



# ROC NEW YORK

RESTAURANT OPPORTUNITIES CENTERS OF NEW YORK

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To:

The Great City of New York

From: Prabhu Sigamani, Director

Restaurant Opportunities Centers United New York

Thursday, May 23, 2023

It is my honor and duty to stand before you on behalf of all restaurant workers. The mission of the Restaurant Opportunities Centers (ROC) United is to improve wages and working conditions for the nation's restaurant workforce. We are thousands of restaurant workers, hundreds of great employers, and thousands of engaged consumers united to raise restaurant industry standards as such.

To the committee and elected officials, guests, and constituents, thank you for allowing me to be here to share our concerns about non-compete agreements and their negative impact on New York workers. ROC New York appreciates the opportunity to testify in support of Senate Bill S3100.

## ABOUT ROC NY HERE

There are nearly 129,000 tipped workers in Upstate New York. 62,000 of these tipped workers are servers, and 77% of these are women. 30% of these servers are mothers – half of these single mothers. Tipped restaurant workers in upstate New York live in poverty at the same rate as other restaurant workers, 2.4 times the rate of the general workforce.



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In our experience, non-compete clauses are often buried in the fine print of employment contracts and, in many cases, are not flagged by employers; many workers do not even recall signing a non-compete agreement until an employer attempts to enforce it. SB S3100 will bolster food preparation and service workers' ability to make a good living and advance their careers with more autonomy. This testimony highlights some of the most common harms that non-compete agreements cause in the food preparation and service industry.

The Bill would prohibit non-compete agreements and certain restrictive covenants. We strongly support this, which should significantly reduce the use of non-compete clauses in the food preparation and service industry. Non-compete agreements in the restaurant industry pose significant threats to worker mobility, hinder entrepreneurship, and prevent workers from earning higher wages.

According to the GAO, these agreements can restrict workers from seeking employment with a competitor or starting a competing business. These agreements can help companies protect confidential information, but they can also lead to less job mobility and lower wages for workers.

SB S3100 is needed as it will benefit millions of workers in the restaurant industry, narrowing racial and gender-based wage gaps and promoting worker mobility and increased income. To provide context, food preparation, and service workers comprise an essential and lucrative part of the U.S. economy—an industry including more than 15 million workers nationwide, with a forecasted \$997 billion in sales for 2023. The majority of these workers are women and people of color. According to a 2021 study surveying almost seventy thousand workers, one in six food preparation and service workers in the United States has signed a non-compete agreement with their employer. This means as many as 1.4 million food and service workers may be bound by a non-compete agreement. Making matters worse, only ten percent of employees negotiate over non-compete terms, and one-third of employees are asked to sign non-compete clauses after accepting employment.



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The COVID-19 pandemic has also made non-competes use by fast food chains, especially pernicious. As fast food service workers were increasingly deemed “essential workers,” many fast food chains began raising wages. Still, workers bound by non-compete agreements could not gain higher wages by moving to another employer within the industry. Even the U.S. Chamber of Commerce, a staunch defender of non-compete agreements, has noted that “a noncompete agreement used to make sure a fast food worker, making minimum wage, doesn’t leave to work across the street at a competing restaurant that is willing to pay more is very likely a problem.”

Non-compete agreements have become more popular for low-wage positions, like many in the food preparation and service industry. Outside of fast food chain employers, noncompetes also impact chefs, white-collar food service managers, food safety and science specialists, workers and more across the industry. Bound by non-competes, these workers cannot create jobs, innovate, or meaningfully compete with existing players to move the industry forward. Recent studies have also found that non-compete agreements systematically drive down wages, even for workers they do not bind.

Workers trapped in their jobs by non-competes represent positions that do not open up for someone else—and if employers know their workers cannot leave, there are few incentives to offer competitive pay and benefits. In support of the Federal Trade Commission’s Proposed Rule regarding non-compete, we collected nearly 300 responses from restaurant workers across the nation

The following responses is the voice of the Restaurant workers:

- “I have worked for both a corporate-owned and franchise-owned McDonald’s restaurants for over ten years. I am a single parent, struggling to make ends meet. But I didn’t have any opportunities to raise my income because I unknowingly entered into an agreement that forbids hiring me for other locations or other jobs that are a ‘competitor’ of McDonald’s. I didn’t know about non-compete terms because they were not explained to me during the hiring process. The FTC proposed rule on banning non-competes would allow me to grow and increase my wages to support myself and my child. I would no longer suffer from reduced wages and loss of potential growth opportunities.”



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- “During the pandemic, as an essential worker, I was stuck at my job, earning \$2.13 per hour, because of the non-compete clause that I agreed to have in my contract. I didn’t know that it would affect my wages and my life greatly. As a hardworking father, I risked
- my own life and the health of my family so that people could eat or bring food to their tables. But at that time, there were other employers that saw how important our job was, and they were hiring for higher wages and better benefits. Yet, I couldn’t leave my job because of the non-compete terms. I believe that the FTC proposed rule on banning non-compete terms would help me and millions of restaurant workers who may be in a similar situation.”
- “[T]he only sense [non-compete agreements] make for food-service jobs is to strengthen employers' upper hand in dominating underpaid workers. They are grossly unfair to the workers.”
- “No one in the food industry, whether you work at McDonald's or a fancy restaurant, should be subject to a non-compete agreement. Non-competes contribute to gender and racial-based wage gaps and suppress an individual's income after that person leaves a particular employment (or worse, is fired). If lawyers in New York cannot be held to a non-compete agreement, why should a restaurant worker be?”
- “Non-compete clauses make it harder for people to switch jobs in order to get better wages. As a result, employers can continue to pay poorly because they know their employees won't quit. Knowing their workers could leave for jobs that pay better is [an] incentive for companies to pay their employees well. In the end, everybody benefits because workers have more to spend, and thus stimulate the economy.”
- “Non-compete clauses can trap workers with a specific skill-set in a toxic workspace because moving outside of the non-compete zone is expensive and can impact entire families who have to uproot or take a pay cut to learn a new skill in a new industry. Having non-compete clauses means the employers have no incentive to provide competitive wages in their area.”

Non-compete clauses in the food preparation and service industry impose significant burdens and harms on workers who would otherwise seek gainful employment that better serves their needs



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and talents or who would start their own businesses. ROC NY strongly supports SB S3100 and will continue to raise awareness for restaurant workers so that they know of the harms of non-competes.

Thank you,

Rev.Prabhu Sigamani, Director of ROC New York