MARCH 2018

A BAD TIP:
The Harmful Proposal to Eliminate New York's Tip Credit

Employment Policies INSTITUTE

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EXECUTIVE SUMMARY

Starting in 2015, the state of New York embarked on an unprecedented experiment in raising its minimum wage. Subsequent anecdotal and empirical evidence suggests these increases were tremendously-disruptive to New York's service industry. Nevertheless, in December 2017 Governor Cuomo indicated his interest in further raising the base wage for tipped employees—eliminating the state's tip credit and making New York one of just a handful of states that doesn't treat tips as income in its labor law.

As a rationale for his proposal, the Governor claimed the tip credit was "linked to higher rates of sexual harassment," citing a 2014 report by a labor advocacy group called the Restaurant Opportunities Center. Those same advocates in January 2018 released a brief arguing that a 50 percent increase in New York's tipped wage at the end of 2015 "didn't hurt workers there at all."

A new analysis of data from the Labor Department and the Census Bureau, as well as careful scrutiny of ROC's report, demonstrates that neither of these claims—which form the foundation for the Governor's push to eliminate the tip credit—are true.

After the state's 50-percent tipped wage hike in late 2015, Labor Department data show that employment growth in the state's full-service restaurants fell to less than one-third of its average over the previous three years. New York State also lost over 270 full-service restaurants—after consistent growth in prior years. In New York City, the damage was even worse; a rising tipped wage reduced robust full-service employment growth averaging 6.7 percent down to barely one percent.

The claims about a tip credit and its link to sexual harassment are similarly baseless. ROC's analysis to arrive at that figure is undercut by a series of fatal flaws, including the following:

- ROC's core claim that sexual harassment in tip credit states is "half" of states that don't permit a tip credit includes 1) behavior from managers and co-workers whose interactions have nothing to do with tipping or the tip credit, and 2) the reported experiences of non-tipped employees in those states;
- ROC collected little-to-no direct survey data from employees in states without a tip credit—only "inferring" their location from an IP address, a practice that's been criticized by experts in the field;
- EEOC data covering a time period similar to ROC's report shows 1.8 percent of sexual harassment claims in New York came from the restaurant industry, compared to nearly four percent in California—New York's closest equivalently—sized state without a tip credit;

ROC is also careless with the use of its own statistics. In a recent report titled "Better Wages, Better Tips," ROC cites its 2014 report to back up the claim that *female tipped workers* report half the rate of sexual harassment in states without a tip credit. Yet a careful reading of ROC's own report shows that this isn't true.

According to Census Bureau data, tipped restaurant servers self-report earning nearly $20 per hour on average in New York City, and over $17 an hour on average statewide. These estimates are likely conservative; a survey of thousands of servers from the New York City Hospitality Alliance suggests the average take-home pay is closer to $25 an hour. Because of their substantial tip income, Census Bureau data show that servers and bartenders in New York have a poverty rate that's roughly two-percentage points lower than the poverty rate for other non-managerial restaurant occupations.

The facts are clear: The Governor's prior tipped wage hikes have harmed full-service restaurants, and the case for future increases is based solely on a flawed study that doesn't survive basic scrutiny.

SECTION 1: EVIDENCE ON NEW YORK'S TIPPED WAGE HISTORY

Gov. Andrew Cuomo needs only to look at New York's recent history to understand the consequences of his proposal to eliminate New York's tip credit. On December 31st, 2015, New York State raised the employer portion of the food service tipped minimum wage by 50 percent overnight to $7.50 from $5. Census Bureau data demonstrates New York full-service restaurant establishments and employment growth fell dramatically in the following year, 2016.

Number of Full-Service Restaurants in New York Falls in 2016. According to the Quarterly Census of Employment and Wages (QCEW), the number of full-service restaurants in the state fell in 2016 by 273, a 1.4 percent decrease from 2015. This drop in full-service restaurants followed several years of full-service restaurant growth in the state. (See figure 1 on the next page.)

Full-Service Employment Growth in New York Falls in 2016. Employment growth at full-service restaurants in New York also fell precipitously in 2016 following the Dec. 31, 2015 tipped minimum wage increase. In 2016, full-service restaurant employment growth fell to 1.3 percent, down from 3.6 percent in 2015 and 4.2 percent in 2014. (See figure 2 on the next page.)

New York Full-Service Restaurant Pullback is Not Limited to Upstate. This decline in New York's full-service restaurants isn't limited to upstate, where economic conditions are less vibrant. In New York City, full-service restaurant employment growth has also plummeted following the 50 percent

TAKE-HOME PAY AND POVERTY RATES OF TIPPED EMPLOYEES IN NEW YORK

Tipped employees are legally-guaranteed to earn the full minimum wage with tips and base pay; employers have to make up the difference between the two if they do not.

Census Bureau data show that tipped restaurant servers in New York—both in New York City and statewide—report earned substantially more than the state minimum wage.

Reported Pay, New York Restaurant Servers	
New York City	$19.58
New York State	$17.24

Source: Current Population Survey

These data also show that tipped restaurant servers are 56 percent female.

These estimates are likely conservative; many economists have recognized that tip income is underreported in the Current Population Survey.[1] A 2015 survey of nearly 14,000 servers in New York City found an hourly base wage of $25.34.[2]

Because of the substantial tip income available to tipped servers and bartenders in New York, their poverty rate is nearly two percentage-points lower than other non-managerial restaurant workers.

ROC has suggested that an increased minimum wage for tipped employees would increase pay—specifically, resulting in better tips. Census Bureau research says otherwise; the Bureau's economist finds that "tips per hour appear to decrease in response to higher tipped minimum wages..."[3]

1https://www.census.gov/content/dam/Census/library/working-papers/2004/demo/cpsdataquality101504.pdf
2https://www.thenycalliance.org/government-affairs/tipped-wages-and-the-tip-credit
3https://www.census.gov/content/dam/Census/library/working-papers/2016/adrm/carra-wp-2016-03.pdf

FIGURE 1

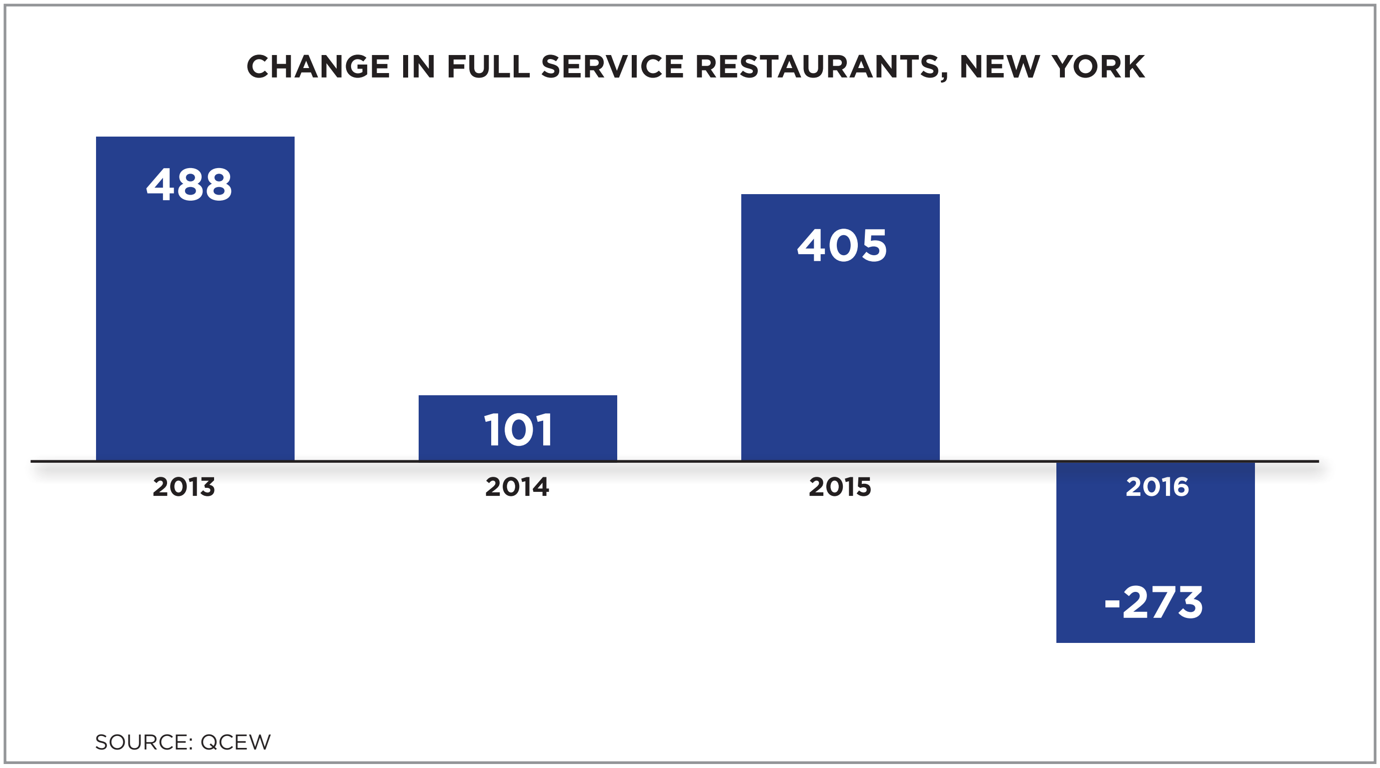


FIGURE 2

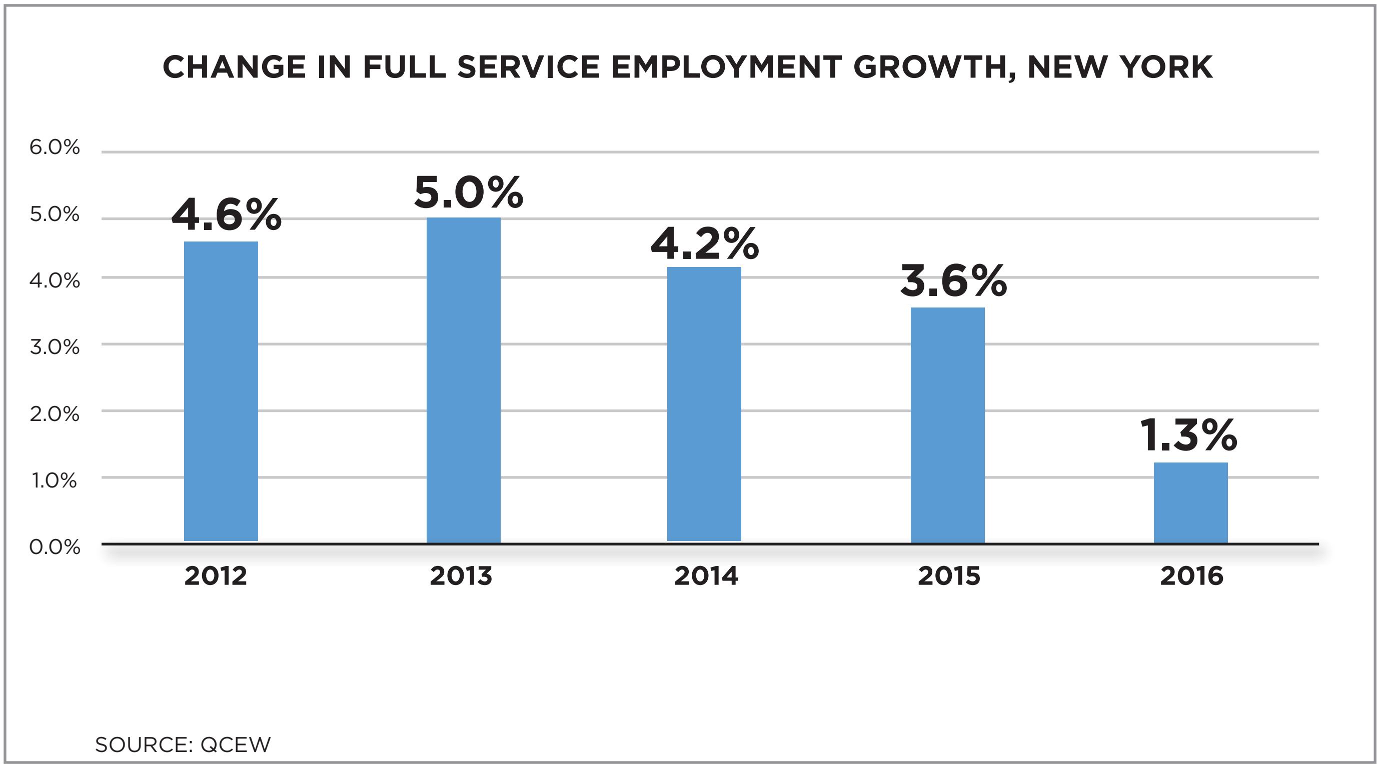
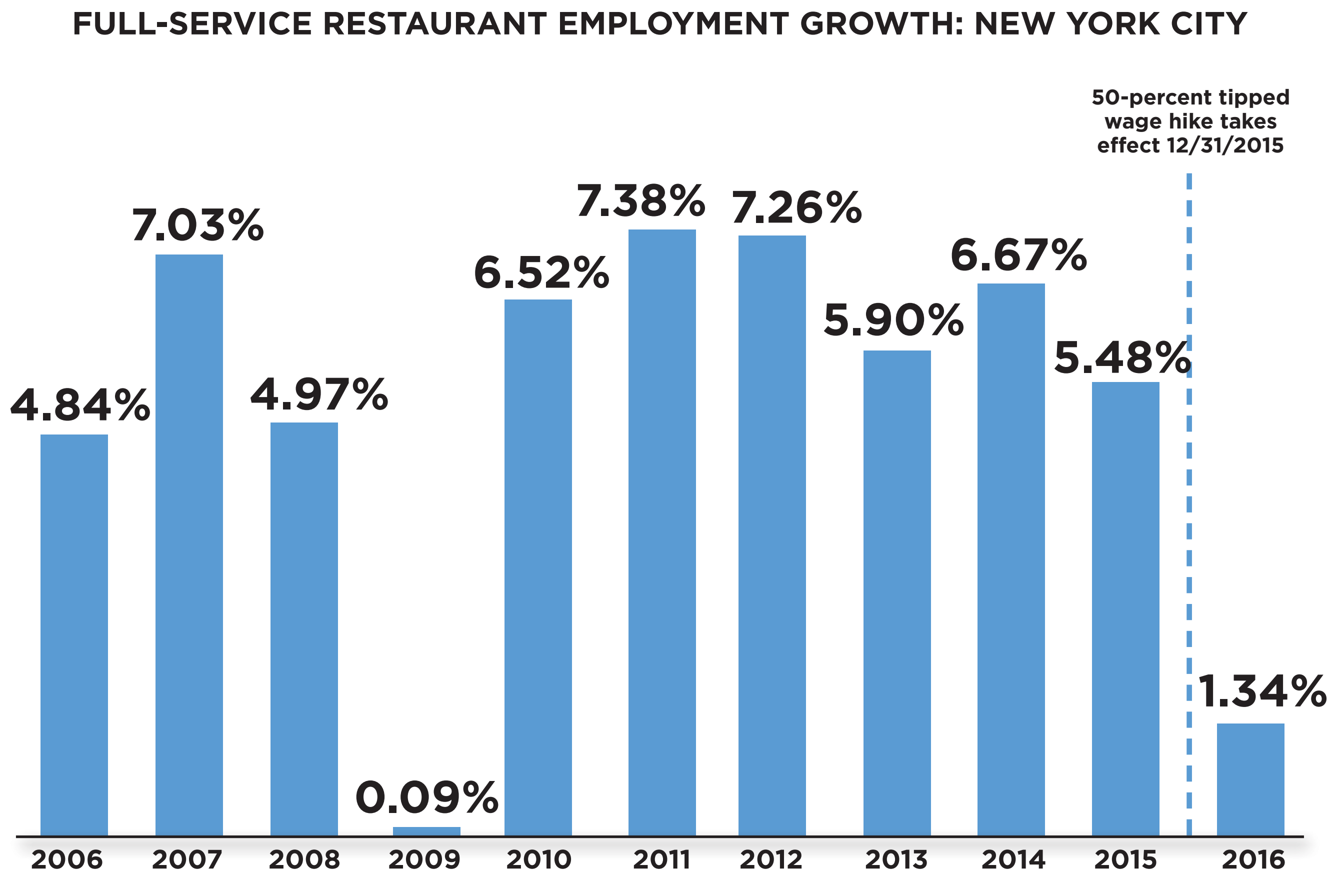


FIGURE 3



SOURCE: CURRENT EMPLOYMENT STATISTICS

tipped minimum wage increase. In 2016, it fell to 1.3 percent – less than one quarter the 6.5 percent average rate between 2010 and 2015. The last time the city experienced full-service employment growth this slow was in 2009 – during the heart of the Great Recession. (See figure 3 above.)

Such significant declines in New York full-service restaurant establishments and employment growth in 2016 following years of increases suggest the dramatic tipped minimum wage increase is to blame. But perhaps other factors are responsible. To control for broader economic trends that may have harmed full-service restaurants, consider full-service restaurants in other states that didn't pursue dramatic tipped minimum wage increases.

In neighboring Pennsylvania and New Jersey, where the tipped minimum wage is roughly the federal standard, full-service restaurant establishments *increased* in 2016.

Number of Full-Service Restaurants in Pennsylvania Grows in 2016. According to QCEW data, the number of full-service restaurants in Pennsylvania grew in 2016 by 218, a 2.5 percent increase over 2015. This increase was greater than those in 2015 or 2014. (See figure 4 on the next page.)

Number of Full-Service Restaurants in New Jersey Grows in 2016: A similar trend is seen in New Jersey, which added 212 restaurants in 2016 after adding 84 restaurants the year before. That represents a 3.1 percent increase in 2016, after a 1.2 percent increase in 2015. (See figure 5 on next page.)

FIGURE 4

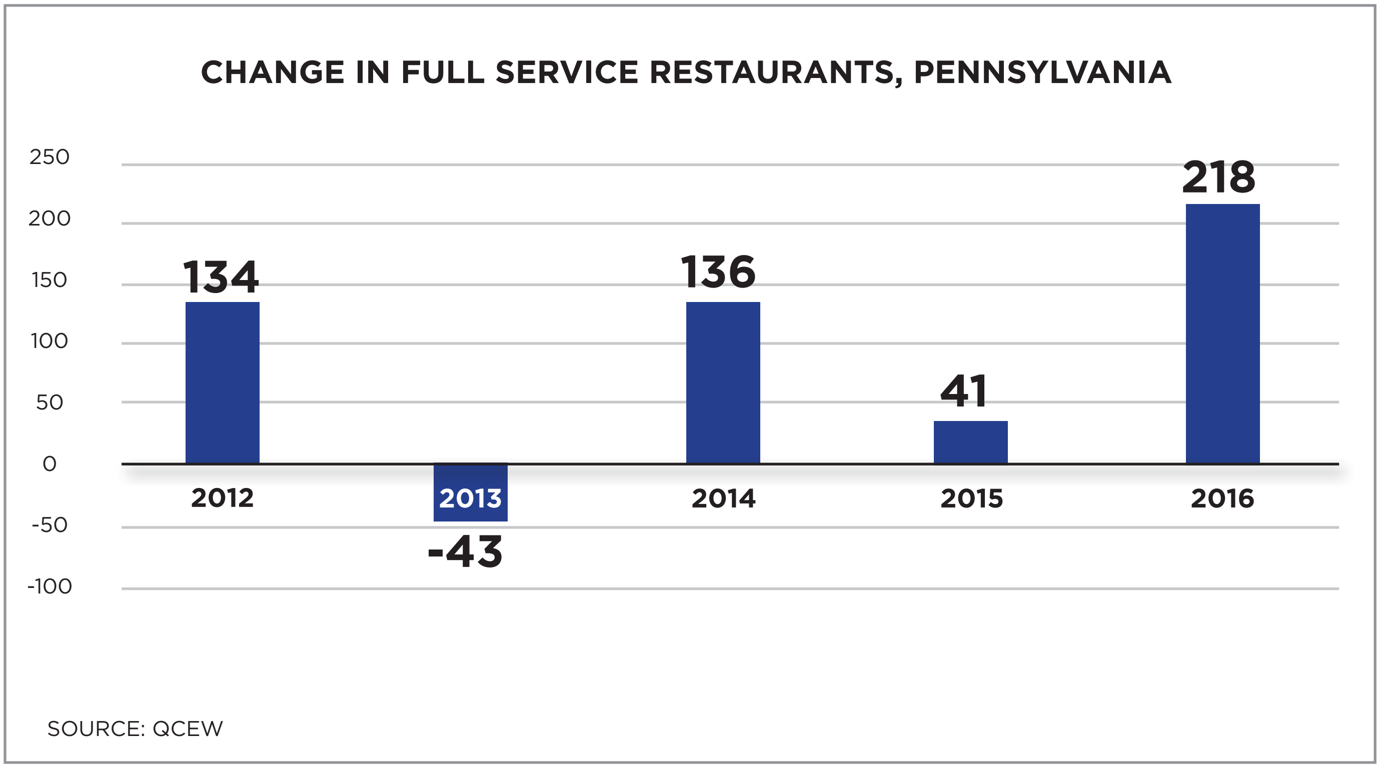
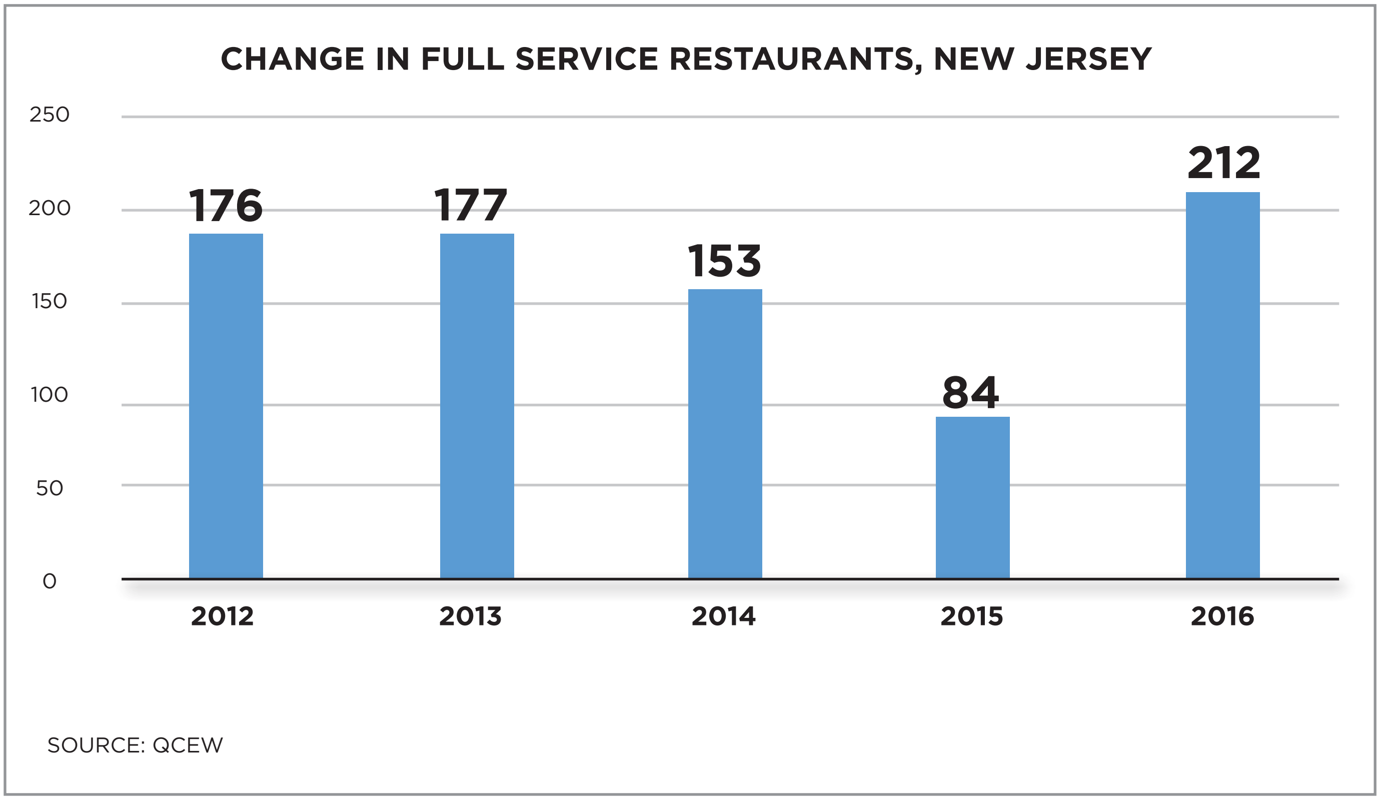


FIGURE 5



Taken together, this data – along with compelling anecdotal stories of restaurant closures and employee layoffs due to the tipped minimum wage increase – suggests that New York's overnight 50 percent tipped minimum wage increase on Dec. 31, 2015 was the proximate cause of the state's full-service restaurant shortfall.

REAL STORIES OF WAGE HIKE HARM IN NEW YORK

To illuminate the data showing that increases in the tipped minimum wage have harmed New York restaurants, we've provided five sample stories of affected restaurants in New York that have cut back staff, reduced hours, or even permanently closed due to the rise in labor costs.

Da Silvano, New York City
Greenwich's famous Italian eatery, Da Silvano, announced in late 2016 that after 41 years in the industry the restaurant would be shutting its doors for good. Owner Silvano Marchetto cited many reasons for the closure including skyrocketing rent and operating costs. "A grim-sounding Marchetto blamed soaring operating costs including new minimum-wage rules and rent that escalated from $500 a month in 1975 to $41,000 a month today." "I couldn't do it anymore," Marchetto said after deciding to close his famous eatery.[4]

Longway's Diner, Watertown
For over 50 years, Longway's Diner has been known amongst truck drivers as a popular place to stop and grab a bite to eat at any time of day, until recently. In response to the rise in the tipped minimum wage Lawrence Longway, the current owner of the diner, was forced to cut the restaurant's entire overnight shift, closing the restaurant at 10 p.m. instead of its previous 24 hours a day operations.[5]

Medici House, Aurora
Medici House owner, John Rooney, said that he decided to close Medici House based on survival; he could no longer afford to operate the restaurant after operating costs grew too high due to the increase in the tipped minimum wage. Rooney said the increased labor costs resulted in an additional $100,000 in operating expenses for his business. Medici House had many employees who had been with the restaurant since its opening, over 14 years ago.[6]

Hullar's Restaurant, Fayetteville
After over 100 years of operation, Hullar's Restaurant will be closing its full-service restaurant. The Hullar family had been grappling with this decision for quite some time, but the rising costs of labor outweighed their love for the family-owned restaurant. The rise in the tipped minimum wage caused the owners to cut their staff from 42 individuals to six. "I knew [the increase in the tipped minimum wage] was going to be the downfall for a lot of restaurants," Nanette Hullar said.[7]

Annisa, New York City
In response to the rise in the tipped minimum wage Anito Lo, Annisa's owner, increased menu prices and eliminated tipping. Lo's hope is that her back-of-house staff would be paid more, but in reality, higher menu prices turned away customers. This ultimately led to Lo throwing in the towel after 17 years. Lo said, "we do the numbers, and they don't work anymore."[8]

SECTION 2: DEBUNKING THE LINK BETWEEN TIPPING AND SEXUAL HARASSMENT

ROC has consistently claimed that sexual harassment is linked to tipping, and that eliminating tip credits will solve the problem. In a recent interview with Reuters, ROC founder Saru Jayaraman claimed that "sexual harassment gets cut in half" in response to a state eliminating its tipped wage.

ROC sources this claim from its 2014 report "The Glass Floor," which is based on a survey of 455 current tipped and non-tipped restaurant industry staff. Despite its frequent citation, ROC's claims about a link between tipping and sexual harassment have gone mostly unchallenged.

A closer look at the report's results and methodology reveals that the link between tipping and sexual harassment is not proved by any of the data ROC provides.

METHODOLOGICAL CONCERNS

ROC Can't Accurately Identify Employees Who Work In States Without a Tip Credit

ROC explains in its methodology that 60 percent of its data for current restaurant workers came from pencil-and-paper surveys collected in five states: Michigan, Texas, Louisiana, New York, and New Jersey. Importantly, all of these states permit a tip credit; Texas, Louisiana, and New Jersey follow the federal $2.13 standard. The rest of the data—*including potentially all responses from states without a tip credit*—came through online surveys where participants weren't asked their location. Rather, the location was "extrapolated" via their computer's IP address. Yet extensive literature has documented substantial problems with this approach.

Locations associated with IP addresses are often inaccurate. For starters, if a survey respondent is taking the survey in a different state than which they reside, they could be inaccurately-identified as residing in a non-tip credit state. Locations associated with IP addresses can be infrequently updated, and don't have a good method for dealing with users on cellular devices. One tech writer in Atlanta found that his home IP address was matched to Ottawa, Canada; on his cell phone, his IP was placed as far away as San Diego, CA.[9] The IP address of EPI's office in Washington, DC, variously matches to locations in Virginia and Maryland—where the minimum wage and tipped wage are very different. On a recent flight out of Reagan Airport in suburban Virginia, the IP address on one researcher's cellphone identified the location as York, Pennsylvania. (See screenshot on following page.) A restaurant worker in Washington, DC could thus be wrongly-identified as working in a state that follows the federal tipped wage.

One infamous example, reported in 2016, was of a single farmhouse in Kansas that was identified as the location of 600 million IP addresses.[10]

In short: There's no way for ROC to determine with any accuracy whether its survey results are indeed coming from servers in states without a tip credit.

[5]https://nypost.com/2016/12/21/legendary-eatery-da-silvano-closed-forever/
[6]http://www.nnybizmag.com/index.php/2016/01/07/restaurants-cut-staff-hours-after-tipped-wage-hike/
[7]http://www.wgrz.com/article/news/local/east-aurora/east-aurora-restaurant-closes-and-owner-blames-minimum-wage-increase/62065998
[8]http://www.wgrz.com/article/news/local/east-aurora/east-aurora-restaurant-closes-and-owner-blames-minimum-wage-increase/62065998
[9]https://www.techdirt.com/articles/20160413/12012834171/how-bad-are-geolocation-tools-really-really-bad.shtml
[10]https://mashable.com/2016/08/11/ip-addresses-kansas/#Kqf9N0vSmEqY

ROC Includes Behavior From Managers and Co-Workers, and Includes Survey Responses From Non-Tipped Employees

The report defines sexual harassment to include everything from an off-color remark or suggestive glance (the bulk of the harassment claims), or more-serious charges such as inappropriate groping. Throughout, ROC's narrative is clear: The tip credit forces tipped servers who "rely on tips" to put up with inappropriate behavior from the customers who tip them. ROC's founder, Saru Jayarman, made this case as recently as last month on Bill Maher's talk show.

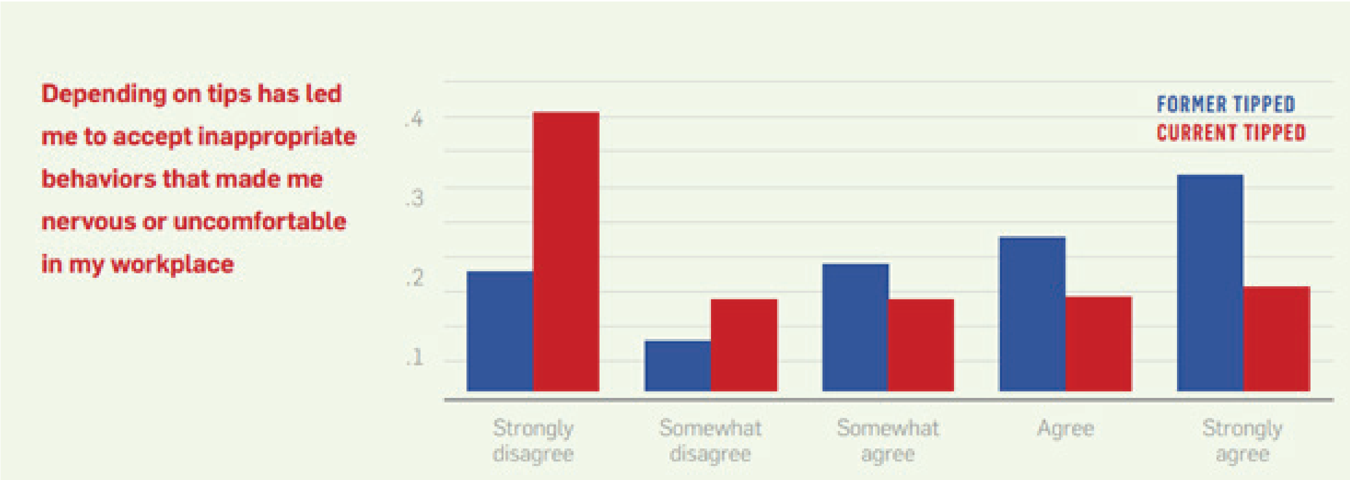
Yet ROC's most-cited claim—that sexual harassment is half in states those without a tip credit—relies on 1) responses from employees who don't even receive tips (one-quarter of those surveyed), and 2) reported actions from managers and co-workers whose behavior has nothing to do with a customer's gratuity. ROC even acknowledges in a technical note that the "highest rates of sexual harassment were experienced from co-workers..."

A table buried in the back (see image on next page) of ROC's paper sheds light on why ROC might lump these behaviors together. ROC asked current tipped workers whether "depending on tips" led them to "accept inappropriate behaviors...in my workplace." Just 20 percent said they "strongly agreed" with this statement, and roughly 60 percent outright disagreed with the statement.

To be clear: ROC can draw no credible conclusions about the impact of tipping on sexual harassment, when its core result relies on responses from employees who don't receive tips, and from manager/coworker behavior that has nothing to do with tipping.

ROC'S FLAWED METHODOLOGY

In total, 688 valid surveys were collected from individuals, 455 of who were currently working in the restaurant industry, and 233 of who had recently worked in the restaurant industry. Surveys were gathered from three sources. ROC staff and members collected 273 pencil-and-paper in-person surveys of current restaurant workers in Detroit, Houston, New Orleans, New York, and, together with Wider Opportunities for Women, in New Jersey. Forward Together staff and members collected surveys of 182 current restaurant workers and 233 former restaurant workers. Out of the surveys of current and former restaurant workers collected by Forward Together, 382 were gathered through online surveys and 33 by a Spanish pencil-and-paper survey. Data on workplace location was included in all pencil-and-paper surveys to analyze the effect of state and sub-minimum wage, and was extrapolated from the IP addresses of on-line respondents. A wage region variable was then created based on the sub-minimum wage to compare states that allow employers to pay tipped workers a sub-minimum wage of $2.13 per hour, and states that offer one wage to both tipped and non-tipped workers. Occupations were combined into tipped and non-tipped



Actual EEOC Data Show That New York Has a Lower Rate Of Restaurant Sexual Harassment Than California

One way to check ROC's claims against a credible third-party source is to use data from the Equal Employment Opportunity Commission (EEOC). While the Commission doesn't publish state/industry specific data publicly, EPI obtained it via a public record request for the four-year period prior to the release of ROC's report.

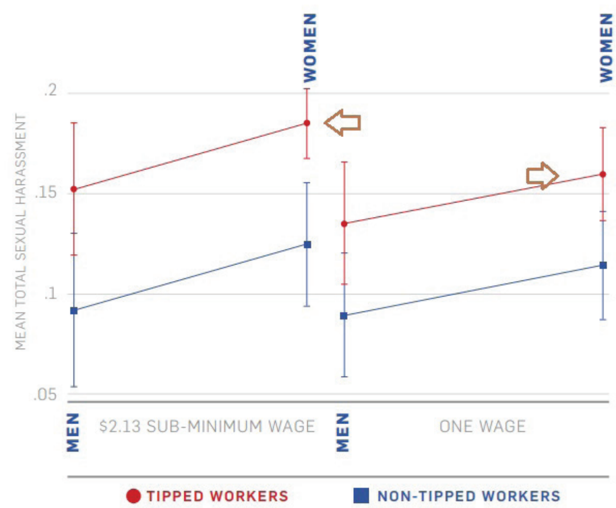
Contrary to ROC's argument, the data show that New York—with its tip credit—had half the rate of restaurant sexual harassment claims as did California. Looking specifically at the three $2.13 federal tipped wage states that ROC surveyed—Louisiana, Texas, and New Jersey—the EEOC data show that 2.83 percent of claims come from the restaurant industry, more than one percentage point lower than California.

% Sexual Harassment Claims, Restaurants	
New York	1.80%
California	3.97%

Source: EEOC Public Records Request, 2010-2013

Beyond these flaws, ROC's report seems designed to obfuscate closer scrutiny of its results. For instance, ROC does not include the survey questionnaire with its results; this leaves readers unable to determine whether ROC used leading (or misleading) language in its survey questions. ROC's survey also draws significantly from those who claimed to be former restaurant employees—nearly one-third of the responses came from this pool. Yet these responses—all collected online—provide no information on how, when, or for how long these individuals worked in the restaurant industry. In other words, ROC had no way to verify whether they'd ever worked in a restaurant.

ROC is also careless with its use of its own statistics. In a recent report titled "Better Wages, Better Tips," ROC claims that female tipped workers report "half the rate of sexual harassment" as states without a tip credit. Yet ROC's own report doesn't support this claim. As the image below (taken from ROC's report, with arrows added by EPI) demonstrates, even with ROC's flawed data, the reported difference in sexual harassment for tipped female employees is far less than half.



ABOUT THE RESTAURANT OPPORTUNITIES CENTER

The excerpts below, from the New York Post, describe ROC's bad behavior and real agenda

ROC's UNION ROOTS[11]

"ROC was founded in the wake of 9/11, ostensibly to help employees of the Windows on the World restaurant. The vast majority of the restaurant's surviving employees were unionized, and the Hotel Employees and Restaurant Employees union collected over $3 million in donations to support an employee-assistance plan that ROC helped create.

The good vibes didn't last long. When one Windows owner opened a new Times Square eatery in mid-2002, ROC chafed that it wasn't staffed exclusively with workers from the old restaurant. Of course, it wasn't that simple: Some Windows ex-employees who applied weren't qualified; still others were offered a job and passed. No matter: ROC ignored the facts and staged a series of protests. ...

By late 2003, ROC co-founder Saru Jayaraman had explicitly stated that her group's goal was to organize the 'non-union 90 percent of New York City's restaurant workforce.' ROC aimed at creating a 'labor-friendly climate' to pave the way for union organizing drives."

ROC's HYPOCRISY[12]

"Colombia-born Orlando Godoy, 54, had been a floor captain at Windows. He joined up with ROC post-9/11, and stuck with it even after most other Windows workers left, because Jayaraman was offering a chance for him to realize his lifelong dream: to become a "co-owner" in a new restaurant venture.

Then came a demand to sign a contract in which workers/owners would agree to certain conditions: "paying monthly dues," "attending protests (at least one per campaign)," "supporting workers [at other restaurants] in any dispute with employers," "testifying in favor of worker legislation" and "holding my elected representatives accountable to his/her responsibilities."

Nonplussed—what did any of this have to do with running a restaurant?—Godoy refused to sign; he was subsequently forced out of ROC altogether.

The problem, he said in a recent interview, is that being a part of ROC and its offspring Colors requires a total embrace of Jayaraman's radicalism—even including trips to D.C. to protest the Iraq War.

"Saru thinks of herself as a workers' Che Guevara, but she's really a Stalin," says Behzad Pasdar.

Indeed, Pasdar charges, Jayaraman used ex-Windows staffers as a "golden goose." "She dragged them around town to [raise money from] foundations. But she wouldn't even pay them as promised."

ROC'S CHECKERED PAST[13]

"The House investigations panel has opened a probe into a controversial labor-activist group accused of harassing New York City eateries, The Post has learned. ...

[The] city Health Department has slapped ROC's own restaurant, Colors in Greenwich Village, with numerous sanitary violations. And the group itself has been accused of wage violations by its own workers, Issa said.

He said city Health Department inspections showed ROC's eatery Colors had a "troubling history of poor sanitation" over the past two years—including violations for the presence of mice, food surfaces not properly washed, and food not protected from 'potential sources of contamination in storage, preparation, transportation, display or service.'"

[11]https://nypost.com/2012/09/08/10-years-of-rancid-restaurant-bashing/
[12]https://nypost.com/2007/03/22/social-justice-hypocrites/
[13]https://nypost.com/2012/07/03/house-probes-ny-restaurant-harass-group/

NOTES