

**Order of Acting Commissioner of Labor Mario J. Musolino on the
Report and Recommendations of the 2014 Hospitality Wage Board**

February 24, 2015

The 2014 Wage Board has fulfilled its charge. After more than 4 months of study and deliberations informed by a large amount of public input from persons whose livelihoods come from the restaurant and hotel industries, the Wage Board has made several recommendations regarding tipping practices in the hospitality industry.

The Board's recommendations would simplify criteria for tipped workers and increase worker wages – especially in New York City, which has a significantly higher cost of living.

Section 656 of the Labor Law authorizes the Commissioner to accept, reject or modify the Recommendations of the Board or to remand matters for further consideration.

My decisions are as follows with respect to each of the recommendations made in the "Report and Recommendation of the Minimum Wage Board to the Commissioner of Labor Pursuant to Labor Law Section 655 (Article 19, the Minimum Wage Act)":

A. The board recommends uniform tip amounts and criteria for all tipped workers in the hospitality industry, so that the same rates apply to food service workers, service employees and service employees in resort hotels.

I accept the recommendation to consolidate tip amounts and criteria so that the same rates apply to food service workers, service employees and service employees in resort hotels, as further provided for by the board's second recommendation. In doing so, we ratify the goal set by the 2009 Wage Board and Commissioner to combine all tipped workers into one class.

B. The board recommends an increase in the tipped cash wage amounts from their current rates of \$4.90, \$5.00 and \$5.65, which have not increased since 2011, to \$7.50 per hour, effective December 31, 2015.

I accept the recommendation to increase the cash wage for all tipped workers in the hospitality industry to \$7.50 per hour beginning December 31, 2015. After receiving testimony divided between those in favor of eliminating the tip credit and those opposed to any change, I believe this recommendation strikes the proper balance. It increases wages for those who have been without a raise for far too long and completes the goal that was postponed in 2009 of establishing a single rate for all tipped workers.

C. The board recommends that, if the legislature enacts a separate minimum wage rate for New York City, then the cash wage for such workers be increased by one dollar, effective on the date that such separate minimum wage rate for New York City takes effect.

I accept the recommendation for a one-dollar increase for tipped workers in New York City if and when the legislature enacts a separate minimum wage rate for New York City. I believe this recommendation complements the Governor's initiative to provide a minimum wage in New York City that would be one dollar higher than in the rest of the state. The net effect would maintain the same tip allowance throughout the state, which would be consistent with Recommendation A.

D. The board recommends a review of whether the system of cash wages and tip credits should be eliminated.

I accept the recommendation for a review of whether to eliminate the system of cash wages and tip credits. The board received testimony and signatures from numerous individuals who called for the current system to be eliminated.

E. The board recommends that, effective December 31, 2015, the tip allowance be increased by \$1.00 per hour when the weekly average of cash wages and tips equals or exceeds the applicable hourly minimum wage rate by 150% in New York City or 120% in the rest of the state.

I reject the recommendation to give some employers a larger tip allowance. This final recommendation appears to be inconsistent with recommendations A and C, which provides for a single tip allowance for all tipped workers throughout the state, by establishing three-tiers of tip allowances, with two different thresholds applied in different parts of the state. As the members who voted for this recommendations acknowledged, the recommendation is complicated and its impact is unclear. Moreover, I reject the underlying assumptions that tip allowances function as a penalty for employers who violate the law, that relief from such "penalty" should only be extended to certain law abiding employers, and that the relief provided would be used to increase compensation to employees in the back of the house.

I would like to thank the members of the 2014 Wage Board for all their hard work, their deep commitment to advancing the well being of workers and businesses in the hospitality industry and their vision of change. I would also like to thank the numerous workers, businesses owners and operators, unions, organizations and other industry representatives who took the time to submit testimony to the Wage Board.

CONCLUSION

This Order is hereby filed with the Secretary of the Department of Labor, to be effective thirty (30) days after publication of a notice of such filing in at least ten (10) newspapers of general circulation in the state.



MARIO J. MUSOLINO
Acting Commissioner of Labor

Dated: February 24, 2015
Albany, New York