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Client Alert: Tip for Massachusetts Employers of Tipped Workers: Complying with New Minimum Wage Law Means "Per Shift" Payroll Calculations

JANUARY 4, 2019

As of January 1, 2019, the new minimum wage in Massachusetts is $12 per hour, and $4.35 for tipped employees, but with an important caveat: under the new minimum wage regime, employers must ensure that each tipped employee earns the equivalent of $12 per hour — **as calculated for each shift the employee works** — with the employer required to make up any of the $7.65 per hour difference not accounted for in tips earned from customers served during the shift.

This change, codified in the revised text of M.G.L. c. 151 § 7, is mandated under compromise **legislation** enacted this past summer (Acts 2018, ch. 121, the "Act"). In addition to requiring a steady increase of the state minimum wage (until it reaches $15 per hour in 2023), the Act also establishes a permanent annual sales tax holiday and provides for new worker entitlements to periods of **paid family and medical leave**, supported by proceeds of a new payroll tax (split between employers and employees). The Act does not change the fact that restaurant employees are exempt from overtime under **state law** (though not under federal law).

Restaurants and other businesses employing tipped workers must take care to ensure payroll is calculated in accordance with this new requirement, since most payroll software and services are not yet equipped to automate the calculations under the new standard. While businesses work with their vendors to automate the payroll calculations accordingly, they may need to make manual payroll calculations in order to comply with the new law. Failure to make payments in accordance with the new standard could otherwise open businesses up to litigation, including potential class action liability.

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