

HOSPITALITY

ALERT

DESPITE THE RISE IN MINIMUM WAGE RATES, EMPLOYERS IN THE HOSPITALITY INDUSTRY WILL NOT BE REQUIRED TO PAY ADDITIONAL DIRECT WAGES TO FOOD SERVICE WORKERS OR SERVICE EMPLOYEES

By Eli Z. Freedberg, Carolyn D. Richmond and Glenn Grindlinger

In April of this year, New York's Governor Cuomo signed legislation that will increase the minimum wage rates in New York State over a three-year period. Presently, all non-exempt New York State employees must receive at least \$7.25 per hour; however on December 31, 2013, the minimum wage in New York will increase by \$0.75 to \$8.00 per hour. On December 31, 2014, the minimum wage will rise another \$0.75 to \$8.75 per hour. Finally, on December 31, 2015, the minimum wage will increase to \$9.00 per hour.

Until now, there has been no indication on how the minimum wage hike will affect employers in the hospitality industry that apply the "tip credit" towards food service workers' or service employees' wages. Presently, New York employers in the hospitality industry may pay food service workers (employees such as servers, bussers, runners and bartenders who are primarily engaged in serving food and beverages to guests) a direct minimum wage of \$5.00 per hour and apply a tip credit of \$2.25 towards the food service workers' wages (provided the food service worker earns at least \$2.25 per hour in tip compensation). Similarly,

employers in the hospitality industry may pay service employees (employees, such as delivery workers or bathroom attendants who customarily receive tips at the rate of \$1.60 an hour) a direct wage of \$5.65 per hour and apply a \$1.60 tip credit towards the service employees' wages (provided the service employee earns at least \$1.60 per hour in tip compensation).

The New York State Department of Labor (DOL) has just issued proposed changes to the Wage Order for the Hospitality Industry (Wage Order) that reflects the rise in minimum wage rates. In a rare flash of good news for the hospitality industry, the proposed changes increase the tip credit that employers may take toward the wages of food service and service employees' wages. Thus, hospitality employers will be permitted to continue to pay food service workers a direct wage of \$5.00 an hour and service employees \$5.65 an hour notwithstanding the increase to the minimum wage.

The chart on the following page itemizes the applicable minimum wage rates and overtime rates applicable to food service workers and service employees.

Year	NYS Minimum Wage	Regular NYS Overtime Rate	NYS Tip Credit for food service workers	NYS Direct Wage owed to food service workers	NYS Tipped Overtime Rate for food service worker	NYS Tip Credit for service employees	NYS Direct Wage owed to service employees such as a delivery person or bathroom attendant	NYS Tipped Overtime Rate for service employees such as a delivery person or bathroom attendant
1/1/2011	\$7.25	\$10.88	\$2.25	\$5.00	\$8.63	\$1.60	\$5.65	\$9.28
After 12/31/13	\$8.00	\$12.00	\$3.00	\$5.00	\$9.00	\$2.35	\$5.65	\$9.65
After 12/31/14	\$8.75	\$13.13	\$3.75	\$5.00	\$9.38	\$3.10	\$5.65	\$10.03
After 12/31/15	\$9.00	\$13.50	\$4.00	\$5.00	\$9.50	\$3.35	\$5.65	\$10.15

The DOL has also identified changes to uniform maintenance pay where an employer requires employees to wear uniforms that require either, washing, ironing, dry cleaning, alterations, repair or any other maintenance. After December 31, 2013, an employer will have to pay an employee an additional \$9.95 per week if the employee works more than 30 hours, \$7.85 per week if the employee works between 20 and 30 hours and \$4.75 per week if the employee work 20 hours or less. After December 31, 2014, an employer will have to pay an employee an additional \$10.90 per week if the employee works more than 30 hours, \$8.60 per week if the employee works between 20 and 30 hours and \$5.20 per week if the employee work 20 hours or less. After December 31, 2015, an employer will have to pay an employee an additional \$11.20 per week if the employee works more than 30 hours, \$8.85 per week if the employee works between 20 and 30 hours and \$5.35 per week if the employee work 20 hours or less.

In addition, the DOL has proposed new meal credit rates for hospitality employers that provide meals to their employees. After December 31, 2013, an employer may take a \$2.75 credit per meal. After December 31, 2014, an employer may take a \$3.00 credit per meal, and after December 31, 2015, an employer may take a \$3.10 credit per meal. Lodging credits in restaurants and in all-year

hotels and meal and lodging credits in resort hotels have also been revised by the DOL.

Finally, the DOL increased the minimum weekly salaries that employers are required to pay exempt executive or administrative employees in order to ensure that such employees are exempt from overtime requirements. After December 31, 2013, an employer must pay such employees at least \$600.00 per week inclusive of board, lodging and other allowances. After December 31, 2014, this salary threshold increases to \$656.25 per week inclusive of board, lodging and other allowances, and after December 31, 2015, the amount increase to \$675.00 per week inclusive of board, lodging and other allowances.

Of course, all of these numbers are preliminary and still may be adjusted. Fox Rothschild will continue to keep you advised of any additional changes.

If you require any assistance in applying the new minimum wage rates please contact Carolyn D. Richmond at crichmond@foxrothschild.com or Eli Z. Freedberg at efreedberg@foxrothschild.com or Glenn S. Grindlinger at ggrindlinger@foxrothschild.com or another member of Fox Rothschild's New York Labor & Employment Department. Visit us on the web at www.foxrothschild.com.

Attorney Advertisement

© 2013 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.