

**Out of the Frying Pan into the Fire: Unintended Consequences of Restaurant Policies
Targeting Discriminatory Outcomes of Tipping**

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ABSTRACT

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Abstract text (208 words)

In the United States, 16 states still uphold the tipping provision in the Fair Labor Standards Act (FLSA) which permits restaurants to pay tipped workers a poverty subminimum wage of \$2.13 per hour, disproportionately affecting Black and women servers. The practice of tipping creates a complex system of power imbalances between customers, management, and employees that perpetuates unsafe work environments and economic cleavages between the *idealized white male server* and racialized and sexualized servers.

In this thesis, I utilize an intersectional lens to identify potential unintended consequences of restaurants' corporate strategies to combat discriminatory tipping practices and outcomes in relation to wage inequalities and unsafe work environments, specifically analyzing the case of Black and Brown women servers as one of the most vulnerable groups in the restaurant industry. I classify these strategies into two types: tip-focused and workplace culture-focused strategies. While all strategies rectify some specific harms created by tipping practices, I contend tip-focused strategies notably increases the risk of sexual harassment. Although slower in implementation, workplace culture-focused strategies positively improve server-management relations, thus ameliorating servers' safety and reducing management biases which can influence servers' wages. Overall, I advocate for restaurants to use a human-rights centered approach to take accountability and counter workplace discrimination without further exacerbating inequalities.

Keywords: Restaurants, Tipping, Equal Pay, Anti-Discrimination, Human Rights, Business Responsibility, Intersectionality

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Chapter 1: Introduction

A heralding debate around tipping remains in the restaurant industry. Over half of surveyed servers in the United States report considering leaving the restaurant industry, “70% of whom are citing low wages and tips as their primary reason for leaving.”¹ In contrast to other countries, US servers largely rely on tips as their main source of income due to the subminimum wage, a historic US bill provision which allows businesses to pay lower wages to tipped workers.² While many servers feel awkward, embarrassed, and even disdainful of tips being a large part of their income,³ waitstaff is quite adamant about holding onto their tips, which boosts mid to high-end servers’ average salary to around \$30 an hour.⁴ Nevertheless, these high incomes are not equally reflected across servers.

Tipping became the norm in the US hospitality industry following the Civil War so businesses could circumvent new requirements to pay formerly enslaved persons a real wage.⁵ Today, this racist history reinforces gender injustice as restaurant workers, who are “70% female and disproportionately Black and brown women”, are continually left out of advances in labor protections.⁶ Full-service restaurants, which “have table service where a consumer orders from a

¹ Tefa Galvis, “New York,” *One Fair Wage*, *One Fair Wage* (blog), accessed November 21, 2023, <https://onefairwage.site/newyork>.

² Sylvia A. Allegretto, “The Subminimum Wage Plus Tips: A Bad Bargain for Workers,” *New Labor Forum* 32, no. 2 (May 1, 2023): <https://doi.org/10.1177/10957960231170201>, 13.

³ Kathleen P. Hunt, “#LivingOffTips: Reframing Food System Labor Through Tipped Workers’ Narratives of Subminimum Wage Exploitation,” *Journal of Agriculture, Food Systems, and Community Development* 6, no. 2 (April 4, 2016): <https://doi.org/10.5304/jafscd.2016.062.021>, 172.

⁴ Richard B. McKenzie, “Tipped Workers and the Minimum Wage,” Cato Institute, March 8, 2019, <https://www.cato.org/regulation/spring-2019/tipped-workers-minimum-wage>.

⁵ Michelle Alexander, “Tipping Is a Legacy of Slavery,” *New York Times*, February 5, 2021, <https://www.nytimes.com/2021/02/05/opinion/minimum-wage-racism.html>.

⁶ Examples include the 1938 minimum wage law, 1966 and the creation of the subminimum wage. Source: Alexander, “Tipping Is a Legacy of Slavery.”

menu at a table,”⁷ have high rates of occupational segregation. White male servers dominate finer dining establishments, which are known to receive higher tips and have more benefits, while Black and brown women are pushed to more casual full-service restaurants.⁸

In addition, tipping creates power dynamics between customers and servers, which results in an uncomfortable and sometimes unsafe work environment. Research shows sexual harassment is rampant in the restaurant industry, including indecent exposure, lewd remarks/requests, touching, hugging, groping, grabbing, pressure for dates, and unwanted advances.⁹ Women servers, who are prominent victims of sexual harassment, must tolerate customers’ adverse behavior to earn a living wage. As servers’ wages are based on customer preferences, the created environment places pressure on servers to perform and empowers customers to push boundaries. One study found over one-third of past female servers left their jobs due to “unwanted sexual advances.”¹⁰ Where legal protections for the industry are lacking, and regulation is slow to follow, my focus falls on restaurants and their responsibility to protect their workers from discriminatory wages and unsafe working conditions.

Taking reference from the Australian Human Rights Commission’s *Ten steps you can take to create a fair and productive workplace*,¹¹ clear policies and guidelines are quintessential to ensuring employees understand and have access to the necessary resources for them to earn a

⁷ Restaurant Opportunities Centers United, “Ending Jim Crow in America’s Restaurants: Racial and Gender Occupational Segregation in the Restaurant Industry,” ROC United, New York, NY (2015). <https://laborcenter.berkeley.edu/pdf/2015/racial-gender-occupational-segregation.pdf>.

⁸ Alexander, “Tipping Is a Legacy of Slavery.”

⁹ Restaurant Opportunities Centers United, Forward Together, et al. “The Glass Floor: Sexual Harassment in the Restaurant Industry.” *Restaurant Opportunities Centers United*, New York, NY (October 7, 2014). <https://nature.berkeley.edu/agroecologylab/wp-content/uploads/2020/06/The-Glass-Floor-Sexual-Harassment-in-the-Restaurant-Industry.pdf>. 15.

¹⁰ Restaurant Opportunities Centers United. “Our Tips Belong To Us.” *Restaurants Opportunities Centers United*. (October 2017). https://drive.google.com/file/d/1SonkNM-xCvQ_J-gr9KYjjVay5aIy_YEj/view. 6.

¹¹ Australian Human Rights Commission, “Ten Steps You Can Take to Create a Fair and Productive Workplace,” Australian Human Rights Commission, <https://humanrights.gov.au/our-work/employers/ten-steps-you-can-take-create-fair-and-productive-workplace>.

dignified living wage. A human rights framework centers the individual employee, which allows for these policies to be universal in nature, adjusting to and accounting for each person's intersectional identity. Where a firm's responsibility to regulate discriminatory outcomes becomes obscured due to the "triangular structure" of restaurants between the employer, worker, and consumer,¹² succinct policies that outline workers' rights and firms' obligations are all the more important to establish a line of transparency. Without restaurants claiming accountability to their workers, servers and all other restaurant employees will continue to face discrimination in the workplace with no avenue for redress.

Restaurants face an obligation to conduct human rights due diligence under the UN Guiding Principles on Business and Human Rights (UNGPs), yet this is not a piece of international human rights law. Rather, the UNGPs are simply a set of guidelines. US restaurants may further argue that they are not responsible for upholding a vast majority of human rights because the US only ratified three of the nine principal covenants. Nevertheless, two of these three covenants, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD), are directly linked to protecting the rights of women and persons of color, two specific vulnerable groups within the restaurant industry. Subsequently, just as businesses hold an obligation to protect their employees, the US government has a responsibility to protect its citizens when their rights are being violated, even within the workplace.

In both international and US federal law, the responsibility to eliminate discrimination in workplaces falls on businesses. The International Labor Organization (ILO) defines discrimination in employment as "when a potential candidate is treated differently or less favorably because of

¹² Lu-in Wang, "At the Tipping Point: Race and Gender Discrimination in a Common Economic Transaction," SSRN Scholarly Paper (Rochester, NY, February 25, 2013), <https://doi.org/10.2139/ssrn.2224143>. 101.

characteristics that are not related to his/her merit or the inherent requirements of the job,” including but not limited to race, color, sex, religion, age, and sexual orientation.¹³ As enumerated in Article 23 of the Universal Declaration of Human Rights, “Everyone, without any discrimination, has the right to equal pay for equal work.”¹⁴ Additionally, Article 7 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) protects “safe and healthy working conditions.”¹⁵ While the US is a non-signatory to the ICESCR, federal provisions such as the Occupational Safety and Health Act (OSH Act), “gives workers the right to safe and healthful working conditions” and “requires employers to provide their employees with working conditions that are free of known dangers.”¹⁶ Organizations such as One Fair Wage focus on legislative advocacy for states to eliminate subminimum wages and pay a living wage with *tips on top*. While this alleviates the pressure of the tipping system on individuals’ wages, the remaining system of tipping poses a significant risk for continued unequal wages and unsafe work conditions.

Given the fact that Black and Brown women servers “live with” unfair and unlivable wages in the restaurant industry, this paper aims to answer the crucial question: What are the unintended consequences of full-service restaurants’ corporate solutions to discriminatory tipping practices and outcomes in relation to safety concerns? How do these strategies impact highly vulnerable workers, specifically Black and Brown women servers?

In this thesis, I will apply an intersectional lens to analyze restaurants’ tip-focused and workplace culture-focused strategies, along with the suggestions recommended by academics. I

¹³ International Labour Organization United Nations Global Compact, 31.

¹⁴ United Nations. *Universal Declaration of Human Rights*, 10 December, 1948. <https://www.refworld.org/docid/3ae6b3712c.html>.

¹⁵ United Nations (General Assembly). 1966. “International Covenant on Economic, Social, and Cultural Rights.” Treaty Series 999 (December): 171. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

¹⁶ Occupational Safety and Health Administration, OSHA § (2023), <https://www.osha.gov/sites/default/files/publications/osha3021.pdf>.

will focus on the characteristics of race and gender; however, further research should study the compounding impact of other identity characteristics of servers and their effect on relations with both customers and management. Restaurant owners and servers themselves may benefit from this research by using it as a catalyst for restaurant management to take accountability for their role in servers' discriminatory wages and mistreatment at work. While no US courts have yet addressed the merits of discriminatory wage policies in restaurants due to tipping, one scholar, Ryan Nelson, presents a potential case outline where tipping may result in a violation of Title VII.¹⁷ This research provides a foundation for future studies to look at restaurants and other businesses' obligations to non-discrimination not only under US law but also at the global human rights scale by highlighting the need to use an intersectional lens to identify potential unintended consequences of policies to the most vulnerable workers.

¹⁷ Ryan H. Nelson, "Substantive Pay Equality: Tips, Commissions, and How to Remedy the Pay Disparities They Inflict," *Yale Law & Policy Review* 40, no. 1 (2022 2021): 193.

Chapter 2: Theoretical and Conceptual Framework

2.1: Wage Discrimination in the Labor Force and Service Industry

Economists and sociologists alike remain in constant debate on the reasoning behind the persistent wage gaps along racial and gendered lines. Wages delineate a hierarchy of roles in the economy, inherently placing a societal value on a position through its market value. Yet, as shown by the presence of wage gaps, the influence of gendered and racial hierarchies further complicates this social order.

In 2022, full-time working women in the US earned, on average, 84 cents to a man's dollar.¹⁸ When analyzing in comparison to the white, non-Hispanic man's dollar, Asian women earned 99 cents,¹⁹ white non-Hispanic women earned 80 cents, Black women earned 69 cents, and Hispanic women earned 57 cents.²⁰ From individual-focused economic theories of differences in human capital (Becker 1962) and self-selection theories based on compensating wage differentials (Jacobs and Steinberg 1990); to systemic theories on gender and race segregation amongst industries within the workplace (Blinder 1973) and firm-level segregation (Brick et al. 2023); the full explanation for wage differentiation remains incomplete.²¹

Prior to 1938, no federal regulation governed wages. Employers solely determined wages, which often led to worker exploitation, especially in groups with little clout. Due to egregious work conditions across the country and through intense organizing efforts, Congress passed the Fair Labor Standards Act (FLSA), which, alongside other labor protections such as the 40-hour

¹⁸ Isabela Salas-Betsch, "5 Facts from the 2022 Wage Gap Data," American Progress, September 20, 2023, <https://www.americanprogress.org/article/5-facts-from-the-2022-wage-gap-data/>.

¹⁹ The Center for American Progress notes that not all sub-groups of Asian women are treated equally, highlighting the case of Vietnamese women earning 66 cents to the white non-Hispanic man's dollar. Source: Ibid.

²⁰ Ibid.

²¹ Carmen Brick, Daniel Schneider, and Kristen Harknett, "The Gender Wage Gap, Between-Firm Inequality, and Devaluation: Testing a New Hypothesis in the Service Sector," *Work and Occupations* 50, no. 4 (November 1, 2023): 539–77, <https://doi.org/10.1177/07308884221141072>.

work week and overtime pay, created the minimum wage— a baseline value for work.²² Yet, even under the FLSA, many workers remained unprotected.

The 1960s saw a slew of legislation aimed at ending discriminatory pay schemes; namely, Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (ADEA) of 1967. In addition, Congress enacted two important amendments to the FLSA: the Equal Pay Act of 1963 that prohibits sex-based wage discrimination²³ and a 1966 amendment that added more protected industries into the FLSA; such as, the hotel and restaurant industries, which were dominated by women and Black workers.²⁴ However, the 1966 amendment came with some caveats.

Under the 1966 amendments to the FLSA, Congress created a federal tip-credit provision that allowed employers to pay a sub-minimum wage when employees expected more than \$20 in tips per month.²⁵ A “second-tier wage floor”²⁶ emerged in the service industry, contributing to its status as “a devalued occupational identity.”²⁷ The initial provision envisioned customers would bear 50% of the wage burden; however, in positions such as waitressing and bartending, customer-provided tips have become workers’ main source of income.²⁸ 3.7% of all hourly workers in the United States, about 1.5 million people, receive a subminimum wage.²⁹ Tipped workers are two

²² Allegretto, “The Subminimum Wage Plus Tips,” 13.

²³ “Equal Pay for Equal Work,” U.S. Department of Labor, n.d. <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/internal/policies/equal-pay-for-equal-work#foot>.

²⁴ Allegretto, “The Subminimum Wage Plus Tips,” 13.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Sarah E. Dempsey, “Racialized and Gendered Constructions of the ‘Ideal Server’: Contesting Historical Occupational Discourses of Restaurant Service,” *Frontiers in Sustainable Food Systems* 5 (2021), <https://www.frontiersin.org/articles/10.3389/fsufs.2021.727473>. 1.

²⁸ Hunt, “#LivingOffTips,” 171.

²⁹ Michelle Maroto and David Pettinicchio, “Worth Less? Exploring the Effects of Subminimum Wages on Poverty among U.S. Hourly Workers,” *Sociological Perspectives* 66, no. 3 (June 1, 2023): 469, <https://doi.org/10.1177/07311214221124630>.

times more likely to fall below the federal poverty line than other industries. Waitstaff, who are predominantly women, are three times more likely.³⁰

In the restaurant industry, the onus of job evaluation falls onto the customer. Estreicher & Nash describe tipping as “a valuable social institution that allows customers to monitor service where management cannot,” serving as a solution to the principal-agent problem that arises between management and servers in job evaluation.³¹ Other researchers reinforce the benefit of tipping for management who may not have the resources to monitor or train their servers (Azar 2020, Ogbonna & Harris 2002).

Legislators reinforce restaurant management’s ability to exploit their servers as tipping regulation fails to evolve and protect workers. Over six decades, Congress has only lifted the qualifying tip total for a subminimum wage one time: In 1978, Congress changed the qualifier from \$20 to \$30 of tips per month. This threshold remains unchanged despite hefty inflation since then, where \$30 in 1978 equals \$140 in 2023.³² A 1996 amendment, which was influenced by lobbying efforts from the National Restaurant Association, decoupled the subminimum wage from the minimum wage at \$2.13, diluting labor groups’ advocacy efforts to increase wages across industries.³³ The \$2.13 subminimum wage still remains today in the FLSA as a “poverty wage, upholding wage theft.”³⁴ In the absence of federal regulation, 34 states have reformed their subminimum wage; however, only 7 of these 34 states have completely eliminated the

³⁰ Sylvia A Allegretto and Kai Filion, “The \$2.13 Federal Subminimum Wage,” *Economic Policy Institute*, EPI & CWED Briefing, no. Briefing Paper #297 (February 23, 2011), <https://files.epi.org/page/-/BriefingPaper297.pdf>.1.

³¹ Samuel Estreicher and Jonathan Remy Nash, “The Case for Tipping and Unrestricted Tip-Pooling: Promoting Intrafirm Cooperation,” *Boston College Law Review* 59, no. 1 (2018): 1.

³² Allegretto, “The Subminimum Wage Plus Tips,” 14-15.

³³ *Ibid*, 16.

³⁴ Dempsey, “Racialized and Gendered Constructions of the ‘Ideal Server,’” 3.

subminimum wage.³⁵ Nevertheless, 16 states still enforce the federal sub-minimum wage of \$2.13.³⁶

While federal law requires employers to pay the statutory minimum wage if tips do not supplement the subminimum wage,³⁷ firms place the responsibility on workers to address the gap in their paycheck. Where servers even are aware of this right to the full minimum wage, which is not often the case, the power imbalances between management and servers, which will be further detailed in the next section, keeps servers quiet. 35% of tipped workers report illegal wages,³⁸ while violations were found in 85.3% of restaurants and bars that were investigated from 2010 to 2019,³⁹ affecting over 82,000 workers.⁴⁰ As holding restaurants accountable is a hefty task and servers have little resources, many restaurants are able to capitalize off this broken and largely unchecked system.

2.2: Tipping Discriminatory Attitudes

The practice of tipping stems from feudal Europe, where landowners would give their indentured servants small amounts of cash for a job well done.⁴¹ While Europe disposed of such practices following the Great Depression and large labor movements, the United States held onto

³⁵ “One Fair Wage Myths & Facts.” One Fair Wage, April 2021. https://onefairwage.site/wp-content/uploads/2021/04/OFW_MythsAndFacts_6.pdf.

³⁶ “Minimum Wages for Tipped Employees,” DOL, September 30, 2023, <https://www.dol.gov/agencies/whd/state/minimum-wage/tipped>.

³⁷ “History of Changes to the Minimum Wage Law,” U.S. Department of Labor, n.d. <http://www.dol.gov/agencies/whd/minimum-wage/history>.

³⁸ “No Rights, Low Wages, No Service,” PBJ Learning, September 2021, https://pbjlearning.com/wp-content/uploads/2022/03/No-Rights-Low-Wages-No-Service-How-Increased-Violations-of-Workers-Rights-in-2021OFW_NationalWageTheft.pdf, 2.

³⁹ Allegretto, “The Subminimum Wage Plus Tips,” 19.

⁴⁰ Suzanne Dershowitz, Evelyn Rangel-Medina, and Kathleen Tang. *Working Below the Line* (Food Labor Research Center, December 2015), https://www.law.berkeley.edu/wp-content/uploads/2015/04/WorkingBelowTheLine_FULL-LR-2.01PM-151207.pdf, 11.

⁴¹ Pullman Train Company hired many formerly enslaved people. The company fought to keep business responsibility for wages low and would leave “mostly white customers to determine the workers’ compensation through voluntary and unpredictable tips.” Source: Allegretto, “The Subminimum Wage Plus Tips,” 13.

its rich culture of tipping, which had prospered in sectors dominated by formerly enslaved persons.⁴² Today, systemic racism is still seen in the restaurant industry.

Restaurants draw gendered and racialized lines within their positions of managers, servers, bartenders, line cooks, bussers, and dishwashers.⁴³ The more powerful, privileged positions of managers are often filled by white men while Latino and Black workers fall into lower-valued positions, often being pushed to back-of-house positions over customer-facing front-of-house positions.⁴⁴ Research by Restaurants Opportunities United found 40% of white managers and nearly half of managers aged 35-44 years old demonstrate a preference for white people over people of color.⁴⁵ Managers directly influence servers' tips as they create schedules and assign sections. Tables across the restaurant are grouped into "sections". Sections often contain a similar number of tables, but there are often more coveted sections that normally receive higher tip percentages; for example, due to tables with a better view or room for larger parties and thus larger bills. In addition, evening and weekend shifts are known to increase customer turnout and satisfaction, resulting in larger tips. Due to the stress of retaliation through bad shifts or, worse, being fired, servers do not come forward to management when their earnings fall below the minimum wage, placing the fate of workers' paychecks in the hands of the customer.⁴⁶

States that hold the federal subminimum wage at \$2.13 are more likely to have higher Black populations than states that have installed higher minimum wages. 39.3% of all tipped workers live in \$2.13 states, yet 54.1% of all Black tipped workers live there.⁴⁷ Meanwhile, two out of three

⁴² Jacqueline Ross and John Welsh, "Service Labor, Freedom, and the Technique of Tipping," *Critical Sociology* 49, no. 4–5 (July 2023): 726.

⁴³ Dempsey, "Racialized and Gendered Constructions of the 'Ideal Server.'"

⁴⁴ Restaurant Opportunities Centers United, "Ending Jim Crow."

⁴⁵ One Fair Wage, Issue brief, "A Persistent Legacy of Slavery" 9.

⁴⁶ Allegretto, "The Subminimum Wage Plus Tips," 19.

⁴⁷ Allegretto & Pitts, "To Work With Dignity," 12.

tipped workers are women. White women tend to fare better, receiving higher tips, than women of color;⁴⁸ however, some studies have shown white women's overall wage can be lower than women of color due to holding more tipped positions which earn the subminimum wage versus back-of-house position that earn the minimum wage.⁴⁹ Restaurant owners profit because through tipping customers subsidize server wages, which permits owners to not only drop menu prices and become more appealing to customers, but it also allows restaurants to place strong incentives on servers to work hard and provide exceptional service.⁵⁰

Tipping, as in any practice, brings in the belief systems of its practitioners. Consumers tip to reward service or out of social obligation, demonstrating how servers are not in total control of their tips.⁵¹ Consumers' own implicit biases contribute to the rewards of services. Under the guise of ranking quality of service, racist or sexist tendencies may be obscured.⁵² When examining tipping cleavages, Wang posits purposeful cuts in tips along racial lines are diminished due to consumer fears of coming across as overtly racist; however, Wang does find white servers receive higher rewards for great service, while Black servers see no substantial difference in their tips.⁵³

The construction of the "Ideal Server" favors the white male.⁵⁴ Gendered wage differentials reflect this phenomenon, where women waitresses made 87 cents to a male server's dollar in 2021, according to data from the US Bureau of Labor Statistics.⁵⁵ Moreso, women servers report feeling pressure to "sexually provoke customers through dress or conversation" in order to provide 'good'

⁴⁸ Allegretto and Filion, "The \$2.13 Federal Subminimum Wage."

⁴⁹ Restaurant Opportunities Centers United, "Ending Jim Crow," 14-15.

⁵⁰ Ofer H. Azar, "The Economics of Tipping," *Journal of Economic Perspectives* 34, no. 2 (May 1, 2020): 215–36, <https://doi.org/10.1257/jep.34.2.215>.

⁵¹ Hunt, "#LivingOffTips".

⁵² Wang (2006) found situational discrimination helped obscure racism in the restaurant industry. Source: Wang, "At the Tipping Point," 127.

⁵³ Ibid, 132.

⁵⁴ Dempsey, "Racialized and Gendered Constructions of the 'Ideal Server.'"

⁵⁵ Gina Trapani and Matt Jacobs. "The Gender Pay Gap for Women Waitresses." Narrow the Gap. n.d.. <https://narrowthegap.co/gap/waiters-and-waitresses>.

service and receive more tips.⁵⁶ Women servers report high rates of harassment on the job. Management decisions feed into the sexualization of female servers by mandating revealing uniforms.⁵⁷ Women servers living in states which uphold the federal subminimum wage of \$2.13 were three times more likely to be told by management to wear ‘sexier’ and ‘more revealing’ clothing.⁵⁸ As stated, these \$2.13 workers are disproportionately people of color, placing Black women servers at an even higher risk than white women servers due to the hyper sexualization of Black women in US media.⁵⁹ Overall, Black and Brown women in the restaurant industry are in the most precarious positions as they face high levels of workplace segregation and sexual harassment, as well as low wages.⁶⁰

2.3: Theoretical Framework - Intersectionality

Restaurants, as all organizations, have inequality regimes, which Joan Acker defines “as systematic disparities between participants in power and control over goals, resources, and outcomes.”⁶¹ These systems of power range from relational, structural, and systemic⁶² – all influencing the interactions between servers, customers, and management. Susan Strange defines relational power as “the capacity of one actor to get another actor to do something it would not otherwise do” while structural power is “power actors source not from the possession of resources, but from their capacity to control the structures that define the environment within which their

⁵⁶ Hunt, “#LivingOffTips,” 173-4.

⁵⁷ Restaurant Opportunities Centers United. “Our Tips Belong To Us.” 6.

⁵⁸ Restaurant Opportunities Centers United, Forward Together, et al. “The Glass Floor,” 2-3.

⁵⁹ L. Monique Ward et al., “A Woman’s Worth: Analyzing the Sexual Objectification of Black Women in Music Videos,” in *The Sexualization of Girls and Girlhood: Causes, Consequences, and Resistance* (New York, NY, US: Oxford University Press, 2013), 39–62.

⁶⁰ Ibid, 14.

⁶¹ Joan Acker, “Inequality Regimes: Gender, Class, and Race in Organizations,” *Gender and Society* 20, no. 4 (August 2006): 443.

⁶² Albenaz Azmanova, “Relational, Structural and Systemic Forms of Power: The ‘Right to Justification’ Confronting Three Types of Domination,” *Journal of Political Power* 11, no. 1 (January 2, 2018): 68–78, <https://doi.org/10.1080/2158379X.2018.1433757>.

interactions take place.”⁶³ Structural power could be enacted when managers create schedules, while relational power could be a veteran server having a new server cover a bad shift for them. Systemic power, on the other hand, relates to the “subordination of all members of society to the operational logic of the social system,” specifically a historically rooted system.⁶⁴ This level of power connects to systems of oppression such as racism, the patriarchy, and capitalism and how they impact the actual structure of an organization as well as its relations. These three systems of power outline the complexities of the relations within any organization and the inequities which can arise along lines of identity such as gender, race, class, age, ethnicity, language, and disability, to name a few.

However, for people who face an intermingling of identities, power relations may become more difficult to analyze. “Intersectionality exposes how individuals experience the effects of their social roles (founded on mutually intersecting identities) not as separate or additive outcomes but in ways that are simultaneous and intermingled and different from the effects of one identity category alone.”⁶⁵ Intersectionality, originally coined by Kimberlé Crenshaw⁶⁶, has become a framework for understanding the realities of individuals who face oppression from compounding systems of power.

Mooney and Baum took an intersectional approach when analyzing the contemporary hospitality industry and front-line service workers, specifically with an aim to inform diversity management practices.⁶⁷ They argue an intersectionality framing can be used to overcome the

⁶³ Azmanova, “Relational, Structural and Systemic Forms of Power.”

⁶⁴ Azmanova, “Relational, Structural and Systemic Forms of Power.”

⁶⁵ Shelagh Mooney and Tom Baum, “Intersectionality in Hospitality,” in *The Routledge Handbook of Diversity, Equity, and Inclusion Management in the Hospitality Industry* (Routledge, 2023). 140-41.

⁶⁶ Kimberlé Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,” *Stanford Law Review* 43, no. 6 (1991): 1241–99, <https://doi.org/10.2307/1229039>; First used in her 1989 piece but more fully developed in this 1991 piece.

⁶⁷ Mooney and Baum, “Intersectionality in Hospitality.”

popular view of frontline service work as “precarious, poorly paid, and socially undervalued employment opportunities” to a professional industry that receives “respectful and equitable outcomes for all workers”.⁶⁸ Intersectionality allows researchers to understand the levels of inequalities within a specific occupation. Subsequently, I will utilize an intersectional framework to analyze restaurant policies aimed at diminishing discrimination to see their success on varied identity groups, specifically focusing on white women and women of color. I will further explain my use of the intersectionality framework in my methods.

⁶⁸ Mooney and Baum, “Intersectionality in Hospitality,” 149.

Chapter 3: Methods

3.1 Data Collection

For this study, I utilized desk research as my primary source of data collection. My research included types of data: what actions restaurants have taken and what actions researchers have studied or theorized. For both sections, I explored journals, organizational reports, organizations' and restaurants' websites, government resources, and news outlets. I utilized Columbia University's library search engine and Google Scholar as primary sources of research. I used a variety of keywords to find relevant scholarship on tipping, such as "tip", "gratuity", "wage", and "subminimum wage". After finding an initial set of resources, I then relied on the referencing of other authors throughout these papers to build up a comprehensive picture of the research which has been conducted on tipping and its alternatives. Of particular interest were the following sources: Cornell School of Hotel Administration and Hospitality, the Restaurant Opportunities Centers (ROC) United, the National Restaurant Association (NRA), and One Fair Wage (OFW) as well as specific authors like Michael Lynn, Sylvia Allegretto, Lu-In Wang, and Sarah Dempsey. I then created a table (Table 1) outlining these findings of the actions restaurants take to combat discriminatory outcomes of tipping, the definitions, benefits, and precautions of each strategy, and examples.

As a case study, I decided to study the handbooks of two of the largest full-service restaurant corporations in the United States: Darden Restaurants Inc. and Hard Rock Café International (USA) Inc. According to Gale Business Insights, these two companies are the top grossing restaurant chains in the United States, with \$10,487.8 million and \$5,900.0 million, respectively. Darden owns over 850 Olive Gardens across the US alongside seven other brand

restaurants employing around 175,000 people.⁶⁹ Through internet research, I found a September 2022 employee handbook from Olive Garden, a subsidiary of Darden, and a May 2012 employee handbook from Hard Rock Café.

I also researched state regulations, specifically those requiring businesses and restaurants to conduct or require training in three categories: food safety, sexual harassment, and discrimination bias, which I compiled in Table 2 (Appendix B).

3.2 Analysis

For each policy, I weigh the options for accountability, feasibility in US culture, and the policies' ability to address different aspects of discrimination which arise from tipping, specifically focusing on the effects policies have on Black and Brown women servers. I utilize an intersectional framework as presented by Kimberlé Crenshaw as “a metaphor for understanding the ways that multiple forms of inequality or disadvantage sometimes compound themselves and create obstacles that often are not understood among conventional ways of thinking”⁷⁰ to analyze my findings of restaurant options for addressing the discriminatory nature of tipping. Specifically, I adopt Leslie McCall's framework of *intercategorical complexity* as an intersectional approach that acknowledges inequalities within social groups and subsequently analyzes the relationships between social groups and how these relationships develop.⁷¹ McCall posits that this type of multigroup study allows for the examination of “both advantage and disadvantage explicitly and simultaneously,” allowing for a managed complexity of between-group relationships one at a

⁶⁹ Julie Littman, “Judge Dismisses OFW Lawsuit against Olive Garden Parent over Tipping Policy,” Restaurant Dive, September 16, 2021, <https://www.restaurantdive.com/news/one-fair-wage-sues-olive-garden-parent-over-tipping-policy/598541/>

⁷⁰ Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” in *Feminist Legal Theories* (Routledge, 1997). 149.

⁷¹ McCall, “The Complexity of Intersectionality,” 1785.

time.⁷² This framework allows me to specifically look at the varying impact of policies across the occupation of servers.

My two primary categories of analysis are gender and race, specifically analyzing the impact of policies between Black and Brown women and white women servers. I chose these group specifications due to the abundance of research revolving around wage disparities and workplace harassment for these social groups within the restaurant industry, which gives context for businesses to make reforms. Nevertheless, further research should look into the intersectionality of other pertinent identity categories, such as class, education, disability, and age, to name a few.

Limitations and Positionality

My analyses are limited by time and the accessibility of the relevant research. I utilized Columbia University's library to access scholarly research and thus only had access to certain materials. My study focuses on the practices of larger restaurants through the analysis of restaurant chain employee handbooks, news-reported local restaurant systems, and previous research. Subsequently, fewer methods utilized by smaller family-owned restaurants are covered.

My initial data collection focused on a wide variety of full-service restaurant employee handbooks in New York City: family-owned, small businesses and chains. Through email, I reached out to over 50 restaurants in New York City. However, I only received one response, which was a decline in participation to the study. I attempted to contact each restaurant by phone where available, yet, often, I was asked to leave a message for a manager, to which I received no response. Further research should be conducted into the practices of smaller restaurants in order to understand how some of the most vulnerable workers' tips are impacted, how businesses are responding, and if there is anything smaller businesses can teach or learn from larger businesses.

⁷² McCall, "The Complexity of Intersectionality," 1787.

In addition, as this study utilizes an intersectional approach to analyze restaurant strategies, I believe it is important to address my own positionality. As a white woman who worked in the service industry for six years, I am personally familiar with some of the stated realities within restaurants' workplace cultures. Nevertheless, both my race and financial stability distance my own experience to the most vulnerable workers. My analysis is one possible interpretation of the unintended consequences which may arise with these policies as influenced by previous research analyzing the intersectionality of Black and Brown women specifically. Nevertheless, I wish to highlight the need to continue to bring in impacted workers' voices into this conversation of how restaurants and businesses in general can move forward.

Chapter 4: Six Strategies to Reduce Discriminatory Tipping Practices and Outcomes in Relation to Safety Concerns

Table 1 outlines the six main strategies I identified that restaurants implement to address the discriminatory outcomes of tipping: three tip-focused strategies and three workplace culture-focused strategies. I characterized my findings into two separate sections due to the two streams of thought which I identified while researching. I define tip-focused strategies as policies or actions that specifically affect tip income and/or distribution to staff, whether that be policies aimed at increasing, eliminating, or redistributing tips. Businesses that implement these strategies direct efforts towards reducing the discriminatory wage effects of tipping through either reforming training systems or tip distribution systems as a means to equalize take-home wages between their servers. I define workplace culture-focused strategies as actions that impact the way in which customers, servers, and management interact, specifically “how employees function within the workplace and how the public perceives the organization.”⁷³ Restaurants that implement these strategies target the unsafe work environments which arise due to the culture of tipping. These strategies include reporting policies, training, and clear guidelines for all employees in relation to the values of the company. While these policies do not directly change the take-home wages of workers, they empower servers to speak out when facing discriminatory treatment from customers, fellow employees, or management without fear of retaliation that would impact their wages.

While most tip-focused strategies have roots in the early 2000s, it seems workplace culture-focused strategies have only become more popular within the last decade. Notably, ServSafe’s 2018 training module coincides with research from Restaurants Opportunities Center United,

⁷³ Indeed Editorial Team, “What Is Company Culture? (With Definition and Examples),” Indeed, July 22, 2022, <https://www.indeed.com/career-advice/career-development/culture-of-a-company-examples>.

Table 1: Main Findings - Description and Examples of Restaurant Policies Addressing Discriminatory Outcomes of Tipping

Actions Restaurants Take to Combat Discriminatory Outcomes of Tipping	Definition, Benefits, and Precautions	Examples
Tip-Focused Policies		
Provide Servers with Customer Focused Training to Make More Tips	<p>Specific advice curated for servers to boost tips based on observed customer behavior; such as being more memorable and personable</p> <p>Individual implementation, although some techniques require management’s cooperation (tip trays with credit card insignia, customer candy, and tipping guidelines)</p>	<p>Michael Lynn’s booklet examples:^{74 75}</p> <ul style="list-style-type: none"> - Sell more - Forecast good weather - Smile - Use customers’ names - Squat next to tables - Briefly touch customers’ hands or shoulders.
Gratuity-Included Bills	<p>Eliminates the practice of tipping and the subminimum wage by boosting menu prices or automatically adding gratuity to each bill.⁷⁶</p> <p>Equalizes servers' wages and/or redistributes revenues from</p>	<p>Danny Meyer’s Union Square Hospitality Group (USHG)⁸⁰: Adopted gratuity-included model to equalize FOH and BOH wages</p> <ul style="list-style-type: none"> - USHG servers reported pay drops of ~\$100/week, leading to an increased turnover

⁷⁴ Mega-tips (2003): 1) Wear something unusual 2) Introduce yourself by name 3) Sell, Sell, Sell 4) Squat next to the table 5) Touch your customers 6) Entertain your customers 7) Repeat Customers’ orders 8) Call your customers by name 9) Draw on the check 10) Use credit card insignia (on tip trays and check folders) 11) Smile 12) Write “Thank you” on the check 13) Forecast good weather 14) Give customers candy. Source: Michael Lynn. "Mega Tips: Scientifically tested techniques to increase your tips." (2003). <https://ecommons.cornell.edu/server/api/core/bitstreams/c28f9aa5-c82a-4526-8b7a-d33dda60cee/content>.

⁷⁵ Mega-tips 2 (2011) New additions to the list include 1) Use makeup (for waitresses) 2) Stand physically close to the customer 3) Write a patriotic message on the check 3) Provide tipping guidelines 4) Play songs with pro-social lyrics. Source: Michael Lynn. "Mega tips 2: Twenty tested techniques to increase your tips." (2011). <https://ecommons.cornell.edu/server/api/core/bitstreams/088096bd-8aed-40b0-b185-f347fadc9650/content>.

⁷⁶ Crowley and Rami 2016 survey of 503 American restauranters: 18% adopted no-tipping policies, 29% planned to adopt no-tipping policies, 27% pro-tipping and will keep tipping, 10% undecided, and 17% may switch to no-tipping if more restaurants decide to. Source: Azar, “The Economics of Tipping.”

⁸⁰ USHG owns and operates 12 restaurant and bar brands, including fine-dining at The Modern and more casual dining at Gramercy Tavern in New York City. Source: Union Square Hospitality Group, “Restaurants and Bars.” Union Square Hospitality Group, <https://www.ushg.com/restaurants>.

	<p>front-of-house (FOH) to back-of-house workers (BOH)⁷⁷</p> <p>May harm restaurants' rapport with customers.</p> <ul style="list-style-type: none"> - Restaurants that imposed automatic gratuities saw lower online customer ratings,⁷⁸ with a stronger effect on cheaper restaurants, potentially due to more expensive restaurants' ability to "hire more experienced and professional servers," reducing the need for tipping as a mechanism for service management⁷⁹ 	<p>rate of 33%. Some USHG restaurants saw staff turnover twice.⁸¹</p> <ul style="list-style-type: none"> - Removed policy for post-COVID reopening, and now Meyer advocates for a tip-pooling policy⁸²
Tip-pooling	<p>"Occurs when tips received by one employee are shared to some extent with other employees."⁸³</p> <p>"Provide[s] a mechanism for employers to reward cooperation among employees."⁸⁴</p> <p>The Fair Labor Standards Act (FLSA):</p>	<p>Flea Street, Menlo Park, California: All staff receive a living wage and split the included gratuity⁸⁶</p> <ul style="list-style-type: none"> - Lost no kitchen staff but have lost numerous servers - Owner Jesse Cool reports staff who remain take pride in each staff member being equally awarded for their contribution.

⁷⁷ FOH employees refer to staff that directly interacts with customers such as hostesses, servers, and bussers while BOH employees are all other workers like cooks and dishwashers. FOH employees tend to be more white, female, and English speaking than their BOH counterparts. The wage disparities between FOH and BOH employees require study and reform. Nevertheless, this study will only focus on experiences of servers. Source: Restaurant Opportunities Centers United Seattle. "The Great Service Divide: Occupational Segregation, Inequality, and the Promise of a Living Wage in the Seattle Restaurant Industry." *Restaurants Opportunities Centers United*. (July 2020). https://rocunited.org/wp-content/uploads/sites/7/2020/07/GreatServiceDivide_Seattle_Report_W.pdf.

⁷⁸ Michael Lynn and Zachary W. Brewster, "A Within-Restaurant Analysis of Changes in Customer Satisfaction Following the Introduction of Service Inclusive Pricing or Automatic Service Charges," *International Journal of Hospitality Management* 70 (March 1, 2018): 9–15, <https://doi.org/10.1016/j.ijhm.2017.11.001>.

⁷⁹ Azar, "The Economics of Tipping."

⁸¹ Keenan Steiner, "As Danny Meyer Continues to Eliminate Tips, His Staff Struggles to Adapt," Grub Street, October 19, 2017, <https://www.grubstreet.com/2017/10/danny-meyer-no-tips-staff-expectations.html>.

⁸² Many restaurants following COVID-19, which had previously gone tip-free, followed suit. Meyer stated in a LinkedIn post, "We've come to believe that it's the inability to share tips that is the problem, not the tips themselves." Source: Danny Meyer, "A Return to Tipping, but Let Them Be Shared," LinkedIn, August 1, 2020, <https://www.linkedin.com/pulse/return-tipping-let-them-shared-danny-meyer>.

⁸³ Estreicher and Nash, "The Case for Tipping and Unrestricted Tip-Pooling," 2.

⁸⁴ Ibid.

⁸⁶ Laura Ness, "Flea Street's Tipping Program Goes to 'Heart of House,'" *The Mercury News*, January 16, 2023, <https://www.mercurynews.com/2023/01/15/flea-street-cafes-tipping-program-goes-to-heart-of-house/>.

	<ul style="list-style-type: none"> - Restricts tip pools to qualifying employees who receive the statutory minimum wage and “customarily and regularly receive tips.” - Requires employers to notify employees of mandatory tip pools, base the tip credit on the final received amount, and exclude themselves from the pool.⁸⁵ - May only extend to BOH where FOH employees, receive at least the statutory minimum wage. - Significant number of wage-violation cases are linked to violations of tip-pooling provisions of the FLSA 	<p>Canadean Company Reports company profile of Hard Rock Cafe International:</p> <ul style="list-style-type: none"> - Reports recent lawsuits in relation to tip-pooling as a company-wide weakness – bad for reputation and fear of raising labor costs⁸⁷
Workplace-Culture Focused Policies		
Clear-Reporting Mechanisms	<p>Accessible policies that outline procedures and points of contact following any incidence of discrimination or harassment.</p> <ul style="list-style-type: none"> - Direct responses to unacceptable behavior by other staff, customers, or management - Process for redress for employees <p>Boosts employee communication and empowers servers to speak up to management when they feel boundaries have been crossed</p>	<p><u>Homeroom</u>, California: A “color-coded system to monitor customer behavior: a yellow flag if a server senses a potential problem, an orange one for inappropriate comments and a red flag for overtly sexual comments or touching, at which point the customer is asked to leave.”⁸⁸</p>

⁸⁵ US Department of Labor, “Fact Sheet #15: Tipped Employees under the Fair Labor Standards Act (FLSA),” DOL, <https://www.dol.gov/agencies/whd/fact-sheets/15-tipped-employees-flsa>.

⁸⁷ “Hard Rock Cafe International, Inc.: Foodservice - Company Profile & SWOT Report,” *Canadean Company Reports* (Basingstoke, United Kingdom: GlobalData plc, June 13, 2014), <https://www.proquest.com/docview/1547927385/abstract/E1A99AF0101240C6PQ/1>. 10-11.

⁸⁸ Rachel Abrams and Catrin Einhorn, “The Tipping Equation,” *The New York Times*, March 12, 2018, <https://www.nytimes.com/interactive/2018/03/11/business/tipping-sexual-harassment.html>.

Discrimination and Harassment Training	<p>Focused staff training addressing discrimination and harassment in the workplace that covers:⁸⁹</p> <ul style="list-style-type: none"> - Discrimination law - Phone harassment policies - Effective communication skills - Identifying verbal harassment - Implicit Bias 	<p>2019 National Restaurant Association (NRA) ServSafe⁹⁰ training module: “Understanding Unconscious Bias in Restaurants”</p> <ul style="list-style-type: none"> - A 30-minute program that “aims to heighten awareness of unconscious bias” that “helps employees and managers promote a culture of respect with guests and one another.”⁹¹ - Managers offered an additional 30-minute segment that teaches how to “proactively and reactively manag[e] situations in which bias occurs,” “manag[e] employee interactions to promote a fair, respectful, and inclusive workplace,” and “deal with difficult situations to minimize impact on the business.”⁹²
Value-Driven Employee Handbooks	<p>Guiding structure for restaurants’ business models and for employee expectations to:</p> <ul style="list-style-type: none"> - Outline expectations for staff and company values - Document and explain discrimination, harassment, and reporting policies <p>“Practicing deterrence is a necessary business strategy for business managers.”⁹³</p>	See case study.

⁸⁹ Kenneth James Welch, “Preventive Strategies to Reduce Discrimination Lawsuits Against Restaurants,” Scholar Works , August 2019, <https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=8629&context=dissertations>. 89.

⁹⁰ ServSafe is a food and beverage safety certificate training program created by the NRA.

⁹¹ Vanessa Sink , “National Restaurant Association Introduces Unconscious Bias Training Suite,” NRA, April 19, 2019, <https://restaurant.org/research-and-media/media/press-releases/national-restaurant-association-introduces-unconscious-bias-training-suite/>.

⁹² Ibid.

⁹³ Welch, “Preventive Strategies to Reduce Discrimination Lawsuits Against Restaurants,” 90.

which points to “internalized, implicit, and deep-seated biases among all three restaurant stakeholders—workers, employers, and consumers.”⁹⁴ Focusing on the management of restaurants, this research found through implicit association testing that “nearly 40% of white managers and nearly half of managers between 35 and 44 years of age demonstrated a preference for white people over people of color.”⁹⁵ Restaurant customers were found to have a slightly higher preference for white people.⁹⁶ Restaurant employees have raised concerns with ServSafe following a 2023 *New York Times* article that reported the NRA lobbies against minimum wage increases. Since 2010, ServSafe has been used by over 3.6 million workers, bringing in \$25 million in revenue for the NRA.⁹⁷ ServSafe databases show that the majority of users are based in states that require food-handler classes: Texas, California, Illinois, and Florida. *NYT* reports that since 2007 when the NRA acquired ServSafe, they have doubled their lobbying costs. Some of these efforts have gone to pushing for state legislation mandating food handler training, while others push to keep subminimum wages in place.

Table 2 (Appendix A) documents all 50 states and whether they require food safety, sexual harassment or discrimination training for their staff. 41 of 50 states have legislation requiring at least one member of the staff to be trained in food safety. 10 states require at least one staff member or more to be trained in sexual harassment prevention, all of which have increased the subminimum wage from the federally implemented level of \$2.13. No states have legislation requiring

⁹⁴ Restaurant Opportunities Centers United. “Building the High Road to Racial Equity: Addressing Implicit Bias in the San Francisco Bay Area Restaurant Industry.” *ROC United*, New York, NY (May 2019). https://rocunited.org/wp-content/uploads/sites/7/2022/06/TheHighRoad_RacialEquity_Report_W.pdf, 19.

⁹⁵ One Fair Wage. “A Persistent Legacy of Slavery: Ending the Subminimum Wage for Tipped Workers in New York as a Racial Equity Measure”, June 2020, https://web.archive.org/web/20201101054932/https://onefairwage.com/wp-content/uploads/2020/07/LegacyOfSlavery_2.pdf, 9.

⁹⁶ *Ibid.*

⁹⁷ David A. Fahrenthold and Talmon Joseph Smith, “How Restaurant Workers Help Pay for Lobbying to Keep Their Wages Low,” *The New York Times*, January 17, 2023, <https://www.nytimes.com/2023/01/17/us/politics/restaurant-workers-wages-lobbying.html>.

discrimination training; however, some states offer free resources to employers for such training. Additionally, civil society organizations such as the ROC United provide toolkits which challenge restaurants to conduct a self-assessment on occupational segregation and help map out ideas for paths forward to racial equity.⁹⁸

Illinois and Washington D.C. are the only two jurisdictions which provide specific regulations on sexual harassment training for tipped employees. The Tipped Wage Workers Fairness Amendment Act of 2018 to the District of Columbia Human Rights Act of 1977 “requires employers in the District of Columbia who hire employees earning tips as wages to provide sexual harassment training to all employees, managers, owners, or operators of that organization.”⁹⁹ The training must be conducted by an Office of Human Rights certified trainer, including material on “how to respond to, intervene in, and prevent sexual harassment by co-workers, management, and patrons.”¹⁰⁰ In Illinois, Section 2-110 of the Illinois Human Rights Act requires “annual ‘supplemental’ sexual harassment prevention training”, including “specific conduct, activities, or videos related to the restaurant or bar industry; an explanation of manager liability and responsibility under the law; and English and Spanish language options.”¹⁰¹ Restaurants are allowed to create their own training provided they meet these requirements.

Outside of mandated training, some restaurants also create communities centered around development for more “informal” discussions on creating a more welcoming workspace. One

⁹⁸ “Adding Racial Equity to the Menu: An Equity Toolkit for Restaurant Employees,” a toolkit created by Restaurant Opportunities Centers United (ROC United), Race Forward, and the Center for Social Inclusion, available at https://racialequitymenu.com/wp-content/uploads/sites/22/2022/04/ROC_EquityToolkit_2020.pdf

⁹⁹ “Sexual Harassment Prevention Training and Documentation Compliance for Tipped Wage Workers Fairness Amendment Act Frequently Asked Questions,” Office of Human Rights, December 2022, https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/TWWF%20Compliance%20and%20Training%20FAQ_Dec2022.pdf.

¹⁰⁰ Ibid.

¹⁰¹ “Minimum Sexual Harassment Prevention Training Standards for Restaurants and Bars,” Illinois Department of Human Rights, 2024, <https://dhr.illinois.gov/training/minimum-training-standards-for-bars-and-restaurants.html#:~:text=Every%20restaurant%20and%20bar%2C%20as,2%2D110%20of%20the%20IHRA.>

example is Hard Rock Café’s 11 different Team Member Resource Groups (TMRGs), which are open to all employees across locations. TMRGs meet virtually numerous times throughout the year. Each TMRG has a specific theme,¹⁰², but all share the following goals: cultural awareness, community outreach and engagement, professional development, business impact, and recruiting.¹⁰³ These employee groups act as a space for employees to not only create community but also to share ideas on how to foster a more productive and safe work environment. Employees attest that in the TMRGs they are “express[ing] [themselves] without judgment,” “contributing positively and affecting so many employees, their families, and their communities,” and “mak[ing] it easier to ease interactions with Team Members and [their] guests.”¹⁰⁴

4.1 Case Study: A Human Rights Analysis of Darden and Hard Rock Café’s Employee Handbooks

To understand how restaurants are currently using their employee handbooks, I chose to focus on the employee handbooks of the two largest US restaurant corporations: Darden, the parent organization of Olive Garden¹⁰⁵, and the Hard Rock Café¹⁰⁶. I utilized the Australian Human Rights Commission’s (AHRC) *Ten steps you can take to create a fair and productive workplace* as a means for analysis. Column one of Table 3 (Appendix B) documents the ten recommendations the Commission makes for businesses, followed by AHRC’s policy recommendations in column

¹⁰² The current list of 11 TMRGs include: Caring (caregivers), R.E.A.C.H. (people with disabilities), Inspire (leadership development), A.P.I. (Asian Pacific Islander), Unconquered (Seminole Native American Indigenous), V.I.B.E. (Black & African American), Salute (veterans, military, police and first responders), Believe (interfaith), L.E.A.D. (Latine), P.U.L.S.E. (LGBTQ+), and Generations Now (intergenerational). [https://www.hardrock.com/csr-report.aspx#:~:text=Team%20Member%20Resource%20Groups%20\(TMRGs,Inspire%20\(leadership%20development\)%2C%20A.P.I.](https://www.hardrock.com/csr-report.aspx#:~:text=Team%20Member%20Resource%20Groups%20(TMRGs,Inspire%20(leadership%20development)%2C%20A.P.I.)

¹⁰³ *Fifty Years Forward Social Responsibility Report*. Seminole Gaming. <https://view.ceros.com/redline-media-group/csr-report-1-1/p/5>.

¹⁰⁴ Ibid.

¹⁰⁵ Darden’s Olive Garden Team Member Handbook, September 2022. Available at https://www.studocu.com/en-us?utm_campaign=shared-document&utm_source=studocu-document&utm_medium=social_sharing&utm_content=olive-garden-employee-handbook.

¹⁰⁶ Hard Rock Café’s Employee Handbook. May 2012. Available at <http://hrcwroclaw.com/Employee%20Handbook%20-%20May%202012%20English%20V005.pdf>.

2 and the inclusion of such policies in Darden's and Hard Rock's employee handbooks, if present, in column 3.

Seven of the ten steps¹⁰⁷ presented by the AHRC focus specifically on business policies regarding discrimination and harassment in the workplace. Both Hard Rock Café and Darden provide a policy on discrimination and harassment with a procedure to respond to complaints. Each corporation requires employees to sign the employee handbook as a means of acknowledging these rights and obligations. Both Hard Rock's and Darden's handbooks outline a list of contact points for employees who have experienced discrimination, starting with a General Manager and working up the chain of command, alongside a toll-free number for employees to speak to the Corporate Human Resources Manager and the Employee Relations Department, respectively.

Nonetheless, neither handbook includes information about specific training "on [staff] rights and responsibilities regarding discrimination and harassment in the workplace" or specifically considers potential risk factors for discrimination and harassment.¹⁰⁸ This exclusion from the handbook does not mean that neither company addresses risk factors or provides discrimination and harassment training; however, these policies are not clearly laid out in the handbook as the main company policy. Hard Rock Café does, however, encourage staff to take part in exit interviews, which the AHRC states may help identify "potential problem areas where discrimination or harassment may arise."¹⁰⁹

The last two steps¹¹⁰ presented by the AHRC relate to creating a more inclusive workplace environment. I qualified Darden's and Hard Rock Café's commitment to these steps based on

¹⁰⁷ AHRC Steps 1-6, 8 and 10. Source: Australian Human Rights Commission, "Ten Steps You Can Take to Create a Fair and Productive Workplace."

¹⁰⁸ Ibid [Step 4].

¹⁰⁹ Ibid [Step 10].

¹¹⁰ Ibid [Step 7 and 9].

AHRC's recommendations (Column 2, Table 3, Appendix B). For step 7, the AHRC suggested flexible work arrangements for family and care responsibilities. Both companies respect and outline the Family and Medical Leave Act of 1993, which grants employees 12 weeks of unpaid leave. Darden additionally has a program called Darden Paid Sick Leave, which grants one hour of paid sick leave to each hourly employee who works 30 hours. Employees are eligible to accrue up to 40 hours of Darden PSL per year, which may be used for personal or family care reasons.

For step 9, the AHRC recommends audits and reasonable adjustment policies for employees with disabilities. Both companies state their compliance with the Americans with Disability Act (ADA) of 1990, which "requires that employers grant reasonable accommodations to qualified disabled employees if they can perform their essential functions of a position with or without the accommodation."¹¹¹ Darden's handbook further details their policy by providing examples of how the company may deal with accommodations, such as "reallocation of non-essential job functions; reasonable leave of absence; reasonable modification of work schedule; obtaining or modifying equipment or devices; reassignment to another vacant position for which the requesting team member is qualified; or in the case of a disabled team member with an identified guardian, involving the guidance in resolving performance-related issues."¹¹²

It is impossible to write the culture of a restaurant into an employee handbook. Restaurant culture emerges from the evolution of relationships within the restaurant. Rachel Ramsey, who works with small restaurants at Measured HR, states companies can only outline their values and mission as a business to guide the ethos of the organization.¹¹³ These values may help both

¹¹¹ Hard Rock Café's Employee Handbook. May 2012, 5.

¹¹² Darden's Olive Garden Team Member Handbook, September 2022, 15.

¹¹³ *November 2023: Employee Handbooks with Rachel Ramsey*, 2023.

employees and employers forge a system of accountability that may help create a healthy and safe work environment for all by outlining the expectations for both parties.

4.2 Intersectional Analysis: Unintended Consequences of Policies

While these three aforementioned strategies are constructed to soothe the economic or social tensions caused by tipping, it is necessary to rethink the benefits of each strategy, specifically keeping in mind the unintended consequences on the most vulnerable groups. To critically analyze these policies, I will apply an intersectional lens with a focus on gender and race to measure the effectiveness of these policies on both reducing wage disparities and increasing workplace safety.

In the gratuity-included model, most restaurants follow the model of paying servers base salaries and adding the extra income, whether through higher menu prices or automatically added gratuity, to restaurant revenues. On the macro level, this system eliminates the wage disparities within the server occupation, supposedly meeting the firm's responsibility to ensure equal and fair remuneration for all its employees. Yet, when considering a more intricate system where veteran servers may receive raises, it is important to analyze the reality of non-tipped workers in the US. While regulations exist in the United States today that prohibit "compensation discrimination" on race, color, national origin, religion, sex, age, marital status, political affiliation, and disability,¹¹⁴ difficulties in enforcement and loopholes keep pay differentials prevalent across industries. In 2022, in salary-based positions, women in the US earned 84 cents to a man's dollar,¹¹⁵ Black women earned 69 cents to a white man's dollar, and white non-Hispanic women earned 80 cents.¹¹⁶ Wage gaps due to customer bias in tipping may be eliminated through the gratuity-included model;

¹¹⁴ "Equal Pay for Equal Work."

¹¹⁵ Salas-Betsch, "5 Facts from the 2022 Wage Gap Data."

¹¹⁶ Ibid.

however, discrimination in wage negotiation, bonuses, and promotions perpetuates, keeping women and specifically women of color at a disadvantage.

Implementation of the gratuity-model has yet to see large success in the US as the practice of tipping is deeply rooted into US history and culture. The failure of Meyer's USHG restaurants demonstrates how the US public may not be ready to make this switch. Due to the uncertainty surrounding the pandemic, Meyer noted how the experimentality of the gratuity-included model hurt business. Nevertheless, even before the pandemic, USHG restaurants were already facing high rates of server turnover as many servers believed they would earn more with tips at other restaurants. Where white males predominately fill positions at higher end restaurants, if gratuity-included restaurants become less desirable positions, women, specifically women of color, will likely fill in. These more vulnerable workers will be placed at the heart of this policy experiment which have left customers weary of higher prices and denial of customary tips. Without full adoption throughout the industry, restaurants using gratuity-included systems will not survive as customers who do not understand the equity concerns, flock to restaurants that offer lower prices due to customer-subsidized wages.

Shifting customers' views to be more altruistic in their tipping practices may prove troublesome. In my own experience in the restaurant industry, customers are very earnest on tipping YOU, not all employees. I distinctly remember one experience I had as a novice hostess at a seasonal vacation restaurant, where after helping a large family get seated quickly, the grandfather of the group handed me a \$20 bill. It is unusual for a hostess to receive such a tip, but it was not very uncommon at this restaurant as the waitlist often was one hour or more. After receiving the tip, I thanked him and put it in our general tip jar which we left out for takeout orders. The customer immediately protested saying, "No, that is for you, for helping us." I ended up

putting the bill in my pocket until he went to his seat and then placed it into the jar. The lead hostess later told me that if someone gives you a tip, always accept it in front of the customer for yourself and then place it into the general jar later, as customers like it better when they feel they are “directly” tipping you. A gratuity-included model takes away the satisfaction which customers feel when they tip their servers directly.¹¹⁷

The gratuity-included model encompasses the idea that restaurants are successful due to the hard work of every individual in the restaurant. Yet, customers do not necessarily understand this idea. Where servers may be punished for food coming out slowly from the kitchen, they also are rewarded when the food tastes impeccable,¹¹⁸ neither of which servers may have any control over. Taking away the built-in customer-server job evaluation process that a tip serves allows businesses to directly set the valuation of each worker; however, it then means management would have to qualify job performance and promotions, which as stated earlier may exacerbate the same inequalities. Yet, eliminating the tip reduces the precariousness of wages of front of house employees by reducing their sensitivity to customers' turnout, emotions, and biases.

Nevertheless, both customers and businesses may not be ready to make this change. As Crenshaw notes, “People can only demand change in ways that reflect the logic of the institutions they are challenging. Demands for change that do not reflect... dominant ideology... will probably be ineffective.”¹¹⁹ While eliminating tipping altogether seems the intuitive response to resolving the wage gaps which occur due to tipping practices, the feasibility of this method is low and

¹¹⁷ Michael Lynn and Xinyue Ni, “The Effects of Tip Distribution Policies: Servers’ Keeping vs Sharing/Pooling Tips Affects Tippers’ Sentiments but Not Tip-Giving,” *International Journal of Hospitality Management* 100 (January 1, 2022): 103087, <https://doi.org/10.1016/j.ijhm.2021.103087>.

¹¹⁸ Michael Lynn and Michael McCall, “Gratitude and Gratuity: A Meta-Analysis of Research on the Service-Tipping Relationship,” *The Journal of Socio-Economics* 29, no. 2 (January 1, 2000): 203–14, [https://doi.org/10.1016/S1053-5357\(00\)00062-7](https://doi.org/10.1016/S1053-5357(00)00062-7).

¹¹⁹ Crenshaw, “Mapping the Margins,” 4.

currently unsustainable, especially when this strategy has no further plans for combatting wage discrimination risks in the new system.

Subsequently, I turn to tip-pooling as another strategy to address the wage discrimination which arises with tipping. Tip-pooling itself does not change any mechanisms on the end of the customer, rather it splits tips amongst employees at the end of each shift. This method's success purely depends on how each restaurant implements the tip-pooling policy.

Tip-pooling, as stated in the FLSA, can only include employees who work directly with customers and receive some form of a tip-credit. For example, tip-pools may distribute tips to other front of house workers such as hostesses, bartenders, and bussers, but it may not include a sharing of tips between servers. In this method, evidently tip-pooling would not help address the wage differences between servers. Tip-pooling amongst servers, on the other hand, promotes cooperation amongst employees.¹²⁰ Because one server's tips will affect the final payout of each server, employees are likely to help each other out more, bringing food to each other's tables, refilling drinks, and clearing away plates. Cool's Flea Street in California is an example where the tip-pooling system has worked. Yet Cool's dedicated search for workers to buy into the new mission of the restaurant shows this method is not the normal within the industry.

As for moderating safe work conditions between customer and server relations, tip-pooling and its potential to boost server cooperation may dilute the effect of a customer's power over a server. Where servers are sharing tips, collaborating on table service is more likely. Thus, if a server feels uncomfortable with a specific customer, this setup makes it easier for another server to step in. This will all depend on the organization of the restaurant and how they split tables and service. Where servers tag-team tables, there is a potential that customers tip less if they feel like

¹²⁰ Estreicher and Nash, "The Case for Tipping and Unrestricted Tip-Pooling," 2.

they have received less “personalized” service as research shows tips increase as servers show a greater level of personality.¹²¹ More research is needed on the direct effects of cooperative service versus individual service on tip income. Yet, Lynn and Ni (2021) found that customer knowledge of a tip-pool does not affect the actual tip amount.¹²²

Tip-pooling’s effects on server-server relationships is not fully clear. On the one hand, as stated, tip-pooling has the potential to create stronger bonds between servers, boost cooperation and efficiency, improve service, and subsequently earn higher tips across the board. Yet, tip-pooling insinuates that servers who profited off the previous system, already receiving high tip percentages, such as veteran servers or white male servers, will subsidize the tips of lower tipped workers such as newer or less experienced servers or as shown women of color. It is possible frustration will build between servers if wages fall for some with accusations that other servers who bring in lower levels of tips are not ‘pulling their weight’. Currently, server positions are viewed as quite independent jobs and a switch to a system of cooperation may not be seamless. More research needs to be done to understand the implications of tip-pooling on server to server relations.

Overall, tip-pooling and its feasibility remains a puzzle as there has yet to be a standardized policy implemented in restaurants across the US. In addition, US legislation remains quite strict regarding restaurant’s ability to implement tip-pooling. An acceptance of the tip-pooling scheme by both restaurant owners and all workers is needed in order to make this method successful at counteracting wage disparities and boosting cooperation in the restaurant. Without this consensus, a forced tip-pooling system risks worsening the workplace conditions of more vulnerable groups of servers through heightened tension with co-workers.

¹²¹ Lynn, “Mega Tips”.

¹²² Lynn and Ni, “The Effects of Tip Distribution Policies.”

The two methods focused on firm responsibility to address wage discrepancies between workers show some promise; however, without both industry and the public's support, its failures will negatively impact already vulnerable groups, like women and people of color, through both exacerbating wages and relationships, increasing risk of unsafety in the workplace.

The last tip-focused strategy of improving relations with customers based on observed customer tipping activity places responsibility on servers to counteract discrepancies in their wages. This method, largely researched and supported by Michael Lynn, fails to account for other side effects this advice may have on servers and their safety at work; namely, squatting next to the table, touching customers, standing physically close to customers, and using makeup.

Lynn favors probability of boosting monetary outcome over the physical boundaries of both servers and customers. He explains in order to touch customers in the "safest manner possible" one should touch the shoulder as it is "a less-private zone", while handing the check as it draws the customer's attention away from the touch.¹²³ Lynn acknowledges the need for caution through this physical intrusion and that it may cause unease for both parties. Especially for servers who do not identify with the strong American culture of touch which accepts hugs and physical closeness, this advice may be seen as a large violation of privacy. Where servers already struggle to draw clear boundaries between themselves and customers in fear of tip retaliation, touching customers or standing too close to them may be misconstrued as flirting and increase the risk of servers to experience sexual harassment from their customers. Women servers who are disproportionately likely to face sexual harassment in the restaurant industry, face higher risk in implementing these methods. More specifically, Black servers face greater risk as they are often

¹²³ Lynn, "Mega Tips," 10.

not listened to in cases of sexual assault as being viewed as “less trustworthy and more responsible for the assault than White Victims.”¹²⁴

Lynn posits the largest boost in tips for his ‘touching’ method occurs in multi-sex parties where women servers touch the female members of the group.¹²⁵ Thus, the interaction between women servers and women customers may play a larger role in impacting servers’ tips. To further understand this point, I began to examine the suggestion to wear make-up, which plays into the reliance and valuation on “beauty” and the sexualization of servers in the restaurant industry. Parrott presents that “attractive servers earn roughly \$1,261 more per year than unattractive servers,” due to female customers tipping higher percentages to more attractive female servers.¹²⁶ While this supports the finding that wearing makeup may boost tips, it also highlights that a large portion of tips can be determined through a US woman’s view of attractiveness, which may explain pay differentials between white women servers and Black women servers.

Stereotypes on sexualization also heavily impact the server occupation, which is inherently sexualized through performance and risky uniforms. Biefeld et al. find women apply sexualization stereotypes differently to Black and white women, where polled women believed sexualized Black women were the most “popular,” and non-sexualized Black women were the least popular when shown an array of sexualized versus non-sexualized Black and white women. Biefeld et al. find white sexualized women are viewed as less nice than non-sexualized women, while Black sexualized women escape this trope of sexualized women being less kind.¹²⁷ Bielefeld et al.

¹²⁴ Biefeld, Stone, and Brown, “Sexy, Thin, and White.”

¹²⁵ Lynn, “Mega Tips,” 10.

¹²⁶ Matt Parrett, “Beauty and the Feast: Examining the Effect of Beauty on Earnings Using Restaurant Tipping Data,” *Journal of Economic Psychology* 49 (August 1, 2015): 34–46, <https://doi.org/10.1016/j.joep.2015.04.002>.

¹²⁷ Sharla D. Biefeld, Ellen A. Stone, and Christia Spears Brown, “Sexy, Thin, and White: The Intersection of Sexualization, Body Type, and Race on Stereotypes about Women,” *Sex Roles* 85, no. 5 (September 1, 2021): 287–300, <https://doi.org/10.1007/s11199-020-01221-2>.

consider other factors such as the woman's weight were also considered in this study, however, I will not dive into this added characterization or others such as age, although they may play an important role in explaining wage differentials amongst groups. Nevertheless, this study shows how systemic power systems such as racism and the patriarchy deeply influence the perceptions of even those who may be the victim of such ideologies. This highlights both the subjectivity of tipping and the power imbalances at play in the customer-server-management relations, raising into question whether equalizing tip income within such a complex and biased system of relations is feasible without structural support from restaurant management.

Restaurants have an obligation to create safe work environments as outlined in the OSH Act. Moreso, restaurants have an obligation to protect their workers from threats of sexual harassment. In 1986, *Meritor Savings Bank v. Vinson* established the precedent that firms hold a responsibility to create a safe work environment free of sexual harassment as sexual harassment became categorized as a form of sex discrimination under Title VII.¹²⁸ Yet, similar to fears of speaking up regarding tips, many workers remain quiet when it comes to reporting sexual harassment due to fears of retaliation in forms of being fired, passed over for promotions, or increased harassment as well as feelings of shame, self-blame, and increased anxiety.¹²⁹ When enacting strategies that focus on individual responsibility to fix wage discrepancies, restaurants fail to protect their employees and promote behavior which may put servers in unsafe situations.

Tipping in itself does not seem to be the sole problem feeding into unsafe work conditions in the restaurant industry. In other countries such as Australia, where tips are not a part of the

¹²⁸ Restaurant Opportunities Centers United, Forward Together, et al. "The Glass Floor," 9.

¹²⁹ Restaurant Opportunities Centers United, Forward Together, et al. "The Glass Floor," 9.

hospitality structure, there are still high reports of sexual harassment.¹³⁰ Even in the United States, Johnson and Madera (2018) ran a case study which found 112/226 incident reports of sexual harassment in the restaurant industry involved coworkers corroborating a 2014 report which reported 66% of surveyed restaurant employees in the US experienced sexual harassment from management and 80% of employees experienced sexual harassment from co-workers.¹³¹ These findings indicate tipping itself is not the catalyst but just part of a larger cultural problem in the industry.¹³²

Overall, tip-focused strategies lack clear evidence for feasibility and success in the US context. In principle, each method presents admirable intentions for reducing discrimination within the industry; however, the explicit focus on tipping inhibits the strategies' abilities to fully address unsafe working conditions which stem from companies' cultures. Subsequently, workplace culture-focused strategies present a more compelling case for restaurants to address discrimination within their workplace, focusing on impacting relationships between servers and management within US restaurants.

The primary strategy addressing maltreatment in the restaurant industry is full staff discrimination and harassment training. As stated earlier, server income and tips can be affected by decisions made by management and customers. Customers' behavior is harder to regulate; however, management's treatment of its employees is in the control of company policy.

Restaurant management biases mirror those of customers, favoring white male servers.¹³³ ROC research shows 40% of white managers and nearly half of managers aged 35-44 years old

¹³⁰ “#RebuildHospo: A Post-Covid Roadmap For Secure Jobs In Hospitality,” United Workers Union (Karma Lord, n.d.), HospoVoice, <https://www.aph.gov.au/DocumentStore.ashx?id=5b69697c-6fba-4572-b07c-60c61f0b7849&subId=705888>.

¹³¹ Restaurant Opportunities Centers United, Forward Together, et al. “The Glass Floor,” 2.

¹³² Azar, “The Economics of Tipping.”

¹³³ Dempsey, “Racialized and Gendered Constructions of the ‘Ideal Server.’”

demonstrate a preference for white people over people of color.¹³⁴ In states where the subminimum wage remains at the federal level of \$2.13, women servers were three times more likely to be told by management to “alter their appearance and to wear ‘sexier,’ more revealing clothing than they were in states where the same minimum wage was paid to all workers.”¹³⁵ These “\$2.13 states” as referred to by the UC Berkeley report, are disproportionately home to Black tipped workers,¹³⁶ and as shown in Chart 1 do not have any mandatory regulations for sexual harassment training. As women and specifically women of color are adversely impacted by management biases, restaurant policies not only need to specifically protect these groups of workers, upholding their responsibility to protect their workers, but they also need to address these biases within their workplace.

Discrimination and harassment training, when offered, has often been viewed as “an empty form of liability protection that does not really influence [workers’] day-to-day life.”¹³⁷ Critics of discrimination and harassment training highlight the need for discrimination and harassment training to include not only what employees are not allowed to do but how they should be acting. Coats et al. (1996) suggests “replacing a negative, avoidance, compliance-focused narrative with a positive, approach, culture-focused narrative.”¹³⁸ Perry explains this means businesses need to clearly outline professional boundaries for their employees. This means not only learning on what conduct is permissible and inadmissible and how to communicate effectively when a boundary is crossed, but it also means learning how to support each other through bystander training which

¹³⁴ One Fair Wage, Issue brief, “A Persistent Legacy of Slavery” 9.

¹³⁵ Restaurant Opportunities Centers United, Forward Together, et al. “The Glass Floor,” 2-3.

¹³⁶ Allegretto & Pitts, “To Work With Dignity,” 12.

¹³⁷ Sara Jansen Perry, “Changing the Narrative on Harassment and Discrimination Training: Building an Organizational Culture with Healthy Professional Boundaries,” *Industrial and Organizational Psychology* 13, no. 2 (June 2020): 186–90, <https://doi.org/10.1017/iop.2020.33>.

¹³⁸ Perry, “Changing the Narrative on Harassment and Discrimination Training.”

teaches employees to advocate for each other in the workplace and in the resolution process.¹³⁹ A critical part of this training includes conveying how professional boundaries vary from employee to employee across individual, cultural, and occupational differences.¹⁴⁰

Discrimination and harassment training cannot be a one and done method. Berzukova et al. (2016) found regular and varied training as the most effective in boosting retention and application.¹⁴¹ Creating identity group communities for co-workers to discuss their specific space in the organization such as Hard Rock's TMRGs can contribute positively to building community in the workplace and collectively outlining boundaries. However, only large corporate restaurants have the bandwidth and personnel to create and participate in these sort of community groups. Smaller family-owned businesses are unlikely to either have the diversity to represent a wide variety of identity groups or have the resources to organize such meetings. This does not mean that having shared conversations about identity is impossible, but it does mean these conversations will be more intersectional and less formal than larger companies.

Standing alone, discrimination and harassment training will not change the culture of the restaurant industry. A study which analyzed the effectiveness of resources, training, and leadership implementation in reducing racial and ethnic harassment and discrimination (REHD) in the military found leadership implementation had the largest effect.¹⁴² Leadership implementation included addressing complaints of REHD and enforcing sanctions.¹⁴³ It is not enough for

¹³⁹Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Sadie Larsen et al., "Do Actions Speak Louder Than Words? A Comparison of Three Organizational Practices for Reducing Racial/Ethnic Harassment and Discrimination," *Military Psychology* 25 (November 1, 2013): 602–14, <https://doi.org/10.1037/mil0000024>.

¹⁴³ Ibid, 610.

restaurants to simply create training programs or offer resources which will allow them to bypass liability, there must be a real effort by management to enforce a change in the culture.

Clear reporting mechanisms for employees is a simple policy measure which may aid restaurants seeking to counteract discrimination within their restaurants, specifically when considering sexual harassment. While sexual harassment claims are prevalent amongst all relationships in restaurants' management-employee-customer dynamics, employees report being most uncomfortable with sexual harassment from customers, with women employees being more uncomfortable than male employees.¹⁴⁴ The hospitality industry bases itself on the principle of "The customer is always right." Standing up to customers' unsavory behavior is unimaginable in the restaurant industry, especially for servers whose wages and the management whose profits are directly affected by customers' perceptions. This culture silences any complaint of customer behavior, from a rude comment to overt sexual harassment. In Equal Employment Opportunity Commission (EEOC)¹⁴⁵ claims regarding sexual harassment in restaurants, the EEOC often suggests businesses to create strong reporting structures alongside the required damages they have to pay for successful cases.¹⁴⁶ Establishing a system such as Homeroom that allows for clear and continuous communication between servers and management regarding customers behavior not only eases the mind of servers but it also places more accountability on customers for their behavior towards servers. While such a policy may not change the behavior of customers, it will empower and reassure servers to stick up for themselves knowing their manager will support them when a customer has crossed a line.

¹⁴⁴ Restaurant Opportunities Centers United, Forward Together, et al. "The Glass Floor," 23.

¹⁴⁵ Federal office in charge of creating equal and inclusive workplace environments.

¹⁴⁶ Restaurant Opportunities Centers United, Forward Together, et al. "The Glass Floor," 15.

Historically, increases in sexual harassment and assault reporting has arisen when the public has created a culture of believing and supporting for survivors. This can be seen with the #MeToo movement where awareness of sexual assault and harassment grew, more women became empowered to come forward. Nevertheless, the experience of white women and women of color cannot be equated. Historically, women have not spoken up against sexual harassment in the workplace due to fears of retaliation and not being believed. Yet, Black women's claims face a higher likelihood of being dismissed. Crenshaw reports white women were more likely to be believed by juries in US rape court cases than Black women due to the stereotype of innocence and chastity for white women versus promiscuity for Black women.¹⁴⁷ Nevertheless, over the past 20 years, a 2019 study found a rise in Black women's reports of sexual harassment. This is coupled with a lower rate of reporting for white women. Rather than relating to an empowerment to report, Cassino and Besen-Cassino find these differences arise due to differences in experiences of sexual harassment in the workforce.¹⁴⁸ Black women are at a higher risk for experiencing sexual harassment at work than their white counterparts. Subsequently, in an industry where Black women are even more sexualized, there is a strong responsibility on restaurant management to specifically have policies in place that protect Black women servers.

While leadership's implementation of clear reporting mechanisms, the enforcement and sanctions of reported behaviors should be carefully considered. Research has shown where direct termination is involved, sexual harassment filings go down.¹⁴⁹ Nevertheless, it is possible

¹⁴⁷ Kimberle Crenshaw, "Race, Gender, and Sexual Harassment Gender, Race, and the Politics of Supreme Court Appointments: The Import of the Anita Hill/Clarence Thomas Hearings: Anita Hill One Month Later: Remarks Before the National Forum for Women State Legislators," *Southern California Law Review* 65, no. 3 (1992 1991): 1467–76.

¹⁴⁸ Dan Cassino and Yasemin Besen-Cassino, "Race, Threat and Workplace Sexual Harassment: The Dynamics of Harassment in the United States, 1997–2016," *Gender, Work & Organization* 26, no. 9 (2019): 1221–40, <https://doi.org/10.1111/gwao.12394>.

¹⁴⁹ Larsen et al., "Do Actions Speak Louder Than Words?" 610.

employees will want to know specific actions leadership has taken in response to complaints. Management may not feel comfortable responding to employees' demands for proof of punishment following filing a report.¹⁵⁰ For restaurants which have clear reporting mechanisms, it is important to also be clear about follow-up procedures. Who runs the investigation? What is the discipline policy? Will all employees' privacy be respected? These are just some of the questions which businesses will have to reckon with and make clear to their employees in order to ensure reporting mechanisms work. Thus, while management needs to show a commitment to listening to their employees' concerns, they also need to create fair and proportionate response mechanisms.

Employee handbooks provide a platform for employers to outline their mission and values to employees and the public. As stated, employee handbooks may act as an avenue for accountability amongst employees and employers to create a workplace culture that is free of discrimination. While Hard Rock Café and Darden are only two examples of restaurant employee handbooks, due to their corporate structure, these handbooks are likely to be the most comprehensive in the industry. Both employee handbooks address many of the recommended steps outlined by the Australian Human Rights Commission in their publication *Ten steps you can take to create a fair and productive workplace*, such as providing a policy on discrimination and harassment, informing employees of these policies, having contact points for affected employees, and providing accommodations for employees with family, care responsibilities, medical problems, or disabilities. Nevertheless, both Darden's and Hard Rock's policies barely passed the threshold of alignment with federal legislation.

Article 11 of the United Nations Guiding Principles on Business and Human Rights states businesses have an obligation to "address adverse human rights impacts with which they are

¹⁵⁰ November 2023: *Employee Handbooks with Rachel Ramsey*, Youtube (High Road Restaurants, 2023), <https://www.youtube.com/watch?v=nHM5AWeUIGg&t=3s>.

involved.” Especially in the restaurant industry where there are already strong power dynamics across customers-employees-management, the management has an even stronger obligation to implement precautions for its employees. Darden completely failed to outline within their employee handbook, a commitment to human rights due diligence and self-identifying possible risks to their employees at work. Hard Rock only suggested employee exit interviews. Especially in corporate restaurants that have more dispensable resources, internal audits are both a plausible and effective way for restaurants to fulfill their values of anti-discrimination which they attest to by providing valuable information on the status of workers. While outlining these initiatives within an employee handbook may seem superfluous, it provides both transparency and a level of accountability on firms which will not only improve the conditions of employees, but it will also push other companies in the industry to follow suit.

On the other hand, smaller family-owned restaurants often do not have the resources to develop strong human resource tools, thus they are often lacking clear written policies and guidance for their employees. Nevertheless, there are organizations that work with small restaurants to help create strong employee handbooks like Measured HR.¹⁵¹ Rachel Ramsey, an employee at Measured HR, spoke to her work with smaller businesses on their employee handbooks in a November 2023 webinar with High Road Restaurants– “a national network of restaurant owners who are committed to racial and gender justice every day.”¹⁵² Ramsey describes that there has been a shift in the past decade, especially since 2020, from employee handbooks being a safety tool for companies against liability to communication and advertising tools where

¹⁵¹ Measured HR works with small businesses within the restaurant industry who have 0-400 employees with specific HR needs such as payroll, employee relations, and DEI efforts. Source: *November 2023: Employee Handbooks with Rachel Ramsey*, 2023.

¹⁵² “Dignity, Equity, Community,” High Road Restaurants, September 9, 2022, <https://highroadrestaurants.org/>.

employers can show who they are, what they do, and why people should want to work for them.¹⁵³ Employee handbooks are an avenue for restaurants to both outline their policies in accordance with state and federal law as well as the company's values and benefits for employees. Although lacking resources and personnel, small restaurants can capitalize on these supposed 'weaknesses' by using their greater familiarity with their staff as a means to tailor policies towards employees' direct concerns and needs. Having a smaller staff can be more conducive to communication which will help these restaurants include more regular feedback from staff to create a general system of values all staff want to buy into.

Just as employee handbooks can be a place for positive business values to shine through, they can also be infiltrated by implicit bias which can fester into the workplace. Occupational segregation is one major problem within the restaurant industry which has been seen to cause wage discrimination, where people of color and women, specifically Black and brown women, are kept out of higher-end full-service restaurants. A 2015 study on occupational segregation within the restaurant industry underlined how implicit bias arises in restaurants hiring processes through the use of specific racialized code words within their hiring materials and employee handbooks, such as "good attitude," "work ethic," "lack of initiative," "drive," "clean cut," "presentable," "warmth," "aura," and "personality."¹⁵⁴ As a means of analyzing Darden's and Hard Rock Café's handbooks, I searched for these words. Both handbooks require employees to have "neat" and "well-groomed" appearances. Hard Rock Café's handbook is more specific, stating hair should be kept "clean and well-trimmed". In addition, the handbook stated that all employees are "hired for [their] personality and individuality" and that if guests are dissatisfied, employees are expected to "take the initiative" to improve their experience. By using these racialized code words, these

¹⁵³ *November 2023: Employee Handbooks with Rachel Ramsey, 2023.*

¹⁵⁴ Restaurant Opportunities Centers United, "Ending Jim Crow," 23.

employee handbooks perpetuate an organizational favoring of white traits amongst its staff, embedding a racial bias into their values.

Chapter 5: Conclusion: An Advocacy for Human Rights Inspired Business Policies

In addressing the complexities of intersecting identities, McCall states, “Some forms of inequality seem to arise from the same conditions that might reduce other forms.”¹⁵⁵ As businesses, governments, and advocates go forward in pursuing remedies for tipped workers, it is imperative to consider all possible outcomes, both positive and negative. Furthermore, these policies should be aimed at providing the best possible outcome for the most vulnerable. A business and human-rights framework provides a comprehensive method for restaurants to assume accountability and combat unbalanced power relations between management, employee, and customers, creating a more sustainable and just business model that enables workers to earn a dignified living wage.

Addressing the discriminatory outcomes of tipping will require more than removing this deeply entrenched racist and sexist system. In fact, most servers in the restaurant industry do not view removing the practice of tipping as a viable solution. Many servers believe the culture of tipping is here to stay and that the solution to wage gaps lies in solving the customers’ information problem of assuming tips reward service rather than subsidizes servers’ wages. Servers suggest reframing their advocacy battle for better working conditions to “Living off Tips” as a means to highlight the exploitation they face at work.¹⁵⁶ As restaurants outline ways forward, including workers’ voices will not only create more durable solutions but it will also help restaurants take a more intersectional lens as they hear from impacted individuals. These policies may differ from state to state and restaurant to restaurant depending on the structure of systems in place and the state of relations between the public, employees, and firms. Especially as a wave of tip-fatigue

¹⁵⁵ Leslie McCall, “The Complexity of Intersectionality,” *Signs* 30, no. 3 (2005): 1771–1800, <https://doi.org/10.1086/426800>.1791.

¹⁵⁶ Hunt, “#LivingOffTips,” 175.

washes over the nation, applying a blanket system of change will not be sustainable and will incur negative unintended consequences on already vulnerable workers, as shown through the case of Black and Brown women servers.

While I chose to focus on actions restaurants can take to mitigate the harms to servers caused by tipping practices, due to the slow nature of regulation, the importance of said legislation should not be overlooked. Illinois and Washington D.C.'s specific human rights legislation, which mandates sexual harassment training for all tipped employees, are but one example of how states can feasibly address the unjust and dangerous working conditions servers across the US face every day. Further research should specifically examine the state of servers within these regions in order to understand the effects such legislation has had on ameliorating workers' conditions.

On the international scale, a covenant on business and human rights may provide the necessary framework for states to hold corporations accountable for not only their workers but all impacted communities along their value chain. As home to a vast array of corporations, the United States has a strong voice on the future of business and human rights. While the reality of a binding agreement remains slim, together civil society and businesses can shift the tide by working together to promote a culture of transparency and accountability within firms to monitor their activities for hidden consequences, ensuring to put out the fire and protect the most vulnerable communities.

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Appendices

Appendix A

Table 2: Training Requirements in State Legislation on Food-handler Safety, Sexual Harassment, and Discrimination (50 states plus Washington D.C.)

State	Subminimum Wage	Required Food Safety Training ¹⁵⁷	Required Sexual Harassment Training ¹⁵⁸ (private employees)	Required Sexual Harassment Training ¹⁵⁹ (public employees)
Alabama	\$2.13	At least 1 person	No	No
Alaska	\$11.73	All employees	No	No
Arizona	\$11.35	All employees, most counties, ANSI-accredited exam	No	No
Arkansas	\$2.63	All employees, \$15 exam	No	No
California	\$16	All employees, ANSI-accredited class, \$15 exam	Yes	Yes
Colorado	\$11.40	At least 1 person, ACCR-accredited program, supervisors required 8hrs every 5 years	No	No
Connecticut	\$6.38	At least 1 employee	Yes	Yes
DC	\$8	Onsite certified food handler, test scores to Food Protection Division from Department of Health	Yes	Yes
Delaware	\$2.23	At least 1 employee, CFPM credential	Yes	Yes
Florida	\$8.98	At least 1 manager, DBPR-accredited course	Yes	No

¹⁵⁷ “Food Handler License Requirements: State-by-State Guide,” CoverWallet, November 22, 2023.

<https://www.coverwallet.com/business-tips/food-handler-license-requirements>

¹⁵⁸ “An Updated List of State-Specific Harassment Training Requirements,” Project WHEN.

<https://projectwhen.org/harassment-training-requirements-by-state/>.

¹⁵⁹ “50-State Sexual Harassment Training Requirements,” EEO Training LLC, November 1, 2022,

<https://www.eeotraining.com/sexual-harassment-training-requirements-all-50-states/>.

Georgia	\$2.13	Employee discretion, but need one on site manager certified through state Public Health program (free programs online valid for 3 years)	No	No
Hawaii	\$12.75	At least 1 employee on shift	No	No
Idaho	\$3.35	None but recommendation on free training provided by State	No	No
Illinois	\$8.40	All employees, ANSI-approved courses	Yes	Yes
Indiana	\$2.13	At least 1 employee on shift, accredited exam	No	No
Iowa	\$4.35	At least 1 employee with food protection manager certification	No	No
Kansas	\$2.13	Leaves to local regulation	No	No
Kentucky	\$2.13	Leaves to local regulation	No	No
Louisiana	\$2.13	At least one employee, ANSI-approved program	No	Yes
Maine	\$7.08	At least one certified food protection manager, CFP-approved exam	Yes	Yes
Maryland	\$3.63	Some employees, specifications by local health departments	No	Yes
Massachusetts	\$6.75	Full-time certified food manager, accredited program	Yes	Yes
Michigan	\$3.93	Certified food manager, ANSI or CFP-accredited exam	No	No
Minnesota	\$10.85	Certified food protection manager, accredited course	No	No
Mississippi	\$2.13	Certified food protection manager, accredited course	No	Yes
Missouri	\$6.15	Leaves to local regulation	Yes	No
Montana	\$10.30	Certified food protection manager, ANSI or CFP-accredited training course	No	No

Nebraska	\$2.13	Leaves to local regulation	No	No
Nevada	\$11.25	Certified food safety management	No	Yes
New Hampshire	\$3.26	Certified food protection manager on site	No	No
New Jersey	\$5.26	Certified food protection manager	Yes	Yes
New Mexico	\$3	All employees, certified food protection manager	No	No
New York	\$10	Leaves to local regulation	Yes	Yes
North Carolina	\$2.13	Certified food protection manager, ANSI-accredited course	No	Yes
North Dakota	\$4.86	Leaves to local regulation	No	No
Ohio	\$5.25	Leaves to local regulation	No	No
Oklahoma	\$2.13	Certified food protection manager on site	No	No
Oregon	\$15.45	All employees, Oregon-approved programs	No	No
Pennsylvania	\$2.83	At least one employee with food manager certification, ANSI or CFPM-approved program	No	Yes
Rhode Island	\$3.89	Certified full-time manager in food safety	No	No
South Carolina	\$2.13	On site food protection manager, ANSI-accredited course	No	No
South Dakota	\$5.60	On site certified food manager with approved 8hr training program	No	No
Tennessee	\$2.13	Food protection manager, CFP-accredited program	No	Yes
Texas	\$2.13	All employees, certified food protection manager onsite	No	Yes
Utah	\$2.13	All employees	No	Yes

Vermont	\$6.84	Certified food protection manager or someone with food safety knowledge	No	No
Virginia	\$2.13	Certified food protection manager	No	Yes
Washington	\$16.28	All employees	No	Yes
West Virginia	\$2.63	Leaves to local regulation	No	No
Wisconsin	\$2.33	Certified food protection manager	No	No
Wyoming	\$2.13	Certified food manager	No	No

Appendix B

Table 3: Analysis of Hard Rock Café’s and Olive Garden’s Employee Handbooks to the Australian Human Rights Commission’s (AHRC) “Ten steps you can take to create a fair and productive workplace”

<u>Australian Human Rights System</u>	AHRC’s Suggestions to get there	Hard Rock Café (2012) ¹⁶⁰	Olive Garden - Darden (2022) ¹⁶¹
Develop and implement a policy on discrimination and harassment	You can adapt the Discrimination and harassment policy template to your workplace.	Equal Opportunity Employment (pp.5) Clear discrimination and harassment policy (pp.7-8) “Zero-tolerance” policy (pp.18)	Policy on non-discrimination and sexual harassment “Strictly prohibits any form of discrimination by any of our team members, guests or vendors”
Establish a process for responding to any complaints about discrimination and harassment that may arise.	Good practice guidelines for internal complaint processes can help.	Corporate Compliance Program “provides details on methods of responding to harassment and other violations of company policy” Report within 48 hours of the incident to the General Manager, Director of Operations, Corporate Employee Relations Department, any other Manager the employee is comfortable speaking with	Reporting list of people Dispute Resolution Process (DRP) 1. The Open Door 2. Peer Review 3. Mediation 4. Final and binding arbitration
Make sure staff are aware of your policies and processes regarding discrimination and harassment.	You could do this by providing this information to new staff on commencement, promoting it on staff noticeboards and/or	Code of ethics which Hard Rock employees are required to sign showing they are informed and educated about the policies (pp.17-19)	Handbook requires signature proving understanding and acknowledgement of team members (pp.32).

¹⁶⁰ Hard Rock Café’s Employee Handbook. May 2012. Available at <http://hrcwroclaw.com/Employee%20Handbook%20-%20May%202012%20English%20V005.pdf>.

¹⁶¹ Darden’s Olive Garden Team Member Handbook, September 2022. Available at https://www.studocu.com/en-us?utm_campaign=shared-document&utm_source=studocu-document&utm_medium=social_sharing&utm_content=olive-garden-employee-handbook.

	circulating it on your intranet.		
Provide training for your staff on their rights and responsibilities regarding discrimination and harassment in the workplace.	If you don't have sufficient resources to train all staff, focus on those in management and human resources roles. Options for low-cost training are available in most states and territories.		
Make sure managers model behaviour that is consistent with promoting a workplace free from discrimination and harassment.	You might do this by including relevant indicators in performance agreements.	Prohibits "unwelcome conduct coming from Managers, Supervisors, co-workers, guests, vendors, or anyone else with whom the employee interacts with on the job"	Supervisors have a specific "prohibited conduct section" <ul style="list-style-type: none"> - Discrimination not affecting employment decisions - Not creating an intimidating, hostile or offensive work environment - No personnel action in favor of any person because of any relationship <p>"If you are a supervisor, you have an obligation to monitor your workplace to make sure it is free from discrimination and harassment and you must disclose any reports of discrimination or harassment that you witness or are brought to your attention"</p>
Have contact point/s for employees to discuss any issues relating to discrimination and harassment, for example, by establishing Workplace Contact Officers.	Options for low-cost training of contact officers are available in most states and territories.	Staff can contact General Manager, Director of Operations, Corporate Employee Relations department, or any other manager the employee is comfortable with within 48 hours of the incidence (pp.8) Open Door Policy (pp.39) <p>Formal grievance process: Speak to immediate Supervisor, other management, or the Corporate Human Resources Manager available at a toll-free number</p>	General Manager/Managing Partner Director of Operations Senior Vice President Employee Relations Department reachable at a toll-free number

<p>Establish other policies that reflect your organisation's commitment to workplace equality.</p>	<p>For example, regarding flexible work arrangements to accommodate those with family or caring responsibilities.</p>	<p>FMLA leave, unpaid 12 weeks (pp.44)</p>	<p>Medical, religious, and lactation accommodations (pp.15-16)</p> <p>FMLA leave, unpaid 12 weeks (pp.30)</p>
<p>Identify and plan to address possible risk factors for discrimination and harassment.</p>	<p>Specifically, address risks for where you have a staff member returning from extended leave due to parental responsibilities, illness or injury.</p>		
<p>Make sure that your workplace, including your premises, information and communication technology, is accessible to employees with a disability.</p>	<p>You could do this by undertaking an access audit and/or developing a reasonable adjustment policy. For more information about reasonable adjustments and financial assistance for workplace modifications see the Disability discrimination fact sheet.</p>	<p>“Complies with the Americans with Disabilities Act (ADA) of 1990... requires that employers grant reasonable accommodations to qualified disabled applicants and employees if they can perform their essential functions of a position with or without the accommodation” (pp.5)</p>	<p>“Qualified individuals with disabilities needing or requesting accommodation are expected to cooperate in a dialogue with the Company in order to determine the nature of the disability, need for accommodation and accommodation options. Accommodations will be determined on a case-by-case basis and may include, but are not limited to, by way of example, reallocation of non-essential job functions; reasonable leave of absence; reasonable modification of work schedule; obtaining or modifying equipment or devices; reassignment to another vacant position for which the requesting team member is qualified; or in the case of a disabled team member with an identified guardian, involving the guardian in resolving performance-related issues” (pp.15).</p>

<p>Consider how you might identify potential problem areas where discrimination or harassment may arise.</p>	<p>You could do this by conducting staff surveys or exit interviews with departing employees, or by reviewing work units with high rates of absenteeism or staff turnover.</p>	<p>Encourages “departing staff to participate in an exit interview with a manager to discuss their reason for leaving,” also offers a toll-free number to call for the interview.</p>	
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