New York To End Subminimum Wage For Many Tipped Workers

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New York employers will soon be required to pay an estimated 70,000 tipped workers the full minimum wage, regardless of any tips received. Governor Andrew Cuomo just announced on December 31 that the New York State Department of Labor is issuing an order eliminating the tip credit for “miscellaneous” industries statewide by the end of 2020. That credit currently allows employers to pay a subminimum wage to certain tipped workers such as nail salon workers, hairdressers, aestheticians, car wash workers, valet parking attendants, door-persons, tow truck drivers, dog groomers and tour guides. Importantly, however, workers in the hospitality industry – such as restaurant wait staff, bartenders, or other service employees who customarily receive tips – will not be impacted by this impending change, and employers can continue to pay them a subminimum wage so long as tips received ensure the workers earn the applicable minimum wage.

The announcement comes after a lengthy investigation by the Department of Labor conducted at the behest of Governor Cuomo, summarized in a report which recommended eliminating the tip credit for all workers covered by the Minimum Wage Order for Miscellaneous Industries and Occupations. The Department of Labor held seven hearings across the state, which included 40 hours of testimony from more than 700 individuals, and received comments from more than 3,000 individuals.

What Does This Mean?
New York State law currently allows employers in certain industries to pay tipped employees below the state minimum wage if the employee earns a sufficient amount in tips. This tip credit can only be used if the subminimum wage plus tips add up to at least the minimum wage. Different rules determine the subminimum wage an employer must pay, depending on whether the worker is in the hospitality industry or other “miscellaneous” industries. The formula is particularly complex in non-hospitality industries and varies depending on whether the weekly average of tips received is considered “low” or “high.”

By the end of 2020, tipped workers in non-hospitality industries will need to be paid at least minimum wage in addition to any tips they may earn. The elimination of the tip credit will be phased in over a one-year period. On June 30, 2020, the difference between the minimum wage and the current subminimum wages will be cut in half, and on December 31, 2020, the subminimum wage will be eliminated completely. At that time, tipped workers in miscellaneous industries must be paid the normal minimum wage.

As noted above, tipped workers in the hospitality industry will not be impacted by this change. Restaurant workers reportedly fought against the proposal, fearing a higher minimum wage would mean fewer tips and ultimately less income.

**What Do Employers Need To Do Now?**

New York employers with tipped employees (outside of the hospitality industry) must take note of this order and be prepared to comply. This means that employers in the impacted industries must increase the wages of tipped employees as of June 30 and again on December 31, at which time you must pay tipped employers the normal minimum wage. You should take the necessary steps to change your payroll accordingly.

We will continue to monitor further developments and provide updates on this issue and other labor and employment issues affecting New York employers, so make sure you are subscribed to Fisher Phillips’ alert system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, or any attorney in our New York City office.

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