

The Subminimum Wage for Tipped Workers as a Human Rights Issue

This project sought to understand the subminimum wage paid to tipped restaurant workers in the United States through a human rights framework, to document how this subminimum wage violates several international human rights conventions, and to harness international legal standards as leverage to support domestic advocacy efforts on their behalf.

The International Human Rights Law Clinic and the Berkeley Food Labor Research Center collaborated with the Restaurant Opportunities Center United (ROC-United) to produce a human rights analysis of the subminimum wage for tipped restaurant workers in the United States. The report, entitled “Working Below the Line: How the Subminimum Wage for Tipped Restaurant Workers Violates International Human Rights Standards,” was released on Human Rights Day 2015 (December 10th).

Objectives

Federal law sets the regular federal minimum wage, currently \$7.25 per hour, as well as the subminimum wage, which allows employers to pay workers who earn tips only \$2.13 an hour. Tipped restaurant workers in the 43 states with a subminimum wage are at least two times more likely to live in poverty than the general US population. The restaurant industry is the lowest-paying employer in the United States; according to the US Department of Labor, seven of the eleven lowest-paying and the two absolute lowest-paying jobs are restaurant jobs.

Advocacy groups are working at the state and federal level to eliminate the subminimum wage for tipped workers so that all workers are required to be paid “one fair wage.” Documenting subminimum wages as a violation of international human rights standards will provide significant grounding and draw media attention to legislative and legal efforts.



Photo credit: UC Berkeley Food Labor Research Center

Key Activities

Legal Research

Students with the International Human Rights Law Clinic developed a comprehensive legal analysis of the situation of tipped workers in the US under international law.

Worker Interviews

The team collaborated with ROC-United to conduct interviews with over 30 workers in a dozen states where ROC has large membership, to hear a diversity of experiences with regard to different levels of state subminimum wages for tipped workers.

Legal Analysis of Research Findings

Clinic students analysed the findings from the research and interviews to identify recurrent themes and patterns in the data and to identify potential violations of human rights obligations.

Report Dissemination and Advocacy

The result was a published research report, “Working Below the Line: How the Subminimum Wage for Tipped Restaurant Workers Violates International Human Rights Standards.” The team organized two public symposia to disseminate the results.



From this research the team published a final report, “Working Below the Line: How the Subminimum Wage for Tipped Restaurant Workers Violates International Human Rights Standards.”

“Working Below the Line”

The report finds that the subminimum wage system violates the human rights of workers, including:

- The right to an adequate standard of living
- The right to just and favorable remuneration
- The right to health (including the rights to food and housing)
- The prohibition against discrimination

The report recommends federal and state lawmakers incorporate international standards and best practices into law and policy to ensure tipped restaurant workers a living wage, access to affordable health care, and protection from sexual harassment and sex discrimination. It further recommends promotion of job training and advancement for women and workers of color.

Report Release

The report was released in Washington, DC to an invited group of leading human rights and worker rights advocates. A separate briefing was provided to attendees of the Leadership Conference on Civil and Human Rights, a key civil society group advocating for workers’ rights at the national level. Through press outreach in advance of the event, the report received attention in *Forbes Magazine*.

In a second event held at UC Berkeley, the report authors spoke on a panel with Catherine Albiston, a Berkeley Law faculty member specializing in employment discrimination.

Link to Policy

The research came at a time when several states and localities around the country were considering legislation and ballot initiatives that would eliminate the subminimum wage for tipped workers. At the federal level, Congress was considering a substantial increase in the subminimum wage for tipped workers. While the federal effort did not succeed, Maine became the eighth state to phase out a subminimum wage in 2016. This report helped propel ROC-United’s national “One Fair Wage” Campaign to eliminate the subminimum wage on a state-by-state basis. The findings will continue to inform policymakers and voters of the ongoing human rights violations occurring within states that are operating under a subminimum wage system.

In California, there is no subminimum wage. However, some of the report’s human rights frameworks can be adapted to advance statewide advocacy to promote a living wage and a life with dignity for restaurant workers.



Read the report!

<https://food.berkeley.edu/working-below-the-line>

Research Team

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