

Significant Changes to New York State Hospitality Industry Wage and Hour Laws Effective 12/31/15

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December 22, 2015

New York State Hospitality Industry employers face several significant changes to employee compensation, effective December 31.

These changes result from: 1) the final stage of the three-step state minimum wage increase passed by the New York State Legislature, 2) a new Hospitality Industry Wage Order enacted by the New York State Department of Labor, and 3) as applicable, a new proposed Fast Food Industry Wage Order recommended by a "Wage Board" and adopted by the New York State Commissioner of Labor in an Order dated September 10, 2015.

These changes are summarized below in three parts — the first section addresses changes applicable to all hospitality employers; the second, industry employers not covered by the Fast Food Industry Wage Order; and the third, industry employers covered by the Fast Food Industry Wage Order.

1. Changes Applicable to All Hospitality Employers

Increased Minimum Salary for Exempt Employees

- The minimum weekly salary for an exempt executive or administrative employee increases from \$656.25 to \$675 on December 31, 2015. (This is not limited to the Hospitality Industry.)
- Under federal law, this amount is likely to increase to \$970 per week at some point in 2016 for industry employers covered by federal law, but the effective date for the change has not been announced.

2. Changes Applicable to Hospitality Employers Not Covered by the Fast Food Industry Wage Order

Increased Minimum Wage

- Starting December 31, 2015, the minimum wage increases from \$8.75 to \$9.00.

Increased Minimum Wage for Tipped Employees/Consolidation of Available Tip Credit

- Effective December 31, 2015, the cash wage applicable to all tipped workers increases to \$7.50 per hour, meaning the maximum tip credit (difference between minimum wage and cash wage) has been reduced to \$1.50, from the current amount of \$3.75. Employees should be given a written notice of these changes and the new tip credit amount.
- There will no longer be a distinction between the tip credit that can be taken for tipped foodservice workers and other service workers. This means that both food service workers and other tipped service employees, such as delivery workers, must be paid at least \$7.50 per hour.

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be paid at least \$7.50 per hour.

Resulting Increase to Overtime Rates

- The overtime rate for a non-tipped minimum wage employee accordingly increases to \$13.50 per hour.
- The overtime rate for tipped employees for whom a full tip credit is taken increases to \$12.00. This is calculated by multiplying the minimum wage (\$9.00) by 1.5, and then subtracting the tip credit (\$1.50).

Uniform Allowance

- The uniform allowance increases effective December 31, 2015, to \$11.20 per week for those working over 30 hours, \$8.85 per week for those working between 20 and 30 hours, and \$5.35 per week for those working under 20 hours.

Meal Credit

- The maximum meal credit for non-service employees (e.g., cooks) will increase to \$3.10 per meal on December 31, 2015, but the meal credit for all service workers remains at \$2.50.

Spread of Hours

- As spread-of-hours pay equals the minimum wage, beginning December 31, 2015, the spread-of-hours payment is \$9.00. All overtime-eligible employees must receive spread-of-hours.

3. Changes Applicable to Employers Covered by the Fast Food Industry Wage Order

This Order covers Fast Food Establishments, defined as:

Any establishment in the state of New York: (a) which has as its primary purpose serving food or drink items; (b) where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out, or delivered to the customer's location; (c) which offers limited service; (d) which is part of a chain; and (e) which is one of thirty (30) or more establishments nationally, including: (i) an integrated enterprise which owns or operates thirty (30) or more such establishments in the aggregate nationally; or (ii) an establishment operated pursuant to a Franchise where the Franchisor and the Franchisee(s) of such Franchisor owns or operate thirty (30) or more such establishments in the aggregate nationally. "Fast Food Establishment" shall include such establishments located within non-Fast Food Establishments.

- While litigation challenging the Order continues, the Department of Labor is taking the position that the Order is effective December 31, 2015.
- Effective December 31, 2015, employees covered by this Wage Order in New York City must be paid a minimum wage of \$10.50 per hour and employees covered by this Wage Order outside of New York City must be paid a minimum wage of \$9.75 per hour. Covered employees are those whose "job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance."
- Effective December 31, 2015, the overtime rates for employees paid such minimum wage will be \$15.75 in New York City and \$14.63 outside New York City.
- The Fast Food Order does not address uniform maintenance rates, but employers covered by the Fast Food Order should continue to be treated as covered by the Hospitality Wage Order and those provisions (discussed above) deemed to apply to employees covered by the Fast Food Industry Wage Order.
- Although the Fast Food Order also does not address spread-of-hours pay, since spread-of-hours pay is based on the minimum wage, as a best practice, employers covered by the Fast Food Order should make spread-of-hours payment to covered employees at \$10.50 in New York City and \$9.75 outside New York City.
- The Fast Food Order also does not address tip credits. Accordingly, applicability of the tip credit to industry service employees (e.g., delivery personnel) is unclear. At this time, to minimize the likelihood of litigation or New York Department of



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Labor enforcement action, no tip credit should be utilized for any employees covered by the Fast Food Order.

All New York Hospitality Industry employers should ensure they have a full understanding of these changes and issue wage notices as needed by December 31 to each impacted employee detailing any compensation changes.

Jackson Lewis attorneys are available to discuss these legislative changes and any other wage and hour issues applicable to your organization on a federal, state, or local level.

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