

**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)**

**I. Forward**

**A. Appointment of Board**

As part of the 2013-14 State Budget, the New York State statutory minimum wage was increased in a series of three annual increments, from \$7.25 per hour to \$8.00 per hour effective December 31, 2013, to \$8.75 per hour effective December 31, 2014, and to \$9.00 per hour effective December 31, 2015. The 2013-14 State Budget also required the Commissioner of Labor to appoint a Wage Board “to inquire and report and recommend any changes to the wage order governing wages payable to such food service workers and service employees sufficient to provide adequate maintenance and to protect the health and livelihood of employees subject to such a wage order.” And that “such Wage Board shall make such report and recommendations to the commissioner within six months of its establishment.”

On September 15, 2014, the Commissioner of Labor duly appointed the undersigned members to the 2014 Wage Board (the “Board”) to examine what, if any, modifications should be made to the required cash wage rates and the allowable credits for tips, meals and lodging for food service workers and service employees in the hospitality industry.

As required by law, the Board consists of equal representation of employees selected upon nomination of the state American Federation of Labor/Congress of Industrial Organization, representation of employers selected upon nomination of the New York State Business Council and the representation of the public, nominated by the Commissioner of Labor.

These Representatives are:

**Timothy Grippen, Chair**  
Retired Broome County Executive

**Heather C. Briccetti**  
President and CEO  
The Business Council

**Peter Ward**  
President  
New York Hotel and Motel Trades Council, AFL-CIO

## B. The Commissioner's Charge

The Commissioner tasked the Board with the following charge:

**“Tipped workers in the hospitality industry.** What modifications, if any, should be made to the required cash wage rates and the allowable credits for tips, meals and lodging for food service workers and service employees in the hospitality industries?”

## II. Report

### A. Gathering the Record: Organizational Activities

The Board first met on September 15, 2014, in Albany and New York City, with Commissioner of Labor Peter M. Rivera, Executive Deputy Commissioner Mario J. Musolino, General Counsel Pico Ben-Amotz, Deputy Commissioner for Worker Protection James Rogers, and representatives from the Department's Division of Research and Statistics to acquaint the Board with its responsibilities and establish a timeline for its further activities. Members were advised that the resources of the Department, including Counsel's Office and the Division of Research and Statistics, were available to them upon request. The Board heard a presentation from the Division of Research and Statistics about employment and wages in New York State's hospitality industry. The Board discussed obtaining public comment and agreed to schedule four public hearings, one each in Syracuse, New York City, Buffalo and Albany.

Following the public hearings, the Board met on four more occasions: December 10, December 17, January 8 and January 30. Meetings were publicized in advance and open to the public. The meetings were videotaped and posted as webcasts to the Department's website.

### B. Public Hearings

The Wage Board is given the power to conduct public hearings by Section 655.3 of the Labor Law. In order to provide the representatives of interested employer and employee groups, as well as members of the general public, with maximum opportunity to present and submit their views and data concerning possible changes for food service workers and service employees in the hospitality industries, Wage Board members and Departmental staff used multiple means of advertising the public hearings in advance. Board members shared the information announcing the hearings with persons, groups or organization memberships they felt may be impacted by any changes in the wage orders of the restaurant and hotel industries. Notices were sent to labor and employer organizations believed to have an interest in these deliberations. The Department of Labor's website and social media channels advertised these hearings. Press releases were widely distributed to media outlets around the state. For those unable to testify in

person, all publicity notices stated the opportunity to submit written testimony through December 15, 2014. Those planning to testify in person were encouraged to submit a written copy of their testimony as well. All written testimony received was posted to the Department of Labor's website.

The Board held its first public hearing on October 3, 2014, in Syracuse with 24 persons giving testimony and an estimated 30 observers. The Board held its second public hearing on October 20, 2014, in New York City with 56 persons giving testimony and an estimated 70 observers. The Board held its third public hearing on November 13, 2014, in Buffalo with 18 persons giving testimony and an estimated 20 observers. The Board held its final public hearing on December 9, 2014, in Albany with 29 persons giving testimony and an estimated 20 observers. The Board accepted written testimony through December 15, 2014, and received 135 separate submissions. The hearings were videotaped and subsequently posted as webcasts on the Department's website.

The response to the public hearings, based on the number of persons who appeared and/or testified at those hearings and the number of written comments received, was substantial and covered a wide spectrum of issues affecting the hospitality industries.

The comments received by the Board fell almost exclusively into two categories: one focused on eliminating the tipped wage altogether and the other focused on not changing the current model. Due to the volume of comments received at the public hearings and in written testimony, the Board respectfully refers the Commissioner to those written comments and videotaped sessions as he considers this Report and Recommendation.

### **III. Recommendations**

After receiving all public testimony, in person or via written submissions, the Board convened on four occasions to review this information, deliberate and develop its recommendations. At its final meeting, the Board adopted each of the following recommendations by majority votes of two to one:

**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.**

The Board received numerous comments concerning the need for simplifying the distinction between food service workers and service employees. In addition, the previous Wage Board, appointed in 2009, recommended an eventual combination of wages for all tipped employees into one class of tipped workers.

Over the course of several meetings, Board members expressed an interest in eliminating differences and distinctions among different classes of tipped workers and

simplifying the existing regulatory scheme to make it easier for employees to understand, for employers to implement and for the Department to enforce.

In moving to adopt Recommendation A, Peter Ward said a uniform standard would be better for enforcement, calling it an issue of fairness and equity. He said the Board should eliminate hoops employees have to jump through. Timothy Grippen added that it would be easier administratively.

Heather Briccetti said while this would simplify things, all three tipped classes being raised to the highest rate at once would negatively impact chambermaids and resorts workers in Upstate New York. She urged the Board to recognize communities dependent on tourism and the potential impact on jobs.

**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.**

The Board received much testimony; some recommending the complete elimination of the tip credit and others recommending it remain unchanged. During the penultimate meeting, Board members appeared to be receptive to the idea of increasing cash wage amounts and inquired about what the highest cash wages had been historically, as a percentage of minimum wages. At the close of that meeting, the Chair moved to increase the cash wage to \$7.00 per hour, but withdrew the motion when it was clear that the other members would neither second nor support that particular amount.

At the final meeting, the Chair noted the prior impasse, with respect to increasing the cash wage to \$7.00, and asked whether either of the other members had alternative resolutions to propose. Peter Ward offered the motion to increase the cash wage to \$7.50, which the Chair seconded.

During deliberations, Heather Briccetti called a jump to \$7.50 too steep of an increase and suggested that she might be agreeable to an increase to \$7 phased in over 18 months to avoid job loss.

**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.**

The 2015 Executive Budget includes provisions to increase the minimum wage to \$11.50 in New York City and \$10.50 in the remainder of the state, effective December 31, 2016. According to the budget plan, "this would bring the minimum wage more in line with the cost of living and the wage required to lift a family out of poverty."

In reaching this recommendation, Timothy Grippen noted the recent proposal by the Governor to create a separate minimum wage for New York City. In addition, the Board recognized the higher cost of living and doing business in New York City.

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

In several meetings, Peter Ward advocated for a complete elimination of the tip credit in favor of workers -- especially low-paid employees, women and minorities. He noted that a complete elimination and raise to a single minimum wage would simplify a complicated system, especially from a regulatory perspective. At the second to last meeting, he made motion to eliminate the tip credit, which was rejected by the Board.

In reaching this recommendation, Heather Briccetti said that eliminating the tip credit is not helpful or healthy for the economy. She also said it would lead to substantial job losses in the industry.

**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.**

In moving to adopt the recommendation, Heather Briccetti explained her intent to recognize two categories of employers, mainly among restaurants. One group, for whom this would be a relief instead of a penalty, is employers who could demonstrate objectively, either through payroll records or the IRS tip wage tracking, that their employees receive substantially above the minimum wage. The second is those who violate the law by not “truing up” their cash wages when tips fall short and who are not paying the minimum wage, and where disincentives exist for employees to report problems.

She said her proposal is based on a recognition that there are very big differences between the economy of New York City and that of the rest of the state and that, while the proposal sounds very complicated, some business payroll systems automatically kick back payroll when wages, tips and hours do not satisfy minimum wage requirements.

Peter Ward at an earlier meeting said anyone who was going to report to the authorities was going to report only what met their requirements under the law. He said for those who were not reporting, the opposite was likely true.

After seconding the motion, the Chair noted confusion in the language and asked Heather Briccetti to explain the practical impact. She said the intent was to reduce the impact of the increased cash wage to protect the ability of employers to highly compensate workers in the “back of the house.” The Chair responded that it sounded

reasonable, but that he was really not sure of the impact, and joined Heather Briccetti in voting in favor of the resolution so that the Labor Commissioner might assess and decide if and how this recommendation could be implemented without statutory changes or unintended consequences.

#### IV. Further Considerations

The Board would like to express its thanks to the Department's able and professional staff for their assistance to the Board. This Board would not have completed its work without their assistance.

Dated: February 2, 2015

Respectfully submitted,



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TIMOTHY GRIPPEN  
Chair, Public Member



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HEATHER C. BRICCETTI  
Employer Member

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PETER WARD  
Employee Member

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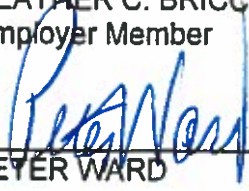


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TIMOTHY GRIPPEN  
Chair, Public Member

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HEATHER C. BRICCETTI  
Employer Member



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