

In addition to my recorded comments at our final Minimum Wage Board meeting on 10/13/05, where the Board voted not to change the existing wage orders, I ask Commissioner Angello to consider the following:

1. **Section 137-1.4 Tip allowance for service workers.** I ask you to consider simplifying the existing restaurant wage order with regard to the definition of service employees. Unless there are positions warranting the inclusion of "service employees" in the restaurant wage order (and I'm not aware of any), why not consider removing the definition of service employee and leave food service workers and non-food service workers? Clarification for the benefit of NYS employers would undoubtedly improve compliance.

2. **Section 137-1.5 Tip allowance for the food service worker.** I know from more than 15 years of personal experience in both the restaurant and hotel industry (in the Hudson Valley and northern New York), that the average food service worker consistently exceeds the minimum wage. In most cases, their wages greatly exceed the state minimum wage requirements. As a hospitality recruiter from 1996-2002, I regularly interviewed applicants from all across NYS for tipped restaurant positions at the 900-employee resort where I work. Rarely did I hear applicants in tipped positions tell me that they weren't making minimum wage. What they did tell me is that they envisioned making upwards of \$20 per hour in the food service industry as a tipped employee and that they would quickly vacate one job for another if their tipped wages weren't at least \$14-15 per hour (far above minimum wage but barely acceptable to them). Furthermore, while employed in various locations as a busser, bartender and server in the early to mid 1990's and in human resource management since 1996, I haven't experienced any significant shortages of tipped food service employees. Please realize that in my occupation regular discussions surrounding this very topic exist between numerous human resource colleagues and myself. Therefore, I ask you to carefully consider whether or not tipped employees should continue to receive increases in the cash wage in accordance with the scheduled minimum wage increases in January 2006 and January 2007.

In closing, I am grateful for the opportunity to serve on the NYS Minimum Wage Board with Dr. Nathan and Ms. Hinds. I would also like to thank Ms. Spies and Mr. Ruberto of the NYS Department of Labor as well as any staff members who provided documentation to the Minimum Wage Board.

Sincerely,



Max K. Rausch
Assistant Director of Human Resources
The Sagamore
Bolton Landing, NY 12866
(518) 743-6263

Persons Providing Testimony to the Board

New York City

1. Fred G. Sampson – New York State Restaurant Association
2. Denis Hughes – New York State AFL-CIO

Buffalo

1. Dennis DiPaolo – owner: Ilio DiPaolo Restaurant
2. William A. DeLuca – owner: Mr. Bill's Restaurant and Bar

Department of Labor Staff Members Assisting the Board

Legal Services

Jerome Tracy – Counsel's Office

Research Services

Norman Steele – Division of Research and Statistics

New York City Hearing Point Coordinator

John Hopkins – Division of Labor Standards

Buffalo Hearing Point Coordinator

Andrew Cahill – Division of Labor Standards

Albany Hearing Point Coordinator

Jo-Ann Powell – Office of Staff and Organizational Development

Executive Secretary

Carmine Ruberto – Division of Labor Standards

Staff Assistant

Sharon Spies – Division of Labor Standards

Summary

Minimum Wage & Wage Board History

The first New York minimum wage legislation to be declared constitutional was passed in 1937. Since then, the minimum wage coverage has been expanded and rates raised through a combination of legislative mandates and recommendations from wage boards established by the Commissioner of Labor. Since 1960 most changes were mandated by legislation. An exception to this pattern was the creation of a General Industry Wage Board in 1985. The membership, powers of minimum wage boards and the time limits for issuing a report are contained in Section 655 of the Labor Law. Generally, a wage board has 45 days after appointment to present its report to the Commissioner.

In 2000, the legislature raised the minimum wage to \$5.15 per hour and for the first time established the term "food service worker." It set by statute the cash wage for the classification and required the Commissioner of Labor to appoint a wage board to review and recommend changes to wage orders covering these restaurant and hotel industry workers whenever there was an increase in the basic minimum wage rate. The legislature passed an increase effective January 1, 2005, to \$6.00 per hour with additional increases in 2006 and 2007. As a result, the Commissioner must appoint a wage board no later than June 30, 2005.

Minimum Wage History

The first minimum wage law in New York was passed in 1933, but was found unconstitutional by both the State Court of Appeals and the United States Supreme Court in 1936. Following a 1937 ruling by the Supreme Court holding the State of Washington's minimum wage law to be constitutional, New York passed a new statute on April 27, 1937.

The 1937 legislation did not apply to all workers. It decreed that the public policy of New York was "women and minors employed in any occupations should receive wages sufficient to provide adequate maintenance and to maintain their health." Males were covered by a supplementary provision prohibiting those 21 years of age and over from getting a wage lower than the minimum set for women and minors.

The law did not require a general minimum wage rate, but instead allowed the Commissioner of Labor (then called the Industrial Commissioner) to establish wage boards of up to three representatives each from the public, employers and employees in specific industries. These included Laundry, Beauty Service, Confectionery, Cleaning and Dyeing, Restaurant, Hotel, Retail Trade, Building Service, Amusement and Recreation and Camp Counselor. A substantial number of workers were employed in industries for which no wage order were established and were, therefore, excluded from state minimum wage coverage, although some were covered by the Fair Labor Standards Act (FLSA).

With minor amendments and adjustments, the minimum wage picture remained substantially the same until 1960. In that year, a statutory rate of \$1.00 per hour was enacted. The legislation changed the policy of protecting only women and minors to protecting all persons employed in the private sector. The Commissioner was required to modify all prior wage order rates and add a new wage order for Miscellaneous Industries and Occupations. This order extended coverage to those not included in other wage orders and who were not covered by the FLSA.

Statutory changes to the basic minimum hourly wage rates were made in 1962 (\$1.15), 1964 (\$1.25), 1967 (\$1.50), and 1970 (\$1.85). During this period, employees covered by FLSA became covered by state wage orders and an interlock was created between the federal and state wage rates. This provision became significant when the federal minimum wage exceeded New York's in 1974. New York's rate was raised to \$2.00 on May 1, 1974, \$2.10 on January 1, 1975, and \$2.30 per hour on January 1, 1976. Legislation in 1978 raised the basic minimum hourly wage rate to \$2.65 on October 1, to \$2.90 on January 1, 1979, \$3.10 on January 1, 1980, and \$3.35 on January 1, 1981. In 1990, the rate was changed to \$3.80 effective April 1 and to \$4.25 on April 1, 1991. There

was no interlock between state and federal rates. When the FLSA rate was raised in 1996 to \$5.15 per hour, there was no automatic state increase.

In 1999 the legislature raised New York's rate to match the \$5.15 federal rate and added a provision that if the FLSA required a higher wage rate than state statute, our rate would rise to the higher federal rate. In March of 2000, after much lobbying by the restaurant and hotel employers and employees, a chapter amendment to the 1999 bill created the classification of "food service worker," defined as an employee primarily engaged in the serving of food or beverages to guests, patrons or customers in the hotel and restaurant industries, including wait staff, bartenders, captains and bussing personnel who regularly receive tips from their guests, patrons or customers.

The chapter amendment also established a cash wage of \$3.30 for food service workers and limited any increase in meal and lodging allowances for food service workers to two-thirds of mandated increases in these allowances applicable to other workers in these industries. A final provision required the Commissioner of Labor to appoint a wage board within six months after any further increases in the basic minimum wage increases to recommend any changes in the wage orders applicable to food service workers. An increase to \$6.00 an hour enacted effective January 1, 2005, triggered this provision. The legislation also raised the cash wage for food service workers to \$3.85 per hour. There are additional increases mandated for 2006 and 2007.

Wage Board Procedure

Section 655 of the Labor Law prescribes the composition, powers and standards to be used by a wage board. The board can have as many as three representatives each from employers, employees and the public. A public member must be selected as Chair. The legislature inserted language requiring that any wage board established to review wage orders relating to food service workers would have employer representatives nominated by the State Business Council and employee representatives nominated by the State AFG-CIO. Two-thirds of the members of the board or of a panel of the Board constitutes a quorum.

A wage board has the power to conduct public hearings, administer oaths and subpoena witnesses, records and other relevant evidence it may require and take depositions. It may also consult with employers and employees in affected industries and other person, including the Commissioner, as it determines. The Board is not bound by the common law or statutory rules of procedure or evidence.

A wage board has 45 days after appointment to conduct public hearings and submit recommendations to the Commissioner. Any recommendation must have the support of a majority of board members. The Commissioner may extend up to ninety days the time allowable for submission of a report.

The board may not reduce any wage rate specified in the Minimum Wage Act, except in very limited circumstances. It may, however, recommend rates other than an hourly rate, vary rates by locality and consider other regulations for special rates, such as part time, call-in, split shift, spread of hours and weekly guaranteed rates; as well as allowances for meals, lodging, apparel and other items, services or facilities. It can also consider special rates for learners and apprentices and for persons whose earning capacity is affected or impaired by youth, age or physical or mental disability.

The last Minimum Wage Board was established in 1985. It looked at all the various wage orders then in effect and it was charged by the Commissioner to consider specific issues including overtime; allowances for uniforms; special sub-minimum wage rates for youth, learners and handicapped workers; as well as possible consolidation of wage orders.

The Board took over 5 months to finalize its recommendations. The Commissioner accepted most of them and remanded several issues back to the Board for reconsideration. It took another 6 months for the Board to hold additional hearings and make its final recommendations.

During its operation, a wage board has at its disposal the various divisions of the Department, including Research and Statistics and the Legal Bureau. It is likely that the Commissioner will appoint an Executive Secretary for the board to assist the members in developing and executing its schedule and maintaining a record of the board's deliberations.

**Briefing Document on Employment and Wages in
New York's Hotel and Restaurant Industries**

Prepared for the Minimum Wage Board

July 26, 2005

Prepared by
Division of Research and Statistics
New York State Department of Labor

2D-b-1

Briefing Document on Employment and Wages in New York's Hotel and Restaurant Industries

Introduction

On July 1, 2005, New York State Commissioner of Labor Linda Angello convened a minimum wage board to review minimum wage orders for food service and related occupations in the hotel and restaurant industries. The Board requested that the Department of Labor prepare a briefing document with background information on recent trends in the number of business establishments and employment in the hotel and restaurant industries. In addition, the Board requested information on food service occupations within those industries.

This briefing document is divided into three principal sections: Section I presents statewide and regional data on trends in the number of establishments and on employment levels in New York's hotel and restaurant industries over the 2000-2004 period. All data presented in this section come from the Quarterly Census of Employment and Wages (QCEW), which are collected from reports filed by employers with New York's Unemployment Insurance program.

Section II reports estimates of 2004 (fourth quarter) statewide occupational employment and wages for selected food service and related occupations in New York's hotel and restaurant industries. All statistics presented here come from New York's Occupational Employment Statistics survey, which collects information from approximately 57,000 businesses across all industrial sectors.

Section III presents statewide data on a variety of demographic characteristics, including education, age, gender, race, and ethnicity, of workers in food service and related occupations in New York's hotel and restaurant industries. In turn, the characteristics of these particular workers are then compared with those of workers in all occupations in all industries. All data come from the 2000 Census.

I. Statewide and Regional Establishment and Employment Trends in New York's Hotel and Restaurant Industries

Introduction

This section presents data on changes in the number of establishments and in employment levels in New York's hotel and restaurant industries between 2000 and 2004. Data presented in this section come from the Quarterly Census of Employment and Wages (QCEW), which are collected by New York State's Unemployment Insurance program.

The information here is presented both on a statewide and regional basis. The regions mentioned here refer to Labor Market Regions, which correspond to ten geographic areas of the state and are defined by the New York State Department of Labor. (see Appendix I for a list of counties comprising each region.)

Here, we use the term *hotel industry* to refer to the industry group more formally known as the *accommodation sector* in the North American Industry Classification System (NAICS). NAICS serves as the new structure for classifying business activity in North America. The *accommodation sector*, which is also known as NAICS Industry 721, contains three industry groups including: 1) traveler accommodation; 2) recreational accommodation; and, 3) rooming and boarding houses. Similarly, the term *restaurant industry* is used here to refer to the wide range of industries more formally known as the *food services and drinking places* sector or NAICS Industry 722. (see Appendix II for a detailed list of the industries comprising each NAICS sector.)

Hotel Industry Analysis

Establishment trends since 2000 (see Figure 1): Statewide, the number of establishments in the hotel industry grew from 1,996 in 2000 to 2,034 in 2004, an increase of 38 or 1.9 percent. Over the 2000-2004 period, the number of establishments in the hotel industry increased in six of 10 labor market regions. The largest numeric increase was in New York City, where the number of hotel establishments jumped by 42 (+10.8 percent), while the largest percentage increases were posted by the Finger Lakes (+ 11.9 percent) and Central NY (+11.8 percent) regions. The North Country experienced both the largest numeric (-16) and percentage loss (-7.6 percent) in hotel establishments.

Employment trends since 2000 (see Figure 1): For the same timeframe, total statewide employment in the hotel industry fell by 1,197, or 1.5 percent, to 78,235 in 2004. The region with the largest increase, by far, was the Mohawk Valley, which gained 1,087 jobs, an increase of 28.1 percent. Seven of 10 regions lost jobs between 2000 and 2004, most notably Western NY (-908) and Finger Lakes (-894).

Seasonal employment trends (see Figure 2): The job count in the hotel industry fluctuates by only 8,000 to 11,000 during the course of the year. The high point is in the summer, while the low point is in the winter. Most regions, except New York City, follow this pattern. In New York City, the job count dips in July and August even though January is the annual low. The North Country exhibits the greatest percentage increase in the summer.

Restaurant Industry Analysis

Establishment trends since 2000 (see Figure 1): Statewide, the number of establishments in the restaurant industry dropped from 34,103 in 2000 to 33,887, a decline of 216 or 0.6 percent. Over the 2000-2004 period, the number of establishments in the restaurant industry decreased in seven of 10 labor market regions. The largest numeric decreases were in Western NY (-219) and the Capital District (-163). In contrast, New York City added 306 establishments, a gain of 2.4 percent.

Employment trends since 2000 (see Figure 1): Restaurant industry employment increased by 29,376, or 7.1 percent, from 414,209 in 2000 to 443,585 in 2004. Nine of 10 regions gained jobs; only Finger Lakes lost restaurant industry jobs (-857). Employment advanced most in the regions with the largest population – New York City (+9,575 jobs), Long Island (+8,730), and the Hudson Valley (+5,599). Long Island (+14.5 percent) and Hudson Valley (+14.3 percent) also saw the greatest percentage increases in jobs. Over one-third of the state's jobs in this industry are in New York City.

Seasonal employment trends (see Figure 2): Employment in restaurants generally builds from a low in January to a peak in mid-summer, declines gradually through December and then contracts substantially in January. The gain in jobs from the January low to the June high ranges between 33,000 and 45,000. Statewide, peak employment is in the summer and the low point is in the winter; most regions follow that pattern. However, the New York City's restaurant job count is the least seasonal, while the North Country exhibits the greatest summer buildup on a percentage basis.

**Figure 1. Number of Establishments and Employment in the Hotel and Restaurant Industries*
by New York State Region, 2004 vs. 2000**

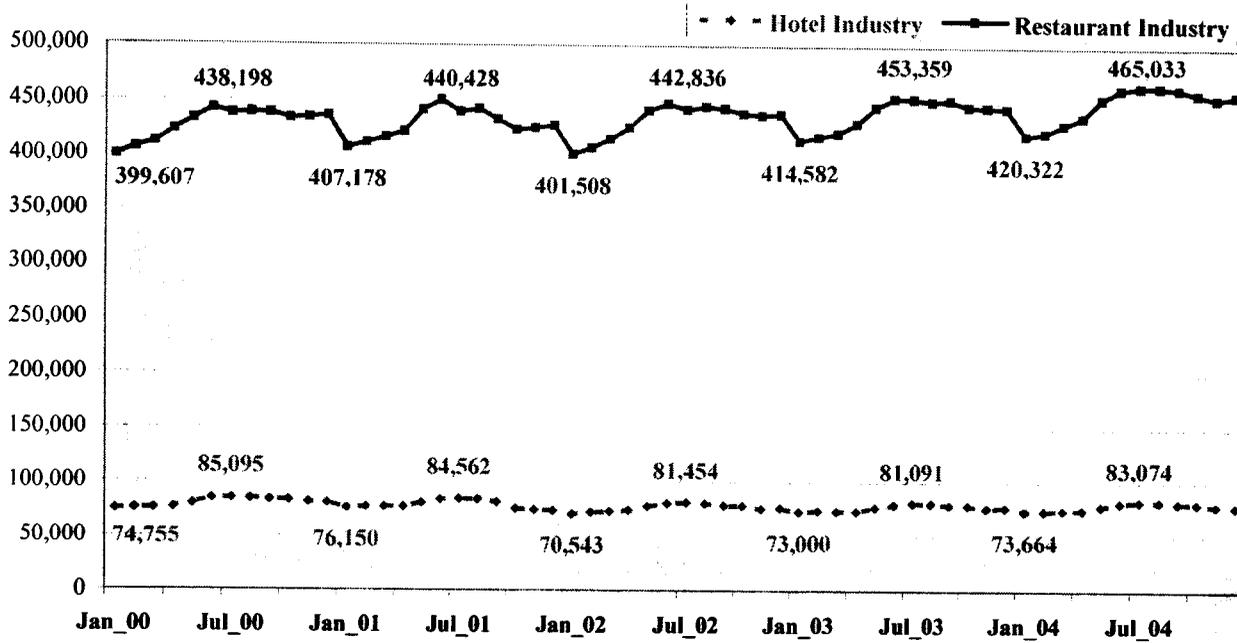
Hotel Industry Region	Number of Establishments				Employment Summary**			
	1 st Qtr-2004	1 st Qtr-2000	Change	% Change	2004	2000	Change	% Change
Capital District	320	331	-11	-3.3%	5,494	5,549	-55	-1.0%
Central NY	95	85	10	11.8%	2,821	2,730	91	3.3%
Finger Lakes	122	109	13	11.9%	3,507	4,401	-894	-20.3%
Hudson Valley	261	259	2	0.8%	7,903	7,996	-93	-1.2%
Long Island	204	198	6	3.0%	5,298	5,254	44	0.8%
Mohawk Valley	79	75	4	5.3%	4,962	3,875	1,087	28.1%
New York City	432	390	42	10.8%	38,494	38,627	-133	-0.3%
North Country	195	211	-16	-7.6%	2,431	2,682	-251	-9.4%
Southern Tier	155	160	-5	-3.1%	2,498	2,583	-85	-3.3%
Western NY	171	178	-7	-3.9%	4,827	5,735	-908	-15.8%
NYS TOTAL	2,034	1,996	38	1.9%	78,235	79,432	-1,197	-1.5%

Restaurant Industry Region	Number of Establishments				Employment Summary**			
	1 st Qtr-2004	1 st Qtr-2000	Change	% Change	2004	2000	Change	% Change
Capital District	2,084	2,247	-163	-7.3%	28,645	26,338	2,307	8.8%
Central NY	1,361	1,403	-42	-3.0%	20,954	19,827	1,127	5.7%
Finger Lakes	2,032	2,122	-90	-4.2%	31,714	32,571	-857	-2.6%
Hudson Valley	4,127	4,031	96	2.4%	44,848	39,249	5,599	14.3%
Long Island	5,184	5,124	60	1.2%	68,877	60,147	8,730	14.5%
Mohawk Valley	939	1,020	-81	-7.9%	11,414	11,087	327	2.9%
New York City	13,181	12,875	306	2.4%	165,682	156,107	9,575	6.1%
North Country	853	898	-45	-5.0%	10,013	9,847	166	1.7%
Southern Tier	1,316	1,354	-38	-2.8%	18,212	16,853	1,359	8.1%
Western NY	2,810	3,029	-219	-7.2%	43,226	42,183	1,043	2.5%
NYS TOTAL	33,887	34,103	-216	-0.6%	443,585	414,209	29,376	7.1%

* Definitions of these industry classifications and exclusions from this analysis provided as an appendix.

** Employment calculated as the average employment level over the 12 months of a calendar year.

**Figure 2. Trends in Employment in the Hotel (NAICS 721: Accommodations) and Restaurant (NAICS 722: Food Services & Drinking Places) Industries
New York State, Jan. 2000 - Dec. 2004**



Note: Data values shown are for January and July in each year for each series.

Source: Quarterly Census of Employment and Wages (QCEW)

II. Occupational Employment and Wages

Hotel Industry Analysis

Figure 3 shows the employment levels and annual wages for the 17 largest food-related occupations in the hotel industry. Waiters and waitresses is, by far, the occupation with the most employment, but it is among the lowest paid jobs. The highest paid food-related occupations are food service managers (\$53,412), followed by chefs and head cooks (\$44,644) and first-line supervisors/managers of food preparation and serving workers (\$40,037). These three highest paying jobs are among the occupations with the smallest employment levels in the hotel industry.

**Figure 3. Employment and Wages in Food Service and Related Occupations
in the Hotel Industry
New York State, 2004**

OCCUPATIONAL TITLE	EMPLOYMENT	MEDIAN 2004 WAGE
Waiters and Waitresses	6,480	\$19,751
Cooks, Restaurant	2,950	\$31,579
Dining Room and Cafeteria Attendants and Bartender Helpers	2,240	\$17,590
Bartenders	2,230	\$20,475
Dishwashers	2,040	\$16,485
Food Servers, Non-restaurant	1,720	\$21,281
Combined Food Preparation and Serving Workers, Including Fast Food	1,340	\$21,796
First-Line Supervisors/Managers of Food Preparation and Serving Workers	1,130	\$40,037
Food Preparation Workers	960	\$20,766
Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	820	\$21,294
Chefs and Head Cooks	710	\$44,644
Food Service Managers	410	\$53,412
Cooks, Institution and Cafeteria	270	\$22,886
Cooks, Short Order	210	\$19,946
Bakers	160	\$34,496
Food Preparation and Serving Related Workers, All Other	90	\$21,781
Cooks, Fast Food	40	\$19,100

Source: Occupational Employment Statistics survey.

Restaurant Industry Analysis

Data for food-related occupations in the restaurant industry are shown in Figure 4. The largest occupation, waiters and waitresses, employs nearly twice as many as the second largest job, combined food preparation and serving workers. Like in the hotel industry, waiters and waitresses are among the lowest paying job titles among food service job titles. The best paying jobs are general and operations managers (\$61,699) followed by food service managers (\$39,991) and chefs and head cooks (\$36,950). These three occupations employ among the fewest workers.

**Figure 4. Employment and Wages in Food Service and Related Occupations
in the Restaurant Industry
New York State, 2004**

OCCUPATIONAL TITLE	EMPLOYMENT	MEDIAN 2004 WAGE
Waiters and Waitresses	107,860	\$16,391
Combined Food Preparation and Serving Workers, Including Fast Food First-Line Supervisors/Managers of Food Preparation and Serving Workers	56,340	\$13,636
Food Preparation Workers	34,060	\$24,264
Cooks, Restaurant	29,280	\$16,086
Cooks, Fast Food	28,160	\$22,490
Dishwashers	26,070	\$15,563
Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	22,090	\$14,015
Bartenders	22,030	\$15,645
Cashiers	21,880	\$16,152
Dining Room and Cafeteria Attendants and Bartender Helpers	17,160	\$14,622
Cooks, Short Order	12,850	\$14,454
Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	10,680	\$18,396
Food Service Managers	9,290	\$16,584
Chefs and Head Cooks	7,160	\$39,991
Cooks, Institution and Cafeteria	4,590	\$36,950
General and Operations Managers	4,230	\$23,216
Bakers	4,080	\$61,699
Food Servers, Non-restaurant	2,660	\$22,386
	1,470	\$21,192

Source: Occupational Employment Statistics survey.

III. Characteristics of Food Service and Related Workers

Workers in food service and related occupations in the hotel and restaurant industries are younger and less educated than workers in general. Over one-third have less than a high school education. Fewer workers in food-related jobs in these two industries work full-time than workers in all industries. This is especially pronounced among workers aged 16-24 who comprise nearly forty percent of workers in food-related occupations, but applies to all age groups. (see Figure 5 below)

**Figure 5. Demographic Characteristics of Food Service and Related Workers
in Restaurant and Hotel Industries Compared with All Workers in All Industries,
New York State, 2000**

Characteristic	Selected Occupations in Restaurant and Hotel Industries			All Workers in All Industries		
	Number	Percent		Number	Percent	
Educational Attainment						
Less than high school	144,611	35.7%		1,109,744	13.2%	
High school graduate	113,727	28.0%		2,066,807	24.6%	
Associate degree or some college, but no degree	108,325	26.7%		2,419,457	28.8%	
Bachelor's degree or more	38,799	9.6%		2,792,786	33.3%	
Total	405,462	100.0%		8,388,794	100.0%	
			% Full- time			% Full- time
Age	Number	Percent		Number	Percent	
16 – 24	158,654	39.1%	36.4%	1,022,864	12.2%	51.3%
25 – 34	97,671	24.1%	75.5%	1,949,291	23.2%	83.4%
35 – 44	78,997	19.5%	76.0%	2,297,476	27.4%	83.1%
45 – 54	45,557	11.2%	77.0%	1,898,074	22.6%	84.2%
55 – 64	18,950	4.7%	74.3%	920,138	11.0%	79.0%
65 – 74	4,592	1.1%	38.6%	232,210	2.8%	49.8%
75 or older	1,041	0.3%	50.0%	68,741	0.8%	37.6%
Total	405,462	100.0%		8,388,794	100.0%	

Gender	Number	Percent
Male	225,282	55.6%
Female	180,180	44.4%
Total	405,462	100.0%

Number	Percent
4,428,775	52.8%
3,960,019	47.2%
8,388,794	100.0%

Race	Number	Percent
White alone	265,191	65.4%
African American alone	37,886	9.3%
American Indian alone or Alaskan Native alone	1,983	0.5%
Asian alone	42,777	10.6%
Native Hawaiian and Other Pacific Islander alone	312	0.1%
Some other race alone	40,558	10.0%
Two or more race groups	16,755	4.1%
Total	405,462	100.0%

Number	Percent
6,009,984	71.6%
1,183,280	14.1%
30,263	0.4%
453,367	5.4%
4,057	0.0%
482,030	5.7%
225,813	2.7%
8,388,794	100.0%

Ethnicity	Number	Percent
Not Hispanic	322,852	79.6%
Hispanic	82,610	20.4%
Total	405,462	100.0%

Number	Percent
7,357,460	87.7%
1,031,334	12.3%
8,388,794	100.0%

Source: Census 2000, 5% Public Use Microdata Sample.

Appendix I: Labor Market Regions in New York State



Labor market regions:

- **Capital District:** Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren and Washington counties.
- **Central New York:** Cayuga, Cortland, Onondaga and Oswego counties.
- **Finger Lakes:** Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates counties.
- **Hudson Valley:** Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester counties.
- **Long Island:** Nassau and Suffolk counties.
- **Mohawk Valley:** Fulton, Herkimer, Madison, Montgomery, Oneida and Schoharie counties.
- **New York City:** Bronx, Kings, New York, Queens and Richmond counties.
- **North Country:** Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis and St. Lawrence counties.
- **Southern Tier:** Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Steuben, Tioga and Tompkins counties.
- **Western New York:** Allegany, Cattaraugus, Chautauqua, Erie and Niagara counties.

Appendix II: NAICS Industry Definitions

NAICS Industry 721: Accommodation

Industries in the Accommodation subsector provide lodging or short-term accommodations for travelers, vacationers and others. There is a wide range of establishments in these industries. Some provide lodging only, while others provide meals, laundry services and recreational facilities, as well as lodging. Lodging establishments are classified in this subsector even if the provision of complementary services generates more revenue. The types of complementary services provided vary from establishment to establishment.

The subsector is organized into three industry groups: (1) 7211 Traveler Accommodation, (2) 7212 Recreational Accommodation, and (3) 7213 Rooming and Boarding Houses. For the purposes of this analysis, the focus has been restricted to 7211 Traveler Accommodation, and the recreational accommodation and rooming and boarding houses industry groups have been excluded. The Traveler Accommodation industry group includes establishments that primarily provide traditional types of lodging services. This group includes hotels, motels and bed and breakfast inns. In addition to lodging, these establishments may provide a range of other services to their guests. Establishments that manage short-stay accommodation establishments (e.g., hotels and motels) on a contractual basis are classified in this subsector if they both manage the operation and provide the operating staff. Such establishments are classified based on the type of facility managed and operated.

NAICS Industry 722: Food Services and Drinking Places

Industries in the Food Services and Drinking Places subsector prepare meals, snacks and beverages to customer order for immediate on-premises and off-premises consumption. There is a wide range of establishments in these industries. Some provide food and drink only, while others provide various combinations of seating space, waiter/waitress services and incidental amenities, such as limited entertainment. The industries in the subsector are grouped based on the type and level of services provided. The industry groups are full-service restaurants; limited-service eating places; special food services, such as food service contractors, caterers, and mobile food services; and drinking places.

Food services and drink activities at hotels and motels, amusement parks, theaters, casinos, country clubs, and similar recreational facilities, and civic and social organizations are included in this subsector only if these services are provided by a separate establishment primarily engaged in providing food and beverage services. Excluded from this subsector are establishments operating dinner cruises. These establishments are classified in Subsector 487, Scenic and Sightseeing Transportation because those establishments utilize transportation equipment to provide scenic recreational entertainment.

NOTICE OF PUBLIC HEARING

Department of Labor

Pursuant to Labor Law Sections 653(2) and 655(4) and the Open Meeting Law, the New York State Department of Labor hereby gives public notice that on Thursday, August 18, 2005, the Wage Board will hold a public hearing to receive testimony regarding changes to wage orders governing wages payable to food service workers.

The hearing will be held at the following locations at the designated times:

New York City - 9:00 a.m. - 11:00 a.m.
345 Hudson Street
Room 7321
New York, New York

Albany - 11:00 a.m. - 1:00 p.m.
State Office Campus
Building 12
Training Room E - 1st Floor
Albany, New York

Buffalo - 2:00 p.m. - 4:00 p.m.
65 Court Street
4th Floor Conference Room
Buffalo, New York

Persons wishing to speak at the hearing must notify the Wage Board at State Office Campus, Building 12, Room 532, Albany, New York 12240, (518) 457-4256, (518) 457-7997(fax) or carmine.ruberto@labor.state.ny.us by August 10, 2005. Speakers are also required to prepare their testimony in writing and to make 5 copies available at hearing. Oral presentations will be limited to 10 minutes each. Written testimony will be accepted until August 25, 2005.

The hearing facilities meet the accessibility needs of individuals with disabilities. Persons planning to attend the hearing who are in need of reasonable accommodations such as interpreters, assistive listening devices, large-print or Braille materials, should so inform the Department at least two weeks prior to the hearing date. Call (518) 457-4256 for assistance or information.

For further information, contact: Carmine Ruberto, Executive Secretary, New York State Wage Board, State Office Campus, Building 12, Room 532, Albany, New York 12240, (518) 457-4256, (518) 457-7997(fax), carmine.ruberto@labor.state.ny.us.

2D-c

Notice of Public Hearing

NYS Department of Labor

Wage Board

Richard P. Nathan, Chair
Janella Hinds, Member
Max K. Rausch, Member

CHANGES TO WAGE ORDERS GOVERNING WAGES PAYABLE TO FOOD SERVICE WORKERS

Pursuant to Labor Law Sections 653(2) and 655(4) and the Open Meeting Law, the New York State Department of Labor hereby gives public notice that on Thursday, August 18, 2005, the Wage Board will hold a public hearing to receive testimony regarding changes to wage orders governing wages payable to food service workers.

The hearing will be held at the following locations at the designated times:

New York City	9:00 a.m. – 11:00 a.m. 345 Hudson Street, Room 7321 New York, New York
Albany	11:00 a.m. – 1:00 p.m. State Office Bldg. Campus, Building 12 Training Room E – 1 st Floor Albany, New York
Buffalo	2:00 p.m. – 4:00 p.m. 65 Court Street, 4 th Floor Conference Room Buffalo, New York

Persons wishing to speak at the hearing must notify the Wage Board at State Office Building Campus, Building 12, Room 532, Albany, New York 12240, (518) 457-4256, fax (518) 457-7997, or carmine.ruberto@labor.state.ny.us. Persons who will be attending the hearing should complete and return the enclosed appearance form by mail, fax or e-mail by **August 15, 2005**.

Speakers are required to prepare their testimony in writing and make 5 copies available at the hearing. Oral presentations will be limited to 10 minutes each. Written testimony from individuals who are unable to attend the hearing will be accepted until August 25, 2005, at the Wage Board address above.

For further information, contact Carmine Ruberto, Executive Secretary, New York State Wage Board, State Office Building Campus, Building 12, Room 532, Albany, New York 12240, (518) 457-4256; fax (518) 457-7997, carmine.ruberto@labor.state.ny.us.

NOTICE OF PUBLIC HEARING:

**CHANGES TO WAGE ORDERS GOVERNING WAGES PAYABLE
TO FOOD SERVICE WORKERS**

Mail to: Wage Board
State Office Bldg. Campus,
Building 12, Room 532
Albany, New York 12240

or Fax to: (518) 457-7997

or e-mail to: carmine.ruberto@labor.state.ny.us

I plan to testify at the August 18, 2005, hearing at the following location:

- New York City
- Albany
- Buffalo

I plan to attend but not testify at the August 18, 2005, hearing at the following location:

- New York City
- Albany
- Buffalo

I will require assistance and/or handicapped accessibility information.
Please specify type of assistance required:

Name _____

Title _____

Organization (if any) _____

Address _____

City/State/Zip Code _____

Telephone number _____ **Fax** _____

E-mail Address: _____

2D-d-2

Written Testimony of Fred G. Sampson on behalf of the New York State Restaurant Association.

Members of the Wage Board: Chairman Nathan, Ms. Hinds and Mr. Rausch, I am Fred Sampson, President of Sampson Consulting, and I am here representing the New York State Restaurant Association (NYSRA). I welcome the opportunity to speak on the current Minimum Wage Order for the Restaurant Industry and offer some thoughts and suggestions on its future.

Throughout the course of my career, I have worked extensively on restaurant labor issues. Not only did I serve as President of NYSRA from 1961-1995 but I also had the opportunity to serve as a wage board member under Governor Rockefeller in 1963 and again under Governor Cuomo in the mid-1980s.

The Association I am representing today, NYSRA, is a non-profit trade association dedicated to protecting, promoting, representing and educating its members so that they can better serve the public. NYSRA represents more than 8,000 restaurants, catering facilities, foodservice operations, and suppliers from Massena to Montauk and everywhere in between.

New York's Minimum Wage Order for the Restaurant Industry covers an industry with more than 477,000 employees and projected sales of \$23 billion in 2005, a sizeable portion of New York State's economy and workforce.

NYSRA has several observations and recommendations to improve the current wage order. Our goal is to make the Restaurant Wage Order more employer-friendly, reflective of the current conditions and "real-world" realities of the restaurant industry, simplified and uniform. The result will be a wage order that the restaurateur can understand, that clearly defines what constitutes compliance, and is free of redundant and unnecessary specifications.

1. Section 137-1.4 Tip allowance for service employees.

The New York State Restaurant Association believes that all tipped employees in the restaurant industry are food service workers according to the definition provided under section 137-3.4. We have been unable to think of an employee that would instead fall under the definition of service employees. We would ask the wage board to please consider this section and see if they can think of any restaurant industry tipped employee that would not fall under the definition of food service worker. If they cannot, NYSRA recommends that section 137-1.4 be deleted in its entirety and any further reference to service employees, in order to simplify the wage order and make it easier for the employer to comply.

2. Section 137-1.5 Tip allowance for food service worker.

NYSRA believes that tipped employees are earning far in excess of the minimum wage and should not receive continued increases in the cash wage under this section. So long as tips and the cash wage at least equal the statutory minimum wage as required in section 137-1.2, then compliance is met.

To support this recommendation, I ask you to consider the Federal Law. Under the FLSA employers must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. The current federal cash wage is \$2.13 an hour and the federal minimum wage is \$5.15 making the federal tip allowance \$3.02 an hour, far in

excess of New York's tip allowance of \$2.15 an hour, which is based on a \$6.00 an hour minimum wage.

It is recognized in the restaurant and hotel industries that foodservice workers whom render a personal service to the customer/client, receive sufficient tips on a daily basis, in the vast majority of cases which far exceeds state minimum wage requirements. In some cases, wait staff personnel receive anywhere from \$12 to \$17 per-hour in tips from customers/clients on a daily basis. Documentation furnished to the Internal Revenue Service for tax purposes by tipped employees to the restaurant employer can substantiate these facts.

Another illustration of the true value of tips is as follows: Zagat Guide for 2003 reported that the average price of a meal nationally was \$28 and in New York City \$37. If we were to cut that by a third, that would mean that meals in New York City would be \$25 per person and an average tip of 15% would be \$3.75 per person. If we cut the national average by a third to \$19 per person, and multiply that by 15% you would have a tip of \$2.85 per person. Simply put, waiting on just one person at those prices far exceeds the present tip allowance. If you were to make that a party of two or four, you can see the tip earnings involved.

There is also a relationship between menu prices and tip earnings. As an example, it has been five years since there has been an increase in the minimum wage. In that same five years, food-service management, because of increases in energy costs, rent, taxes, insurance, equipment and food-products themselves, have had to increase their menu prices on an average of 5% per year, which translates into an aggregate total of 27.6%. Simply put, it would follow, since patrons tip on the basis of the amount of the check, that tipped employees' income had increased by the same percentage. So, without an increase in the minimum wage, tipped employees' earnings have continued to rise and, in fact, usually rise every time management must raise prices. NYSRA thinks it stands to reason to say that tipped employees are not minimum wage employees.

In the New York State Department of Labor, Emergency/Proposed Rule Making, ID No. LAB-01-05-00008-EP, Filing No. 1431, Filing date: Dec. 21, 2004, Effective date: Dec. 21, 2004, Regulatory Impact Statement, 2. Legislative Objectives the New York State Department of Labor recognizes the fact that tipped employees make far in excess of the minimum wage. The exact language in that document reads, "The legislature acknowledged that the food and beverage service industry is highly competitive and that tipping employees who serve customers in food and beverage establishments is a common practice. It is also common that the total income earned by employees in this industry, when tips are combined with the wages required under existing wage orders of the department of labor, frequently exceed the mandated minimum wage."

And finally, to further support this modern approach and prove that employees are receiving more than adequate tips, we recommend that the Wage Board examine the records of the N.Y.S.D.O.L. - Division of Labor Standards for the past 10 years and look at the total number of minimum wage inspections for restaurants completed where not making sufficient tips was the basis of the underpayments. We think you will find there are few, if any minimum wage under payments.

3. Section 137-1.9 Allowances for Meals and Lodging

NYSRA recommends that there should not be any differentiation in meal allowances or lodging allowances for Food Service Workers and For All Other Workers. The value for a meal and

lodging should be the same, since it is the same meal and the same room being provided to these employees.

NYSRA further recommends that the wage board consider eliminating specific rates in the Wage Order for these allowances, and permit the employer to charge the actual cost of the meals and lodging, or the fair value of same. Fair Value means not more than the actual cost to the employer of the food or lodging supplied by an employer and does not include a profit to the employer. To support this recommendation, the Wage Board should look at the Fair Labor Standards Act and the New Jersey Wage & Hour Law.

4. Section 137-2.1 (e) Employer records

NYSRA recommends adding the language "or another location mutually acceptable to all parties" at the end of the paragraph. This change would allow the Department of Labor to review the employer's records at any location not just the place of employment so long as all parties agree.

5. Section 137-2.3 Posting

NYSRA recommends adding "or a reasonable facsimile" to the end of the paragraph. This change would allow employers to post a notice other than the Department of Labor's so long as it included all of the necessary information.

6. Section 137-3.3 Service employee and nonservice employee.

In accordance with previous recommendations, NYSRA suggest that the Wage Board eliminate the definition of a service employee and leave only the definitions of a food service worker and a nonservice employee. For clarification it may be necessary to rename the nonservice employee a non food service employee. The Non Service Employee does not receive any tips and is paid the hourly rate of \$6.00 or higher for all hours worked up to 40.

7. Section 137-3.8 Meals

NYSRA recommends that the definition of a meal should be changed to read "(a) A meal shall provide adequate portions of a variety of wholesome, nutritious foods." The rest of the language should be eliminated since it is out of date with current dietary recommendations.

I would like to thank the wage board for this opportunity to testify and make suggestions. Since a wage board has not convened in nearly 20 years, we hope that today's hearing will result in a more modern approach to the wage order, one that truly reflects the restaurant industry in 2005.

**New York State Department of Labor
Minimum Wage Board
Public Hearing on Changes to Wage Orders**

**Testimony of Denis Hughes, President
New York State AFL-CIO**

August 18, 2005

Members of the Minimum Wage Board, I present this testimony of behalf of the 2.5 million working people in New York State and specifically the workers in the food service and hospitality industries across our state. We are pleased that our state legislature has allowed us to join 12 other states and the District of Columbia by passing this important legislation.

The federal minimum wage has remained at the same level since 1997 although costs have increased and the economy has seen dramatic ups and downs. New York State has one of the highest costs of living in the United States, and, over the past 8 years, thousands of New Yorkers earning minimum wage salaries have been unable to provide for their families' basic needs. We expect the increase in the minimum wage to be particularly helpful in Western and Upstate counties of New York, where local economies continue to struggle, and where more than 16% of the workers in the counties of Broome, Cattaraugus, Cayuga, Chautauqua, Cayuga, Chenango, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Montgomery, Niagara, Oneida, Orleans, Oswego, Seneca, St. Lawrence, Steuben, Sullivan, Warren, and Washington (a total of 221,900 people) work at or just above the minimum wage.

63% of New York State's workforce is female, and 100,000 of those women are single women with children earning minimum wage incomes. In addition, 42% of families with children in New York State rely on the income of at least one worker earning the minimum wage. The workers who provide essential services around the state, and their children, will be the greatest beneficiaries of his important legislation.

The increase in New York State's minimum wage not only helps those workers currently earning the minimum \$6.00 per hour. This increase also directly benefits all tipped workers across the state. The formula currently established is critical for these workers, many of whom are at the lower range of the income continuum. We expect this increase in the minimum wage to help all workers throughout the state by allowing them to more effectively meet their basic needs and increase their contributions to our state's economy.

Studies show that the increase in the minimum wage has improved the economies of those states with wage floors higher than the federal. The increase in the state's minimum wage has established a higher wage floor, increasing the fairness of the competition between New York State's businesses. We can safely expect that, over the next three years, our State's economy will improve as well. As New York State's workers earn higher wages, our income tax base will expand and our consumers will have more money to spend on goods and services. We can also expect employment to increase as it has in states with minimum wage rates higher than the federal base. The higher wage floor established by our new minimum wage levels the playing field among competing businesses and ensures that businesses are protected from unfair competition.

The increase in the minimum wage is beneficial to workers and employers alike. The New York State AFL-CIO and its members are pleased that New York State's workers have the opportunity to benefit with the growth of our economy through the increase of our state's minimum wage.

Thank you for the opportunity to present this testimony.

Aug 15 05 01:54p

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AUG-15-05

12:43PM

FROM-NEW YORK STATE RESTAURANT ASSOCIATION

518-452-4487

T-283 P 003

F-239

P. 1

NOTICE OF PUBLIC HEARING:

CHANGES TO WAGE ORDER'S GOVERNING WAGES PAYABLE TO FOOD SERVICE WORKERS

Mail to: Wage Board
State Office Bldg. Campus,
Building 12 Room 532
Albany, New York 12240

or Fax to: (518) 457-1999

or e-mail to: car-nine@labor.state.ny.us

I plan to testify at the August 18, 2005, hearing at the following location:

- New York City
- Albany
- Buffalo

I plan to attend but not testify at the August 18, 2005, hearing at the following location:

- New York City
- Albany
- Buffalo

I will require assistance and/or handicapped accessibility information. Please specify type of assistance required:

Name DENNIS DI PAOLO

Title OWNER ILIO DI PAOLO'S REST

Organization (if any) N.Y. STATE RESTAURANT ASSC.

Address 3785 SOUTH PARK

City/State/Zip Code ELMASD -CC NY 14219

Telephone number 716-825-3175 Fax 716-825-1054

E-mail Address: DD31055@AOL.COM

2D-g1

DiPaolo's
Restaurant and Bar

3785 South Park Avenue
Roseland, New York 14219
Tel: (716) 825-3675
Fax: (716) 825-1054
www.dipaolos.com



Dennis DiPaolo | (716) 825-3675
Part Chief | (716) 825-1054 (Fax)
| (716) 866-2611 (Cell)
| d3675@aol.com

Ugo DiPaolo's Restaurant
3785 South Park Avenue
Roseland, NY 14219

2D-g2

rec'd 3-12-2005
from Dennis D. Poole

**6 Month Labor Report
January- June
25 Weeks**

<u>Hours:</u>	<u>2004</u>	<u>2005</u>	<u>Comparison</u>
Total	38,462	35,218	-3,244
Chef	8,000	7,528	-472
Pizza	2,801	2,619	-182
Pantry	2,958	2,650	-308
Dishes	7,749	6,327	-1,422
Restaurant Server	7,557	7,551	(-6)
Banquet Server	4,943	4,655	-288
Bar	2,338	2,403	(65)
Bus	675	441	-234
Management	5,042	4,954	-88
Cost:	Were within 1% of 2004		-7,205
Sales:	Down 2% from 2004		-11,489
%:	24.50%	24%	-5%

Please note that since the minimum increase, helping our young get jobs and learn responsibilities of life, is difficult because we have had to eliminate many of those positions. Yet, since the tipped employee wage increase, those already making well over (at least 3x's) minimum wage have stayed strong because of the demand of customer service.

2D-g3

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TO FOOD SERVICE WORKERS**

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Albany, New York 12240

or Fax to: (518) 457-7997

or e-mail to: carmine.ruberto@labor.state.ny.us

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- New York City
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- Buffalo

I will require assistance and/or handicapped accessibility information.
Please specify type of assistance required:

Name

William A DeLuca

Title

OWNER

Organization (if any)

MR. BILL'S REST. + BAR

Address

1500 CLEVELAND DR

City/State/Zip Code

CHEEKTOWAGA, N.Y. 14225

Telephone number

716-634-0783 Fax 716-634-7928

E-mail Address:

MRBILL1500 @ G-MAIL . COM

2D-g4

STATE OF NEW YORK

DEPARTMENT OF LABOR



Minimum Wage Order for the Restaurant Industry

Part 137 of Title 12 of Official Compilation of Codes, Rules and Regulations

Based on Labor Law Changes Effective January 1, 2005

Promulgated by the Commissioner of Labor Pursuant to the Minimum Wage

Act (Article 19 of the New York State Labor Law)

(07-05)

2D-h1

PART 137
RESTAURANT INDUSTRY

(Statutory authority: Labor Law, § 21[11], art.19] Article 2, § 21 [11] and Article 19, § 652)

Subpart 137-1 Minimum Wage and Allowances
Subpart 137-2 Regulations
Subpart 137-3 Definitions

SUBPART 137-1
MINIMUM WAGE AND ALLOWANCES

Sec.

- 137-1.1 Application
- 137-1.2 Basic minimum hourly wage rates
- 137-1.3 Overtime hourly rate
- 137-1.4 Tip allowance for service employees
- 137-1.5 Tip allowance for food service worker
- 137-1.6 Call-in pay rate
- 137-1.7 Additional rate for spread of hours
- 137-1.8 Rate for required uniforms
- 137-1.9 Allowances for meals and lodging

§ 137-1.1 Application.

Every employer in the restaurant industry shall pay to each employee, as defined in this Part, not less than the minimum wage rates provided in this Part.

§ 137-1.2 Basic minimum hourly wage rates.

The basic minimum hourly rate shall be:

- (a) \$5.15 per hour on and after March 31, 2000;
- (b) \$6.00 per hour on and after January 1, 2005;
- (c) \$6.75 per hour on or after January 1, 2006; and
- (d) \$7.15 per hour on and after January 1, 2007; or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or any successor provisions.

§ 137-1.3 Overtime hourly rate.

An employer shall pay an employee for overtime at a wage rate of 1 1/2 times the employee's regular rate for hours worked in excess of 40 hours in one workweek.

§ 137-1.4 Tip allowance for service employees.

(a) Allowance for tips shall not exceed:

(1) On and after March 31, 2000, \$1.15 an hour for an employee whose average of tips received is between \$1.15 and \$1.65 per hour; \$1.65 per hour for an employee whose average tips received is \$1.65 per hour or more;

(2) On and after January 1, 2005, \$1.35 an hour for an employee whose average of tips received is between \$1.35 and \$1.90 per hour; \$1.90 per hour for an employee whose average of tips received is \$1.90 per hour or more;

(3) On and after January 1, 2006, \$1.50 an hour for an employee whose average of tips received is between \$1.50 and \$2.15 per hour; \$2.15 per hour for an employee whose average of tips received is \$2.15 per hour or more;

(4) On and after January 1, 2007, \$1.60 an hour for an employee whose average of tips received is between \$1.60 and \$2.30 per hour; \$2.30 per hour for an employee whose average of tips received is \$2.30 per hour or more;

(b) No allowance for tips or gratuities shall be permitted for an employee whose weekly average of tips is less than:

(1) \$1.15 per hour on and after March 31, 2000;

(2) \$1.35 per hour on and after January 1, 2005;

(3) \$1.50 per hour on and after January 1, 2006; and

(4) \$1.60 per hour on and after January 1, 2007.

§ 137-1.5 Tip allowance for food service worker.

(a) On or after March 31, 2000, a food service worker shall receive a cash wage of at least \$3.30 per hour, provided that the tips of such worker, when added to such cash wage, are equal to or exceed \$5.15 per hour.

(b) On or after January 1, 2005, a food service worker shall receive a cash wage of at least \$3.85 per hour, provided that the tips of such worker, when added to such cash wage, are equal to or exceed \$6.00 per hour.

(c) On or after January 1, 2006, a food service worker shall receive a cash wage of at least \$4.35 per hour, provided that the tips of such worker, when added to such cash wage, are equal to or exceed \$6.75 per hour.

(d) On or after January 1, 2007, a food service worker shall receive a cash wage of at least \$4.60 per hour, provided that the tips of such worker, when added to such cash wage, are equal to or exceed \$7.15 per hour.

§ 137-1.6 Call-in pay rate.

(a) An employee who by request or permission of the employer reports for duty on any day, whether or not assigned to actual work, shall be paid at the applicable minimum wage rate:

(1) for at least three hours for one shift, or the number of hours in the regularly scheduled shift, whichever is less;

(2) for at least six hours for two shifts totalling six hours or less; or the number of hours in the regularly scheduled shift, whichever is less; and

(3) for at least eight hours for three shifts totalling eight hours or less, or the number of hours in the regularly scheduled shift, whichever is less.

§ 137-1.7 Additional rate for spread of hours.

On each day in which the spread of hours exceeds 10, an employee shall receive one hour's pay at the basic minimum hourly wage rate before allowances, in addition to the minimum wages otherwise required in this Part.

§ 137-1.8 Rate for required uniforms.

No allowance for the supply, maintenance, or laundering of required uniforms shall be permitted as part of the minimum wage. Where an employee purchases a required uniform he shall be reimbursed by the employer for the cost thereof not later than the time of the next payment of wages. Where the employer fails to launder or maintain required uniforms for any employee, he shall pay such employee in addition to the minimum wage prescribed herein:

(a) \$6.40 per week on and after March 31, 2000, if the employee works more than 30 hours weekly; \$5.05 per week on and after March 31, 2000, if the employee works more than 20 but not more than 30 hours weekly; and \$3.05 per week on and after March 31, 2000, if the employee works 20 hours or less weekly.

(b) \$7.45 per week on and after January 1, 2005, if the employee works more than 30 hours weekly; \$5.90 per week on and after January 1, 2005, if the employee works more than 20 but not more than 30 hours weekly; and \$3.55 per week on and after January 1, 2005, if the employee works 20 hours or less weekly;

(c) \$8.40 per week on and after January 1, 2006, if the employee works more than 30 hours weekly; \$6.60 per week on and after January 1, 2006, if the employee works more than 20 but not more than 30 hours weekly; and \$4.00 per week on and after January 1, 2006, if the employee works 20 hours or less weekly; and

(d) \$8.90 per week on and after January 1, 2007, if the employee works more than 30 hours weekly; \$7.00 per week on and after January 1, 2007, if the employee works more than 20 but not more than 30 hours weekly; and \$4.25 per week on and after January 1, 2007, if the employee works 20 hours or less weekly.

§ 137-1.9 Allowances for meals and lodging.

(a) *Allowances for meals.*

(1) Meals furnished by an employer to an employee shall be valued at no more than:

(i) \$1.65 per meal on and after March 31, 2000, for food service workers receiving a cash wage of at least \$3.30 per hour; and \$1.75 per meal on and after March 31, 2000, for all other workers:

(ii) \$1.85 per meal on and after January 1, 2005, for food service workers receiving a cash wage of at least \$3.85 per hour; and \$2.05 per meal on and after January 1, 2005, for all other workers:

(iii) \$2.00 per meal on and after January 1, 2006, for food service workers receiving a cash wage of at least \$4.35 per hour; and \$2.30 per meal on and after January 1, 2006, for all other workers:

(iv) \$2.10 per meal on and after January 1, 2007, for food service workers receiving a cash wage of at least \$4.60 per hour; and \$2.45 per meal on and after January 1, 2007, for all other workers.

(2) An allowance for more than one meal shall not be permitted for any employee working less than five hours on any day.

(3) An allowance for more than two meals shall not be permitted for any other employee on any day, except that an allowance of one meal per shift may be permitted for such an employee working on a split shift.

(b) *Allowances for lodging.* Lodging furnished by an employer to an employee may be considered as part of the minimum wage but shall be valued at not more than:

(1) \$1.20 per day on and after March 31, 2000, for food service workers receiving a cash wage of at least \$3.30 per hour; \$1.25 per day on and after March 31, 2000 for all other workers; \$7.60 per week on and after March 31, 2000, for food service workers receiving a cash wage of at least \$3.30 per hour; \$8.05 per week on and after March 31, 2000, for all other workers;

(2) \$1.35 per day on and after January 1, 2005, for food service workers receiving a cash wage of at least \$3.85 per hour; \$1.45 per day on and after January 1, 2005, for all other workers; \$8.45 per week on and after January 1, 2005, for food service workers receiving a cash wage of at least \$3.85 per hour; \$9.40 per week on and after January 1, 2005, for all other workers;

(3) \$1.45 per day on and after January 1, 2006, for food service workers receiving a cash wage of at least \$4.35 per hour; \$1.65 per day on and after January 1, 2006, for all other workers; \$9.15 per week on and after January 1, 2006, for food service workers receiving a cash wage of at least \$4.35 per hour; \$10.55 per week on and after January 1, 2006, for all other worker; and.

(4) \$1.50 per day on and after January 1, 2007, for food service workers receiving a cash wage of at least \$4.60 per hour; \$1.75 per day on and after January 1, 2007, for all other workers; \$9.50 per week on and after January 1, 2007, for food service workers receiving a cash wage of at least \$4.60 per hour; and \$11.15 per week on and after January 1, 2007, for all other workers.

**SUBPART 137-2
REGULATIONS**

Sec.

- 137-2.1 Employer records
- 137-2.2 Statement to employee
- 137-2.3 Posting
- 137-2.4 Basis of wage payment
- 137-2.5 Deductions and expenses
- 137-2.6 Employment covered by more than one wage order
- 137-2.7 Learner or apprentice rates
- 137-2.8 Rehabilitation programs
- 137-2.9 Student obtaining vocational experience

§ 137-2.1 Employer records.

(a) Every employer shall establish, maintain and preserve for not less than six years weekly payroll records which shall show for each employee:

- (1) name and address;
- (2) social security number;
- (3) occupational classification and wage rate;
- (4) the number of hours worked daily and weekly, including the time of arrival and departure for each employee working a split shift or spread of hours exceeding 10;
- (5) the amount of gross wages;
- (6) deductions from gross wages;
- (7) allowances, if any, claimed as part of the minimum wage;
- (8) money paid in cash; and
- (9) student classification.

(b) The records should also indicate whether the employee has uniforms laundered, cleaned or maintained by the employer.

(c) In addition, for each individual permitted to work in an executive, administrative or professional capacity, an employer's records shall show:

- (1) name and address;
- (2) social security number;
- (3) description of occupation; and
- (4) for individuals working in an executive or administrative capacity, total wages, and the value of allowances, if any, for each payroll period.

(d) For each individual for whom student status is claimed, a statement from the school which such individual attends indicating whether or not such individual:

- (1) is a student whose course of instruction is one leading to a degree, diploma or certificate; or
- (2) is completing residence requirements for a degree; and
- (3) is required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

(e) Employers, including those who maintain their records containing the information required by this section at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the commissioner at the place of employment.

§ 137-2.2 Statement to employee.

Every employer covered by this Part shall furnish to each employee a statement with every payment of wages listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages.

§ 137-2.3 Posting.

Every employer covered by this Part shall post, in a conspicuous place in his or her establishment, a notice issued by the Department of Labor summarizing minimum wage provisions.

§ 137-2.4 Basis of wage payment.

The minimum wage provided by this Part shall be required for each week of work, regardless of the frequency of payment, whether the wage is on a commission, bonus, piece rate, or any other basis.

§ 137-2.5 Deductions and expenses.

(a) Wages shall be subject to no deductions, except for allowances authorized in this Part, and except for deductions authorized or required by law, such as for social security and income tax. Some examples of prohibited deductions are:

- (1) deductions for spoilage or breakage;
- (2) deductions for cash shortages or losses;
- (3) fines or penalties for lateness, misconduct, or quitting by an employee without notice.

(b) The minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by his employer.

§ 137-2.6 Employment covered by more than one wage order.

An employee in the restaurant industry who works for the same employer at an occupation governed by another New York State minimum wage order:

- (a) for two hours or more during any one day; or
- (b) for 12 hours or more in any week;

shall be paid for all hours of working time for that day or week in accordance with the minimum wage standards contained in the minimum wage order for such other industry or the restaurant industry, whichever is higher.

§ 137-2.7 Learner or apprentice rates.

No learner or apprentice shall be paid less than the minimum rates prescribed in this Part.

§ 137-2.8 Rehabilitation programs.

For an individual employed as part of a rehabilitation program approved by the commissioner, the payment of compensation under such program shall be deemed to meet the requirements of this Part.

§ 137-2.9 Student obtaining vocational experience.

A student is not deemed to be working or to be permitted to work if, in order to fulfill the curriculum requirements of the educational institution which the student attends, such student is required to obtain supervised and directed vocational experience in another establishment.

**SUBPART 137-3
DEFINITIONS**

Sec.

- 137-3.1 Restaurant industry
- 137-3.2 Employee
- 137-3.3 Service employee and nonservice employee
- 137-3.4 Food service worker
- 137-3.5 Regular rate
- 137-3.6 Working time
- 137-3.7 Voluntary absence
- 137-3.8 Meals
- 137-3.9 Lodging
- 137-3.10 Split shift
- 137-3.11 Spread of hours
- 137-3.12 Interval off duty
- 137-3.13 Required uniforms

§ 137-3.1 Restaurant industry.

(a) The term *restaurant industry* includes any eating or drinking place that prepares and offers food or beverage for human consumption either on any of its premises or by such service as catering, banquet, box lunch, or curbside service or counter service to the public, to employees, or to members or guests of members, and services in connection therewith or incidental thereto.

(b) The industry includes but is not limited to restaurant operations of other types of establishments, restaurant concessions in any establishment and concessions in restaurants.

(c) The term *restaurant industry* excludes:

(1) eating or drinking places operated by establishments customarily offering lodging accommodations of five or more rooms to the public, to employees or to members or guests of members, except that it does not exclude eating or drinking places offering lodging accommodation only to their own employees;

(2) eating or drinking places operated by establishments where the service of food or beverage is not available to the public but is incidental to instruction, medical care, religious observance, or the care of handicapped or destitute persons or other charges; and

(3) eating and drinking places operated by any corporation, unincorporated association, community chest, fund or foundation organized exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

These exclusions shall not be deemed to exempt such establishments from coverage under another minimum wage order which covers them.

§ 137-3.2 Employee.

(a) *Employee* means any individual permitted to work by an employer in the restaurant industry, except as provided below.

(b) Employee does not include any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) Employee also does not include any individual permitted to work in, or as:

(1) Executive, administrative or professional capacity.

(i) Executive. Work in a *bona fide executive* capacity means work by an individual:

(a) whose primary duty consists of the management of the enterprise in which such individual is employed or of a customarily recognized department or subdivision thereof;

(b) who customarily and regularly directs the work of two or more other employees therein;

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(d) who customarily and regularly exercises discretionary powers; and

(e) who is paid for his services a salary of not less than:

(1) \$386.25 per week on and after March 31, 2000, inclusive of board, lodging, other allowances, and facilities;

(2) \$450.00 per week on and after January 1, 2005, inclusive of board, lodging, other allowances, and facilities;

(3) \$506.25 per week on and after January 1, 2006, inclusive of board, lodging, other allowances, and facilities; and

(4) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances, and facilities.

(ii) *Administrative.* Work in a *bona fide**administrative*..... *capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of such individual's employer;

(b) who customarily and regularly exercises discretion and independent judgment;

(c) who regularly and directly assists an employer, or an employee employed in a *bona fide* executive or administrative capacity (*e.g.*, employment as an administrative assistant); or who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary of not less than:

(1) \$386.25 per week on and after March 31, 2000, inclusive of board, lodging, other allowances, and facilities;

(2) \$450.00 per week on and after January 1, 2005, inclusive of board, lodging, other allowances, and facilities;

(3) \$506.25 per week on and after January 1, 2006, inclusive of board, lodging, other allowances, and facilities; and

(4) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances, and facilities.

(iii) *Professional.* Work in a *bona fide* *professional capacity* means work by an individual:

(a) whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes; or original and creative in character in a

recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work), and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(2) Outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer, and not at any fixed site and location for the purpose of:

(i) making sales; or

(ii) selling and delivering articles or goods; or

(iii) obtaining orders or contracts for service or for the use of facilities.

§ 137-3.3 Service employee and nonservice employee.

(a) A *service employee* is an employee who customarily receives tips at the rate of:

(1) \$1.15 or more per hour on and after March 31, 2000;

(2) \$1.35 or more per hour on and after January 1, 2005;

(3) \$1.50 or more per hour on and after January 1, 2006; and

(4) \$1.60 or more per hour on and after January 1, 2007.

(b) A *nonservice employee* is any employee other than a service employee.

(c) Classification as a service employee or as a nonservice employee shall be on a weekly basis except that an employee may not be classified as a service employee on any day in such week in which he has been assigned to work in an occupation in which tips are not customarily received.

(d) The employer shall have the burden of proof that an employee receives sufficient tips to entitle such employer to classify such employee as a service employee.

§ 137-3.4 Food service worker.

(a) A *food service worker* is any employee who, after March 31, 2000, is primarily engaged in the serving of food or beverages to guests, patrons or customers in the hotel or restaurant industries, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receive tips from such guests, patrons or customers.

(b) Classification as a *food service worker* shall be on a weekly basis except that an employee may not be classified as a *food service worker* on any day in such week in which he has been assigned to work in an occupation in which tips are not customarily received.

(c) The employer shall have the burden of proof that an employee receives sufficient tips to entitle him to classify such employee as a food service worker.

§ 137-3.5 Regular rate.

The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work. When an employee is paid on a piece rate, salary or any other basis than hourly rate, the regular hourly rate shall be determined by dividing the total hours worked during the week into the employee's total earnings.

§ 137-3.6 Working time.

Working time means time worked or time of permitted attendance, including waiting time, whether or not work is provided, and time spent in traveling as part of the duties of the employee.

§ 137-3.7 Voluntary absence.

Voluntary absence means an absence which is not designed or planned by the employee or the employer to evade minimum wage standards. Recurrent or periodic absence is not voluntary absence except for medical treatment under a doctor's care.

§ 137-3.8 Meals.

(a) A meal shall provide adequate portions of a variety of wholesome, nutritious foods and shall include at least one of the types of food from all four of the following groups: (1) fruits or vegetables; (2) cereals, bread or potatoes; (3) eggs, meat, fish or poultry; and (4) milk, tea or coffee, except that for breakfast, group (3) may be omitted if both cereal and bread are offered in group (2).

(b) Meals shall be deemed to be furnished by an employer to an employee when made available to the employee during reasonable meal periods and customarily eaten by the employee.

§ 137-3.9 Lodging.

Lodging means living accommodations used by the employee which meet generally accepted standards of adequacy and sanitation.

§ 137-3.10 Split shift.

A *split shift* is a schedule of daily hours in which the working hours required or permitted are not consecutive. No meal period of one hour or less shall be considered an interruption of consecutive hours.

§ 137-3.11 Spread of hours.

The *spread of hours* is the interval between the beginning and end of an employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals off duty.

§ 137-3.12 Interval off duty.

An *interval off duty* is time during the workday other than working time, waiting time, travel time, and time off duty for any meal period of one hour or less.

§ 137-3.13 Required uniforms.

A *required uniform* shall be that clothing worn by an employee, at the request of an employer, while performing job-related duties or to comply with any State, city or local law, rule or regulation. It does not, however, include clothing that may be worn as part of an employee's ordinary wardrobe.

STATE OF NEW YORK

DEPARTMENT OF LABOR



Minimum Wage Order for the Hotel Industry

Part 138 of Title 12 of Official Compilation of Codes, Rules and Regulations

Based on Labor Law Changes Effective January 1, 2005

Promulgated by the Commissioner of Labor Pursuant to the Minimum Wage

Act (Article 19 of the New York State Labor Law)

(07-05)

2D-11

**PART 138
HOTEL INDUSTRY**

(Statutory authority: Labor Law, [§ 21 [11], art. 19] Article 2, § 21 [11] and Article 19, §652)

- Subpart 138-1 Coverage**
- Subpart 138-2 Minimum Wage and Allowances**
- Subpart 138-3 Regulations**
- Subpart 138-4 Definitions**
- Subpart 138-5 Standards for Lodging of Employees in the Hotel Industry for the Purpose of Permitting an Allowance for Lodging**

**SUBPART 138-1
COVERAGE**

Sec.

138-1.1 Coverage of Part

§ 138-1.1 Coverage of Part.

Every employer in the hotel industry shall pay to each employee, as defined in this Part, not less than the minimum wage rates provided in this Part.

**SUBPART 138-2
MINIMUM WAGE AND ALLOWANCES**

Sec.

- 138-2.1 Basic minimum hourly wage rate and tip allowances --- all-year and resort hotels
- 138-2.2 Overtime hourly rates
- 138-2.3 Call-in pay
- 138-2.4 Rate for working time, waiting time and travel time
- 138-2.5 Required uniforms
- 138-2.6 Additional rate for spread of hours – all-year hotels only
- 138-2.7 Allowances for meals and lodging

§ 138-2.1 Basic minimum hourly wage rate and tip allowances--all-year and resort hotels.

(a) Basic minimum hourly wage rate.

- (1) \$5.15 per hour on and after March 31, 2000;

- (2) \$6.00 per hour on and after January 1, 2005;
- (3) \$6.75 per hour on and after January 1, 2006; and
- (4) \$7.15 per hour on and after January 1, 2007; or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or any successor provisions.

(b) Tip allowance for service employees.

- (1) On and after March 31, 2000, allowance for tips shall not exceed \$1.15 an hour for an employee whose weekly average of tips received is between \$1.15 and \$1.65 per hour and shall not exceed \$1.65 per hour for an employee whose weekly average of tips received is \$1.65 per hour or more. FOR RESORT HOTELS ONLY, the allowance for tips shall not exceed \$2.05 per hour for an employee whose weekly average of tips received exceeds \$2.90 per hour.
- (2) On and after January 1, 2005, allowance for tips shall not exceed \$1.35 an hour for an employee whose weekly average of tips received is between \$1.35 and \$1.90 per hour and shall not exceed \$1.90 per hour for an employee whose weekly average of tips received is \$1.90 per hour or more. FOR RESORT HOTELS ONLY, the allowance for tips shall not exceed \$2.40 per hour for an employee whose weekly average of tips received exceeds \$3.40 per hour.
- (3) On and after January 1, 2006, allowance for tips shall not exceed \$1.50 an hour for an employee whose weekly average of tips received is between \$1.50 and \$2.15 per hour and shall not exceed \$2.15 per hour for an employee whose weekly average of tips received is \$2.15 per hour or more. FOR RESORT HOTELS ONLY, the allowance for tips shall not exceed \$2.70 per hour for an employee whose weekly average of tips received exceeds \$3.80 per hour.
- (4) On and after January 1, 2007 allowance for tips shall not exceed \$1.60 an hour for an employee whose weekly average of tips received is between \$1.60 and \$2.30 per hour and shall not exceed \$2.30 per hour for an employee whose weekly average of tips received is \$2.30 per hour or more. FOR RESORT HOTELS ONLY, the allowance for tips shall not exceed \$2.85 per hour for an employee whose weekly average of tips received exceeds \$4.05 per hour.

(c) Tip allowance for food service worker.

- (1) On and after March 31, 2000, a food service worker shall receive a cash wage of at least \$3.30 per hour, provided that the tips received when added to such cash wage are equal to or exceed \$5.15 per hour;

- (2) On and after January 1, 2005, a food service worker shall receive a cash wage of at least \$3.85 per hour, provided that the tips received when added to such cash wage are equal to or exceed \$6.00 per hour; On and after January 1, 2006, a food service worker shall receive a cash wage of at least \$4.35 per hour, provided that the tips received when added to such cash wage are equal to or exceed \$6.75 per hour; and
- (3) On and after January 1, 2007, a food service worker shall receive a cash wage of at least \$4.60 per hour, provided that the tips received when added to such cash wage are equal to or exceed \$7.15 per hour;

(d) *Tip allowance for chambermaids in resort hotels.*

- (1) On and after March 31, 2000, allowance for tips shall not exceed 80 cents per hour for an employee whose weekly average of tips received is between 80 cents and \$2.90 per hour and shall not exceed \$1.65 per hour for an employee whose weekly average of tips received is more than \$2.90 per hour;
- (2) On and after January 1, 2005, allowance for tips shall not exceed 95 cents per hour for an employee whose weekly average of tips received is between 95 cents and \$3.40 per hour and shall not exceed \$1.90 per hour for an employee whose weekly average of tips received is more than \$3.40 per hour;
- (3) On and after January 1, 2006, allowance for tips shall not exceed \$1.05 per hour for an employee whose weekly average of tips received is between \$1.05 and \$3.80 per hour and shall not exceed \$2.15 per hour for an employee whose weekly average of tips received is more than \$3.80 per hour;
- (4) On and after January 1, 2007, allowance for tips shall not exceed \$1.10 per hour for an employee whose weekly average of tips received is between \$1.10 and \$4.05 per hour and shall not exceed \$2.30 per hour for an employee whose weekly average of tips received is more than \$4.05 per hour;

§ 138-2.2 Overtime hourly rates.

An employer shall pay an employee for overtime at a wage rate of 1 1/2 times the employee's regular rate for hours worked in excess of maximum hours as listed below.

	<i>Nonresidential employees</i>	<i>Residential employees</i>
For working time over	40 hours	44 hours

To all employees of resort hotels on the seventh consecutive day in any week, for the hours worked on such seventh consecutive day.

§ 138-2.3 Call-in pay.

(a) Where a nonresidential employee by request or permission of the employer reports for duty on any day, whether or not assigned to actual work, the employer shall pay:

(1) for at least three hours for one shift, or the number of hours in the regularly scheduled shift, whichever is less;

(2) for at least six hours for two shifts totalling six hours or less, or the number of hours in the regularly scheduled shift, whichever is less;

(3) for at least eight hours for three shifts totalling eight hours or less, or the number of hours in the regularly scheduled shifts, whichever is less.

(b) Payment shall be at the applicable minimum wage rate after allowance for tips for the time actually worked and without allowance for tips for the balance of the period.

§ 138-2.4 Rate for working time, waiting time and travel time.

(a) *All-year hotels.*

(1) *Working time* means actual service or time of permitted attendance at the establishment, and time spent in traveling at the request of the employer from one of the employer's establishments to another.

(2) *Waiting time*, other than time off duty for a split shift, during which an employee is required or permitted to wait during the workday while no work is provided by the employer, shall be counted as working time. Such waiting time shall be paid for at not less than the minimum rate before taking into account any allowances for tips, and after taking into account any allowance for meals and the total number of hours of working time for that week.

(3) An employee required or permitted to travel from one establishment to another of the same employer after the beginning or before the close of the working day shall be compensated for *travel time* at the minimum rate before taking into account any allowances for tips and shall be reimbursed for fare.

(b) *Resort hotels. Working time* means that an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee.

(c) *All hotels.* A residential employee shall not be deemed to be permitted to work or required to be available for work:

(1) during such employee's normal sleeping hours solely because such employee is required to be on call during such hours; or

(2) at any other time when such employee is free to leave the place of employment.

§ 138-2.5 Required uniforms.

No allowance for the supply, maintenance, or laundering of required uniforms shall be permitted as part of the minimum wage. Where an employee purchases a required uniform, he shall be reimbursed by the employer for the cost thereof not later

than the time of the next payment of wages. Where the employer fails to launder or maintain required uniforms for any employee, he shall pay such employee in addition to the minimum wage prescribed herein:

(1) On and after March 31, 2000, \$6.40 per week if the employee works more than 30 hours weekly; \$5.05 per week if the employee works more than 20 but not more than 30 hours weekly; and \$3.05 per week if the employee works 20 hours or less weekly;

(2) On and after January 1, 2005, \$7.45 per week if the employee works more than 30 hours weekly; \$5.90 per week if the employee works more than 20 but not more than 30 hours weekly; and \$3.55 per week if the employee works 20 hours or less weekly;

(3) On and after January 1, 2006, \$8.40 per week if the employee works more than 30 hours weekly; \$6.60 per week if the employee works more than 20 but not more than 30 hours weekly; and \$4.00 per week if the employee works 20 hours or less weekly; and

(4) On and after January 1, 2007, \$8.90 per week if the employee works more than 30 hours weekly; \$7.00 per week if the employee works more than 20 but not more than 30 hours weekly; and \$4.25 per week if the employee works 20 hours or less weekly.

§ 138-2.6 Additional rate for spread of hours--all-year hotels only.

A nonresidential employee in an all-year hotel shall receive one hour's pay at the basic minimum hourly wage rate before allowances, in addition to the minimum wages otherwise required in this Part, for any day in which the spread of hours exceeds 10.

§ 138-2.7 Allowances for meals and lodging.

(a) Allowance for meals--all-year hotels.

(1) Meals furnished by an employer to an employee may be considered part of the minimum wage, but shall be valued at not more than:

(i) On and after March 31, 2000, \$1.65 per meal for food service workers earning at least \$3.30 per hour; and \$1.75 per meal for all other workers;

(ii) On and after January 1, 2005, \$1.85 per meal for food service workers earning at least \$3.85 per hour; and \$2.05 per meal for all other workers;

(iii) On and after January 1, 2006, \$2.00 per meal for food service workers earning at least \$4.35 per hour; and \$2.30 per meal for all other workers; and

(iv) On and after January 1, 2007, \$2.10 per meal for food service workers earning at least \$4.60 per hour; and \$2.45 per meal for all other workers.

(2) For an employee working less than 5 hours on any day, the allowance for meals shall not exceed that for one meal.

(b) Allowance for lodging--all-year hotels.

Lodging furnished by an employer to an employee in an all-year hotel may be considered a part of the minimum wage, but shall be valued at not more than 25 cents per hour on and after March 31, 2000; not more than 30 cents per hour on and after January 1, 2005; and not more than 35 cents per hour on and after January 1, 2006.

(c) *Allowances for meals and lodging--resort hotels.*

Meals and lodging furnished by an employer to an employee in a resort hotel may be considered a part of the minimum wage, but shall be valued at not more than:

(1) Lodging and three meals per day:

(i) On and after March 31, 2000, \$10.90 per day for a food service worker earning at least \$3.30 per hour; and \$11.55 per day for each day worked by all other workers;

(ii) On and after January 1, 2005, \$12.10 per day for a food service worker earning at least \$3.85 per hour; and \$13.45 per day for each day worked by all other workers;

(iii) On and after January 1, 2006, \$13.10 per day for a food service worker earning at least \$4.35 per hour; and \$15.15 per day for each day worked by all other workers; and

(iv) On and after January 1, 2007, \$13.60 per day for a food service worker earning at least \$4.60 per hour; and \$16.05 per day for each day worked by all other workers.

(2) Meals furnished by an employer to a non-residential employee:

(i) On and after March 31, 2000, \$2.15 per meal on workdays for a food service worker earning at least \$3.30 per hour; and \$2.30 per meal on workdays for all other workers;

(ii) On and after January 1, 2005, \$2.40 per meal on workdays for a food service worker earning at least \$3.85 per hour; and \$2.70 per meal on workdays for all other workers;

(iii) On and after January 1, 2006, \$2.60 per meal on workdays for a food service worker earning at least \$4.35 per hour; and \$3.00 per meal on workdays for all other workers; and

(iv) On and after January 1, 2007, \$2.70 per meal on workdays for a food service worker earning at least \$4.60 per hour; and \$3.20 per meal on workdays for all other workers.

(3) Lodging furnished without meals:

(i) 25 cents an hour on and after March 31, 2000;

(ii) 30 cents an hour on and after January 1, 2005; and

(iii) 35 cents an hour on and after January 1, 2006.

**SUBPART 138-3
REGULATIONS**

Sec.

- 138-3.1 Employer records
- 138-3.2 Statement to employee
- 138-3.3 Posting
- 138-3.4 Lodging and meals
- 138-3.5 Basis of wage payment
- 138-3.6 Deductions and expenses
- 138-3.7 Diversified employment
- 138-3.8 Employment covered by more than one wage order
- 138-3.9 Learner or apprentice
- 138-3.10 Rehabilitation programs
- 138-3.11 Student obtaining vocational experience

§ 138-3.1 Employer records.

(a) Every employer shall establish, maintain and preserve for not less than six years weekly payroll records which shall show for each employee:

- (1) name and address;
- (2) social security number;
- (3) the number of hours worked daily and weekly, including the time of arrival and departure of each *nonresidential* employee working on a split shift, and of each *nonresidential* employee in an all-year hotel with a spread of hours exceeding 10;
- (4) the amount of gross wages, job classification and wage rate;
- (5) deductions from gross wages;
- (6) allowances, if any, claimed as part of the minimum wage;
- (7) money paid in cash; and
- (8) student classification.

(b) In addition, for each individual permitted to work as a staff counselor in a children's camp, or in an executive, administrative or professional capacity, an employer's records shall show:

- (1) name and address;
- (2) social security number;
- (3) description of occupation; and
- (4) for individuals working in an executive or administrative capacity, total wages, and the value of allowances, if any, for each payroll period.

(c) For each individual for whom student status is claimed, a statement from the school indicating whether or not such individual:

- (1) is a student and his course of instruction is one leading to a degree, diploma or certificate; or

(2) is completing residence requirements for a degree;

(3) is required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

(d) Employers, including those who maintain their records containing the information required by this section at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the commissioner at the place of employment.

§ 138-3.2 Statement to employee.

Every employer covered by this Part shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions, and net wages.

§ 138-3.3 Posting.

Every employer covered by this Part shall post in a conspicuous place in his or her establishment a notice issued by the Department of Labor summarizing minimum wage provisions.

§ 138-3.4 Lodging and meals.

(a) No charge shall be made by an employer for lodging or for any meal furnished by the employer to an employee whose compensation is predicated on the inclusion of lodging or meals. A residential employee in a resort hotel whose compensation is predicated on the inclusion of meals shall receive three meals per day.

(b) Nothing herein contained shall prevent an employee purchasing from the employer, or the employer selling to the employee:

(1) in an all-year hotel, meals at other times or places than those provided as part of his compensation;

(2) in a resort hotel, food in addition to meals provided as part of his compensation.

§ 138-3.5 Basis of wage payment.

The minimum wage provided by this Part shall be required for each week of work, regardless of the frequency of payment, whether the wage is on a commission, bonus, piece rate, or any other basis.

§ 138-3.6 Deductions and expenses.

(a) Wages shall be subject to no deductions, except for allowances authorized in this Part, and except for deductions authorized or required by law, such as for social security and income tax. Some examples of prohibited deductions are:

(1) deductions for spoilage or breakage;

(2) deductions for cash shortages or losses;

(3) fines or penalties for lateness, misconduct, or quitting by an employee without notice.

(b) The minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by his employer.

§ 138-3.7 Diversified employment.

The wages of an employee who works at diversified employment on any day shall be subject to no allowance for gratuities for that day, provided he works for two hours or more as a nonservice employee. The wages of a service employee or a food service worker in a resort hotel who works for two hours or more on any day as a chambermaid shall be subject to the allowance for chambermaid for that day.

§ 138-3.8 Employment covered by more than one wage order.

An employee in the hotel industry who works for the same employer at an occupation governed by another New York State minimum wage order:

- (a) for two or more hours during any one day; or
- (b) for 12 or more hours in any week;

shall be paid for all his hours of working time for that day or week in accordance with the minimum wage standards contained in the minimum wage order for such other industry or the hotel industry, whichever is higher.

§ 138-3.9 Learner or apprentice.

No learner or apprentice shall be paid less than the minimum rate prescribed in this Part.

§ 138-3.10 Rehabilitation programs.

For an individual employed as part of a rehabilitation program approved by the commissioner, the payment of compensation under such a program shall be deemed to meet the requirements of this Part.

§ 138-3.11 Student obtaining vocational experience.

A student is not deemed to be working or to be permitted to work if, in order to fulfill the curriculum requirements of the educational institution which the student attends, such student is required to obtain supervised and directed vocational experience in another establishment.

SUBPART 138-4
DEFINITIONS

Sec.

- 138-4.1 Hotel industry
- 138-4.2 Resort hotel
- 138-4.3 All-year hotel
- 138-4.4 Employee
- 138-4.5 Service employee
- 138-4.6 Nonservice employee
- 138-4.7 Food service worker
- 138-4.8 Chambermaid
- 138-4.9 Voluntary absence
- 138-4.10 Meals
- 138-4.11 Lodging
- 138-4.12 Split shift
- 138-4.13 Spread of hours
- 138-4.14 Interval off duty
- 138-4.15 Required uniforms
- 138-4.16 Regular rate
- 138-4.17 Diversified employment

§ 138-4.1 Hotel industry.

(a) The term *hotel industry* includes any establishment which as a whole or part of its business activities offers lodging accommodations for hire to the public, to employees, or to members or guests of members, and services in connection therewith or incidental thereto. The industry includes but is not limited to commercial hotels, apartment hotels, resort hotels, lodging houses, boarding houses, furnished room houses, children's camps, adult camps, tourist camps, tourist homes, auto camps, motels, residence clubs, membership clubs, dude ranches, Turkish baths and Russian baths.

(b) The term hotel industry excludes:

- (1) eating and drinking places (i) customarily offering lodging accommodations only to their own employees; (ii) customarily offering lodging accommodations of less than five rooms to the public, or to members or guests of members whether or not lodging accommodations are offered to their own employees;
- (2) establishments in which lodging accommodation is not available to the public, or to members or to guests of members, but is incidental to instruction, medical care, religious observance, or to the care of handicapped or destitute persons or other public charges;
- (3) establishments in which lodging accommodations are offered by any corporation, unincorporated association, community chest, fund or foundation organized exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

These exclusions shall not be deemed to exclude such establishments from coverage under another minimum wage order which covers them.

§ 138-4.2 Resort hotel.

A *resort hotel* is one which offers lodging accommodations of a vacational nature to the public or to members or guests of members, and which:

- (a) operates for not more than seven months in any calendar year; or
- (b) being located in a rural community or in a city or village of less than 15,000 population, increased its number of employee workdays during any consecutive four-week period by at least 100 percent over the number of employee workdays in any other consecutive four-week period within the preceding calendar year; or
- (c) being located in a rural community or in a city or village of less than 15,000 population, increased its number of guest days during any consecutive four-week period at least 100 percent over the number of guest days in any other consecutive four-week period in a preceding calendar year.

§ 138-4.3 All-year hotel.

An *all-year hotel* is one that does not qualify as a resort hotel under the foregoing definition. Motor courts, motels, cabins, tourist homes, and other establishments serving similar purposes shall be classified as all-year hotels unless they specifically qualify as a resort hotel in accordance with the foregoing definition thereof.

§ 138-4.4 Employee.

(a) *Employee* means any individual permitted to work in the hotel industry by the operator of the establishment or by any other employer, except as provided below.

(1) Golf caddies shall be excluded from this definition. This exclusion shall not be deemed to exclude caddies from another minimum wage order which covers such employees.

(2) A camper who works no more than four hours a day for a children's camp and at all other times enjoys the same privileges, facilities and accommodations as a regular camper in such camp shall be known as a camper worker and shall not be an employee within the meaning of this Part.

(3) Turkish bath workers employed by concessionaires in hotels or by Turkish baths operated independently of hotels are excluded from this definition, except that such workers are employees under this Part if they are employed in connection with the lodging facilities of the establishment. Turkish bath workers employed by hotels are employees under this Part.

(b) Employee also does not include any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) Employee also does not include an individual employed in, or as:

- (1) Executive, administrative or professional capacity.

(i) Executive. Work in a *bona fide executive . . . capacity* means work by an individual:

(a) whose primary duty consists of the management of the enterprise in which such individual is employed or of a customarily recognized department or subdivision thereof; and

(b) who customarily and regularly directs the work of two or more other employees therein; and

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) who customarily and regularly exercises discretionary powers; and

(e) who is paid for his services a salary of not less than:

- (1) \$386.25 per week on and after March 31, 2000, inclusive of board, lodging, other allowances, and facilities;
- (2) \$450.00 per week on and after January 1, 2005, inclusive of board, lodging, other allowances, and facilities;
- (3) \$506.25 per week on and after January 1, 2006, inclusive of board, lodging, other allowances, and facilities; and
- (4) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities.

(ii) Administrative. Work in a *bona fide . . . administrative . . . capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of his employer; and

(b) who customarily and regularly exercises discretion and independent judgment; and

(c) who regularly and directly assists an employer, or an employee employed in a *bona fide executive or administrative capacity* (e.g., employment as an administrative assistant); or who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary of not less than:

- (1) \$386.25 per week on and after March 31, 2000 inclusive of board, lodging, other allowances, and facilities;
- (2) \$450.00 per week on and after January 1, 2005, inclusive of board, lodging, other allowances, and facilities;
- (3) \$506.25 per week on and after January 1, 2006, inclusive of board, lodging, other allowances, and facilities; and
- (4) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities.

(iii) Professional. Work in a *bona fide . . . professional . . . capacity* means work by an individual:

(a) whose primary duty consists of the performance of work; requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical process; or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work), and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(2) Outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

- (i) making sales; or
- (ii) selling and delivering articles or goods; or
- (iii) obtaining orders or contracts for service or for the use of facilities.

(3) Staff counselor in children's camps.

(i) A *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision and care of campers in children's camps, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes, but is not limited to: head counselor, assistant head counselor, specialists counselor or instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp mother, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

(ii) *Children's camp* means any establishment which, as a whole or part of its business activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs of supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play schools, or by any other name. The term children's camp does not include an establishment which is open for a period exceeding 17 consecutive weeks during the year.

§ 138-4.5 Service employee.

(a) A *service employee* is an employee, other than a food service worker, who customarily receives tips of at least:

- (1) \$1.15 per hour on and after March 31, 2000;
- (2) \$1.35 per hour on and after January 1, 2005;
- (3) \$1.50 per hour on and after January 1, 2006; and
- (4) \$1.60 per hour on and after January 1, 2007.

(b) It shall be presumed that employees whose duties relate solely to any of the following services are *service employees*:

- (1) table waiters, prior to March 31, 2000;
- (2) bellmen;
- (3) baggage porters;
- (4) package-room messengers or delivery boys;
- (5) doormen and footmen;
- (6) busboys in resort hotels, and
- (7) page boys.

(c) It shall be presumed that all employees other than those mentioned in subdivisions (a) and (b) of this section are nonservice employees or food service workers (except for resort hotel chambermaid). Substantial proof must be presented to the Department of Labor to rebut these presumptions.

§ 138-4.6 Nonservice employee.

(a) A *nonservice employee* is any employee other than a service employee, a food service worker or a resort hotel chambermaid.

(b) In resort hotels a chambermaid shall be deemed a nonservice employee if she fails to receive tips of at least:

- (1) 80 cents per hour on and after March 31, 2000;
- (2) 95 cents per hour on and after January 1, 2005;
- (3) \$1.05 per hour on and after January 1, 2006; and
- (4) \$1.10 per hour on and after January 1, 2007.

§ 138-4.7 Food service worker.

A *food service worker* is one who on and after March 31, 2000, is primarily engaged in the serving of food or beverages to guests, patrons or customers in the hotel or restaurant industries, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receives tips from such guests, patrons or customers.

§ 138-4.8 Chambermaid.

A *chambermaid* means any employee in a resort hotel whose duties relate solely to the cleaning and servicing of guest rooms and who customarily receives tips of at least:

- (1) 80 cents per hour on and after March 31, 2000;
- (2) 95 cents per hour on and after January 1, 2005;
- (3) \$1.05 per hour on and after January 1, 2006; and
- (4) \$1.10 per hour on and after January 1, 2007.

§ 138-4.9 Voluntary absence.

Voluntary absence means an absence which is not designed or planned by the employee or the employer to evade minimum wage standards. Recurrent or periodic absence is not voluntary absence except for medical treatment under a doctor's care.

§ 138-4.10 Meals.

(a) A *meal* shall provide adequate portions of a variety of wholesome, nutritious foods. As a standard it should include at least one of the types of food from all four of the following groups:

- (1) fruits or vegetables;
- (2) cereals, bread or potatoes;
- (3) eggs, meat, fish or poultry; and
- (4) milk, tea or coffee; except that for breakfast, group (3) may be omitted if both cereal and bread are offered in group (2).

(b) Meals shall be deemed to be furnished by an employer to an employee when made available to the employee during reasonable meal periods and customarily eaten by the employee.

§ 138-4.11 Lodging.

Lodging means living accommodations which meet the standards prescribed in Subpart 138-5 of this Part, standards for lodging of employees in the hotel industry for the purpose of permitting an allowance for lodging, and are used by the employee.

§ 138-4.12 Split shift.

A *split shift* is a schedule of daily hours in which the hours of work required or permitted are not consecutive. Interruption of working hours for any meal period of one hour or less does not constitute a split shift.

§ 138-4.13 Spread of hours.

The *spread of hours* is the interval between the beginning and end of the workday. The spread of hours for any day shall include working time plus time off for meals plus time off duty.

§ 138-4.14 Interval off duty.

An *interval off duty* is the time during the workday, other than working time, waiting time, travel time and time off duty, for any meal period of one hour or less.

§ 138-4.15 Required uniforms.

A *required uniform* shall be that clothing worn by an employee, at the request of an employer, while performing job-related duties or to comply with any State, city or local law, rule or regulation. It does not, however, include clothing that may be worn as part of an employee's ordinary wardrobe.

§ 138-4.16 Regular rate.

The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work. When an employee is paid on a piece rate, salary, or any other basis than hourly rate, the regular hourly rate shall be determined by dividing the total hours worked during the week into the employee's total earnings.

§ 138-4.17 Diversified employment.

The term *diversified employment* means employment in an all-year hotel of any employee who is required or permitted to perform either the duties of a service employee or food service worker as well as those of a nonservice employee, and the employment in a resort hotel of an employee who is required or permitted to perform either the duties of a service employee or food service worker as well as those of a chambermaid, or the duties of a chambermaid as well as those of a nonservice employee, or the duties of a service employee or food service worker as well as those of a nonservice employee.

**SUBPART 138-5
STANDARDS FOR LODGING OF EMPLOYEES IN THE HOTEL INDUSTRY
FOR THE PURPOSE OF PERMITTING AN ALLOWANCE FOR LODGING**

Sec.

- 138-5.1 Structural standards
- 138-5.2 Water, waterclosets, washing facilities
- 138-5.3 Site of room and area per person
- 138-5.4 Light and heat
- 138-5.5 Furniture, beds, storage space, etc.
- 138-5.6 Cleanliness

§ 138-5.1 Structural standards.

(a) The building in which hotel employees are lodged should be in good repair, have a satisfactory floor, and watertight roof and sides.

(b) The premises in which hotel employees are lodged should be in compliance with standards for protection against fire, and with all structural, sanitation and similar standards in State and local laws, codes, regulations and ordinances applicable to the premises.

(c) *Windows and ventilation.* For sleeping quarters, natural light through clear glass should be provided by windows having a total area within the casements of at least 10 percent of the floor area of the room. Natural ventilation should be furnished in sleeping quarters by an openable window area of at least five percent of the floor area of the room. Doors opening from sleeping quarters directly to the outside of the structure should not be considered a part of the area required to be openable for ventilation. Adequate light and natural or mechanical ventilation should be provided in toilet rooms and bathrooms.

(d) *Screens.* Effective screening against mosquitoes and house flies should be provided between May 1st and October 15th for all windows and exterior openings of living quarters.

§ 138-5.2 Water, waterclosets, washing facilities.

(a) *Water.* Drinking water acceptable to the local health authority should be readily available and easily accessible.

(b) *Toilets.*

(1) Adequate toilet facilities should be provided. These facilities should provide for privacy, and should be so constructed and maintained that they will not be offensive. Privies shall be considered inadequate toilet facilities. Toilet facilities should be separate for each sex, except when used by less than seven persons, and except where building is occupied by one sex.

(2) Except when used by less than seven persons, there should be at least the following: one toilet for each 10 persons or less of each sex. Urinals may be substituted for not more than one half of the required toilets for men.

(3) The required toilet facilities should be easily accessible, should be located in the same building as the sleeping facilities or adjacent thereto, and should be no more than one floor above or below the sleeping room, and be within 200 feet, by walking distance, of a door of each sleeping room. They shall be so located as to be accessible without any person passing through any sleeping room other than his own.

(c) *Washing facilities.* At least one shower head or bathtub should be provided for each 20 persons or less of each sex. Bathing facilities should be separate for each sex, except when used by less than seven persons. Hot and cold running water should be provided for every shower head or bathtub. Adequate handwashing facilities with hot and cold running water should be provided in sleeping rooms or adjacent to toilet or sleeping facilities.

§ 138-5.3 Size of room and area per person.

A room used as sleeping quarters should contain for single occupancy at least 60 square feet; for multiple occupancy at least 40 square feet of floor area for each person; provided, however, that if a double-deck unit is substituted for a single-level bed, bunk or cot, there should be at least 35 square feet of floor area for each person using the double-deck unit. The required floor area in a room in a building should consist only of that part of the floor area which has a clear height above it of at least five feet, and at least 80

percent of the required floor area should have a continuously clear height above it of at least six feet six inches. Sleeping quarters should be separate for each sex, except for married couples.

§ 138-5.4 Light and heat.

(a) *Heat.* All rooms occupied between October 1st and May 1st should have heating facilities which are properly vented and shielded and capable of maintaining a minimum temperature of 68°F in each room, and such temperature should be maintained at least between 6 a.m. and 10 p.m. whenever the outdoor temperature falls below 50°F.

(b) *Light.* Adequate light should be provided for sleeping quarters, toilet rooms, public halls, and stairs. If electric current is available, at least one electric light outlet with fixtures in proper working condition should be provided in each sleeping room, toilet room, bathroom, public hall, and on stairs.

§ 138-5.5 Furniture, beds, storage space, etc.

(a) *Beds, etc.* The employer should supply every employee with an individual bed or bunk or cot, bed or bunk spring, mattress, pillow, blanket or other cover all of which shall be clean and in good condition. Every bed, bunk or cot should be raised at least one foot from the floor, be located at least two feet from the side of any other bed, bunk or cot located in the same room, and have at least 27 inches of air space above it.

(b) *Storage space.* Every person should be supplied, in the sleeping quarters, with adequate space for storage of his or her clothes and other possessions.

(c) *Linens.* Clean sheets, towels and pillowcases should be supplied weekly by the employer.

§ 138-5.6 Cleanliness.

The building should be maintained in a clean and sanitary condition free of vermin, rodents, garbage, or other matter dangerous to life or health. The grounds of the building should be maintained in a clean and reasonably dry condition.