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New York's Minimum Wage To Rise to $9 Per Hour over the Next Three Years

April 26, 2013

Late last month, Governor Andrew Cuomo signed into law new legislation that, among other things, will raise New York's minimum wage to $9 per hour over the next three years. The minimum wage – both in NY and under federal law – currently is $7.25 per hour. It will rise to $8 per hour effective December 31, 2013, $8.75 per hour effective December 31, 2014, and $9 per hour effective December 31, 2015.

Currently, 19 states, plus Washington, DC, have minimum wages above the federal rate of $7.25 per hour. Only Washington State has a minimum wage higher than $9 per hour. Following the increase, New York will join Washington, Washington, DC, and seven other states to have a minimum wage at or above $8 per hour: California ($8.00), Connecticut ($8.25), D.C. ($8.25), Illinois ($8.25), Massachusetts ($8.00), Nevada ($8.25), Oregon ($8.95), Vermont ($8.60), and Washington ($9.19).

The law also will raise the minimum hourly wage that service employees and food service workers who routinely receive tips must be paid in cash. The law requires the Labor Commissioner to issue a new Wage Order for food service workers and service employees. The Wage Order will address how the new minimum wage will impact the minimum hourly cash wage that must be paid if an employer utilizes tip credits (i.e., set a new, higher minimum hourly cash wage and higher tip credit), as well as meal and lodging credits. The Commissioner must first appoint a Wage Board to inquire and report and recommend any changes to the Wage Order, and the Wage Board must make its report and recommendation to the Commissioner within 6 months of being established.

If a new Wage Order is not issued before the first increase in the minimum wage on December 31, 2013, the minimum hourly cash wage that must be paid to food service workers and service employees, as well as the maximum tip credit, will both increase in proportion to the increase in minimum wage. For example, service employees currently must be paid a cash wage of at least $5.65 per hour with a tip credit of up to $1.60 per hour, and food service workers must be paid a cash wage of at least $5.00 per hour with a tip credit of up to $2.25 per hour. If no Wage Order is issued before December 31, 2013, the minimum cash wage for service employees would increase to $6.25 per hour and the maximum tip credit would increase to $1.75 per hour. Similarly, the minimum cash wage for food service workers would increase to $5.50 per hour and the maximum tip credit would increase to $2.50 per hour.

Employers with employees earning at or slightly above the current minimum wage of $7.25, as well as employers in the hospitality and service industries who utilize tip, meal and lodging credits, are advised to begin taking steps to ensure compliance with the new minimum wage rates. Employers also should anticipate a similar increase in related overtime costs, as overtime typically is calculated at 1.5 times an employee's regular rate.

Proskauer will provide further updates as soon as a Wage Board is appointed and issues its report and recommendations on a new Wage Order. If you would like further information or have other wage and hour questions, please feel free to contact your Proskauer relationship attorney or any of the attorneys listed in this alert.