

## Saru Jayaraman

My name is Saru Jayaraman; I have founded three organizations over the last 20 years to fight to raise wages and working conditions for service sector workers. I'm also a Professor at the University of California, Berkeley's Goldman School of Public Policy and have written 3 books on the restaurant industry. My work was featured in two recent documentary films -Waging Change by Peabody-award winning documentarian Abby Ginzberg, and the Great American Lie by The First Partner of California, Jennifer Siebel Newsom

Prior to the COVID 19 pandemic, the restaurant industry was one of the largest and fastest growing sectors of both the US and the NY state economy, but also the lowest paying.<sup>1</sup> Indeed, eight of the 15 lowest-paid occupations are restaurant jobs, seven of which are tipped.<sup>2</sup> As COVID-19 forced the closure of thousands of restaurants nationwide, as well as other tipped personal service occupations such as nail salon, car wash, airport and parking attendants, and tipped gig workers, this workforce plummeted even deeper into poverty and financial insecurity.

**These workers' low pay is a result of the subminimum wage for tipped workers, a legacy of slavery that emerged during the era following Emancipation to exploit recently freed people, particularly Black women. This legacy continues today.** In New York and 42 other states across the country, tipped workers, still subject to a subminimum wage by law, are twice as likely to live in poverty and rely on food stamps than the general workforce<sup>3</sup>. Tipped workers in these states also suffer from twice the rate of sexual harassment compared to the seven states that offer a full wage with tips on top.<sup>4</sup> These statistics are worse for tipped workers of color. The percentage of New York tipped workers of color living in poverty is 65% higher compared to white workers; similarly the percentage of women in poverty is 45% greater than men.<sup>5</sup>

The subminimum wage for tipped workers resulted in a horrific experience for Black tipped workers during the COVID-19 pandemic. Survey data from New York tipped service workers reveals that 63% of all tipped workers and 73% of service workers of color in New York reported experiencing barriers with regard to accessing unemployment insurance, in large part due to the fluctuation of tips and an inability to meet the earnings threshold. Even before the pandemic, the financial precarity facing workers of color in New York was severe given that this group already earned far less than white workers due to their segregation in more casual restaurants, where less tips are earned, and due to customer bias in tipping.<sup>6 7</sup> As a result, 93% of Black tipped service workers reported being unable or unsure whether they could afford their rent or mortgage, and 87% percent of Black workers reported only being able to afford groceries for 2 weeks or less – all at much higher rates than their white counterparts.<sup>8</sup> These horrific statistics have health consequences. Workers have reported to us that they are now planning to steal

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<sup>1</sup> Bureau of Labor Statistics, February 2019. Employment Projections, 2016-2026.

<sup>2</sup> National Restaurant Association, (2019). Restaurant Industry Facts at a Glance. <https://restaurant.org/research/restaurant-statistics/restaurant-industry-facts-at-a-glance>.

<sup>3</sup> American Community Survey (2013-2017). Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas, and Matthew Sobek. IPUMS USA: Version 9.0 [dataset]. Minneapolis, MN: IPUMS, 2019. <https://doi.org/10.18128/D010.V9.0>.

<sup>4</sup> Restaurant Opportunities Centers United. "The Glass Floor: Sexual Harassment in the Restaurant Industry." New York, NY. October 2014.

<sup>5</sup> See footnote 3.

<sup>6</sup> One Fair Wage. "A Persistent Legacy of Slavery: Ending the Subminimum Wage for Tipped Workers in New York as a Racial Equity Measure". July 2020.

<sup>7</sup> Lynn et al., (2008). Consumer Racial Discrimination in Tipping: A Replication and Extension. *Journal of Applied Social Psychology*, 38(4), pp.1045–1060

<sup>8</sup> See footnote 6.

food for their children as they cannot get to the foodbank - given the danger of public transportation and many have said they do not have money for gas to get to the foodbank - and even when they get to the foodbank, workers report that only limited or spoiled food is available.

Now, workers who are being asked to return to work are facing both grave health risks and a subminimum wage for tipped workers, at a time when the majority of tipped workers surveyed in New York report that their tips have been reduced by at least 50%.<sup>9</sup> They are facing an impossible choice that is about to become worse - research shows that indoor dining is one of the highest risk places to catch the virus, and workers are thus having to choose between a subminimum wage while risking catching the virus or refusing work and thus being denied unemployment benefits.<sup>10</sup> This difficult choice will be felt most by Black workers and other workers of color, who because of customer bias earned less in tips to begin with.<sup>11</sup>

The pandemic has revealed deep race and gender inequities in New York's restaurant industry. Our recent research shows that New York and Massachusetts trail only Alabama in having the highest pay gaps between Black women and white men in restaurant dining floors among states with statistically significant Black populations.<sup>12</sup> The New York restaurant industry's race and gender pay gap of \$7.74 is 60% worse than the rest of the country;<sup>13</sup> it can be traced directly to the subminimum wage for tipped workers, given that women of color earn so much less in tips than white men, and it has created a horrific situation for women of color during the COVID-19 pandemic.

These inequities for people of color, and women of color in particular, are caused by both the subminimum wage for tipped workers and race and gender segregation in the service sector. As the economy re-opens and workers are forced to resume potentially dangerous occupations or lose their unemployment insurance, many will see deeply reduced incomes. Limited restaurant capacity, plummeting tipping rates and customers who refuse to comply with health protocols leave many tipped service workers' lives and livelihoods at grave risk. With so many futures on the line, it is more clear than ever that we must eradicate the subminimum wage for tipped workers and pass One Fair Wage legislation. This legislative change is the clearest pathway to ensure the lives of Black workers, women and all workers are truly valued and protected. **As such, Vice President Biden has endorsed One Fair Wage in three different parts of his platform: in his Jobs & Economic Recovery platform, his Women's Agenda, and in his Racial Equity Agenda.** The time has come for New York to follow this momentum and enact One Fair Wage.

Now, we at One Fair Wage have brought together 50 NY restaurant owners, including Danny Meyer, Tom Colicchio, David Chang, Will Guidara, and dozens of other smaller, women and people of color owned restaurants in Harlem, Brooklyn, Queens and statewide, as well as with 200 restaurant workers, to put forward the 'NY Safe & Just Reopening Plan.' In an unprecedented moment in which hundreds of employers have expressed new support for One Fair Wage, we have created a joint proposal that includes One Fair Wage, the allowance for tip

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<sup>9</sup> Ibid.

<sup>10</sup> CDC. 2020. "Communities, Schools, Workplaces, & Events." Centers for Disease Control and Prevention. April 30, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html>.

<sup>11</sup> See footnote 7.

<sup>12</sup> One Fair Wage. "A Persistent Legacy of Slavery: Ending the Subminimum Wage for Tipped Workers as a Racial Equity Measure". August 2020.

<sup>13</sup> Ibid.

sharing with all non-management employees, payroll tax relief that will be offset by income tax from increased wages, and a state-endorsed surcharge for restaurants that commit to higher standards of safety protocols for workers and consumers. Higher standard safety protocols for both workers and employers will be essential as colder weather comes to NY and forces outdoor dining to become indoor dining. We are proposing this model based on a high standard model already being used in Austin, TX and now about to be replicated in Oakland, CA. Leading restaurant owners and workers who previously disagreed on these issues have come together in a groundbreaking agreement to demand One Fair Wage and restaurant relief, and we call on the NY State Legislature to enact this plan and end the legacy of slavery that is the subminimum wage for tipped workers in NY State.

## Jaime Millner

Hi,

I'm Jaime. I've worked in bars and restaurants my entire life. When I moved to NYC in 2012, I earned \$5/hr plus tips. I was excited about this because it was an increase from the \$2.13/hr I was paid in Virginia (a wage that still stands today). Since then the \$5 has increased insultingly to only \$10/hr, still well below the state minimum. This sub minimum pay rate encourages divisiveness amongst staff and bolsters elitism with guests. Much like the dynamic we are experiencing with the current divide between those working to earn less than a living wage and those who were collecting the extra \$600/wk from the CARES ACT. Restaurant employees are routinely expected to take on tasks outside of our hired job descriptions. We train new hires, we accept deliveries, we build and disassemble entire dining rooms by moving 50lb marble tables up and down narrow flights of stairs, we translate for guests and for employees due to under qualified management and if we are offered any additional compensation at all, it's with food. For a job done above and beyond expectations we are paid with food. How insulted would you be to work diligently on something and to be compensated with a cheeseburger? The Anti-Racism Coalition at my job has addressed these issues privately with our owners. However, my employers have made it abundantly clear that they will do only what is lawfully obligated of them and nothing beyond that. NY State legislature and Gov. Cuomo can change that scope by requiring restaurant owners to pay their tipped employees the state minimum. We are not asking for too much.

The twin forces of the COVID-19 pandemic and the uprising for Black Lives shifted my work like never before. Laid off with the rest of my staff in March, I heard little from my employers until a few weeks ago when I received a letter mandating that I return to work. There were no questions regarding COVID or whether I was sick or at risk, only that I must return or face termination of my unemployment insurance. The re-opening coincided during the peak of the Black Lives Matter movement resurgence.

I had numerous concerns about going back to work, from fears about my health and safety to worries about how I would pay bills at a time when tips are down, capacity is limited and customers are still infrequent. I knew, however, that I did not have a real choice. If I could collect unemployment benefits and stay safe I would, but I also know that my co-workers and I have to accept our employers terms or lose our unemployment benefits.

As a Black woman, I am frustrated and disheartened by the complete lack of care and communication on the part of my employer to address either the pandemic or rising calls for an end to anti-black racism. Within the first couple weeks of reopening customers were starting to show severe resistance and hostility towards the employees. I recall a story where a customer refused to wear a mask despite being consistently asked by service staff. One worker was forced to de-escalate the man and he eventually left. Upon exit he yelled that we are what is wrong with America, and if he wanted to risk his life that was his choice. He expressly stated that he would be voting for Trump come November.

This is not my first encounter with coded racism and harassment on the part of customers or management while working in the industry. I have seen people fired over racist

yelp reviews left by customers. A few years ago I was actually referred to as a “mammy” by my southern manager, a racial slur for Black women that harkens back to the era of slavery. I reported the incident, but was told that they would not fire the manager. I was given the choice to continue to work with him or move to another restaurant.

Now, at my current workplace, my coworkers and I are organizing to bring greater racial equity to the dining room. Non-management staff, led by people of color, are calling for more Black and brown employees in the front of the house and in management, which currently is almost entirely white. We are asking the restaurant to hire more multilingual managers or at least compensate lower level staff who are often burdened with translating. These actions are perhaps obvious antidotes to patterns of racial segregation and other inequities, but they are so common that often they are met with severe resistance. As of yet, management has refused to take action to update their hiring, promotion and compensation practices.

Although my co-workers and I are calling for change within my institution, I know that larger transformation needs to happen at the legislative level. Governor Cuomo gave the One Fair Wage act to everyone except restaurant workers. The tipping system is antiquated and feeds into the idea that we should be grateful for everything that we get. Employers benefit from the fact that we have to serve customers, sometimes non-consensually, for our wages, instead of getting our wages directly from our employer. As someone who is an advocate both within my workplace and as a citizen of New York state, I am looking toward holistic solutions. Never has the time been so clear, Black servers deserve safety and dignity.

Sincerely,  
Jaime Millner, 15 year veteran to the hospitality industry

## **Mike Fuquay**

My name is Michael Fuquay and I am the co-owner of The Queensboro in Jackson Heights. Prior to opening The Queensboro in 2018, I worked in restaurants for 25+ years as a waiter, bartender and manager.

Like so many others, we are struggling to save our business. Our immediate neighborhood was hit harder by Covid than any other. While our elected officials dithered over whether to shut things down, both of my business partners and several of our servers became ill with Covid-19. In the absence of leadership from our Mayor and Governor, we made the decision to close. We layed off everyone, including ourselves. At the time I thought we were going to lose everything.

We have survived, in large part by using our shuttered restaurant to serve our decimated community. Buoyed by neighbors raising money on our behalf, we began preparing meals for workers at Elmhurst Hospital. Over the next few months we served over 20,000 meals to hospital workers, first responders, homeless shelters and community organizations. We also used our wholesale network to purchase groceries for mutual aid groups and schools to distribute. Along the way, we patched together enough loans, grants and miscellaneous jobs to stabilize our business. Even with all of that, we are operating at a loss every single week and will need another PPP grant to survive the fall.

Before we opened The Queensboro, my partners and I strongly considered opening as a “no tipping” restaurant. We were concerned about the gross inequity between pay rates for tipped employees and those who work in the kitchen. We concluded that the rules governing tip sharing in New York State made it impossible for us to follow that path. In order to pay all our employees fairly we would have had to raise our menu prices to levels that were unrealistic in our working and middle class neighborhood. We were constrained by the law from doing what we thought was right. It is time for that law to change.

The current system of wages and tips does not work for restaurants, nor does it work for the majority of restaurant employees. Under the current system, owners have very little control over what job skills are rewarded with higher pay. Instead most compensation is tied by law to tipped employees. The skill that is most highly rewarded is erudition in English. This results in inequities that play out along the fault lines of race and gender. At The Queensboro, my lowest earning server makes about twice as much per hour as my best paid non-tipped employee. At high end restaurants the disparity is even more stark. This does not in any way reflect their relative value to our business.

We are standing on the precipice of an extinction event for restaurants in NYC. Many of us will not survive. All of us are re-thinking every aspect of how we operate. The fact is that the majority of restaurants were operating within 1-2% of the breaking point even before Covid. We have to re-imagine how we do business. The businesses that survive will not be the same. We will all have scars. Whether those scars leave us crippled or make us stronger depends in part on the support we get from our elected officials. I urge the New York State Legislature and Governor Cuomo to enact the New York Safe and Just Reopening Plan, with One Fair Wage, tip sharing, payroll tax relief and a surcharge to pay for high standard safety protocols.

Thank you for your time, attention and dedication to our community.

## Amanda Cohen

My name is Amanda Cohen and I own Dirt Candy in NYC. Thank you for taking the time to read my testimonial. Five years ago, I made the decision to move away from tipping because tipping is inherently a sexist, racist system that encourages harassment of our workers. In what other industry, do we have our customer base paying half the employees' wage? Studies show that sexual harassment dramatically decreases in states that have higher minimum wages and in restaurants that don't have tipping.<sup>14</sup> Dirt Candy is on a no tipping model because it allows me to pay our workers, both front of house and back of house, a fair wage. It allows my front-of-house staff to be treated like professionals, instead of people to be dehumanized for a tip.

This is why I am urging the NY state legislature to enact the New York Safe & Just Reopening plan. The wage models suggested by One Fair Wage have proven to provide more stability and secure financial life to our employees. Restaurants are our meeting places, they're where we mark our birthdays and anniversaries. Yet, for years we've shown that we're comfortable celebrating our plenty while those employees, who wait on us, go without.

The time for action is now. We have this cataclysmic event; every single restaurant is basically back at zero. It's imperative that we change it right now for the better. We need to start with a system that works for our businesses and our employees. As we move forward, we want to walk into that future as a better industry than the one that we shut down.

For years, everybody has been talking about the industry as being broken. We as a country and industry have the opportunity to fix it at this moment. I urge the NY state legislature and Gov. Cuomo to enact the New York Safe & Just Reopening plan, with One Fair Wage, tip sharing, payroll tax relief, and a surcharge for restaurants that commit to higher-standard safety protocols.

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<sup>14</sup> Restaurant Opportunities Centers United. "Better Wages, Better Tips: Restaurants Flourish with One Fair Wage". New York, NY. 2018.

## Chris Bates

Hello, my name is Christopher Bates; I am a chef, Master Sommelier and restaurant owner. Seven years ago my wife and I left our positions as general managers of a Relais & Chateaux property with a vision of creating a better model for our industry. One that couldn't be achieved while working off someone else, nor could it likely be done with an existing property. We envision a world where hospitality can be viewed as a career, not a job, and in which our industry could be viewed as the goal and not as a fall back. We opened our first restaurant, F.L.X. Wienery, six years ago, and as of this week we have officially opened our 5th restaurant with the launch of an F.L.X. Wienery in Rochester. Along the way, F.L.X. Table was named the Best New Restaurant in the Country by USA Today, F.L.X. Wienery and F.L.X. Table have been featured in Wine Enthusiasts Top 100 wine destinations in the country, and F.L.X. Fry Bird and F.L.X. Provisions have both outgrown their previous spaces and had to be moved into larger locations. Three new locations, another F.L.X. Provisions, The Maillard Club and Quincy Exchange, are scheduled to open next month in Corning NY. Having several businesses in upstate New York, I can tell you that we have different needs from restaurants in New York City. Unlike the elite diners in the city, we rely on working people to eat in our restaurants. In order for them to be able to dine with us, we need them to be paid well in order to be able to consume. This means abolishing the subminimum wage.

I moved away from the subminimum wage years ago because the current system does not allow us to equitably share tips with the entire team who contribute to the guests experience that they are tipping for. Frankly, not sharing tips equitably does not support the team mentality that I encourage with my staff. Everyone on my team contributes equally and they should all be able to share in the reward of a busy night that is reflected in the service charge. Currently, with proper social distancing, our locations simply cannot fit the amount of diners necessary to help ensure that our staff can make the service charge they were receiving prior to COVID 19; service charges are down 50-75% across our state. During the time of COVID 19, being able to have the option to move to a tip pooling system versus service charge could save my business payroll tax dollars in a moment when every penny counts. Additionally, I cannot not increase my prices in a market where my competition can pay less in wages than I do. Therefore, we need the state to enact One Fair Wage and create a level playing field so that we're all paying a full fair minimum wage to all our employees. Our businesses and our workers need a fighting chance to survive this pandemic.

Some people might say - why would we raise wages now when restaurants are struggling? But now is precisely the time to make this change. We're re-thinking every aspect of our business - for restaurants the word of this moment is pivot. The current wage model does not work and this is the perfect time to change it as guests start to come back into our restaurants. This moment gives us the opportunity to build a model that is fair to the entire team and can support my small businesses. This is why I call on Gov Cuomo and the NY state legislature to enact the New York Safe & Just Reopening plan, with Open Fair Wage, tip sharing, payroll tax relief, and a surcharge for restaurants that commit to higher-standard safety protocol.

Sincerely,  
Christopher Bates