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New York State Enters 2020 With Key Labor and Employment Law Changes

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New York rang in the new year with a pair of significant labor law developments. Governor Andrew Cuomo announced on December 31 that the Department of Labor would end the tip credit for “miscellaneous” industries by the end of 2020, and the following day he vetoed a bill that would have allowed for employees to obtain liens on their employers’ personal and real property when there are allegations that the employees were underpaid.

The elimination of the tip credit for “miscellaneous” industries by December 31, 2020 means that New York employers in industries other than agricultural, hospitality and building services will no longer be permitted to take advantage of a tip credit against the wages of their employees who customarily receive tips as part of their jobs.

Cuomo’s veto of the sweeping Unpaid Wages Lien Bill halts implementation of a law passed by the state senate and assembly that would have allowed employees to obtain a lien against their employers’ real and personal property when that employee claimed they were owed unpaid wages.

Tip Credit Eliminated for 'Miscellaneous' Industries

By the end of 2020, employers in “miscellaneous” industries in New York State will no longer be able to take advantage of a tip credit against the wages of their employees who customarily receive tips as part of their jobs. Importantly, this will not impact members of the hospitality industry, who will still be able to apply a tip credit against wages paid to tipped food service and service employees in restaurants and hotels.

As of December 31, 2020, employers who are covered by the state’s Minimum Wage Order for Miscellaneous Industries and Occupations (the Miscellaneous Industries Order) will no longer be able to take a tip credit against their employee’s wages. The Miscellaneous Industries and Occupations covers all employers in New York other than those in the agricultural, hospitality or building services industries). According to the Department of Labor’s estimates, the elimination of the tip credit in the Miscellaneous Industries Order will impact over 70,000 employees in New York State. Employers covered by the Miscellaneous Industries Order may currently take a tip credit against an employee’s wages if:

- (1) The particular occupation in which the employee is engaged is one in which tips have customarily and usually constituted a part of the employee’s remuneration;

- (2) The employee received tips in at least the amount of the claimed tip allowance; and
- (3) The allowance is recorded on a weekly basis as a separate item in the wage record.

Tipped occupations that are covered by the Miscellaneous Industries Order include, among other things, car wash attendants, nail salon workers, tow truck drivers, dog groomers, wedding planners, tour guides, valet parking attendants, hairdressers, aestheticians, golf and tennis instructors and door-persons.

Employers covered by the Miscellaneous Industries Order may take either a “low” or “high” tip credit against the minimum wage of eligible employees. The low tip credit can be taken if the employee’s weekly average of tips received is between the low and high tip amounts. The high tip credit may be taken if the employee’s weekly average of tips received equals or exceeds the high tip amounts. As of December 31, 2019, the applicable minimum wage, tip credits and tipped cash wages in New York State for occupations covered by the Miscellaneous Industries Order are as follows:

Region	Minimum Wage	Low Tip Credit	High Tip Credit	Low Tipped Cash Wage	High Tipped Cash Wage
New York City	\$15.00	\$2.25	\$3.65	\$12.75	\$11.35
Long Island/ Westchester	\$13.00	\$1.95	\$3.20	\$11.05	\$9.80
Remainder of New York State	\$11.80	\$1.75	\$2.90	\$10.05	\$8.90

The Department of Labor will eliminate these tip credits over the course of the next year in two phases. As of June 30, 2020, the tip credits will be cut in half. The applicable credits and rates that will be in effect as of June 30 under the Miscellaneous Industries Order are as follows:

Region	Minimum Wage	Low Tip Credit	High Tip Credit	Low Tipped Cash Wage	High Tipped Cash Wage
New York City	\$15.00	\$1.15	\$1.85	\$13.85	\$13.15
Long Island/ Westchester	\$13.00	\$1.00	\$1.60	\$12.00	\$11.40
Remainder of New York State	\$11.80	\$.90	\$1.45	\$10.90	\$10.35

On December 31, 2020, these tip credits will be eliminated completely. All employees covered by the Miscellaneous Industries Order will need to be paid the full applicable minimum wage by their employers. The minimum wage will also be increasing on that date outside of New York City. Thus, as of December 31, 2020, employees covered by the Miscellaneous Industries Order will need to be paid:

- \$15.00 per hour in New York City;
- \$14.00 per hour in Westchester, Nassau and Suffolk Counties; and
- \$12.50 per hour in the remainder of New York State.

Employers covered by the Miscellaneous Industries Order should take immediate steps to prepare for these upcoming changes. Employers should contact their payroll provider to ensure that employee payroll will be processed properly and reflect the new tip credits after June 30, 2020. Employers also should prepare to provide their employees with updated rate of pay forms prior to June 30, 2020 to inform them of the changes to their tip credit and rate of pay. Employers will need to take these steps again prior to December 31, 2020 when the tip credit is eliminated completely from the Miscellaneous Industries Order.

Cuomo Vetoes Unpaid Wages Lien Bill

As detailed in our [prior alert](#), in June 2019, the New York State Senate and Assembly passed a sweeping bill that would have allowed employees to obtain a lien against their employers' real and personal property when that employee claimed they were owed unpaid wages. The broad definition of "employer" under applicable law would have caused this bill to have a significant impact on all New York employers and potentially could have led to managers, executives, and human resources personnel having liens placed against their homes and personal property if an employee alleged their employer failed to pay them all wages due.

Governor Cuomo, however, vetoed this bill on January 1, 2020 and suggested that he may introduce a bill to address wage theft to the state legislature in 2020 and/or include it as part of his budget in April.

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