



July 2015

# NEW YORK FAST FOOD WAGE BOARD RECOMMENDS INCREASING THE MINIMUM WAGE FOR “FAST FOOD” EMPLOYEES TO \$15.00 PER HOUR

By Carolyn D. Richmond, Glenn S. Grindlinger & Gregg M. Kligman

As expected, on July 22, 2015, the Fast Food Wage Board (“Wage Board”) appointed by New York Governor Andrew Cuomo unanimously recommended increasing the minimum wage for fast food employees across New York State to \$15.00 per hour. While the \$15.00 minimum wage for fast food employees will not be implemented overnight, New York State fast food restaurants must be prepared for substantial increases to their labor costs over the next several years.

In May 2015, through the New York Commissioner of Labor, Governor Cuomo empanelled the Wage Board to review whether the minimum wage in the fast food industry should be raised in order to protect the “health and maintenance” of employees in the industry. The Wage Board consisted of three members: (1) Mayor Byron Brown of Buffalo; (2) Mike Fishman, Secretary-Treasurer of the Service Employees International Union; and (3) Kevin Ryan,

Chairman and Founder of Gilt. In published reports, Governor Cuomo has suggested that a \$15.00 minimum wage would be appropriate.

The Wage Board held four hearings around the state and took or received testimony from more than 2,000 interested persons and groups. According to the Wage Board, the testimony and information that they received indicated that a \$15.00 minimum wage across the state was “necessary” for the health and maintenance of the fast food employees. The Wage Board did note that businesses would need time to adjust to the increase and that there were discrepancies between New York City’s economy and the economy in the rest of the state. Accordingly, the Wage Board recommended that the \$15.00 minimum wage be phased in over three years in New York City and over five and one-half years in the rest of the state under the following schedule:

<b>New York City</b>	<b>Rest of State</b>
\$10.50 on December 31, 2015	\$9.75 on December 31, 2015
\$12.00 on December 31, 2016	\$10.75 on December 31, 2016
\$13.50 on December 31, 2017	\$11.75 on December 31, 2017
\$15.00 on December 31, 2018	\$12.75 on December 31, 2018
	\$13.75 on December 31, 2019
	\$14.50 on December 31, 2020
	\$15.00 on July 1, 2021

These recommended increases to the minimum wage apply only to “fast food employees” in “fast food establishments.” The Wage Board defined a “fast food employee” as “any person employed or permitted to work at or for a fast food establishment by any employer where such person’s job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning or routine maintenance.” A “fast food establishment” is any establishment in New York serving food or drink items:

- a) where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out or delivered to the customer’s location;
- b) which offers limited service;
- c) which is part of a chain; and
- d) which is one of 30 or more establishments nationally, including:
  - i. an integrated enterprise which owns or operates 30 or more such establishments in the aggregate nationally; or
  - ii. an establishment operated pursuant to a franchise where the franchisor and the franchisee(s) of such franchisor own or operate 30 or more such establishments in the aggregate nationally.

Significantly, the definition of “fast food establishment” contains a number of key terms. The Wage Board stated that the term:

- “Chain” refers to a set of establishments that share a common brand, or that are characterized by standardized options for décor, marketing, packaging, products and services.
- “Integrated enterprise” means two or more entities sufficiently integrated so as to be considered a single employer as determined by application of the following factors:
  - o the degree of interrelation between the operations of multiple entities;

- o the degree to which the entities share common management;
  - o whether there is centralized control of labor relations; and
  - o the degree of common ownership or financial control.
- “Franchisee” refers to a person or entity to whom a franchise is granted.
  - “Franchisor” refers to a person or entity that grants a franchise to another person or entity.
- However, the Wage Board failed to define the term “limited service,” which will certainly cause confusion and concern.

The Wage Board’s recommendations will be sent to the Commissioner of Labor, who will publish and review them. Upon publication, individuals will have 15 days to comment on the recommendations. The Commissioner of Labor will then accept, reject or modify the recommendations. Though there is the possibility that the recommendations will be modified, it is widely expected that the Wage Board’s recommendations will be adopted in their entirety. The Commissioner will then promulgate a new wage order through the normal regulatory process.

As a result of the recommendations of the Wage Board, businesses are advised to review their operations to determine whether they qualify as a “fast food establishment” under the new recommendations. If a business qualifies as a fast food establishment, it must ensure that it is prepared to implement the projected wage increases that commence on December 31, 2015.

For more information about this alert, please contact Carolyn D. Richmond at 212.878.7983 or [crichmond@foxrothschild.com](mailto:crichmond@foxrothschild.com), Glenn S. Grindlinger at 212.905.2305 [ggrindlinger@foxrothschild.com](mailto:ggrindlinger@foxrothschild.com), Gregg M. Kligman at 212.878.7910 or [gkligman@foxrothschild.com](mailto:gkligman@foxrothschild.com) or any member of the firm’s Labor & Employment Department.