

New Regulations for Tipped Employees in the Hospitality Industry

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On December 23, 2015, the New York State Department of Labor adopted new regulations for certain tipped employees in the hospitality industry. The new regulations raise the minimum wage for “food service workers” and “service employees” to \$7.50 per hour (from \$5.00 and \$5.65, respectively) and reduce the maximum available “tip credit” for such employees to \$1.50 per hour (from \$3.75 and \$3.10, respectively). The regulations became effective on December 31, 2015.

By way of background, “food service workers” are any employees who are primarily engaged in the serving of food or beverages to customers in the hospitality industry, and who regularly receive tips. Food service workers generally include, but are not limited to, wait staff, bartenders, and bussing personnel. “Service employees” are employees, other than food service workers, who customarily receive tips at the rate of \$1.95 or more per hour.

Employers of food service workers and service employees may take a tip credit so long as the workers receive: (i) a sufficient number of tips to meet the state’s minimum wage requirements; and (ii) proper written notice of their regular hourly rates and the tip credit amount. Wage and tip credit notices must be distributed before an employee starts employment, and must be reissued before implementing any changes in an employee’s pay rate or the tip credit amount.

Under the new regulations, food service workers and service employees must be paid at least \$7.50 per hour and the maximum allowable tip credit is reduced to \$1.50 per hour. Moreover, the \$1.50 tip credit is only permitted to the extent that the total “tips received” plus wages meets or exceeds the new state minimum wage rate of \$9.00 per hour. This calculation should be done on a weekly basis, meaning that the employer should calculate the total “tips received” and wages for an employee for the week, divided by the total hours worked by the employee for the week, to determine whether the \$9.00 threshold has been met. The new regulations further clarify that “tips received” means the net amount of tips received after adjustments for tip pooling, tip sharing, and credit card charges.

Hospitality employers that employ food service workers and/or service employees (including restaurants, hotels and motels, bars, entertainment venues, brewpubs and microbreweries) should review their payrolls to determine whether they are in compliance with the new regulations. Likewise, hospitality employers should revise and reissue their wage and tip credit notices accordingly.

These changes will likely cause additional wage overhead for hospitality industry employers. Brewpubs and micro-breweries utilizing tipped employees should consider how the higher minimum wage and diminishing tip credit may affect their business.

If you have any questions about any of the above information, please contact [Chip Grieco](mailto:cgrieco@bsk.com) at cgrieco@bsk.com or [Riane Lafferty](mailto:rlafferty@bsk.com) at rlafferty@bsk.com.



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