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It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tipped Workers in the Hospitality Industry

I.D. No. LAB-40-15-00015-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of section 146-1.3; and addition of section 146-3.12 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 652 and 656

Subject: Tipped workers in the hospitality industry.

Purpose: To implement changes to the wages for food service workers and service employees in the hospitality industry.

Text of proposed rule: Paragraph (4) of subdivision (a) of section 146-1.3 of 12 NYCRR Part 146 is amended as follows:

(4) On and after December 31, 2015, a service employee shall receive a wage of at least [\$5.65] \$7.50 per hour, and credit for tips shall not exceed [\$3.35] \$1.50 per hour, provided that the total of tips received plus wages equals or exceeds \$9.00 per hour. FOR RESORT HOTELS ONLY, a service employee shall receive a wage of at least [\$4.90] \$7.50 per hour, and credit for tips shall not exceed [\$4.10] \$1.50 per hour, if the [weekly average of] tips received equal or exceed [is] at least \$5.05 per hour.

Paragraph (4) of subdivision (b) of section 146-1.3 of 12 NYCRR Part 146 is amended as follows:

(4) On and after December 31, 2015, a food service worker shall receive a wage of at least [\$5.00] \$7.50 per hour, and credit for tips shall not exceed [\$4.00] \$1.50 per hour, provided that the total of tips received plus the wages equals or exceeds \$9.00 per hour.

A new section 146-3.12 of 12 NYCRR Part 146 is added to read as follows:

§ 146-3.12. *Hourly tip rates.*

The term tips received, as used in section 146-1.3 of this Part, and the term receives tips, as used in sections 146-3.3 and 146-3.4 of this Part, shall mean the hourly rate that results when the total amount of tips received by a tipped employee during a week of work are divided by the total working time of such worker during that week of work. The total amount of tips received shall be the net amount of tips received after adjustments for tip pooling, tip sharing, and credit card charges pursuant to sections 146-2.14, 146-2.15, 146-2.16 and 146-2.20.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380, email: TippedHospitality@labor.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority: The statutory authority for the promulgation of this rule is based on the Commissioner's general rulemaking authority under Labor Law § 21(11) and the specific statutory directives at Labor Law §§ 652(6) and 656 to appoint a wage board and take action on the wage board's recommendations.

Legislative Objectives: This rulemaking is the final step in implementing public policy objectives that the legislature sought to advance in enacting Labor Law § 652(6), which expressly established an administrative process for setting rates for hourly cash wages paid to tipped workers in

the hospitality industry. Specifically, the legislature mandated that modifications in the minimum hourly cash wage for tipped workers under 12 NYCRR Part 146 "shall be made by a wage order promulgated by the commissioner pursuant to section six hundred fifty six of this article" when the statutory minimum wage for all workers was increased in 2013. Laws of 2013, Chapter 57, Part P, amending Labor Law § 652(1) and adding § 652(6).

Pursuant to the above-referenced objectives and mandate and Labor Law § 656, the Commissioner appointed a wage board comprised of representatives of employers, employees and the public to investigate, hold public hearings around the state, and report back with recommendations on the issues reserved by the legislature for resolution through this process, in accordance with Labor Law § 655. The board met nine times between September 15, 2014 and January 30, 2015, including four public hearings around the state at which 127 persons testified, with an additional 140 persons in attendance, and four deliberative meetings and received 135 written submissions. Each of these nine meetings was publicized in advance, open to the public, videotaped, and subsequently webcast. The notices, webcasts, written submissions, and other materials, including the Commissioner's initial charge to the wage board, are posted on the Department of Labor's website at www.labor.ny.gov/wageboard2014.

Upon receipt and filing of the wage board's report and recommendations, the Commissioner gave public notice of, and solicited public comment on, the wage board's report and recommendations, received over 6,000 and timely issued an order, dated February 24, 2015, accepting certain recommendations and rejecting others, in accordance with Labor Law § 656. The board's report and recommendation, and the Commissioner's order are also posted on the Department's website at the address identified above.

The wage board's recommendations to establish uniform tip amounts and criteria for all tipped workers in the hospitality industry were overwhelmingly supported by the public comments received by the Commissioner: 6,112 in support, 187 in opposition. In adopting those recommendations, the Commissioner found that, "[i]n doing so, we ratify the goal set by the 2009 Wage Board and Commissioner to combine all tipped workers into one class." In accepting the board's recommendation of "an increase in the tipped cash wage amounts from their current rates of \$4.90, \$5.00 and \$5.65, which have not increased since 2011, to \$7.50 per hour, effective December 31, 2015," the Commissioner made the following findings:

After receiving testimony divided between those in favor of eliminating the tip credit and those opposed to any change, I believe this recommendation strikes the proper balance. It increases wages for those who have been without a raise for far too long and completes the goal that was postponed in 2009 of establishing a single rate for all tipped workers.

For the reasons set forth above, this rulemaking, which equalizes and increases to \$7.50 the minimum hourly wage rate for tipped employees in the hospitality industry, accords with the public policy objectives that the legislature sought to advance in raising the minimum wage and enacting Labor Law § 652(6) while delegating to the Commissioner, upon a wage board recommendation, with public notice and comment, the responsibility for determining such rates.

Needs and Benefits: The purpose of the rule is to provide the rate setting determination that the legislature delegated to the Commissioner, upon recommendation of a wage board, and mandated "shall be made by wage order promulgated by the commissioner." Labor Law § 652(6). The need for the rule is to comply with that legislative mandate. The benefit of the rule is that it "strikes the proper balance" between eliminating the tip credit that benefits employers, and denying the rate increases that benefit tipped workers, and "increases wages for those who have been without a raise for far too long and completes the goal that was postponed in 2009 of establishing a single rate for all tipped workers."

Costs: (a) The cost to regulated parties – employers in the hospitality industry – will be de minimis, according to the testimony and comments provided by, or on behalf of, employers to the wage board and the Commissioner, which indicated that if rates for tipped workers are increased, employers will not absorb those increased costs, but will, instead, pass them along to consumers in the form of higher prices, or offset them by identifying cost savings that will allow them to maintain their overall labor costs at desired levels. While employers suggested that increases in these hourly rates will be offset by employment losses among tipped workers in the hospitality industry, similar suggestions that were made last time that these rates were increased on January 1, 2011, do not appear to have resulted in any measurable losses. In fact, in the intervening years, employment in the hospitality industry in New York actually increased by 14.9 percent, from 589,514 in 2010 to 677,626 in 2013. (Source: Quarterly Census of Employment and Wages). By contrast, hospitality industry employment increases ranged from 6 to 10.4 percent in neighboring states, and by 9.6 percent nationwide, during this same time period. Id. Most of New York's growth in the hospitality industry occurred among tipped oc-

cupations; the growth among untipped occupations was nearly flat. (Source: Occupational Employment Survey).

(b) The costs to the Department, the state and local governments for implementation and continuation of the rule will be de minimus. The Department currently works with employers and employees on outreach and enforcement for the current wage order for the hospitality industry and the proposed rulemaking is not expected to increase the costs for such outreach and enforcement. Because the proposed rulemaking adopts uniform tip amounts and criteria for all tipped workers in the hospitality industry, costs could decrease due to efficiencies associated with such uniformity.

(c) The sources for such information and the methodology are set forth above.

Local Government Mandate: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Parts 141, 142, 143 and 146 by Labor Law Section 651(5)(n) and 651(5) (last paragraph). They are not covered under Part 143 because it covers only certain non-profit organizations, in accordance with Labor Law § 652(3).

Paperwork: None.

Duplication: This rule exceeds the federal minimum wage requirements, but follows the requirements set by the New York State Legislature.

Alternatives: These amendments made are required by law and thus there are no alternatives to amending these regulations.

Federal Standards: This rule implements the minimum wage and requirements set forth in New York law that exceeds the federal minimum wage. There are no other federal standards relating to this rule.

Compliance Schedule: The regulated community will be required to comply with this regulation on and after December 31, 2015.

Regulatory Flexibility Analysis

Effect of Rule: All small businesses, but no local governments, are potentially affected by the changes in the regulations.

Compliance Requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. Small businesses in the hospitality industry, and small businesses in other industries that employ workers at rates that are near, or below, the new statutory minimum wage rates, will have to review their payrolls in light of the new statutory minimum wage rates and the proposed wage orders to determine whether they will need to increase the amount that they pay to their workers.

Professional Services: No professional services would be required to effectuate the purposes of this rule.

Compliance Costs: These rules do not impose any additional compliance costs separate and apart from the costs imposed under the current rule. Such compliance costs do not exceed the cost of reviewing and increasing pay rates consistent with the increases implemented by this rulemaking.

Economic and Technological Feasibility: Compliance with these regulations will be economically and technologically feasible because these regulations simply adjust existing rates, without imposing new, or altering existing, requirements or procedures for complying with minimum wage requirements.

Minimizing Adverse Impact: Employers who testified and provided comments to the wage board and the Commissioner indicated that if rates for tipped workers are increased, employers will not absorb those increased costs, but will, instead, pass them along to consumers in the form of higher prices, or offset them by identifying cost savings that will allow them to maintain their overall labor costs at desired levels.

Small Business and Local Government Participation: Opportunities to participate in the development of this rulemaking were provided through two stages of notice and comment. At the first stage, a wage board for the hospitality industry met nine times between September 15, 2014 and January 30, 2015, including four public hearings around the state at which 127 persons testified, with an additional 140 persons in attendance, and four deliberative meetings and received 135 written submissions. Each of these nine meetings was publicized in advance, open to the public, videotaped, and subsequently webcast. The notices, webcasts, written submissions, and other materials, including the Commissioner's initial charge to the wage board, are posted on the Department of Labor's website at www.labor.ny.gov/wageboard2014.

At the second stage, upon receipt and filing of the wage board's report and recommendations, the Commissioner gave public notice of, and solicited public comment on, the wage board's report and recommendations, and received over 6,000 submissions.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: These rules apply to all private employers in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements: There are no changes in the reporting or record-keeping requirements regarding

the minimum wage. Employers in the hospitality industry, and employers in other industries that employ workers at rates that are near, or below, the new statutory minimum wage rates, will have to review their payrolls in light of the new statutory minimum wage rates and the proposed wage orders to determine whether they will need to increase the amount that they pay to their workers.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: These rules do not impose any additional compliance costs separate and apart from the costs that exist under the current rule. Such compliance costs do not exceed the cost of reviewing and increasing pay rates consistent with the increases implemented by this rulemaking.

5. Minimizing adverse impact: Employers who testified and provided comments to the wage board and the Commissioner indicated that if rates for tipped workers are increased, employers will not absorb those increased costs, but will, instead, pass them along to consumers in the form of higher prices, or offset them by identifying cost savings that will allow them to maintain their overall labor costs at desired levels.

6. Rural area participation: Opportunities to participate in the development of this rulemaking were provided through two stages of notice and comment. At the first stage, a wage board for the hospitality industry met nine times between September 15, 2014 and January 30, 2015, including four public hearings around the state at which 127 persons testified, with an additional 140 persons in attendance, and four deliberative meetings and received 135 written submissions. Each of these nine meetings was publicized in advance, open to the public, videotaped, and subsequently webcast. The notices, webcasts, written submissions, and other materials, including the Commissioner's initial charge to the wage board, are posted on the Department of Labor's website at www.labor.ny.gov/wageboard2014.

At the second stage, upon receipt and filing of the wage board's report and recommendations, the Commissioner gave public notice of, and solicited public comment on, the wage board's report and recommendations, and received over 6,000 submissions.

Job Impact Statement

1. Nature of impact: This rulemaking equalizes and increases the minimum hourly cash wage rate for all tipped workers in the hospitality industry to conform to the February 24, 2015, order of the Commissioner upon the report of the 2014 hospitality wage board. In doing so, it is not expected to have a substantial impact on jobs or on employment opportunities.

The impact that this rulemaking will have should be positive, for tipped workers who are paid less than \$7.50 per hour, without negatively impacting jobs, employers, or the hospitality industry. The purpose of this rulemaking is to provide uniform tip allowances and criteria for all tipped workers in the hospitality industry, so that the same rates apply to food service workers, service employees and service employees in resort hotels, and to increase the minimum hourly tipped cash wage rates from their current rates of \$4.90, \$5.00 and \$5.65, which have not increased since 2011, to \$7.50 per hour, effective December 31, 2015.

While there are many studies that examine the impact of minimum wage increases on jobs, the various findings are inconsistent and inconclusive, with some studies suggesting a decrease in employment and others an increase. A United States Department of Labor review of 64 studies on minimum wage increases found no discernible negative effect on employment. www.dol.gov/minwage/mythbuster.htm

On January 1, 2011, rates for tipped workers in New York's Hospitality industry were increased from \$4.90 to \$5.65 for some workers and \$4.65 to \$5.00 for others. During the intervening years, employment in the hospitality industry in New York increased by 14.9 percent, from 589,514 in 2010 to 677,626 in 2013. (Source: Quarterly Census of Employment and Wages). By contrast, hospitality industry employment increases ranged from 6 to 10.4 percent in neighboring states, and by 9.6 percent nationwide, during this same time period. Id. Most of New York's growth in the hospitality industry occurred among tipped occupations; the growth among untipped occupations was nearly flat. (Source: Occupational Employment Survey).

The impact of these increases on employers is tempered by the fact that almost half of the labor force in the hospitality industry is comprised of occupations that do not customarily receive tips. For that untipped half of the labor force, as well as for the portion of the remaining tipped minority who are already paid at least \$7.50 an hour, no increased costs should result from the increase in the minimum hourly tipped wage rate to \$7.50.

2. Categories and numbers affected: Only businesses in the hospitality industry that employ tipped workers and pay them less than \$7.50 per hour are affected by this rule. Overall, the entire hospitality industry and workforce consists of approximately 677,538 people employed in 46,901 establishments in New York State in 2013.

No data is available to identify the number, or percentage of tipped employees in the hospitality industry in New York who are paid less than

\$7.50 per hour. Occupational Employment Survey results report estimates of overall employment in New York by occupation, and if those numbers are grouped according to whether the occupation customarily receives tips, the following general breakdowns are disclosed. Among the occupations that are prevalent in the hospitality industry (SOC numbers listed below), those that do not customarily receive tips account for almost half of the workforce. Those untipped occupations include various food preparation and cleaning occupations and supervisors (SOC 35-1011, 35-1012, 35-2011, 35-2012, 35-2014, 35-2015, 35-2019, 35-2021, 35-9021, 35-9099, 37-1011, 37-2011 and 43-4081 at labor.ny.gov/stats/lswage2.asp). Tipped occupations that are prevalent in the hospitality industry account for about a quarter of the workforce, with most of those engaged in food service, wait staff, bartenders, and bus persons (SOC 35-3011, 35-3031, 35-3041 and 35-9011 at id.), and the balance engaged in other services, including housekeeping and coat checks (SOC 35-9031, 37-2012, 39-3093, 39-6011 and 39-6012 at id.). The remaining occupations, whose scope is broad enough to cover a mix of tipped and untipped occupations found in and out of the hospitality industry account for about a fifth of the workforce (35-3021, 35-3022).

Fewer workers in food related occupations in these industries work full time compared to workers in all industries. Workers aged 16-24 comprise over one-third of workers in food-related occupations.

3. Regions of adverse impact: These regulations will not have a disproportionate impact upon any area of the State.

4. Minimizing adverse impact: Employers can minimize any negative impact on jobs resulting from the limited increases in labor costs that result in New York's hospitality industry from this rulemaking by increasing sales, efficiencies, or prices, by decreasing costs, or by any combination thereof.

(8) review of the minutes of meetings of the governing body;
(9) inspection of the physical plant and equipment, and review of protective procedures in relation to structural and fire hazards;

(10) identification of any construction or improvements to the premises completed since the last visit; and

(11) review of written reports by local inspectors and other authorized inspection, certifying, or accrediting agencies, and review of conditions about which any recommendations for improvement have been made.

Text of proposed rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority: Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Subdivisions (a) and (b) of Section 7.15 of the Mental Hygiene Law authorize the Commissioner to evaluate programs and services of prevention, diagnosis, examination, care, treatment, rehabilitation, training, and research for persons with mental illness, and permits such activities to be undertaken in cooperation and agreement with other departments or agencies of the State, local or Federal government, or with other organizations and individuals.

Section 7.17 of the Mental Hygiene Law establishes and identifies a distinct list of hospitals to be directly operated by the Office of Mental Health. This section directs the Commissioner to establish policies and procedures for the organization, administration and operation of these facilities under his or her jurisdiction.

Sections 31.02 and 31.04 of the Mental Hygiene Law authorize the Commissioner to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.

Section 31.05 of the Mental Hygiene Law establishes criteria for the issuance of operating certificates.

Section 31.07 of the Mental Hygiene Law gives the Commissioner the power to conduct periodic investigations into the operations of providers of mental health services which are required by Article 31 to have an operating certificate, and to inspect and examine records, including, but not limited to, medical service and financial records, to determine whether such providers are complying with applicable provisions of the Mental Hygiene Law and applicable laws, rules and regulations.

Section 31.09 of the Mental Hygiene Law gives the Commissioner or his or her authorized representative the power to inspect facilities, examine records, conduct examinations and interviews, and obtain such other information as necessary to carry out his or her responsibilities under Article 31. All such investigations and inspections shall be made by persons competent to conduct them.

Section 31.11 of the Mental Hygiene Law requires every holder of an operating certificate to cooperate with the Commissioner in any inspection or investigation, and to permit the Commissioner to inspect its facility, books and records, including records of persons receiving services.

Sections 31.13 and 31.19 of the Mental Hygiene Law further authorize the Commissioner or his or her representatives to examine and inspect such programs to determine their suitability and proper operation.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and charges OMH with the responsibility for ensuring that persons with mental illness receive high quality care and treatment.

3. Needs and Benefits: Part 553 of Title 14 NYCRR requires that all facilities under the jurisdiction of the Office of Mental Health (OMH) be visited and inspected by reviewers designated by the Commissioner. Existing regulations further state that unless otherwise specifically stated in the Part, reviewers shall be personnel of OMH who are competent and qualified to conduct such inspections. This proposal will amend Part 553 by clarifying that the term, "facilities under the jurisdiction of the Office of Mental Health," pertains to facilities that are required to obtain an operating certificate from the Commissioner pursuant to Article 31 of the Mental Hygiene Law. This specifically excludes OMH-operated psychiatric centers, which are psychiatric facilities that are run by OMH, not licensed by OMH, and which are subject to OMH policies by operation of law. This amendment will enable an external entity to review and inspect OMH-operated facilities, rather than having the reviews be completed by personnel of the Office. It is believed that this external review will enhance the health, safety and quality of care in OMH-operated psychiatric centers. There will be no impact on OMH-licensed facilities or programs.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Visitation and Inspection of Facilities

I.D. No. OMH-40-15-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Part 553 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 7.15, 7.17, 31.02, 31.04, 31.05, 31.07, 31.09, 31.11, 31.13 and 31.19

Subject: Visitation and Inspection of Facilities.

Purpose: Clarification of the term "facilities under the jurisdiction of the Office of Mental Health" for purposes of Part 553.

Text of proposed rule: (Statutory Authority: Mental Hygiene Law §§ 7.09, 7.15, 7.17, 31.02, 31.04, 31.05, 31.07, 31.08, 31.09, 31.11, 31.13, 31.19, 41.13)

Section 553.3 of Title 14 NYCRR is amended to read as follows:

§ 553.3 Scope of reviews and inspections.

(a) For purposes of this Part, "facilities under the jurisdiction of the Office of Mental Health" shall mean facilities required to obtain an operating certificate from the Commissioner pursuant to Article 31 of the Mental Hygiene Law.

(b) Prior to visiting a facility, the reviewer will study reports of previous reviews and inspections and the following information submitted by the facility:

- (1) clinical and statistical data, and
- (2) the policies of the facility.

[(b)](c) The onsite review and inspection shall include, as appropriate:

- (1) review of program operation in comparison to programs authorized;
- (2) private conversation with any person receiving mental health services or employee who so desires;
- (3) review of case records of persons currently or previously served;
- (4) review of the legal admission documents of persons receiving services and the conformity of the facilities admission procedures with the law and regulations;
- (5) review of the records of restraint and seclusion;
- (6) review of the qualifications of the staff and the staffing pattern in comparison to those authorized;
- (7) inspection of the records and storage of medications, and procedures for prescription and dispensing of medications;