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On December 6, 2004, the New York State Legislature overrode a gubernatorial veto and enacted the Empire State Wage Act of 2004, which will substantially increase the New York State minimum wage over a period of twenty-five months, beginning January 1, 2005. The new minimum wage will be increased to the following levels:

East Coast Edition

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New York State Increases Minimum Wage

By Gerald T. Hathaway

Minimum Wage	as of:			
	Dec. 2004	Jan. 1, 2005	Jan. 1, 2006	Jan. 1, 2007
Employees (other than Tipped Food Service Workers)	\$5.15	\$6.00	\$6.75	\$7.15
Tipped Food Service Worker*	\$3.30	\$3.85	\$4.35	\$4.60

**Combined tips and wage must equal at least the minimum wage for other employees.*

By law, whenever the minimum wage is increased, there is to be an automatic increase to the tip, meal and lodging allowances employers are entitled to claim toward fulfilling the minimum wage requirement. Specifically, Section 652.2 of the New York Labor Law requires that the allowances provided in state regulations must be increased in proportion to minimum wage increases as they are made from time to time. Thus, if the minimum wage goes up 10%, the allowances for tips, meals and lodging provided by an employer also go up 10%.

For meal and lodging allowances under the New York Labor Law, there is a two tier system: One allowance amount for employees who are not tipped food service workers, and a lower allowance amount for tipped food service workers. The Empire State Wage Act of 2004 maintains the two tier system, and creates a greater spread by limiting proportional allowance increases for tipped food service workers to two thirds of the proportional increase applicable to other workers. Also, because tipped food service workers already have a lower New York State minimum wage because tips are factored into its calculation, there is no tip allowance for tipped food service workers. The tip allowance for other workers will be increased by operation of the Empire State Wage Act. Once the proportional increases in

allowances are calculated, the New York Labor Law calls for a rounding of the increased amount of the allowance to the nearest five cents.

The New York State Department of Labor promptly issued new schedules for tip, meal and lodging allowances that become effective on January 1, 2005 along with the new minimum wage. The minimum wage will go from \$5.15 per hour to \$6.00, which is an increase of 16.5%. While that rate of increase will apply to many of the allowances that may be claimed (subject to rounding), only two-thirds of that increase, or 11%, will apply to the increases in allowances applicable to tipped food service workers.

Using the formula set forth in the statute, The New York State Department of Labor has calculated the allowances that may be claimed by New York employers. The previous tip allowance for non-food servers in the hotel and restaurant industries who receive a certain level of tips has been increased from \$1.65 to \$1.90 per hour. The New York minimum wage currently paid to such employees works out to be \$3.50 per hour (minimum wage of \$5.15 less prior tip allowance of \$1.65), but as of January 1, 2005 that minimum hourly payment goes up to \$4.10 (new minimum wage of \$6.00, less new tip allowance of \$1.90). The tip allowance for

certain “miscellaneous” employees (defined under the regulations as employees not covered by an industry-specific wage standard) was raised from \$1.25 per hour to \$1.45, provided certain tip levels are met for those employees. Also, meal allowances for employees *other* than tipped food service employees was increased from \$1.75 per meal to \$2.05 per meal, but the meal allowance for tipped food service employees is being increased from \$1.65 per meal to only \$1.85 per meal. These allowances will again go up with the minimum wage on January 1, 2006, and then yet again on January 1, 2007.

As is always the case when calculating the minimum wage that must be paid to employees, the rate and available allowances should be calculated under both federal and state law, and the more generous hourly rate that results from the two calculations is the rate that must be paid.

The New York State Department of Labor’s summary of the new minimum wage law can be viewed at: http://www.labor.state.ny.us/business_ny/employer_responsibilities/workprot/minwage.htm

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