



New York Employers – Minimum Wage Increases and Other Reminders for the New Year

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As we approach the end of the year, it is critical to remember and implement new legal requirements that go into effect on December 31, 2017. Failure to comply with these requirements could subject an uninformed employer to substantial financial liability.

Minimum Wage Increases

Effective December 31, 2017, the minimum wage, tip credit, and minimum salary levels in New York will increase. The increases will vary depending upon an employer's size and location. On December 31, 2017, the regular, minimum wage and fast food minimum wage in New York will increase as follows:

Location	Regular Minimum Wage	Fast Food Minimum Wage
New York City – Large Employers**	\$13.00	\$13.50
New York City – Small Employers	\$12.00	\$13.50
Long Island & Westchester County	\$11.00	\$11.75
Remainder of New York State	\$10.40	\$11.75

**** A New York City – Large Employer is one with 11 or more employees. A New York City – Small Employer is one with 10 employees or less.**

As a reminder, a “fast food employee” is any individual working in a fast food establishment whose 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:

1. 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;
2. which offers limited service;
3. which is part of a chain; and
4. which is one of 30 or more establishments nationally, including:
 1. an integrated enterprise which owns or operates 30 or more such establishments in the aggregate nationally; or
 2. 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.

The rate for spread of hours pay, call-in pay, and similar non-working time payments that are based on the minimum wage will increase to match the minimum wages outlined above. The specific amount will depend on an employer's location, number of employees, and whether it is designated as a fast food establishment.



Tip Credits And Other Allowances

In the hospitality industry, the tip credit, meal credit, and uniform maintenance allowances will also change effective December 31, 2017, with the amount varying depending upon the employer's location, size, and the designation of whether the employee is a food service worker, service employee, or non-service employee.

A "food service worker" is one who:

- is primarily engaged in serving food and beverages to guests, patrons, and customers, other than delivery employee;
- customarily and regularly receives tips from such guests, patrons, and customers; and
- does not spend more than two (2) hours in any day or more than 20% of their time performing work where tips are not customarily received.

A "service employee" is one who regularly and customarily receives tips for the work they perform and who is not a food service worker or a fast food employee. A "non-service employee" is any non-exempt employee other than a food service worker, service employee, or fast food employee.

Before a New York employer can take a tip credit, they must inform the employee in writing, in English and in the employee's native language if not English, that the employer is taking a tip credit and the amount of the tip credit. The employer must also provide the employee with notice of their regular rate of pay, overtime rate of pay and their regular payday. In addition, the employer must advise the employee that if the cash wages they receive, plus the employee's tips, do not equal the regular minimum wage for all hours worked, the employer will pay the employee the difference. Finally, in order to take the tip credit, the employer must notify the employee that the employer will not take any tips received by the employee except those that are contributed to a valid tip pooling or tip sharing arrangement. If an employer fails to provide this information, they cannot take the tip credit.

With these parameters in mind, effective December 31, 2017, the tip credit and cash wage that must be paid to such employees is as follows:

Food Service Workers

Location	Tip Credit	Cash Wage	Reg. Min. Wage	Cash Tipped OT Wage
New York City – Large Employers	\$4.35	\$8.65	\$13.00	\$15.15
New York City – Small Employers	\$4.00	\$8.00	\$12.00	\$14.00
Long Island & Westchester	\$3.50	\$7.50	\$11.00	\$13.00
Remainder of NY State	\$2.90	\$7.50	\$10.40	\$12.70



Service Employees

Location	Tip Credit	Cash Wage	Tip Threshold	Tip Threshold for Resort Hotels	Reg. Min. Wage	Cash Tipped OT Wage
New York City – Large Employers	\$2.15	\$10.85	\$2.80	\$7.30	\$13.00	\$17.35
New York City – Small Employers	\$2.00	\$10.00	\$2.60	\$6.75	\$12.00	\$16.00
Long Island & Westchester	\$1.85	\$9.15	\$2.40	\$6.15	\$11.00	\$14.65
Remainder of NY State	\$1.75	\$8.65	\$2.25	\$5.85	\$10.40	\$13.85

In order to take the tip credit for service employees, the employee must meet the tip threshold. This means that the employee's average weekly tips must meet the minimum amount listed in the chart above per hour worked.

Uniforms

Where employers covered by New York's Hospitality Industry Wage Order require employees to maintain their uniforms, unless they are "wash and wear" clothing that do not require any special treatment (i.e. dry cleaning, pressing, repairs), they must provide such employees with uniform maintenance pay. Under the Hospitality Industry Wage Order, the uniform maintenance pay will increase on December 31, 2017 to:

Location	Work week over 30 hours	Work week of more than 20 hours, but less than 30 hours	Work week of 20 hours or less
New York City – Large Employers	\$16.20	\$12.80	\$7.75
New York City – Small Employers	\$14.95	\$11.80	\$7.15
Long Island & Westchester	\$13.70	\$10.80	\$6.55
Remainder of NY State	\$12.95	\$10.25	\$6.20

Meal Credit

Pursuant to New York's Hospitality Industry Wage Order, an employer who provides a qualifying meal to an employee may consider that meal to be part of the employee's wages and take a credit against the employee's wages for providing that meal. In order to qualify as a "meal," it must include each of the following: (1) fruits or vegetables; (2) grains or potatoes; (3) eggs, meat, fish, poultry, dairy or legumes; and (4) tea, coffee, milk or juice. The meal credit under New York's Hospitality Industry Wage Order shall change on December 31, 2017 to:

Restaurants and All Year Hotels

Location	Food Service Workers	Service Employees	All Other Employees
New York City – Large Employers	\$3.25	\$3.60	\$4.50
New York City – Small Employers	\$3.05	\$3.35	\$4.15
Long Island & Westchester	\$2.85	\$3.05	\$3.80
Remainder of NY State	\$2.75	\$2.90	\$3.60



Resort Hotels

Location	Food Service Workers	Service Employees	All Other Employees
New York City – Large Employers	\$3.55	\$4.70	\$5.85
New York City – Small Employers	\$3.35	\$4.35	\$5.40
Long Island & Westchester	\$3.15	\$3.95	\$4.95
Remainder of NY State	\$3.05	\$3.75	\$4.70

New York Minimum Salary Levels

The minimum salary levels to qualify for overtime exemptions in New York are also increasing. Effective December 31, 2017, in order to be exempt from overtime as either an executive/managerial or administrative employee, in addition to any other legal requirements, the employee must be paid a minimum salary as follows:

Location	Weekly Minimum Salary
New York City – Large Employers	\$975.00
New York City – Small Employers	\$900.00
Long Island & Westchester	\$825.00
Remainder of New York State	\$780.00

Notice of Rate of Pay

Pursuant to New York's Wage Theft Prevention Act ("WTPA"), New York employers must provide a "Notice of Pay" form to all employees at the time of hire and upon a change in their rate of pay. For all employers outside of the hospitality industry, the New York State Department of Labor ("NYDOL") has opined that, as long as the new rate of pay is referenced in the employee's next pay stub, employers do not need to provide a new Notice of Pay as a result of the increase in the minimum wage.

Unfortunately, hospitality employers are not so lucky. The language of the Hospitality Industry Wage Order specifically states that employers must provide a new Notice of Pay form to those employees who are affected by the increase to the minimum wage (including all tipped employees) on or before December 31, 2017. The notice must contain the following information:

- The employee's normal rate(s) of pay and the basis thereof (e.g., hourly, shift, weekly, salary);
 - If an employer is taking a tip credit for an employee, the employer should note the full minimum wage as the employee's hourly rate of pay, rather than the cash wage, i.e. \$13.00, \$12.00, \$11.00, or \$10.40, depending on employer size and location, beginning on December 31, 2017.
- If applicable, the employee's overtime rate of pay;
 - If an employer is taking a tip credit for an employee, the employer should note the full overtime wage, rather than the cash overtime wage i.e. \$19.50, \$18.00, \$16.50 or \$15.60, depending on employer size and location, beginning on December 31, 2017.
- The employee's regular pay day;
- Any allowances claimed against the minimum wage (e.g., tip credit, meal credit, lodging allowance, etc.);



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- The name of the employer (including any “doing business as” name);
- The address of the employer’s main office and a mailing address (if different); and
- The employer’s telephone number.

The written notice must be signed by both the employer and the employee and must be retained by the employer for at least six years.

The NYDOL has issued sample Notice of Pay forms that employers may use. Although employers are not required to use the NYDOL forms, it is recommended that they do so in order to ensure full compliance with New York law. The NYDOL sample forms can be obtained from the NYDOL’s website here (<https://labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>).

The Notice of Pay must be provided in both English and the employee’s native language (if not English), provided the NYDOL has created a Notice of Pay form in the employee’s native language. Currently, the NYDOL has issued forms in English, Spanish, Chinese, Haitian Creole, Italian, Korean, Polish and Russian, which are available on the NYDOL’s website (<https://labor.ny.gov/formsdocs/wp/ellsformsandpublications.shtm>).

Paystubs

In addition to providing employees with the Notice of Pay, New York employers must provide their employees with detailed paystubs that contain the following information:

- The dates of work covered by the paycheck;
- The name of the employee;
- The name, address and phone number of the employer;
- The rates of pay (regular and overtime) and basis of pay i.e. whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or other method;
- Gross wages;
- A detailed listing of deductions;
- A listing of any allowances claims as part of the minimum wage; and
- Net wages.

Employers in New York City who are required to comply with the New York City Earned Safe and Sick Time Act and all employers offering vacation, paid time off, sick time or any other similar benefit should provide detailed information regarding these benefits on employee paystubs to avoid any discrepancies and confusion. Such information should include the amount of time accrued during that pay period, the total amount of time accrued that year, the amount of time used during that pay period, the amount of time used during that year to date, and the amount of time available to the employee for use.

Remember, it is the responsibility of the employer to ensure that paystubs are accurate. Do not blindly trust your payroll service to ensure that paystubs are compliant.



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Beyond New York

New York is not the only jurisdiction where the minimum wage is increasing. For example, as the chart below indicates, effective January 1, 2018, the minimum wage will increase in a number of other states, including:

State	Current Minimum Wage	Current Tipped Minimum Wage	Minimum Wage Effective January 1, 2018	Tipped Minimum Wage Effective January 1, 2018
Alaska	\$9.80	\$9.80 (no tip credit)	\$9.84	\$9.84 (no tip credit)
Arizona	\$10.00	\$7.00	\$10.50	\$7.50
California (26 or more employees)	\$10.50	\$10.50 (no tip credit)	\$12.00	\$12.00 (no tip credit)
California (less than 26 employees)	\$10.00	\$10.00 (no tip credit)	\$10.50	\$10.50 (no tip credit)
Colorado	\$9.30	\$6.28	\$10.20	\$7.18
Florida	\$8.10	\$5.08	\$8.25	\$5.23
Hawaii	\$9.25	\$8.50	\$10.10	\$9.35
Maine	\$9.00	\$5.00	\$10.00	\$5.00
Michigan	\$8.90	\$3.38	\$9.25	\$3.52
Montana	\$8.15	\$8.15 (no tip credit)	\$8.30	\$8.30 (no tip credit)
New Jersey	\$8.44	\$2.13	\$8.60	\$2.13
Ohio	\$8.65	\$4.325	\$8.85	\$4.425
Vermont	\$10.00	\$5.00	\$10.50	\$5.25
Washington	\$11.00	\$11.00 (no tip credit)	\$11.50	\$11.50 (no tip credit)

Please also note that on July 1, 2018 the following will raise their minimum wages:

Washington, D.C. will increase its minimum wage to \$13.25;

Maryland will increase its minimum wage to \$10.10; and

Oregon will increase its minimum wage to \$10.75.

Several municipalities throughout the country require the payment of minimum wages that are higher than the federal minimum wage and their respective state minimum wages. In 2018, several municipalities will increase the minimum wage for employees in their jurisdiction including, but not limited to:

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Flagstaff, AZ (\$12.50 effective on January 1, 2018);

San Francisco, CA (\$15.00 July 1, 2018);

San Jose, CA (\$13.50 on January 1, 2018);

Chicago, IL (\$12.00 on January 1, 2018);

St. Louis, MO (\$11.00 January 1, 2018); and

Tacoma, WA (\$12.00 on January 1, 2018).

Based upon the influx of increases in the minimum wage in 2018, it is prudent for employers to consult with counsel to determine if the minimum wage is increasing in the city, county and/or state where the business operates.

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