
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

January 2020

Department of Labor Preserves Tip Credit – Nearly two years after Governor Cuomo directed the State Department of Labor to study eliminating the tip credit, the Department has issued a report recommending eliminating the tip credit for miscellaneous industries but not the hospitality industry. During six months of public hearings the Department heard from nail salon and car wash workers about unfair treatment and wage theft, but restaurant owners and workers told a different story. It's clear that the Labor Department heard us.

Governor Cuomo has accepted these recommendations and has directed the Department of Labor to eliminate the tip credit for miscellaneous industries in two steps – getting rid of half of it on July 1, 2020 and eliminating it entirely at the end of the year. The Department will now begin the regulatory process to put those changes into effect.

While the report is silent on any recommendations for the hospitality tip credit, in public statements from the Department since the report was issued they've said that any change in the hospitality tip credit "would require further study." After two years of study we're not anticipating further action from the Department of Labor on the hospitality industry tip credit anytime soon, but we'll remain vigilant and on-guard for any sign of movement.

The advocates for eliminating the tip credit have already published an op-ed in the NY Daily News calling for further action. And since Governor Cuomo has not answered their call it's likely they'll take their case to the State Legislature. We were successful maintaining the tip credit through the active and vocal participation of members of the industry all across the state and we'll push back against any legislative initiative using the same strategy.

We achieved this result with the help of a broad coalition of groups and organizations. Our appreciation goes out to our Association partners the New York State Restaurant Association, the New York State Hospitality & Tourism Association, the New York State Bowling Proprietors Association, and the New York City Hospitality Alliance. Their work, along with that of the groups representing servers (Supporters of the Tip Credit and the Restaurant Workers of America) combined to make it clear to policy makers that eliminating the hospitality tip credit was not welcome by owners and workers which led to this favorable outcome.

Win Some, Lose Some in Last Minute Actions by the Governor – The Assembly and Senate passed approximately 950 bills in 2019, about 33% more than in recent years, which kept the Governor’s office busy through the summer and fall reviewing these bills and making recommendations to the Governor. Three bills of interest were acted on just before the end of the year:

Employee Liens – Governor Cuomo vetoed a bill that would have authorized employees to impose a lien on the business and personal assets of employers, investors and managers based solely on the claim that there was a wage violation. The Governor had proposed his own initiative earlier in the year that focused on the bad actors – those businesses that were actually found to have violated the wage laws – but it was rejected by the legislature. We expect this issue to be addressed by the legislature and the Governor again in 2020.

Cure Period – The Governor signed a bill that directs state agencies to allow a small business to cure or fix a problem for a first time violation rather than face an immediate fine from the agency. The types of problems covered are limited to those related to paperwork or actions or omissions that are de minimus. We’ll have to wait and see which, if any, violations this will affect. It’s unlikely the State Liquor Authority, the Health Department, or the Labor Department will find many violations that this will apply to, but it’s definitely a step in the right direction for New York State’s policy to be that small businesses deserve a break.

Paying Alcohol Wholesalers by Credit Card – This bill passed by the legislature authorized beer, wine and liquor wholesalers to accept credit card payments from retail licensees and required retailers to pay a credit card surcharge to be determined by the SLA to compensate the wholesalers for the credit card processing fees they would pay on these transactions. We supported the provision allowing retailers to pay by credit card, but strongly opposed requiring retailers to pay a surcharge to wholesalers. After months of study the Governor signed this bill but with an agreement that the legislature pass an amendment that limits the bill to purchasing beer and cider and setting a fixed surcharge of three percent on all transactions. We’re opposing the amendment – a 3% surcharge for wholesalers is much higher than they’ll pay in credit card processing fees – and hope to get the surcharge eliminated or reduced before the amendment is adopted.

Salary History Ban Takes Effect – A new law that prohibits employers from asking about salary history took effect on January 6th. Under the law New York employers cannot request that job applicants provide wage or salary history as a condition of employment. In addition, current employees do not have to provide their salary history from any outside employees. The law also prohibits seeking similar information from other sources. The purpose of the law is to address the gender pay gap and follows a series of pay equity hearings the Department of Labor held across the state.