

**New York Tip Law Update:
Subminimum Wage for Tipped Employees
Will Increase to \$7.50 per Hour on December 31, 2015**

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By Jeffrey H. Ruzal

On February 24, 2015, New York State Acting Commissioner of Labor Mario J. Musolino issued [an order](#) (“Order”) increasing the subminimum cash wage for all tipped workers in the hospitality industry from the current \$5.00 hourly rate to \$7.50 per hour. This 50 percent increase will take effect on December 31, 2015. It is important to note that on December 31, 2015, the New York State minimum wage will also increase from the current \$8.75 hourly rate to \$9.00 per hour.

Employers are currently permitted to take an allowance, also known as a “tip credit,” in an amount up to \$3.75 against tipped employees’ hourly wages. For example, if a restaurant employer pays its tipped employees \$8.75 per hour, the employer can take a maximum \$3.75 tip credit against the employees’ hourly wage and must then pay a \$5.00 subminimum cash wage. Effective December 31, 2015, however, employers will be left with a maximum tip credit of only \$1.50, and they must then pay a \$7.50 subminimum cash wage.

Notably, the Order also calls for a review of whether to eliminate the system of tip wages and credits in the future. While this drastic proposal will not result in an immediate repeal of tip wages and credits, it is likely that the Commissioner and Wage Board will soon consider the feasibility of enacting this proposal.

Computing Overtime

Employers should also remember that when computing overtime on a tipped employee’s pay, they must multiply the full hourly wage by one and one-half and then subtract the tip credit. For example, assume that a tipped employee earns a regular hourly rate of \$9.00. The employer takes a \$1.50 per hour tip credit and pays the tipped employee \$7.50 per hour as a subminimum cash wage. To compute overtime, the employer must multiply the full \$9.00 hourly wage by 1.5, which equals \$13.50. The employer should then subtract the \$1.50 tip credit from \$13.50 to arrive at \$12.00, which is the amount that the employer will be required to pay its tipped employees for each hour worked over 40 per week.

What Employers Should Do Now

- Speak with your payroll personnel or contact your payroll service provider to ensure that all changes to the tip credit calculations and paystub detail will be updated by December 31, 2015.
- Ensure that you remain in compliance with the New York Labor Law and Wage Theft Prevention Act requirements that employees must be provided with notice of the tip credit both upon hire and on the paystub detail that is distributed with each paycheck.
- Consider ways to modify your budget or operating costs to accommodate the impending subminimum cash wage increase.

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