

KD Employment Alert: Wage Rate Adjustments For New York's Hospitality Industry Set To Take Effect On December 31, 2015

By Jeffery A. Meyer, Esq. and David A. Tauster, Esq.

Several changes are scheduled to take effect to wages and employer credits in New York's hospitality industry before the end of 2015. The most significant of these changes involves a substantial increase in the tipped minimum wage for service employees, including both "food service workers" and other employees such as delivery drivers. However, there are also several other changes to the credits and adjustments to wages in the industry that must be made by employers.

On December 31, 2015, the basic minimum wage in New York will increase from \$8.75 to \$9.00 per hour. Significantly, however, the "tipped" minimum wage for employees in New York's hospitality industry will increase to \$7.50 per hour. This increase will not only apply to food service workers, but to all "service" employees in the hospitality industry, including servers, bussers, and delivery drivers.

The new regulations governing the tipped minimum wage represent a substantial change for the hospitality industry. Since 2011, employers in this industry were not required to adjust tipped employees' base minimum wage to keep up with the Department of Labor's annual increases, as all that was necessary was to show that the employee's hourly tips increased in conjunction with the basic minimum wage. This change, however, encompasses both a reduction in the allowable tip credit and an increase in the base minimum wage. Accordingly, employers may now only take a credit of \$1.50 per hour against the minimum wage for all service employees, regardless of whether these employees receive more than that amount per hour. Additionally, employers must be certain to apply the correct overtime premium of \$12.00 per hour beyond 40 hours in a given week for tipped food service workers.

These minimum wage adjustments are not the only changes that will be taking effect on December 31, 2015. This date will also see an increase in the uniform maintenance rate, which employers must pay to employees who are required to launder and maintain a required uniform. Specifically, this amount will increase from \$10.90 to \$11.20 for employees working over 30 hours per week; from \$8.60 to \$8.85 for employees working between 20 and 30 hours per week; and from \$5.20 to \$5.35 for employees working 20 hours or less per week.

Similarly, the amount of the meal credit that New York employers may take for providing employees with meals during the course of the workday will also increase for some employees on December 31. Specifically, the meal credit will increase from \$3.00 per meal to \$3.10 per meal for non-service employees. However, the meal credit will remain at \$2.50 per meal for food service workers and other service employees within the hospitality industry.

Given the existence of liquidated damages and other statutory penalties for underpayment of wages, New York employers should be certain to review their payroll practices to ensure that all credits and wages are properly accounted for. Additionally, employers must be certain to provide employees whose wages will increase as a result of this change the proper wage acknowledgment forms. The labor and employment attorneys at Kaufman Dolowich & Voluck are available to assist employers in properly accounting for these changes, including ascertaining the applicability and availability of credits and adjustments to reduce overall expenditures on wages.