
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

December 2022

Reminder: Minimum Wage Increases at the End of the Month - The state's minimum wage rate varies depending on the region, and is increasing every year until it reaches \$15.00 per hour. New York City, Long Island, and Westchester have reached the \$15.00 per hour minimum wage level – and a cash wage for tipped foodservice workers of \$10 per hour.

The minimum wage rate in the rest of the state increases from \$13.20 per hour to \$14.20 per hour on December 31st. The cash wage for tipped foodservice workers will increase from \$8.80 per hour to \$9.45 per hour. These increases take effect on December 31, 2022, not after. Employees working on New Year's Eve are required to be paid the new rates for the entire day.

As noted above, the minimum wage will continue to increase in the rest of the state until it reaches \$15.00 per hour. It's all but certain that the state will increase the minimum wage in those areas next year to the \$15.00 per hour level. The question is will it go higher after that? And if it does, how high?

The Chairs of the Assembly and Senate Labor Committees have both introduced legislation to increase the wage further and to index the minimum wage to the cost of living and increases in “worker productivity” going forward. Each bill pegs the new minimum wage above \$20.00 per hour before implementing automatic, annual increases. This will be one of the most contentious issues during the 2023 Legislative Session, so we're at work with other groups to build a campaign to thwart this onslaught.

SLA Cap on Split Case Fee on Hold Due to Legal Challenge - In a surprise to almost no one, Southern Glaser Wine & Spirits went to court and obtained a Temporary Restraining Order preventing the Liquor Authority from implementing the updated rule that limits split case fees to \$7.39 per case. Southern did this after the State Liquor Authority agreed to their request to delay the new limit until February 1st in order to give them time to implement the change without disruption.

Southern's lawsuit claims that they can charge whatever they want for a bottle of liquor, regardless of the case price, and that they can charge a split case fee of any amount – no matter what the actual cost of splitting a case is. They claim there's nothing the Liquor Authority can do about it through regulation and oversight. They assert that this is the

policy of the State of New York – the legislature having considered but not advanced legislation to address the regulation of these fees. And we know there's nothing you can do, since Southern has exclusive rights to the brands you need to serve your customers.

The most absurd claim in the lawsuit is that these split case fees do not discriminate against small retailers. They assert that as long as they charge all retailers who split cases the same fee, they're treating everyone equally. It appears lost on them that small retailers who pay this extra charge (most likely with delivery charges piled on) end up paying substantially higher prices for product than larger retailers. And if the split case charges they assess are more than the actual cost for splitting cases, then those charges are discriminatory.

According to Southern, it costs them about \$11 million per year to fulfill split case orders. They claim that they fill one thousand split case order every day and that the fees they collect fall short of covering all of these expenses. What they didn't explain is why they charge more for split case fees than any other wholesaler. Empire charges \$30 per case and other licensed wholesalers charge various amounts less than \$30 per case, or do not charge any split case fee.

As the largest wholesaler in New York State and one of the largest distributors in the country, Southern should have the most efficient operation and amongst the lowest split case fees – not the most expensive. Empire has the second highest fees and is the second largest liquor distributor in New York. Do you see a pattern here? Perhaps the fees have more to do with the market power that Empire and Southern have over retailers?

We're digging in for the fight! We did not expect Empire and Southern to roll over, but they picked the wrong fight this time.

To begin with, we're seeking to join the lawsuit as an Intervenor – representing parties that have an interest in the case. This will allow us to get in front of a judge and make the case on your behalf. While the Attorney General and State Liquor Authority counsels are doing a fine job representing the state, they don't speak for you and cannot explain to the court the impact these fees have on your businesses.

We're also taking this fight to New York's policy makers. Southern claims the legislature and the Governor think this is the appropriate public policy – we're going to ask them. We don't think legislators will agree that these wholesalers, who operate without competition, should have unfettered ability to charge retailers whatever fees they want. And we don't think the State Liquor Authority will agree that wholesalers can charge split case fees and delivery charges that are not price posted as required by law.

Bring it on, we're ready!