



**CLIENT ALERT**

**Updated Minimum Wage Developments in New York - 2017**

On December 27, 2016, we alerted you to increases in the minimum wage for 2017. Since then, the New York State Department of Labor (“DOL”) issued new regulations, effective December 31, 2016, that re-introduced separate tip credit amounts for “service employees” and “food service workers” employed in the hospitality/restaurant industry.

Accordingly, we have added the minimum wage and tip credit amounts for restaurant/hospitality service employees to the charts below from our prior alert. The term “service employee” applies to any tipped employee other than a “food service worker.” Examples of “service employees” in the restaurant/hospitality industry are delivery persons, coat check employees, and hosts.

In addition, the DOL increased the tip credit for tipped employees outside the hospitality/restaurant industry and, like other minimum wage changes, the tip credit levels vary based on employer location and size. Accordingly, we have revised the tip credit table for these employees below.

Please note the following new minimum wage and overtime rates and, as necessary, issue new 195.1 Notice of Pay Rate forms to your employees as soon as possible:

**All Employers**

Beginning December 31, 2016, the minimum wage and corresponding overtime rate will depend on the location of the employer’s business and/or the size of the employer, as follows:

**NYC employers with 11 or more employees:**

Minimum Wage	Overtime Rate
\$11.00	\$16.50

**NYC Employers with 10 or fewer employees:**

Minimum Wage	Overtime Rate
\$10.50	\$15.75

**Nassau / Suffolk / Westchester – All Employers**

Minimum Wage	Overtime Rate
\$10.00	\$15.00

**Rest of State (Outside NYC, Nassau, Suffolk & Westchester)**

Minimum Wage	Overtime Rate
\$9.70	\$14.55

**Tipped Food Service Workers - Restaurant/Hospitality Industry**

Employers in the restaurant/hospitality industry may continue to pay tipped food service workers a tipped minimum wage of \$7.50 per hour. However, beginning on December 31, 2016, the amount of the tip credit that may be taken by employers in the hospitality industry will differ based on the employer’s location and accordingly different overtime rates will apply, as follows:

**NYC Employer – 11 or more employees:**

Minimum Wage	Tipped Minimum Wage	Tip Credit	Tipped Overtime Rate
\$11.00	\$7.50	\$3.50	\$13.00

**NYC Employer – 10 or fewer employees:**

Minimum Wage	Tipped Minimum Wage	Tip Credit	Tipped Overtime Rate
\$10.50	\$7.50	\$3.00	\$12.75

**Nassau / Suffolk / Westchester – All Employers:**

Minimum Wage	Tipped Minimum Wage	Tip Credit	Tipped Overtime Rate
\$10.00	\$7.50	\$2.50	\$12.50

**Rest of State (Outside NYC, Nassau, Suffolk & Westchester):**

Minimum Wage	Tipped Minimum Wage	Tip Credit	Tipped Overtime Rate
\$9.70	\$7.50	\$2.20	\$12.35

**Tipped Service Employees (Non-Food Service Workers) – Restaurant/Hospitality Industry**

Employers in the restaurant/hospitality industry will be entitled to take tip credits towards the wages of tipped service employees (non-food service workers) that will vary based on the employer’s location and/or the size of the employer. Provided that the tipped service employees’ weekly average of tips is at least the hourly Minimum Tip Threshold rate listed below, and the total of tips received plus wages equals or exceeds the basic minimum hourly rate, tip credits towards the wages of tipped service employees may be taken as follows:

**NYC Employer – 11 or more employees:**

Minimum Wage	Tipped Minimum Wage	Tip Credit	Minimum Tip Threshold	Tipped Overtime Rate
\$11.00	\$9.15	\$1.85	\$2.40	\$14.65

**NYC Employer – 10 or fewer employees:**

Minimum Wage	Tipped Minimum Wage	Tip Credit	Minimum Tip Threshold	Tipped Overtime Rate
\$10.50	\$8.75	\$1.75	\$2.30	\$14.00

**Nassau / Suffolk / Westchester – All Employers**

Minimum Wage	Tipped Minimum Wage	Tip Credit	Minimum Tip Threshold	Tipped Overtime Rate
\$10.00	\$8.35	\$1.65	\$2.15	\$13.35

**Rest of State (Outside NYC, Nassau, Suffolk & Westchester)**

Minimum Wage	Tipped Minimum Wage	Tip Credit	Minimum Tip Threshold	Tipped Overtime Rate
\$9.70	\$8.10	\$1.60	\$2.10	\$12.95

**Tipped Employees - Other Industries**

Employers outside the restaurant/hospitality industry will still be entitled to take a tip credit for employees whose weekly average tips meet or exceed a specified amount, but, as with other minimum wage changes, that tip credit and tip threshold will now vary by employer location and size. For example, where an employer was entitled to take a tip credit of \$1.35 an hour if an employee’s weekly average of tips was between \$1.35 and \$2.20 an hour, a New York City employer with 11 or more employees is now entitled to take a tip credit of \$1.65 an hour if an employee’s weekly average of tips is between \$1.65 and \$2.70 an hour. Accordingly, the minimum wage that must be paid to these tipped employees and the corresponding overtime rate will now vary, as follows:

**NYC Employer – 11 or more employees:**

Minimum Wage	Tipped Minimum Wage - \$1.65/Hr Credit	Overtime Rate - \$1.65/Hr Credit	Tipped Minimum Wage - \$2.70/Hr Credit	Overtime Rate - \$2.70/Hr Credit
\$11.00	\$9.35	\$14.85	\$8.30	\$13.80

**NYC Employer – 10 or fewer employees:**

Minimum Wage	Tipped Minimum Wage - \$1.60/Hr Credit	Overtime Rate - \$1.60/Hr Credit	Tipped Minimum Wage - \$2.55/Hr Credit	Overtime Rate - \$2.55/Hr Credit
\$10.50	\$8.90	\$14.15	\$7.95	\$13.20

**Nassau / Suffolk / Westchester – All Employers**

Minimum Wage	Tipped Minimum Wage - \$1.50/Hr Credit	Overtime Rate - \$1.50/Hr Credit	Tipped Minimum Wage - \$2.45/Hr Credit	Overtime Rate - \$2.45/Hr Credit
\$10.00	\$8.50	\$13.50	\$7.55	\$12.55

**Rest of State (Outside NYC, Nassau, Suffolk & Westchester)**

Minimum Wage	Tipped Minimum Wage - \$1.45/Hr Credit	Overtime Rate - \$1.45/Hr Credit	Tipped Minimum Wage - \$2.35/Hr Credit	Overtime Rate - \$2.35/Hr Credit
\$9.70	\$8.25	\$13.10	\$7.35	\$12.20

**Fast Food Workers**

The “fast food minimum wage” applies to workers in fast food restaurants that are part of chains with at least 30 outlets. The following minimum wage and overtime rates apply to “fast food” workers beginning December 31, 2016:

**NYC Fast Food Employers**

Fast Food Minimum Wage	Fast Food Overtime Rate
\$12.00	\$18.00

**Fast Food Employers – Outside NYC**

Fast Food Minimum Wage	Fast Food Overtime Rate
\$10.75	\$16.13

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Please remember to complete and distribute your Wage Theft Prevention Forms (the 195.1 forms) for the new pay rates.

If you have questions or would like additional information, please contact Amanda M. Fugazy ([afugazy@egsllp.com](mailto:afugazy@egsllp.com)), Paul P. Rooney ([prooney@egsllp.com](mailto:prooney@egsllp.com)), Valerie J. Bluth ([vbluth@egsllp.com](mailto:vbluth@egsllp.com)) or the primary EGS attorney with whom you work.

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