

---

# Empire State Restaurant & Tavern Association

---

*Report From The Executive Director...Scott Wexler*

## November 2017

Campaign Against Wine & Spirits Wholesalers Continues - Our efforts to combat the monopolistic practices by wine and liquor wholesalers entered a new stage last month. In addition to our existing campaign to obtain the right for on-premises retailers to purchase wine and spirits from liquor stores, the Association has asked the State Liquor Authority to investigate the practices of wholesalers to charge split case and delivery charges in excess of what is permissible. Our request was made as part of testimony opposing a proposed change to the Authority's Rules and Regulations that would remove the current split case charge of \$1.92.

As we reported last month, the SLA has not been enforcing the current split case charge choosing instead to permit wholesalers to charge whatever they want as long as they notify retailers of the charge. This approach is clearly in conflict with the regulations so, rather than make the wholesalers follow the rules, the Liquor Authority proposed changing them. Our testimony at the SLA's public hearing made clear that such a change would lead to higher costs for retailers. We cited the outrageous split case charges being assessed by wholesalers as evidence that given the opportunity to increase costs to retailers the wholesalers will do so.

We also discovered that wholesalers are imposing delivery charges on retailers that violate the rules. The SLA Regulations allow for delivery charges but they must be for the "actual cost for delivery." A system where you are charged for delivery only if you do not meet a minimum order and under which all retailers face the same delivery charge is obviously in violation of the rules. We called this to the attention of the Liquor Authority in our testimony. We noted that while the expenses of splitting cases and delivery have risen over the years, any increase in charges allowed by the SLA must be approved and enforced by the Authority. We urged the Members of the Liquor Authority not to make the proposed change to the split case charge. We proposed an alternative- convene an industry meeting to examine this issue in more detail and develop a proposal to update the charges that considers the interests of wholesalers and retailers.

The State Liquor Authority hasn't made a final decision on the proposed changes, but we're not sitting back while we await their determination. At the Association's Board meeting last month we agreed to pursue any and all means to protect your bottom line from these unreasonable practices. We're currently exploring these options and will report to you next month on our findings.

No matter how our fight over split case and delivery charges turns out we're still pursuing our legislative proposal to allow you to purchase wine and spirits. The state legislature returns to session in January and S4343-A7898 is our top priority in the coming year. We got off to a good start last year getting this bill passed by the Senate Commerce Committee but we have more work to be done before it becomes law and you're allowed to buy from liquor stores. Although the legislature doesn't return to Albany until January it's not too early for you to contact your Assembly and Senate representatives to let them know how important this bill is to your business. Contact the State Association office if you want help getting in touch with your legislators. Stay tuned for an update next month!

Department of Labor Proposes New Scheduling Rules - The State Department of Labor has proposed new scheduling rules for employers covered by the Miscellaneous Industries and Occupations Minimum Wage Order which will dramatically increase employer costs for last minute schedule changes and make it much harder to run a business. Employers covered by this Wage Order include general merchandise retailers (Walmart, Target, etc.), grocery stores, convenience stores and many other employers not covered by an industry specific Wage Order. This proposal does not need the approval of the State Legislature. Similar to the increase in wages for tipped workers and the fast food minimum wage increase, the Labor Department can adopt these on their own after considering public comments.

Here are the key provisions of the proposed regulations:

- Establishes a 14-day advance notice standard for scheduling and provide 2 hours' extra pay for last-minute assignments
- Expands existing reporting pay of at least four hours to now include last-minute cancellations and assignments and on-call shifts requiring workers to be on stand-by to come into work
- Provides limited flexibility for employers due to unforeseen circumstances such as weather or other disruptions
- Employees swapping schedules amongst themselves on a completely voluntary basis will still be permitted under this proposal

These rules do not affect hospitality industry employers since you're covered by the Hospitality Industry Minimum Wage Order but Governor Cuomo and the Department of Labor have made clear that this proposal will be extended to all other employers once finalized. While that would require a separate proposal and could provide an opportunity for industry specific accommodations, this proposal will be the foundation of the rules sought for all other industries so we need to pay attention and get involved in this fight now to protect your business in the future. Putting our heads in the sand and hoping it will go away will not be an effective strategy. We're in the process of collaborating with our colleagues in the business community on a plan to take on this new threat and plan to aggressively defend your right to manage your business.