



COVER STORY

THE PATH TO I-82

D.C.'s restaurants must change business models yet again as a new law revamps tipped wages

BY DANIEL J. SERNOVITZ | dsernovitz@bizjournals.com, @DanWBJ

In four decades, Greg Casten doesn't remember feeling this excited and anxious at the same time.

The veteran restaurateur behind Buzzard Point's The Point and Ivy City Smokehouse is readying two new restaurants east of the Anacostia River – encouraged by the potential of helping quench a long-standing food desert. And yet, at one of his oldest establishments, Tony and Joe's Seafood Place, which opened in Georgetown in 1983, soaring interest rates, inflation and labor costs have cut into his bottom line enough that, in March, he watched his rent bill exceed his earnings.

“That is upside down,” said Casten, president of Oceanpro Industries. “I've been in this business for 40 years now, and I've never been more scared.”

It reflects a restrained rebound for D.C.'s restaurant scene, where customers are returning in greater numbers, but rising prices – from staff to rents, eggs to napkins – are breaking budgets. And now coming atop that is Initiative 82, a new law effective in March, that calls for restaurants, shops and other service businesses to raise their share of their tipped employees' hourly wages to the citywide \$17 minimum wage by 2027, starting with a 65-cent bump to \$6 on May 1 and \$2 bump July 1 to \$8.



ABDULLAH KONTE / WBJ

The voter referendum eliminates tip credits, which allow tips to fill the gap between a lower base pay and the area minimum wage. The measure divided the restaurant and consumer industries between dire warnings of closures and high-minded promises of fair wages – and remains to be seen which will be correct. For now, many industry heavyweights are scraping together the dollars for the first wage increase, then waiting to gauge best steps before the next tiers kick in. Others have already increased charges to cover the new costs.

How this all plays out remains a big question. It's made Shawn Townsend, president and CEO

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GREG CASTEN, pictured, president, Oceanpro Industries

of Restaurant Association Metropolitan Washington, fear many small business owners still aren't ready for the change and need more clarity from the city on what they can, and cannot, do to absorb those pay hikes. He's ramping up what he expects will be a \$1 million awareness campaign to roll out information sessions and advertising to educate the restaurant industry on compliance, though he's still seeking public and private funds to help cover that program's costs.

“I hear it all the time. We get calls, we get emails from folks in the industry and customers asking: I heard the law's changed, what do we do?” Townsend said. “I just think that there's a lot of confusion and lack of information that's been provided, which is why we think that an awareness campaign is more than fitting for the occasion.”

Wage 'n' information wars

The owners of Bread Furst Bakery, located along the busy Connecticut Avenue corridor in Upper Northwest Washington, decided not to wait until ordered.

Founded in 2014 by James Beard Foundation Outstanding Baker honoree Mark Furstenberg and a few others, the neighborhood bakery imposed a 9.5% service charge soon after the referendum passed last Election Day, with the extra funds applied toward increasing employee base wages. General Manager Scott Auslander said he heard some customer grouching at first, but most have come around to the restaurant's strategy.

“Obviously there's a fair amount of pushback from customers,” he said. But when “given the opportunity to really talk to customers about it, I find that those conversations go well.”

The service charge model has had another benefit, he said, by boosting pay for back-of-house employees, who couldn't tap into tips from satisfied customers to front-line employees under the prior system. That “was an important objective,” Auslander said.

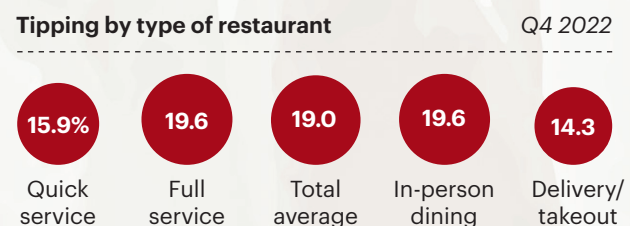
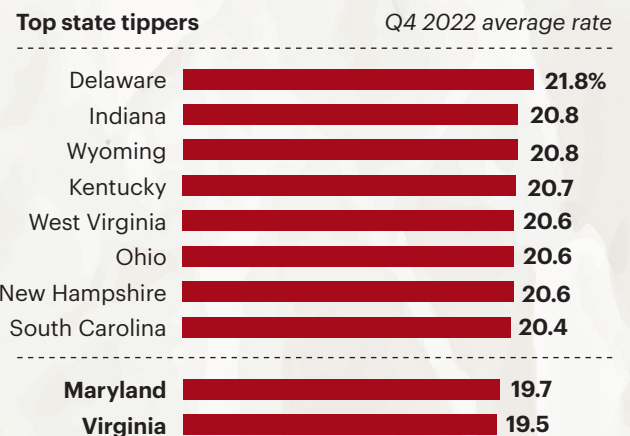
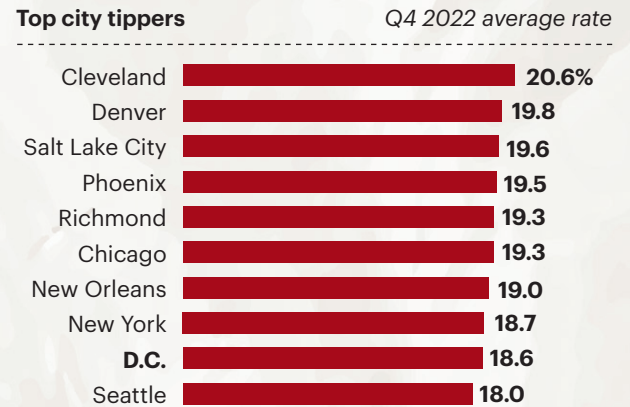
“What that's allowed us to do is get everybody up to at least the minimum wage,” he said.

It's a tactic many restaurants first applied early in the pandemic to help recoup lost revenue and higher costs, and is only expected to rise as tip credits are scaled back. But that system also has its downfall, namely a

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WHO'S AT THE TIPPING TOP?

Nationwide, more people tip now, from 37% of patrons in 2020's first quarter to 48% in 2022's fourth quarter, per restaurants on software firm Toast's platform. But on average, they tip at a lower rate, from 19.2% in 2021 to 19% last year. Among tipping rates in major markets, based on Toast data, D.C. falls a bit lower in the pack.



FULL MINIMUM WAGE BEFORE TIPS

These states require employers to pay a tipped worker's full minimum wage outside of tips, shown below as of Jan. 1. The federal law mandates a minimum \$2.13 and let tips supplement up to a minimum \$7.25 per hour.

Alaska	\$10.85
California	\$15.50
Minnesota	
Annual sales over \$500K	\$10.59
Annual sales under \$500K	\$8.63
Montana	
Annual sales over \$110K	\$9.95
Annual sales under \$110K	\$4.00
Nevada	
Without employer health insurance	\$10.50
With employer health insurance	\$9.50
Oregon (varies by region)	\$13.50
Washington state	\$15.74

SOURCES: Toast's Restaurant Trends Report, Department of Labor

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rise in customer complaints of the service charges, according to the District's principal consumer advocate.

D.C. Attorney General Brian Schwab kicked off a social media firestorm in early March, when his office issued letters to more than 2,400 restaurants in the District advising them of the need for fee transparency. Restaurants may use such fees, the notice said, but must clearly and prominently display them and explain where those dollars are going before the customer orders.

"We look forward to working with consumers and the restaurant industry to ensure transparency and fairness in the marketplace, consistent with CPPA requirements," per the letter, referencing the Con-

Pictured: D.C.'s Bread Furst, and its general manager, Scott Auslander, were early adopters of a new service charge to help cover rising wages.

sumer Protection Procedures Act. "We also stand ready to enforce the law where violations are found."

The agency's warning stems from repeated complaints from consumers who felt blindsided by these fees when they cracked open the dinner check, per Adam Teitelbaum, consumer protection director in the public advocacy division of the OAG, who penned the letter.

"It was causing real harm to consumers," Teitelbaum said. "It's an issue we saw was harmful to the vast majority of the businesses in the District, the small businesses, the restaurants, many of whom were being transparent and playing by the rules."

Yet many restaurateurs were similarly surprised by the OAG notice, or felt alienated during an already particularly sensi-

time. Townsend said it will be critical for all sides to get on the same page, and this notice didn't help.

"We believe the tone and the timing of all of this from the OAG is frustrating," Townsend said. "This was just one more thing that's just confusing the hell out of everybody."

Teitelbaum dismissed the notion that the OAG was singling out restaurant owners, pointing to his office's scrutiny, and legal prosecution in some cases, of delivery services and gig economy apps about undisclosed or excessive fees. The idea, he said, centers more on "transparency and making sure consumers can make informed choices."

But that transparency can help protect the businesses too, especially in the event a consumer complaint is filed

against them, said Christine Lopez Kulumani, managing attorney for the D.C. Bar Pro Bono Center.

"At the end of the day, it is all about not being misleading," she said. "And we want to make sure if there is ever a situation where a customer feels misled, the business can establish and prove: Actually, here are all the things that we did."

A tempest in a teacup?

With Initiative 82, D.C. joins the ranks of other jurisdictions that abolished tipped wage credits, including Alaska, California, Minnesota, Montana, Nevada, Oregon and Washington state. Still more are moving in that direction.

Among those is Maryland, where a bill was introduced in March to establish a \$15 base hourly wage for restaurant serv-

ers, though it failed to advance before the legislative session ended April 10.

If there's one point of agreement among both sides, it's that education is key. Sally Greenberg, CEO of the D.C.-based National Consumers League, which pushed for Initiative 82, said education of both employers and employees, as well as transparency across the board, will help everyone understand what to expect and where they can report problems that arise. And she rejects the notion that implementing I-82 will result in slimmer tips for servers.

"We know there are seven states, and Guam, that don't have a tipped credit anymore, and the impact on the restaurant industry, and the impact on the business industry has been fairly minimal," Greenberg said. "There haven't been any shockwaves through the restaurant industry."

In Portland, Oregon, where tipped credits were eliminated years ago, restaurateur Kurt Huffman said pay can start for both front- and back-of-the-house employees at \$16 an hour, often with higher food and menu prices to cover labor costs. But tips haven't wavered in any of his towns, he said.

"That is a totally unfounded concern," said Huffman, owner of ChefsTable, an association of independent restaurants with 35 food and beverage operations in Oregon, California and Washington state. "Americans tip because it's a social tradition."

Critics of the tip credits say they're trying to quash a system that's a throwback to the Emancipation Proclamation days, when the restaurant industry sanctioned freed Black employees being forced to work for tips rather than a reliable wage. I-82 will result in a more equitable system of pay, said Saru Jayaraman, president of One Fair Wage, based in Cambridge, Massachusetts, which pressed the District for nearly a decade to terminate tip credits and is working to do the same in other states, from Maine to Michigan. Plus, advocates argue, higher base wages will attract more workers to the field.

"Thanks to workers across the country refusing to work for these wages post-pandemic, this is happening everywhere," Jayaraman said.

Not everyone's convinced. Townsend said a fear is that the already shrinking hospitality

D.C. RESTAURANT WORKFORCE

2013-2023, monthly

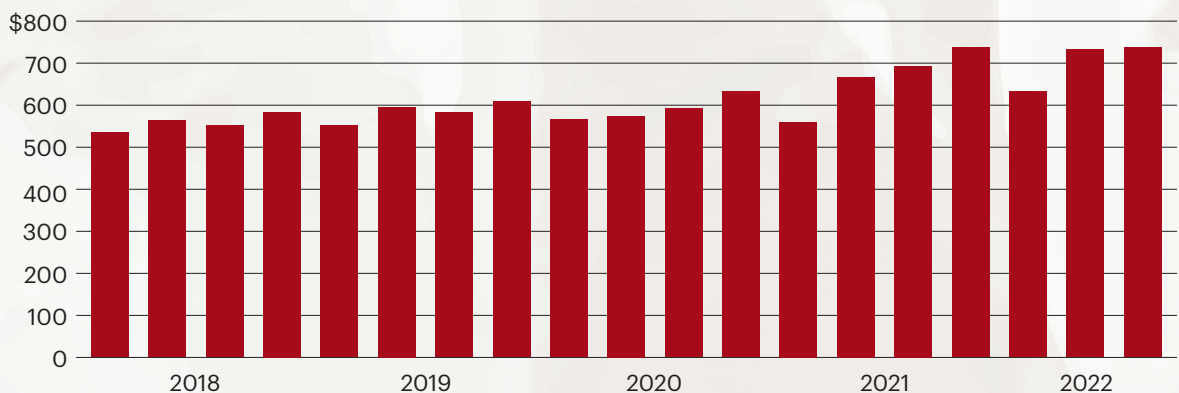
Total employment for the District's restaurant industry has its seasonal ups and downs, but slowly inched up over the years to a peak of 46,300 months before the pandemic hit, causing it to plunge as furloughs and layoffs spread through the sector. It's since rebounded, but has not yet reached pre-pandemic levels.



AVERAGE WEEKLY WAGE

Q1 2018-Q3 2022

Wages for D.C.'s restaurant sector also can be a bit seasonal over the years, but they had remained relatively stable until the last two years, when they climbed to new highs. Wages in the first quarter of 2019, for instance, rose about 3% from the same period in 2018. In 2022, first-quarter wages soared 12% year over year.

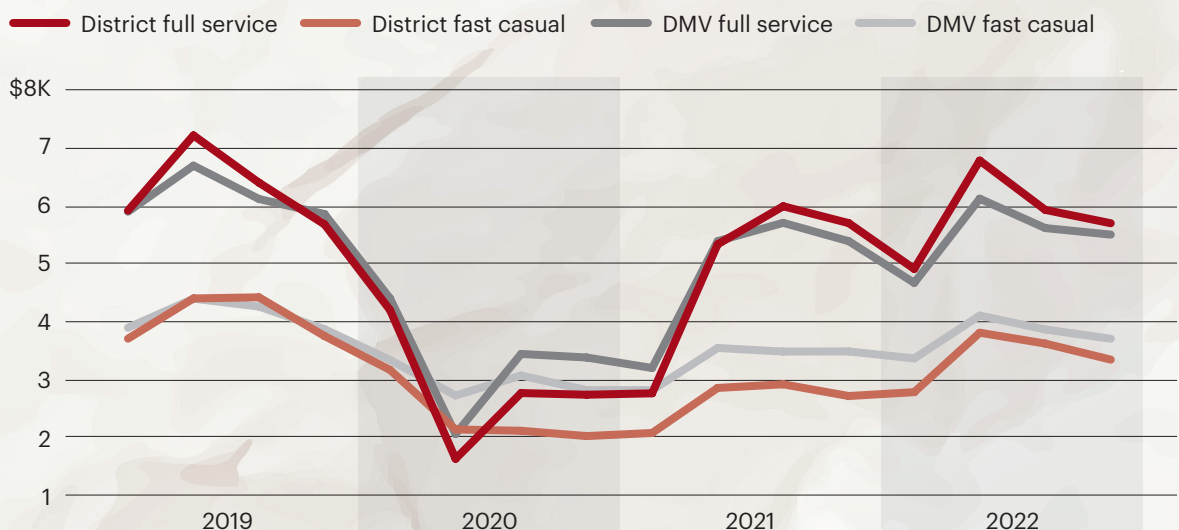


SOURCE: Bureau of Labor Statistics

MEDIAN SALES BY TYPE OF RESTAURANT

Q1 2019-Q4 2022

According to quarterly data from industry software firm MarginEdge, restaurant sales had tread ever closer to pre-pandemic levels, both in D.C. and regionally, last year, for both fast-casual and finer dining establishments. D.C. outpaced the region in full-service eatery sales, but lagged behind among fast-casual vendors.



SOURCE: MarginEdge

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workforce, which the Bureau of Labor Statistics had counted at more than 46,000 pre-pandemic, will thin further if workers who previously thrived on tips depart the industry or city.

Others say they've already had to pay higher wages just to attract folks amid a labor shortage. Among them is Ashok Bajaj, whose Knightsbridge Restaurant Group includes Bombay Club, Rasika and Sababa. As a result of earlier pay hikes, most of his workers already earn at least \$6 an hour in base pay, so the first jump come May 1 isn't so concerning. But further out?

"I want to make sure they make the money they make now, because I want to continue to attract and keep the best staff," he said. "At the same time, we have to continue to be in business. Because if I can't afford to stay in business, I can't keep paying them."

The pain, and figuring out solutions, will bear down in 2024 and beyond, potentially setting D.C. restaurants behind Northern Virginia or suburban Maryland rivals that aren't bearing such costs, some owners say.

"Because it's not a level playing field, it puts D.C. restaurants at a disadvantage," said Jason Berry, co-founder and principal of Knead Hospitality + Design, whose network spans from Mah Ze Dahr in Crystal City to Sucotash in National Harbor to Mi Vida and Gatsby in D.C.

At 101 Hospitality, owner and Executive Chef Matt Baker also doesn't expect the initial \$6 base hourly rate to affect him. After increasing prices 8% last summer to account for inflation and supply chain costs, 101 Hospitality recently hired an outside expert to keep a closer eye on commodities pricing so it can respond more rapidly to market prices. When it comes to the longer-term wage increases, Baker said the restaurant group behind Baker's Daughter, Michelin-starred Gravitas, Michele's and Conservatory is still weighing the best course of action.

"I think it is going to ruffle some feathers with people, and I think it's going to create some hesitancy for people who don't live in D.C. to come into D.C. for dinner, thinking it's going to cost more," he said. "I just think there's going to be some growing pains that are going to come from it, and I hope our customers are patient and understanding."

D.C.'S TIPPING TIMELINE: THEN ...

We've been through this before. Initiative 82 is not our first rodeo. Both sides remember battling their way through Initiative 77 in 2018, well before the pandemic waged its own war on the restaurant industry. Here's how that effort played out.

June 2018 D.C. voters, by a 58% majority vote, backed the Initiative 77 referendum, which aimed to eliminate the tip credit and raise the \$3.89 hourly pay for restaurant workers over time to the city's minimum wage, then \$13.25.

October 2018 The D.C. Council repealed Initiative 77 amid heavy lobbying from both sides. RAMW led the opposition to the initiative at the time.

December 2018 A D.C. Superior Court judge's ruling prevented the D.C. Board of Elections from certifying thousands of petition signatures that would have set up another tipped wage referendum.

Nov. 8, 2022 D.C. voters once again backed a tipped wage credit elimination referendum, at 74%, with plans to phase in increases in hourly wages, from \$5.35 to the city's minimum wage by 2027. This time, D.C. Council members indicated they wouldn't seek a repeal.

Jan. 17, 2023 D.C. Council voted to delay implementation from January to May.

... AND NOW

Initiative 82, which took effect in March, compels restaurants to hike tipped workers' hourly base pay each year to reach the citywide minimum wage by 2027 — which, as of July 1, will be \$17. Currently, restaurants pay \$5.35 per hour and only pay more if an employee's tips don't fill out the remaining \$10.75 to reach the \$16.10 hourly minimum wage. Under the new initiative, here's what cash hourly minimum wages must rise to, and by when:



SOURCE: D.C. Law, Office of Wage-Hour Compliance

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SALLY GREENBERG, CEO, National Consumers League

**A taxing problem**

New service charges are a welcome avenue for One Fair Wage's Jayaraman, who says they help level the playing field and reduce bias toward service workers who are predominantly women or people of color. "There is quite a bit of implicit bias in tipping," she said, "and service charges should get rid of that."

But they do carry one issue: Unlike tips, they are subject to the city's sales tax.

The D.C. Office of the Chief Financial Officer on March 27 issued an advisory noting it has received "several inquiries from consumers who have recently noticed an additional line-item mandatory charge on their bills" and advising customers to contact its service center or direct questions to the OAG's office.

RAMW has been lobbying the Bowser administration and D.C. Council to consider exempting those service charges from sales taxes. The organization is also looking at ways to help restaurant tenants pay rent based on a percentage of their overall sales, to help ease other cost burdens.

Council Chairman Phil Mendelson said he last talked with RAMW last fall and isn't aware of legislation in the works, though it would have to contend with a tight budget this year. "There are council members who are sympathetic to trying to help restaurants manage the transition with Initiative 82, but exactly how that will play out is not clear to me at this point," he said.

Portland's Huffman suggested a shift he's seen, and exploring himself, of food delivery models that require fewer people, but don't compromise on product. "There's been an explosion on the West Coast of high-end restaurants groups doing counter service," he said.

While D.C.'s timing is tough after Covid, Huffman said, after 45 restaurants in 15 years, he's found higher wages, and thus higher price points, are sustainable. "It's a slimmer margin business. It's not for everybody," he said. "But it doesn't mean it's not a good business."

The question is whether those margins will suffice for local restaurant owners. Without any legislative help, Townsend said, the wage changes could translate to a potential 200% increase in labor costs in the next five years.

"We're still trying to recover," he said. "It's tough for the small businesses, the mom-and-pops, the Black- and brown-owned. These are the places that will be disproportionately impacted the most by the pandemic, I-82." ❧



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A MEMORABLE ENTREE

RAMW's new CEO must manage multiple shifts as industry faces upheaval

Shawn Townsend wasn't necessarily ready to get back into the public eye after serving as D.C.'s "night mayor" for nearly three years.

Before donning that hat, he'd worked for District government, as a D.C. Office of Complaints investigator and in the Alcoholic Beverage Regulation Administration. In 2018, he took up directing nightlife and culture for the Bowser administration. Then Covid hit, and he suddenly found himself helping craft a Bridge Fund for financial support and the streateries program to keep restaurants open and operating. He finally stepped down in July 2021 and assumed a more behind-the-scenes post as a principal at influential political consulting firm Dewey Square Group — with no intention of reentering the spotlight.

When Kathy Hollinger announced plans to step down from Restaurant Association Metropolitan Washington to be CEO of Greater Washington Partnership last year, his first thought was: "Hmmm, well, someone has big shoes to fill." Then came the calls from restaurant owners asking if he planned to apply.

"Believe it or not, I am a private person, and this public-facing role

in the mayor's office of nightlife, and now at RAMW, it's just never been my thing," Townsend said in a wide-ranging interview with the Washington Business Journal from RAMW's new headquarters in a West End office building. "But I just think I established a good reputation with operators and folks in the industry, and when I was at ABRA, and in the [Mayor's Office of Nightlife and Culture], that's all I did."

Here's more of what he said, edited for space and clarity, about what he expects ahead in his new, very public-facing role.

How is the diminished daytime office population still affecting D.C.'s restaurant industry? It is tough. Downtown is the example of it, and just trying to find out if it's ever coming back. I talk to our members who have venues downtown, and they're starting to feel less optimistic about the federal government bringing employees back to work, and whether or not that stream of revenue can be replaced. The reality of it is we just don't know what the future looks like.

What do you mean? You might see tables full when you walk past a restaurant at 8 p.m. But

at 5 p.m., at happy hour and at late night, we're just not seeing the turns that we once saw pre-Covid.

What was a memorable moment during the pandemic, and what did you learn from it? One of the hardest things I've had to ever do in my career was call operators and tell them that the city was shut down indefinitely. Navigating through Covid, on behalf of the hospitality industry, was no easy task. You learn how to navigate with what you have and utilize the resources you have in order to do the best job that you can.

What are your thoughts on the Initiative 82 referendum? I've worked on a number of campaigns in my lifetime, and the good thing about campaigns is that you win some and you lose some. And when you are on the losing side, you've got to lick your wounds, and pick your head back up, and keep going. In politics and in campaigns, there are no permanent friends and no permanent enemies. In this case, the other side won, and I'm open to working with them on the implementation of this. I want to make sure that, obviously, we're advocating for our members to the best of our ability, but it

Pictured: Shawn Townsend said the role of RAMW is to be transparent, as well as "advocating to the best of our abilities to anyone that will listen and ensure that we continue to fight for relief for an industry that's still suffering."

doesn't mean that we can't sit at a table.

What are some of your goals for your new position? I want to expand the membership. I want to get more Black and brown operators not only involved — but in order to get them involved, you have to get them open. But in order to get them opened, you've got to help them get capital. So it's important to have those relationships that I have in government, in the private sector as well, to figure out how do we continue to elevate Black-owned businesses, minority-owned businesses and ideas.

What effect did your parents have on your career? My entrepreneurial spirit comes from my father. I've seen him open up a number of businesses during my lifetime. I've seen him fail, and I've seen him get back up. I've seen what success looks like from my mom, who is a retired nurse from the VA. I've seen what consistency looks like, you know? Both parents instilled in me that you don't get anything easy. You've got to go get what you deserve and just treat people the way you want to be treated.

You have worked in bars and restaurants yourself. What has that taught you? I know what it feels like to be behind the bar, or in the kitchen, when an inspector comes in the middle of the busiest time of the night. I know what it's like to manage payroll and try to figure out: How do you balance the budget, how do you make sure the bills get paid, what bills do you not pay right away, and what bills can wait? Now in this seat, I can talk to the operator and have a really good understanding of what they're going through.

Will you yourself ever open a restaurant? It's always been on my bucket list. Not sure if it will ever happen. I know the stress. You hear that someone's a business owner and you think that, you know, they're rich. And in most cases, that's not the reality, especially in the restaurant industry where the margins are so thin. You have to have a real fondness for the industry if you are in it.

Talk about Gordon Ramsay coming to Southwest D.C. Gordon Ramsay is a household name. I don't even know how many texts and calls I got after a picture surfaced of him and I talking at the opening of his restaurant at The Wharf. It's amazing to see D.C. emerge as a destination for world-renowned chefs. He told me himself that him and his team had studied D.C. for years prior to the opening this year, and that told me something right away.

Favorite place to do business: Dinner at Dauphine's or The Park at 14th. On the weekends, it's Shōtō.

On the weekends, you can find me... Attending a sporting event with my son or watching my wife's show, "Symone," on MSNBC at 4 p.m.

— Interview by Daniel J. Sernovitz