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NEW YORK'S FAST FOOD WAGE ORDER ADOPTED: MINIMUM WAGE TO RISE TO \$15.00 PER HOUR

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As expected, on September 10, 2015, New York State Acting Commissioner of Labor Mario J. Musolino issued the 2015 Fast Food Wage Order officially adopting the report and recommendations of the 2015 Fast Food Wage Board. Under the Order, the minimum wage for fast food workers will increase to \$15.00 by December 31, 2018, in New York City and by July 1, 2021, across the rest of the state. The increase in the minimum wage for fast food workers shall be phased in under the following schedule:

| New York City | Rest of State |
|------------------------------|------------------------------|
| \$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 increases to the minimum wage apply only to “fast food employees” in “fast food establishments.” The Order defines a “fast food employee” as:

[A]ny 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:

- a) which has as its primary purpose serving food or drink items;
- b) 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;

- c) which offers limited service;
- d) which is part of a chain; and
- e) 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 owns 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 Order states that:

- “Chain” refers to a set of establishments which share a common brand, or which 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, as with the Fast Food Wage Board’s initial report and recommendations, the Order fails to define the term “limited service,” which will certainly cause confusion, concern and litigation.

As a result of the Order, 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 wage increases that commence on December 31, 2015.

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