



New York State Wage Board Hearing

Monday, October 20, 2014

Adam Clayton Powell, Jr. State Office Building

Art Gallery (2nd Floor)

State Labor Commissioner Peter M. Rivera

Chair Timothy Grippen,

Zenaida Mendez, President NOW-NYS

Good day. My name is Zenaida Mendez, and I am the President of the National Organization for Women, New York State, Inc. In our efforts to secure pay equity, NOW has long been concerned with “the glass ceiling” which prevents women from advancing to high-paying jobs. But as an organization we have been just as concerned with “the sticky floor,” a term used to define a set of laws and practices that keep women’s wages low.

The subminimum wage for tipped workers, 70% of whom are women, is a textbook example of a “sticky floor.” National studies done by the National Employment Law Project (2009), the Economic Policy Institute (2011 and 2014), and the Restaurant Opportunities Center (2014) have found that the poverty rate for restaurant wait staff is three times the rate of the American workforce as a whole.

NOW, at both the state and national levels, seeks the elimination of the subminimum wage. I urge this Commission to seriously consider this option. In the seven states that have eliminated the tipped wage (Alaska, California, Minnesota, Montana, Nevada, and Oregon), restaurants have remained a growth industry and the poverty rates for restaurant workers have decreased substantially.

There are three reasons why we make this recommendation.

First, the policy is discriminatory. When Congress adopted the federal minimum wage standard in 1938, it reflected the sexism and racism that prevailed at that time by purposely excluding domestic, retail, farm, and tipped workers. The NAACP, in particular, objected that the majority of African Americans and women employees would not be covered by this act. Members of Congress were well aware of this.

Second, the creation of the subminimum wage at both the federal and state level has created a time lag for wage increases for tipped workers. When Congress finally got around to creating a subminimum wage for tipped workers in 1966, it represented only 50% of the minimum wage for other workers. But instead of regularly raising the subminimum wage to keep to this ratio, increases lagged. The current federal standard of \$2.13 an hour for workers receiving tips, which has not been increased by Congress in twenty-two years, now represents less than 30% of the minimum wage for other workers.

While New York State has not been as bad as Congress, it needs to be pointed out that the state minimum wage was increased by the NYS Legislature in 2013, but tipped workers have had to wait for the Wage Board to be appointed. Your recommendations will be not be made public until 2015. Quite frankly, this two-year delay for a tipped wage increase is part of the “sticky floor” problem in New York State.

Third, the current staffing of the NYS Department of Labor’s Division of Labor Standards makes it difficult, if not impossible, to enforce the subminimum wage standard. The concept behind creating the category of “tipped employees” is that these workers receive enough tips so that, combined with the subminimum wage, their income is equivalent to other workers receiving the state’s minimum wage. At some time in the past, the Division of Labor Standards might have been able to ensure employer compliance with this standard, but not now.

According to research compiled by Make the Road New York, the Division had 300 labor inspectors in 1966, but it now has less than half this staff, only 120 investigators. The labor force in New York State has grown, so in reality the understaffing is even more severe. What was once a ratio of one investigator for every 22,365 workers has become one investigator for every 73,724 workers. The result of this understaffing has been widespread wage theft and widespread misclassification of workers.

Creating a minimum wage for all workers will eliminate the problem of misclassification, which will allow the Division to focus on the urgent problem of wage theft. I want to end my testimony with a plea that this Commission recommends the end of the subminimum wage, but also makes a strong recommendation for improved enforcement of the state’s wage standard and the state’s laws against employment discrimination.

Earlier this year, NOW-NYS sent a letter to the Governor asking an increase of \$25 million targeted to staffing increases for the Division of Labor Standards. If standards for minimum wage rates continued to be poorly enforced, thousands of restaurant workers will see no improvement in their pay rates. Law-abiding restaurant owners will also continue to be placed at a disadvantage in competition with owners who practice wage theft.

Enforcement efforts need to be increased by the Division for Human Rights. Sexual harassment is a serious problem experienced by restaurant workers. Other organizations testifying today will also focus on this issue. But sexual harassment is not the only serious problem facing waitresses. The discrimination they often face is very visible to even the most casual observer. Some restaurants have a wait staff that is diverse in terms of gender, race, and age. But too many restaurants practice open discrimination — such as hiring only men or relegating people of color to “bus-boy” positions. Both high-end and ethnic restaurants, in particular, have a practice of excluding middle-aged women from their wait staffs.

In conclusion, the elimination of tipped wages needs to be accompanied by a effort to prevent both wage theft and overt discrimination.

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