



CLIENT ALERT

Minimum Wage Developments in New York – 2018

As 2018 quickly approaches, New York employers must prepare for scheduled minimum wage increases that will take effect December 31, 2017. As in 2017, the applicable increased minimum wage will vary based upon where the employee is located and the size of the employer.

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, but no later than December 31, 2017:

All Employers

Beginning December 31, 2017:

NYC employers with 11 or more employees:		NYC Employers with 10 or fewer employees:	
Minimum Wage	Overtime Rate	Minimum Wage	Overtime Rate
\$13.00	\$19.50	\$12.00	\$18.00
Nassau / Suffolk / Westchester – All Employers:		Rest of State (Outside NYC, Nassau, Suffolk & Westchester):	
Minimum Wage	Overtime Rate	Minimum Wage	Overtime Rate
\$11.00	\$16.50	\$10.40	\$15.60

Tipped Food Service Workers - Restaurant/Hospitality Industry

The term “food service worker” applies to any tipped employee who is primarily engaged in the serving of food or beverages to customers. Examples of “food service workers” in the restaurant industry include wait staff, bartenders, captains, and bussing personnel. Provided that the food service worker’s weekly tips plus wages equals or exceeds the basic minimum hourly rate, tip credits towards the wages of tipped food service worker may be taken as follows:

NYC Employer – 11 or more employees:

Minimum Wage	Tipped Minimum Wage	Tip Credit	Tipped Overtime Rate
\$13.00	\$8.65	\$4.35	\$15.15

NYC Employer – 10 or fewer employees:

Minimum Wage	Tipped Minimum Wage	Tip Credit	Tipped Overtime Rate
\$12.00	\$8.00	\$4.00	\$14.00

Nassau / Suffolk / Westchester – All Employers:

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

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

Minimum Wage	Tipped Minimum Wage	Tip Credit	Tipped Overtime Rate
\$10.40	\$7.50	\$2.90	\$12.70

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

The term “service employee” applies to any tipped employee other than a “food service worker” or “fast food employee.” Examples of “service employees” in the restaurant industry are delivery persons, coat check employees, and hosts. Provided that the tipped service employees’ weekly average of tips is at least the hourly Minimum Tip Threshold rate listed below, and the weekly

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
\$13.00	\$10.85	\$2.15	\$2.80	\$17.35

NYC Employer – 10 or fewer employees:

Minimum Wage	Tipped Minimum Wage	Tip Credit	Minimum Tip Threshold	Tipped Overtime Rate
\$12.00	\$10.00	\$2.00	\$2.60	\$16.00

Nassau / Suffolk / Westchester – All Employers:

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

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

Minimum Wage	Tipped Minimum Wage	Tip Credit	Minimum Tip Threshold	Tipped Overtime Rate
\$10.40	\$8.65	\$1.75	\$2.25	\$13.85

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 schedules, that tip credit and tip threshold varies by employer location and size. For example, a New York City employer with 11 or more employees is now entitled to take a tip credit of \$1.95 an hour if an employee’s weekly average of tips is between \$1.95 and \$3.20 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 - \$1.95/Hr Credit	Overtime Rate - \$1.95/Hr Credit	Tipped Minimum Wage - \$3.20/Hr Credit	Overtime Rate - \$3.20/Hr Credit
\$13.00	\$11.05	\$17.55	\$9.80	\$16.30

NYC Employer – 10 or fewer employees:

Minimum Wage	Tipped Minimum Wage - \$1.80/Hr Credit	Overtime Rate - \$1.80/Hr Credit	Tipped Minimum Wage - \$2.95/Hr Credit	Overtime Rate - \$2.95/Hr Credit
\$12.00	\$10.20	\$16.20	\$9.05	\$15.05

Nassau / Suffolk / Westchester – All Employers:

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

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

Minimum Wage	Tipped Minimum Wage - \$1.55/Hr Credit	Overtime Rate - \$1.55/Hr Credit	Tipped Minimum Wage - \$2.55/Hr Credit	Overtime Rate - \$2.55/Hr Credit
\$10.40	\$8.85	\$14.05	\$7.85	\$13.05

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 nationally. The following minimum wage and overtime rates apply to “fast food” workers beginning December 31, 2017:

NYC Fast Food Employers:

Fast Food Minimum Wage	Fast Food Overtime Rate
\$13.50	\$20.25

Fast Food Employers – Outside NYC:

Fast Food Minimum Wage	Fast Food Overtime Rate
\$11.75	\$17.63

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

If you have questions or would like additional information, please contact The 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.



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