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PROPERLY IMPLEMENTING THE UPCOMING NEW YORK WAGE INCREASES FOR TIPPED EMPLOYEES

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As detailed in a previous [alert](#), on December 31, 2016, the hourly rate for “food service workers” in New York City is expected to increase to \$7.50 with a \$3.50 tip credit for a total of \$11.00 for large employers (11 or more employees); and to \$7.50 with a \$3.00 tip credit for a total of \$10.50 for small employers (10 or fewer employees). A “food service worker” eligible for this tip credit must be employed in a position that *customarily and regularly receives tips*, including but not limited to: server, busser, food runner and bartender.

The Hospitality Wage Order, however, specifically states that the term “food service worker” does not include delivery workers. Instead, delivery workers must be paid at the “service employee” tip credit rate. Moreover, the service employee tip credit rate now includes an hourly “tip threshold,” which must be met in order for employers to avail themselves of the tip credit. If a service employee’s weekly average of tips does not meet the hourly tip threshold rate, an employer may not pay that employee at the tip credit rate.

The charts below detail the Hospitality Wage Order’s proposed increases for “food service workers,” “service employees” other than at resort hotels (which includes delivery workers) and “service employees” at resort hotels.

Food Service Workers

New York City Large Employers (11 or More Employees):

Cash Wage	Tip Credit	Regular Minimum Wage	New Rate Effective On and After
\$7.50	\$3.50	\$11.00	December 31, 2016
\$8.65	\$4.35	\$13.00	December 31, 2017
\$10.00	\$5.00	\$15.00	December 31, 2018

New York City Small Employers (10 or Fewer Employees):

Cash Wage	Tip Credit	Regular Minimum Wage	New Rate Effective On and After
\$7.50	\$3.00	\$10.50	December 31, 2016
\$8.00	\$4.00	\$12.00	December 31, 2017
\$9.00	\$4.50	\$13.50	December 31, 2018
\$10.00	\$5.00	\$15.00	December 31, 2019

Remainder of Downstate (Nassau, Suffolk and Westchester Counties):

Cash Wage	Tip Credit	Regular Minimum Wage	New Rate Effective On and After
\$7.50	\$2.50	\$10.00	December 31, 2016
\$7.50	\$3.50	\$11.00	December 31, 2017
\$8.00	\$4.00	\$12.00	December 31, 2018
\$8.65	\$4.35	\$13.00	December 31, 2019
\$9.35	\$4.65	\$14.00	December 31, 2020
\$10.00	\$5.00	\$15.00	December 31, 2021

Remainder of State (Outside of New York City, Nassau, Suffolk and Westchester Counties):

Cash Wage	Tip Credit	Regular Minimum Wage	New Rate Effective On and After
\$7.50	\$2.20	\$9.70	December 31, 2016
\$7.50	\$2.90	\$10.40	December 31, 2017
\$7.50	\$3.60	\$11.10	December 31, 2018
\$7.85	\$3.95	\$11.80	December 31, 2019
\$8.35	\$4.15	\$12.50	December 31, 2020



Service Employees (Other than at Resort Hotels, including Delivery Workers)

New York City Large Employers (11 or More Employees):

Cash Wage	Tip Credit	Tip Threshold	Regular Minimum Wage	New Rate Effective On and After
\$9.15	\$1.85	\$2.40	\$11.00	December 31, 2016
\$10.85	\$2.15	\$2.80	\$13.00	December 31, 2017
\$12.50	\$2.50	\$3.25	\$15.00	December 31, 2018

New York City Small Employers (10 or Fewer Employees):

Cash Wage	Tip Credit	Tip Threshold	Regular Minimum Wage	New Rate Effective On and After
\$8.75	\$1.75	\$2.30	\$10.50	December 31, 2016
\$10.00	\$2.00	\$2.60	\$12.00	December 31, 2017
\$11.25	\$2.25	\$2.95	\$13.50	December 31, 2018
\$12.50	\$2.50	\$3.25	\$15.00	December 31, 2019

Remainder of Downstate (Nassau, Suffolk and Westchester Counties):

Cash Wage	Tip Credit	Tip Threshold	Regular Minimum Wage	New Rate Effective On and After
\$8.35	\$1.65	\$2.15	\$10.00	December 31, 2016
\$9.15	\$1.85	\$2.40	\$11.00	December 31, 2017
\$10.00	\$2.00	\$2.60	\$12.00	December 31, 2018
\$10.85	\$2.15	\$2.80	\$13.00	December 31, 2019
\$11.65	\$2.35	\$3.05	\$14.00	December 31, 2020
\$12.50	\$2.50	\$3.25	\$15.00	December 31, 2021



Remainder of State (Outside of New York City, Nassau, Suffolk and Westchester Counties):

Cash Wage	Tip Credit	Tip Threshold	Regular Minimum Wage	New Rate Effective On and After
\$8.10	\$1.60	\$2.10	\$9.70	December 31, 2016
\$8.65	\$1.75	\$2.25	\$10.40	December 31, 2017
\$9.25	\$1.85	\$2.40	\$11.10	December 31, 2018
\$9.85	\$1.95	\$2.55	\$11.80	December 31, 2019
\$10.40	\$2.10	\$2.70	\$12.50	December 31, 2020

Service Employees at Resort Hotels

New York City Large Employers (11 or More Employees):

Cash Wage	Tip Credit	Tip Threshold	Regular Minimum Wage	New Rate Effective On and After
\$9.15	\$1.85	\$6.15	\$11.00	December 31, 2016
\$10.85	\$2.15	\$7.30	\$13.00	December 31, 2017
\$12.50	\$2.50	\$8.40	\$15.00	December 31, 2018

New York City Small Employers (10 or Fewer Employees):

Cash Wage	Tip Credit	Tip Threshold	Regular Minimum Wage	New Rate Effective On and After
\$8.75	\$1.75	\$5.90	\$10.50	December 31, 2016
\$10.00	\$2.00	\$6.75	\$12.00	December 31, 2017
\$11.25	\$2.25	\$7.60	\$13.50	December 31, 2018
\$12.50	\$2.50	\$8.40	\$15.00	December 31, 2019



Remainder of Downstate (Nassau, Suffolk and Westchester Counties):

Cash Wage	Tip Credit	Tip Threshold	Regular Minimum Wage	New Rate Effective On and After
\$8.35	\$1.65	\$5.60	\$10.00	December 31, 2016
\$9.15	\$1.85	\$6.15	\$11.00	December 31, 2017
\$10.00	\$2.00	\$6.75	\$12.00	December 31, 2018
\$10.85	\$2.15	\$7.30	\$13.00	December 31, 2019
\$11.65	\$2.35	\$7.85	\$14.00	December 31, 2020
\$12.50	\$2.50	\$8.40	\$15.00	December 31, 2021

Remainder of State (Outside of New York City, Nassau, Suffolk and Westchester Counties):

Cash Wage	Tip Credit	Tip Threshold	Regular Minimum Wage	New Rate Effective On and After
\$8.10	\$1.60	\$5.45	\$9.70	December 31, 2016
\$8.65	\$1.75	\$5.85	\$10.40	December 31, 2017
\$9.25	\$1.85	\$6.25	\$11.10	December 31, 2018
\$9.85	\$1.95	\$6.60	\$11.80	December 31, 2019
\$10.40	\$2.10	\$7.00	\$12.50	December 31, 2020

New York employers in the hospitality industry will need to comply with the above minimum wage increases over the next several years and maintain accurate records reflecting tip credit and tip threshold compliance. Employers should work closely with counsel in order to properly implement these regulations.

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