

N.Y. Considers Eliminating Separate Wage for Tipped Workers

By Gerald B. Silverman

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- Gov. Andrew Cuomo (D) ordered state Labor Department to hold hearings on minimum wage for tipped workers
- Industry officials say eliminating tip credit would hurt workers

New York state is considering eliminating the tip credit that allows restaurants and certain other employers to pay a lower minimum wage to wait staff and employees that receive tip income.

Gov. Andrew M. Cuomo (D) has asked the state Department of Labor to hold hearings on the issue, calling it a matter of “basic fairness” and economic justice for low-wage workers. The schedule for the hearings hasn’t been set.

Elimination of the credit would impact an estimated 400,000 workers in New York, according to Restaurant Opportunities Centers United, a group that advocates for restaurant workers.

Leaders of the restaurant and car wash industries oppose the move, saying it would lead to widespread changes and the elimination of the very jobs Cuomo is trying to protect.

Under New York law, employers in certain industries can meet their minimum wage requirements by combining a cash wage paid by the employer with a credit or allowance for tips.

For example, employers in New York City with at least 11 employees must pay a minimum wage of \$13 an hour, effective Dec. 31, but they can pay a cash wage of \$8.65 an hour and get a tip credit of \$4.35 an hour.

More Kiosks in Restaurants?

Restaurants are likely to reduce wait staff and replace them with more electronic kiosks, tablets, and other technology, if the tip credit is eliminated, according to Melissa Fleischut, president and chief executive officer of the New York State Restaurant Association.

“The restaurant industry is already a very difficult business to run,” she told Bloomberg Law Dec. 19. “Their profit margins are usually pennies on a dollar.”

Fleischut said restaurants will hire fewer wait staff in New York, as they do in other states where there is no tip credit. Elimination of the tip credit will also accelerate a trend already underway to eliminate tipping entirely.

The car wash industry predicts a similar result. “Closure or automation are the only viable business plans in this regulatory environment,” the New York State Car Wash Association told Bloomberg Law Dec. 19 in an emailed statement.

The Association said the possible elimination of the tip credit could be the final nail in the coffin, after the state has raised its minimum wage and moved to restrict call-in scheduling.

“The full service car wash is being regulated into extinction by the New York State Department of Labor’s regulations,” it said.

Elimination of the credit is supported by the Retail, Wholesale and Department Store Union, which has been trying to organize the car wash industry. In a statement, Stuart Applebaum, president of the union, said “this abhorrent loophole has left immigrant workers susceptible to wage theft.”

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