

**KANE KESSLER, P.C.**  
**1350 Avenue of the Americas**  
**New York, N.Y. 10019**  
**(212)541-6222**  
**Fax (212) 541-9799**  
**Direct dial (212) 519-5154**  
[drothfeld@kanekessler.com](mailto:drothfeld@kanekessler.com)

**MEMORANDUM**

**DATE:** December 2, 2015  
**TO:** New York Clients  
**FROM:** Kane Kessler, P.C.  
Labor and Employment Law Department  
**RE:** New York State Minimum Wage Increase

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New York State laws and regulations set forth the minimum wage to be paid to all non-exempt workers across the State. These regulations also establish the wages to be paid to tipped employees along with the related credits, deductions, and reimbursements to which employers are entitled or for which they are responsible. This memorandum serves as a reminder of the upcoming wage-related increases effective December 31, 2015.

Minimum wage and related items

Effective December 31, 2015, the minimum wage in New York State increases for all non-exempt employees from \$8.75 per hour to \$9.00 per hour.

In addition, in order to be eligible for the executive or administrative exemption from overtime, effective December 31, 2015, employees must be paid a minimum of \$675.00 per week, an increase from \$656.25 per week during the prior year.

On February 24, 2015, the acting Commissioner of the New York State Department of Labor accepted recommendations submitted by the State's Wage & Hour Board to increase the minimum wage for all tipped workers from \$5.00 for food service employees and \$5.65 for non-food service employees to \$7.50 per hour. As a result, there is no longer a difference in the direct wage rate paid to tipped food service and tipped non-food service workers<sup>1</sup>.

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<sup>1</sup> A "food service worker" is defined as "any employee who is primarily engaged in the serving of food or beverages to guests, patrons or customers in the hospitality industry, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receives tips from such guests, patrons or customers" and does "not include delivery workers". A "non-food service worker" is any employee other than a food service worker.

New York State Department of Labor regulations allow employers to take a tip credit from the minimum wage if an individual is a tipped employee. Currently, the tip credit for food service workers is set at \$3.75 while the tip credit for non-food service workers is \$3.10. Effective December 31, 2015, these amounts will decrease to \$1.50 in correspondence with the increase in the minimum wage for tipped workers discussed above.

Below is a chart itemizing the applicable minimum wage rates, tip credits and overtime rates for tipped food service and tipped non-food service workers.

Effective Date	NYS Minimum Wage	Regular NYS OT rate	NYS Tip credit for food service workers	NYS Direct wage for food service workers	NYS Tipped OT rate for food service workers	NYS Tip credit for non-food service workers	NYS Direct wage for non-food service workers	NYS Tipped OT rate for non-food service workers
12/31/15	\$9.00	\$13.50	\$1.50	\$7.50	\$12.00	\$1.50	\$7.50	\$12.00

On September 10, 2015, the acting Commissioner accepted the recommendations of the Fast Food Wage Board to increase the minimum wage of all fast food workers within the state<sup>2</sup>. Beginning on December 31, 2015, this increase shall be phased in over the next three (3) years in New York City and over the next six (6) years statewide as follows:

- For New York City, the minimum wage for fast food workers shall be increased to:
  - \$10.50 on December 31, 2015
  - \$12.00 on December 31, 2016
  - \$13.50 on December 31, 2017; and
  - \$15.00 on December 31, 2018
  
- For the rest of the state, the minimum wage for fast food workers shall be increased to:
  - \$9.75 on December 31, 2015
  - \$10.75 on December 31, 2016
  - \$11.75 on December 31, 2017
  - \$12.75 on December 31, 2018
  - \$13.75 on December 31, 2019
  - \$14.50 on December 31, 2020; and
  - \$15.00 on December 31, 2021

New York State Governor Andrew Cuomo announced earlier this month that he would be increasing the minimum wage for employees employed by the State itself in

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<sup>2</sup> A “fast food employee” is one who works in a chain establishment of limited service which is one (1) of thirty (30) or more such establishments nationally and whose job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning, or routine maintenance.

accordance with this exact schedule. These increases come on the heels of a pronouncement made by Governor Cuomo in September of this year that he would seek a \$15.00 minimum wage across all industries within the state. The Governor is continuing to seek support for legislation to effectuate this change.

Finally, please be mindful of the notice requirements still in effect pursuant to the Wage Theft Prevention Act. All employers must continue to provide wage rate notices to employees in English and their primary language within ten (10) days of hire, or face penalties for failure to do so. Employers must also continue to collect signed acknowledgements of receipt from new employees. The requirements regarding earnings statements, wage changes or change in status remain the same. Employees must be notified seven (7) days before any changes to such information, such as the wage increases discussed in this memorandum. Our previous memorandum discussing the amendments to the Act can be found here:

<http://www.kanekessler.com/files/Dec. 31 2014 - Regarding Wage Theft Protection - Changes effective 2015.pdf>.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Judith A. Stoll, Lois M. Traub, Alexander Soric, Jaclyn Ruocco, Michael C. Lydakakis or Robert L. Sacks.

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*This memo is provided for informational purposes only.  
It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances*