
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

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Pay Transparency Law Takes Effect - A new state law that took effect this month requires businesses across New York State with four or more employees to include compensation ranges in all advertisements for job, promotion, and transfer opportunities. The law requires all job, promotion or transfer opportunities physically performed, at least in part, in the State of New York to include a range of pay when advertised.

Advertisements require a range of pay regardless of how or where they are posted. The new law covers any job posting shared with more than one person made internally or to the public. It applies to newspaper ads, printed flyers, social media posts, website postings, anything sent to an electronic mailing list, and emails sent to a pool of more than one applicant. This applies to posts made by the employer directly or on the employer's behalf by a third-party, such as through a job-listing website.

Pay ranges must include a minimum and maximum annual salary or hourly rate of compensation for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting. If the employer does not plan to offer a range, but instead plans to offer a single fixed rate, such as \$10 an hour, then the fixed rate must be listed. An open ended pay range, such as \$10+ an hour is not allowed.

In addition, employers must clearly state if a position is commission-based. A range of pay cannot include other forms of compensation or benefits such as employer provided health insurance, paid leave, or retirement savings. Employers must also provide the job description in the advertisement if one exists.

The law mandates that employers make a good faith effort to determine the range of pay. A "good faith pay range" is one that an employer believes they are willing to pay at the time of the advertisement's posting. An employer may adjust the range of pay in an advertisement after collecting additional information during the hiring process.

The new law does not require employers to create a posting for every available job, promotion, or transfer opportunity, nor does it require employers to use a specific medium for advertisements. The NYS Department of Labor has begun the process of adopting regulations to implement this new law and answer outstanding questions about the law. The Labor Department has published an FAQ document to help explain the requirements of the new pay transparency law (enclosed).

ESRTA Asks Court to Uphold SLA Split Case Fee Regulation - The Association appeared before the NYS Supreme Court over the summer to urge it to uphold the State Liquor Authority's regulation prohibiting liquor wholesalers from charging exorbitant split case fees. This regulation, which has been on the books for more than 40 years, was updated by the SLA last year after learning that some wholesalers were charging small businesses as much as \$3.00 per bottle extra for splitting up a case of liquor and imposing delivery fees for orders below various minimum purchase levels set by the wholesalers.

An inquiry by the Liquor Authority determined that these extra fees added up to about \$8,000 per year for a typical small establishment. The SLA also found that these fees are not listed on the price postings liquor wholesalers file with the Authority each month as required by state law. A retailer looking up the price of ordering an individual bottle of liquor would not see the actual cost of the product until receiving their invoice. The revised regulation requires that these fees be included in the price posting for each product going forward.

The New York State Supreme Court in Albany heard oral argument over the summer on the Article 78 petitions filed by Empire Merchants and Southern Glaser Wine & Spirits seeking to overturn the revised SLA regulation. Representatives of the hospitality industry filed a motion seeking to intervene in the case as interested parties who are significantly impacted by this litigation and appeared before the court to explain the burden these policies impose on small operators. The judge reserved decision from the bench and agreed to issue a written decision which has not yet been released.

Our battle against split case fees and delivery charges will continue regardless of the results of this court hearing. Legislation is pending before the Assembly and Senate that would prohibit fees to be added to the price and that would allow on premises licensees to make limited purchases from liquor stores. We're also looking for additional proposals that would provide relief from wholesalers' market dominance. Stay tuned for an update once the judge issues his decision.

Association's Fall Board of Directors Meeting Heads to Saratoga Springs - The Fall Meeting of the Association's Board of Directors will be held on October 17th at the Embassy Suites Hotel located in Saratoga Springs. The agenda will include an update on the Association's activities over the past year, a review of our Workers' Compensation Safety Group, planning for the 2024 legislative session, and our Annual Banquet Dinner. Please contact the Association office if you're interested in joining us for all or part of the meeting.