

## Reminder: The Tip Credit for Employees Outside the Hospitality Industry Has Been Cut in Half

Last week, the New York State Department of Labor formally adopted an amendment to the [Minimum Wage Order for Miscellaneous Industries and Occupations](#) that cuts the tip credit for all miscellaneous industry workers in half effective June 30, 2020. The amendment also eliminates the tip credit completely for miscellaneous industry workers effective December 31, 2020. As we [previously reported on our blog](#), the NYS DOL recommended the elimination of the tip credit for miscellaneous industry workers after holding multiple hearings across the state regarding the impact of tip credits and Gov. Cuomo announced in January that the NYS DOL's recommendation would be implemented in two phases.

The amendment revises Section 142-2.21 of the Miscellaneous Industries Wage Order to add the following sentence: "Notwithstanding any other provision contained in this part, tips or gratuities shall not be considered a part of the minimum wage on or after December 31, 2020, provided, however, that no employer shall claim a tip allowance in excess of fifty percent of the applicable allowances listed in this part and rounded to the nearest five cents on or after June 30, 2020." 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 was required to be paid a minimum wage of at least \$8.90 per hour (\$11.80 per hour minimum wage minus \$2.90 tip credit) prior to June 30, 2020. 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 tip credit). Effective December 31, 2020, the car wash attendant must be paid the full minimum wage (which will be \$12.50 by then in areas outside of New York City, Nassau, Suffolk and Westchester counties) without any tip credit.

This amendment 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 amendment will not have any impact on food service workers and other employees of hotels and restaurants who customarily receive tips because those employees are covered by the Hospitality Industry Wage Order, which has not been amended.

If you have questions about this information memo, please contact [Subhash Viswanathan](#), any [attorney](#) in our [Labor and Employment practice](#), or the attorney at the firm with whom you are regularly in contact.



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