

Parts 141, 142, 143 and 146 of 12 NYCRR – **Minimum Wage Orders** – are amended to read as follows:

**PART 141
BUILDING SERVICE INDUSTRY**

Subpart 141-1 Minimum Wage and Allowances
Subpart 141-2 Regulations
Subpart 141-3 Definitions

**SUBPART 141-1
MINIMUM WAGE AND ALLOWANCES**

Sec.

- 141-1.1 Application
- 141-1.2 Unit rate for janitors in residential buildings
- 141-1.3 Basic minimum hourly wage rate
- 141-1.4 Overtime hourly rate
- 141-1.5 Allowances for apartment
- 141-1.6 Allowances for utilities
- 141-1.7 Allowance for tip or gratuities
- 141-1.8 Required uniforms
- 141-1.9 Allowance for tools and supplies
- 141-1.10 Other allowances

§ 141-1.1 Application.

Every employer in the building service industry shall pay to each employee, as defined herein, not less than the minimum wage rates provided in this Part.

§ 141-1.2 Unit rate for janitors in residential buildings.

For buildings with any number of units, resident or nonresident janitor and any type of heating[--] the rate per unit per week shall be, for work performed in:

- [(a) \$4.80 on and after January 1, 2007;
- (b) \$4.85 on and after July 24, 2009;
- (c) \$5.35 on and after December 31, 2013;
- (d) \$5.85 on and after December 31, 2014;
- (e) \$6.00 on and after December 31, 2015.]

(a) New York City for

(1) Large employers of eleven or more employees

- \$7.35 on and after December 31, 2016;
- \$8.65 on and after December 31, 2017;
- \$10.00 on and after December 31, 2018;

(2) Small employers of ten or fewer employees

\$7.00 on and after December 31, 2016;
\$8.00 on and after December 31, 2017;
\$9.00 on and after December 31, 2018;
\$10.00 on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$6.65 on and after December 31, 2016;
\$7.35 on and after December 31, 2017;
\$8.00 on and after December 31, 2018;
\$8.65 on and after December 31, 2019;
\$9.35 on and after December 31, 2020;
\$10.00 on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$6.45 on and after December 31, 2016;
\$6.95 on and after December 31, 2017;
\$7.40 on and after December 31, 2018;
\$7.85 on and after December 31, 2019;
\$8.35 on and after December 31, 2020.

§ 141-1.3 Basic minimum hourly wage rate.

(a) For all employees except janitors in residential buildings, the basic minimum hourly rate shall be, for each hour worked in:

(a) \$7.15 per hour on and after January 1, 2007;

(b) \$7.25 per hour on and after July 24, 2009;

(c) \$8.00 per hour on and after December 31, 2013;

(d) \$8.75 per hour on and after December 31, 2014;

(e) \$9.00 per hour on and after December 31, 2015, or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or its successors.]

(1) New York City for

(i) Large employers of eleven or more employees

\$11.00 per hour on and after December 31, 2016;
\$13.00 per hour on and after December 31, 2017;
\$15.00 per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$10.50 per hour on and after December 31, 2016;

\$12.00 per hour on and after December 31, 2017;

\$13.50 per hour on and after December 31, 2018;

\$15.00 per hour on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$10.00 per hour on and after December 31, 2016;

\$11.00 per hour on and after December 31, 2017;

\$12.00 per hour on and after December 31, 2018;

\$13.00 per hour on and after December 31, 2019;

\$14.00 per hour on and after December 31, 2020;

\$15.00 per hour on and after December 31, 2021.

(3) *Remainder of state* (outside of New York City and Nassau, Suffolk and Westchester counties)

\$9.70 per hour on and after December 31, 2016;

\$10.40 per hour on and after December 31, 2017;

\$11.10 per hour on and after December 31, 2018;

\$11.80 per hour on and after December 31, 2019;

\$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal Law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

§ 141-1.4 Overtime hourly rate.

An employer shall pay an employee, except a janitor in a residential building, for overtime at a wage rate of 1 1/2 times the employee's regular rate for hours worked in excess of 40 hours in a workweek.

§ 141-1.5 Allowances for apartment.

An apartment furnished by an employer to an employee in a residential building, and occupied by him, may be considered part of the minimum wage, but the allowance for such apartment shall not exceed:

(a) For buildings with nine or more dwelling units, in which the employee's apartment is:

(1) on the ground or top floors of the building: the lowest rental on June 1, 1975 for apartments having the same number of rooms in the building. Where the building does not have an apartment of comparable size, the allowance per room may not exceed the per-room value of the lowest rented apartment of the next larger or smaller size, whichever is lowest;

(2) above the ground and below the top floors of the building: the average rental on June 1, 1975 of apartments with the same number of rooms, in the same line of the building, including the apartments on the ground and top floors;

(3) below curb level (in whole or in part):

(i) apartments for permanent occupancy: 85 percent of the lowest rental on June 1, 1975 for curb-level or above-curb-level apartments having the same number of rooms in the building. Where the

building does not have an apartment of comparable size, the allowance per room may not exceed 85 percent of the per-room value of the lowest rented apartment of the next larger or smaller size, whichever is lowest;

(ii) apartments for temporary occupancy: 50 percent of the lowest rental on June 1, 1975 for curb-level or above-curb-level apartments having the same number of rooms in the building, whichever is lowest. Where the building does not have an apartment of comparable size, the allowance per room may not exceed 50 percent of the per-room value of the lowest rented apartment of the next larger or smaller size, whichever is lowest.

(b) For buildings with fewer than nine dwelling units, in which the employee's apartment is:

(1) at or above curb level: the legal rental in effect on June 1, 1975 as established by the appropriate housing or rent commission for said apartment. Where the housing or rent commission has not established a ceiling rental for said apartment, the allowance may not exceed the average rental for apartments of comparable size (number of rooms) in the building;

(2) below curb level (in whole or in part):

(i) apartments for permanent occupancy: 85 percent of the lowest ceiling rental in effect on June 1, 1975 as established by the appropriate housing or rent commission for a comparable size (number of rooms) curb-level or above-curb-level apartment in the building, whichever is lowest. Where the appropriate housing or rent commission has not established a ceiling rental for a comparable size curb-level or above-curb-level apartment in the building, the allowance may not exceed 85 percent of the average rental for curb-level or above-curb-level apartments of comparable size in the building, whichever is lowest;

(ii) apartments for temporary occupancy: 50 percent of the lowest ceiling rental in effect on June 1, 1975 as established by the appropriate housing or rent commission for a comparable size (number of rooms) curb-level or above-curb-level apartment in the building, whichever is lowest. Where the appropriate housing or rent commission has not established a ceiling rental for a comparable size curb-level or above-curb-level apartment in the building, the allowance may not exceed 50 percent of the average rental for curb-level or above-curb-level apartments of comparable size in the building, whichever is lowest.

(c) In no event shall an employer who gives an employee a cash wage in addition to the occupancy of an apartment, reduce the cash wage to such employee or his successor, by offsetting it by an increase in the rent allowance for such apartment in an amount greater than that allowed on June 1, 1975.

§ 141-1.6 Allowances for utilities.

Utility service charges expended by the employer for the private use of an employee may be considered part of the minimum wage. Allowances for such charges shall not exceed:

(a) *Gas - electricity.* (1) When the employee's apartment has its own exclusive gas or electric meter: full charge, as shown on the bill for a specific period.

(2) When the employee's gas or electric consumption is registered on the building line meter, or when gas or electric bills are not shown at the time of inspection:

(i) With refrigerator in:

- [(a) \$20.00 per month on and after January 1, 2007;
- (b) \$20.30 per month on and after July 24, 2009;
- (c) \$22.40 per month on and after December 31, 2013;
- (d) \$24.50 per month on and after December 31, 2014;
- (e) \$25.20 per month on and after December 31, 2015.]

(a) New York City for

(i) Large employers of eleven or more employees

- \$30.80 per month on and after December 31, 2016;
- \$36.40 per month on and after December 31, 2017;
- \$42.00 per month on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

- \$29.40 per month on and after December 31, 2016;
- \$33.60 per month on and after December 31, 2017;
- \$37.80 per month on and after December 31, 2018;
- \$42.00 per month on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

- \$28.00 per month on and after December 31, 2016;
- \$30.80 per month on and after December 31, 2017;
- \$33.60 per month on and after December 31, 2018;
- \$36.40 per month on and after December 31, 2019;
- \$39.20 per month on and after December 31, 2020;
- \$42.00 per month on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

- \$27.15 per month on and after December 31, 2016;
- \$29.10 per month on and after December 31, 2017;
- \$31.10 per month on and after December 31, 2018;
- \$33.05 per month on and after December 31, 2019;
- \$35.00 per month on and after December 31, 2020;

(ii) Without refrigerator in:

- [(a) \$14.45 per month on and after January 1, 2007;
- (b) \$14.65 per month on and after July 24, 2009;
- (c) \$16.15 per month on and after December 31, 2013;

(d) \$17.65 per month on and after December 31, 2014;

(e) \$18.15 per month on and after December 31, 2015.]

(a) New York City for

(i) Large employers of eleven or more employees

\$22.20 per month on and after December 31, 2016;

\$26.20 per month on and after December 31, 2017;

\$30.25 per month on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$21.20 per month on and after December 31, 2016;

\$24.20 per month on and after December 31, 2017;

\$27.25 per month on and after December 31, 2018;

\$30.25 per month on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$20.15 per month on and after December 31, 2016;

\$22.20 per month on and after December 31, 2017;

\$24.20 per month on and after December 31, 2018;

\$26.20 per month on and after December 31, 2019;

\$28.25 per month on and after December 31, 2020;

\$30.25 per month on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$19.55 per month on and after December 31, 2016;

\$20.95 per month on and after December 31, 2017;

\$22.40 per month on and after December 31, 2018;

\$23.80 per month on and after December 31, 2019;

\$25.20 per month on and after December 31, 2020.

(b) Telephone, when required by the employer – the amount in excess of the minimum billing rate.

§ 141-1.7 Allowance for tips or gratuities.

Tips or gratuities from tenants and others shall not be counted as part of the minimum wage.

§ 141-1.8 Required uniforms.

(a) No allowance for the supply, maintenance, or laundering of required uniforms shall be permitted as part of the minimum wage. Where an employee purchases a required uniform he shall be reimbursed by the employer for the cost thereof not later than the time of the next payment of wages. Where the employer fails to launder or maintain required uniforms for any employee, he shall pay such employee in addition to the minimum wage prescribed herein at the weekly rate set forth below, based on the number of hours worked, where employees who work over 30 hours per week shall be paid the High rate, employees who work more than

20 hours but fewer than 30 hours shall be paid the Medium rate and employees who work 20 hours or fewer shall be paid the Low rate for work performed in:

[(a) \$8.90 per week on and after January 1, 2007, if the employee works more than 30 hours weekly; \$7.00 per week on and after January 1, 2007, if the employee works more than 20 but not more than 30 hours weekly; and \$4.25 per week on and after January 1, 2007, if the employee works 20 hours or less weekly;

(b) \$9.00 per week on and after July 24, 2009, if the employee works more than 30 hours weekly; \$7.10 per week on and after July 24, 2009, if the employee works more than 20 but not more than 30 hours weekly; and \$4.30 per week on and after July 24, 2009, if the employee works 20 hours or less weekly;

(c) \$9.95 per week on and after December 31, 2013, if the employee works more than 30 hours weekly; \$7.85 per week on and after December 31, 2013, if the employee works more than 20 but not more than 30 hours weekly; and \$4.75 per week on and after December 31, 2013, if the employee works 20 hours or less weekly;

(d) \$10.90 per week on and after December 31, 2014, if the employee works more than 30 hours weekly; \$8.60 per week on and after December 31, 2014, if the employee works more than 20 but not more than 30 hours weekly; and \$5.20 per week on and after December 31, 2014, if the employee works 20 hours or less weekly;

(e) \$11.20 per week on and after December 31, 2015, if the employee works more than 30 hours weekly; \$8.85 per week on and after December 31, 2015, if the employee works more than 20 but not more than 30 hours weekly; and \$5.35 per week on and after December 31, 2015, if the employee works 20 hours or less weekly.]

(1) New York City for

(i) Large employers of eleven or more employees

\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2016;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2017;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$13.05 High, \$10.35 Medium, \$6.25 Low on and after December 31, 2016;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2017;
\$16.80 High, \$13.30 Medium, \$8.05 Low on and after December 31, 2018;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$12.45 High, \$9.85 Medium, \$5.95 Low on and after December 31, 2016;
\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2017;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2018;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2019;
\$17.40 High, \$13.75 Medium, \$8.30 Low on and after December 31, 2020;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$12.05 High, \$9.55 Medium, \$5.75 Low on and after December 31, 2016;
\$12.95 High, \$10.25 Medium, \$6.20 Low on and after December 31, 2017;
\$13.80 High, \$10.90 Medium, \$6.60 Low on and after December 31, 2018;
\$14.70 High, \$11.60 Medium, \$7.00 Low on and after December 31, 2019;
\$15.55 High, \$12.30 Medium, \$7.45 Low on and after December 31, 2020.

§ 141-1.9 Allowance for tools and supplies.

No allowance for tools and supplies required by the employer for the maintenance of the building shall be permitted as part of the minimum wage. Where an employee advances the cost of such tools or supplies, he shall be reimbursed no later than the time of the next payment of wages.

§ 141-1.10 Other allowances.

No other allowances for any other items, services or facilities furnished by the employer to an employee shall be permitted as part of the minimum wage.

**SUBPART 141-2
REGULATIONS**

Sec.

- 141-2.1 Employer records
- 141-2.2 Statement to employee
- 141-2.3 Posting
- 141-2.4 Condition for allowance for apartment
- 141-2.5 Payments in addition to regular wages
- 141-2.6 Count of units
- 141-2.7 Employer residing on building premises
- 141-2.8 Limitations as to minimum weekly wage of janitors
- 141-2.9 Basis for wage payment
- 141-2.10 Deductions and expenses
- 141-2.11 Employment covered by more than one wage order
- 141-2.12 Learner or apprentice rates
- 141-2.13 Rehabilitation programs
- 141-2.14 Student obtaining vocational experience

§ 141-2.1 Employer records.

Employers shall make the following records or sworn certified copies thereof available upon request of the commissioner, or his authorized representative, at the place of employment:

(a) *Payroll records.* Every employer shall establish, maintain and preserve for not less than six years, payroll records which shall show for each employee:

- (1) name and address;
- (2) apartment number if allowance for apartment is claimed;

(3) social security number;

(4) occupational classification (resident janitor, nonresident janitor, "all other" workers) and wage rate;

(5) for janitors in residential buildings:

(i) number of units in building;

(6) for "all other" employees: the number of hours worked daily and weekly;

(7) cash wages;

(8) allowances claimed as part of the minimum wage, listing separately the value of the apartment and each utility supplied;

(9) gross wages (cash wages plus allowances);

(10) legal deductions;

(11) net wages; and

(12) student classification.

(b) For each individual for whom student status is claimed, a statement from the school which such individual attends, indicating whether or not such individual:

(1) is a student whose course of instruction is one leading to a degree, diploma or certificate; or

(2) is completing residence requirements for a degree; and

(3) is required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

(c) Records for individuals permitted to work in an executive, administrative or professional capacity shall show:

(1) name and address;

(2) social security number;

(3) description of occupation; and

(4) for individuals working in an executive or administrative capacity, total wages, and the value of allowances, if any, for each payroll period.

(d) *Records of apartment rentals as of June 1, 1975.* (1) Where an allowance for an apartment furnished to an employee is part of the minimum wage, the employer shall maintain the following records, showing for each of the apartments in the building, the apartment rental as of June 1, 1975:

(i) apartment number;

(ii) floor on which apartment is located;

(iii) number of rooms; and

(iv) apartment rental.

(2) The employer shall also maintain a certificate or permit, where required by law, authorizing occupancy by an employee of an apartment in whole or in part below curb level.

(3) In the event such records of apartment rentals or such certificate or permit are not furnished, no apartment allowance shall be permitted.

§ 141-2.2 Statement to employee.

Every employer covered by this Part shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages. In the case of janitors, the number of units shall be recorded in the place of hours worked.

§ 141-2.3 Posting.

Every employer covered by this Part shall post in a conspicuous place in his or her establishment a notice issued by the Department of Labor summarizing minimum wage provisions of this Part.

§ 141-2.4 Condition for allowance for apartment.

No allowance will be permitted for an apartment furnished by an employer to an employee unless the employer makes available to the Commissioner of Labor, or his representative, the rental records prescribed in this Part.

§ 141-2.5 Payments in addition to regular wages.

(a) Payments in addition to regular wages may be considered part of the minimum wage, provided they are:

(1) for work generally performed by janitors;

(2) recorded in the payroll book; and

(3) credited only for the payroll period during which payment was made.

(b) Payments for painting an apartment or for major repairs may not be considered as part of the minimum wage.

§ 141-2.6 Count of units.

Janitors employed in residential buildings that also include business and/or commercial units shall be paid for the total number of residential, business and commercial units combined. Housing accommodations occupied by employees shall be included in the total count of units. Units which are withdrawn from the rental market shall not be included in the count.

§ 141-2.7 Employer residing on building premises.

Where the employer resides in the building or within a distance of 200 feet therefrom and where the employer participates substantially in the maintenance, care or operation of the building, such employer may consider an employee in such building to be an "all other" worker.

§ 141-2.8 Limitations as to minimum weekly wage of janitors.

The unit rates prescribed herein shall not be applicable to janitors who are paid at least the following amounts in:

[(a) \$304.10 per week on and after January 1, 2007, by a building owner or managing agent for whom the employee renders janitorial services;

(b) \$308.35 per week on and after July 24, 2009, by a building owner or managing agent for whom the employee renders janitorial services.;

(c) \$340.25 per week on and after December 31, 2013, by a building owner or managing agent for whom the employee renders janitorial services;

(d) \$372.15 per week on and after December 31, 2014, by a building owner or managing agent for whom the employee renders janitorial services;

(e) \$382.80 per week on and after December 31, 2015, by a building owner or managing agent for whom the employee renders janitorial services.]

(a) New York City for

(1) Large employers of eleven or more employees

\$467.85 per week on and after December 31, 2016;

\$552.95 per week on and after December 31, 2017;

\$638.00 per week on and after December 31, 2018;

(2) Small employers of ten or fewer employees

\$446.60 per week on and after December 31, 2016;

\$510.40 per week on and after December 31, 2017;

\$574.20 per week on and after December 31, 2018;

\$638.00 per week on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$425.35 per week on and after December 31, 2016;

\$467.85 per week on and after December 31, 2017;

\$510.40 per week on and after December 31, 2018;

\$552.95 per week on and after December 31, 2019;

\$595.45 per week on and after December 31, 2020;

\$638.00 per week on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$412.55 per week on and after December 31, 2016;

\$442.35 per week on and after December 31, 2017;

\$472.10 per week on and after December 31, 2018;

\$501.90 per week on and after December 31, 2019;

\$531.65 per week on and after December 31, 2020.

§ 141-2.9 Basis for wage payment.

The minimum wage provided by this Part shall be required for each week of work regardless of the frequency of payment, whether the wage is a commission, bonus, piece rate or unit rate, or any other basis.

§ 141-2.10 Deductions and expenses.

(a) Wages shall be subject to no deductions, except for allowances authorized in this Part, and except for deductions authorized or required by law, such as for social security and income tax. Some examples of prohibited deductions are:

- (1) deductions for spoilage or breakage;
- (2) deductions for cash shortages or losses; and
- (3) fines or penalties for lateness, misconduct, or quitting by an employee without notice.

(b) The minimum wages shall not be reduced by expenses incurred by an employee in carrying out duties assigned by an employer.

§ 141-2.11 Employment covered by more than one wage order.

An employee in the building service industry who works for the same employer at an occupation governed by another New York State minimum wage order:

- (a) for two hours or more during any one day; or
- (b) for 12 hours or more in any week;

shall be paid for all hours of working time for that day or week in accordance with the minimum wage standards contained in the minimum wage order for such other industry, or for the building service industry, whichever is higher.

§ 141-2.12 Learner or apprentice rates.

No learner or apprentice shall be paid less than the minimum rate prescribed in this Part.

§ 141-2.13 Rehabilitation programs.

For an individual employed as part of a rehabilitation program approved by the commissioner, the payment of compensation under such a program shall be deemed to meet the requirements of this Part.

§ 141-2.14 Student obtaining vocational experience.

A student is not deemed to be working or to be permitted to work if, in order to fulfill the curriculum requirements of the educational institution which the student attends, such student is required to obtain supervised and directed vocational experience in another establishment.

SUBPART 141-3 DEFINITIONS

Sec.

- 141-3.1 Building service industry
- 141-3.2 Employee
- 141-3.3 Regular rate
- 141-3.4 Janitor
- 141-3.5 Resident janitor
- 141-3.6 Nonresident janitor
- 141-3.7 "All other" employees
- 141-3.8 Apartments for permanent occupancy below curb level
- 141-3.9 Apartments for temporary occupancy below curb level
- 141-3.10 Residential unit
- 141-3.11 Required uniforms

§ 141-3.1 Building service industry.

(a) The *building service industry* includes any person, corporation or establishment engaged in whole or in part in renting, servicing, cleaning, maintaining, selling, or managing buildings or building space, and all occupations, operations and services in connection therewith or incidental thereto. The industry includes, but is not limited to, real estate owners, building owners, operators, lessors, managing agents and independent contractors.

(b) The *building service industry* does not include (1) a building trades contractor engaged exclusively in the field of construction, or (2) any building owned, operated and used solely for religious, charitable or educational purposes by a nonprofit organization organized exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. These exclusions shall not be deemed to be exclusions from coverage under another minimum wage order.

§ 141-3.2 Employee.

(a) *Employee* means any individual permitted to work by an employer in the building service industry, except as provided below.

(b) Employee does not include:

(1) an employee of an owner or lessee of a building occupying the entire building for his own use if such employee works exclusively in that building; or

(2) an individual working in or in connection with a bungalow colony. These exclusions shall not be deemed to be exclusions from coverage under another minimum wage order; or

(3) any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) Employee also does not include any individual permitted to work in, or as:

(1) Executive, administrative or professional capacity.

(i) Executive. Work in a *bona fide executive... capacity* means work by an individual:

(a) whose primary duty consists of the management of the enterprise in which such individual is employed or of a customarily recognized department or subdivision thereof; and

(b) who customarily and regularly directs the work of two or more other employees therein; and

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) who customarily and regularly exercises discretionary powers; and

(e) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

[(1) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities;

(2) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging, other allowances and facilities.;

(3) \$600.00 per week on and after December 31, 2013, inclusive of board, lodging, other allowances and facilities;

(4) \$656.25 per week on and after December 31, 2014, inclusive of board, lodging, other allowances and facilities;

(5) \$675.00 per week on and after December 31, 2015, inclusive of board, lodging, other allowances and facilities.]

(1) New York City for

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;

\$975.00 per week on and after December 31, 2017;

\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;

\$900.00 per week on and after December 31, 2017;

\$1,012.50 per week on and after December 31, 2018;

\$1,125.00 per week on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;

\$825.00 per week on and after December 31, 2017;

\$900.00 per week on and after December 31, 2018;

\$975.00 per week on and after December 31, 2019;

\$1,050.00 per week on and after December 31, 2020;

\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;

\$780.00 per week on and after December 31, 2017;

\$832.00 per week on and after December 31, 2018;

\$885.00 per week on and after December 31, 2019;

\$937.50 per week on and after December 31, 2020.

(ii) Administrative. Work in a *bona fide... administrative... capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of his or her employer; and

(b) who customarily and regularly exercises discretion and independent judgment; and

(c) who regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity (*e.g.*, employment as an administrative assistant); or who performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

[(1) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities;

(2) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging, other allowances and facilities;

(3) \$600.00 per week on and after December 31, 2013, inclusive of board, lodging, other allowances and facilities;

(4) \$656.25 per week on and after December 31, 2014, inclusive of board, lodging, other allowances and facilities;

(5) \$675.00 per week on and after December 31, 2015, inclusive of board, lodging, other allowances and facilities.]

(1) New York City by

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(iii) Professional. Work in a *bona fide... professional capacity* means work by an individual:

(a) whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes; or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(2) Outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

- (i) making sales; or
- (ii) selling and delivering articles or goods; or
- (iii) obtaining orders or contracts for service or the use of facilities.

§ 141-3.3 Regular rate.

The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work. When an employee is paid on a piece rate, salary, or other basis than hourly rate, the regular hourly rate shall be determined by dividing the total hours worked during the week into the employee's total earnings.

§ 141-3.4 Janitor.

A *janitor* is a person employed to render any physical service in connection with the maintenance, care or operation of a residential building. Where there is only one employee, such employee shall be deemed the janitor. Where there is more than one employee in the building, the employer shall designate an employee who lives in the building as the janitor. No building may have more than one janitor.

§ 141-3.5 Resident janitor.

A *resident janitor* is a janitor as defined above who resides in the building where he or she renders services, or in another building within a distance of 200 feet therefrom.

§ 141-3.6 Nonresident janitor.

A *nonresident janitor* is a janitor as defined above who does not reside in the building where he or she renders services, or in another building within a distance of 200 feet therefrom.

§ 141-3.7 "All other" employees.

"All other" employees means all building service employees other than janitors in residential buildings.

§ 141-3.8 Apartments for permanent occupancy below curb level.

An *apartment for permanent occupancy below curb level* is an apartment in whole or in part below curb level which is permitted by law to be occupied for living purposes without restriction.

§ 141-3.9 Apartments for temporary occupancy below curb level.

An *apartment for temporary occupancy below curb level* is an apartment in whole or in part below curb level permitted to be occupied for living purposes, under a permit or certificate issued by the departments having jurisdiction thereof, for a temporary duration period and only by the then occupant of the apartment.

§ 141-3.10 Residential unit.

A *residential unit* is that portion of a dwelling consisting of one or more living rooms, which group of rooms is separated from all other groups within a dwelling.

§ 141-3.11 Required uniforms.

A *required uniform* shall be that clothing worn by an employee, at the request of an employer, while performing job-related duties or to comply with any State, city or local law, rule or regulation. It does not, however, include clothing that may be worn as part of an employee's ordinary wardrobe.

PART 142
MISCELLANEOUS INDUSTRIES AND OCCUPATIONS

- Subpart 142-1 Coverage**
Subpart 142-2 Provisions Applicable to All Employees Subject to This Part, Except Employees in Nonprofitmaking Institutions Covered by the Provisions of Subpart 142-3
Subpart 142-3 Provisions Applicable to Employee in Nonprofitmaking Institutions Which Have Not Elected to be Exempt from Coverage Under a Minimum Wage Order

SUBPART 142-1
COVERAGE

Sec.

142-1.1 Coverage of Part.

§ 142-1.1 Coverage of Part

This Part shall apply to all employees, as such term is defined in this Part, except:

(a) employees who are covered by minimum wage standards in any other minimum wage order promulgated by the commissioner; and

(b) employees of a nonprofitmaking institution which has elected to be exempt from coverage under a minimum wage order, pursuant to subdivision 3 of section 652 of the Minimum Wage Act.

SUBPART 142-2
PROVISIONS APPLICABLE TO ALL EMPLOYEES SUBJECT TO THIS PART, EXCEPT
EMPLOYEES IN NONPROFITMAKING INSTITUTIONS COVERED BY THE PROVISIONS OF
SUBPART 142-3

Sec.

142-2.1 Basic minimum hourly wage rate and allowances

142-2.2 Overtime rate

142-2.3 Call-in pay

142-2.4 Additional rate for split shift and spread of hours

142-2.5 Allowances

REGULATIONS

142-2.6 Employer records

142-2.7 Statement to employee

142-2.8 Posting

142-2.9 Basis of wage payment

142-2.10 Deductions and expenses

142-2.11 Student obtaining vocational experience

142-2.12 Learner and apprentice rates

142-2.13 Rehabilitation programs

DEFINITIONS

142-2.14 Employee

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142-2.16 Regular rate

142-2.17 Split shift

- 142-2.18 Spread of hours
- 142-2.19 Meal
- 142-2.20 Lodging
- 142-2.21 Tips
- 142-2.22 Required uniform
- 142-2.23 Student

§ 142-2.1 Basic minimum hourly wage rate and allowances.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

[(1) \$7.15 per hour on and after January 1, 2007;

(2) \$7.25 per hour on and after July 24, 2009;

(3) \$8.00 per hour on and after December 31, 2013;

(4) \$8.75 per hour on and after December 31, 2014;

(5) \$9.00 per hour on and after December 31, 2015, or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or its successors.]

(1) New York City for

(i) Large employers of eleven or more employees

\$11.00 per hour on and after December 31, 2016;

\$13.00 per hour on and after December 31, 2017;

\$15.00 per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$10.50 per hour on and after December 31, 2016;

\$12.00 per hour on and after December 31, 2017;

\$13.50 per hour on and after December 31, 2018;

\$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$10.00 per hour on and after December 31, 2016;

\$11.00 per hour on and after December 31, 2017;

\$12.00 per hour on and after December 31, 2018;

\$13.00 per hour on and after December 31, 2019;

\$14.00 per hour on and after December 31, 2020;

\$15.00 per hour on and after December 31, 2021;

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)

\$9.70 per hour on and after December 31, 2016;

\$10.40 per hour on and after December 31, 2017;

\$11.10 per hour on and after December 31, 2018;

\$11.80 per hour on and after December 31, 2019;

\$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer--shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment.

§ 142-2.2 Overtime rate.

An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to the exemptions of sections 7 and 13 of 29 USC 201 et seq., the Fair Labor Standards Act of 1938, as amended, provided, however, that the exemptions set forth in section 13(a)(2) and (4) shall not apply. In addition, an employer shall pay employees subject to the exemptions of section 13 of the Fair Labor Standards Act, as amended, except employees subject to section 13(a)(2) and (4) of such act, overtime at a wage rate of one and one-half times the basic minimum hourly rate. The Fair Labor Standards Act is published in the United States Code, the official compilation of Federal statutes, by the Government Printing Office, Washington, DC. Copies of the Fair Labor Standards Act are available at the following office:

New York State Department of Labor
Counsel's Office
State Office Building Campus,
Building 12, Room 509
Albany, NY 12240-0005

The applicable overtime rate shall be paid for each workweek:

| | <i>Non-residential employees</i> | <i>Residential employees</i> |
|-----------------------|--------------------------------------|----------------------------------|
| For working time over | 40 hours | 44 hours |

§ 142-2.3 Call-in pay.

An employee who by request or permission of the employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage.

§ 142-2.4 Additional rate for split shift and spread of hours.

An employee shall receive one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage required in this Part for any day in which:

- (a) the spread of hours exceeds 10 hours; or
- (b) there is a split shift; or
- (c) both situations occur.

§ 142-2.5 Allowances.

(a) Allowances for meals, lodging and utilities. (1) Meals and lodging furnished by an employer to an employee may be considered a part of the minimum wage, but shall be valued at not more than:

- (i) Meals, for work performed in: [\$2.45 per meal on and after January 1, 2007;
\$2.50 per meal on and after July 24, 2009;
\$2.75 per meal on and after December 31, 2013;
\$3.00 per meal on and after December 31, 2014;
\$3.10 per meal on and after December 31, 2015.]

(a) New York City for

(1) Large employers of eleven or more employees

- \$3.80 per meal on and after December 31, 2016;
- \$4.50 per meal on and after December 31, 2017;
- \$5.15 per meal on and after December 31, 2018;

(2) Small employers of ten or fewer employees

- \$3.60 per meal on and after December 31, 2016;
- \$4.15 per meal on and after December 31, 2017;
- \$4.65 per meal on and after December 31, 2018;
- \$5.15 per meal on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

- \$3.45 per meal on and after December 31, 2016;
- \$3.80 per meal on and after December 31, 2017;
- \$4.15 per meal on and after December 31, 2018;
- \$4.50 per meal on and after December 31, 2019;
- \$4.80 per meal on and after December 31, 2020;
- \$5.15 per meal on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

- \$3.35 per meal on and after December 31, 2016;
- \$3.60 per meal on and after December 31, 2017;
- \$3.80 per meal on and after December 31, 2018;
- \$4.05 per meal on and after December 31, 2019;

\$4.30 per meal on and after December 31, 2020.

(ii) Lodging, for work performed in: [\$3.05 per day on and after January 1, 2007;
\$3.10 per day on and after July 24, 2009;
\$3.40 per day on and after December 31, 2013;
\$3.70 per day on and after December 31, 2014;
\$3.80 per day on and after December 31, 2015.]

(a) New York City for

(1) Large employers of eleven or more employees

\$4.65 per day on and after December 31, 2016;
\$5.50 per day on and after December 31, 2017;
\$6.35 per day on and after December 31, 2018;

(2) Small employers of ten or fewer employees

\$4.45 per day on and after December 31, 2016;
\$5.05 per day on and after December 31, 2017;
\$5.70 per day on and after December 31, 2018;
\$6.35 per day on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$4.20 per day on and after December 31, 2016;
\$4.65 per day on and after December 31, 2017;
\$5.05 per day on and after December 31, 2018;
\$5.50 per day on and after December 31, 2019;
\$5.90 per day on and after December 31, 2020;
\$6.35 per day on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$4.10 per day on and after December 31, 2016;
\$4.40 per day on and after December 31, 2017;
\$4.70 per day on and after December 31, 2018;
\$5.00 per day on and after December 31, 2019;
\$5.30 per day on and after December 31, 2020.

(2) When a house or apartment and utilities are furnished by an employer to an employee, a fair and reasonable amount may be allowed for such facilities, which amount shall not exceed the lesser of either the value of prevailing rentals in the locality for comparable facilities, or [\$5.70 per day on and after January 1, 2007; \$5.80 per day on and after July 24, 2009; \$6.40 per day on and after December 31, 2013; \$7.00 per day on and after December 31, 2014; \$7.20 per day on and after December 31, 2015.] the following amounts, for work performed in

(i) New York City for

(a) Large employers of eleven or more employees

\$8.80 per day on and after December 31, 2016;
\$10.40 per day on and after December 31, 2017;
\$12.00 per day on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$8.40 per day on and after December 31, 2016;
\$9.60 per day on and after December 31, 2017;
\$10.80 per day on and after December 31, 2018;
\$12.00 per day on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$8.00 per day on and after December 31, 2016;
\$8.80 per day on and after December 31, 2017;
\$9.60 per day on and after December 31, 2018;
\$10.40 per day on and after December 31, 2019;
\$11.20 per day on and after December 31, 2020;
\$12.00 per day on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$7.75 per day on and after December 31, 2016;
\$8.30 per day on and after December 31, 2017;
\$8.90 per day on and after December 31, 2018;
\$9.45 per day on and after December 31, 2019;
\$10.00 per day on and after December 31, 2020.

(b) *Allowances for tips.* (1) Tips, or gratuities, may be considered a part of the minimum wage, subject to the following conditions:

(i) 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;

(ii) substantial evidence is provided that the employee received in tips at least the amount of the allowance claimed. An example of substantial evidence is a statement signed by the employee that he actually received in tips the amount of the allowance claimed; and

(iii) the allowance claimed by the employer is recorded on a weekly basis as a separate item in the wage record.

(2) *Allowances for tips.*

(i) Allowances for tips shall not exceed the Low tip amount listed below for an employee whose weekly average of tips received is between such Low tip amount and the High tip amount listed below, and shall not exceed such High tip amount for an employee whose weekly average of tips received equals or exceeds such High tip amount, for work performed in:

[(a) on and after January 1, 2007, \$1.10 an hour for an employee whose weekly average of tips received is between \$1.10 and \$1.75 per hour, and \$1.75 per hour for an employee whose weekly average of tips received is \$1.75 per hour or more;

(b) on and after December 31, 2013, \$1.20 an hour for an employee whose weekly average of tips received is between \$1.20 and \$1.95 per hour, and \$1.95 per hour for an employee whose weekly average of tips received is \$1.95 per hour or more;

(c) on and after December 31, 2014, \$1.30 an hour for an employee whose weekly average of tips received is between \$1.30 and \$2.15 per hour, and \$2.15 per hour for an employee whose weekly average of tips received is \$2.15 per hour or more;

(d) on and after December 31, 2015, \$1.35 an hour for an employee whose weekly average of tips received is between \$1.35 and \$2.20 per hour, and \$2.20 per hour for an employee whose weekly average of tips received is \$2.20 per hour or more.](a) New York City for

(1) Large employers of eleven or more employees

\$1.65 Low, \$2.70 High on and after December 31, 2016;

\$1.95 Low, \$3.20 High on and after December 31, 2017;

\$2.25 Low, \$3.65 High on and after December 31, 2018;

(2) Small employers of ten or fewer employees

\$1.60 Low, \$2.55 High on and after December 31, 2016;

\$1.80 Low, \$2.95 High on and after December 31, 2017;

\$2.05 Low, \$3.30 High on and after December 31, 2018;

\$2.25 Low, \$3.65 High on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$1.50 Low, \$2.45 High on and after December 31, 2016;

\$1.65 Low, \$2.70 High on and after December 31, 2017;

\$1.80 Low, \$2.95 High on and after December 31, 2018;

\$1.95 Low, \$3.20 High on and after December 31, 2019;

\$2.10 Low, \$3.40 High on and after December 31, 2020;

\$2.25 Low, \$3.65 High on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$1.45 Low, \$2.35 High on and after December 31, 2016;

\$1.55 Low, \$2.55 High on and after December 31, 2017;

\$1.65 Low, \$2.70 High on and after December 31, 2018;

\$1.75 Low, \$2.90 High on and after December 31, 2019;

\$1.90 Low, \$3.05 High on and after December 31, 2020.

(ii) [. On and after January 1, 2007, no]No allowance for tips or gratuities shall be permitted for an employee whose weekly average of tips is less than [\$1.10 an hour. On and after December 31, 2013, no allowance for tips or gratuities shall be permitted for an employee whose weekly average of tips is less than \$1.20 an hour. On and after December 31, 2014, no allowance for tips or gratuities shall be permitted for an employee whose weekly average of tips is less than \$1.30 an hour. On and after

December 31, 2015, no allowance for tips or gratuities shall be permitted for an employee whose weekly average of tips is less than \$1.35. the applicable Low tip amount listed above in the preceding subparagraph (i) of paragraph (2) of subdivision (b) of section 142-2.5 of this Subpart.

(c) No allowance for the supply, maintenance or laundering of required uniforms shall be permitted as part of the minimum wage. Where an employee purchases a required uniform, he shall be reimbursed by the employer for the cost thereof not later than the time of the next payment of wages. Where an employer fails to launder or maintain required uniforms for any employee, he shall pay such employee in addition to the minimum wage prescribed herein at the weekly rate set forth below, based on the number of hours worked, where employees who work over 30 hours per week shall be paid the High rate, employees who work more than 20 hours but fewer than 30 hours shall be paid the Medium rate and employees who work 20 hours or fewer shall be paid the Low rate for work performed in:

[(1) \$8.90 per week on and after January 1, 2007, if the employee works more than 30 hours weekly; \$7.00 per week on and after January 1, 2007, if the employee works more than 20 but not more than 30 hours weekly; and \$4.25 per week on and after January 1, 2007, if the employee works 20 hours or less weekly;

(2) \$9.00 per week on and after July 24, 2009, if the employee works more than 30 hours weekly; \$7.10 per week on and after July 24, 2009, if the employee works more than 20 but not more than 30 hours weekly; and \$4.30 per week on and after July 24, 2009, if the employee works 20 hours or less weekly.;

(3) \$9.95 per week on and after December 31, 2013, if the employee works over 30 hours weekly; \$7.85 per week on and after December 31, 2013, if the employee works more than 20 but not more than 30 hours weekly; and \$4.75 per week on and after December 31, 2013, if the employee works 20 hours or less weekly;

(4) \$10.90 per week on and after December 31, 2014, if the employee works over 30 hours weekly; \$8.60 per week on and after December 31, 2014, if the employee works more than 20 but not more than 30 hours weekly; and \$5.20 per week on and after December 31, 2014, if the employee works 20 hours or less weekly;

(5) \$11.20 per week on and after December 31, 2015, if the employee works over 30 hours weekly; \$8.85 per week on and after December 31, 2015, if the employee works more than 20 but not more than 30 hours weekly; and \$5.35 per week on and after December 31, 2015, if the employee works 20 hours or less weekly.]

(1) New York City for

(i) Large employers of eleven or more employees

\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2016;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2017;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$13.05 High, \$10.35 Medium, \$6.25 Low on and after December 31, 2016;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2017;
\$16.80 High, \$13.30 Medium, \$8.05 Low on and after December 31, 2018;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$12.45 High, \$9.85 Medium, \$5.95 Low on and after December 31, 2016;
\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2017;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2018;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2019;
\$17.40 High, \$13.75 Medium, \$8.30 Low on and after December 31, 2020;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$12.05 High, \$9.55 Medium, \$5.75 Low on and after December 31, 2016;
\$12.95 High, \$10.25 Medium, \$6.20 Low on and after December 31, 2017;
\$13.80 High, \$10.90 Medium, \$6.60 Low on and after December 31, 2018;
\$14.70 High, \$11.60 Medium, \$7.00 Low on and after December 31, 2019;
\$15.55 High, \$12.30 Medium, \$7.45 Low on and after December 31, 2020.

REGULATIONS

§ 142-2.6 Employer records.

(a) Every employer shall establish, maintain and preserve for not less than six years, weekly payroll records which shall show for each employee:

(1) name and address;

(2) social security number;

(3) wage rate;

(4) the number of hours worked daily and weekly, including the time of arrival and departure of each employee working a split shift or spread of hours exceeding 10;

(5) when a piece-rate method of payment is used, the number of units produced daily and weekly;

(6) the amount of gross wages;

(7) deductions from gross wages;

(8) allowances, if any, claimed as part of the minimum wage;

(9) net wages paid; and

(10) student classification.

(b) In addition, for each individual permitted to work as a staff counselor in a children's camp, or in an executive, administrative or professional capacity, an employer's records shall show:

(1) name and address;

(2) social security number;

(3) description of occupation; and

(4) for individuals working in an executive or administrative capacity, total wages, and the value of allowances, if any, for each payroll period.

(c) For each individual for whom student status is claimed, an employer's records shall contain a statement from the school which the student attends, indicating such student:

(1) is a student whose course of instruction is one leading to a degree, diploma or certificate; or

(2) is required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

(d) Employers, including those who maintain their records containing the information required by this section at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the commissioner at the place of employment.

§ 142-2.7 Statement to employee.

Every employer covered by this Part shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages.

§ 142-2.8 Posting.

Every employer covered by this Part shall post in a conspicuous place in his or her establishment a notice issued by the Department of Labor summarizing minimum wage provisions.

§ 142-2.9 Basis of wage payment.

The minimum and overtime wage provided by this Part shall be required for each week of work, regardless of the frequency of payment, whether the wage is on a commission, bonus, piece rate, or any other basis.

§ 142-2.10 Deductions and expenses.

(a) Wages shall be subject to no deductions, except for allowances authorized in this Part, and except for deductions authorized or required by law, such as for social security and income tax. Some examples of prohibited deductions are:

(1) deductions for spoilage or breakage;

(2) deductions for cash shortages or losses;

(3) fines or penalties for lateness, misconduct or quitting by an employee without notice.

(b) The minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by an employer.

§ 142-2.11 Student obtaining vocational experience.

A student is not deemed to be working or to be permitted to work if, in order to fulfill the curriculum requirements of the educational institution which such student attends, such student is required to obtain supervised and directed vocational experience in another establishment.

§ 142-2.12 Learner and apprentice rates.

No learner or apprentice shall be paid less than the minimum rate prescribed in this Part.

§ 142-2.13 Rehabilitation programs.

For an individual employed as part of a rehabilitation program approved by the commissioner, the payment of compensation under such program shall be deemed to meet the requirements of this Part.

DEFINITIONS

§ 142-2.14 Employee.

(a) *Employee* means any individual employed, suffered or permitted to work by an employer, except as provided below.

(b) Employee does not include any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) Employee also does not include any individual permitted to work in, or as:

(1) Baby-sitter; companion.

(i) The term *baby-sitter* means an individual in service as a part-time baby-sitter in the home of the employer.

(ii) The term *companion* means someone who lives in the home of an employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping.

(2) Booth renter. The term *booth renter* means someone who leases or rents space in a beauty establishment or shop and who operates as an owner or an independent contractor.

(3) Labor on a farm. Farm employees are covered under the provisions of the minimum wage order for farm workers, Part 190 of this Title, promulgated by the Commissioner of Labor pursuant to article 19-A of the New York State Labor Law.

(4) Executive, administrative or professional capacity.

(i) Executive. Work in a *bona fide executive... capacity* means work by an individual:

(a) whose primary duty consists of the management of the enterprise in which such individual is employed or of a customarily recognized department or subdivision thereof;

(b) who customarily and regularly directs the work of two or more other employees therein;

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(d) who customarily and regularly exercise discretionary powers; and

(e) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

[(1) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities;

(2) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging, other allowances and facilities;

(3) \$600.00 per week on and after December 31, 2013, inclusive of board, lodging, other allowances and facilities;

(4) \$656.25 per week on and after December 31, 2014, inclusive of board, lodging, other allowances and facilities;

(5) \$675.00 per week on and after December 31, 2015, inclusive of board, lodging, other allowances and facilities.](1) New York City for

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(ii) Administrative. Work in a *bona fide... administrative... capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of such individual's employer;

(b) who customarily and regularly exercises discretion and independent judgment;

(c) who regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity (e.g., employment as an administrative assistant); or who performs, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

[(1) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities;

(2) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging, other allowances and facilities;

(3) \$600.00 per week on and after December 31, 2013, inclusive of board, lodging, other allowances and facilities;

(4) \$656.25 per week on and after December 31, 2014, inclusive of board, lodging, other allowances and facilities;

(5) \$675.00 per week on and after December 31, 2015, inclusive of board, lodging, other allowances and facilities.]

(1) New York City for

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(iii) Professional. Work in a *bona fide... professional capacity* means work by an individual:

(a) whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes; or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(5) Outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

(i) making sales;

(ii) selling and delivering articles or goods; or

(iii) obtaining orders or contracts for service or for the use of facilities.

(6) Taxicab driver. The term *driver engaged in operating a taxicab* means an individual employed to drive an automobile equipped to carry no more than seven passengers, which is used in the business of carrying or transporting passengers for hire on a zone or meter fare basis, and the use of which is generally limited to a community's local transportation needs and which is not operated over fixed routes, or between fixed terminals, or under contract.

(7) Student in or for a college or university fraternity, sorority, student association or faculty association. A student is not deemed to be an employee if he or she is permitted to work in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university.

(8) Staff counselor in a children's camp. (i) A *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision and care of campers in a children's camp, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes, but is not limited to: head counselor, assistant head counselor, specialist counselor instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp mother, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

(ii) *Children's camp* means any establishment which, as a whole or part of its activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs of supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play schools, or by any other name. The term children's camp does not include an establishment which is open for a period exceeding 17 consecutive weeks during the year.

§ 142-2.15 Voluntary absence.

Voluntary absence includes any absence from work not directed by the employer or the employer's agent and not designed or planned by the employer or the employee to evade minimum wage standards. Voluntary absence does not include any absence contemplated in the employment contract or incurred as a condition of continued employment; or at the direction or suggestion of the employer or his agent; or recurrent or periodic absence, except such absence for medical treatment under a doctor's care.

§ 142-2.16 Regular rate.

The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work. When an employee is paid on a piece work basis, salary, or any basis other than hourly rate, the regular hourly wage rate shall be determined by dividing the total hours worked during the week into the employee's total earnings.

§ 142-2.17 Split shift.

A *split shift* is a schedule of daily hours in which the working hours required or permitted are not consecutive. No meal period of one hour or less shall be considered an interruption of consecutive hours.

§ 142-2.18 Spread of hours.

The *spread of hours* is the interval between the beginning and end of an employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals off duty.

§ 142-2.19 Meal.

A *meal* shall provide adequate portions of a variety of wholesome, nutritious foods, and shall include at least one of the types of foods from all four of the following groups:

- (a) fruits or vegetables;

(b) cereals, bread or potatoes;

(c) eggs, meat, fish or poultry;

(d) milk, tea or coffee; except that for breakfast, group (c) may be omitted if both cereal and bread are offered in group (b).

§ 142-2.20 Lodging.

Lodging includes room, house or apartment, and means living accommodations which meet generally accepted standards for protection against fire, and all structural, sanitation and similar standards in State and local laws, codes, regulations and ordinances applicable to the premises.

§ 142-2.21 Tips.

Tips, or *gratuities*, shall mean voluntary contributions received by the employee from a guest, patron, customer or other person for services rendered. No gratuities or tips shall be deemed received for the purpose of this Part if their acceptance is prohibited by the employer or prohibited by law.

§ 142-2.22 Required uniform.

A *required uniform* shall be that clothing worn by an employee, at the request of the employer, while performing job-related duties or to comply with any State, city or local law, rule or regulation. It does not, however, include clothing that may be worn as part of an employee's ordinary wardrobe.

§ 142-2.23 Student.

A *student* means an individual who is enrolled in and regularly attends a course of instruction at a state-licensed educational institution of learning leading to a degree, certificate or diploma, or who is completing residence requirements for a degree.

SUBPART 142-3

PROVISIONS APPLICABLE TO EMPLOYEES IN NONPROFITMAKING INSTITUTIONS WHICH HAVE NOT ELECTED TO BE EXEMPT FROM COVERAGE UNDER A MINIMUM WAGE ORDER

Sec.

MINIMUM WAGE AND REGULATIONS

- 142-3.1 Basic minimum hourly wage rate
- 142-3.2 Overtime rate
- 142-3.3 Call-in pay
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- 142-3.5 Allowances
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- 142-3.12 Employee
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MINIMUM WAGE AND REGULATIONS

§ 142-3.1 Basic minimum hourly wage rate.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

(1) \$7.15 per hour on and after January 1, 2007;

(2) \$7.25 per hour on and after July 24, 2009;

(3) \$8.00 per hour on and after December 31, 2013;

(4) \$8.75 per hour on and after December 31, 2014;

(5) \$9.00 per hour on and after December 31, 2015, or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or its successors.]

(1) New York City for

(i) Large employers of eleven or more employees

\$11.00 per hour on and after December 31, 2016;

\$13.00 per hour on and after December 31, 2017;

\$15.00 per hour on and after December 31, 2018;

(ii) *Small employers of ten or fewer employees*

\$10.50 per hour on and after December 31, 2016;

\$12.00 per hour on and after December 31, 2017;

\$13.50 per hour on and after December 31, 2018;

\$15.00 per hour on and after December 31, 2019;

(2) *Remainder of downstate (Nassau, Suffolk and Westchester counties)*

\$10.00 per hour on and after December 31, 2016;

\$11.00 per hour on and after December 31, 2017;

\$12.00 per hour on and after December 31, 2018;

\$13.00 per hour on and after December 31, 2019;

\$14.00 per hour on and after December 31, 2020;

\$15.00 per hour on and after December 31, 2021,

(3) *Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)*

\$9.70 per hour on and after December 31, 2016;

\$10.40 per hour on and after December 31, 2017;

\$11.10 per hour on and after December 31, 2018;

\$11.80 per hour on and after December 31, 2019;

\$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors.

Such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer-- shall not be deemed to be permitted to work or required to be available for work:

(1) during his or her normal sleeping hours solely because such employee is required to be on call during such hours; or

(2) at any other time when he or she is free to leave the place of employment.

§ 142-3.2 Overtime rate.

An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to the exemptions of sections 7 and 13 of 29 U.S.C. 201 *et seq.*, the Fair Labor Standards Act of 1938, as amended, provided, however that the exemptions set forth in section 13(a)(4) shall not apply. In addition, an employer shall pay employees subject to the exemptions of section 13 of the Fair Labor Standards Act, as amended, except employees subject to section 13(a)(4) of such act, overtime at a wage rate of one and one-half times the basic minimum hourly rate. The Fair Labor Standards Act is published in the *United States Code*, the official compilation of Federal statutes, by the Government Printing Office, Washington, DC. Copies of the Fair Labor Standards Act are available at the following office:

New York State Department of Labor
Counsel's Office

State Office Building Campus
Building 12, Room 509
Albany, NY 12240-0005

The applicable overtime rate shall be paid for each workweek:

| | <i>Non-residential employees</i> | <i>Residential employees</i> |
|-----------------------|----------------------------------|------------------------------|
| For working time over | 40 hours | 44 hours |

This provision shall not apply to residential house parents in children's homes.

§ 142-3.3 Call-in pay.

An employee who by request or permission of the employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum hourly wage.

§ 142-3.4 Additional rate for split and spread of hours.

An employee shall receive one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage required herein for any day in which:

- (a) the spread of hours exceeds 10 hours;
- (b) there is a split shift; or
- (c) both situations occur.

§ 142-3.5 Allowances.

(a) *Allowances for meals, lodging and utilities for all employees except employees in children's camps.*

(1) Meals and lodging furnished by an employer to an employee may be considered a part of the minimum wage, but shall be valued at not more than:

- (i) Meals, for work performed in \$2.45 per meal on and after January 1, 2007;
- \$2.50 per meal on and after July 24, 2009;
- \$2.75 per meal on and after December 31, 2013;
- \$3.00 per meal on and after December 31, 2014;
- \$3.10 per meal on and after December 31, 2015.]

(a) New York City for

(1) Large employers of eleven or more employees

\$3.80 per meal on and after December 31, 2016;
\$4.50 per meal on and after December 31, 2017;
\$5.15 per meal on and after December 31, 2018;

(2) *Small employers* of ten or fewer employees

\$3.60 per meal on and after December 31, 2016;
\$4.15 per meal on and after December 31, 2017;
\$4.65 per meal on and after December 31, 2018;
\$5.15 per meal on and after December 31, 2019;

(b) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$3.45 per meal on and after December 31, 2016;
\$3.80 per meal on and after December 31, 2017;
\$4.15 per meal on and after December 31, 2018;
\$4.50 per meal on and after December 31, 2019;
\$4.80 per meal on and after December 31, 2020;
\$5.15 per meal on and after December 31, 2021;

(c) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$3.35 per meal on and after December 31, 2016;
\$3.60 per meal on and after December 31, 2017;
\$3.80 per meal on and after December 31, 2018;
\$4.05 per meal on and after December 31, 2019;
\$4.30 per meal on and after December 31, 2020.

(ii) *Lodging, for work performed in* \$4.25 per day on and after January 1, 2007;

\$4.30 per day on and after July 24, 2009;
\$4.75 per day on and after December 31, 2013;
\$5.20 per day on and after December 31, 2014;

\$5.35 per day on and after December 31, 2015.]

(a) *New York City* for

(1) *Large employers* of eleven or more employees

\$6.55 per day on and after December 31, 2016;
\$7.75 per day on and after December 31, 2017;
\$8.90 per day on and after December 31, 2018;

(2) *Small employers* of ten or fewer employees

\$6.25 per day on and after December 31, 2016;
\$7.15 per day on and after December 31, 2017;
\$8.05 per day on and after December 31, 2018;
\$8.90 per day on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$5.95 per day on and after December 31, 2016;
\$6.55 per day on and after December 31, 2017;
\$7.15 per day on and after December 31, 2018;
\$7.75 per day on and after December 31, 2019;
\$8.30 per day on and after December 31, 2020;
\$8.90 per day on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$5.75 per day on and after December 31, 2016;
\$6.20 per day on and after December 31, 2017;
\$6.60 per day on and after December 31, 2018;
\$7.00 per day on and after December 31, 2019;
\$7.45 per day on and after December 31, 2020.

(2) When a house or apartment and utilities are furnished by an employer to an employee, a fair and reasonable amount may be allowed for such facilities, which amount shall not exceed the lesser of either the value of prevailing rentals in the locality for comparable facilities, or[\$8.90 per day on and after January 1, 2007; \$9.00 per day on and after July 24, 2009; \$9.95 per day on and after December 31, 2013; \$10.90 per day on and after December 31, 2014; \$11.20 per day on and after December 31, 2015.] the following amounts, for work performed in

(i) New York City for

(a) Large employers of eleven or more employees

\$13.70 per day on and after December 31, 2016;
\$16.20 per day on and after December 31, 2017;
\$18.65 per day on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$13.05 per day on and after December 31, 2016;
\$14.95 per day on and after December 31, 2017;
\$16.80 per day on and after December 31, 2018;
\$18.65 per day on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$12.45 per day on and after December 31, 2016;
\$13.70 per day on and after December 31, 2017;
\$14.95 per day on and after December 31, 2018;
\$16.20 per day on and after December 31, 2019;
\$17.40 per day on and after December 31, 2020;
\$18.65 per day on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$12.05 per day on and after December 31, 2016;
\$12.95 per day on and after December 31, 2017;
\$13.80 per day on and after December 31, 2018;
\$14.70 per day on and after December 31, 2019;
\$15.55 per day on and after December 31, 2020.

(b) *Allowances for meals and lodging for employees in children's camps.* Meals and lodging furnished by an employer to an employee may be considered a part of the minimum wage, but shall be valued at not more than:

(1) Meals, for work performed in

[\$2.45 per meal on and after January 1, 2007;
\$2.50 per meal on and after July 24, 2009;
\$2.75 per meal on and after December 31, 2013;
\$3.00 per meal on and after December 31, 2014;
\$3.10 per meal on and after December 31, 2015.]

(i) New York City for

(a) Large employers of eleven or more employees

\$3.80 per meal on and after December 31, 2016;
\$4.50 per meal on and after December 31, 2017;
\$5.15 per meal on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$3.60 per meal on and after December 31, 2016;
\$4.15 per meal on and after December 31, 2017;
\$4.65 per meal on and after December 31, 2018;
\$5.15 per meal on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$3.45 per meal on and after December 31, 2016;
\$3.80 per meal on and after December 31, 2017;
\$4.15 per meal on and after December 31, 2018;
\$4.50 per meal on and after December 31, 2019;
\$4.80 per meal on and after December 31, 2020;
\$5.15 per meal on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$3.35 per meal on and after December 31, 2016;
\$3.60 per meal on and after December 31, 2017;
\$3.80 per meal on and after December 31, 2018;
\$4.05 per meal on and after December 31, 2019;
\$4.30 per meal on and after December 31, 2020.

(2) Lodging, for work performed in

[\$0.35 per hour on and after January 1, 2006;
\$0.40 per hour on and after December 31, 2013;

\$0.45 per hour on and after December 31, 2014.]

(i) New York City for

(a) Large employers of eleven or more employees

\$0.55 per hour on and after December 31, 2016;

\$0.65 per hour on and after December 31, 2017;

\$0.75 per hour on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$0.55 per hour on and after December 31, 2016;

\$0.60 per hour on and after December 31, 2017;

\$0.70 per hour on and after December 31, 2018;

\$0.75 per hour on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$0.50 per hour on and after December 31, 2016;

\$0.55 per hour on and after December 31, 2017;

\$0.60 per hour on and after December 31, 2018;

\$0.65 per hour on and after December 31, 2019;

\$0.70 per hour on and after December 31, 2020;

\$0.75 per hour on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$0.50 per hour on and after December 31, 2016;

\$0.55 per hour on and after December 31, 2018;

\$0.60 per hour on and after December 31, 2019;

\$0.65 per hour on and after December 31, 2020.

(c) *Required uniforms.* No allowance for supply, maintenance or laundering of required uniforms shall be permitted as part of the minimum wage. Where an employee purchases a required uniform, he shall be reimbursed by the employer for the cost thereof not later than the time of the next payment of wages. Where an employer fails to launder or maintain required uniforms for any employee, he shall pay such employee in addition to the minimum wage prescribed herein at the weekly rate set forth below, based on the number of hours worked, where employees who work over 30 hours per week shall be paid the High rate, employees who work more than 20 hours but fewer than 30 hours shall be paid the Medium rate and employees who work 20 hours or fewer shall be paid the Low rate for work performed in:

[(1) \$8.90 per week on and after January 1, 2007, if the employee works more than 30 hours weekly; \$7.00 per week on and after January 1, 2007, if the employee works more than 20 but not more than 30 hours weekly; and \$4.25 per week on and after January 1, 2007, if the employee works 20 hours or less weekly;

(2) \$9.00 per week on and after July 24, 2009, if the employee works more than 30 hours weekly; \$7.10 per week on and after July 24, 2009, if the employee works more than 20 but not more than 30 hours weekly; and \$4.30 per week on and after July 24, 2009, if the employee works 20 hours or less weekly;

(3) \$9.95 per week on and after December 31, 2013, if the employee works more than 30 hours weekly; \$7.85 per week on and after December 31, 2013, if the employee works more than 20 but not more than 30 hours weekly; and \$4.75 per week on and after December 31, 2013, if the employee works 20 hours or less weekly;

(4) \$10.90 per week on and after December 31, 2014, if the employee works more than 30 hours weekly; \$8.60 per week on and after December 31, 2014, if the employee works more than 20 but not more than 30 hours weekly; and \$5.20 per week on and after December 31, 2014, if the employee works 20 hours or less weekly;

(5) \$11.20 per week on and after December 31, 2015, if the employee works more than 30 hours weekly; \$8.85 per week on and after December 31, 2015, if the employee works more than 20 but not more than 30 hours weekly; and \$5.35 per week on and after December 31, 2015, if the employee works 20 hours or less weekly.](1) New York City for

(i) Large employers of eleven or more employees

\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2016;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2017;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$13.05 High, \$10.35 Medium, \$6.25 Low on and after December 31, 2016;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2017;
\$16.80 High, \$13.30 Medium, \$8.05 Low on and after December 31, 2018;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$12.45 High, \$9.85 Medium, \$5.95 Low on and after December 31, 2016;
\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2017;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2018;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2019;
\$17.40 High, \$13.75 Medium, \$8.30 Low on and after December 31, 2020;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$12.05 High, \$9.55 Medium, \$5.75 Low on and after December 31, 2016;
\$12.95 High, \$10.25 Medium, \$6.20 Low on and after December 31, 2017;
\$13.80 High, \$10.90 Medium, \$6.60 Low on and after December 31, 2018;
\$14.70 High, \$11.60 Medium, \$7.00 Low on and after December 31, 2019;
\$15.55 High, \$12.30 Medium, \$7.45 Low on and after December 31, 2020.

§ 142-3.6 Employer payroll records requirements for nonprofitmaking institutions.

(a) Every nonprofitmaking institution shall establish, maintain, and preserve for not less than six years, records for each employee; and these records shall contain the following data:

(1) name and address;

(2) social security number, if any;

(3) wage rate;

(4) a record of hours worked daily and weekly during each payroll period, including the time of arrival and departure of each employee working a split shift or spread of hours exceeding 10; and

(5) a record for each payroll period of:

(i) the amount of gross wages;

(ii) deductions, if any;

(iii) allowances, if any; and

(iv) net wages paid.

(b) Every such institution employing persons in an executive or administrative capacity shall establish, maintain and preserve for not less than six years, records which show for each such individual:

(1) name and address;

(2) social security number, if any; and

(3) total wages, and the value of allowances, if any, for each payroll period.

(c) Employers, including those who maintain their records containing the information required by this section at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the commissioner at a place within New York State specified by the commissioner.

§ 142-3.7 Required personnel records for nonprofitmaking institutions.

(a) Every nonprofitmaking institution shall establish, maintain and preserve for not less than six years, records with respect to each individual permitted to work:

(1) as an apprentice;

(2) as a learner;

(3) in an executive, administrative or professional capacity;

(4) if the individual is a student;

(5) if the work performed is not under any express contract of hire and is incidental to or in return for charitable aid conferred on such individual;

(6) if the earning capacity of such individual is impaired by age, physical or mental deficiency or injury;

(7) in or for a summer camp or conference in not more than 13 calendar weeks in a calendar year; or

(8) as a staff counselor in a children's camp.

(b) These records shall contain the following data:

(1) the date of commencement of work;

(2) a statement indicating the classification under which the employee is permitted to work;

(3) the nature of work performed; and

(i) for an apprentice, a copy of the apprentice program and agreement;

(ii) for a learner, a statement as to the nature and extent of the instruction and supervision;

(iii) for a student, a statement from the school which the student attends indicating whether or not:

(a) he or she is a student and his or her course of instruction is one leading to a degree, diploma or certificate; or

(b) he or she is completing residence requirements for a degree;

(iv) for an individual permitted to work in return for charitable aid conferred, a statement as to the dates, nature and extent of the charitable aid conferred;

(v) for an individual permitted to work whose earning capacity for such work is impaired by age, physical or mental deficiency or injury:

(a) a statement as to the age;

(b) a report from a doctor or other competent authority concerning the nature and extent of the deficiency or injury;

(c) a statement as to the manner in which, and extent to which age, deficiency or injury impairs the earning capacity for the work to which such individual is assigned.

§ 142-3.8 Statement to employee.

Every employer covered by this Part shall furnish to each of his employees a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions, and net wages.

§ 142-3.9 Posting.

Every employer covered by this Part shall post in a conspicuous place in his establishment, a notice issued by the Department of Labor summarizing minimum wage provisions.

§ 142-3.10 Basis of wage payment.

The minimum wage provided by this Part shall be required for each payroll period, whether the wage is on a commission, bonus, piece rate, or any other basis.

§ 142-3.11 Deductions and expenses.

(a) Wages shall be subject to no deductions, except for allowances authorized in this Part, and except for deductions authorized or required by law, such as for social security and income tax. Some examples of prohibited deductions are:

- (1) deductions for spoilage or breakage;
- (2) deductions for cash shortages or losses;
- (3) fines or penalties for lateness, misconduct, or quitting by an employee without notice.

(b) The minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by his employer.

DEFINITIONS

§ 142-3.12 Employee.

(a) *Employee* means any individual permitted to work by an employer, except as provided below.

(b) *Employee* also does not include any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) *Employee* also does not include any individual permitted to work in, or as:

(1) Labor on a farm. Farm employees are covered under the provisions of the minimum wage order for farm workers. Part 190 of this Title promulgated by the Commissioner of Labor pursuant to article 19-A of the New York State Labor Law.

(2) Executive, administrative or professional capacity.

(i) Executive. Work in a *bona fide... executive capacity* means work by an individual:

(a) whose primary duty consists of the management of the institution in which such individual is employed or of a customarily recognized department or subdivision thereof;

(b) who customarily and regularly directs the work of two or more other employees therein;

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(d) who customarily and regularly exercises discretionary powers; and

(e) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

[(1) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities;

(2) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging, other allowances and facilities.;

(3) \$600.00 per week on and after December 31, 2013, inclusive of board, lodging, other allowances and facilities;

(4) \$656.25 per week on and after December 31, 2014, inclusive of board, lodging, other allowances and facilities;

(5) \$675.00 per week on and after December 31, 2015, inclusive of board, lodging, other allowances and facilities.](1) New York City for

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(ii) Administrative. Work in a *bona fide... administrative... capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of his or her employer;

(b) who customarily and regularly exercises discretion and independent judgment;

(c) who regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity (e.g., employment as an administrative assistant), or who performs, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

[(1) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging, other allowances and facilities;

(2) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging, other allowances and facilities.;

(3) \$600.00 per week on and after December 31, 2013, inclusive of board, lodging, other allowances and facilities;

(4) \$656.25 per week on and after December 31, 2014, inclusive of board, lodging, other allowances and facilities;

(5) \$675.00 per week on and after December 31, 2015, inclusive of board, lodging, other allowances and facilities.](1) New York City for

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(iii) Professional. Work in a *bona fide... professional capacity* means work by an individual:

(a) whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes; or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends primarily on the invention, imagination or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(3) Outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

(i) making sales;

(ii) selling and delivering articles or goods; or

(iii) obtaining orders or contracts for service or for the use of facilities.

(4) Taxicab driver. The term *driver engaged in operating a taxicab* means an individual employed to drive an automobile equipped to carry no more than seven passengers, which is used in the business of carrying or transporting passengers for hire on a zone or meter fare basis, and the use of which is generally limited to a community's local transportation needs and which is not operated over fixed routes, or between fixed terminals or under contract.

(5) Volunteer. The term *volunteer* means a person who works for a nonprofitmaking institution under no contract of hire, express or implied, and with no promise of compensation, other than reimbursement for expenses as part of the conditions of work.

(6) Learner. (i) The term *learner* means a person in a nonprofitmaking institution who is participating in a bona fide training program for an occupation in which such person is employed, the required training period for which is recognized to be at least two weeks.

(ii) A bona fide training program is one which must involve either formal instruction or on-the-job training, during a period when the learner is entrusted with limited responsibility and is under supervision or guidance.

(iii) No person shall be deemed a learner at an institution in an occupation for which he or she has completed the required training; and in no case may a person be deemed a learner in such an occupation at an institution after 10 weeks of such training, except that a person may be deemed a learner for a longer period if the commissioner finds after investigation that for the particular occupation a minimum of proficiency cannot be acquired in 10 weeks.

(7) Apprentice. (i) The term *apprentice* means a person in a nonprofitmaking institution whose work at an institution (a) is in an apprenticeable trade or occupation, and (b) is part of a bona fide training program leading to qualification as a journeyman in the trade or occupation.

(ii) No such apprentice training program shall be deemed bona fide unless it meets all of the following:

(a) it is for an occupation which is on either the Federal or New York State list of apprenticeable trades and occupations or is commonly recognized as such, but shall not include any of the following:

(1) occupations in the distributive field;

(2) managerial occupations;

(3) clerical occupations;

(4) professional or semiprofessional occupations (occupations for which entrance requirements customarily include education of college level);

(b) it requires at least two years (4,000 hours) of work experience;

(c) it provides for a schedule of work processes or operations in which experience is to be given the apprentice on the job;

(d) it involves the development of skill sufficiently broad to be applicable in like occupations rather than to be limited to the requirements of one institution; and

(e) the employer keeps and makes available written evidence of the apprenticeship agreement or a detailed schedule of work processes and wages.

(8) Member of a religious order. The term *religious order* means a group of persons who are joined together under the authority of a religious leader, and are dedicated to the performance of religious works.

(9) Sexton. The term *sexton* means an individual who works as a caretaker at a place where religious services are held, or whose duties at such place are solely of a religious nature, or whose duties are partly religious and partly as a caretaker.

(10) Person who works in return for charitable aid. The term *work... incidental to or in return for charitable aid conferred* means any work or duties performed by a person who is not under any express contract of hire, in or for a nonprofitmaking religious or charitable institution, as a means of discharging an obligation to such an institution for charitable aid given to the worker.

(11) Student in or for a nonprofitmaking institution. The term *student* means an individual who is enrolled in and regularly attends during the daytime a course of instruction leading to a degree, certificate or diploma, offered at an institution of learning, or who is completing residence requirements for a degree. A person is deemed to be a student during the time that school is not in session if such person was a student during the preceding semester.

(12) Person whose earning capacity is impaired. The phrase *earning capacity... is impaired by... age, or by physical or mental deficiency or injury*, applies to a person in a nonprofitmaking institution whose earning capacity for the work to which he or she is assigned to perform is impaired by age, or by physical or mental deficiency or injury; but a person's earning capacity may not be deemed impaired by age until such person's 65th birthday.

(13) Staff counselor in a children's camp. (i) A *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision and care of campers in a children's camp, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes but is not limited to: head counselor, assistant head counselor, specialist counselor or instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp mother, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

(ii) *Children's camp* means any establishment which, as a whole or part of its activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs or supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play school, or by any other name. The term *children's camp* does not include an establishment which is open for a period exceeding 17 consecutive weeks during the year.

(14) In or for a summer camp or conference for not more than three months annually.

(i) A person who works in not more than 13 calendar weeks in a calendar year in or for a summer camp or conference is deemed to have worked for *not more than three months annually*. A person who works in more than 13 calendar weeks in a calendar year is deemed to be an employee for the entire period of employment.

(ii) A *summer camp or conference* means a camp or conference which is open any part of the period from June 21st to September 21st, and which is operated by a nonprofitmaking institution.

§ 142-3.13 Nonprofitmaking institution.

A *nonprofitmaking institution* means any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

§ 142-3.14 Regular rate.

The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work. When an employee is paid on a piece-rate, salary or any basis other than hourly rate, the regular hourly wage rate shall be determined by dividing the total hours worked during the week into the employee's total earnings.

§ 142-3.15 Split shift.

A *split shift* is a schedule of daily hours in which the working hours required or permitted are not consecutive. No meal period of one hour or less shall be considered an interruption of consecutive hours.

§ 142-3.16 Spread of hours.

The *spread of hours* is the interval between the beginning and end of an employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals of duty.

§ 142-3.17 Meal.

A *meal* shall provide adequate portions of a variety of wholesome, nutritious foods, and shall include at least one of the types of food from all four of the following groups:

(a) fruits or vegetables;

(b) cereals, bread or potatoes;

(c) eggs, meat, fish or poultry; and

(d) milk, tea or coffee; except that for breakfast, group (c) may be omitted if both cereal and bread are offered in group (b).

§ 142-3.18 Lodging.

Lodging includes room, house or apartment, and means living accommodations which meet generally accepted standards for protection against fire, and all structural, sanitation and similar standards in State and local laws, codes, regulations and ordinances applicable to the premises.

§ 142-3.19 Required uniform.

A *required uniform* shall be that clothing worn by an employee, at the request of an employer, while performing job-related duties or to comply with any State, city or local law, rule or regulation. It does not, however, include clothing that may be worn as part of employee's ordinary wardrobe.

PART 143

REGULATIONS APPLICABLE TO EACH NONPROFITMAKING INSTITUTION WHICH CERTIFIES IT WILL PAY THE STATUTORY MINIMUM WAGE TO EACH EMPLOYEE IN LIEU OF BEING COVERED UNDER A MINIMUM WAGE ORDER

Sec.

- 143.0 Minimum wage requirements applicable to nonprofitmaking institutions which have elected the option to pay the statutory wage exclusive of allowances in lieu of wage order coverage
- 143.1 Definitions of exclusions from the term *employee*
- 143.2 Election by nonprofitmaking institutions
- 143.3 Notice requesting application of minimum wage orders
- 143.4 Revocation of exemption
- 143.5 Employer personnel records requirements for nonprofitmaking institutions
- 143.6 Employer payroll records
- 143.7 An hour
- 143.8 Allowances

§ 143.0 Minimum wage requirements applicable to nonprofitmaking institutions which have elected the option to pay the statutory wage exclusive of allowances in lieu of wage order coverage.

(a) *Definition of nonprofitmaking institution.* *Nonprofitmaking institution* means any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) *Statutory minimum wage, for each hour worked in:* [(1) \$7.15 per hour on and after January 1, 2007;

(2) \$7.25 per hour on and after July 24, 2009;

(3) \$8.00 per hour on and after December 31, 2013;

(4) \$8.75 per hour on and after December 31, 2014;

(5) \$9.00 per hour on and after December 31, 2015, or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or its successors.]

(1) New York City for

(i) Large employers of eleven or more employees

\$11.00 per hour on and after December 31, 2016;

\$13.00 per hour on and after December 31, 2017;

\$15.00 per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$10.50 per hour on and after December 31, 2016;

\$12.00 per hour on and after December 31, 2017;

\$13.50 per hour on and after December 31, 2018;

\$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$10.00 per hour on and after December 31, 2016;

\$11.00 per hour on and after December 31, 2017;

\$12.00 per hour on and after December 31, 2018;

\$13.00 per hour on and after December 31, 2019;

\$14.00 per hour on and after December 31, 2020;

\$15.00 per hour on and after December 31, 2021.

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)

\$9.70 per hour on and after December 31, 2016;

\$10.40 per hour on and after December 31, 2017;

\$11.10 per hour on and after December 31, 2018;

\$11.80 per hour on and after December 31, 2019;

\$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

§ 143.1 Definitions of exclusions from the term *employee*.

(a) *Labor on a farm*. (1) The term *farm* includes stock, dairy, poultry, furbearing animal, fruit and truck farms, plantations, orchards, nurseries, greenhouses or other similar structures, used primarily for the raising of agricultural or horticultural commodities.

(2) The term *labor on a farm* includes the service of any person permitted to work on a farm by an employer in connection with:

(i) cultivating the soil;

(ii) raising or harvesting any agricultural or horticultural commodity, including the raising or hatching of poultry, the raising, shearing, feeding, caring for, training and management of livestock, bees, furbearing animals and wildlife;

(iii) the production or harvesting of maple syrup or maple sugar;

(iv) the operation, management, conservation, improvement or maintenance of a farm and its tools and equipment;

(v) the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for removing, supplying and storing water for farming purposes;

(vi) the handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market, or to a carrier for transportation to market, any agricultural or horticultural commodity.

(b) *Executive, administrative or professional capacity*.

(1) Executive. Work in a *bona fide executive... capacity* means work by an individual:

(i) whose primary duty consists of the management of the institution in which he or she is employed or of a customarily recognized department or subdivision thereof;

(ii) who customarily and regularly directs the work of two or more other employees therein;

(iii) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(iv) who customarily and regularly exercises discretionary powers; and

(v) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

[(a) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging or other allowances and facilities;

(b) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging or other allowances and facilities;

(c) \$600.00 per week on and after December 31, 2013, inclusive of board, lodging, other allowances and facilities;

(d) \$656.25 per week on and after December 31, 2014, inclusive of board, lodging, other allowances and facilities;

(e) \$675.00 per week on and after December 31, 2015, inclusive of board, lodging, other allowances and facilities.](a) New York City for

(1) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;

\$975.00 per week on and after December 31, 2017;

\$1,125.00 per week on and after December 31, 2018;

(2) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;

\$900.00 per week on and after December 31, 2017;

\$1,012.50 per week on and after December 31, 2018;

\$1,125.00 per week on and after December 31, 2019;

(b) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;

\$825.00 per week on and after December 31, 2017;

\$900.00 per week on and after December 31, 2018;

\$975.00 per week on and after December 31, 2019;

\$1,050.00 per week on and after December 31, 2020;

\$1,125.00 per week on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;

\$780.00 per week on and after December 31, 2017;

\$832.00 per week on and after December 31, 2018;

\$885.00 per week on and after December 31, 2019;

\$937.50 per week on and after December 31, 2020.

(2) Administrative. Work in a *bona fide ... administrative ... capacity* means work by an individual:

(i) whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general operations of his or her employer; and

(ii) who customarily and regularly exercises discretion and independent judgment; and

(iii) who regularly and directly assists an employer, or an employee employed in a bona fide executive or administrative capacity (*e.g.*, employment as an administrative assistant), or who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; and

(iv) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts listed below when working in:

[(a) \$536.10 per week on and after January 1, 2007, inclusive of board, lodging or other allowances and facilities;

(b) \$543.75 per week on and after July 24, 2009, inclusive of board, lodging or other allowances and facilities;

(c) \$600.00 per week on and after December 31, 2013, inclusive of board, lodging, other allowances and facilities;

(d) \$656.25 per week on and after December 31, 2014, inclusive of board, lodging, other allowances and facilities;

(e) \$675.00 per week on and after December 31, 2015, inclusive of board, lodging, other allowances and facilities](a) New York City for

(1) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;

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\$787.50 per week on and after December 31, 2016;

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\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(c) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(3) Professional. Work in a *bona fide ... professional capacity* means work by an individual:

(i) whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(ii) whose work requires the consistent exercise of discretion and judgment in its performance; or

(iii) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) *Outside salesperson*. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

(1) making sales; or

(2) selling and delivering articles or goods; or

(3) obtaining orders or contracts for service or for the use of facilities.

(d) *Taxicab driver*. The term *driver engaged in operating a taxicab* means an individual employed to drive an automobile equipped to carry no more than seven passengers, which is used in the business of carrying or transporting passengers for hire on a zone or meter fare basis, and the use of which is generally limited to a

community's local transportation needs and which is not operated over fixed routes, or between fixed terminals, or under contract.

(e) *Volunteer*. The term *volunteer* means a person who works for a nonprofitmaking institution under no contract of hire, express or implied, and with no promise of compensation, other than reimbursement for expenses as part of the conditions of work.

(f) *Learner*. (1) The term *learner* means a person who is participating in a bona fide training program for an occupation in which such person is employed, the required training period for which is recognized to be at least two weeks.

(2) A bona fide training program is one which must involve either formal instruction or on- the-job training during a period when the learner is entrusted with limited responsibility and is under supervision or guidance.

(3) No person shall be deemed a learner at an institution in an occupation for which he or she has completed the required training; and in no case may a person be deemed a learner in such an occupation at an institution after 10 weeks of such training, except that a person may be deemed a learner for a longer period if the commissioner finds after investigation that for the particular occupation a minimum of proficiency cannot be acquired in 10 weeks.

(g) *Apprentice*. (1) The term *apprentice* means a person whose work at an institution:

(i) is in an apprenticeable trade or occupation, and

(ii) is part of a bona fide training program leading to qualification as a journeyman in the trade or occupation.

(2) No such apprentice training program shall be deemed bona fide unless it meets all of the following:

(i) it is for an occupation which is on either the Federal or New York State list of apprenticeable trades and occupations or is commonly recognized as such, but shall not include any of the following:

(a) occupations in the distributive field;

(b) managerial occupations;

(c) clerical occupations;

(d) professional or semi-professional occupations (occupations for which entrance requirements customarily include education of college level);

(ii) it requires at least two years (4,000 hours) of work experience;

(iii) it provides for a schedule of work processes or operations in which experience is to be given the apprentice on the job;

(iv) it involves the development of skill sufficiently broad to be applicable in like occupations rather than to be limited to the requirements of one institution;

(v) the employer keeps and makes available written evidence of the apprenticeship agreement or a detailed schedule of work processes and wages.

(h) *Religious order*. The term *religious order* means a group of persons who are joined together under the authority of a religious leader and are dedicated to the performance of religious works.

(i) *Sexton*. The term *sexton* means an individual who works as a caretaker at a place where religious services are held, or whose duties at such place are solely of a religious nature, or whose duties are partly religious and partly as a caretaker.

(j) *Work in return for charitable aid*. The term *work ... incidental to or in return for charitable aid conferred* means any work or duties performed by a person who is not under any express contract of hire, in or for a nonprofitmaking religious or charitable institution as a means of discharging an obligation to such an institution for charitable aid given to the worker.

(k) *Student in or for a nonprofitmaking institution*. The term *student* means an individual who is enrolled in and regularly attends during the daytime a course of instruction leading to a degree, certificate, or diploma offered at an institution of learning, or who is completing residence requirements for a degree. A person is deemed to be a student during the time that school is not in session if such person was a student during the preceding semester.

(l) *Impairment of earning capacity*. The phrase, *earning capacity ... is impaired by ... age, or by physical or mental deficiency or injury*, applies to a person whose earning capacity for the work to which he or she is assigned to perform is impaired by age, or by physical or mental deficiency or injury; but a person's earning capacity may not be deemed impaired by age until such person's 65th birthday.

(m) *Staff counselor in a children's camp*. (1) A *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision, and care of campers in a children's camp, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes but is not limited to: head counselor, assistant head counselor, specialist counselor or instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp mother, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

(2) *Children's camp* means any establishment which, as a whole or part of its activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs or supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play schools, or by any other name. The term *children's camp* does not include an establishment which is open for a period exceeding 17 consecutive weeks during the year.

(n) *Summer camp or conference for not more than three months annually*. (1) A person who works in not more than 13 calendar weeks in a calendar year in or for a summer camp or conference is deemed to have worked for not more than three months annually. A person who works in more than 13 calendar weeks in a calendar year is deemed to be an employee for the entire period of employment.

(2) A *summer camp or conference* means a camp or conference which is open any part of the period from June 21st to September 21st, and which is operated by a nonprofitmaking institution.

§ 143.2 Election by nonprofitmaking institutions.

An election by a nonprofitmaking institution to pay each of its employees in every occupation a

wage, exclusive of allowances, of not less than the amount specified in subdivision 1 of section 652 of the Labor Law shall be made on a form furnished for this purpose by the commissioner.

§ 143.3 Notice requesting application of minimum wage orders.

A nonprofitmaking institution which, having elected to pay to each of its employees in every occupation a wage, exclusive of allowances, of not less than the statutory minimum wage, wishes to change its election and become subject to minimum wage order coverage shall notify the commissioner in writing, over the signature of an authorized official thereof:

(a) that it requests to have all the provisions of applicable minimum wage orders apply to its employees beginning 60 days from the date of the notice; and

(b) that until such 60th day the institution will continue to pay wages in accordance with the election in effect until such date.

§ 143.4 Revocation of exemption.

(a) An exemption, elected by a nonprofitmaking institution when it certified under oath to the commissioner to pay to each of its employees in every occupation a wage, exclusive of allowances, of not less than the statutory minimum hourly rate may be revoked by order of the commissioner if he finds:

(1) that the certification contained misrepresentations; or

(2) that the nonprofitmaking institution has violated the provisions of article 19 applicable to it.

(b) No such order of the commissioner shall be issued unless the nonprofitmaking institution is given an opportunity to be heard by the commissioner. A record will be made of such hearing.

§ 143.5 Employer personnel records requirements for nonprofitmaking institutions.

(a) Every such institution must establish, maintain and preserve for not less than six years, records with respect to each individual permitted to work:

(1) as an apprentice;

(2) as a learner;

(3) in an executive, administrative, or professional capacity;

(4) if the individual is a student;

(5) as a staff counselor;

(6) in or for a summer camp or conference;

(7) if the work performed is not under any express contract of hire and is incidental to or in return for charitable aid conferred on such individual;

(8) if the earning capacity of such individual is impaired by age, physical or mental deficiency or injury.

(b) These records shall contain the following data:

(1) the date of commencement of work;

(2) a statement indicating the classification under which he is permitted to work;

(3) the nature of work performed; and

(i) for an apprentice, a copy of the apprentice program and agreement;

(ii) for a learner, a statement as to the nature and extent of the instruction and supervision;

(iii) for an individual permitted to work in return for charitable aid conferred, a statement as to the dates, nature and extent of the charitable aid conferred;

(iv) for an individual permitted to work whose earning capacity for the work to which he is assigned is impaired by age, physical or mental deficiency or injury:

(a) a statement as to the age;

(b) a report from a doctor or other competent authority concerning the nature and extent of the deficiency or injury;

(c) a statement as to the manner in which, and extent to which age, deficiency or injury impairs the earning capacity for the work to which he is assigned.

§ 143.6 Employer payroll records.

(a) Every nonprofitmaking institution employing persons within New York State shall establish, maintain, and preserve for not less than six years, records:

(1) for each employee; and

(2) for each individual permitted to work whose earning capacity is impaired by age, physical or mental deficiency, or injury; and

(3) for each individual permitted to work as a learner.

(b) These records shall contain the following data:

(1) name and address;

(2) social security number, if any;

(3) a record of hours worked during each payroll period (time cards, time sheets, etc.);

(4) a record for each payroll period of:

(i) the amount of gross wages;

(ii) deductions, if any;

(iii) amount of cash wages.

(c) Every such institution employing persons in an executive or administrative capacity shall establish, maintain, and preserve for not less than six years records which will show for each such individual:

(1) name and address;

(2) social security number, if any;

(3) total wages and the value of allowances, if any, for each payroll period.

(d) Employers, including those who maintain their records containing the information required by this section at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the commissioner at a place within New York State specified by the commissioner.

§ 143.7 An hour.

The term *an hour* shall include each hour an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee—one who lives on the premises of the employer—shall not be deemed to be permitted to work or required to be available for work:

(a) during such employee's normal sleeping hours solely because he or she is required to be on call during such hours;

(b) at any other time when he or she is free to leave the place of employment.

§ 143.8 Allowances.

The term *allowances* means any deduction for gratuities, and any charge or deduction for meals, lodging, apparel, and other such items, services and facilities furnished by an employer to an employee when the employee must utilize such items, services or facilities as a condition of his employment.

PART 146
HOSPITALITY INDUSTRY

Subpart 146-1 Minimum Wage Rates

Subpart 146-2 Regulations

Subpart 146-3 Definitions

SUBPART 146-1
MINIMUM WAGE RATES

Sec.

- 146-1.1 Application
- 146-1.2 Basic minimum hourly rate
- 146-1.3 Tip credits
- 146-1.4 Overtime hourly rates
- 146-1.5 Call-in pay
- 146-1.6 Spread of hours greater than 10 in restaurants and non-resort hotels
- 146-1.7 Uniform maintenance pay
- 146-1.8 Costs of purchasing required uniforms
- 146-1.9 Credits for meals and lodging

§ 146-1.1. Application.

(a) Every employer in the hospitality industry must pay to each employee, as defined in this Part, at least the minimum wage rates provided in this Part.

(b) The rates provided herein shall apply, unless otherwise stated, on and after January 1, 2011.

§ 146-1.2. Basic minimum hourly rate.

(a) The basic minimum hourly rate[, except for fast food employees,] shall be, for each hour worked by: [(1) \$7.25 per hour on and after January 1, 2011;

(2) \$8.00 per hour on and after December 31, 2013;

(3) \$8.75 per hour on and after December 31, 2014;

(4) \$9.00 per hour on and after December 31, 2015.]

(1) Employees, other than fast food employees, in

(i) New York City for

(a) Large employers of eleven or more employees

\$11.00 per hour on and after December 31, 2016;

\$13.00 per hour on and after December 31, 2017;

\$15.00 per hour on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$10.50 per hour on and after December 31, 2016;

\$12.00 per hour on and after December 31, 2017;
\$13.50 per hour on and after December 31, 2018;
\$15.00 per hour on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$10.00 per hour on and after December 31, 2016;
\$11.00 per hour on and after December 31, 2017;
\$12.00 per hour on and after December 31, 2018;
\$13.00 per hour on and after December 31, 2019;
\$14.00 per hour on and after December 31, 2020;
\$15.00 per hour on and after December 31, 2021,

(iii) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)

\$9.70 per hour on and after December 31, 2016;
\$10.40 per hour on and after December 31, 2017;
\$11.10 per hour on and after December 31, 2018;
\$11.80 per hour on and after December 31, 2019;
\$12.50 per hour on and after December 31, 2020.

[(b) The basic minimum hourly rate for fast food employees employed in the City of New York shall be:](2) Fast food employees in

(i) New York City

[(1) \$10.50 per hour on and after December 31, 2015;]
[(2)]\$12.00 per hour on and after December 31, 2016;
[(3)]\$13.50 per hour on and after December 31, 2017;
[(4)]\$15.00 per hour on and after December 31, 2018.

[(c) The basic minimum hourly rate for fast food employees employed outside of the City of New York shall be:](ii) Outside of New York City

[(1) \$10.50 per hour on and after December 31, 2015;
(2)]\$10.75 per hour on and after December 31, 2016;
[(3)]\$11.75 per hour on and after December 31, 2017;
[(4)]\$12.75 per hour on and after December 31, 2018;
[(5)]\$13.75 per hour on and after December 31, 2019;
[(6)]\$14.50 per hour on and after December 31, 2020;
[(7)]\$15.00 per hour on and after July 1, 2021.

[(d)b] If a higher wage is established by federal law pursuant to 29 U.S.C. section 206 or any successor provisions, such wage shall apply.

§ 146-1.3. Tip credits.

An employer may take a credit towards the basic minimum hourly rate if a service employee or food service worker receives enough tips and if the employee has been notified of the tip credit as required in section 146-2.2 of this Part. Such employees shall be considered “tipped employees.”

(a) *Tip credits for service employees.* [(1) On and after January 1, 2011, a service employee shall receive a wage of at least \$5.65 per hour, and credit for tips shall not exceed \$1.60 per hour provided that the total of tips received plus wages equals or exceeds \$7.25 per hour. FOR RESORT HOTELS ONLY, a service employee shall receive a wage of at least \$4.90 per hour, and credit for tips shall not exceed \$2.35 per hour, if the weekly average of tips is at least \$4.10 per hour.

(2) On and after December 31, 2013, a service employee shall receive a wage of at least \$5.65 per hour, and credit for tips shall not exceed \$2.35 per hour, provided that the total of tips received plus wages equals or exceeds \$8.00 per hour. FOR RESORT HOTELS ONLY, a service employee shall receive a wage of at least \$4.90 per hour, and credit for tips shall not exceed \$3.10 per hour, if the weekly average of tips is at least \$4.50 per hour.

(3) On and after December 31, 2014, a service employee shall receive a wage of at least \$5.65 per hour, and credit for tips shall not exceed \$3.10 per hour, provided that the total of tips received plus wages equals or exceeds \$8.75 per hour. FOR RESORT HOTELS ONLY, a service employee shall receive a wage of at least \$4.90 per hour, and credit for tips shall not exceed \$3.85 per hour, if the weekly average of tips is at least \$4.90 per hour.

(4) On and after December 31, 2015, a service employee shall receive a wage of at least [\$7.50 per hour] the hourly Cash Wage rate listed below, and credit for tips shall not exceed [\$1.50 per hour]the hourly Credit rate listed below, provided that the weekly average of tips is at least the hourly Tip Threshold rate listed below and the total of tips received plus wages equals or exceeds [\$9.00 per hour. FOR RESORT HOTELS ONLY, a service employee shall receive a wage of at least \$7.50 per hour, and credit for tips shall not exceed \$4.10 per hour, if the weekly average of tips received equal or exceed at least \$5.05 per hour. the basic minimum hourly rate pursuant to section 146-1.2 of this Subpart.

(1) General. For service employees (other than at resort hotels) employed in

(i) New York City by

(a) Large Employers of eleven or more employees

\$9.15 Cash Wage, \$1.85 Credit, \$2.40 Tip Threshold on and after December 31, 2016;
\$10.85 Cash Wage, \$2.15 Credit, \$2.80 Tip Threshold on and after December 31, 2017;
\$12.50 Cash Wage, \$2.50 Credit, \$3.25 Tip Threshold on and after December 31, 2018;

(b) Small Employer of ten or fewer employees

\$8.75 Cash Wage, \$1.75 Credit, \$2.30 Tip Threshold on and after December 31, 2016;
\$10.00 Cash Wage, \$2.00 Credit, \$2.60 Tip Threshold on and after December 31, 2017;
\$11.25 Cash Wage, \$2.25 Credit, \$2.95 Tip Threshold on and after December 31, 2018;
\$12.50 Cash Wage, \$2.50 Credit, \$3.25 Tip Threshold on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$8.35 Cash Wage, \$1.65 Credit, \$2.15 Tip Threshold on and after December 31, 2016;
\$9.15 Cash Wage, \$1.85 Credit, \$2.40 Tip Threshold on and after December 31, 2017;
\$10.00 Cash Wage, \$2.00 Credit, \$2.60 Tip Threshold on and after December 31, 2018;
\$10.85 Cash Wage, \$2.15 Credit, \$2.80 Tip Threshold on and after December 31, 2019;
\$11.65 Cash Wage, \$2.35 Credit, \$3.05 Tip Threshold on and after December 31, 2020;
\$12.50 Cash Wage, \$2.50 Credit, \$3.25 Tip Threshold on and after December 31, 2021;

(iii) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)

\$8.10 Cash Wage, \$1.60 Credit, \$2.10 Tip Threshold on and after December 31, 2016;
\$8.65 Cash Wage, \$1.75 Credit, \$2.25 Tip Threshold on and after December 31, 2017;
\$9.25 Cash Wage, \$1.85 Credit, \$2.40 Tip Threshold on and after December 31, 2018;
\$9.85 Cash Wage, \$1.95 Credit, \$2.55 Tip Threshold on and after December 31, 2019;
\$10.40 Cash Wage, \$2.10 Credit, \$2.70 Tip Threshold on and after December 31, 2020.

(2) Resorts. For service employees at resort hotels only, employed in

(i) New York City by

(a) Large employers of eleven or more employees

\$9.15 Cash Wage, \$1.85 Credit, \$6.15 Tip Threshold on and after December 31, 2016;
\$10.85 Cash Wage, \$2.15 Credit, \$7.30 Tip Threshold on and after December 31, 2017;
\$12.50 Cash Wage, \$2.50 Credit, \$8.40 Tip Threshold on and after December 31, 2018;

(b) Small Employer of ten or fewer employees

\$8.75 Cash Wage, \$1.75 Credit, \$5.90 Tip Threshold on and after December 31, 2016;
\$10.00 Cash Wage, \$2.00 Credit, \$6.75 Tip Threshold on and after December 31, 2017;
\$11.25 Cash Wage, \$2.25 Credit, \$7.60 Tip Threshold on and after December 31, 2018;
\$12.50 Cash Wage, \$2.50 Credit, \$8.40 Tip Threshold on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$8.35 Cash Wage, \$1.65 Credit, \$5.60 Tip Threshold on and after December 31, 2016;
\$9.15 Cash Wage, \$1.85 Credit, \$6.15 Tip Threshold on and after December 31, 2017;
\$10.00 Cash Wage, \$2.00 Credit, \$6.75 Tip Threshold on and after December 31, 2018;
\$10.85 Cash Wage, \$2.15 Credit, \$7.30 Tip Threshold on and after December 31, 2019;
\$11.65 Cash Wage, \$2.35 Credit, \$7.85 Tip Threshold on and after December 31, 2020;
\$12.50 Cash Wage, \$2.50 Credit, \$8.40 Tip Threshold on and after December 31, 2021.

(iii) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)

\$8.10 Cash Wage, \$1.60 Credit, \$5.45 Tip Threshold on and after December 31, 2016;
\$8.65 Cash Wage, \$1.75 Credit, \$5.85 Tip Threshold on and after December 31, 2017;
\$9.25 Cash Wage, \$1.85 Credit, \$6.25 Tip Threshold on and after December 31, 2018;
\$9.85 Cash Wage, \$1.95 Credit, \$6.60 Tip Threshold on and after December 31, 2019;
\$10.40 Cash Wage, \$2.10 Credit, \$7.00 Tip Threshold on and after December 31, 2020.

(b) *Tip credits for food service workers.* [(1) On and after January 1, 2011, a food service worker shall receive a wage of at least \$5.00 per hour, and credit for tips shall not exceed \$2.25 per hour, provided that the total of tips received plus the wages equals or exceeds \$7.25 per hour.

(2) On and after December 31, 2013, a food service worker shall receive a wage of at least \$5.00 per hour, and credit for tips shall not exceed \$3.00 per hour, provided that the total of tips received plus the wages equals or exceeds \$8.00 per hour.

(3) On and after December 31, 2014, a food service worker shall receive a wage of at least \$5.00 per hour, and credit for tips shall not exceed \$3.75 per hour, provided that the total of tips received plus the wages equals or exceeds \$8.75 per hour.

(4) On and after December 31, 2015, a]A food service worker shall receive a wage of at least[\$7.50 per hour] the hourly Cash Wage rate listed below, and credit for tips shall not exceed[\$1.50 per hour]the hourly Credit rate listed below, provided that the total of tips received plus the wages equals or exceeds[\$9.00 per hour.] the hourly Total rate listed below when working in:

(1) New York City for

(i) Large Employers of eleven or more employees

\$7.50 Cash Wage, \$3.50 Credit, \$11.00 Total on and after December 31, 2016;
\$8.65 Cash Wage, \$4.35 Credit, \$13.00 Total on and after December 31, 2017;
\$10.00 Cash Wage, \$5.00 Credit, \$15.00 Total on and after December 31, 2018;

(ii) Small Employers of ten or fewer employees

\$7.50 Cash Wage, \$3.00 Credit, \$10.50 Total on and after December 31, 2016;
\$8.00 Cash Wage, \$4.00 Credit, \$12.00 Total on and after December 31, 2017;
\$9.00 Cash Wage, \$4.50 Credit, \$13.50 Total on and after December 31, 2018;
\$10.00 Cash Wage, \$5.00 Credit, \$15.00 Total on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$7.50 Cash Wage, \$2.50 Credit, \$10.00 Total on and after December 31, 2016;
\$7.50 Cash Wage, \$3.50 Credit, \$11.00 Total on and after December 31, 2017;
\$8.00 Cash Wage, \$4.00 Credit, \$12.00 Total on and after December 31, 2018;
\$8.65 Cash Wage, \$4.35 Credit, \$13.00 Total on and after December 31, 2019;
\$9.35 Cash Wage, \$4.65 Credit, \$14.00 Total on and after December 31, 2020;
\$10.00 Cash Wage, \$5.00 Credit, \$15.00 Total on and after December 31, 2021;

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)

\$7.50 Cash Wage, \$2.20 Credit, \$9.70 Total on and after December 31, 2016;
\$7.50 Cash Wage, \$2.90 Credit, \$10.40 Total on and after December 31, 2017;
\$7.50 Cash Wage, \$3.60 Credit, \$11.10 Total on and after December 31, 2018;
\$7.85 Cash Wage, \$3.95 Credit, \$11.80 Total on and after December 31, 2019;
\$8.35 Cash Wage, \$4.15 Credit, \$12.50 Total on and after December 31, 2020.

(c) Tip credit for fast food employees. No tip credit is permitted for fast food employees.

§ 146-1.4. Overtime hourly rates.

An employer shall pay an employee for overtime at a wage rate of 1½ times the employee's regular rate for hours worked in excess of 40 hours in one workweek. When an employer is taking a credit toward the basic minimum hourly rate pursuant to section 146-1.3 of this Subpart, the overtime rate shall be the employee's regular rate of pay before subtracting any tip credit, multiplied by 1½, minus the tip credit. It is a violation of

the overtime requirement for an employer to subtract the tip credit first and then multiply the reduced rate by one and one half.

Example 1: Non-tipped employee (when the basic minimum hourly rate is less than or equal to \$10.00). An employee regularly paid \$10 per hour who works 50 hours in a workweek:

| | |
|--------------------|---|
| Regular rate: | \$10.00 per hour |
| Overtime rate: | $\$10.00 \times 1.5 = \15.00 per hour |
| Wage for 40 hours: | $\$10.00 \times 40 = \400.00 |
| Wage for 10 hours: | $\$15.00 \times 10 = \150 |
| | Total \$550.00 |

Example 2: Tipped employee ([on and after January 1, 2011, and prior to December 31, 2013]when the basic minimum wage was \$5.00, and the maximum tip credit was \$2.25, for food service workers). A food service worker regularly paid \$7.25 per hour minus a tip credit of \$2.25 per hour, for a wage rate of \$5.00 per hour, who works 50 hours in a workweek:

| | |
|-------------------------|--|
| Regular rate: | \$7.25 per hour |
| Overtime rate: | $\$7.25 \times 1.5 = \10.875 per hour |
| Wage rate for 40 hours: | $\$7.25 - \$2.25 = \$5.00$ per hour |
| Wage rate for 10 hours: | $\$10.875 - \$2.25 = \$8.625$ per hour |
| Wages for the workweek: | $\$5.00 \times 40 \text{ hours} = \200.00 |
| | $\$8.625 \times 10 \text{ hours} = \underline{\$ 86.25}$ |
| | Total \$286.25 |

Alternative calculation:

| | |
|--------------------------|---|
| Wages for the work week: | $\$7.25 \times 40 \text{ hours} = \290.00 |
| | $\$10.875 \times 10 \text{ hours} = \underline{\$108.75}$ |
| | Subtotal \$398.75 |
| Minus tip credit | $\$2.25 \times 50 \text{ hours} = - 112.50$ |
| | Total \$286.25 |

§ 146-1.5. Call-in pay.

(a) An employee who by request or permission of the employer reports for duty on any day, whether or not assigned to actual work, shall be paid at the applicable wage rate:

(1) for at least three hours for one shift, or the number of hours in the regularly scheduled shift, whichever is less;

(2) for at least six hours for two shifts totaling six hours or less, or the number of hours in the regularly scheduled shift, whichever is less; and

(3) for at least eight hours for three shifts totaling eight hours or less, or the number of hours in the regularly scheduled shift, whichever is less.

(b) For purposes of this section, *applicable wage rate* shall mean:

(1) Payment for time of actual attendance calculated at the employee's regular or overtime rate of pay, whichever is applicable, minus any customary and usual tip credit;

(2) Payment for the balance of the period calculated at the basic minimum hourly rate with no tip credit subtracted. Payment for the balance of the period is not payment for time worked or work performed and need not be included in the regular rate for the purpose of calculating overtime pay.

(c) Call-in pay shall not be offset by any credits for meals or lodging provided to the employee.

(d) A *regularly scheduled shift* is a fixed, repeating shift that an employee normally works on the same day of each week. If an employee's total hours worked or scheduled to work on a given day of the week change from week to week, there is no regularly scheduled shift.

(e) This section shall apply to all employees, regardless of a given employee's regular rate of pay.

§ 146-1.6. Spread of hours greater than 10 in restaurants and all-year hotels.

The *spread of hours* is the length of the interval between the beginning and end of an employee's workday. The spread of hours for any day includes working time plus time off for meals plus intervals off duty. Examples of a spread of hours greater than 10 are: 7 a.m. – 10 a.m., 7 p.m. – 10 p.m. = 6 hours worked but a 15 hour spread; 11:30 a.m. – 3 p.m., 4 p.m. – 10:00 p.m. = 9½ hours worked but a 10½ hour spread.

(a) On each day on which the spread of hours exceeds 10, an employee shall receive one additional hour of pay at the basic minimum hourly rate.

(b) The additional hour of pay shall not be offset by any credits for meals or lodging provided to the employee.

(c) The additional hour of pay is not a payment for time worked or work performed and need not be included in the regular rate for the purpose of calculating overtime pay.

(d) This section shall apply to all employees in restaurants and all-year hotels, regardless of a given employee's regular rate of pay.

§ 146-1.7. Uniform maintenance pay.

Maintaining required uniforms includes washing, ironing, dry cleaning, alterations, repair, or any other maintenance necessary.

(a) Where an employer does not maintain required uniforms for any employee, the employer shall pay the employee, in addition to the employee's agreed rate of pay, uniform maintenance pay[of] at the weekly rate set forth below, based on the number of hours worked, where employees who work over 30 hours per week shall be paid the High rate, employees who work more than 20 hours but fewer than 30 hours shall be paid the Medium rate and employees who work 20 hours or fewer shall be paid the Low rate for work performed in:

[(1) on and after January 1, 2011: \$9.00 per week for work weeks over 30 hours, \$7.10 per week for work weeks of more than 20 but not more than 30 hours, and \$4.30 per week for work weeks of 20 hours or less;

(2) on and after December 31, 2013: \$9.95 per week for work weeks over 30 hours, \$7.85 per week for work weeks of more than 20 but not more than 30 hours, and \$4.75 per week for work weeks of 20 hours or less;

(3) on and after December 31, 2014: \$10.90 per week for work weeks over 30 hours, \$8.60 per week for work weeks of more than 20 but not more than 30 hours, and \$5.20 per week for work weeks of 20 hours or less;

(4) on and after December 31, 2015: \$11.20 per week for work weeks over 30 hours, \$8.85 per week for work weeks of more than 20 but not more than 30 hours, and \$5.35 per week for work weeks of 20 hours or less.](1) New York City for

(i) Large employers of eleven or more employees

\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2016;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2017;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$13.05 High, \$10.35 Medium, \$6.25 Low on and after December 31, 2016;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2017;
\$16.80 High, \$13.30 Medium, \$8.05 Low on and after December 31, 2018;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$12.45 High, \$9.85 Medium, \$5.95 Low on and after December 31, 2016;
\$13.70 High, \$10.80 Medium, \$6.55 Low on and after December 31, 2017;
\$14.95 High, \$11.80 Medium, \$7.15 Low on and after December 31, 2018;
\$16.20 High, \$12.80 Medium, \$7.75 Low on and after December 31, 2019;
\$17.40 High, \$13.75 Medium, \$8.30 Low on and after December 31, 2020;
\$18.65 High, \$14.75 Medium, \$8.90 Low on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$12.05 High, \$9.55 Medium, \$5.75 Low on and after December 31, 2016;
\$12.95 High, \$10.25 Medium, \$6.20 Low on and after December 31, 2017;
\$13.80 High, \$10.90 Medium, \$6.60 Low on and after December 31, 2018;
\$14.70 High, \$11.60 Medium, \$7.00 Low on and after December 31, 2019;
\$15.55 High, \$12.30 Medium, \$7.45 Low on and after December 31, 2020.

(b) *Wash and wear exception to uniform maintenance pay.* An employer will not be required to pay the uniform maintenance pay, where required uniforms

(1) are made of “wash and wear” materials;

(2) may be routinely washed and dried with other personal garments;

(3) do not require ironing, dry cleaning, daily washing, commercial laundering, or other special treatment; and

(4) are furnished to the employee in sufficient number, or the employee is reimbursed by the employer for the purchase of a sufficient number of uniforms, consistent with the average number of days per week worked by the employee.

(c) *Employee chooses not to use employer-provided laundry service.* The employer will not be required to pay uniform maintenance pay to any employee who chooses not to use the employer's service, where an employer:

- (1) launders required uniforms free of charge and with reasonable frequency;
- (2) ensures the availability of an adequate supply of clean, properly-fitting uniforms; and
- (3) informs employees individually in writing of such service.

(d) Uniform maintenance pay shall not be offset by any credits for meals or lodging provided to the employee.

(e) This section shall apply to all employees, regardless of a given employee's regular rate of pay.

§ 146-1.8 Costs of purchasing required uniforms.

(a) When an employee purchases a required uniform, he or she shall be reimbursed by the employer for the total cost of the uniform no later than the next payday. Employers may not avoid such costs by requiring employees to obtain uniforms before starting the job.

(b) Where the employer furnishes to the employees free of charge, or reimburses the employees for purchasing, enough uniforms for an average workweek, and an employee chooses to purchase additional uniforms in excess of the number needed, the employer will not be required to reimburse the employee for the cost of purchasing the additional uniforms.

(c) This section shall apply to all employees, regardless of a given employee's regular rate of pay.

§ 146-1.9. Credits for meals and lodging.

Meals and/or lodging provided by an employer to an employee may be considered part of the wages paid to the employee but shall be valued at no more than the amounts given below.

(a) *Meal credits in restaurants and all-year hotels.* (1) Meals furnished by an employer to an employee may be considered part of the wages but shall be valued at no more than the per meal amounts listed below at the Food Service rate for food service workers, the Service rate for service employees, and the Other rate for non-service employees for work performed in:

- (i) \$2.50 per meal for all workers, on and after January 1, 2011;
- (ii) \$2.75 per meal for non-service employees, on and after December 31, 2013;
- (iii) \$3.00 per meal for non-service employees, on and after December 31, 2014;

(iv) \$3.10 per meal for non-service employees, on and after December 31, 2015.]

(i) New York City for

(a) Large employers of eleven or more employees

\$2.85 Food Service, \$3.05 Service, \$3.80 Other per meal on and after December 31, 2016;
\$3.25 Food Service, \$3.60 Service, \$4.50 Other per meal on and after December 31, 2017;
\$3.60 Food Service, \$4.15 Service, \$5.15 Other per meal on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$2.80 Food Service, \$2.90 Service, \$3.60 Other per meal on and after December 31, 2016;
\$3.05 Food Service, \$3.35 Service, \$4.15 Other per meal on and after December 31, 2017;
\$3.35 Food Service, \$3.75 Service, \$4.65 Other per meal on and after December 31, 2018;
\$3.60 Food Service, \$4.15 Service, \$5.15 Other per meal on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$2.70 Food Service, \$2.80 Service, \$3.45 Other per meal on and after December 31, 2016;
\$2.85 Food Service, \$3.05 Service, \$3.80 Other per meal on and after December 31, 2017;
\$3.05 Food Service, \$3.35 Service, \$4.15 Other per meal on and after December 31, 2018;
\$3.25 Food Service, \$3.60 Service, \$4.50 Other per meal on and after December 31, 2019;
\$3.45 Food Service, \$3.90 Service, \$4.80 Other per meal on and after December 31, 2020;
\$3.60 Food Service, \$4.15 Service, \$5.15 Other per meal on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$2.65 Food Service, \$2.70 Service, \$3.35 Other per meal on and after December 31, 2016;
\$2.75 Food Service, \$2.90 Service, \$3.60 Other per meal on and after December 31, 2017;
\$2.90 Food Service, \$3.10 Service, \$3.80 Other per meal on and after December 31, 2018;
\$3.00 Food Service, \$3.30 Service, \$4.05 Other per meal on and after December 31, 2019;
\$3.15 Food Service, \$3.45 Service, \$4.30 Other per meal on and after December 31, 2020.

(2) A credit for more than one meal shall not be permitted for any employee working less than 5 hours on any day.

(3) A credit for more than two meals shall not be permitted for any other employee on any day, except that a credit of one meal per shift may be permitted for an employee working on a split shift.

(b) *Lodging credits in restaurants.* [(1)]Lodging furnished by an employer to an employee may be considered part of wages but shall be valued at no more than the daily or weekly amounts listed below at the Food Service rate for food service workers, the Service rate for service employees, and the Other rate for non-service employees:

(i) \$1.50 per day for food service workers and \$1.75 per day for all other workers; or \$9.60 per week for food service workers and \$11.30 per week for all other workers on and after January 1, 2011;

(ii) \$1.95 per day or \$12.45 per week for non-service employees on and after December 31, 2013;

(iii) \$2.15 per day or \$13.60 per week non-service employees on and after December 31, 2014;

(iv) \$2.20 per day or \$14.00 per week for non-service employees on and after December 31, 2015.](1)
Daily, for work performed in

(i) New York City for

(a) Large employers of eleven or more employees

\$1.70 Food Service, \$2.15 Service, \$2.70 Other on and after December 31, 2016;
\$1.95 Food Service, \$2.55 Service, \$3.20 Other on and after December 31, 2017;
\$2.15 Food Service, \$2.90 Service, \$3.65 Other on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$1.65 Food Service, \$2.05 Service, \$2.55 Other on and after December 31, 2016;
\$1.85 Food Service, \$2.35 Service, \$2.95 Other on and after December 31, 2017;
\$2.00 Food Service, \$2.65 Service, \$3.30 Other on and after December 31, 2018;
\$2.15 Food Service, \$2.90 Service, \$3.65 Other on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$1.60 Food Service, \$1.95 Service, \$2.45 Other on and after December 31, 2016;
\$1.70 Food Service, \$2.15 Service, \$2.70 Other on and after December 31, 2017;
\$1.85 Food Service, \$2.35 Service, \$2.95 Other on and after December 31, 2018;
\$1.95 Food Service, \$2.55 Service, \$3.20 Other on and after December 31, 2019;
\$2.05 Food Service, \$2.70 Service, \$3.40 Other on and after December 31, 2020;
\$2.15 Food Service, \$2.90 Service, \$3.65 Other on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$1.60 Food Service, \$1.90 Service, \$2.35 Other on and after December 31, 2016;
\$1.65 Food Service, \$2.00 Service, \$2.55 Other on and after December 31, 2017;
\$1.75 Food Service, \$2.15 Service, \$2.70 Other on and after December 31, 2018;
\$1.80 Food Service, \$2.30 Service, \$2.90 Other on and after December 31, 2019;
\$1.90 Food Service, \$2.45 Service, \$3.05 Other on and after December 31, 2020.

(2) Weekly, for work performed in

(i) New York City

(a) Large employers of eleven or more employees

\$11.00 Food Service, \$13.80 Service, \$17.10 Other on and after December 31, 2016;
\$12.45 Food Service, \$16.30 Service, \$20.20 Other on and after December 31, 2017;
\$13.85 Food Service, \$18.85 Service, \$23.35 Other on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$10.65 Food Service, \$13.20 Service, \$16.35 Other on and after December 31, 2016;

\$11.75 Food Service, \$15.05 Service, \$18.65 Other on and after December 31, 2017;
\$12.80 Food Service, \$16.95 Service, \$21.00 Other on and after December 31, 2018;
\$13.85 Food Service, \$18.85 Service, \$23.35 Other on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$10.30 Food Service, \$12.55 Service, \$15.55 Other on and after December 31, 2016;
\$11.00 Food Service, \$13.80 Service, \$17.10 Other on and after December 31, 2017;
\$11.75 Food Service, \$15.05 Service, \$18.65 Other on and after December 31, 2018;
\$12.45 Food Service, \$16.30 Service, \$20.20 Other on and after December 31, 2019;
\$13.15 Food Service, \$17.60 Service, \$21.80 Other on and after December 31, 2020;
\$13.85 Food Service, \$18.85 Service, \$23.35 Other on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$10.10 Food Service, \$12.20 Service, \$15.10 Other on and after December 31, 2016;
\$10.60 Food Service, \$13.05 Service, \$16.20 Other on and after December 31, 2017;
\$11.10 Food Service, \$13.95 Service, \$17.25 Other on and after December 31, 2018;
\$11.60 Food Service, \$14.80 Service, \$18.35 Other on and after December 31, 2019;
\$12.10 Food Service, \$15.70 Service, \$19.45 Other on and after December 31, 2020.

(c) *Lodging credits in all-year hotels.* [(1)]Lodging furnished by an employer to an employee in an all-year hotel may be considered part of wages but shall be valued at no more than the hourly amounts listed below at the Food Service rate for food service workers, the Service rate for service employees, and the Other rate for non-service employees for work performed in:

(i) \$0.35 per hour on and after January 1, 2011;

(ii) \$0.40 per hour for non-service employees on and after December 31, 2013;

(iii) \$0.45 per hour for non-service employees on and after December 31, 2014.](1) New York City for

(i) Large employers of eleven or more employees

\$0.40 Food Service, \$0.45 Service, \$0.55 Other per hour on and after December 31, 2016;
\$0.45 Food Service, \$0.50 Service, \$0.65 Other per hour on and after December 31, 2017;
\$0.50 Food Service, \$0.60 Service, \$0.75 Other per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$0.40 Food Service, \$0.40 Service, \$0.55 Other per hour on and after December 31, 2016;
\$0.45 Food Service, \$0.45 Service, \$0.60 Other per hour on and after December 31, 2017;
\$0.45 Food Service, \$0.55 Service, \$0.70 Other per hour on and after December 31, 2018;
\$0.50 Food Service, \$0.60 Service, \$0.75 Other per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$0.40 Food Service, \$0.40 Service, \$0.50 Other per hour on and after December 31, 2016;
\$0.40 Food Service, \$0.45 Service, \$0.55 Other per hour on and after December 31, 2017;
\$0.45 Food Service, \$0.45 Service, \$0.60 Other per hour on and after December 31, 2018;

\$0.45 Food Service, \$0.50 Service, \$0.65 Other per hour on and after December 31, 2019;
\$0.50 Food Service, \$0.55 Service, \$0.70 Other per hour on and after December 31, 2020;
\$0.50 Food Service, \$0.60 Service, \$0.75 Other per hour on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$0.35 Food Service, \$0.40 Service, \$0.50 Other per hour on and after December 31, 2016;
\$0.40 Food Service, \$0.40 Service, \$0.50 Other per hour on and after December 31, 2017;
\$0.40 Food Service, \$0.45 Service, \$0.55 Other per hour on and after December 31, 2018;
\$0.40 Food Service, \$0.45 Service, \$0.60 Other per hour on and after December 31, 2019;
\$0.45 Food Service, \$0.50 Service, \$0.65 Other per hour on and after December 31, 2020.

(d) *Meal and lodging credits in resort hotels.* Meals and lodging furnished by an employer to an employee in a resort hotel may be considered part of wages but shall be valued at no more than the amounts listed below at the Tipped rates for food service workers and service employees, the Untipped rates for non-service employees other than fast food employees, and the Fast Food rates for fast food employees for:

(1) Lodging and three meals per day furnished to a residential employee in[:]

[(i) \$13.75 for each day worked by a food service worker and \$16.25 per day for each day worked by all other workers on and after January 1, 2011;

(ii) \$17.95 per day for each day worked by non-service employees on and after December 31, 2013;

(iii) \$19.65 per day for each day worked by non-service employees on and after December 31, 2014;

(iv) \$20.20 per day for each day worked by non-service employees on and after December 31, 2015.](i) New York City for

(a) Large employers of eleven or more employees

\$15.80 Food Service, \$19.85 Service, \$24.70 Other per day on and after December 31, 2016;
\$17.80 Food Service, \$23.45 Service, \$29.20 Other per day on and after December 31, 2017;
\$19.85 Food Service, \$27.10 Service, \$33.65 Other per day on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$15.30 Food Service, \$18.95 Service, \$23.55 Other per day on and after December 31, 2016;
\$16.80 Food Service, \$21.65 Service, \$26.95 Other per day on and after December 31, 2017;
\$18.35 Food Service, \$24.40 Service, \$30.30 Other per day on and after December 31, 2018;
\$19.85 Food Service, \$27.10 Service, \$33.65 Other per day on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$14.75 Food Service, \$18.05 Service, \$22.45 Other per day on and after December 31, 2016;
\$15.80 Food Service, \$19.85 Service, \$24.70 Other per day on and after December 31, 2017;
\$16.80 Food Service, \$21.65 Service, \$26.95 Other per day on and after December 31, 2018;
\$17.80 Food Service, \$23.45 Service, \$29.20 Other per day on and after December 31, 2019;
\$18.85 Food Service, \$25.30 Service, \$31.40 Other per day on and after December 31, 2020;
\$19.85 Food Service, \$27.10 Service, \$33.65 Other per day on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$14.45 Food Service, \$17.50 Service, \$21.75 Other per day on and after December 31, 2016;
\$15.20 Food Service, \$18.80 Service, \$23.35 Other per day on and after December 31, 2017;
\$15.90 Food Service, \$20.05 Service, \$24.90 Other per day on and after December 31, 2018;
\$16.60 Food Service, \$21.30 Service, \$26.50 Other per day on and after December 31, 2019;
\$17.30 Food Service, \$22.55 Service, \$28.05 Other per day on and after December 31, 2020.

(2) Meals furnished to a non-residential employee in[:]

(i) \$2.75 per meal on workdays for a food service worker and \$3.25 per meal on workdays for all other workers on and after January 1, 2011;

(ii) \$3.60 per meal on workdays for non-service employees on and after December 31, 2013;

(iii) \$3.95 per meal on workdays for non-service employees on and after December 31, 2014;

(iv) \$4.05 per meal on workdays for non-service employees on and after December 31, 2015.](i)
New York City for

(a) Large employers of eleven or more employees

\$3.15 Food Service, \$3.95 Service, \$4.95 Other per meal on and after December 31, 2016;
\$3.55 Food Service, \$4.70 Service, \$5.85 Other per meal on and after December 31, 2017;
\$3.95 Food Service, \$5.40 Service, \$6.75 Other per meal on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$3.05 Food Service, \$3.80 Service, \$4.75 Other per meal on and after December 31, 2016;
\$3.35 Food Service, \$4.35 Service, \$5.40 Other per meal on and after December 31, 2017;
\$3.65 Food Service, \$4.90 Service, \$6.10 Other per meal on and after December 31, 2018;
\$3.95 Food Service, \$5.40 Service, \$6.75 Other per meal on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$2.95 Food Service, \$3.60 Service, \$4.50 Other per meal on and after December 31, 2016;
\$3.15 Food Service, \$3.95 Service, \$4.95 Other per meal on and after December 31, 2017;
\$3.35 Food Service, \$4.35 Service, \$5.40 Other per meal on and after December 31, 2018;
\$3.55 Food Service, \$4.70 Service, \$5.85 Other per meal on and after December 31, 2019;
\$3.75 Food Service, \$5.05 Service, \$6.30 Other per meal on and after December 31, 2020;
\$3.95 Food Service, \$5.40 Service, \$6.75 Other per meal on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$2.90 Food Service, \$3.50 Service, \$4.35 Other per meal on and after December 31, 2016;
\$3.05 Food Service, \$3.75 Service, \$4.70 Other per meal on and after December 31, 2017;
\$3.20 Food Service, \$4.00 Service, \$5.00 Other per meal on and after December 31, 2018;
\$3.30 Food Service, \$4.25 Service, \$5.30 Other per meal on and after December 31, 2019;
\$3.45 Food Service, \$4.50 Service, \$5.65 Other per meal on and after December 31, 2020;

(3) Lodging furnished without meals in[:

- (i) \$0.35 per hour on and after January 1, 2011;
- (ii) \$0.40 per hour for non-service employees on and after December 31, 2013;
- (iii) \$0.45 per hour for non-service employees on and after December 31, 2014.]

(i) New York City for

(a) Large employers of eleven or more employees

\$0.40 Food Service, \$0.45 Service, \$0.55 Other per hour on and after December 31, 2016;
\$0.45 Food Service, \$0.50 Service, \$0.65 Other per hour on and after December 31, 2017;
\$0.50 Food Service, \$0.60 Service, \$0.75 Other per hour on and after December 31, 2018;

(b) Small employers of ten or fewer employees

\$0.40 Food Service, \$0.40 Service, \$0.55 Other per hour on and after December 31, 2016;
\$0.45 Food Service, \$0.45 Service, \$0.60 Other per hour on and after December 31, 2017;
\$0.45 Food Service, \$0.55 Service, \$0.70 Other per hour on and after December 31, 2018;
\$0.50 Food Service, \$0.60 Service, \$0.75 Other per hour on and after December 31, 2019;

(ii) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$0.40 Food Service, \$0.40 Service, \$0.50 Other per hour on and after December 31, 2016;
\$0.40 Food Service, \$0.45 Service, \$0.55 Other per hour on and after December 31, 2017;
\$0.45 Food Service, \$0.45 Service, \$0.60 Other per hour on and after December 31, 2018;
\$0.45 Food Service, \$0.50 Service, \$0.65 Other per hour on and after December 31, 2019;
\$0.50 Food Service, \$0.55 Service, \$0.70 Other per hour on and after December 31, 2020;
\$0.50 Food Service, \$0.60 Service, \$0.75 Other per hour on and after December 31, 2021;

(iii) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$0.35 Food Service, \$0.40 Service, \$0.50 Other per hour on and after December 31, 2016;
\$0.40 Food Service, \$0.40 Service, \$0.50 Other per hour on and after December 31, 2017;
\$0.40 Food Service, \$0.45 Service, \$0.55 Other per hour on and after December 31, 2018;
\$0.40 Food Service, \$0.45 Service, \$0.60 Other per hour on and after December 31, 2019;
\$0.45 Food Service, \$0.50 Service, \$0.65 Other per hour on and after December 31, 2020.

**SUBPART 146-2
REGULATIONS**

Sec.

- 146-2.1 Employer records
- 146-2.2 Written notice of pay rates, tip credit and pay day
- 146-2.3 Statement to employee
- 146-2.4 Posting requirements
- 146-2.5 Hourly rates are required
- 146-2.6 Weekly basis of minimum wage
- 146-2.7 Deductions and expenses

- 146-2.8 Meals and lodging
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- 146-2.12 Rehabilitation programs
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- 146-2.19 Administrative charge not purported to be a gratuity, or tip
- 146-2.20 Tips charged on credit cards

§ 146-2.1. Employer records.

(a) Every employer shall establish, maintain and preserve for at least six years weekly payroll records which shall show for each employee:

- (1) name and address;
- (2) social security number or other employee identification number;
- (3) occupational classification;

(4) the number of hours worked daily and weekly, including the time of arrival and departure for each employee working a split shift or spread of hours exceeding 10;

- (5) regular and overtime hourly wage rates;
- (6) the amount of gross wages;
- (7) deductions from gross wages;
- (8) the amount of net wages;
- (9) tip credits, if any, claimed as part of the minimum wage;
- (10) meal and lodging credits, if any, claimed as part of wages;
- (11) money paid in cash; and
- (12) student classification.

(b) The records should also indicate whether the employee has uniforms maintained by the employer.

(c) In addition, for each individual working in an executive, administrative or professional capacity, or as a staff counselor in a children's camp, an employer's records shall also show:

- (1) name and address;

(2) social security number or other employee identification number;

(3) description of occupation; and

(4) for individuals permitted or suffered to work in an executive or administrative capacity, total wages, and the value of meal and lodging credits, if any, for each payroll period.

(d) For each individual for whom student status is claimed, a statement from the school which such individual attends indicating whether or not such individual:

(1) is a student whose course of instruction is one leading to a degree, diploma or certificate; or

(2) is completing residence requirements for a degree; and

(3) is required to obtain supervised and directed vocational experience to fulfill curriculum requirements.

(e) Employers, including those who maintain their records containing the information required by this section, section 146-2.2, section 146-2.17 and section 146-2.18 of this Subpart at a place outside of New York State, shall make such records or sworn certified copies thereof available at the place of employment upon request of the commissioner.

§ 146-2.2. Written notice of pay rates, tip credit and pay day.

(a) Prior to the start of employment, an employer shall give each employee written notice of the employee's regular hourly pay rate, overtime hourly pay rate, the amount of tip credit, if any, to be taken from the basic minimum hourly rate, and the regular payday. The notice shall also state that extra pay is required if tips are insufficient to bring the employee up to the basic minimum hourly rate. The employer must provide notice in:

(1) English; and

(2) any other language spoken by the new employee as his/her primary language, so long as the Commissioner has made such notice available to employers in such language on the Department's website.

(b) Such notice shall also be required prior to any change in the employee's hourly rates of pay.

(c) An acknowledgment of receipt signed by the employee shall be kept on file for six years.

(d) The employer has the burden of proving compliance with the notification provisions of this section. As an example, the employer will have met this burden by providing the employee with the following notice, filled out and subject to revisions in the minimum rates, subject to the language requirements set forth in subdivision (a) of this section, and the employee signs a statement acknowledging that he or she received the notice.

Notice of Pay Rates and Pay Day

Company name and address _____

Preparer's name and title _____

Employee's name and address _____

Your regular rate of pay will be \$_____ per hour for the first 40 hours in a week.

Your overtime rate of pay will be \$_____ per hour for hours over 40.

Your designated pay day will be: _____

FOR TIPPED EMPLOYEES ONLY:

The tip credit taken will be \$_____ per hour.

If you do not receive enough tips over the course of a week to bring you up to the minimum hourly rates of [\$7.25]\$_____ per hour for the first 40 hours and \$[10.875]_____ per hour for hours over 40, you will be paid additional wages that week to make up the difference.

FOR SERVICE EMPLOYEES IN RESORT HOTELS ONLY (if different from rates given above): If your weekly average of tips received is at least \$[4.10]_____ per hour, your regular rate of pay will be \$_____ per hour and your overtime rate of pay will be \$_____ per hour. The tip credit taken will be \$_____ per hour.

Preparer's signature and date _____

I have been notified of my pay rate, overtime rate, tip credit if applicable, and designated pay day on the date given below.

Employee's signature and date _____

§ 146-2.3. Statement to employee.

Every employer shall provide to each employee a statement, commonly referred to as a pay stub, with every payment of wages. The pay stub must list hours worked, rates paid, gross wages, credits claimed (for tips, meals and lodging) if any, deductions and net wages.

§ 146-2.4. Posting requirements.

Every employer shall post, in a conspicuous place in his or her establishment, notices issued by the Department of Labor about wage and hour laws, tip appropriations, illegal deduction provisions and any other labor laws that the Commissioner shall deem appropriate.

§ 146-2.5. Hourly rates are required.

Employees as defined in section 146-3.2 of this Title, other than commissioned salespersons, shall be paid hourly rates of pay. Employers may not pay employees on a daily, weekly, salary, piece rate or other non-hourly rate basis.

§ 146-2.6. Weekly basis of minimum wage.

The minimum wage provided by this Part shall be required for each week of work, regardless of the frequency of payment.

§ 146-2.7. Deductions and expenses.

(a) Employers may not make any deductions from wages, except for credits authorized in this Part and deductions authorized or required by law, such as for social security and income taxes. Some examples of prohibited deductions are:

- (1) deductions for spoilage or breakage;
- (2) deductions because of non-payment by a customer;
- (3) deductions for cash shortages or losses; and
- (4) fines or penalties for lateness, misconduct, or quitting by an employee without notice.

(b) Employers may not charge employees separately from wages for items prohibited as deductions from wages, except for optional meal purchases allowed by section 146-2.8(d) of this Part.

(c) If an employee must spend money to carry out duties assigned by his or her employer, those expenses must not bring the employee's wage below the required minimum wage.

§ 146-2.8. Meals and lodging.

(a) When an employer takes a meal and/or lodging credit toward the pay of an employee, the employer may not charge the employee any additional money for the meal(s) and/or lodging.

(b) A residential employee in a resort hotel whose compensation is based on the inclusion of meals shall be provided with three meals per day.

(c) An employee who works a shift requiring a meal period under Section 162 of the New York State Labor Law must either:

- (1) receive a meal furnished by the employer as part of his or her compensation, at no more than the meal credit allowed in this Part; or
- (2) be permitted to bring his or her own food and consume it on premises.

(d) Nothing in this Part shall prevent an employee from purchasing from the employer:

- (1) in a restaurant or an all-year hotel, meals at other times or places than those provided as part of his or her compensation;
- (2) in a resort hotel, food in addition to meals provided as part of his or her compensation.

Such purchases may not be paid for through deductions from the employee's wages.

§ 146-2.9. Working at tipped and non-tipped occupations on the same day.

On any day that a service employee or food service worker works at a non-tipped occupation

- (a) for two hours or more, or

(b) for more than 20 percent of his or her shift, whichever is less, the wages of the employee shall be subject to no tip credit for that day.

Example: An employee has a daily schedule as follows: 8 a.m. to 9:45 a.m., food preparation; 9:45 a.m. to 1:30 p.m., serving food in the restaurant; takes ½ hour meal period; 2:00 p.m. to 4:30 p.m. serving food in the restaurant. That employee has worked 8 hours total, consisting of 6 hours, 15 minutes as a food service worker and 1 hour, 45 minutes in a non-tipped occupation. Twenty percent of an 8 hour shift is 1 hour, 36 minutes. Although the employee worked for less than two hours at the non-tipped occupation, he/she has worked for more than 20 percent of his/her shift at the non-tipped occupation. Therefore, the employee is subject to no tip credit for that day.

§ 146-2.10. Employment covered by more than one wage order.

An employee in the hospitality industry who works for the same employer at an occupation governed by another New York State minimum wage order

(a) for two hours or more during any one day; or

(b) for 12 hours or more in any week shall be paid for all hours of working time for that day or week in accordance with the minimum wage standards contained in the minimum wage order for such other industry or the hospitality industry, whichever is higher.

§ 146-2.11. Learner, trainee, or apprentice rates.

Any employees whom an employer designates learners, trainees, or apprentices must nonetheless be paid at least the minimum rates prescribed in this Part.

§ 146-2.12. Rehabilitation programs.

For an individual employed as part of a rehabilitation program approved by the commissioner, the payment of compensation under such program shall be deemed to meet the requirements of this Part.

§ 146-2.13. Student obtaining vocational experience.

A student is not deemed to be permitted or suffered to work if, in order to fulfill the curriculum requirements of the educational institution which the student attends, the student is required to obtain supervised and directed vocational experience in another establishment.

§ 146-2.14. Tip sharing and tip pooling.

(a) *Tip sharing* is the practice by which a directly tipped employee gives a portion of his or her tips to another service employee or food service worker who participated in providing service to customers and keeps the balance.

(b) *Tip pooling* is the practice by which the tip earnings of directly tipped employees are intermingled in a common pool and then redistributed among directly and indirectly tipped employees.

(c) *Directly tipped employees* are those who receive tips from patrons or customers without any intermediary between the patron or customer and the employee.

(d) *Indirectly tipped employees* are those employees who, without receiving direct tips, are eligible to receive shared tips or to receive distributions from a tip pool.

(e) Eligibility of employees to receive shared tips, or to receive distributions from a tip pool, shall be based upon duties and not titles. Eligible employees must perform, or assist in performing, personal service to patrons at a level that is a principal and regular part of their duties and is not merely occasional or incidental. Examples of eligible occupations include:

- (1) wait staff;
- (2) counter personnel who serve food or beverages to customers;
- (3) bus persons;
- (4) bartenders;
- (5) service bartenders;
- (6) barbacks;
- (7) food runners;
- (8) captains who provide direct food service to customers; and
- (9) hosts who greet and seat guests.

(f) Employers may not require directly tipped employees to contribute a greater percentage of their tips to indirectly tipped employees through tip sharing or tip pooling than is customary and reasonable.

§ 146-2.15. Tip sharing.

(a) Directly tipped employees may share their tips on a voluntary basis with other service employees or food service workers who participated in providing service to customers.

(b) An employer may require directly tipped food service workers to share their tips with other food service workers who participated in providing service to customers and may set the percentage to be given to each occupation. However, employees must handle the transactions themselves.

(c) Nothing in this section shall be interpreted as requiring an employer to compensate participants in tip sharing for tips wrongfully withheld from the tip sharing by any participant.

§ 146-2.16. Tip pooling.

(a) Directly tipped employees may mutually agree to pool their tips on a voluntary basis and to redistribute the tips among directly tipped employees and indirectly tipped employees who participated in providing the service.

(b) An employer may require food service workers to participate in a tip pool and may set the percentage to be distributed to each occupation from the tip pool. Only food service workers may receive distributions from the tip pool.

(c) Nothing in this section shall be interpreted as requiring an employer to compensate participants in tip pooling for tips wrongfully withheld from the tip pool by any participant.

§ 146-2.17. Records of tip sharing or tip pooling.

(a) Employers who operate a tip sharing or tip pooling system must establish, maintain, and preserve for at least six years records which include:

(1) A daily log of the tips collected by each employee on each shift, whether in cash or by credit card;

(2) A list of occupations that the employer deems eligible to receive tips through a tip sharing or tip pool system;

(3) The shares of tips that each occupation is scheduled to receive from tip sharing or tip pooling; and

(4) The amount in tips that each employee receives from the tip share or tip pool, by date.

(b) Such records must be regularly made available for participants in the tip sharing or tip pooling systems to review. Nothing in this section shall be interpreted as granting any employee the right to review the payroll records of any other employee.

§ 146-2.18. Charge purported to be a gratuity or tip.

Section 196-d of the New York State Labor Law prohibits employers from demanding, accepting, or retaining, directly or indirectly, any part of an employee's gratuity or any charge purported to be a gratuity.

(a) A charge purported to be a gratuity must be distributed in full as gratuities to the service employees or food service workers who provided the service.

(b) There shall be a rebuttable presumption that any charge in addition to charges for food, beverage, lodging, and other specified materials or services, including but not limited to any charge for "service" or "food service," is a charge purported to be a gratuity.

(c) Employers who make charges purported to be gratuities must establish, maintain and preserve for at least six years records of such charges and their dispositions.

(d) Such records must be regularly made available for participants in the tip sharing or tip pooling systems to review.

§ 146-2.19 Administrative charge not purported to be a gratuity or tip.

(a) A charge for the administration of a banquet, special function, or package deal shall be clearly identified as such and customers shall be notified that the charge is not a gratuity or tip.

(b) The employer has the burden of demonstrating, by clear and convincing evidence, that the notification was sufficient to ensure that a reasonable customer would understand that such charge was not purported to be a gratuity.

(c) *Adequate notification* shall include a statement in the contract or agreement with the customer, and on any menu and bill listing prices, that the administrative charge is for administration of the banquet, special function, or package deal, is not purported to be a gratuity, and will not be distributed as gratuities to the employees who provided service to the guests. The statements shall use ordinary language readily understood and shall appear in a font size similar to surrounding text, but no smaller than a 12-point font.

(d) A combination charge, part of which is for the administration of a banquet, special function or package deal and part of which is to be distributed as gratuities to the employees who provided service to the guests, must be broken down into specific percentages or portions, in writing to the customer, in accordance with the standards for adequate notification in subdivision (c) of this section. The portion of the combination charge which will not be distributed as gratuities to the employees who provided service to the guests shall be covered by subdivisions (a), (b) and (c) of this section.

§ 146-2.20. Tips charged on credit cards.

When tips are charged on credit cards, an employer is not required to pay the employee's pro-rated share of the service charge taken by the credit card company for the processing of the tip. The employer must return to the employee the full amount of the tip charged on the credit card, minus the pro-rated portion of the tip taken by the credit card company.

Example: The bill totals \$100 exactly. The customer leaves, on their credit card, the \$100 payment of the bill, as well as a \$20 tip. Both the tip and the bill must be processed through a credit card company which charges a 5 percent fee on all transactions. The total charge levied by the credit card company on the \$120 charge is \$6. Of that \$6, \$5 is for the bill (5 percent of \$100) and \$1 is for the tip (5 percent of \$20). The employer must provide the employee \$19, which represents the \$20 tip minus \$1 pro-rated employee's portion of the surcharge).

SUBPART 146-3
DEFINITIONS

| | |
|----------|---|
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§ 146-3.1. Hospitality industry.

(a) The term *hospitality industry* includes any restaurant or hotel, as defined herein.

(b) The term *restaurant* includes any eating or drinking place that prepares and offers food or beverage for human consumption either on any of its premises or by such service as catering, banquet, box lunch, curbside service or counter service to the public, to employees, or to members or guests of members, and services in connection therewith or incidental thereto. The term *restaurant* includes but is not limited to restaurant operations of other types of establishments, restaurant concessions in any establishment and concessions in restaurants.

(c) The term *hotel* includes:

(1) any establishment which as a whole or part of its business activities offers lodging accommodations for hire to the public, to employees, or to members or guests of members, and services in connection therewith or incidental thereto. The industry includes but is not limited to commercial hotels, apartment hotels, resort hotels, lodging houses, boarding houses, all-year hotels, furnished room houses, children's camps, adult camps, tourist camps, tourist homes, auto camps, motels, residence clubs, membership clubs, dude ranches, and spas and baths that provide lodging.

(2) An *all-year hotel* is one that does not qualify as a resort hotel under the definition below. Motor courts, motels, cabins, tourist homes, and other establishments serving similar purposes shall be classified as all-year hotels unless they specifically qualify as resort hotels in accordance with the definition below.

(3) A *resort hotel* is one which offers lodging accommodations of a vacational nature to the public or to members or guests of members, and which:

(i) operates for not more than seven months in any calendar year; or

(ii) being located in a rural community or in a city or village of less than 15,000 population, increased its number of employee workdays during any consecutive four-week period by at least 100 percent over the number of employee workdays in any other consecutive four-week period within the preceding calendar year; or

(iii) being located in a rural community or in a city or village of less than 15,000 population, increased its number of guest days during any consecutive four-week period by at least 100 percent over the number of guest days in any other consecutive four-week period within the preceding calendar year.

(d) The *hospitality industry* excludes:

(1) establishments where the service of food or beverage or the provision of lodging is not available to the public or to members or guests of members, but is incidental to instruction, medical care, religious observance, or the care of persons with disabilities or those who are impoverished or other public charges; and

(2) establishments where the service of food or beverage or the provision of lodging is offered by any corporation, unincorporated association, community chest, fund or foundation organized exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The exclusions set forth in paragraphs (1) and (2) of this subdivision shall not be deemed to exempt such establishments from coverage under another minimum wage order which covers them.

§ 146-3.2. Employee.

(a) *Employee* means any individual suffered or permitted to work in the hospitality industry by the operator of the establishment or by any other employer, except as provided below.

(b) *Employee* does not include any individual employed by a Federal, State or municipal government or political subdivision thereof.

(c) *Employee* also does not include any individual permitted to work in, or as:

(1) an executive, administrative or professional capacity.

(i) executive. *Work in a bona fide executive capacity* means work by an individual:

(a) whose primary duty consists of the management of the enterprise in which such individual is employed or of a customarily recognized department or subdivision thereof;

(b) who customarily and regularly directs the work of two or more other employees therein;

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(d) who customarily and regularly exercises discretionary powers; and

(e) who is paid for his services a salary, inclusive of board, lodging or other allowances and facilities, of at least the amounts listed below when working in:

[(1) \$543.75 per week inclusive of board, lodging, or other allowances and facilities on and after January 1, 2011;

(2) \$600.00 per week inclusive of board, lodging, or other allowances and facilities on and after December 31, 2013;

(3) \$656.25 per week inclusive of board, lodging, or other allowances and facilities on and after December 31, 2014;

(4) \$675.00 per week inclusive of board, lodging, or other allowances and facilities on and after December 31, 2015.](1) New York City for

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;
\$975.00 per week on and after December 31, 2017;
\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;
\$900.00 per week on and after December 31, 2017;
\$1,012.50 per week on and after December 31, 2018;
\$1,125.00 per week on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;
\$825.00 per week on and after December 31, 2017;
\$900.00 per week on and after December 31, 2018;
\$975.00 per week on and after December 31, 2019;
\$1,050.00 per week on and after December 31, 2020;
\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;
\$780.00 per week on and after December 31, 2017;
\$832.00 per week on and after December 31, 2018;
\$885.00 per week on and after December 31, 2019;
\$937.50 per week on and after December 31, 2020.

(ii) Administrative. Work in a *bona fide administrative capacity* means work by an individual:

(a) whose primary duty consists of the performance of office or non-manual field work directly related to management policies or general operations of such individual's employer;

(b) who customarily and regularly exercises discretion and independent judgment;

(c) who regularly and directly assists an employer, or an employee employed in a *bona fide* executive or administrative capacity (*e.g.*, employment as an administrative assistant); or who

performs under only general supervision work along specialized or technical lines requiring special training, experience or knowledge; and

(d) who is paid for his services a salary, inclusive of board, lodging or other allowances and facilities, of at least the amounts listed below when working in:

[(1) \$543.75 per week inclusive of board, lodging, or other allowances and facilities on and after January 1, 2011;

(2) \$600.00 per week inclusive of board, lodging, or other allowances and facilities on and after December 31, 2013;

(3) \$656.25 per week inclusive of board, lodging, or other allowances and facilities on and after December 31, 2014;

(4) \$675.00 per week inclusive of board, lodging, or other allowances and facilities on and after December 31, 2015.

(1) New York City for

(i) Large employers of eleven or more employees

\$825.00 per week on and after December 31, 2016;

\$975.00 per week on and after December 31, 2017;

\$1,125.00 per week on and after December 31, 2018;

(ii) Small employers of ten or fewer employees

\$787.50 per week on and after December 31, 2016;

\$900.00 per week on and after December 31, 2017;

\$1,012.50 per week on and after December 31, 2018;

\$1,125.00 per week on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;

\$825.00 per week on and after December 31, 2017;

\$900.00 per week on and after December 31, 2018;

\$975.00 per week on and after December 31, 2019;

\$1,050.00 per week on and after December 31, 2020;

\$1,125.00 per week on and after December 31, 2021;

(3) Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;

\$780.00 per week on and after December 31, 2017;

\$832.00 per week on and after December 31, 2018;

\$885.00 per week on and after December 31, 2019;

\$937.50 per week on and after December 31, 2020.

(iii) professional. Work in a *bona fide professional capacity* means work by an individual:

(a) whose primary duty consists of the performance of work:

(1) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual or physical processes, or

(2) original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; and

(b) whose work requires the consistent exercise of discretion and judgment in its performance; or

(c) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work), and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(2) an outside salesperson. The term *outside salesperson* means an individual who is customarily and predominantly engaged away from the premises of the employer and not at any fixed site and location for the purpose of:

(i) making sales; or

(ii) selling and delivering articles or goods; or

(iii) obtaining orders or contracts for service or for the use of facilities.

(3) a golf caddy. This exclusion shall not be deemed to exclude caddies from another minimum wage order which covers such employees.

(4) a camper worker. A camper who works no more than four hours a day for a children's camp and at all other times enjoys the same privileges, facilities and accommodations as a regular camper in such camp shall be known as a *camper worker* and shall not be an employee within the meaning of this Part.

(5) spa and bath workers employed by concessionaires in hotels or by spas and baths operated independently of hotels, who shall be covered under another minimum wage order. Spa and bath workers employed by hotels are employees under this Part.

(6) staff counselors in children's camps.

(i) a *staff counselor* is a person whose duties primarily relate to the guidance, instruction, supervision and care of campers in children's camps, whether such work involves direct charge of, or responsibility for, such activities, or merely assistance to persons in charge. The term *staff counselor* includes, but is not limited to: head counselor, assistant head counselor, specialist counselor or instructor (such as swimming counselor, arts and crafts counselor, etc.), group or division leader, camp mother or father, supervising counselor, senior counselor, counselor, general counselor, bunk counselor, assistant counselor, co-counselor, junior counselor, and counselor aide.

(ii) *children's camp* means any establishment which, as a whole or part of its business activities, is engaged in offering for children, on a resident or nonresident basis, recreational programs of supervised play or organized activity in such fields as sports, nature lore, and arts and crafts, whether known as camps, play groups, play schools, or by any other name. The term *children's camp* does not include an establishment which is open for a period of more than 17 consecutive weeks during the year.

§ 146-3.3. Service employee and non-service employee.

(a) A *service employee* is an employee, other than a food service worker or fast food employee, who customarily receives tips at or above the Tip Threshold rate[of \$1.60 on and after January 1, 2011; \$1.75 on and after December 31, 2013; \$1.90 on and after December 31, 2014; and \$1.95 on and after December 31, 2015, or more per hour] listed at subdivision (a) of section 146-1.3 of this Subpart.

(b) A *non-service employee* is any employee other than a service employee or a food service worker.

(c) Classification as a service employee or as a non-service employee shall be on a weekly basis except that an employee may not be classified as a service employee on any day in which she or he has been assigned to work at an occupation in which tips are not customarily received for 2 hours or more or for more than 20 percent of her or his shift, whichever is less.

(d) The employer shall have the burden of proof that an employee receives sufficient tips to be classified as a service employee.

§ 146-3.4. Food service worker.

(a) A *food service worker* is any employee who is primarily engaged in the serving of food or beverages to guests, patrons or customers in the hospitality industry, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receives tips from such guests, patrons or customers. The term *food service worker* shall not include delivery workers.

(b) Classification as a food service worker shall be on a weekly basis except that an employee may not be classified as a food service worker on any day in such week in which she or he has been assigned to work in an occupation in which tips are not customarily received for 2 hours or more or for more than 20 percent of her or his shift, whichever is less.

§ 146-3.5. Regular rate of pay.

(a) The term *regular rate* shall mean the amount that the employee is regularly paid for each hour of work, before subtracting a tip credit, if any.

(b) If an employer fails to pay an employee an hourly rate of pay, the employee's regular hourly rate of pay shall be calculated by dividing the employee's total weekly earnings, not including exclusions from the regular rate, by the lesser of 40 hours or the actual number of hours worked by that employee during the work week.

Exclusions from the regular rate are gifts and discretionary bonuses, fringe benefits pay, expense reimbursement, profit-sharing and savings-plan payments, employer contributions to benefit plans, premium pay for hours worked above 8 hours a day or 40 hours a week or above normal daily or weekly standards, premium pay for time and one half (or greater) rates paid for Saturday, Sunday, holiday, day of rest, sixth or seventh day worked, and premium pay for work outside of a contractual daily period not exceeding 8 hours or a contractual weekly period not exceeding 40 hours. The premium pay mentioned above shall be credited towards overtime pay due.

§ 146-3.6. Working time.

Working time means time worked or time of permitted attendance, including waiting time, whether or not work duties are assigned, or time an employee is required to be available for work at a place or within a geographical area prescribed by the employer such that the employee is unable to use the time productively for his or her own purposes, and time spent in traveling as part of the duties of the employee.

§ 146-3.7. Meal.

(a) A *meal* shall provide adequate portions of a variety of wholesome, nutritious foods and shall include at least one of the types of food from all four of the following groups:

- (1) fruits or vegetables;
- (2) grains or potatoes;
- (3) eggs, meat, fish, poultry, dairy, or legumes; and
- (4) tea, coffee, milk or juice.

(b) *Meals* shall be deemed to be furnished by an employer to an employee when made available to that employee during reasonable meal periods and customarily eaten by that employee.

§ 146-3.8. Lodging.

Lodging means living accommodations used by the employee which meet generally accepted standards of adequacy and sanitation. All lodging provided by an employer to an employee must comply with all community standards for housing. For purposes of this Part, *community standards* shall mean all applicable state, county and local health or housing codes. The employer shall have the burden of proof that provided lodging complies with community standards.

§ 146-3.9. Split shift.

A *split shift* is a schedule of daily hours in which the working hours required or permitted are not consecutive. Interruption of working hours for a meal period of one hour or less does not constitute a split shift.

§ 146-3.10. Required uniform.

(a) A *required uniform* is that clothing required to be worn while working at the request of an employer, or to comply with any federal, state, city or local law, rule, or regulation, *except* clothing that may be worn as part of an employee's ordinary wardrobe.

(b) *Ordinary wardrobe* shall mean ordinary basic street clothing selected by the employee-where the employer permits variations in details of dress.

§ 146-3.11. Week of work.

A *week of work* is a fixed and regularly recurring period of 168 hours—7 consecutive 24 hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under this Part, a single workweek may be established for an establishment as a whole or

different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him or her. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of this Part.

§ 146-3.12. Hourly tip rates.

The term *tips received*, as used in section 146-1.3 of this Part, and the term *receives tips*, as used in sections 146-3.3 and 146-3.4 of this Part, shall mean the hourly rate that results when the total amount of tips received by a tipped employee during a week of work are divided by the total working time of such worker during that week of work. The total amount of tips received shall be the net amount of tips received after adjustments for tip pooling, tip sharing, and credit card charges pursuant to sections 146-2.14, 146-2.15, 146-2.16 and 146-2.20.

§ 146-3.13 Fast Food Employee

(a) "Fast Food Employee" shall mean any person employed or permitted to work at or for a Fast Food Establishment by any employer where such person's job duties include at least one of the following: customer service, cooking, food or drink preparation, delivery, security, stocking supplies or equipment, cleaning, or routine maintenance.

(b) "Fast Food Establishment" shall mean any establishment in the state of New York: (a) which has as its primary purpose serving food or drink items; (b) where patrons order or select items and pay before eating and such items may be consumed on the premises, taken out, or delivered to the customer's location; (c) which offers limited service; (d) which is part of a chain; and (e) which is one of thirty (30) or more establishments nationally, including: (i) an integrated enterprise which owns or operates thirty (30) or more such establishments in the aggregate nationally; or (ii) an establishment operated pursuant to a Franchise where the Franchisor and the Franchisee(s) of such Franchisor owns or operate thirty (30) or more such establishments in the aggregate nationally. "Fast Food Establishment" shall include such establishments located within non-Fast Food Establishments.

(c) "Chain" shall mean a set of establishments which share a common brand, or which are characterized by standardized options for décor, marketing, packaging, products, and services.

(d) "Franchisee" shall mean a person or entity to whom a franchise is granted.

(e) "Franchisor" shall mean a person or entity who grants a franchise to another person or entity.

(f) "Franchise" shall have the same definition as set forth in General Business Law Section 681.

(g) "Integrated enterprise" shall mean two or more entities sufficiently integrated so as to be considered a single employer as determined by application of the following factors: (i) degree of interrelation between the operations of multiple entities; (ii) degree to which the entities share common management; (iii) centralized control of labor relations; and (iv) degree of common ownership or financial control.

