

December 17, 2013

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VIA E-MAIL

Benjamin Esposito
President
New York State Camp Directors Association
c/o Pierce Country Day Camp
37 Mineola Avenue
Roslyn, New York 11576

Re: Meal and Lodging Allowances for Camp Support Staff (excluding counselors)

Dear Mr. Esposito:

This opinion is sent in response to the New York State Camp Directors Association's ("NYSCDA") request for confirmation of the meal and lodging allowances set forth in the New York State Department of Labor's amended regulations (also referred to as Wage Orders), which become effective December 31, 2013.

On March 29, 2013, Governor Andrew Cuomo signed legislation that will raise the minimum hourly wage in New York in three increments, commencing on December 31, 2013. The increased minimum wage affects other compensation requirements, such as meal and lodging allowances, which are routinely utilized by the camping industry. As set forth below, the permitted meal and lodging allowances will vary, depending on the type of camp (for-profit v. non-profit) and nature of employment (kitchen staff v. all other categories).

For-Profit Camps – Excludes Kitchen Staff

Pursuant to 12 NYCRR § 142-2.5(a), meals and lodging furnished by a for-profit employer to an employee may be considered part of the minimum wage, but shall be valued at no more than:

MEALS

- December 31, 2013 - \$2.75 per meal;
- December 31, 2014 - \$3.00 per meal; and
- December 31, 2015 - \$3.10 per meal.

LODGING

- December 31, 2013 - \$3.40 per day;

- December 31, 2014 - \$3.70 per day; and
- December 31, 2015 - \$3.80 per day.

Non-Profit Camps – Excludes Kitchen Staff¹

Pursuant to 12 NYCRR § 142-3.5(b), meals and lodging furnished by a non-profit employer to an employee may be considered part of the minimum wage, but shall be valued at no more than:

MEALS

- December 31, 2013 - \$2.75 per meal;
- December 31, 2014 - \$3.00 per meal; and
- December 31, 2015 - \$3.10 per meal.

LODGING

- December 31, 2013 - .40 cents per hour; and
- December 31, 2014 - .45 cents per hour.

Kitchen Staff – Except Faith Based Camps

Pursuant to 12 NYCRR §146-1.9(d), meals and lodging furnished by an employer to an employee in a “resort hotel”² may be considered part of the minimum wage, but shall be valued at no more than:

LODGING AND THREE MEALS PER DAY FURNISHED TO A RESIDENTIAL EMPLOYEE

- \$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.
- \$17.95 per day for each day worked by non-service employees on and after December 31, 2013.

¹ Because the Hospitality Wage Order, *infra.*, carves out an exception for faith-based organizations, the meal and lodging allowances set forth at §142.3-5(b) likely apply to all support staff (including kitchen staff) employed by a faith-based camp.

² Camps qualify as a “resort hotel” under the Hospitality Wage Order. *See* Hospitality Wage Order Frequently Asked Questions, available at <http://labor.ny.gov/legal/counsel/pdf/hospitality-wage-order-frequently-asked-questions.pdf> (last visited December 13, 2013). Therefore, camps should be cognizant that an employee who works in an occupation governed by another Wage Order (*e.g.*, Miscellaneous Industries and Occupations, 12 NYCRR § 142-2, and Nonprofitmaking Institutions, 12 NYCRR § 142-3) for two hours or more during any one day or for twelve hours or more in any week shall be paid for all hours of working time in accordance with the minimum wage standards contained in the minimum wage order that provides the higher level of wages to the employee. *Id.* at § 146-2.10.

- \$19.65 per day for each day worked by non-service employees on and after December 31, 2014.
- \$20.20 per day for each day worked by non-service employees on and after December 31, 2015.

The Hospitality Wage Order defines “food service worker” as “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 receive tips from such guests, patrons or customers. The term *food service worker* shall not include delivery workers.” *Id.* at § 146-3.4. A “service employee” is defined as “an employee, other than a food service worker, who customarily receives tips,” while a “non-service employee” is “any employee other than a service employee or a food service worker.” *Id.* at § 146-3.3. Therefore, to the extent kitchen staff do not receive tips, they would be classified as “non-service employees”.

As a final matter, the Hospitality Wage Order does not apply to “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, not part of the net earnings of which inures to the benefit of any private shareholder or individual.” *Id.* at § 146-3.1(d). Thus, a faith-based camp is likely excluded from the requirements of the Hospitality Wage Order and, as such, all support staff (including kitchen staff) arguably fall under the wage order applicable to non-profit camps.

I trust that the foregoing has been responsive to your inquiry. To the extent you have any questions or would like to discuss this matter in more detail, please do not hesitate to contact me.

Sincerely,

LITTLER MENDELSON, P.C.

/s/

Ethan D. Balsam

This opinion is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues which inevitably arise in any wage and hour matter. Although this opinion addresses the recent amendments to the meal and lodging allowances, this opinion is not all-inclusive, and the current status of any principle of law should be verified by counsel.