

SUBMITTING ONLY

Empire State Restaurant & Tavern Association

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Hon. John DeFrancisco
Chairman, Senate Finance Committee
New York State Senate
Room 416 Cap
Albany, New York 12247

Hon. Herman D. Farrell
Chairman, Assembly Ways & Means Committee
New York State Assembly
Room 923 LOB
Albany, New York 12248

February 4, 2015

Re: Human Services Legislative Budget Hearing

Dear Chairmen DeFrancisco and Farrell:

During today's budget hearing you may hear testimony related to the state's minimum wage, the Governor's proposal to increase the minimum wage included in the Executive Budget or a proceeding currently pending before the Commissioner of Labor, pursuant to an Act of the Legislature directing the Commissioner to convene a Wage Board to study adjusting the cash wage for tipped workers in the hospitality industry in light of the recently enacted minimum wage increase.

Our members are concerned about all of these matters. We have listened to discussions about the need to increase the minimum wage beyond the \$9.00 per hour rate, even before that increase is fully implemented. We've reviewed the Governor's proposal and while I can tell you today that we strongly oppose this proposal – both the additional wage hike and the concert of establishing a differential for New York City – we look forward to engaging in this public policy discussion with you and your colleagues and by our colleagues representing small business over the next few weeks. Today I'd like to provide you with just a little insight into the Wage Board matter.

Drink Responsibly.
Drive Responsibly.

As you know the Legislature called on the Commissioner of Labor to convene a wage board in the statute that provided the current minimum wage increase. That law, which took effect on March 29, 2013 provided for the Commissioner to convene a wage board at any time after such date to study the adjustment needed, if any, for the cash wage for foodservice workers and service workers in the hospitality industry.

The Wage Board was convened in the Fall of 2014 and voted in favor of several recommendations for the Commissioner's consideration at a meeting this past Friday, January 30, 2015. Amongst their recommendations is an increase in the cash wage for most foodservice workers \$7.50 per hour, (a 50% increase for tipped foodservice workers), an increase to \$6.50 per hour for highly tipped foodservice workers and a proposal to review and study the system of providing a cash wage for tipped workers. These recommendations are pending before the Acting Commissioner of Labor as we speak.

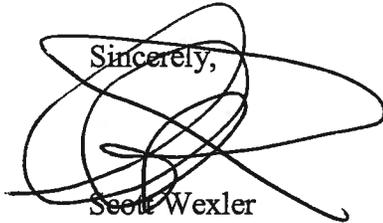
The discussion around the Wage Board and its recommendations have been filled with misinformation. Here are some key points you should know:

1. Tipped foodservice workers are not paid a "sub-minimum" wage. All employees in New York State are required to earn at least the minimum wage.
2. The State Labor Law provides exceptions to the minimum wage for certain industries. They include beauty service workers, car wash attendants, building service workers, youth and farmers. Even with these exceptions, the employee still must earn at least the state minimum wage. Any change in the state's public policy in this area is the province of the State Legislature.
3. The Wage Board's recommendation to establish a two tier tipped wage rate for foodservice workers is not unprecedented as some have claimed. As a matter of fact it's the method the State Labor Department currently uses in the Wage Order for most tipped workers not in the hospitality industry. Given the Department's experience with this method it should be a system the Department can easily implement and enforce.
4. The Wage Board likely recommended the two tier tipped cash wage rate because they listened to the testimony during the four public hearings they held across the state at which they heard that some foodservice workers earn \$15, \$20, \$25 per hour or more and did not think the state needed to mandate a 50% pay raise for people earning such wages (at least that's my impression for why they acted based on their public comments).

We are having a hard time digesting a 50% wage increase for most tipped foodservice workers as recommended by the Wage Board. And we're troubled by the thought that if the Governor's proposal to raise the minimum wage is approved by the Legislature we'll face another increase in our labor costs – for tipped workers and all our other employees.

Now that these issues have been placed in your lap by the Executive Budget proposal and the Wage Board we look forward to discussing them with you, your colleagues and your staff. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Scott Wexler
Executive Director