

## Business Litigation Team

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## Minnesota House Passes Minimum Wage Modification for Tipped Employees

Minnesota's new three-phase minimum wage framework continues to generate discussion in the legislature. The first phase of the plan, which began last August, increased the minimum wage to \$8 and \$6.50 per hour for employees of large and small employers, respectively. Those hourly wages will increase to \$9 and \$7.25 in August 2015, and again to \$9.50 and \$7.75 in August 2016. Additionally, Minnesota will begin raising the minimum wage to account for inflation—commonly called “indexing”—beginning in 2018.

As Minnesota moves toward joining the seven states that presently have a minimum wage of at least \$9 per hour, it also joins a growing debate over how to fit tipped employees into the statutory wage framework. Ensuring minimum compensation of tipped employees is difficult because their compensation depends on tip adjustments carried out on a small scale, often nightly, and often within small businesses.

In March, the Minnesota House of Representatives passed a bill that would create a lower minimum wage for tipped employees, such as restaurant servers. The bill, which will face opposition in the state senate and from Governor Mark Dayton before becoming law, is the latest proposal raised after the state instituted its three-phased raise in the minimum wage in 2014.

The proposed House bill would cap the hourly wage at \$8 per hour for tipped employees who earn at least \$12 per hour after tips; tipped employees falling below that threshold would make the regular minimum wage.

Other states have dealt with this issue in various ways, and with varying degrees of complication. In New York, where Governor Andrew Cuomo recently announced that the minimum wage for tipped employees will rise to a uniform \$7.50 per hour from current rates between \$4.90 and \$5.65, chef and restaurant owner Amanda Cohen predicts that a new business model will emerge. Cohen's new restaurant, which pays employees flat wages of at least \$15 per hour, has a no-tipping policy; instead, a flat 20% “administrative fee” is added to the bill to cover the wages. She predicts that others will follow her lead.

In 2014, Seattle passed an ordinance that, within three years, will mandate the country's highest minimum wage of \$15 per hour. After several proposals concerning tipped employees, the final ordinance allows only small businesses to count tips as a part of the hourly wage. Like their New York counterparts, many Seattle business owners now predict a shift to a service-charge model.

It remains to be seen whether the debate over tipped employee wages in Minnesota tracks the discussions in New York or Seattle, or takes its own course. But regardless, it's certain that both restaurant owners and employees will be following closely.

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