

Dear Council President Brendmoen and Council Members:

On behalf of the National Employment Law Project, I would like to submit the attached written testimony in advance of the hearing scheduled for November 7, 2018 regarding Ord. 18-54, Creating Chapter 224 of the Legislative Code to Implement a City Minimum Wage.

NELP has worked with most of the cities in the U.S. that have adopted a higher minimum wage in recent years, and we are familiar with their economic experiences. Should it be helpful for the Council, our testimony offers an overview of some of the most rigorous research on the economic impact of raising the minimum wage, research documenting the potential benefits for workers, their families, and local communities, discussion of the importance of including tipped workers in minimum wage increases, and a discussion of key policies for effective enforcement of local minimum wage laws.

I would be happy to answer any questions you may have. Thank you.

Sincerely,

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Testimony of Laura Huizar

National Employment Law Project

TESTIMONY

Increasing the Minimum Wage in St. Paul to \$15 Per Hour

Testimony Concerning Ord. 18-54, Creating Chapter 224 of the Legislative Code to Implement a City Minimum Wage

November 7, 2018

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Across the country, our staff are recognized as policy experts in areas such as unemployment insurance, wage and hour enforcement, and, as is relevant for today's hearing, the minimum wage. We have worked with dozens of city councils and state legislatures across the country and with the U.S. Congress on measures to boost pay for low-wage workers. NELP has worked with most of the cities in the United States that have adopted higher city minimum wages in recent years and is familiar with their economic experiences.

NELP testifies today in support of increasing the City of St. Paul's minimum wage to \$15 per hour. We also strongly urge the City Council to reject proposals to exclude tipped workers in the City from the full benefits of the proposed minimum wage increase or unnecessarily delay the phase-in of the much-needed increase. Minnesota is one of eight states that guarantee tipped workers what has come to be termed as One Fair Wage.¹ Under a One Fair Wage system, tipped workers are entitled to the same minimum wage as all other workers without a reduction in the cash wage paid by the employer based on tips. Minnesota abolished a lower minimum wage for tipped workers in 1984 and has resisted all attempts to bring back a subminimum wage for tipped workers for over three decades.

A growing number of U.S. states and cities in just the last few years have adopted a minimum wage of \$15 per hour. California and New York approved a statewide \$15 minimum wage in 2016. SeaTac, Washington, which was the first city to do so, approved a \$15 minimum wage in 2013. San Francisco Mayor Ed Lee brokered an agreement between labor and business to place a \$15 minimum wage on the November 2014 ballot, which the voters overwhelmingly approved, and the Los Angeles city council approved a \$15 minimum wage in 2015. In 2017, Minneapolis became the first city in the Midwest to adopt a \$15 minimum wage.²

The most rigorous modern research on the impact of raising minimum wages shows that raises increase worker earnings with negligible adverse impact on employment levels. As more and more U.S. cities enact local minimum wages, the research has similarly shown that such local measures have no adverse effect on jobs, and implementation of higher local wages has proven manageable for employers. The benefits for low-wage workers and their families of higher wages have been significant, raising wages in the face of broader economic trends that have led to stagnant and falling wages across the bottom of our economy, reducing economic hardship, lifting workers out of poverty, and improving other life outcomes.

Low-paying industries are disproportionately fueling job growth today, with more and more adults spending their careers in these positions. Raising the wage floor, which has badly eroded over the decades even as corporate profits have skyrocketed, is urgently needed to ensure that local economies can rely on workers' spending power to recover and that the growing numbers of workers relying on low wages to make ends meet can contribute fully to this recovery.

Ensuring that all workers, including tipped workers, are entitled to the same base minimum wage regardless of tips received is a crucial part of any minimum wage increase that seeks to make a significant difference for low-wage workers. Thousands of tipped workers in St. Paul struggle on barely more than the minimum wage and face significant economic insecurity.³ The complex subminimum wage system is difficult to enforce and results in widespread noncompliance. Workers who are forced to rely mainly on tips as income, rather than on a stable base cash wage paid directly by their employer, face wide fluctuations in paychecks as tips vary from season to season, shift to shift, and customer to customer. The experiences of cities that have already raised their minimum wage to \$15 and require that tipped workers receive the full minimum wage directly from their

employer show that eliminating the subminimum wage in St. Paul will not lead to the widespread elimination of tipping or a significant reduction in tipping rates.

Effective enforcement of any local minimum wage law is also necessary to ensure that workers receive the wage increases they are entitled to under local law. NELP strongly supports the inclusion of a private right of action in the bill under consideration today, clear penalties and remedies for workers, and clear authority for the local agency tasked with enforcement to issue notices of violation and final decisions that employers can then appeal to a court without involving the full City Council in enforcement decisions.

Finally, raising the minimum wage across the country, including in St. Paul, would go a long way toward restoring the minimum wage to where it was at its peak. When unemployment rates were low, the minimum wage reflected much higher purchasing power and the minimum wage was equal to half of what the median worker earned.

Who Would Benefit From A Higher Minimum Wage in St. Paul?

As the bill under consideration today states, an increase in the St. Paul minimum wage to \$15 per hour stands to benefit 56,000 St. Paul workers, or 31 percent of the city's workforce.⁴ Workers in St. Paul simply cannot make ends meet on the state's minimum wage. The Economic Policy Institute's Family Budget Calculator estimates that a single worker with no children who works full-time needed \$17.78 per hour in 2017 to make ends meet in the St. Paul/Minneapolis/Bloomington metro area, and a single worker with one child working full-time needed about \$32.68 per hour in 2017 to afford the basics.⁵ The cost of living in the City is among the highest in the state.⁶

The Growing List of Cities and States Enacting Minimum Wage Increases Reflects a Deepening Wage Crisis and Popular Support for Bold Change

The U.S. economy has seen steady growth and improvement in the unemployment rate in recent years, but wages have been flat or declining for much of the labor force.⁷ When considering inflation, the value of wages has gone down for many workers.⁸ The worsening prospects and opportunities for low-wage workers have prompted a record number of cities, counties, and states to enact higher minimum wage rates for their residents.

Since November 2012, more than 19 million workers throughout the country have earned wage increases through a combination of states and cities raising their minimum wage rates; executive orders by city, state, and federal leaders; and individual companies raising their pay scales.⁹ Of those workers, about 10 million will receive gradual raises to \$15 per hour.¹⁰ More than forty cities and counties and more than twenty states have raised their minimum wage since 2012.¹¹

As the Fight for \$15 movement gathers strength, advocates in a rapidly growing list of localities and states are calling for a \$15 minimum wage. Los Angeles, San Francisco, Seattle, SeaTac, Washington, D.C., Minneapolis, Flagstaff, Arizona, and Emeryville, California, have already enacted a \$15 minimum wage for all workers.¹² New York and California approved a statewide \$15 minimum wage in 2016.¹³ More states are also now considering legislative proposals and/or ballot initiatives that would raise the statewide minimum wage to \$15, including New Jersey, Maryland, and Nevada.¹⁴

Polling data shows that approximately two out of three individuals support a \$15 minimum wage, and support among low-wage workers is even higher.¹⁵ A poll of low-wage workers commissioned by NELP found that approximately 75 percent of low-wage workers support a \$15

minimum wage and a union.¹⁶ It also found that 69 percent of unregistered respondents would register to vote if there were a presidential candidate who supported raising the minimum wage to \$15 and making it easier for workers to join a union, and 65 percent of registered voters reported that they are more likely to vote if a candidate supports \$15 and a union for all workers.¹⁷

The trend in localities and states pushing for higher minimum wage rates will likely continue to intensify as wages continue to stagnate or decline, inequality remains at historically high levels, and the federal government fails to take bold action to ensure that hard-working individuals can make ends meet.

Higher Wages from Minimum Wage Increases Bring Significant Benefits to Low-Income People and Families

The higher incomes that result from minimum wage increases have direct and tangible impacts on the lives of the workers affected and their families. Significant increases in minimum wages have proven an effective strategy for addressing declining wages and opportunity for low-wage workers by raising pay broadly across the bottom of the city economy. For example, over the decade that San Francisco's strong minimum wage has been in effect, it has raised pay by more than \$1.2 billion for more than 55,000 workers, and it has permanently raised citywide pay rates for the bottom 10 percent of the labor force.¹⁸ The widely-recognized success of San Francisco's minimum wage led Mayor Ed Lee to broker an agreement with business and labor to place an increase to \$15 on the November 2014 ballot, which the voters overwhelmingly approved.¹⁹

The higher pay resulting from minimum wage increases translates to a range of other important improvements in the lives of struggling low-paid workers and their households. For workers with the lowest incomes, studies show that minimum wage increases lift workers and their families out of poverty.²⁰ Similarly, higher incomes for low-wage workers and their households translate into improved educational attainment and health. For example, a study by the National Institutes of Health determined that "[a]n additional \$4000 per year for the poorest households increases educational attainment by one year at age 21."²¹ Another study found that raising California's minimum wage to \$13 per hour by 2017 "would significantly benefit health and well-being."²² It stated that "Californians would experience fewer chronic diseases and disabilities; less hunger, smoking and obesity; and lower rates of depression and bipolar illness."²³ Moreover, "[i]n the long run, raising the minimum wage would prevent the premature deaths of hundreds of lower-income Californians each year."²⁴ Yet another study found that high dropout rates among low-income children can be linked to parents' low-wage jobs and that youth in low-income families have a greater likelihood of experiencing health problems.²⁵

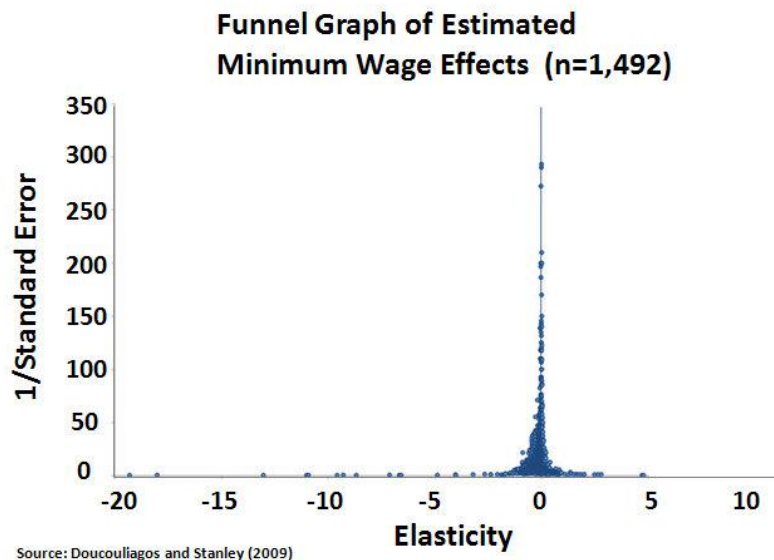
The Most Rigorous Research Shows That Higher Minimum Wages Raise Worker Incomes Without Reducing Employment

More than 25 years of extensive economic research overwhelmingly concludes that states can increase their minimum wage without reducing employment. A cutting-edge, expansive 2017 study examined state minimum wages from 1979 to 2016 and used a methodology comparing the number of jobs in various wage categories (rather than total employment) prior to and following a minimum wage increase ("bunching method").²⁶ It found that jobs were not adversely impacted. The researchers concluded that "on average, the number of missing jobs paying below the new minimum during the five years following implementation closely matches the excess number of jobs paying just above minimum," and that "[t]his leaves the overall number of low-wage jobs essentially unchanged, while raising average earnings of workers below those thresholds."²⁷ As Jared Bernstein of the Center

on Budget and Policy Priorities (“CBPP”) put it, “the researchers find that jobs largely just shift from around the old wage to around the new wage.”²⁸

In 2010, the prestigious *Review of Economics and Statistics* published a highly methodologically sophisticated study, “Minimum Wage Effects Across State Borders,” by economists at the Universities of Massachusetts, North Carolina, and California.²⁹ That study carefully analyzed minimum wage impacts across state borders by comparing employment patterns in more than 250 pairs of neighboring counties in the U.S. that had different minimum wage rates between 1990 and 2006 as the result of being located in states with different minimum wages.³⁰ Consistent with a growing line of similar research, the study found no adverse employment effects in the data from the 250 pairs of neighboring counties, and it found no evidence that higher minimum wages harmed states’ competitiveness by pushing businesses across the state line.³¹

However, it is not simply individual state-of-the-art studies, but the whole body of the most rigorous modern research on the minimum wage that now indicates that higher minimum wages have had little impact on employment levels. This is most clearly demonstrated by several recent “meta-studies” surveying research in the field. For example, a meta-study of 64 studies of the impact of minimum wage increases published in the *British Journal of Industrial Relations* in 2009 shows that the bulk of the studies find close to no impact on employment.³² This is vividly illustrated by a graph from the meta-study showing the results clustered around zero:



Another recent meta-study by Paul Wolfson and Dale Belman of the minimum wage literature demonstrates similar results.³³

Jared Bernstein of the CBPP recently looked at employment trends overall and in three low-wage sectors—retail, leisure/hospitality, and food services—among states that raised their minimum wages during 2013–2017 and states that did not raise their minimums. He found that, “[b]oth overall and in the lower-wage sectors, job growth was slightly faster in states that raised their wage floors and unemployment fell a bit more.”³⁴ An earlier report (2006) published by the Fiscal Policy Institute examined state trends for small businesses employing fewer than 50 workers. It

found that “employment and payrolls in small businesses grew faster in the states with minimum wages above the federal level”³⁵

The Evidence From Cities That Have Adopted Significantly Higher Local Minimum Wages Similarly Shows That They Have Not Cost Jobs and That Implementation Has Proven Manageable for Employers

In addition to extensive research outlined above, the actual experiences of cities that have recently raised the minimum wage at the local level have shown that such increases have been manageable. It is not surprising that some employers might be anxious about the possible impact on their businesses of a higher minimum wage. But cities that have phased in higher minimum wages in recent years have found that predictions that they would be forced to reduce employee hours or reduce job positions in order to adjust to the higher minimum wage have not been borne out.

The most recent study of city-level minimum wage increases was released this month by economists with the Center on Wage and Employment Dynamics at the University of California, Berkeley.³⁶ The study examines the impact of raising the minimum wage in six cities: Chicago, the District of Columbia, Oakland, San Francisco, San Jose, and Seattle.³⁷ It is also the first study to examine the effects of increasing the minimum wage above \$10.³⁸ Focusing on the food services industry as “a major employer of the low-wage labor force,” the study uses sophisticated event study and synthetic control methods to “isolate the causal effect of the local minimum wage policies by comparing the changes [the economists] observe[d] in the six treated cities against a group of highly populated counties in metropolitan areas across the U.S.”³⁹ The study concluded that “a 10 percent increase in the minimum wage increases earnings in the food services industry between 1.3 and 2.5 percent” without a discernible negative impact on employment.⁴⁰

A recent op-ed by Chicago’s Deputy Mayor and the Commissioner of the Chicago Department of Business Affairs and Consumer Protection put the impact of Chicago’s minimum wage in these terms: “In Chicago, wages are up and unemployment is down. . . . When Chicago passed our ordinance raising the wage, there were plenty of voices in the business community who seemed certain the sky would fall. . . . These concerns were based in mythology, not reality.”⁴¹

Another recent study by University of California economists explored the impact of Seattle’s higher minimum wage between 2015 and 2016, when the city’s \$15 minimum wage ordinance began phasing-up. The study focused on the restaurant industry—the largest low-paying sector where any negative effects on jobs would first appear. It found that Seattle’s minimum wage, which ranged from \$10.50 to \$13.00 during the period analyzed, had raised pay for workers without evidence of a negative impact on jobs.⁴² A different, much-publicized Seattle study reached a conflicting conclusion, suggesting that the increase had cost jobs.⁴³ But the conflicting study came under fire for its serious methodological errors. These problems include the fact that the study excluded 40 percent of the workforce from its analysis and failed to control for Seattle’s booming economy, which was naturally reducing the number of low-paying jobs as employers raised pay independent of the minimum wage to compete for scarce workers.⁴⁴ In fact, an updated paper by the same researchers who published the controversial 2017 study of Seattle’s minimum wage backs away from their initial conclusions, finding that, overall, workers benefitted from the increase.⁴⁵

Low Wages Paid By Large, Profitable Employers Present a Significant Cost to the Public by Forcing Workers to Rely on Public Assistance in Order to Afford Basic Necessities

Nationally, nearly three quarters (73 percent) of enrollments in America's major public benefits programs are from working families.⁴⁶ With wages that leave their earnings below subsistence levels, these workers must rely on additional support from programs like the Supplemental Nutrition Assistance Program (SNAP), Medicaid, Children's Health Insurance Programs, and the Earned Income Tax Credit (EITC) in order to afford basics like food, housing, and health care.⁴⁷

A 2013 report from the Democratic Staff of the U.S. House Committee on Education and the Workforce estimated that low wages paid at a single Walmart supercenter cost taxpayers between \$900,000 and \$1.7 million on average per year.⁴⁸ Similarly, a 2013 study from the University of California-Berkeley found that the low wages paid by companies in the fast-food industry cost taxpayers an average of \$7 billion per year.⁴⁹ A companion study from NELP found that the bulk of these costs stem from the ten largest fast-food chains, which account for an estimated \$3.8 billion per year in public costs.⁵⁰

Eliminating the Subminimum Wage for Tipped Workers Is a Crucial Part of Any Minimum Wage Legislation That Seeks to Make a Significant Difference in the Lives of Low-Wage Workers

For any minimum wage initiative to make a significant difference in the lives of low-wage workers, it should reject a subminimum wage for tipped workers. A subminimum wage for tipped workers has not always existed. Until 1966, there was no federal subminimum wage for tipped workers.⁵¹ With the 1966 expansion of the Fair Labor Standards Act (FLSA) to cover hotel, motel, restaurant, and other leisure and hospitality employees who had previously been excluded by the FLSA, the FLSA was amended to allow employers to pay tipped workers a subminimum wage set at 50 percent of the full minimum wage.⁵² In 1996, when the Republican-controlled Congress raised the federal minimum wage from \$4.25 to \$5.15, it, bowed to pressure from the restaurant industry, and froze the tipped minimum wage at \$2.13, decoupling it from the full minimum wage for the first time and setting up more than *two decades* of a frozen minimum wage for tipped workers.⁵³

Eight states—California, Nevada, Oregon, Washington, Minnesota, Montana, Alaska, and Michigan—do not have a subminimum wage for tipped workers (although Michigan, which enacted legislation to eliminate the subminimum wage in 2018 has not yet fully phased-out the subminimum wage).⁵⁴ Tipped workers in states that have eliminated the subminimum wage for tipped workers receive the full minimum wage directly from their employer and their tips function as a gratuity should—not as customers subsidizing wages that an employer should be paying, but as supplemental income over and above their wages in recognition of good service. Similarly, Hawaii abolished the subminimum wage for most tipped workers (preserving a very limited subminimum wage of just 75 cents less than the full minimum wage for tipped workers that average at least \$7.00 an hour in tips).⁵⁵

Although some in the restaurant industry claim that most tipped workers earn high incomes, the government data shows that, in fact, the typical tipped worker in St. Paul earns just a little more than the Minnesota minimum wage. As discussed in a May 2018 fact sheet developed by NELP on the importance of rejecting a tip credit in St. Paul, “[s]ervers and bartenders comprise the majority (52 percent) of the approximately 84,650 tipped workers in the Minneapolis-St.Paul-Bloomington metropolitan area.”⁵⁶ Between November 2014 and May 2017 (the period analyzed), “the median

hourly wage for restaurant servers was \$10.29 including tips, and the average wage was \$12.77, also including tips.”⁵⁷ Bartenders saw similar hourly earnings. In comparison to the state minimum wage applicable during the period analyzed, this means that St. Paul’s servers generally earned only between \$0.79 and \$4.77 in tips per hour.⁵⁸ The same data reviewed also indicated that “only a small number of servers—likely at high-end restaurants—earn total hourly wages (including tips) that are substantially above the minimum wage.”⁵⁹ Tables 1 and 2 (excerpted from NELP’s May 2018 fact sheet) offer a more detailed overview of wages for St. Paul’s tipped workers.

Table 1. Hourly wages for select tipped occupations in the St. Paul metropolitan area

Occupation	Average Wage	Median Wage	90 th Percentile
<i>All occupations</i>	\$26.94	\$21.26	\$49.22
Waiters and waitresses	\$12.77	\$10.29	\$20.81
Bartenders	\$11.46	\$10.19	\$14.90
Hosts and hostesses, restaurant, lounge, and coffee shop	\$11.50	\$10.87	\$14.81
Counter attendants, cafeteria, food concession, and coffee shop	\$10.62	\$9.94	\$12.25
Dining room and cafeteria attendants and bartender helpers	\$11.07	\$10.19	\$13.79
Food servers, non-restaurant	\$13.21	\$12.00	\$18.50

Source: Bureau of Labor Statistics, May 2017 Occupational Employment and Wage Estimates.

Table 2. Most restaurant servers in St. Paul earn only slightly above the minimum wage

Effective Minimum Wage	Server Wage	Difference
\$8.00 (November 2014)	\$10.29 (median wage)	\$2.29
	\$12.77 (average wage)	\$4.77
\$9.50 (May 2017)	\$10.29 (median wage)	\$0.79
	\$12.77 (average wage)	\$3.27

Source: Bureau of Labor Statistics, May 2017 Occupational Employment and Wage Estimates; and U.S. Department of Labor, Changes in Basic Minimum Wages in Non-Farm Employment Under State Law: Selected Years 1968 to 2017.

Tipped work is inherently uneven and often unpredictable. While most of us expect to be paid the same for every day or hour we work, for tipped workers this is often not the case. Restaurant servers, who make up one of the largest tipped occupations, may make a substantial amount of money on Friday or Saturday nights but much less on other days of the week. Bad weather, a sluggish economy, the changing of the seasons, a less generous customer, and a host of other factors can also cause sudden drops in their tipped income and lead to economic insecurity.

It is no surprise, then, that nationally, tipped workers face poverty rates that are about double those for non-tipped workers, and that the poverty rate for waiters and bartenders is even higher.⁶⁰ Tipped workers across the country are also significantly more likely to rely on public assistance to make ends meet. Close to half (46 percent) of tipped workers and their families rely on public benefits compared with 35.5 percent of non-tipped workers.⁶¹

Ultimately, shifting the responsibility to pay workers' wages to customers under the tipped minimum wage allows employers in a few select industries to benefit from a customer-funded subsidy at the expense of workers' economic security.

The Complex Subminimum Wage System for Tipped Workers Is Difficult to Enforce and Results in Widespread Noncompliance

The subminimum tipped wage system is difficult to implement and plagued by noncompliance. Both employers and employees find it difficult to track tip earnings, a task that is often complicated by tip sharing arrangements amongst workers. Workers also often fear asking an employer to make up the difference between their earnings and the full minimum wage—an employer might choose to give more favorable shifts to workers who do not make such demands, for example. A 2014 report by the White House National Economic Council and the U.S. Department of Labor found that one of the most prevalent violations amongst employers is failing to properly track employees' tips and make up the difference between an employee's base pay and the full minimum wage when tips fail to fill that gap.⁶² A survey found that more than 1 in 10 workers employed in predominantly tipped occupations earned hourly wages below the full federal minimum wage, including tips.⁶³

The Restaurant Industry Can Afford a \$15 Minimum Wage in St. Paul Without a Tip Credit

The intended purpose of tips is to reward good service rather than to serve as a substitute for the wages directly paid by employers. In states where a tip credit is allowed, however, tips have become a means for employers to transfer responsibility for paying employees' wages onto the customer. This mainly benefits employers in the restaurant industry and other service industries where the majority of tipped workers are employed. No other industries are subsidized this way.

Employers in the restaurant industry are among the most avid users not only of the tipped subminimum wage, but also of the standard minimum wage, and they are much less likely to offer workplace benefits—such as health insurance, paid sick leave, and paid holidays—making the industry one of the least generous.⁶⁴

The restaurant industry is one of the most profitable sectors of the economy. According to the National Restaurant Association, nationwide industry sales were expected to reach \$799 billion in 2017—equivalent to 4 percent of the U.S. gross domestic product.⁶⁵ The industry employed 14.7 million workers last year, or roughly 10 percent of the nation's workforce, a number that is expected to increase by nearly 11 percent by 2027.⁶⁶ These figures suggest a healthy and profitable industry that could withstand the gradual elimination of the tipped subminimum wage at the national level.

As noted above, seven states have already fully eliminated or prohibited a subminimum wage for tipped workers (California, Nevada, Washington, Minnesota, Alaska, Oregon, and Montana). A number of local jurisdictions—including Minneapolis, Seattle, Flagstaff, and various cities and counties in California—that have adopted a \$15 minimum wage have done so without adopting a lower minimum wage for tipped workers.⁶⁷

Many of the states with the strongest restaurant job growth do not allow a tipped minimum wage for tipped workers and also require employers to pay tipped workers some of the country's highest base wages. For example, restaurant employment in California—which has no subminimum wage for tipped workers and is phasing in a \$15 minimum wage—is projected to grow by 10 percent during the 2018–2028 period.⁶⁸ In California, the minimum wage is now \$10.50 per hour for small employers (25 or fewer employees) and \$11.00 for large employers (26 or more employees), and the minimum wage will reach \$15 for all employers by 2023.⁶⁹ In Oregon, where the minimum wage will increase to between \$12.50 and \$14.75 by 2022,⁷⁰ and which has no tipped subminimum wage, restaurant employment is projected to grow by 12.9 percent during that same period.⁷¹ And in Washington State, where the minimum wage will increase to \$13.50 by 2020,⁷² restaurant employment growth during the same period is expected to grow by 11.4 percent.⁷³ Notably, in San Francisco in 2015, a year after the city began transitioning to a \$15 minimum wage, the Golden Gate Restaurant Association itself reported that the restaurant industry was thriving.⁷⁴

A 2015 Cornell Hospitality Report looked at the impact of minimum wage increases on restaurant employment and business growth levels over twenty years across the United States. It found that raising the minimum wage (including the tipped wage) will raise restaurant industry wages but will not lead to “large or reliable effects on full-service and limited-service restaurant employment.”⁷⁵

Restaurants in Cities That Are Raising the Minimum Wage to \$15 and Have No Tipped Minimum Wage Are Not Rushing to Abolish Tipping, and Tipped Workers in Jurisdictions Without a Subminimum Wage Earn More than Tipped Workers in Jurisdictions with a Low Subminimum Wage

Contrary to predictions by some, raising the minimum wage to \$15 and eliminating the tipped minimum wage at the same time does not lead restaurants to abolish tipping or lead diners to reduce tipping levels. While a small number of mostly high-end restaurants today are experimenting with getting rid of tipping entirely,⁷⁶ tipping continues to be the norm in states like California, Washington, Oregon, and Minnesota where tipped workers receive the full minimum wage before tips.

In San Francisco, with its \$15 minimum wage⁷⁷ and no subminimum wage for tipped workers, the Golden Gate Restaurant Association says that “[d]iners in San Francisco reported an average 19% tip rate”—a healthy rate that does not indicate a decline.⁷⁸

These reports are confirmed by national data, which shows that “raising the tipped wage significantly increases earnings of workers in FSRs [Full-Service Restaurants].”⁷⁹ According to University of California researchers, “tipped workers in equal treatment states [with no tipped minimum wage] earn 14.2 percent more than tipped workers in low tipped minimum states.”⁸⁰ When looking at only waiters and bartenders, data shows that in states where tipped workers must be paid the full minimum wage before tips, earnings are about 20 percent higher than in states that follow the federal \$2.13 tipped minimum wage.⁸¹

A more recent September 2018 report by the Economic Policy Institute compared the wages of tipped workers in Washington, D.C., where employers may still pay tipped workers a subminimum wage, with tipped workers in Seattle and San Francisco.⁸² Employers in San Francisco may not apply any tip credit to the full minimum wage.⁸³ In Seattle, at this time, large employers may not apply any tip credit to the full minimum wage for tipped workers while smaller employers may not apply more than a \$1.00 tip credit to the regular minimum wage.⁸⁴ The report found that “tipped workers in both

cities [Seattle and San Francisco] were paid much higher minimum wages than D.C. tipped workers” during the period analyzed.⁸⁵ In fact, “[s]ervers and bartenders in San Francisco earn 21 percent more per hour than their counterparts in D.C.” and “[s]ervers and bartenders in Seattle earn 7 percent more per hour than their counterparts in D.C.”⁸⁶ When it comes to poverty, “[t]ipped workers in Seattle and San Francisco are roughly twice as likely as nontipped workers to be in poverty; in the District of Columbia, tipped workers are three times as likely as nontipped workers to be in poverty.”⁸⁷

Robust Enforcement of Any Minimum Wage Law Adopted by the City Will Be Necessary in Order to Make a Real Difference in the Lives of Low-Wage Workers

Wage theft is widespread across the country and across industries, costing workers and local economies billions of dollars each year.⁸⁸ A seminal 2009 study by NELP and other academic partners surveyed over 4,000 workers and found that 26 percent were paid less than the required minimum wage in the previous work week, and nearly two-thirds experienced at least one pay-related violation in the previous week, such as failure to pay overtime, not being paid for all hours worked, and stolen tips.⁸⁹ The report estimates that workers surveyed lost an average of 15 percent, or \$2,634, of their annual wages due to workplace violations.⁹⁰

Dozens of other studies of specific industries have uncovered similar rates of wage-related violations. A recent NELP study of business outsourcing, for example, found that the restructuring of employment arrangements through multi-layered contracting, the use of staffing or temp firms, franchising, and other means can result in poor working conditions and a lack of corporate responsibility.⁹¹ The report focused on non-compliance in some of our largest and fastest-growing sectors. In the fast food industry, it reported that based on a 2014 study, nationally, nearly 90 percent of fast food workers suffered some sort of wage theft on the job.⁹² In the warehouse and logistics industry, 23.1 percent suffered minimum wage violations and 67.8 percent suffered overtime violations.⁹³ About 80 percent of port truck drivers who transport goods from ports to railheads or logistics firms are classified as independent contractors—and approximately 80 percent of these workers are misclassified.⁹⁴

Given the information we have about wage theft nationally, as well as the many challenges facing workers who suffer violations, such as the high cost of legal representation, the possibility of retaliation, and language barriers, the numbers highlighted here likely represent only the tip of the iceberg when it comes to wage and hour violations. In short, the wage theft crisis is not only severe, it is pervasive. It affects industries and occupations across our economy, and while it is especially severe among our nation’s low-wage workforce, it is not limited to those sectors.

An effective enforcement scheme must protect workers who come forward to raise complaints—because that is how the vast majority of workplace violations are identified and remedied, given our complaint-driven system of enforcement. An effective scheme must also include strong public and private enforcement tools to better guarantee compliance and help ensure collection of owed wages.

A private right of action gives workers the right to bring a lawsuit in court to address violations and recover their unpaid wages. It is important because wage theft is rampant and government agencies with limited public resources simply cannot tackle enforcement alone. Most major cities that have adopted a local minimum wage have included a private right of action,

including Chicago, Minneapolis, Seattle, Flagstaff, Los Angeles, San Francisco, Washington, D.C., Albuquerque, New Mexico, Las Cruces, New Mexico, and Santa Fe, New Mexico. It is important to keep in mind that public agencies' funding and priorities for enforcement can change over time and giving workers access to courts ensures they always have a way to protect their rights. To be effective, a private right of action must also allow workers to recover attorneys' fees and costs, since the prohibitive cost of legal representation is a significant barrier to low-wage workers who need to protect their rights in court.⁹⁵ NELP strongly encourages the St. Paul City Council to include a private right of action in the bill under consideration today.

NELP also encourages the St. Paul City Council to consider strengthening the authority of the Department of Human Rights and Equal Economic Opportunity (or any department that will be charged with enforcement of St. Paul's minimum wage law). Under the proposal under consideration, this office tasked with enforcement would not be empowered to issue notices of violation without involving the City Attorney and without allowing employers to bring their case before the entire City Council. This type of process will unnecessarily delay justice for both employees and employers, and many low-wage workers simply cannot afford any unnecessary delays in recovering their owed wages. Instead, NELP recommends ensuring the Department of Human Rights and Equal Economic Opportunity can issue notices of violation to employers after an investigation, conduct hearings, and issue final decisions. Employers would still retain the right to appeal any final decisions to the appropriate state court. This recommendation follows best practices developed and implemented around the country.

For more information on enforcement tools that NELP recommends for any effective enforcement system, please refer to NELP's policy brief entitled, "The Top 5 Enforcement Tools for Local Minimum Wage Laws."⁹⁶

Thank you for the opportunity to submit testimony today. I would be happy to answer any questions that you may have.

For more information, please contact NELP Staff Attorney Laura Huizar at lhuizar@nelp.org. For more about NELP, visit www.nelp.org or www.raisetheminimumwage.org.

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