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New York Minimum Wage Increases and Additional Reminders for Employers

As the end of the year approaches, it is important to remember that New York employers are subject to changes in wage and hour regulations that go into effect on December 31, 2018. Failure to comply with the new requirements could subject a non-compliant employer to significant financial liability.

Minimum Wage Increases

The minimum wage and minimum salary levels in New York increase on December 31, 2018. These increases vary depending upon an employer's size and location. On December 31, 2018, the regular minimum wage and fast food minimum wage in New York increase as follows:

Location	Regular Minimum Wage	Fast Food Minimum Wage
NYC - Large Employer**	\$15.00	\$15.00
NYC - Small Employer	\$13.50	\$15.00
Long Island & Westchester	\$12.00	\$12.75
Remainder of NY State	\$11.10	\$12.75

** 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.

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.

New York Minimum Salary Levels

On December 31, 2018, the minimum salary levels to qualify for overtime exemptions in New York also increase. In addition to meeting the duties requirements for the exemptions, an executive/managerial or administrative employee must be paid a minimum salary as follows:

Location	Weekly Minimum Salary Level
NYC - Large Employer	\$1,125.00 (\$58,500.00 annually)
NYC - Small Employer	\$1,012.50 (\$52,650.00 annually)
Long Island & Westchester	\$900.00 (\$46,800.00 annually)
Remainder of NY State	\$832.00 (\$43,264.00 annually)

New York Minimum Wage Increases and Additional Reminders for Employers

Tip Credits And Other Allowances

The tip credit, meal credit, and uniform maintenance allowances permitted by the Hospitality Industry and Miscellaneous Industries and Occupations Wage Orders will also change on December 31, 2018, with the amount varying depending upon the employer's location, size, and, for the hospitality industry, the designation of whether the employee is a food service worker, service employee, or non-service 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, it cannot take the tip credit.

With these parameters in mind, effective December 31, 2018, the tip credit taken by the employer plus the cash wage that must be paid to such employees is as follows:

Miscellaneous Industries and Occupations

Location	Reg. Min. Wage	Low Tip Credit	Low Tip Credit Cash Wage	Low Tip Credit Cash OT Wage	High Tip Credit	High Tip Credit Cash Wage	High Tip Credit Cash OT Wage
NYC - Large Employer	\$15.00	\$2.25	\$12.75	\$20.25	\$3.65	\$11.35	\$17.03
NYC - Small Employer	\$13.50	\$2.05	\$10.95	\$18.20	\$3.30	\$10.20	\$15.30
Long Island & Westchester	\$12.00	\$1.80	\$10.20	\$16.20	\$2.95	\$9.05	\$13.58
Remainder of NY State	\$11.10	\$1.65	\$9.45	\$15.00	\$2.70	\$8.40	\$12.60

Employers covered by the Miscellaneous Industries and Occupations Wage Order may take the Low Tip Credit for employees whose average weekly tips are between the low tip credit and the high tip credit. Employers may take the High Tip Credit for those employees whose average weekly tips equal or exceed the high tip credit.

Hospitality Industry - Food Service Workers

Pursuant to the Hospitality Industry Wage Order, 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.

Location	Cash Wage	Tip Credit	Reg. Min. Wage	Cash Tipped OT Wage
NYC - Large Employer	\$10.00	\$5.00	\$15.00	\$17.50
NYC - Small Employer	\$9.00	\$4.50	\$13.50	\$15.75
Long Island & Westchester	\$8.00	\$4.00	\$12.00	\$14.00
Remainder of NY State	\$7.50	\$3.60	\$11.10	\$13.05

New York Minimum Wage Increases and Additional Reminders for Employers

Hospitality Industry - Service Employees

A “service employee” in the hospitality industry 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.

Location	Cash Wage	Tip Credit	Tip Threshold	Tip Threshold for Resort Hotels	Reg. Min. Wage	Cash Tipped OT Wage
NYC - Large Employer	\$12.50	\$2.50	\$3.25	\$8.40	\$15.00	\$20.00
NYC - Small Employer	\$11.25	\$2.25	\$2.95	\$7.60	\$13.50	\$18.00
Long Island & Westchester	\$10.00	\$2.00	\$2.60	\$6.75	\$12.00	\$16.00
Remainder of NY State	\$9.25	\$1.85	\$2.40	\$6.25	\$11.10	\$14.80

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 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 weekly uniform maintenance pay. The uniform maintenance pay will increase on December 31, 2018 to:

Location	Work Week Over 30 Hours	Work Week More than 20 Hours but Less Than 30 Hours	Work Week of 20 Hours or Less
NYC - Large Employer	\$18.65	\$14.75	\$8.90
NYC - Small Employer	\$16.80	\$13.30	\$8.05
Long Island & Westchester	\$14.95	\$11.80	\$7.15
Remainder of NY State	\$13.80	\$10.90	\$6.60

Meal Credit

Pursuant to New York’s Miscellaneous Industries and Occupations and Hospitality Industry Wage Orders, 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 credits per meal provided shall change on December 31, 2018 to:

Miscellaneous Industries and Occupations

Location	All Employees
NYC - Large Employer	\$5.15
NYC - Small Employer	\$4.65
Long Island & Westchester	\$4.15
Remainder of NY State	\$3.80

New York Minimum Wage Increases and Additional Reminders for Employers

Hospitality Industry - Restaurants and All Year Hotels

Location	Food Service Workers	Service Employees	All Other Employees
NYC - Large Employer	\$3.60	\$4.15	\$5.15
NYC - Small Employer	\$3.35	\$3.75	\$4.65
Long Island & Westchester	\$3.05	\$3.35	\$4.15
Remainder of NY State	\$2.90	\$3.10	\$3.80

Hospitality Industry - Resort Hotels

Location	Food Service Workers	Service Employees	All Other Employees
NYC - Large Employer	\$3.95	\$5.40	\$6.75
NYC - Small Employer	\$3.65	\$4.90	\$6.10
Long Island & Westchester	\$3.35	\$4.35	\$5.40
Remainder of NY State	\$3.20	\$4.00	\$5.00

Notice of Rate of Pay

New York's Wage Theft Prevention Act ("WTPA") requires that all New York employers provide a "Notice of Pay" form to all employees at the time of hire **and upon a change in their rate of pay**. For employers outside of the hospitality industry, the New York State Department of Labor ("NYSDOL") has stated 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 an increase in pay. Hospitality employers must provide a new Notice of Pay upon an increase in pay because the Hospitality Industry Wage Order specifically requires that employers must provide a new Notice of Pay form to those employees who are affected by the increase to the minimum wage.

The required notices 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.
- 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.
- 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 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 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.

New York Minimum Wage Increases and Additional Reminders for Employers

Paystubs

In addition to providing employees with the Notice of Pay, New York employers must continue to 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 subject to the New York City Earned Safe and Sick Time Act as well as any employer providing employees with vacation, paid time off, sick time or a similar benefit should also provide detailed information regarding these benefits on employee paystubs. This will avoid any potential discrepancies and confusion as employees will see on each paycheck 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.

As a reminder, it is the employer's responsibility to ensure that paystubs are accurate. Employers cannot trust their payroll services to ensure that paystubs are compliant. We recommend consulting with counsel to review their paystubs to ensure that they meet the legal requirements.

New York Paid Family Leave

In addition to the previously discussed wage and hour obligations, there are significant changes to New York Paid Family Leave that employers must be aware of. The amount of paid leave that an employee can take increases from 8 weeks to 10 weeks in 2019. Moreover, the payout increases from 50% of an employee's average weekly pay to 55% of an employee's average weekly pay, subject to a cap of \$746.41. Further, the maximum annual employee contribution increases to \$107.64.

Sexual Harassment Statute Compliance

Finally, all employers must ensure that they are in compliance with the sexual harassment laws enacted by New York State and New York City. All employers should have a compliant sexual harassment policy in place and New York City employers must have posted the required workplace poster and distributed the required factsheet to all newly hired employees. Employers must also begin planning sexual harassment training for all employees in order to meet the applicable deadlines.

In anticipation of these changes, New York employers should review their current payroll practices to ensure that they are prepared to meet the increased minimum wages and salary levels on December 31, 2018. Employers should also ensure that they are prepared to enact the increased maximum deduction permitted by the New York Paid Family Leave law and update their policies to reflect the increased amount of paid leave an eligible employee is permitted.

For more information on Meyer Suozzi's Employment Law practice, [click here](#).

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