



CLIENT ALERT

COMPLETE NEW 195.1 FORMS FOR YOUR HOURLY RESTAURANT EMPLOYEES

New York's minimum wage is increasing effective December 31, 2017. The new minimum wage varies according to where your business is located. Additionally, employers in the restaurant industry must pay tipped employees a tipped minimum wage that varies based on the employer's location and whether the employee is a "food service worker" or a "service employee." Further, because the amount of the tip credit that may be taken by employers in the restaurant industry will differ based on the employer's location, different overtime rates will apply. Please refer to our Client Alert entitled "[Minimum Wage Developments in New York – 2018](#)" for a complete schedule of the new minimum wage, tip credit and overtime rates.

The New York Labor Law requires employers to notify employees of their pay rate at the time of hire and whenever the rate changes, and further requires that hospitality industry employees that receive less than the full minimum wage (because they receive tips) be explicitly notified that their employer restaurant is taking a tip credit from the full minimum wage for all hours worked.

While the New York Department of Labor promulgates fill-in-the-blank forms, these forms can be confusing and are often filled out incorrectly, which is leading to increased litigation. Accordingly, to assist you in your legal compliance obligations, we have created the attached form (in both English and Spanish) that restaurant employers should fill out and provide to all non-exempt employees for signature before December 31, 2017. **The form below *only* applies to restaurant/hospitality employers with 11 or more employees in New York City.** If your business is located outside of New York City, or you have 10 or fewer employees within New York City, please contact us for appropriate form(s).

Please be advised that the form is required to be provided to employees in both English and in the employee's primary language, if the employee's primary language is Chinese, Spanish, Haitian Creole, Korean, Polish or Russian. If the employee's primary language is not listed here, you do not have to provide the notice in any language other than English.

When filling out the form, please be sure to check the correct box regarding the employee's pay rate, in accordance with the following:

- Check the "Non-exempt, non-tipped employee" box for employees such as cooks, dishwashers and anyone else who does not receive tips.
- Check the "Non-exempt, food service worker – tip allowance taken" box to reduce the hourly wage paid by the tip credit for any food service worker receiving the tip credit minimum wage, such as servers, bussers, bartenders and food runners. Most of your tipped employees will fall under this category.
- Check the "Non-exempt, service employee (other than food service worker) – tip allowance taken" box to reduce the hourly wage paid to the tip credit minimum wage for any non-food service worker receiving the tip credit minimum wage, such as delivery persons, coat check employees, and hosts.
- Check the "Non-exempt, tipped employee – tip allowance *not* applied" box for tipped employees who earn at least the full minimum wage required by law, and so no tip allowance is applied to reduce the hourly wage paid.

- Check the appropriate “Tip pool” sub-box where tipped employees are required to participate in a tip pool and share tips with other non-managerial service employees.

If you are taking a meal allowance, or deduct for credit card interchange fees, please make sure to note the amount of such allowance on the form where it calls for additional allowances/deductions. When noting a meal allowance deduction, please be sure to check the appropriate box for “Food Service Worker,” “Service Employee,” or “All Others.”

Click [here](#) to see the Form in English and [here](#) in Spanish.

If you have questions or would like additional information, please contact our Employment Law Practice Group Leader Amanda M. Fugazy (afugazy@egsllp.com) or the primary EGS attorney with whom you work.

This memorandum is published solely for the informational interest of friends and clients of Ellenoff Grossman & Schole LLP and should in no way be relied upon or construed as legal advice.



THE EMPLOYMENT LAW PRACTICE GROUP

Amanda M. Fugazy, Esq.
Paul P. Rooney, Esq.
Valerie J. Bluth, Esq.
Stephania C. Sanon, Esq.
Robert J. Anderson, Esq.
Allison Vieyra, Paralegal

1345 Avenue of the Americas, New York, NY 10105
Telephone: (516) 801-8139/(212) 370-1300
afugazy@egsllp.com | www.egsllp.com