

Eliminate the Subminimum Wage

By [Sylvia Allegretto](#)

The federal minimum wage, established through the Fair Labor Standards Act of 1938, initially only covered about 43 percent of the workforce. Subsequent amendments expanded coverage — most notably, the 1966 amendment that brought millions of more workers under FLSA protections, including restaurant employees.

At the same time, however, the 1966 amendment also introduced a subminimum wage to be paid to workers who regularly received tips. The policy stipulated that employers could pay half of the legally required regular minimum wage to tipped workers with the idea that customer tips would provide the other half via a ‘tip credit’ provision. This reasoning effectively designated a share of customer tips not as gratuity but as a wage subsidy provided to employers.

- The 1996 FLSA amendment froze the subminimum wage ‘in perpetuity’ — it has been stuck at \$2.13 since 1991.
- Today, the \$2.13 subminimum wage is just 29.4 percent of the regular \$7.25 minimum after the original 50–50 split was decoupled in the 1996 FLSA amendment.
- Delaware has a \$15 minimum wage coupled with a \$2.23 subminimum wage; thus, customer tips pay \$12.77 (85.1 percent) of a tipped workers wage for every hour they work. Many other state scenarios allow for extremely large gaps between their minimum and subminimum wages, leaving tips to cover the vast majority of a tipped worker’s wage.
- The two-tiered wage floor system harks back to the post-Civil War era when employers did not want to pay wages to formerly enslaved workers, prompting a reliance on customer tips instead.
- Seven states do not allow tipped workers to be paid a subminimum wage and they all have regular minimums that range from \$10.55 (Montana) to \$16.66 (Washington state).
- The US is the only country in the world that allows employers to pay workers subminimum wages, particularly for those in full-service restaurants and bars.

Solution: Eliminate the Federal Subminimum Wage

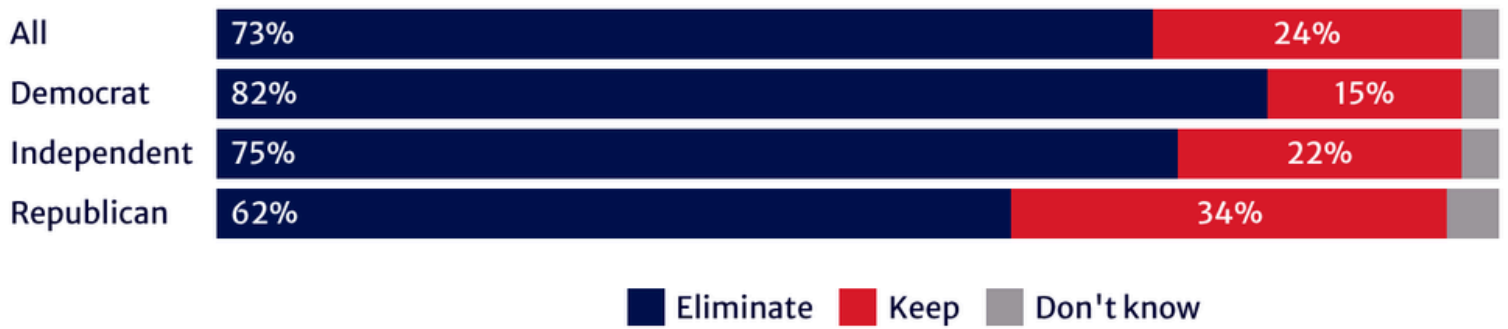
The Fair Labor Standards Act must be amended to phase out the subminimum wage. The proposed 2025 Raise the Wage Act provides a good model. If passed, the 2025 RTWA would have increased the regular minimum to \$17 in 2023, indexed to the median wage in 2031, phased out the \$2.13 tipped wage in 2032, and eliminated subminimum wages for youth and workers with disabilities.

Public Support is Overwhelming

Data in the figure below reflect responses to the question: Do you think that all employees should be paid at least the federal minimum wage, or do you think there should be exceptions for certain employees?

Most Voters Favor Ending the Subminimum Wage

Share of likely voters who want to eliminate or keep the subminimum wage



Source: Data for Progress, April 19–22, 2024. Independent includes unaffiliated and third party voters.



In 1938, Eleanor Roosevelt expressed her dislike of tipping, which she regarded as a result of the failure of employers to provide a living wage. The subminimum wage coupled with the tip credit provision simply allows employers to skirt paying wages to workers by effectively seizing ‘tips’ as wages paid by the employer. It is long overdue that the US pursue a higher federal minimum wage standard that includes the elimination of the subminimum wage.

Resources:

- [Voters Think It is Time to Raise the Minimum Wage](#), Lew Blank, **Data for Progress**, April 26, 2024.
- [Tipped Employees Under the Fair Labor Standards Act](#), **US Department of Labor**.
- [The Subminimum Wage Plus Tips: A Bad Bargain for Workers](#), Sylvia Allegretto, **New Labor Forum**, 2023.
- [Want to Help Women? Get Rid of the Tipped Minimum Wage](#), **Institute for Women’s Policy Research (IWPR)**, December 2024.