
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

December 2021

Minimum Wage Increases Take Effect This Month - The minimum wage will increase throughout New York State, except in New York City at the end of the month. The minimum wage on Long Island and Westchester will increase to \$15.00 per hour, joining New York City at this rate on December 31st. In the rest of the State, the minimum wage will increase to \$13.20 hour, on its way to \$15.00 over the next few years.

The increase in the minimum wage causes the cash wage for tipped foodservice workers to increase as well. As of December 31, 2021 the cash wage will be \$10.00 per hour for tipped foodservice workers in New York City, Long Island, and Westchester. The cash wage for tipped foodservice workers in the rest of the State will increase to \$8.80 per hour. As a reminder, you can only pay your tipped foodservice workers the cash wage if, when combined with their tips, they earn at least the minimum hourly wage.

In addition to the changes in the minimum wage and the cash wage for tipped foodservice workers, the minimum wage for service employees, the rates for uniform allowances & meal credits, and the salary required to be eligible for the executive and administrative exemption all increase at the end of December.

You're also required to post "in plain view" an updated minimum wage poster. We've enclosed a poster for your use. Consult with your payroll advisor, the NYS Department of Labor, or the Association office if you need more information.

Temporary Permit, Licensing Transparency & Alternative Penalties Bills Signed - The Governor signed three bills into law this month designed to help applicants through the licensing process and provide a reduced penalty for certain administrative SLA violations:

Temporary permit – With license applications taking six months or longer to be processed, the ability to seek a temporary permit is essential to starting a new business, especially during these challenging times. This bill authorizes the SLA to issue temporary liquor licenses to prospective licensees in New York City, giving these applicants the same option as applicants in the rest of the State.

Licensing Transparency – The extended delays in licensing make it hard to plan opening a new business. Not being able to monitor your license application in process make it impossible to build an appropriate plan to open, impacting

the premises' construction, ordering of supplies, hiring of staff, and arranging the numerous details that go along with launching a new business venture. Under this new law, the Liquor Authority will make more information available to applicants, enhancing their ability to plan for their opening.

Alternative Penalties – Some SLA violations received by licensees are simple administrative errors, but they can be costly. This new law provides the State Liquor Authority with the ability to provide a cure period or other ameliorative action for a first-time violation. It is similar to a change made in 2019 that allowed for cure periods for first-time violations by businesses of regulations of other state agencies.

Statewide Ban on Expanded Polystyrene Foam Containers Starts - New York's ban on expanded polystyrene foam containers and loose fill packaging, commonly referred to as 'packing peanuts,' begins Jan. 1, 2022. Initially, the NYS Department of Environmental Conservation (DEC) will focus its efforts on outreach and education to ensure a smooth transition for affected stakeholders, but expect enforcement to follow.

New York's ban prohibits any person engaged in the business of selling or distributing prepared food or beverages for on- or off-premises consumption from selling, offering for sale, or distributing disposable food service containers that contain expanded polystyrene foam. In addition, no manufacturer or store will be allowed to sell, offer for sale, or distribute polystyrene loose fill packaging in the state. Disposable food service containers made of expanded polystyrene foam banned under the law include bowls, cartons, hinged "clamshell" containers, cups, lids, plates, trays, or any other product designed or used to temporarily store or transport prepared foods or beverages, including containers generally recognized as designed for single use.

Covered food service providers may be eligible to request a hardship waiver if they meet the following criteria: have an annual gross income under \$500,000 per location; do not operate 10 or more locations in New York State; and are not operated pursuant to a franchise agreement. Retail or wholesale stores that sell expanded polystyrene foam food and beverage containers or loose fill packaging are not eligible to apply for financial hardship waivers.

The law and the proposed regulations to implement the law include exemptions for raw meat, pork, seafood, poultry, or fish sold for the purpose of cooking or preparing off-site by the customer and prepackaged food filled or sealed prior to receipt at a covered food service provider. The law does not apply in New York City because the city has a local polystyrene ban in place. Other local laws enacting a polystyrene ban are preempted by the state law, except any county law enacting a polystyrene ban providing environmental protection equal to or greater than the state law or if the county files a written declaration with DEC of its intent to administer and enforce its local law.