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Tip Credit Changes Under the Miscellaneous Wage Order

Per Order issued by the Commissioner of the New York State Department of Labor on December 31, 2019, the allowable tip credit is phasing out for businesses covered by the Minimum Wage Order for Miscellaneous Industries and Occupations (the “Miscellaneous Wage Order”). The tip credit for those employees who customarily receive tips as part of their jobs will be cut in half on June 30, 2020 and eliminated on December 31, 2020.

May 5, 2020

The Miscellaneous Wage Order permits employers to take a tip credit against the wages of covered employees under the following conditions:

- the particular occupation in which the employee is engaged is one in which tips have customarily and usually constituted a part of the employee's remuneration
- the employee received in tips at least the amount of the allowance claimed; and
- the allowance claimed by the employer is recorded on a weekly basis as a separate item in the wage record.

Some example of tipped occupations subject to the tip credit in the Miscellaneous Wage Order are hairdressers, nail technicians, gas station attendants, car wash attendants, valet parking attendants and doorpersons.

Unlike the fixed tip credit contained in New York's Hospitality Industry Wage Order, employers covered by the Miscellaneous Wage Order may take either the “low” or “high” tip credit depending upon the employee's average weekly tips. Employers may take the lower tip credit if an employee's average weekly tips are between the low and high tip amount and may take the high tip credit if the employee's average weekly tips are equal to or greater than the high tip amount. The tip credits and resulting cash

wages permitted by the Miscellaneous Wage Order are currently as follows:

	Minimum Wage	Low Tip Credit	High Tip Credit	Low Tip Credit Cash Wage	High Tip Credit Cash Wage
New York City	\$15.00	\$2.25	\$3.65	\$12.75	\$11.35
Long Island & Westchester	\$13.00	\$1.95	\$3.20	\$11.05	\$9.80
Remainder of State	\$11.80	\$1.75	\$2.90	\$10.05	\$8.90

Effective June 30, 2020, the tip credits will be reduced by 50% resulting in the following permissible tip credits and cash wages under the Miscellaneous Wage Order:

	Minimum Wage	Low Tip Credit	High Tip Credit	Low Tip Credit Cash Wage	High Tip Credit Cash Wage
New York City	\$15.00	\$1.15	\$1.85	\$13.85	\$13.15
Long Island & Westchester	\$13.00	\$1.00	\$1.60	\$12.00	\$11.40
Remainder of State	\$11.80	\$0.90	\$1.45	\$10.90	\$10.35

On December 31, 2020, the tip credit permitted by the Miscellaneous Wage Order will be eliminated in its entirety, thus requiring all employees covered by the Miscellaneous Wage Order to be paid at the appropriate full minimum wage. Significantly, December 31, 2020 will

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also see an increase in minimum wage for all employers outside of New York City. The minimum wage in Long Island and Westchester will increase to \$14.00 per hour and the minimum wage in the remainder of the state will increase to \$12.50 per hour.

to pay the required higher cash wage to their employees, issue new Notices of Pay Rate and Payday to employees for whom they take the tip credit, and contact their payroll company to ensure proper payroll preparation.

Employers covered by the Miscellaneous Wage Order who take a tip credit for any employees should prepare

Please contact an attorney in MSF's Employment Group if you need assistance with respect to this information.



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