
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

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Minimum Wage Increase Included in New State Budget - The final state budget agreement includes increases in the minimum wage over the next three years after which the minimum wage will be indexed to inflation. It also includes off-ramps that could scuttle minimum wage increases during years when consumer prices fall, unemployment spikes, or the state loses jobs.

The new minimum wage schedule is as follows:

New York City Employers Regardless of Size:

\$16.00 on and after January 1, 2024

\$16.50 on and after January 1, 2025

\$17.00 on and after January 1, 2026

Nassau, Suffolk, and Westchester County Employers:

\$16.00 on and after January 1, 2024

\$16.50 on and after January 1, 2025

\$17.00 on and after January 1, 2026

Remainder of the State:

\$15.00 on and after January 1, 2024

\$15.50 on and after January 1, 2025

\$16.00 on and after January 1, 2026

Beginning on January 1, 2027, the minimum wage will automatically be modified annually by the Commissioner of Labor based on the Consumer Price Index. The new law does provide several “off ramps” - economic circumstances the state might find itself in that would prevent a minimum wage increase from occurring. The minimum wage would not change:

- if the rate of the index is negative
- if the three-month moving average of the seasonally adjusted NYS unemployment rate for the period ending July 31st rises by 0.5% or more relative to its low during the previous 12 months, or
- if the seasonally adjusted total non-farm employment for New York state in July decreased from the seasonally adjusted total non-farm employment for New York state in January.

Minimum wage increases can only be prevented for two consecutive years.

The budget makes no changes in the law for tipped foodservice workers. Under the Labor Law, these workers have a minimum cash wage equal to two-thirds of the minimum wage so the cash wage for tipped foodservice workers will increase proportionately as the minimum wage increases each year.

Fossil Fuel Ban Exempts Commercial Food Establishments - There has been a lot of attention at the state and federal level to proposals that would ban the use of fossil fuel equipment in buildings. You may remember a recent statement by President Biden about not wanting to take anyone's gas stove away from them. It's a serious discussion here in New York since the Climate and Community Protection Act, enacted into law last year, has set the state on a path to zero on-site greenhouse gas emissions.

Under a provision included in the state budget, beginning December 31, 2025, developers and builders will be required to comply with "zero emission construction" standards for most buildings of seven stories or fewer. By 2028, taller buildings will also need to adopt emission-free technologies, trading fossil fuel appliances such as gas stoves and furnaces for electric or induction cooktops and electric heat pumps.

The plan will exempt some types of new buildings, including hospitals, manufacturing facilities and commercial food establishments (restaurants, taverns, bars, etc.), and will allow for back-up generators. It also allows for the replacement of existing gas appliances in existing buildings. This is not the last we've heard of "zero emissions" – more like the beginning of a long term relationship of new challenges.

Bottle Bill/Extended Producer Responsibility - Not included in the final state budget was the Governor's proposal to require suppliers to be responsible for the paper and packaging waste they generate. These so-called extended producer responsibility requirements would impose an obligation on suppliers to manage their paper and packaging waste. One element of the proposal would require any containers not covered by the Bottle Bill to fall under the Extended Producer Responsibility law – most notably for on-premises licensees are wine and liquor bottles.

Under an Extended Producer Responsibility (EPR) law suppliers would need to join with other suppliers to manage their paper and packaging waste. Most EPR models function to collect financial payments to local municipalities to support their costs for waste disposal resulting in higher costs to you and your customers – sort of like a tax system. This would most likely have only a modest impact on your business, except for wine and liquor bottles. Most of those companies have expressed a preference for putting wine and liquor bottles in the Bottle Bill – the devil they know vs the devil they don't know.

Unlike most issues that fall out of the budget, this discussion is not over. There is a great deal of interest in addressing these issues before the legislature completes session in the weeks ahead.

ABC Law Review Commission Recommends Changes to Law - The Commission to Study Reform of the Alcoholic Beverage Control Law, created as part of last year's state budget, released their recommendations for changing the law including allowing restaurants, taverns, bars, and other on-premises licensees to purchase limited amounts of wine and spirits from liquor stores. The Commission's Report, issued on May 1, also makes several sensible recommendations for revising the licensing rules that will reduce barriers to entry to the hospitality industry for small businesses.

The proposal to allow on-premises retailers to make limited purchases from liquor stores is our top legislative priority since it addresses our concerns about liquor pricing and service from Empire and Southern. The Commission's recommendation will be helpful in our efforts to advance the bill. The proposal had the support of several liquor representatives, although the representative of the Metropolitan Package Store Association voted no. Also voting against this recommendation were the lawyers representing Empire Merchants and Southern Glaser Wine & Spirits, the Beer Wholesalers Association, Anheuser-Busch, and the Distilled Spirits Council of the US.

The Commission also recommended several changes to make it easier to get through the licensing process, although I suspect most won't find support in the legislature. They include:

- allowing applicants to file prior to the 30-day notice period is up
- allowing New York City applicants subject to the 500-foot law to be eligible for temporary permit after receiving a positive public interest recommendation
- eliminating the 200-foot law
- eliminating the 500-foot law

And the Commission also recommended authorizing All-Night Permits for weekend nights so they can be issued when New Year's Eve falls on the weekend. In addition to those listed above, other recommendations for ABC reform include:

- Expand liquor store hours from noon to 10 am
- Allow liquor stores to sell additional items
- Allow ownership of more than one (but not unlimited) liquor store
- Change rules for granting liquor store licenses
- Allow ownership changes prior to SLA approval

Now that the Commission's work is complete it will be up to the Assembly, Senate, and the Governor to decide what to do with the recommendations since they are non-binding. If past history is any guide most of these recommendations will be tossed aside due to opposition from within the industry or opposition from legislators who are not interested in improving business conditions for the industry.

We've been laying the groundwork for allowing you to make purchases from liquor stores over the past few years. Now that it has the endorsement of the ABC Reform Commission we'll seek to build on that momentum. With a late state budget and barely one month until the end of the legislative session, there's no time to waste!

Plans for 2022 Golf Outing Announced - It's time to make your plans to attend the Association's Annual Golf Outing. We're once again hosting the outing at Cronin's Golf Resort in Warrensburg. This year's outing will be held on Monday, June 5th. The \$110 per golfer registration fee includes greens fees, cart, lunch, refreshments on the course, hors d'oeuvres and dinner (cash bar), awards, and prizes. Cronin's cabins are available for overnight stay. Call 518.623.9336 to reserve your cabin.

Since the golf outing is an Association fundraiser, we need your help raising funds. The best way you can show your support is by signing up for a sponsorship. Your \$100 donation for a tee sponsor shows your support for our cause and will help make the outing a success. We also have other levels of sponsorship if you or any of your vendors want to support our efforts.

We also have a few tickets left for our Golf Outing Raffle. With only 200 tickets being sold, we're hoping for a sell-out this year. Contact the state association office at 518.436.8121 or esrta@verizon.net for more information. I hope to see you in Warrensburg next month.

VISA Lowers Maximum Allowable Surcharge to 3% - VISA recently notified its merchants that it has lowered the maximum surcharge they will allow on their transactions from 4 to 3 percent. This change is an amendment to their merchant agreement so it's binding on all who accept VISA cards for payment. Failure to comply could result in fines up to \$25,000 per month. Continued non-compliance could lead to a \$100,000 per month fine and could lead to account termination.

Of course surcharges on credit cards are generally illegal in New York. According to the NYS Division of Consumer Protection, credit card surcharges are prohibited in New York State. Businesses are not allowed to advertise a price and add a surcharge at the point of sale when a consumer elects to pay with a credit card. Instead, businesses are required to inform consumers of the higher credit card price for a product or service by posting the higher price. Businesses are also able to offer a discount to consumers who pay in cash. Here are the key points to remember:

- You can't merely surcharge your customers as a percentage of the bill
- The higher credit card price must be listed in dollars and cents on the menu – the customers must know the total price without having to do the math themselves
- Businesses may offer customers a discount for paying cash – your menu prices would reflect the higher credit card prices – you can offer a percentage discount for cash customers

The rules are different for debit cards. A surcharge or higher fee for the use of a debit card is permitted but must be accompanied by clear disclosure at the advertised street signage or prominent placement in the retail location.