
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

December 2023

Minimum Wage Increases January 1st - The state's minimum wage will increase at the start of the new year as part of a long term plan to increase the minimum wage. Under this plan the minimum wage is raised over the next three years – up to \$17.00 downstate and \$16.00 upstate – after which the minimum wage will be "indexed" to the cost of living. A formula specified in the law ties the minimum wage to the cost of living. As the cost of living increases, so will the minimum wage. The objective is to have wages keep up with costs.

The New York State Department of Labor has published proposed changes to the wage and hour rules & regulations to implement the first three statutory steps - the specific increases provided in the law. They've also published the proposed cash wages for foodservice and service workers, required uniform maintenance payments, and meal credits. You can start planning for 2024 to include these new provisions:

New minimum wage rates:

	<i>Downstate*</i>	<i>Upstate**</i>
January 1, 2024	\$16.00	\$15.00
January 1, 2025	\$16.50	\$15.50
January 1, 2026	\$17.00	\$16.00

Foodservice workers minimum wage rates:

	<i>Downstate*</i>	<i>Upstate**</i>
January 1, 2024	\$10.65	\$10.00
January 1, 2025	\$11.00	\$10.35
January 1, 2026	\$11.35	\$10.70

Service workers minimum wage rates:

	<i>Downstate*</i>	<i>Upstate**</i>
January 1, 2024	\$13.35	\$12.50
January 1, 2025	\$13.75	\$12.90
January 1, 2026	\$14.15	\$13.30

* *Downstate includes New York City & Nassau, Suffolk, and Westchester Counties*

***Upstate includes the remainder of New York State*

Similar proportional increases in required uniform maintenance payments and meal credits are also included as part of this proposal:

Uniforms - An employer that does not maintain required uniforms for their employees is required to provide uniform maintenance pay based on the number of hours worked. Employees who work over 30 hours per week shall be paid the high rate, employees who work more than 20 hours but fewer than 30 hours shall be paid the medium rate and employees who work 20 hours or fewer shall be paid the low rate listed below:

**Downstate...*

January 1, 2024	\$19.90 High, \$15.75 Medium, \$9.50 Low
January 1, 2025	\$20.50 High, \$16.25 Medium, \$9.80 Low
January 1, 2026	\$21.10 High, \$16.75 Medium, \$10.10 Low

***Upstate...*

January 1, 2024	\$18.65 High, \$14.80 Medium, \$8.95 Low
January 1, 2025	\$19.25 High, \$15.30 Medium, \$9.25 Low
January 1, 2026	\$19.85 High, \$15.80 Medium, \$9.55 Low

** Downstate includes New York City & Nassau, Suffolk, and Westchester Counties*

***Upstate includes the remainder of New York State*

Meals - Meals furnished by an employer to an employee may be considered part of the wages and employers may take a credit at no more than the per meal amounts listed below at the food service rate for food service workers, the service rate for service employees, and the other rate for non-service employees:

**Downstate...*

January 1, 2024	\$3.85 Food Service, \$4.45 Service, \$5.50 Other per meal
January 1, 2025	\$3.95 Food Service, \$4.60 Service, \$5.65 Other per meal
January 1, 2026	\$4.05 Food Service, \$4.75 Service, \$5.80 Other per meal

***Upstate...*

January 1, 2024	\$3.80 Food Service, \$4.10 Service, \$5.20 Other per meal
January 1, 2025	\$3.95 Food Service, \$4.25 Service, \$5.35 Other per meal
January 1, 2026	\$4.10 Food Service, \$4.40 Service, \$5.50 Other per meal

** Downstate includes New York City & Nassau, Suffolk, and Westchester Counties*

***Upstate includes the remainder of New York State*

You will need to post a new minimum wage poster with the updated wage information on or before January 1st. We've included a poster for your use. You can print & download additional copies of the poster and find more information on the Department of Labor's website, dol.ny.gov.

SLA Forms Committee to Address Licensing Backlog - In spite of new staff and technological upgrades, the State Liquor Authority's backlog in processing new licenses and permits is about as bad as its been in memory. This not only affects someone applying for a new license, but any existing licensee seeking a change in their license or a permit is also caught up in these processing delays.

The State Liquor Authority took an important step towards addressing this problem by forming a committee to take on the backlog. Comprised of some of the Authority's most experienced and dedicated employees, the committee will be asked to look at a large group of applications that fall within one of the following categories:

- New On-Premises license applications submitted by entities or principals who are already licensed by the Authority;
- Applications pending for over 90 days from entities who are already operating with a Temporary Retail Permit with no local municipal/community board opposition;
- Add Bar applications pending for over 90 days with no local municipality or community board opposition and no pending charges;
- Corporate Change applications pending for over 90 days with no local municipality or community board opposition and no pending charges;
- Endorsement applications pending for over 90 days with no local municipality or community board opposition and no pending charges;
- On-Premises Removal applications pending for over 90 days with no local municipality or community board opposition and no pending charges;
- On-Premises Class Change applications pending for over 90 days with no local municipality or community board opposition and no pending charges;
- Method of Operation applications pending for over 90 days with no local municipality or community board opposition and no pending charges;
- On-Premises license applications subject to the 500 Foot Law but are not qualified for a Temporary Retail Permit pending for over 90 days with no local municipality or community board opposition.

Hopefully the new staff and technological upgrades will allow the Liquor Authority to avoid future backlogs once this committee cleans up the current problem.

State Insurance Fund Makes Required Training Available - The New York State Insurance Fund (NYSIF), through their Risk Control Resource Center, offers New York State-specific Sexual Harassment Prevention Training. The course – available in English and Spanish – meets all of the requirements mandated by New York State and New York City. A more in-depth offering is available for managers. Both courses are available within the Resource Center's Learning Management System.

The Sexual Harassment Prevention Training is only one of the NYSIF Risk Control Center's Learning Management System's useful programs. It's only available to NYSIF policy holders, including members of our Workers' Compensation Safety Group #554. Log in to the State Insurance Fund website, NYSIF.com, for more information. Reach out to Mickey McIntire at Fleury Risk Management at 518-478-6314 to learn more about the Association's workers' compensation safety group and see how we can save you money!

Credit Card Surcharge Bill Signed Into Law - Governor Hochul signed into law a bill passed by the Assembly and Senate to clarify how a retailer can charge a surcharge on credit card purchases. The new law, which will take effect in February, will hopefully eliminate the confusion over the process of passing along exorbitant credit card fees to your customers.

For years it was generally understood that it was illegal in New York State to impose a surcharge on credit card sales. The law permitted providing a discount to cash customers, but it did not permit an additional charge being added for using a credit card. Businesses were permitted to have two-tier pricing for cash and credit – every gas station did it – but the legal way to offer two-tier pricing was by discounting cash payments.

In 2018, the New York Court of Appeals, in a challenge to the law, ruled that the statute as it reads is incorrect and that merchants may in fact impose a surcharge on credit card purchases so long as they post the total dollars and cents the customer will be charged. This meant that the total price including the credit card surcharge was presented to the customer. The court was quite clear that the customer must not be required to do the math themselves to determine the total price.

Over the past five years since this court decision was handed down it has been regularly misinterpreted. The message that “surcharges are okay” was heard loud and clear (with the help of credit card processors) but the part about having to list the total price of each item was lost in the wind. Signs popped up in all types of retail locations announcing surcharges on credit card purchases of varying percentages, usually with an explanation that the business was merely “passing along the cost” of credit card processing. But unless those businesses listed out the total price with the surcharge added for each item they were in violation of the law.

In order to ensure transparency, the new law requires businesses to clearly post the highest price that a consumer might pay for each item. Businesses are permitted to offer two-tier pricing systems in which the credit card price is listed alongside the cash price. This works well for businesses with limited items (like gas stations) but can be confusing and seemingly impossible to apply to a restaurant menu. With customers using credit cards to pay for the overwhelming share of transactions, some businesses have transitioned to giving a discount to customers who pay with cash – a practice that does not require itemized pricing. Make sure you consider the requirement of the new law as you try to navigate the constantly increasing costs of operating your business.