

Proposed Draft Regulations – Part 146 Covering the Restaurant and Hotel Industries

The NYS Department of Labor is proposing revised and updated wage regulations that will combine the wage orders for the restaurant and hotel industries into a single new Minimum Wage Order for the Hospitality Industry. These industries employ over half a million people in some 42,000 separate establishments in New York State (2008 data). Click here for the [full text and analyses](#) of their expected impacts.

Early in the development of these proposed regulations, the Commissioner of Labor appointed a Wage Board of private citizens to study the industries and make recommendations. The Board sought and received a large amount of public comment, indicating a high level of interest, from participants in these industries.

The law requires another 45-day public comment period starting when the proposed regulations are published in the State Register. We will take your comments into account before issuing final regulations. If you wish to submit your comments for our consideration before the regulations are finalized, please submit them no later than December 4, 2010 to either of the following addresses:

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Summary of Proposed Changes

Elements unchanged in the proposed regulations: The minimum hourly rate will remain at \$7.25 per hour. Overtime pay will remain at 1½ times the regular rate after 40 hours.

Summary of Changes Proposed

1. Wage orders will be combined.
NYCRR Parts 137 and 138, covering the restaurant and hotel industries respectively, will be replaced by a new Part 146 covering both industries combined and called the “hospitality industry.”
2. Overtime pay is simplified.
1½ times the regular rate after 40 hours will be required for all covered employees. A couple of special overtime pay requirements that currently exist in the hotel industry will be eliminated.
3. Minimum wage rates for tipped employees are simplified and increased.
The number of different rates is reduced. Food service workers, by far the largest group, will see their rates increase. The food service worker rate, as a proportion of the general minimum wage rate, has declined from 70% in 1974 to 64% in 2000, where it remains today. The proposed \$.35 per hour increase will restore it to 69% of the general minimum rate. In resort hotels, chambermaids will be merged with service employees and the rate for service employees will increase. Below are comparisons of proposed and existing rates.

FOOD SERVICE WORKERS

Proposed: \$5.00 min wage/\$2.25 max tip credit/total at least \$7.25
Existing: \$4.65 min wage/\$2.60 max tip credit/total at least \$7.25

SERVICE EMPLOYEES IN RESTAURANTS & ALL-YEAR HOTELS

Proposed: \$5.65 min wage/\$1.60 max tip credit/total at least \$7.25

Existing: \$5.65 min wage/\$1.60 max tip credit, and
\$4.90 min wage /\$2.35 max tip credit

SERVICE EMPLOYEES IN RESORT HOTELS

Proposed: \$4.90 min wage/\$2.35 max tip credit/if tips at least \$4.10/hr

Existing: \$4.35 min wage/\$2.90 max tip credit/if tips at least \$4.10/hr

CHAMBERMAIDS IN RESORT HOTELS

Proposed: merge into service employees in resort hotels

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

4. Extra payments required under specified circumstances (call-in pay, spread of hours pay, and uniform maintenance pay) will be added to wages at any pay level, rather than added only to minimum wage, as they are currently.
5. Wash-and-wear uniforms will be exempt from uniform maintenance pay.
To qualify for the exemption, the number of uniforms provided to the employee must be consistent with the average number of days per week worked by the employee, and they must be able to be laundered routinely along with personal clothing.
6. Hourly rates of pay will be required for all non-exempt employees (except commissioned salespersons).
No longer will salaries, weekly rates, day rates, or piece rates be acceptable. This is intended to deter excessively long hours and to produce greater compliance with the overtime pay requirements of the law.
7. The handling of gratuities will be subject to regulations for the first time in New York State.
The proposed regulations flesh out the Labor Law forbidding tip appropriation by employers or their agents. They allow the sharing and pooling of tips among employees, both voluntary and employer-mandated. They require written notice to employees of the tip policies of the establishment. If the employer has mandated sharing or pooling or has imposed charges on customers for tips, the proposed regulations require record-keeping on the tips collected and distributed. Employees must be given access to these records. Employers will be required to distribute in full to employees any house-imposed charges on guest bills that are purported to be gratuities. A "reasonable customer" standard will be applied in determining whether a charge has been purported to be a gratuity. Employer-imposed charges on customers for tips are allowed only in connection with banquets, special functions, and package deals. If a gratuity is paid by credit card, employers will be allowed to charge employees the same percentage that the credit card company charges the employer for processing the gratuity.
8. Whenever the shift is long enough to invoke the meal period law, employers will have to either allow employees to bring their own food or give them a meal at a cost no greater than the meal credit amount in the wage order.