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

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As we approach the end of the year, it is critical to remember and implement some of the new legal requirements that go into effect in New York on December 31, 2018. Failure to comply with these requirements could subject an uninformed employer to substantial financial liability.

Minimum Wage Increases

Effective December 31, 2018, 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, the regular, minimum wage in New York will increase as follows:

Location	Minimum Hourly Wage	Fast Food Minimum Hourly Wage
New York City – Large Employers (11 or more)	\$15.00	\$15.00
New York City – Small Employers (10 or less)	\$13.50	\$15.00
Long Island & Westchester County	\$12.00	\$12.75
Remainder of New York State	\$11.10	\$12.75

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. In addition, “fast food establishment” is any establishment in New York serving food or drink items:

- 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;
- Which offer limited service;
- Which is part of a chain; and
- Which is one of 30 or more establishments **nationally**, including:
 - An integrated enterprise which owns or operates 30 or more such establishments in the aggregate nationally; or
 - An establishment operating 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 and 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 also change effective December 31, 2018, 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”:

- Primarily engages in the serving of food and beverages to guests, patrons, and customers, other than a 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 in which tips are not customarily received.

A “service employee” is regularly and customarily receiving tips for the work they perform and 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 specify the amount being taken and inform the employee in writing, in English, and, for non-English speakers, the employee’s native language. Specifically, the employer must provide to the employee the following information in writing in order to take the tip credit:

- The employee’s regular rate of pay;
- The employee’s overtime rate of pay;
- The employee’s regular payday;
- Advise the employee that if the cash wages and tips they receive do not equal the regular minimum wage for all hours worked, the employer will pay the employee the difference; and
- 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.

These parameters take effect on December 31, 2018. The tip credit and cash wage that must be paid to such employees is as follows:

Location	Food Service Workers	Service Workers
New York City – Large Employers (11 or more)	Minimum Wage: \$15.00 Cash Wage: \$10.00 Cash Overtime Wage: \$17.50 Tip Credit: \$5.00	Minimum Wage: \$15.00 Cash Wage: \$12.50 Cash Overtime Wage: \$20.00 Tip Credit: \$2.50 Tip Threshold: \$3.25
New York City – Small Employers (10 or less)	Minimum Wage: \$13.50 Cash Wage: \$9.00 Cash Overtime Wage: \$15.75 Tip Credit: \$4.50	Minimum Wage: \$13.50 Cash Wage: \$11.25 Cash Overtime Wage: \$18.00 Tip Credit: \$2.25 Tip Threshold: \$2.95

Long Island & Westchester	Minimum Wage: \$12.00 Cash Wage: \$8.00 Cash Overtime Wage: \$14.00 Tip Credit: \$4.00	Minimum Wage: \$12.00 Cash Wage: \$10.00 Cash Overtime Wage: \$16.00 Tip Credit: \$2.00 Tip Threshold: \$2.60
Remainder of New York State	Minimum Wage: \$11.10 Cash Wage: \$7.50 Cash Overtime Wage: \$13.05 Tip Credit: \$3.60	Minimum Wage: \$11.10 Cash Wage: \$9.25 Cash Overtime Wage: \$14.80 Tip Credit: \$1.85 Tip Threshold: \$2.40

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 shall increase to:

Location	Work Week More Than 30 Hours	Work Week Between 20 Hours and 30 Hours	Work Week of 20 Hours or Less
New York City – Large Employers (11 or more)	\$18.65	\$14.75	\$8.90
New York City – Small Employers (10 or less)	\$16.80	\$13.30	\$8.05
Long Island & Westchester	\$14.95	\$11.80	\$7.15
Remainder of New York State	\$13.80	\$10.90	\$6.60

Meal Credit

Pursuant to the 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 to:

Restaurants and All Year Hotels

Location	Food Service Workers	Service Employees	All Other Employees
New York City – Large Employers (11 or more employees)	\$3.60	\$4.15	\$5.15
New York City – Small Employers (10 or less employees)	\$3.35	\$3.75	\$4.65
Long Island & Westchester	\$3.05	\$3.35	\$4.15
Remainder of New York State	\$2.90	\$3.10	\$3.80

New York Minimum Salary Levels

The minimum salary levels to qualify for overtime exemptions in New York are increasing and take effect on December 31, 2018. 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 (11 or more)	\$1,125.00 (\$58,500.00 annually)
New York City – Small Employers (10 or less)	\$1,012.50 (\$52,650.00 annually)
Long Island & Westchester	\$900.00 (\$46,800.00 annually)
Remainder of New York State	\$832.50 (\$43,290.00 annually)

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 prior to December 31, 2018. 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.*, \$15.00, \$13.50, \$12.00, or \$11.10, depending on employer size and location, beginning on December 31, 2018.
- 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.*, \$22.50, \$20.25, \$18.00 or \$16.65, depending on employer size and location, beginning on December 31, 2018.
- The employee's regular pay day;
- Any allowances claimed against the minimum wage (*e.g.*, tip credit, meal credit, lodging allowance, etc.);
- 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 (6) years. As noted above, employers must provide employees with written notice containing specific information before they may lawfully take a tip credit.

The New York Department of Labor (NYDOL) has issued sample Notice of Pay forms that employers may use. In addition, the notice 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. The NYDOL sample forms can be obtained from the [NYDOL's website](#). However, the Notice of Pay forms provided by the NYDOL do not contain all of the required notices necessary for an employer to take a tip credit. It is advisable to consult with counsel on how to best revise the Notice of Pay form to include the required language.

Paystubs

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

- Dates of work covered by the paycheck;
- Name of the employee;
- Name, address, and phone number of the employer;
- 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;
- Detailed listing of deductions;
- 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 also 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, the amount of time used during that pay period, the amount of time used 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 their paystubs are accurate. Do not blindly trust your payroll service to ensure that the paystubs are compliant. Rather, you should consult with counsel to ensure that your paystubs are compliant with New York law.

Beyond New York

New York is not the only jurisdiction in which the minimum wage will be increasing in 2019. For example, as the chart below indicates, effective January 1, 2019, the minimum wage will increase in a number of other states, including:

State	Current Minimum Wage	Current Tipped Minimum Wage	Minimum Wage Effective 1/1/2019	Tipped Minimum Wage Effective 1/1/2019
Alaska	\$9.84	\$9.84 (no tip credit)	\$9.89	\$9.89 (no tip credit)
Arizona	\$10.50	\$7.50	\$11.00	\$8.00
Arkansas	\$8.50	\$2.63	\$9.25	\$2.63
California (26 or more employees)	\$11.00	\$11.00 (no tip credit)	\$12.00	\$12.00 (no tip credit)
California (less than 26 employees)	\$10.50	\$10.50 (no tip credit)	\$11.00	\$11.00 (no tip credit)
Colorado	\$10.20	\$7.18	\$11.10	\$8.08
Florida	\$8.25	\$5.23	\$8.46	\$5.44
Maine	\$10.00	\$5.00	\$11.00	\$5.50
Massachusetts	\$11.00	\$3.75	\$12.00	\$4.35
Minnesota (annual gross sales > \$500,000)	\$9.65	\$9.65 (no tip credit)	\$9.86	\$9.86 (no tip credit)
Minnesota (annual gross sales < \$500,000)	\$7.87	\$7.87 (no tip credit)	\$8.04	\$8.04 (no tip credit)
Missouri	\$7.85	\$3.925	\$8.60	\$4.30
Montana	\$8.30	\$8.30 (no tip credit)	\$8.50	\$8.50 (no tip credit)
New Jersey	\$8.60	\$2.13	\$8.85	\$2.13

Ohio (annual gross sales > \$314,000)	\$8.30	\$4.15	\$8.55	\$4.30
Rhode Island	\$10.10	\$3.89	\$10.50	\$3.89
South Dakota	\$8.65	\$4.425	\$9.10	\$4.55
Vermont	\$10.50	\$5.25	\$10.78	\$5.39
Washington	\$11.50	\$11.50 (no tip credit)	\$12.00	\$12.00 (no tip credit)

These changes all go into effect on January 1, 2019.

Michigan is also scheduled to increase its minimum wage as of January 1, 2019, but the amount of such increase is in flux. The current minimum wage of \$9.25 had been set to rise with inflation as of January 1. The legislature recently approved a measure to increase the minimum wage to \$10.00 for all employees, including tipped employees, in 2019. However, the state legislature reportedly plans on amending or repealing this increase before it goes into effect January 1.

In addition, please note that on July 1, 2019 Washington, D.C. will increase its minimum wage to \$14.00 and Oregon will increase its minimum wage to \$11.25 (\$12.50 in the Portland metropolitan region). On October 1, 2019, Delaware will increase its minimum wage to \$9.25.

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 2019, several municipalities will also increase the minimum wage for employees in their jurisdiction including, but not limited to:

Municipality	Current Minimum Wage	2019 Minimum Wage	Effective Date
Chicago, IL	\$12.00	\$13.00	July 1, 2019
Los Angeles, CA (more than 25 employees)	\$13.25	\$14.25	July 1, 2019
Los Angeles, CA (25 or less employees)	\$12.00	\$13.25	July 1, 2019
Minneapolis, MN (more than 100 employees)	\$11.25	\$12.25	July 1, 2019
Minneapolis, MN (100 or less employees)	\$10.25	\$11.00	July 1, 2019
San Diego, CA	\$11.50	\$12.00	January 1, 2019

San Francisco, CA	\$15.00	TBD (increase based on annual increase in Consumer Price Index)	July 1, 2019
Seattle, WA (more than 500 employees worldwide)	\$15.45	\$16.00	January 1, 2019
Seattle, WA (500 or less employees worldwide)	\$14.00	\$15.00 (or \$12.00 if employee receives at least \$3.00/hr in tips and/or the employer contributes at least \$3.00/hr to employee's medical benefits)	January 1, 2019

Please note that Miami, Florida passed an ordinance that would increase the minimum wage to \$11.31 in January 2019, but the ordinance was struck down by a Florida court. The case is currently on appeal to the Florida Supreme Court.

Based upon the influx of increases in the minimum wage in 2019, it is prudent for employers to consult with counsel to determine if the minimum wage is increasing in the city, county, and/or state in which the business operates.

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