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# Alert

Labor and Employment

## NYS Dept. of Labor Issues Wage Order for Restaurant & Hospitality Industries *Enforcement to Begin on March 1, 2011*

Green & Seifter, Attorneys, PLLC

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Employers in the hospitality and restaurant industries need to review and modify their current wage and hour policies on a host of issues covered in the New York State Department of Labor's latest Wage Order. The Wage Order establishes rules for tipped credit minimum wage, tip pooling, tip sharing, recordkeeping, private event contracts, spread of hours pay, uniform allowances exemptions, and related practices. Although the Order became effective January 1, 2011, the Department of Labor will not begin enforcement of the Order until March 1, 2011.

A highlight for some of the changes contained in the Wage Order are:

1. It is no longer permissible to pay non-exempt employees a salary, weekly rate, day rate, or piece rate. Non-exempt employees must be paid an hourly rate of pay in compliance with the law and regulations.
2. The minimum hourly wage rate for tipped and non-tipped service employees has increased, thereby decreasing the tip wage credit available.
3. Employers must provide employees with written notice of their pay prior to the commencement of their employment and every time their rate of pay changes. The notice must include the employee's hourly rate of pay, overtime rate of pay, amount of tip credit taken (if applicable), the normal pay date and an explanation to employees that they are entitled to extra pay if actual tips earned are insufficient to bring each employee up to the basic minimum wage.
4. Employers must retain copies of the statements signed by employees acknowledging receipt of the notice.
5. Hospitality industry employers can now, like their restaurant counterparts, require a tip pool for eligible employees.
6. Employers utilizing a tip pool or tip sharing arrangement must keep detailed tipping records including such items as a daily tip log, list of occupations deemed eligible to receive tips through tip sharing or tip pooling, the share of tips each occupation is scheduled to receive under the program, and each employee's share of the tips from the program. Employees must also be given access to these records.

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7. Wash and wear uniform exemption rules have been adopted. To qualify for the wash and wear exemption, the new rule generally requires that the number of uniforms provided to the employee be consistent with the average number of days per week worked by the employee and the uniforms must be able to be laundered routinely with personal clothing. When an employer does not maintain the required uniforms for an employee, the employer must provide uniform maintenance pay as set forth in the regulations.

8. A rebuttable presumption has been established that any charges passed onto customers (other than for food, beverage, lodging, and specifically identified services) shall be deemed a gratuity for the benefit of employees, unless particular language approved by New York Department of Labor is utilized in the customer's contract.

While the new rules may initially create some confusion for many employers in the hospitality and restaurant industries, they finally bring certainty to an area where clear directives were previously unavailable.

The Labor and Employment Practice Group at **Green & Seifter, Attorneys, PLLC** provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives.

If Green & Seifter, Attorneys, PLLC can provide you with additional insight and information regarding the new Wage Order and its implementation, please contact John L. Valentino. John Valentino is a Managing Member of Green & Seifter Attorneys, PLLC, ([www.gslaw.com](http://www.gslaw.com)) and concentrates his practice in the areas of Business Transactions and Employment Law. He can be reached at [jvalentino@gslaw.com](mailto:jvalentino@gslaw.com) or at **315.701.6308**.



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