

Governor Cuomo Announces Plan to Eliminate Tip Credit for Employees Outside the Hospitality Industry

The New York State Department of Labor, after holding multiple hearings across the state regarding the impact of tip credits for employees covered by the Minimum Wage Order for Miscellaneous Industries and Occupations, issued a [report](#) recommending the elimination of the tip credit for all miscellaneous industry workers. Governor Cuomo recently [announced](#) that this recommendation will be implemented in two phases. Effective June 30, 2020, the tip credit will be cut in half. Effective December 31, 2020, the tip credit will be eliminated entirely. This will affect an estimated 70,000 employees, in occupations such as car wash attendants, nail and hair salon workers, tow truck drivers, dog groomers, wedding planners, tour guides, and valet parking attendants. This will not affect employees covered by the Hospitality Industry Wage Order, such as service employees and food service workers in hotels and restaurants.

The New York State Department of Labor's current Minimum Wage Order for Miscellaneous Industries and Occupations permits a portion of tips or gratuities to be considered as part of an employer's minimum wage obligation, as long as: (1) the particular occupation in which the employee is engaged is one in which tips have customarily and usually constituted a part of the employee's remuneration; (2) substantial evidence is provided that the employee received in tips at least the amount of the allowance claimed; and (3) the allowance claimed by the employer is recorded on a weekly basis as a separate item in the wage record.

The current amount of the permissible tip credit varies by location and the weekly average of tips received. In New York City, the tip credit may not exceed \$3.65 per hour for employees whose weekly average of tips received is \$3.65 per hour or higher, and may not exceed \$2.25 per hour for employees whose weekly average of tips received is between \$2.25 per hour and \$3.65 per hour. In Nassau, Suffolk, and Westchester counties, the tip credit may not exceed \$3.20 per hour for employees whose weekly average of tips received is \$3.20 per hour or higher, and may not exceed \$1.95 per hour for employees whose weekly average of tips received is between \$1.95 and \$3.20 per hour. In the rest of New York State, the tip credit may not exceed \$2.90 per hour for employees whose weekly average of tips received equals or exceeds \$2.90 per hour, and may not exceed \$1.75 per hour for employees whose weekly average of tips received is between \$1.75 and \$2.90 per hour.

Effective June 30, 2020, these tip credits in all locations will be reduced by 50% (and rounded to the nearest five cents), which means any non-hospitality industry employers that utilize the tip credit for any of their employees will need to increase the minimum wage for tipped employees by half of the permissible tip credit. For example, a car wash attendant in Upstate New York who customarily and regularly receives tips in the amount of more than \$2.90 per hour must currently be paid a minimum wage of at least \$8.90 per hour (\$11.80 per hour minimum wage minus \$2.90 tip credit). Effective June 30, 2020, the car wash attendant must be paid at least \$10.35 per hour (\$11.80 per hour minimum wage minus \$1.45 per hour tip credit).

As another example, a nail salon worker in New York City who customarily and regularly receives tips in the amount of more than \$3.65 per hour must currently be paid a minimum wage of at least \$11.35 per hour (\$15.00 per hour minimum wage minus \$3.65 per hour tip credit). Half of \$3.65 per hour is \$1.825 per hour, which, rounded to the nearest five cents, is \$1.85 per hour. So, effective June 30, 2020, the nail salon worker must be paid at least \$13.15 per hour (\$15.00 per hour minimum wage minus \$1.85 per hour tip credit).

Effective December 31, 2020, the tip credits in all locations will be eliminated completely, which means that non-hospitality industry employers will be required to pay the regular minimum wage to all employees regardless of whether those employees customarily and regularly receive tips. Effective December 31, 2020, the minimum wage in New York City will be \$15.00 per hour, the minimum wage in Nassau, Suffolk, and Westchester counties will be \$14.00 per hour, and the minimum wage in the rest of New York State will be \$12.50 per hour.

If you have any questions about this Information Memo, please contact [Subhash Viswanathan](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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