jobs, raising minimum wages in fact promotes job growth.

Thank you so much for the opportunity to testify today in support of establishing a decent minimum wage for tipped workers to help working families and promote economic recovery. I’d be happy to answer any questions that you may have.

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<sup>1</sup> <http://www.dol.gov/whd/state/tipped.htm>

<sup>2</sup> Sylvia A. Allegretto and Kai Filion, “Waiting for Change: The \$2.13 Federal Subminimum Wage”, Economic Policy Institute & Institute for Research on Labor and Employment at University of California at Berkeley (February 23, 2011), available at <http://www.epi.org/page/-/BriefingPaper297.pdf>

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Sylvia A. Allegretto and Kai Filion, “Waiting for Change: The \$2.13 Federal Subminimum Wage”, Economic Policy Institute & Institute for Research on Labor and Employment at University of California at Berkeley (February 23, 2011), available at <http://www.epi.org/page/-/BriefingPaper297.pdf>

<sup>8</sup> Helene Jorgenson, “The State of Working New Jersey 2011: The Lost Decade,” New Jersey Policy Perspectives (Nov. 2011), available at <http://www.njpp.org/assets/reports/work-wages/stateofworkingnewjerseyfull.pdf> (New Jersey’s cost of living is higher than 43 other states).

<sup>9</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/bff44d5fafbd9d2175\\_vem6ivjib.pdf](http://nelp.3cdn.net/bff44d5fafbd9d2175_vem6ivjib.pdf)

<sup>10</sup> *Id.*

<sup>11</sup> Benjamin Weiser, “Mario Batali Agrees to \$5.25 Million Settlement Over Employee Tips available at <http://dinersjournal.blogs.nytimes.com/2012/03/07/mario-batali-agrees-to-5-25-million-settlement-over-employee-tips/> (tipped workers alleged that Batali’s restaurants had a policy of deducting an amount equivalent to 4 to 5 percent of total wine sales at the end of each night from the tip pool and keeping the money.)

<sup>12</sup> Annette Bernhardt, et. al, “Broken Laws, Unprotected Workers: Violations of employment and Labor Laws in America’s Cities,” National Employment Law Project (2009), available at <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>

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<sup>13</sup> National Restaurant Association, 2012 Restaurant Industry Forecast, *partially available at* <http://www.restaurant.org/research/forecast/>, on file with the National Employment Law Project

<sup>14</sup> Fiscal Policy Institute, "States with Minimum Wages above the Federal Level have had Faster Small Business and Retail Job Growth," March 30, 2006, *available at* <http://www.fiscalpolicy.org/FPISmallBusinessMinWage.pdf>

<sup>15</sup> David Card and Alan B. Krueger, "Minimum Wages and Employment: A Case Study of the Fast Food Industry in New Jersey and Pennsylvania," NBER Working Paper, October 1993, *available at* <http://www.nber.org/papers/w4509>

<sup>16</sup> Arindrajit Dube, T. William Lester, and Michael Reich, "Minimum Wage Effects Across State Borders: Estimates Using Contiguous Counties," *The Review of Economics and Statistics*, 92(4): 945–964 (November 2010), *available at* <http://www.irle.berkeley.edu/workingpapers/157-07.pdf>

<sup>17</sup> Sylvia A. Allegretto, Arindrajit Dube, and Michael Reich, "Do Minimum Wages Really Reduce Teen Employment? Accounting for Heterogeneity and Selectivity in State Panel Data," *Journal of Industrial Relations* (April 2011), *available at* <http://www.irle.berkeley.edu/workingpapers/166-08.pdf>.

<sup>18</sup> <http://www.crainsnewyork.com/article/20120205/SUB/302059999#ixzz1nf6bGs5b>

<sup>19</sup> Sylvia A. Allegretto and Kai Filion, "Waiting for Change: The \$2.13 Federal Subminimum Wage", Economic Policy Institute & Institute for Research on Labor and Employment at University of California at Berkeley (February 23, 2011), *available at* <http://www.epi.org/page/-/BriefingPaper297.pdf>

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> NRA News Release, "Restaurant Industry Sales Turn Positive in 2011 after Three Tough Years" (Feb. 1, 2011), *available at* <http://www.restaurant.org/pressroom/pressrelease/?id=2039>

<sup>23</sup> Sylvia A. Allegretto and Kai Filion, "Waiting for Change: The \$2.13 Federal Subminimum Wage", Economic Policy Institute & Institute for Research on Labor and Employment at University of California at Berkeley (February 23, 2011), *available at* <http://www.epi.org/page/-/BriefingPaper297.pdf>

<sup>24</sup> National Employment Law Project, "The Good Jobs Deficit: A Closer Look at Recent Job Loss and Job Growth Trends Using Occupational Data", Data Brief, July 2011, *available at* <http://www.nelp.org/page/-/Final%20occupations%20report%207-25-11.pdf?nocdn=1>

<sup>25</sup> *Id.*