

**Summary of Minimum Wage Changes Contained
in the New Part 146 Covering the Restaurant and Hotel Industries Now Combined
in the Hospitality Wage Order
Effective January 1, 2011**

IMPLEMENTATION PERIOD. Employers will be allowed a period of time from January 1, 2011 through February 28, 2011 in which to make the necessary changes in payroll systems and bookkeeping operations resulting from these new rules. As of March 1, 2011 or their next regularly scheduled payday following March 1, 2011, employers must pay all covered employees any additional wages owed on account of the new rules, **computed retroactively to January 1, 2011.** Employers must maintain payroll records that clearly identify the retroactive payments and must post in their workplaces, in a location frequented by employees, a notice discussing this implementation period and the employees' entitlement to retroactive wages. NOTE: Employers who are able to implement the wage increases prior to March 1, 2011 are encouraged to do so.

ELEMENTS UNCHANGED IN THE REGULATIONS: The minimum hourly rate stays at \$7.25 per hour. Overtime pay is still 1½ times the regular rate after 40 hours.

MINIMUM HOURLY RATES FOR TIPPED EMPLOYEES CHANGE AS FOLLOWS:

FOOD SERVICE WORKERS

As of January 1, 2011: \$5.00 min wage/\$2.25 max tip credit/total at least \$7.25

Prior to January 1, 2011: \$4.65 min wage/\$2.60 max tip credit/total at least \$7.25

SERVICE EMPLOYEES IN ALL ESTABLISHMENTS

As of January 1, 2011: \$5.65 min wage/\$1.60 max tip credit/total at least \$7.25

Prior to January 1, 2011: \$5.65 min wage/\$1.60 max tip credit, and
\$4.90 min wage /\$2.35 max tip credit

SERVICE EMPLOYEES IN RESORT HOTELS IF TIPS AT LEAST \$4.10/HR

As of January 1, 2011: \$4.90 min wage/\$2.35 max tip credit

Prior to January 1, 2011: \$4.35 min wage/\$2.90 max tip credit

CHAMBERMAIDS IN RESORT HOTELS

As of January 1, 2011: merge into service employees in resort hotels

Prior to January 1, 2011: \$6.15 min wage/\$1.10 max tip credit/if tips between \$1.10-\$4.10/hr, and
\$4.90 min wage/\$2.35 max tip credit/if tips more than \$4.10/hr.

HOURLY RATES OF PAY ARE REQUIRED FOR ALL NON-EXEMPT EMPLOYEES (EXCEPT COMMISSIONED SALESPERSONS). No longer are salaries, weekly rates, day rates, or piece rates allowed. This is intended to deter excessively long hours and to produce greater compliance with the overtime pay requirements of the law.

OVERTIME PAY FOR ALL NON-EXEMPT, NON-RESIDENTIAL AND RESIDENTIAL EMPLOYEES is due after 40 hours in a week. No longer is the rule after 44 hours for any residential employees.

SPREAD OF HOURS, CALL-IN, AND UNIFORM MAINTENANCE PAY is due to all non-exempt employees at any pay rate, not just to those paid at or very near the minimum wage. These extra payments no longer “phase out” as wage rates rise.

WASH-AND-WEAR UNIFORMS are exempt from the requirement to pay uniform maintenance pay to the worker. To qualify for the exemption, the number of uniforms provided to the employee must be consistent with the average number of days per week worked by the employee, and the uniform garments must be able to be laundered routinely along with personal clothing.

GRATUITIES ARE SUBJECT TO REGULATIONS FOR THE FIRST TIME IN NEW YORK STATE. The new wage order contains regulations fleshing out the law forbidding tip appropriation by employers or their agents. The sharing and pooling of tips among employees, both voluntary and employer-mandated, is allowed. Employers must give written notice to employees of the tip policies of the establishment. If the employer mandates tip sharing or tip pooling, or adds charges to customer bills for tips, the employer must keep records of the tips received and distributed. Employees must be allowed to view these records. If a gratuity is paid by credit card, employers are allowed to charge employees the same percentage that the credit card company charges the employer for processing the gratuity. Employers are required to distribute in full to service employees any house-imposed charges on guest bills that are purported to be gratuities. A charge for the administration of a banquet, special function, or package deal shall be clearly identified as such, and customers shall be notified that the charge is not a gratuity or tip. The employer has the burden of demonstrating, by clear and convincing evidence, that the notification was sufficient to ensure that a reasonable customer would understand that such charge was not purported to be a gratuity. Adequate notification shall include a statement in the contract or agreement with the customer, and on any menu and bill listing prices, that the administrative charge is for administration of the banquet, special function, or package deal, is not purported to be a gratuity, and will not be distributed as gratuities to the employees who provided service to the guests. The statements shall use ordinary language readily understood and shall appear in a font size similar to surrounding text, but no smaller than a 12-point font. A combination charge, part of which is for the administration of a banquet, special function or package deal and part of which is to be distributed as gratuities to the employees who provided service to the guests, must be broken down into specific percentages or portions, in writing to the customer, in accordance with the standards for adequate notification as stated above. The portion of the combination charge which will not be distributed as gratuities to the employees who provided service to the guests shall also be subject to the above requirements.

EMPLOYEE MEALS. Whenever the shift is long enough to invoke the meal period law, employers must either allow employees to bring their own food or give them a meal at no more than the meal credit amount in the wage order (\$2.50 per meal).