

## New York Hospitality Industry Wage Board Recommends Increase in Tipped Employee Minimum Wage

On September 15, 2014, the New York State Commissioner of Labor [assigned the three-member Hospitality Industry Wage Board](#) (Wage Board) with the task of reviewing and making recommendations regarding what changes, if any, should be made to the minimum wage rates and tip credits for food service workers and service employees in the hospitality industry. After conducting several meetings, the Wage Board voted on January 30, 2015, to recommend that the minimum wage rate for all tipped employees in the hospitality industry (regardless of whether they are classified as food service workers or service employees) be increased to \$7.50 per hour effective December 31, 2015. The webcast of the Wage Board's January 30 meeting can be found at <https://www.youtube.com/watch?v=OuLCvnMpQAk>.

Governor Cuomo has expressed his support for the Wage Board's recommendation, which will now be reviewed by the Commissioner of Labor. If the Commissioner of Labor accepts the Wage Board's recommendation, the [Hospitality Industry Wage Order](#) will be revised to reflect the increase.

Under the current [Hospitality Industry Wage Order](#), employers are required to pay food service workers a minimum wage of at least \$5.00 per hour, and may take a tip credit of no more than \$3.75 per hour, provided that the total amount of tips received plus the wages paid equals or exceeds the current regular minimum wage of \$8.75 per hour. The term "food service worker" is defined as any employee who is primarily engaged in serving food or beverages and who regularly receives tips. This includes "front of the house" employees such as wait staff, bartenders, captains, and bussing personnel, but excludes delivery workers. Employers are currently required to pay service employees (other employees in the hospitality industry who customarily receive tips but are not involved in serving food or beverages) a minimum wage of at least \$5.65 per hour, and may take a tip credit of no more than \$3.10 per hour, provided that the total amount of tips received plus the wages paid equals or exceeds \$8.75 per hour. Service employees at resort hotels are subject to a special rule that allows them to be paid a minimum wage of at least \$4.90 per hour. Non-service employees ("back of the house" employees such as cooks and dishwashers) must be paid the regular minimum wage of \$8.75 per hour, and no tip credit may be taken for those employees.

So, the Wage Board's recommendation (if it is accepted by the Commissioner of Labor) would drastically increase the tipped employee minimum wage as of December 31, 2015, by \$2.50 for food service workers, by \$1.85 for most service employees, and by \$2.60 for service employees at resort hotels. The Wage Board also voted to make two other recommendations to the Commissioner of Labor: (1) if the legislature enacts a higher regular minimum wage for New York City, then the minimum wage for tipped employees in the hospitality industry who work in New York City would increase by \$1.00 effective on the date that the higher regular minimum wage goes into effect; and (2) if a hospitality industry employer can demonstrate that the weekly average earnings of an employee (wages paid plus tips received) equals or exceeds 120% of the regular minimum wage (or 150% of the regular minimum wage if the employee works in New York City), then the employer would be eligible to pay \$1.00 less than the applicable tipped employee minimum wage.

Employers in the hospitality industry should begin to consider how this potentially significant increase in labor costs attributable to the employment of food service workers and service employees will impact their businesses, and should evaluate what adjustments may need to be made in the event that the Commissioner of Labor accepts and implements the Wage Board's recommendation. We will report on any further developments as they occur.

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