

Management Alert



Minimum Wage To Increase For NY Tipped Hospitality Workers

By Robert S. Whitman and Howard M. Wexler

As hospitality employers across New York State have been expecting for several months, the Acting Commissioner of Labor has issued an *Order* increasing the minimum wage rate for all tipped employees in the industry to \$7.50 per hour, effective December 31, 2015. The Order also sets the stage for further increases to the tipped employee minimum wage.

2014 Hospitality Industry Wage Board

On September 15, 2014, the Commissioner (as the request of Governor Cuomo) assembled a three-member Hospitality Industry Wage Board and charged it with deciding whether any modifications should be made to the minimum wage rates and tip credits for food service workers and service employees in the hospitality industry.

Under the current Hospitality Industry Wage Order, food service workers must be paid a minimum wage of at least \$5.00 per hour (and employers may take a tip credit of no more than \$3.75 per hour); service employees (other employees in the hospitality industry who customarily receive tips but are not involved in serving food or beverages) must be paid a minimum wage of at least \$5.65 per hour (and employers may take a tip credit of no more than \$3.10 per hour); and service employees at resort hotels must be paid a minimum wage of at least \$4.90 per hour. The last increase to these wage levels was in 2011.

The Wage Board conducted public meetings across the State and announced its *recommendations* on February 4, 2015. On February 24, 2015, Acting Commissioner Mario J. Musolino accepted those recommendations in part. Specifically, Musolino agreed with the Wage Board's recommendation to:

1. Consolidate the tip amounts and criteria for all tipped workers in the industry so that the same rates apply to food service workers, service employees and service employees in resort hotels;
2. Increase the minimum wage rate for all tipped employees to \$7.50 per hour effective December 31, 2015; and
3. Implement a \$1.00 increase for tipped workers in New York City if and when the legislature enacts a separate minimum wage rate for the City.

Musolino rejected the Wage Board's recommendation to increase the tip allowance by \$1.00 per hour (and thus allow employers to pay employees \$1.00 less 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 the rest of the State. He agreed, however, with the Wage Board's suggestion to study whether the system of cash wages and tip credits should be eliminated entirely.

Implication for Employers

The Order significantly increases the tipped employee minimum wage rate as of December 31, 2015—by \$2.50 for food service workers, \$1.85 for most service employees, and \$2.60 for service employees at resort hotels. In addition to these increases for tipped employees, the minimum wage for non-tipped employees is already set to increase to \$9.00 per hour effective December 31, 2015. And the tipped employee minimum wage rate in New York City would go to \$8.50 if the Legislature enacts a separate minimum wage rate for the City, as urged by Mayor Bill De Blasio.

With plenty of lead time until these increases take effect on December 31, employers should start planning now to ensure that their payroll and budget processes are adapted to the revisions.

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