

ROC UNITED
275 7th Ave, Suite 1703
New York, NY 10001



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To: Bryan M. Smolock, Director, Department of Labor and Industry, Bureau of Labor Law Compliance

Re: ROC United's Comments on *Regulation #12-114: Minimum Wage*, updates to the regulations governing tipped employees and clarification of how the base hourly rate for overtime of salaried employees is calculated.

December 20, 2021

Dear Director Smolock,

ROC United is writing to express our strong and unequivocal support for the Department of Labor and Industry's proposed updates to the Minimum Wage Regulations which directly affects tipped workers.

ROC United was established in New York City as a worker relief center for affected restaurant workers and their families after September 11, 2001. Since then, ROC has grown into a national organization powered by area chapters and members throughout the U.S, including Philadelphia, Pittsburgh, Los Angeles, Oakland, Minneapolis, Chicago, Detroit, Pittsburgh, New Orleans, Jackson, Mississippi, and Washington, D.C. ROC United serves and represents over 11 million workers in the restaurant industry, from traditional Back and Front-of-the-House occupations in fine dining full-service restaurants, to combined food prep and serving workers in quick service, to the new and growing segment of app-based delivery. Pennsylvania employees should not have to beg for fair compensation for work and deserve regulations that reflect the modern economic environment. It is imperative that we ensure Pennsylvania employees receive fair compensation for work under updated and revised regulations.

The proposed regulation changes and clarifications will benefit workers socially and financially, offering them greater control over their work and earnings. The changes and clarifications will provide more modern regulations that govern tipped workers, increase workers' earnings, and ensure that tips for those who genuinely work primarily as tipped workers are not unfairly siphoned off by businesses and managers. Pennsylvania's woefully inadequate tipped minimum wage per hour currently tempts employers to consider more workers to be tipped employees so they can be paid a base wage of as little as \$2.83 per hour, with tips bringing them up to \$7.25 per hour. These regulations would limit those who can be paid a base wage below \$7.25 per hour to workers earning a meaningful amount of tips (\$135 per month rather than \$30 month, the first updating of this figure since 1977); and to who those who perform tipped duties most of (at least 80% of) the time.

These regulations would also limit erosion of tips for genuine tipped workers by prohibiting payment of credit card fees with tips and limiting "tip pooling" through which employers cover

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the regular minimum wage of non-tipped workers with tips. Other parts of this regulation provide additional protections for tipped workers.

A separate part of these regulations would deliver basic fairness-and the 40-hour week to lower-paid salaried employees entitled to overtime. In addition, these employees would receive a real time-and-a-half pay for time worked beyond 40 hours—one based on an hourly rate equal to their salary divided by 40.

Prior to the COVID-19 pandemic, [our research](#) has shown that typical tipped workers in the United States do not work in high-end restaurants and bars. They are, instead, paid low wages and subject to [high rates of sexual harassment](#). Additionally, [our research](#) comparing higher restaurant wages in border counties in New York to those bordering in Pennsylvania found a higher rate of employment and industry growth in New York than in the lower wage counties of Pennsylvania. Additionally, our research, published in the Federal Reserve System's [Investing in America's Workforce](#) initiative, shows that higher wages with no subminimum tipped wage are better for workers and lead to higher industry growth, and reduces race and gender inequity. Any regulation that might bring restaurant workers in Pennsylvania closer to parity with higher wage states will benefit both workers and employers.

During the pandemic, thousands of Pennsylvania's tipped and service industry workers suffered a twofold blow, sometimes losing hours or jobs and other times exposed to risk of infection in restaurants, salons, hotels, and other occupations. These long-overdue regulatory changes will help improve the pay of tipped workers and some lower-paid salary workers. These regulations will also benefit employers because employees will be more willing to return to work if the workplace offers fair treatment.

There is much more to be done and now is the time! ROC United supports the enactment of regulations that eliminate the tipped minimum wage and restore an increase in the Pennsylvania salary level below which salaried employees automatically receive overtime; these regulations would positively impact Pennsylvania workers and should be enacted immediately.

Sincerely,

A handwritten signature in black ink, appearing to read 'Teofilo Reyes', with a long horizontal flourish extending to the right.

Teofilo Reyes, PhD
Chief Program Officer
ROC United