

# The Right to a Living Wage for Restaurant Workers

## The Role of Service Charge Regulation

By Sarah Ting



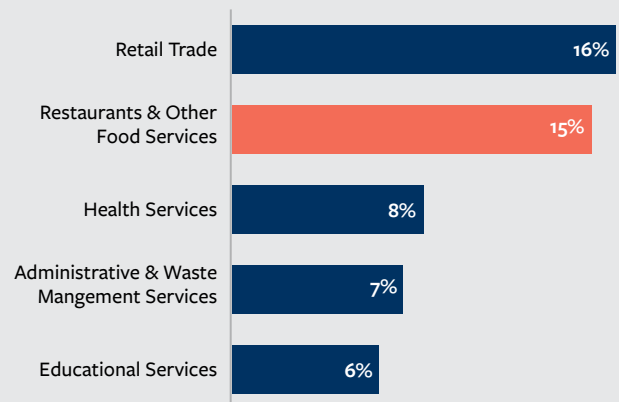
Many restaurant workers fall below the poverty line. In addition to an increased minimum wage, tipping and service charges (an obligatory fee included on the customer's bill, sometimes in lieu of optional tipping) have the potential to help restaurant workers make a living wage. Service charges are not currently required to be allocated to restaurant workers under state law, however, and additional regulation is needed for the benefit of restaurant workers. This brief recommends that service charge regulations be considered to close an existing loophole within California's labor code.

We wish to acknowledge the work of the UC Berkeley International Human Rights Law Clinic, the UC Berkeley Food Labor Research Center, and the Restaurant Opportunities Centers United. These groups contributed to *Working Below the Line*, a report analyzing the impact of the subminimum wage on tipped restaurant workers that was funded by the Berkeley Food Institute and is referenced in this policy brief.

## Why Service Charges Matter with the New Minimum Wage

As of 2015, 15 percent of tipped workers in the state of California fell below the poverty line and depended on a total of \$10,676,252 in CalFresh (California's Supplemental Nutrition Assistance Program) benefits every month.<sup>1</sup> The rollout of the \$15 minimum wage by 2022 will improve the standard of living for many people,

### California Industries with Highest Percentage of Low-Wage Workers Affected by a \$15 Minimum Wage



Source: Jacobs, Ken, and Ian Perry. "\$15 Minimum Wage in California: Who Would be Affected by the Proposal to Raise California's Minimum Wage?" UC Berkeley Labor Center. March 30, 2016.

particularly workers of color, working poor families, and food service employees.<sup>2</sup> However, a \$15 minimum wage will still fall short of a living wage for the average Californian. Two parents working full-time at \$15 per hour would only earn \$62,610, and according to the 2014 self-sufficiency standards, a family of four in California needs an income of at least \$63,979 to pay for basic expenses.<sup>3</sup> Many full-time working families, including those in the food industry, will still need public or private assistance to make ends meet.



Example of receipt with added service charge.

Even with a \$15 minimum wage, many workers in the restaurant industry will still rely heavily on tips or, increasingly, on “service charges” in order to attain a living wage.<sup>4</sup> A service charge differs from a tip, as it is an obligatory fee included on the customer’s bill.<sup>5</sup> Under federal law, tips are considered a worker’s property, while service charges are considered an employer’s property. Restaurant patrons may assume the service charge is equivalent to a tip, but their money may not reach workers as intended or at all, as service charges are non-tip income to distribute as the employer sees fit, or keep entirely.<sup>6</sup>

Restaurants are experimenting with service charges across California and the country, but this practice is adopted and implemented inconsistently. Forty-seven percent of San Francisco’s highest-rated restaurants (as listed by the *San Francisco Chronicle Sunday Magazine* in 2012) add service charges, though it was unclear whether these charges were in addition to, or replaced, traditional tips.<sup>7</sup>

**Current California law does not treat service charges as tips and, therefore, the fees can be kept solely by management.**<sup>8</sup> With the growing prevalence of service charges in restaurants, California and the nation need to adopt new regulations to ensure service charges fairly contribute to a living wage for workers.

## Who Might Service Charges Help the Most?

If regulated appropriately, service charges have the potential to positively affect workers of color, who comprise 69 percent of California’s restaurant industry workforce. Nationally, workers of color in the restaurant industry experience poverty at almost twice the rate of white restaurant workers.<sup>9</sup> Research has shown that discriminatory practices are common in the U.S. restaurant industry, where workers of color are concentrated in lower-paid back-of-the-house occupations such as cooks and dishwashers while non-Hispanic whites are disproportionately found in higher-paid and tipped front-of-the-house positions like servers and managers.<sup>10</sup>

Without additional regulation, back-of-the-house workers could be excluded from service charges and are therefore vulnerable to the exacerbation of disparities in pay. New regulations could provide a unique opportunity to distribute service charges more fairly across all workers, and it is worth investigating ways to do so while minimizing unintended consequences. If service charges were equitably distributed between front- and back-of-the-house employees, they could potentially address disparities in the tipping system.

New service charge policies may also benefit women, who constitute roughly two-thirds of all tipped restaurant workers. In cases where service charges are collected, an improvement to the service charge system has the potential to help provide a fairer wage to the 30 percent of women in the restaurant industry nationwide who are mothers, many of whom are primary breadwinners for their families.<sup>11</sup>



Photo credit: UC Berkeley Food Labor Research Center

Finally, service charges have an impact on consumers. Currently, there is no legal framework requiring disclosure of how service charges are distributed. As such, consumers remain uninformed as to where their dollars go—whether to restaurant owners or front- or back-of-the-house employees. Consumers have a right to know how their money is being distributed and that the service charge they pay is benefiting restaurant workers fairly.

## Examples of Successful Service Charge Policies

Service charge regulations have been imposed to protect worker income and ensure consumer transparency in states such as New York, Massachusetts, and Tennessee. In California, some cities have created their own models to address the issue, as described below:

### Local Minimum Wage Laws Regulating Service Charges: Examples from Santa Monica, Oakland, and Emeryville

#### SANTA MONICA

Under the city's minimum wage ordinance, employers are required to distribute the service charge to their employees, and no managerial or supervisory staff are allowed to receive a portion. The law includes penalties for misappropriations of service charges, and protections against retaliation.

Service charges can be distributed equitably among employees, and may include those who did not interact personally with the customer but indirectly contributed to the service. Customers must be given clear notice of the charge and its use, and the employer must disclose to the employees how this money is distributed.<sup>12</sup>

#### OAKLAND AND EMERYVILLE

In Oakland and Emeryville, hospitality employees (e.g. workers at restaurants, hotels, banquet halls, etc.) are entitled to the entire service charge and management may not take any portion.<sup>13</sup>

## Conclusion

If service charges are not better regulated, consumers and workers will remain uncertain about their meaning and usage. Furthermore, workers may not receive fair compensation in proportion to their performance, and employers are not held accountable if they fail to equitably distribute the fees. Legislators should consider the following:

- Establish laws to regulate the allocation of service charges to restaurant workers, following the examples set by Santa Monica, Oakland, and Emeryville;
- Explore and evaluate strategies for fair distribution of service charges among front-of-the-house and back-of-the-house employees to ensure all restaurant workers are fairly compensated;
- Ensure transparency and full disclosure for workers and consumers to understand where service charges are required, what they pay for, and to whom they are distributed.
- Enable effective implementation of the law by conducting outreach and education to employees and employers alike, creating penalties for misappropriation/theft of service charges, and providing protection against retaliation.

In sum, legal requirements for the allocation of service charges to restaurant workers would coincide well with the new minimum wage, and enable more families—particularly families of color and female-headed households—to earn a living wage.

*“Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.”*

– **International Labor Organization**<sup>14</sup>

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