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Written Testimony of
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To the
New York State Department of Labor
2014 Hospitality Industry Wage Board

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On behalf of the 2.5 million union members, retirees and families of the New York State AFL-CIO, I thank the members of the 2014 Hospitality Industry Wage Board – Peter Ward, Heather Briccetti, and Chair Timothy Grippen, as well as the staff of the New York State Department of Labor who are assisting them, for their time and effort.

Pursuant to Labor Law §652(6) and the charge of Commissioner of Labor Peter Rivera, the 2014 Hospitality Wage Board is empowered to “inquire and report and recommend any changes to the wage order governing wages payable to such food service workers and service employees sufficient to provide adequate maintenance and support and to protect the health and livelihood of employees subject to such wage order.”

The task before the Board is a critical one that has the chance to make a real difference in the lives of low-wage earners as illustrated below. I trust that at the end of your deliberations, you will make an appropriate recommendation that recognizes the inadequacy and unfairness inherent in the current subminimum wage required to be paid to tipped workers in the hospitality industry.

Current Law and It's Application

Current state law allows employers to pay tipped workers a subminimum wage. This subminimum wage plus tips must equal or exceed the statutory minimum wage payable to other workers. If the subminimum wage plus tips does not equal or exceed the statutory minimum wage, the employer is required to “top up” or make up the difference and make the employee whole.

First and foremost, this process raises numerous concerns in terms of practicality and enforceability. The rules governing “topping up” are extremely complex. Averaging across the work week and pooling among different categories of workers creates significant ambiguity that makes tracking and enforcement all the more difficult.

If a worker determines he or she has been underpaid, they then must confront the very employer that decides when and how often they will work. It is a scheme that is fundamentally susceptible to intimidation. A worker, who overcomes that rather large hurdle and confronts his or her employer about underpaid wages, is left with little viable recourse if the employer fails to voluntarily make him or her whole, absent a collective bargaining agreement. A tipped worker whose claims are rebuffed by his or her employer is forced to seek intervention from a public agency or seek civil restitution.

But even if the current law is operating as designed, this scheme essentially allows one group of employers to shirk a responsibility that all other employers are required to meet. Instead of gratuities being over and above the minimum wage payable to all other workers, the hospitality industry has shifted the cost of a basic labor right – the minimum wage – to the consumer. This is unfair, and comes at the detriment of hardworking New Yorkers.

Size of the Industry

The scope of the issue at question is expanding, underscoring the need for this Wage Board to act on behalf of tipped workers. As the Department of Labor's Division of Research and Statistics has reported to this Wage Board, the number of establishments in the hospitality industry has increased by 8.4% from 2010 to 2013, and the number of employees has increased by 14.9%.

With more workers employed in more establishments, it stands to reason that the underpayment of workers, and certainly the inbuilt inequality of the tipped workers' subminimum wage, is impacting a growing number of workers in New York.

Nature of the Workforce

The Wage Board must also recognize that the nature of the industry does not conform to common stereotypes and misconceptions. Restaurant workers are not predominantly high school and college students pursuing extra pocket change. The reality is quite different. As you know, the Division of Research and Statistics has pointed out that over 65% of the hospitality industry workforce is 25 or older.

Tipped workers have children, homes, utilities, transportation costs, and the list goes on and on that they must pay for. Therefore action by the state to raise the tipped workers subminimum wage has the potential to greatly improve the lives working families supported by low-wage, tipped workers in recognition of our new economic reality.

Costs of Poverty and Income Inequality

According to analysis by the Economic Policy Institute, the poverty rate is over 8 points higher nationally for all tipped workers, and 10 points higher for waiters and waitresses, as compared to all workers. This is alarming.

The costs of poverty and income inequality go far beyond tipped workers and their families. We all feel the effects of the hospitality industry's cost shift. When workers are paid insufficiently, society bears the costs of increased public services that are then required to help workers make ends meet.

But, just as importantly, there is a collective opportunity cost of lost consumer spending. Low-wage earners have no choice but to spend all their money back into their local economies just to get by; saving is all too often a luxury they can't afford. They shop in local businesses, consume local services, and pay taxes on those purchases that support quality public services. An increase in the tipped wage will therefore provide a kick-start to New York's economic engine, leading to job creation in both the hospitality industry and other sectors as well.

Recommendation

New York would be well-served to follow the lead of seven states from varying geographic and demographic profiles that do not provide for a tip credit in their minimum wage laws - Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington. It is time that New York end its codified scheme of disadvantaging one group of workers to benefit one group of employers. I ask you to raise the subminimum wage for tipped workers in the hospitality industry to the full minimum wage enjoyed by other workers.

In addition, although it may be outside the statutory scope of this Wage Board, you have a platform to make a statement to policymakers beyond your charge. I encourage you to use this opportunity to urge our elected leaders to raise the minimum wage for all workers beyond the upcoming statutory increases and index it to the Consumer Price Index, so that worker wages, be they in the hospitality industry or elsewhere, are never again ravaged by inflation.

Thank you once again, and please feel free to contact me should you require additional information.