

**CLIENT ALERT: FEDERAL AND NEW YORK STATE MINIMUM WAGE  
INCREASES TO \$7.25 PER HOUR ON JULY 24, 2009; MINIMUM WAGE FOR TIPPED RESTAURANT  
SERVERS AND OTHER SERVERS INCREASES TO \$4.65**

Effective, July 24, 2009, the federal minimum wage increases from the current rate of \$6.55 per hour to \$7.25 per hour in accordance with the Fair Labor Standards Act (the "FLSA"). This is the third increase to take effect since the FLSA was amended in 2007. In 2007, the federal minimum wage rose from \$5.15 to \$5.85 and, in 2008, the rate increased again from \$5.85 to \$6.55.

The New York State minimum wage also increases by 10 cents to \$7.25 on July 24, 2009. Under the New York State Minimum Wage Act, the minimum wage in New York has been at \$7.15 per hour since January 1, 2007. The New York State Minimum Wage Act, however, specifically adopts the federal minimum wage in the event that the federal minimum wage rises above the New York State minimum wage. Accordingly, beginning on July 24, 2009, all New York employers, whether covered under the FLSA or not, must begin paying their employees a minimum wage of \$7.25 per hour.

Moreover, on July 24, 2009, employers must also replace existing state and federal minimum wage posters with new posters reflecting the increase in minimum wage under both the New York State Minimum Wage Act and the FLSA. Updated State minimum wage posters can be downloaded from the New York State Department of Labor website at the following address:

<http://www.labor.state.ny.us/workerprotection/laborstandards/workprot/minwage.shtm>

For those employers subject to the FLSA, federal minimum wage posters can be downloaded from the U.S. Department of Labor website at: <http://www.dol.gov/esa/whd/regs/compliance/posters/flsa.htm>.

The New York State Department of Labor also announced changes to the regulations relating to workers in the restaurant industry. Under the New York State Minimum Wage Act, restaurants are allowed to make allowances for tips and pay employees at a reduced minimum wage. Effective July 24, 2009, the tip allowance for food service workers who are involved in the serving of food or beverages to customers and who regularly receive tips from such customers, including wait staff, bartenders, captains and bussing personnel, increases from \$2.55 to \$2.60 per hour. With the corresponding increase in minimum wage from \$7.15 to \$7.25, the result is that the minimum wage for food service workers increases from \$4.60 per hour to \$4.65 per hour. In addition to the increase in the tip credit allowance for food service workers, the New York State Department of Labor has announced additional changes, including increases in the tip credit allowance for other restaurant employees and increases in uniform maintenance rates. Attached is a summary sheet issued by the New York State Department of Labor detailing the changes in the restaurant industry which are effective July 24, 2009.

Jonathan Stoler (New York)  
+1 (212) 332-3857  
jstoler@sheppardmullin.com

Lisa Lewis (New York)  
+1 (212) 332-3816  
lmlewis@sheppardmullin.com

Eric Raphan (New York)  
+1 (212) 332-3828  
eraphan@sheppardmullin.com

STATE OF NEW YORK  
<http://www.jdsupra.com/post/documentViewer.aspx?fid=60248acd-9f0e-486b-bd9a-cb573e1a6999>  
**SUMMARY OF WAGE ORDER RATES AND ALLOWANCES  
 FOR THE RESTAURANT INDUSTRY**

	Effective 1/1/05	Effective 1/1/06	Effective 1/1/07	Effective 7/24/09
<b><u>Basic Minimum Hourly Rate</u></b>	\$6.00	\$6.75	\$7.15	\$7.25
<b><u>Tip Allowance (per hour)</u></b>				
Food Service Workers*	\$2.15	\$2.40	\$2.55	\$2.60
All other workers	1.35 1.90	1.50 2.15	1.60 2.30	1.60 2.35
<b><u>Uniform Maintenance Rate (per week)</u></b>				
Over 30 hours	\$7.45	\$8.40	\$8.90	\$9.00
Over 20 to 30 hours	5.90	6.60	7.00	7.10
20 hours or less	3.55	4.00	4.25	4.30
<b><u>Per Meal Allowance</u></b>				
Food service workers* earning a cash wage of \$3.85 per hr. effective 1/1/05; \$4.35 per hr. effective 1/1/06; \$4.60 per hr. effective 1/1/07; \$4.65 per hr. effective 7/24/09	\$1.85	\$2.00	\$2.10	\$2.10
All other workers	2.05	2.30	2.45	2.50
<b><u>Lodging Allowances</u></b>				
Per Day				
Food service workers* earning a cash wage of \$3.85 per hr. effective 1/1/05; \$4.35 per hr. effective 1/1/06; \$4.60 per hr. effective 1/1/07; \$4.65 per hr. effective 7/24/09	\$1.35	\$1.45	\$1.50	\$1.50
All other workers	1.45	1.65	1.75	1.75
Per Week				
Food service workers* earning a cash wage of \$3.85 per hr. effective 1/1/05; \$4.35 per hr. effective 1/1/06; \$4.60 per hr. effective 1/1/07; \$4.65 per hr. effective 7/24/09	\$8.45	\$9.15	\$9.50	\$9.60
All other workers	9.40	10.55	11.15	\$11.30
<b><u>Executive and Administrative Exemption</u></b>				
Minimum weekly salary required	\$450.00	\$506.25	\$536.10	\$543.75

\* A "food service worker" means an employee primarily engaged in the serving of food and beverages to guests, patrons or customers in the hotel or restaurant industry, including, but not limited to, wait staff, bartenders, captains and busing personnel; and who regularly receive tips from such guests, patrons or customers.