
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

January 2023

New State Law Changes Workplace Posting Requirements - Labor Law Section 201 mandates that employers post certain legal notices provided by the New York Commissioner of Labor in a conspicuous place on each floor of their premises. A new amendment to that law, signed last month, requires that in addition to posting physical notices, digital versions of applicable federal and state notices must also be made available through the employer's website or by email. The electronic posting requirement will apply to all documents required to be posted at a worksite under state and federal law or regulation including but not limited to:

- Retaliatory action by employers; prohibition- NYS Labor Law Section 740
- Criminal Convictions Records – Article 23-A
- Discrimination
- Minimum Wage
- Safety & Health
- Unemployment Insurance
- Workers' Compensation and Disability Benefits
- Smoking
- Fringe Benefits and Hours, if not included in employee handbook
- Expression of Breastmilk
- Equal Pay
- Posting of Hours for Minors
- FLSA Minimum Wage poster
- The Family and Medical Leave Act
- "Job Safety and Health: It's the Law" Poster (OSHA)
- "Your Rights Under USERRA" Notice/Poster

Given that the law is effective immediately, employers should ensure all mandatory workplace postings have been posted in the physical workplace, in accordance with federal and state laws. Employers will also need to make digital copies of these notices or download them as made available from the applicable federal and state agency websites or via their poster vendor. Employers must then upload them to their company website and intranet or email them to applicants and employees as soon as possible. Employers must also provide employees with a notice that the documents are available electronically and it is recommended that this notice explain how/where to locate the electronic notice.

Statewide Pay Transparency Law Signed - Governor Hochul has signed legislation establishing a statewide pay transparency law in New York State. Under this new law, which takes effect on September 17th, employers are required to list salary ranges in advertisements or postings for job opportunities and promotions. The new law aims to address issues of discriminatory wage-setting and hiring practices by providing workers with this information. The law applies to employers with four or more employees. The law also requires that if a job description exists for the position, it must be included in the posting. This new law will be enforced by the NYS Department of Labor with civil penalties not to exceed \$1000 for the first violation, \$2000 for the second violation, and \$3000 for the third and subsequent violations.

New Veterans' Benefit and Services Posting Requirement - All New York State employers with more than 50 employees are now required to display a new Veterans' Benefits & Services poster. Legislation signed in November now requires the poster to be displayed in an area accessible to all employees in the workplace. The poster provides information on how to access several veteran resources, including mental health and substance abuse assistance, training and workforce services, tax benefits, legal resources, and more. Posters can be downloaded and printed from the NYSDOL website.

Food Allergy Awareness Law - A new law taking effect on May 20th requires restaurants, grocery stores with prepared foods, and online vendors to post a notice for their employees that contains information on the processes to follow if a customer informs staff of a food allergy, how to avoid cross contact, and what to do if a customer has an allergic reaction, including a recommendation on when 911 should be called. The new law also requires a notice to be included on menus – “If you have a food allergy, please notify us.” Additional information on implementing this new law is expected to be published by the State Department of Health over the next several months.

Governor Announces Proposal to Index the Minimum Wage - Earlier this month Governor Hochul included in her State of the State Message a proposal to automatically increase the minimum wage. The Governor cited difficult economic conditions due to inflation and other factors that are eroding the value of the current minimum wage as the rationale for her proposal. Indexing the minimum wage to inflation, she asserted, will ensure that the purchasing power of workers' wages aren't eroded year over year. Under the outline of the Governor's plan, after reaching \$15 per hour, each region's minimum wage will increase consistent with the year-over-year Consumer Price Index. To ensure that no single-year increase would threaten employment, annual increases would be capped, and an “off-ramp” would be available in the event of certain economic conditions, according to the Governor's announcement.

Our understanding is that this proposal preserves the tip credit for foodservice workers, but increases it at the same rate as the general minimum wage. Full details of the proposal will be included in the Executive Budget which will be released on February 1st. We're withholding our evaluation of the plan until we see the details. Regardless of the Governor's proposal, the most progressive members of the legislature are embracing legislation to eliminate the cash wage for tipped foodservice workers so we're gearing up for a fight in the weeks ahead.