

# SHORTED:

## Wage Theft, Time Theft, and Discrimination in San Diego County Restaurant Jobs



### KEY FINDINGS:

**Wage Theft:** More than three-quarters (77%) of 337 restaurant employees surveyed have been victims of wage theft by their employers during the past year, and a third said it happens regularly. Restaurants' varying systems of distributing tips are confusing and open to abuse.

**Break Violations & Fraud:** Nearly a quarter of our sample said employers made them falsely record taking unpaid meal breaks. More than 80% reported violations of their legal rights to breaks, either working more than 6 hours without having a meal break or being prevented or discouraged from taking rest breaks.

**Time Theft & Unstable Schedules:** Most workers surveyed get their work schedules less than a week in advance and 85% get less than two weeks' notice. Other common practices, such as on-call and open-ended scheduling, rob employees of their personal time.

**Sick Time & Health:** More than three-quarters (78%) of workers in the sample have gone to work when they're sick, injured, or in pain, and 65% have done so repeatedly. Only 11% reported having any paid sick time, and only 17% get any health insurance from their jobs.

**Discrimination:** In our survey, wage theft most often targeted women, Latinos, and "back-of-the-house" staff. Observational data on 40 high-end local restaurants show white males disproportionately represented in "front-of-the-house" jobs.



**Wage theft is a national problem, especially in low-wage industries.**

In cities and states previously studied, the restaurant industry has consistently been found to be one of the most abusive. In San Diego County, 125,700 people – nearly one-tenth of all workers – are employed in restaurants, and the industry is growing at almost double the rate of overall employment in the county.<sup>1</sup>

This survey of 337 employees of restaurants throughout San Diego County uncovered disturbing numbers of legal violations and other exploitative workplace practices among restaurants of all kinds – from fast food to fine dining.

This is a pilot study that offers a glimpse into the work lives of San Diegans employed in the restaurant industry, and highlights issues that warrant further exploration and the urgent development of policy solutions. Survey respondents included employees of at least 163 distinct workplaces scattered throughout San Diego County and probably substantially more.<sup>2</sup> We conducted in-depth interviews with 30 survey respondents to clarify and enrich the findings, analyzed census data and collected observational data at 40 top local restaurants. Many of the findings replicate what has been found in studies conducted elsewhere.

# WAGE

Among 337 San Diego County restaurant employees surveyed, 77% reported that employers had stolen their wages in at least one way during the past year. A third (33%) of the sample said their earnings were stolen by their employers regularly (*always or often*).

**77% reported wage theft in the past year**

**33% said it happens often**



In addition to a minimum hourly wage, federal and state law establish minimum standards for wages, overtime, breaks, and related matters. Our survey examined nine types of wage theft, including three kinds of tip theft. (See page 5)

## Wage theft reported by San Diego County restaurant workers surveyed

(N=337)

During the past year...

Type of Wage Theft	Experienced	Experienced Regularly*
Unpaid off-the-clock work	60%	15%
Not paid for Reporting Time	35%	6%
No overtime pay for working > 8hrs/day or >40 hrs/wk	30%	11%
No overtime pay for working a 7-day workweek	15%	5%
Deductions for damages, non-paying customers or cash register shortages	16%	6%
Paid < Minimum Wage	6%	3%

\*"Experienced regularly" is included in the "Experienced" percentage

COVER PHOTO: Jennifer Renner

<sup>1</sup> California Employment Development Department, "Employment by Industry Data." (April 2015). [http://www.labormarketinfo.edd.ca.gov/LMID/Employment\\_by\\_Industry\\_Data.html](http://www.labormarketinfo.edd.ca.gov/LMID/Employment_by_Industry_Data.html)

<sup>2</sup> Of the 195 respondents who answered an optional question naming the restaurant where they worked, 117 distinct names were provided, including 148 different locations. Another 15 respondents gave unique workplace zip codes. If the unnamed restaurants have the same ratio of unique locations, the survey covered more than 250 distinct workplaces.

# THEFT:



## Off-the-Clock Work

**THE LAW:** Employees must be paid for time they work, whether or not it is within regular work hours and whether or not it is voluntary.<sup>3</sup>

**THE SURVEY:** Most (60%) of restaurant employees responding to the survey reported working unpaid off-the-clock either before or after their recorded work hours, and 15% said it was a regular part of their jobs. It was the most common form of wage theft reported.

In interviews, some restaurant workers said their employers directly required them to work during unpaid hours, and many others said they had to work off-the-clock in order to make their paid time manageable. Often they arrive early and/or stay late to prepare for their shifts and to complete “side work” such as cleaning or stocking that they don’t have time for during paid hours.

A typical comment: “The bosses expected us to be there at 5:30 a.m. but we weren’t allowed to clock in until 6. We had to set up the dining room, start heating up the grills, take out the signs, get the drawer ready.” At one chain, sit-down restaurant, a server said: “The managers clock you out at the end of your scheduled shift regardless if you are done or not.” At another restaurant, the pay stops on schedule even though the work doesn’t: “At 2 p.m. the computer clocks you out automatically, but you’re not leaving because you still have to wash your dishes, you still have to clean, you gotta do your silverware roll-ups.”

## Reporting Time Pay

**THE LAW:** Employees who report to work for scheduled shifts must be paid for at least half of their usual number of hours (and no less than two hours), even if they are sent home sooner. This is called “Reporting Time Pay” because they are paid for the expenses and time it takes to report to work.<sup>4</sup>



**THE SURVEY:** More than a third of the restaurant workers surveyed (35%) said they had been sent home without any pay after arriving for a scheduled shift, and 6% said it happens often or always.

Many workers may be unaware of this law. One server, Courtney, believes she does not experience wage theft even though she is regularly scheduled for a 6-hour shift and then sent home after one or two hours, when the rush is over. Legally, Courtney should be paid for 3 hours, or half her scheduled shift.

Reporting Time Pay offsets costs to workers sent home shortly after arriving for a scheduled shift, including time and expenses due to commuting, childcare costs, and lost earning opportunities through other jobs.

<sup>3</sup> “Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.” U.S. Department of Labor. “Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA).” <http://www.dol.gov/whd/regs/compliance/whdfs22.pdf>

<sup>4</sup> California Department of Industrial Relations. “Reporting Time Pay.” [https://www.dir.ca.gov/dlse/FAQ\\_ReportingTimePay.htm](https://www.dir.ca.gov/dlse/FAQ_ReportingTimePay.htm)

## Overtime-Wage Violations: More than 8 hours per day or 40 hours per week

**THE LAW:** Under state law, employers must pay 1.5 times the regular wage for all hours an employee works over 8 hours in a day or over 40 hours in a week.<sup>5</sup>

**THE SURVEY:** In our sample, 30% said they had worked overtime without being paid the required time-and-a-half rate during the past year, with 11% experiencing this type of wage theft regularly. Since so many in our sample reported working part-time, we also looked at those who were eligible for overtime the previous week. Among this group, half (50%) reported this wage violation and 30% said they regularly were not paid the overtime rate due to them.

Several workers described how managers manipulated time records in order not to pay earned overtime, which is an additional violation of state law. One respondent said: “When I work more than 40 hours in any given week, the supervisor or manager goes in the system and fixes it so as to not pay me overtime.”

A lead server at a chain restaurant said: “In the two-and-a-half years I have worked there, I have never been paid overtime. Sometimes the managers go back into the computer and move hours around to cover their asses because they could not turn in extra hours to corporate or they would be fired.”

## Overtime-Wage Violations: 7-Day workweeks

**THE LAW:** If an employee works on all 7 days in a workweek the employer must pay at least 1.5 times the regular wage for any hours worked on the seventh day.<sup>6</sup>

**THE SURVEY:** In our sample, 15% had worked a 7-day workweek without being paid overtime in the previous year, and 5% said they experienced this violation regularly. Among those who worked 7 days the week before taking the survey, 43% reported being cheated of this overtime pay, and half of those said it happens often or always.

One respondent said when he picked up an extra shift on the 7th day of his workweek, not only was he not paid the legally required overtime rate, but the manager cut his hours the following week.

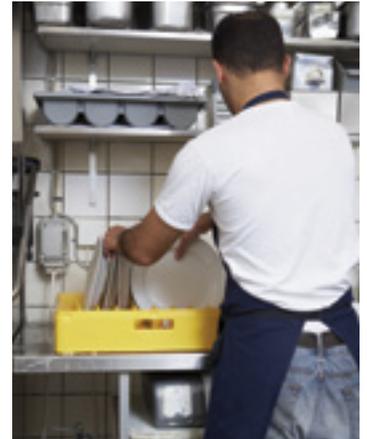
## Illegal Deductions

**THE LAW:** California employers may not withhold or deduct wages for damages, cash shortages, nonpayment by customers or required uniforms or tools.<sup>7</sup>

**THE SURVEY:** In our sample, 16% of workers were charged for damages, breakages, nonpaying customers, or cash register shortages within the past year, and 6% said it was a regular occurrence.

The survey may have undercounted the violations, in part because the survey question did not mention payments for uniforms or work tools, which are usually but not always illegal. Workers interviewed after the survey told of being required to pay for uniforms that had company insignia, which is clearly illegal.

Some workers also said employers required them to take money from their own tips to cover any cash register shortages at the end of their shift. One interviewee said, “Sometimes if you’re short on the drawer at the end of the night, if you’re cashiering you’re responsible for paying it back.” One respondent marked “never” to this survey question, but later explained that the manager makes up for any non-paying customers or cash register shortages by taking the money from the tip pool before disbursing it, effectively deducting the shortage from workers’ pay in violation of state law.



<sup>5</sup> California Department of Industrial Relations. “Overtime.” [http://www.dir.ca.gov/dlse/FAQ\\_Overtime.htm](http://www.dir.ca.gov/dlse/FAQ_Overtime.htm)

<sup>6</sup> *Ibid*

<sup>7</sup> California Department of Industrial Relations. “Deductions.” [https://www.dir.ca.gov/dlse/faq\\_deductions.htm](https://www.dir.ca.gov/dlse/faq_deductions.htm)

## Minimum Wage Violations



**THE LAW:** By state law, workers in California must be paid at least minimum wage, currently \$9 per hour.<sup>8</sup>

**THE SURVEY:** In our sample, 6% of respondents had been paid less than the minimum wage at some point in the last year, and 3% experienced violations regularly.

Our survey finding is consistent with the findings of a study of California workers conducted for the US Department of Labor, which estimated that 3.4% of workers in the “Leisure and Hospitality” industry (which includes restaurants) experienced minimum wage violations in the past month.<sup>9</sup>

Minimum wage violations greatly impact a worker’s income, by reducing wages for every hour worked. The DOL study referenced above found that affected workers lose 42% of their income. In one example from our study, a respondent working as a cook and cashier at a taco shop reported exactly that much loss: She was paid \$50 for each 9-hour shift, robbing her of \$35.50 every day, which is 42% of her legal pay for eight hours at minimum wage plus an hour of overtime.

In another interview, a cook said some of her coworkers were paid \$6 an hour for at least four years.

## Stolen Tips

**THE LAW:**

- 1) Employers (owners, managers, and supervisors) cannot keep any portion of tips left for employees by customers.<sup>10</sup>
- 2) Employers cannot reduce wages because of tips earned, or credit tips against employees’ wages.<sup>11</sup>
- 3) Employers cannot deduct credit card company fees or charges from tips left on credit cards; they must give employees the full amount.<sup>12</sup>

## Tip theft reported by San Diego County restaurant workers surveyed

(N=208)

During the past year...

Type of Tip Theft	Ever Experienced	Regularly Experienced	I Don’t Know <sup>13</sup>
Management takes workers' tips	19%	13%	10%
Wages reduced because of tips	12%	8%	13%
Credit card fees deducted from tips	4%	3%	22%

**THE SURVEY:** Restaurant workers report that all three of these forms of tip theft happen regularly in San Diego County. One of every five tipped employees said they experienced at least one of these tip violations regularly during the past year. In addition, a large number of workers don’t know whether their tips are being stolen, so the reported frequency may be a substantial undercount. Among the 208 survey respondents who receive tips:



- 1) One in five workers (19%) said restaurant owners or managers have taken parts of their tips in the past year, including 13% who said it happened regularly (often or always). Another 10% didn’t know whether it had happened.
- 2) 12% had their paychecks reduced because of the amount of tips they earned, and nearly two-thirds of those said that it happened regularly. Even more, 13%, said they didn’t know whether it happened.
- 3) Credit card fee deductions from tips were reported by 4%, with most saying it was a regular occurrence. But 22% of respondents who get tips said they didn’t know whether their employers deduct the fees.

*continued...*

<sup>8</sup> California Department of Industrial Relations. “Minimum Wage.” [http://www.dir.ca.gov/dlse/FAQ\\_MinimumWage.htm](http://www.dir.ca.gov/dlse/FAQ_MinimumWage.htm)

<sup>9</sup> Eastern Research Group Inc., The Social and Economic Effects of Wage Violations: Estimates for California and New York (2014), <http://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>

<sup>10</sup> California Department of Industrial Relations. “Tips and Gratuities.” [http://www.dir.ca.gov/dlse/FAQ\\_tipsandgratuities.htm](http://www.dir.ca.gov/dlse/FAQ_tipsandgratuities.htm)

<sup>11, 12</sup> *Ibid.*

<sup>13</sup> While it is standard practice to treat “I Don’t Know” answers as missing data in survey research, we included those answers in analysis of the Tip questions because the numbers were considerably higher than for other questions. We found it substantively important to report that such a sizable share of respondents did not know whether their tips were stolen.



The number of “I don’t know” answers to these three questions is striking. For most other questions about employer practices, only 2% to 3% gave that answer. These responses and our in-depth interviews reveal an obfuscated tip system that is open to abuse because it is inconsistent and unclear to workers. Enforcement of these laws depends on complaints, which aren’t possible if workers don’t know their tips are being illegally withheld.

The tip system varies between restaurants and even within restaurants depending on the season. The most common methods of distributing tips described in interviews were: tip pools, usually controlled by managers; servers “tipping out” a fixed percentage to other staff, and servers sharing tips with staff based largely on individual generosity. Tips paid through credit cards are more difficult to track because they may not reach the tipped employee for days or weeks, depending on the payday schedule.



Who received tips and how large a share also varied widely. In our survey, 84% of “front-of-the-house” workers said they received tips, and 29% of kitchen or “back-of-house” workers said they receive small shares of tips left in tip jars or passed on by servers. As one server put it: “It is up to your discretion to decide whether you tip out the back of the house or the hostess. Let’s say the cook has helped you a lot that night doing extra things, then you would tip them out.”

## LATE PAY AND BOUNCED CHECKS

In addition to outright wage theft, some workers are paid late. Employers are subject to civil penalties for late or bounced paychecks, and workers can be owed penalty payments for each violation.

**THE LAW:** All wages are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Late pay is subject to a civil penalty of \$100 for the first violation. If a paycheck is returned for insufficient funds, the employee can receive penalty payment of up to 30 days’ wages, in addition to the amount of the check.<sup>14</sup>

**THE SURVEY:** While 3% of the sample reported always or often being paid late, 13% said it had happened to them in the past year. Bounced checks were less common: 7% had received bounced checks, and 1% received them regularly.

Workers interviewed said late pay sometimes makes them late on rent, bills, and credit card payments, at the risk of extra fees and bad credit. In the worst cases, the late wages were never paid at all.

One server, Kadie, reported that she briefly worked at a restaurant where her paycheck bounced regularly. She spoke to her coworkers and learned that no one was being paid. Some of her coworkers continued to work at the restaurant while looking for other jobs, only taking home cash tips. “They would stay for 2 weeks, maybe 3 weeks, and realize they were not going to get paid and finally they would leave without recourse,” Kadie said. “The owner would then clean himself up and walk out to the street and recruit anyone walking by.... The door kept revolving.”



**Kadie:** Employer never made good on bounced checks.

<sup>14</sup>California Labor Code Section 203.1 and 204

# BREAK VIOLATIONS:

Under California law, employers must have a system in place in which employees are able to take meal and rest breaks, although it's not illegal for employees to skip the breaks.<sup>15</sup> The missed breaks reported in our survey were not included in the wage theft analysis because they did not necessarily include having wages stolen, although the workers often are owed penalties for the violations. The vast majority (84%) of our sample reported violations of their right to breaks in the last year, and more than half (52%) said it happens often or always.

## 10-Minute Rest Breaks

**THE LAW:** Workers in California must be allowed to take a paid 10-minute rest period for every 4 hours worked. Although workers can choose to skip breaks, employers cannot discourage or prevent the breaks. The penalty is one hour of extra pay per violation.<sup>16</sup>

**THE SURVEY:** Almost half (47%) of workers surveyed reported that their employer rarely or never provided the conditions for them to take breaks. And 42% said they had actually been prevented from taking breaks in the past year; almost half of those (19%) said it happened often or always.

Some workers chose not to take breaks so they wouldn't miss out on the income provided by tips, one way in which the tip system makes workers complicit in their own exploitation. In addition, both the survey and the in-depth interviews revealed that many employers don't provide the conditions to make breaks possible. In interviews, workers said under-staffing was overwhelmingly the biggest obstacle to taking breaks. Without sufficient staffing, workers either cannot leave the dining area or the kitchen or would be overburdening their co-workers to do so.

"I have never sat down and taken a 10-minute break because there is no time, and then there is nowhere to sit," one server said. Speaking with frustration, another worker said: "I've never had a break . . . And that's every restaurant I've ever worked at, I've never had a break."

## Meal Breaks

**THE LAW:** Employees must receive an uninterrupted 30-minute unpaid meal break if working more than 5 hours. (Employees may waive this right, but only if they work no more than 6 hours.)<sup>17</sup>

In order to legally provide the break, employers must relieve employees of all duties during the entire 30 minutes. The penalty for failing to provide required meal breaks is an extra hour of pay to the worker per violation.<sup>18</sup>

**THE SURVEY:** Two-thirds (67%) said they have worked more than 6 hours without having a meal break at least once in the past year; 27% said it happens regularly. Worse, 23% said their employers have made them falsely report taking meal breaks, so they work through the break without being paid for that time. 10% said this violation is a regular occurrence. (See next page.)

In interviews, some survey participants said their employers made them take their meal breaks at the end of a 6-hour or 8-hour shift, which are not legal meal breaks but may not have been counted as violations on the survey. Meal breaks must take place during any work stretch of 6 hours because they are intended to give workers a chance to rest as well as to eat. Instead, one worker described a typical lunch as: "While I ran the register, cleaned tables, and ran the food . . . I had to just scarf it down like an animal."

**67% of workers surveyed reported not getting legally required meal breaks.**



<sup>15</sup> We are using the conservative interpretation of the law provided under *Brinker Restaurant Corporation v. Superior Court of San Diego*, 53 Cal.4th 1004, (2012)

<sup>16</sup> California Department of Industrial Relations. "Rest Periods/Lactation Accommodation." [http://www.dir.ca.gov/dlse/FAQ\\_RestPeriods.htm](http://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm)

<sup>17</sup> California Department of Industrial Relations. "Meal Periods." [http://www.dir.ca.gov/dlse/FAQ\\_MealPeriods.htm](http://www.dir.ca.gov/dlse/FAQ_MealPeriods.htm)

<sup>18</sup> *Ibid.*

# PHANTOM MEAL BREAKS:

## FRAUD, WAGE THEFT, AND BREAK VIOLATIONS

Besides being denied required meal breaks, nearly a quarter (23%) of restaurant employees surveyed said their employers made them falsely record meal breaks that never happened. These cases could be triply illegal: labor code violations, fraud, and wage theft.

Some restaurants have time-clocking systems that require employees to report breaks in order to clock out at the end of the shift – whether or not they actually took the breaks. In other cases, employers clock workers out for required breaks but make them keep working.

At one chain family restaurant, an employee said, “We have to have a manager clock us out for our breaks. First you type in your code and a screen comes up asking for a manager code. Knowing very well that you are not going to be able to take a break, the managers type in their code.”



Besides robbing workers of a rest and of the wages for time fraudulently recorded as breaks, employers create false records that protect them from potential wage violation claims. By law, employees are owed a penalty of an hour's wage for each violation.

A server at a well-known downtown restaurant said the management “forces everyone to claim their 30-minute break at the end of their shift, but no server actually gets to take an entire 30-minute break EVER. We may take little 5-minute breaks here and there, to shove food in our mouths really quickly. They make me submit what time I've taken a break, when I've never taken it.”



# SICK TIME AND HEALTH:

Despite the public health implications of their direct contact with food consumed by others, restaurant employees surveyed reported low rates of access to earned sick time or health insurance.

## **Paid sick time**

Among employees surveyed, 76% had no opportunity to earn sick days (paid time off for illness or to care for ill family members). Another 13% didn't know whether they had any sick days. Those results are consistent with previous research finding that 82% of employees in San Diego's food services industry lack access to sick days.<sup>19</sup>

## **Sick at work**

Most of the workers surveyed (65%) said they sometimes or often go to work while sick, injured, or in pain. Among those who said they go to work sick, 34% admitted to coughing or sneezing while handling food and drinks.

"Plenty of times I've gone to work with colds, mucus congestion, drippy nose, and obviously sick and likely contagious," said Brooke, a café server, "because I can't miss my pay and because there's not a lot of staff to cover days. There's a lot of pressure by the management to be at work, regardless of your health situation."

Among respondents who went to work sick, the most common reasons were that without paid time off, they simply can't afford to stay home, they feared retaliation from management for missing work, or they couldn't find someone to cover their shifts.

"I get a high-five when I come to work sick rather than calling in," said Olivia, a bartender. "They would rather have me there sick than have to figure out who could work for me."

Clarissa, who works a fast food counter, added: "If you're sick at work, they're not going to send you home unless you're throwing up. And I need the money and I don't get paid to take a sick day."

## **Health insurance**

Only 17% of the sample said they had any health insurance through their jobs, compared to 55% in the private sector workforce overall.<sup>20</sup> Altogether, 40% said health insurance was offered, far below the 70% nationally.<sup>21</sup> With low and unpredictable incomes, many restaurant workers can't afford health insurance even if offered by employers, because of high premium deductions.

"If I were to receive any benefits, they would come out of my paycheck," said Candy, a cocktail server. "Benefits are so expensive there that I would end up owing money beyond my paycheck every month."

Many restaurants, like other businesses, offer health insurance only to employees working more than 30 hours a week, as required under the Affordable Care Act for large employers. Many employees surveyed said they are limited to fewer than 30 hours, even after years with the same employer.

## SANDRA'S STORY



Sandra at work

PHOTO: Edwin Real

The café where Sandra worked as a cook was often so busy and understaffed that she had difficulty taking restroom breaks. Partly as a result, she recently developed a urinary tract infection that spread to her kidneys. With no health insurance and no paid sick time, Sandra had to pay \$400 out of pocket for treatment at a local clinic and lost income during that illness. Then, on top of everything, her boss pressured her to return to work before the symptoms were gone by threatening to replace her.

Another time, Sandra was badly burned at work when she dropped a pot of boiling water. She had to go to the emergency room and was docked pay for the rest of her shift that day.

<sup>19</sup> Williams, Claudia (2014). Access to Earned Sick Leave in San Diego. Institute for Women's Policy Research. <http://www.iwpr.org/publications/pubs/access-to-earned-sick-leave-in-san-diego>

<sup>20</sup> U.S. Bureau of Labor Statistics (2014). National Compensation Survey. Table 9. Health Care Benefits: Access, Participation and Take-up Rates, Private Industry Workers. <http://www.bls.gov/ncs/ebs/benefits/2014/ownership/private/table09a.htm>

<sup>21</sup> *Ibid.*

# TIME THEFT & UNSTABLE SCHEDULES:

Scheduling practices in the restaurant industry rob most employees surveyed of the ability to control and plan their non-work hours – essentially stealing their personal time. Most of these practices are not illegal in California; as of June 2015 legislation is pending that would address some of these problems for employees of large companies.

Restaurants use flexible and last-minute scheduling to maximize profits by operating with minimal staff. For workers, shift times and the number of hours worked per day can fluctuate wildly and with very little notice. The unpredictable schedules often block opportunities to take another job or attend school, and make it difficult to arrange childcare or plan anything from medical appointments to weekend activities.



## Underemployment

Restaurant work is dominated by part-time jobs, leaving many workers under-employed and with limited incomes. In our sample, 60% reported that in the week before taking the survey they worked less than 30 hours, which is the threshold at which the federal Affordable Care Act requires large employers to provide health insurance. Among these part-time workers, 49% of non-students and 36% of students said they wanted to work more hours.

Rosa has worked part-time for 11 years at Burger King and would like to work full-time. Yet, when a position recently opened up, Burger King hired another part-time employee rather than give her the opportunity to increase her hours. “I would like more hours so I can earn enough to live on,” she said.

## Short-notice scheduling

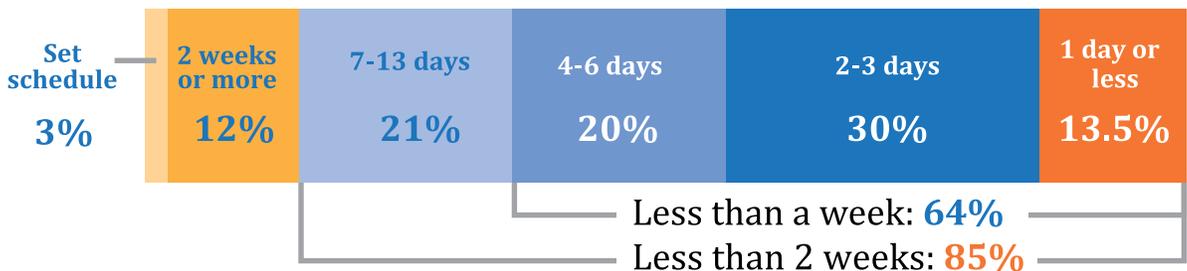
Among survey respondents, 85% reported receiving their work schedules less than two weeks in advance, including 64% with less than a week’s notice and 43% with 3 days’ notice or less. Only 3% of workers in our sample reported that they have a set schedule.

In interviews, many workers said the schedules at their restaurants are posted on a certain day every week, and everyone has to check whether they are working the following day. Even after the schedule is posted it is often subject to last-minute changes. For example, one server said the schedule sometimes is changed overnight and posted online, so servers are required to check it every morning to find out if they work that day.

Such short notice makes it difficult or impossible to schedule shifts at other jobs or make other plans. Matt explains, “There’s nothing that I can do except wait for them to tell me when I’m working. Unless I request the time off, which I don’t want to do

because I need the money, then I can’t really commit to any plans with my loved ones, which is hard on my family and frustrating for me personally.”

**Survey respondents report little advance notice of work schedules**



## On-call

One common and extreme form of last-minute scheduling is keeping workers “on call.” In our sample, 37% of workers have been on call without pay in the last year, and 14% said it happens regularly. This means workers’ “free time” is not theirs to use as they wish; they must be ready to go to work at any point.

Under certain circumstances, current law requires employers to pay for on-call time, depending on how much the on-call requirements restrict employees’ activities.<sup>22</sup> Many restaurants use on-call as part of their scheduling practices, with “on-call” shifts appearing on every schedule. The restaurant industry’s reliance on an abundance of part-time workers who are often in need of additional hours means that employees are motivated to accept any shift offered to them, even at the last minute. Besides needing the income, workers are afraid of retaliation if they turn down last-minute work. Some workers expressed fear of having their hours cut severely the following week if they were not always prepared to come to work when asked.

Jasmine, a fast food worker, explained: “When employees are new they are expected to be on call and show up to work with only 30 minutes’ notice or else they will call someone else.”

## Open-ended shifts

The interviews revealed another common practice that results in unpredictable schedules: At many restaurants, workers have a scheduled start time but are not given an ending time. How long they work depends on how busy the restaurant is that day, with the person who started earliest the “first off” when business slows. In addition to having to block off time they may not end up working, employees cannot predict what their income will be each week.

Marissa, who works for a small restaurant, said, “At my work, employees never know how many hours they will be working any of the days they are scheduled. If there is no business, the wait staff can work two hours or so, while, when it is busy, they can work up to six hours.”

## Cloping

Another brutal scheduling practice is referred to by the contraction “cloping” -- having the closing shift at the restaurant and being scheduled the next day for the opening shift. Depending on a restaurant’s hours, this can mean very little time off to commute home, eat, sleep, and prepare to return to work. Of those surveyed, 63% had cloped and 20% of respondents cloped regularly.

Carol, a server at a La Jolla bar and restaurant, recently was scheduled to clope on weekends for two months straight. On Fridays and Saturdays, she would close the restaurant at 2 a.m. and have to open at 7 a.m. for breakfast the next day. “That was really, really difficult,” she said. “It was so terrible. I was exhausted.”



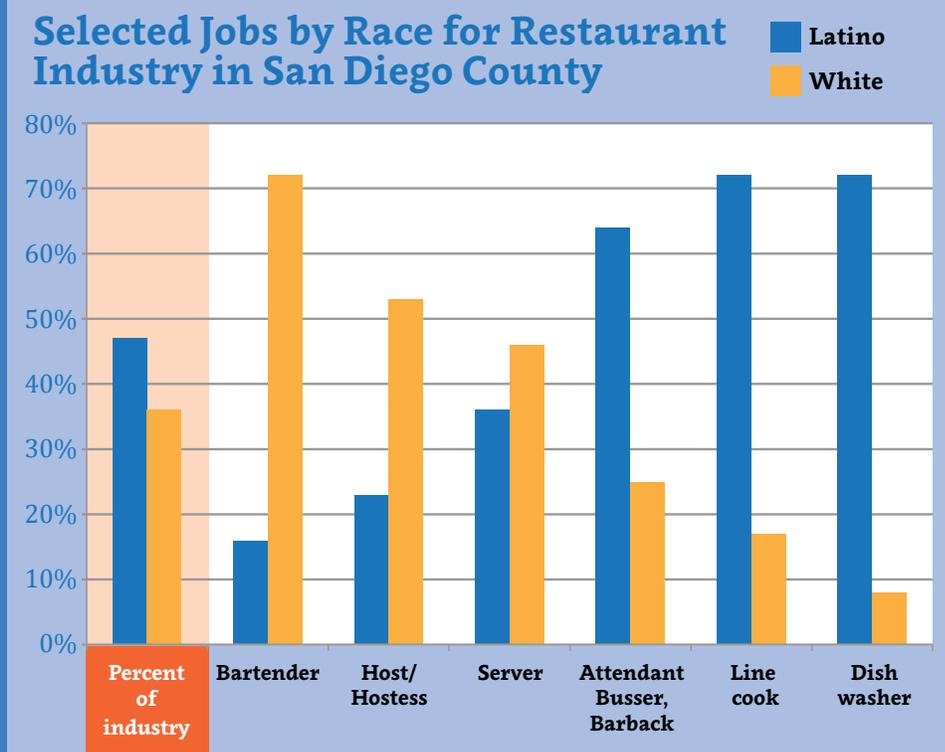
<sup>22</sup> California Department of Industrial Relations. “‘Call Back’ and ‘Stand By’ Time.” <https://www.dir.ca.gov/dlse/CallBackAndStandbyTime.pdf>

# DISCRIMINATION:

According to U.S. Census Bureau data, our survey data, and our systematic observations, Latinos working in San Diego restaurants disproportionately work in positions with minimal or no chance to earn tips. Whites disproportionately work in tipped jobs and are particularly overrepresented in expensive restaurants where tips are highest. In our sample, Latinos experienced wage theft more frequently than White employees, and were more likely to experience multiple types. We also found women were under-represented in jobs at high-end restaurants, and in our sample experienced wage violations more frequently than men in our sample.

Positions that deal directly with the public (servers, bartenders, and hosts/hostesses) were more likely to be filled by White workers and positions that are behind the kitchen door are more likely to be held by Latinos. (Blacks and Asian-Americans are only 2% and 11%, respectively, of workers in the industry and their numbers in our data are too small to draw conclusions.)

Among respondents to our survey, 65% of bartenders, 52% of servers, and 58% of hostesses identified as White, while 73% of dishwashers, 64% of bussers, and 56% of line cooks identified as Latino. This overrepresentation is consistent with U.S. Census data on race and occupation for the San Diego region restaurant industry (2009-2013).



*U.S. Census Bureau ACS/PUMS Data (2009-2013)*

## Observations in High-End Restaurants



In addition to the survey – which included workers at all types of restaurants, coffee shops, fast food places, and bars – we collected observational data at 40 fine dining and casual fine dining restaurants in San Diego on race and gender of front of the house positions. Pairs of graduate students sat for at least an hour in each of the 40 restaurants, ordering beverages, conferring, and noting their observations. While this method involves potentially problematic racial identification by appearance only, it offers a fair measure of the discrimination, which is itself based largely on appearance (both how the employer perceives race and how the employer believes customers will perceive workers). It is a partial measure providing a glimpse at the problem, and obviously could not include observation of the kitchens.<sup>23</sup>

<sup>23</sup> The demographic canvassing method was developed by Restaurant Opportunities Center, which published a report in 2014 documenting occupational segregation in Detroit, Chicago and New Orleans. Restaurant Opportunities Center, (2014). The Great Service Divide: Occupational Segregation and Inequality in the US Restaurant Industry. Available at: <http://rocunited.org/the-great-service-divide-national/>

We found more intense racial disparity among jobs at these high-end restaurants, where the potential tip income is highest. Whites, who make up 36% of all restaurant workers in San Diego, were greatly over-represented among the 548 front-of-the-house workers observed in the 40 establishments; 74% of bartenders, 76% of servers, and 85% of managers were White. Latinos were over-represented in only one front-of-the-house job: as 55% of bussers, compared to their 47% of the industry.



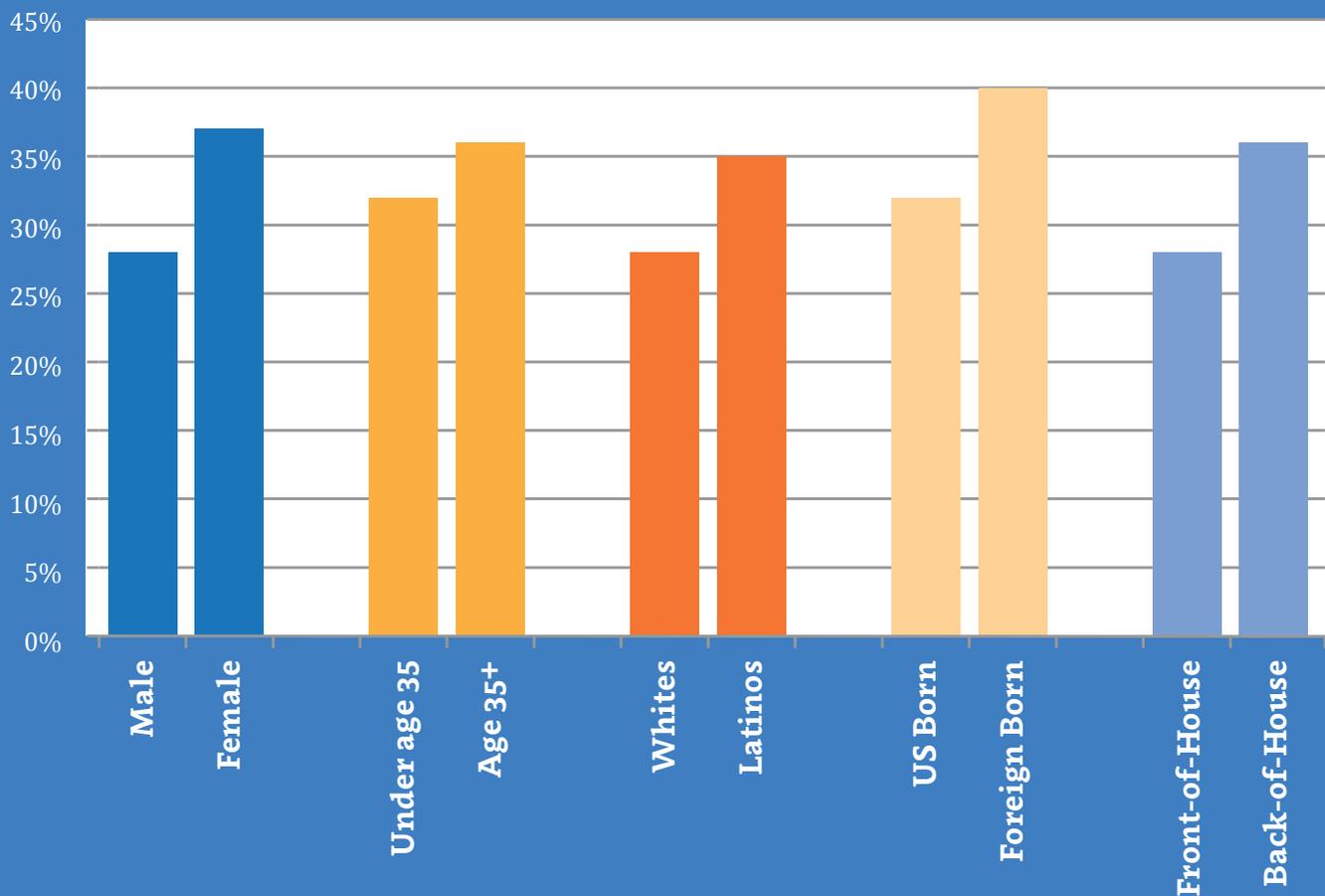
Men also dominated the highest-income jobs. In the 40 high-priced restaurants we observed, 57% of the servers were male. By contrast, 35% of all servers in the local restaurant industry (and 25% in our survey) are men. Two-thirds of bartenders in the high-end restaurants were male, compared to 50% of all bartenders in San Diego County (41% in our sample).

### Wage Theft and Discrimination

In the survey, 35% of Latino respondents reported experiencing wage theft regularly (always or often), regardless of whether they were born in the United States, while 28% of Whites regularly experienced wage theft. Moreover, 8% of Latinos regularly experienced three or more types of wage theft, compared to 4% of Whites.

Wage theft also appears to more often target women: 37% of female respondents and 28% of males in our sample regularly experienced wage theft during the past year.

### Disparities in percentages of surveyed workers experiencing wage theft regularly (often or always)



# POLICY RECOMMENDATIONS:

The dramatic findings from the survey, interviews, and observations of our pilot study point to an urgent need for development of public policy solutions. Local and state governments are responsible for the health and safety of individuals and families, and for enforcing the laws on the books.

## WAGE THEFT:

Effective enforcement of existing laws is key. Increased resources and improved policies are needed to strengthen enforcement.<sup>24</sup>

- Agencies that enforce workplace standards need sufficient resources to allow them to carry out proactive enforcement, rather than relying solely on employee complaints.
- Enforcement agencies at the federal, state and local levels, including City Attorneys and District Attorneys, should collaborate with community-based organizations to identify and pursue wage theft cases.
- Even after workers win court judgments, they often have difficulty collecting from employers. Wage liens can prevent employers from liquidating business assets to avoid payment of a court order giving workers the wages they are due.<sup>25</sup>

## TIP ABUSE:

Increasing employees' knowledge of their rights regarding tips is critical, especially given the high proportion of employees we surveyed who did not know whether their tips were being stolen. Policies should:

- Require employers to give a written accounting to all tipped workers of tips received via credit cards and of tips distributed through tip pools.
- All tipped workers should receive regular information that it is illegal for owners or managers to retain any share of workers' tips, and how to report such violations.
- Reject proposals in California for a so-called "Tip Credit." It would legalize the currently illegal practice of crediting tips to reduce workers' pay and would exacerbate the wage theft and minimum wage enforcement problems by creating a subminimum wage and a complicated system for wages as well as tips.

## SCHEDULING:

States and local jurisdictions should enact "fair scheduling" laws<sup>26</sup> that reduce the burden of unpredictable schedules on workers and incentivize stable schedules and full-time jobs, including:

- Require schedules at least two weeks in advance, with "predictability pay" to workers for last-minute changes.<sup>27</sup>
- Establish a minimum rest period between shifts, with a requirement for time-and-a-half pay for any work performed during the rest period.
- Establish a compensation requirement for each shift that a worker is required to be on-call.<sup>28</sup>
- Require that businesses offer additional hours to their current employees before hiring additional part-time employees.

<sup>24</sup> For detailed policy recommendations and model legislation, see National Employment Law Project. 2011 "Winning Wage Justice." <https://www.nelp.org/content/uploads/2015/03/WinningWageJustice2011.pdf>

<sup>25</sup> Examples of effective state wage lien laws include Alaska Statutes §34.35.400 and Wisconsin Statutes §109.09).

<sup>26</sup> San Francisco "Retail Workers Bill of Rights" (SF Police Code Sections 33F & 33G); see also proposed state bills: California AB 357, Minnesota HF 1139, Massachusetts H.1708, and Maryland SB 688.

<sup>27</sup> *Ibid.*

<sup>28</sup> California AB 357.

## DISCRIMINATION:

In addition to vigorous enforcement of existing equal opportunity laws, employers should be encouraged to create internal career ladders by implementing policies that:<sup>29</sup>

- Create clear, formal policies for hiring and promotion based on objective, skill-based criteria.
- Adopt formal performance evaluation systems based on measurable performance metrics.
- Provide ongoing training opportunities for workers to gain skills beyond those needed for their current position.
- Solicit internal applications for open positions before recruiting new employees.

## SICK TIME AND HEALTH:

Restaurant workers need health insurance and they need the ability to take time off work to recover from illness and prevent the spread of communicable disease without facing economic hardship. Policies are needed that:

- Give food service workers the opportunity to earn 7 paid sick days per year.
- Create incentives for employers to provide affordable health insurance to their employees.

## Methods and Data

This study examines the workplace experiences of employees in the San Diego “Food service and drinking places” industry, referred to throughout as the “restaurant industry.” While other research has relied on survey data from the Census Bureau or the Bureau of Labor Statistics to profile the restaurant workforce in the San Diego region, we believe this is the first effort to survey local restaurant workers directly about their workplace experiences. In addition to surveying 337 workers from local restaurants, cafes, and bars, our research team also conducted in-depth interviews with 30 of the surveyed workers. The survey was conducted by a graduate field practicum class of the SDSU Sociology Masters program in March and April of 2015. Approximately a third of respondents answered the survey in person, and the rest took the survey online. Respondents, who were all 18 or over and currently working in a San Diego County restaurant, were recruited at trolley stops, on trolleys, in front of grocery stores, on community college campuses, through class presentations at SDSU, at soccer fields, at churches, through community organizations, and outside of restaurants. The research team also conducted systematic observations of the race and gender of workers in front-of-the-house jobs in 40 fine dining and casual fine dining restaurants in San Diego County. The restaurants were selected for price, popularity and geographic diversity, from online review and rating websites such as Zagat’s and Yelp. Finally, we analyzed the 2009-2013 five-year Public Use Microdata Sample from the American Community Survey (from

### Demographics of the restaurant industry in San Diego County compared to the SDSU/CPI survey sample

	Census Bureau ACS Data (2009-2013)	SDSU/CPI Survey (2015)
<b>Sample Size</b>	<b>1493</b>	<b>337</b>
<b>Sex</b>	Male	51%
	Female	49%
<b>Age Group</b>	18-25	37%
	25-34	26%
	35-44	18%
	45 and over	20%
<b>Race/Ethnicity</b>	Non-Latino White	36%
	Non-Latino Black	2%
	Asian/Pacific Islander	11%
	Latino, any race	47%
	Other/Mixed Race	4%
<b>Does not speak English well</b>	<b>15%</b>	<b>9%</b>
<b>Foreign-born</b>	<b>37%</b>	<b>30%</b>

the US Census Bureau) for restaurant workers in San Diego County for patterns of discrimination and for comparison with our survey data.

We attempted to recruit a diverse sample that reflects the characteristics of the region’s restaurant workforce. Table 3 compares the demographic characteristics of our sample to weighted estimates of the demographic characteristics of employees in San Diego County’s Food Service and Drinking Places industry from the US Census Bureau’s 2009-2013 American Community Survey (ACS). On race and ethnicity, our data is fairly representative, with slight underrepresentation of Asian/Pacific Islander and Latinos and slight overrepresentation of other groups. Our sample also somewhat underrepresents both those with limited English proficiency and the foreign-born. The survey was available in English and Spanish, but more accessible to people with computer access and literacy.

While wage theft occurs across all groups, in our sample it was higher for women than men, older workers than younger, Latinos than Whites, foreign-born than native-born, non-English speakers than English speakers, and non-students than students. While women are overrepresented in our sample, all other groups with higher rates of violations are underrepresented. Therefore, our sample would likely tend to underestimate rates of violations in the local industry.

<sup>29</sup> For detailed recommendations, see the Restaurant Opportunities Center report, “The Great Service Divide: Occupational Segregation and Inequality in the US Restaurant Industry.” <http://rocunited.org/the-great-service-divide-national>

# SHORTED:

## Wage Theft, Time Theft, and Discrimination in San Diego County Restaurant Jobs

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