

Amended Rules for Implementation of Minimum Wage Policy for Non-Trade Labor Service Contracts - LaGuardia Airport, John F. Kennedy International Airport and Newark Liberty International Airport

Summary:

The Port Authority of New York and New Jersey has adopted a Minimum Wage Policy ("Policy"). By these Rules for Implementation of Minimum Wage Policy for Non-Trade Labor Service Contracts-LaGuardia Airport, John F. Kennedy International Airport and Newark Liberty International Airport ("Rules"), the Policy is being implemented with respect to LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (collectively, "Airports"), to enhance safety, security, and quality of service at the Airports. As set forth below, the Policy will apply to employees who perform either "Covered Services" or "Port District Covered Services."

Compensation:

The minimum wage for workers performing Covered Services or Port District Covered Services is increased to \$19.00, to be implemented according to the following schedule:

Airport	11/18	9/19	9/20	9/21	9/22	9/23
JFK/LGA	\$13.60	\$15.60	\$16.20	\$17.00	\$18.00	\$19.00
EWR	\$12.45	\$15.60	\$16.20	\$17.00	\$18.00	\$19.00

Workers who perform "Covered Services" are workers who perform the "Covered Services" listed in the Addendum to these Rules, within the geographical boundaries of one of the Airports.

Workers who perform "Port District Covered Services" are workers who perform the "Port District Covered Services" listed in the Addendum to these Rules, within the geographical boundaries of the Port District.

Applicability:

These Rules shall apply only to lessees, permittees, and contractors, as well as the subcontractors and sublessees of those entities (collectively, "Contractors") who provide Covered Services or Port District Covered Services.

In all events, Covered Services shall include services provided by non-trade employees whose work requires that they obtain access to the Airfield Operations Area (AOA) whether such AOA access is obtained by the issuance of a badge or an escort.

These Rules are issued by the Port Authority solely in its proprietary capacity, under the power granted by its governing Compact to operate transportation facilities and own and control real property. Acting in their governmental or regulatory capacities, agencies may have various powers – to initiate prosecutions, for example, or to gather evidence using criminal or administrative subpoenas. The Port Authority is not exercising any such powers with respect to enforcement of its minimum wage rules. Rather, the Port Authority is acting in a purely proprietary capacity. Accordingly, while the Port Authority will enforce its minimum wage rules very aggressively, it will do so only using the means that would be available to a similarly-situated private party. These means include initiating a breach of contract law suit, based on the theory that a given Airport employer's non-compliance with the minimum wage rules is a material breach of the employer's binding legal agreement or agreements with the Port Authority.

Exclusions:

The Policy implemented by these Rules will not apply in instances where other applicable laws or regulations provide higher minimum rates for employees falling within the Policy and Rules, as demonstrated by the employer.

Tipped Employees:

A Contractor seeking to demonstrate compliance for employees, who receive tips, shall have the burden of proving that the employee received compensation (including tips) in amounts equal to the minimum wage levels set forth in these rules.

The federal government and certain states allow an employer to count all or part of an employee's tips towards its minimum wage obligations and some states set a maximum "tip credit" toward the minimum wage. For purposes of these rules, only if a Contractor/Employer takes advantage of the applicable "tip credit" for federal, state or local minimum wage compliance, will the Covered Service worker's receipt of tips be considered in determining whether the Contractor/employer is compliant with the Port Authority Minimum Wage Policy.

Contractors/Employers who seek to take advantage of the payment of "tips" or a "tip credit" towards compliance with the Minimum Wage Policy and these Rules, will be required to certify that they are in compliance with the applicable (federal, state or local) minimum wage requirements governing the receipt of a credit for tips for their Covered Service workers.

"Tipped Employees" are those who engage in occupations in which tips are customarily and regularly received from patrons.

Contractors who employ Airport tipped workers and seek to benefit from a tip credit must maintain detailed, contemporaneous records that establish for each employee: (a) how many hours the employee worked in a given pay period, and what the employee was paid; (b) the tips the employee received during the pay period; and (c) supporting documentation to substantiate (a) and (b). With respect to (b), supporting documentation may come in a variety of forms. As to Airport workplaces that rely upon real-time logging of tips through an electronic POS system, supporting documentation may be in the form of the records generated by the POS system. As to all other Airport workplaces, such supporting documentation must include copies of written reports provided by an employee to his or her employer ("Employee Tip Report"). An Employee Tip Report must describe the tips the employee has received during a given shift, and should be prepared and submitted to the Contractor as the shift ends or as soon thereafter as is reasonably practicable.

In addition to any other record-keeping requirements imposed by federal, state, or local law, records described in the preceding paragraph must be retained by the Contractor for two years. Records related to an employee must be immediately

made available by the Contractor to that employee upon the employee's request.

Should a Contractor disagree with an Employee Tip Report, the Contractor must inform that employee in writing of the reasons for the disagreement within 48 hours of the Report being received by the employer. If the Contractor does not do so, the Employee Tip Report will be treated as valid.

If a Contractor determines that it must "top off" an employee's pay for a given pay period because the employee has not received sufficient tips, the Contractor must make the required supplemental payment as promptly as is reasonably practicable. The supplemental payment should be made on the day the employee is paid for the pay period in question. If that is not reasonably practicable, the supplemental payment should be made no later than the employee's next regularly-scheduled pay day.

Contractors who elect to take a tip credit must inform all tipped employees in writing of how the tip credit works, including an explicit statement that if the tips an employee receives are insufficient, the Contractor is obligated to "top off" the employee's wages until the employee's pay equals the minimum wage required by these Rules. Contractors must retain a record documenting that this communication was made. In addition to any record-keeping requirements imposed by federal or state law, these records must be retained by the Contractor for two years.

Contractors must fully and promptly cooperate with all Port Authority audits as to wage payments to Airport workers, including by complying with all reasonable requests for documents or interviews. In the context of such audits, employers must produce clear and convincing evidence that they have retained all required records and that they have in place effective systems for ensuring that all of their tipped employees are receiving the wages to which they are entitled. If this burden is not met, the Port Authority shall prepare an audit report, to be provided to the employer in question; any impacted employees; relevant state Department of Labor officials; and the Port Authority's Director of Aviation, who shall determine what Port Authority remedies may be appropriate. These remedies may include a breach of contract lawsuit or, in

the case of especially serious or persistent violations, denial of permission for the employer to continue operating at the Airports.

Martin Luther King, Jr. Day:

All Contractors subject to the Policy and these Rules shall provide its workers performing Covered Services or Port District Covered Services a paid holiday for Martin Luther King, Jr. Day.

Implementation:

These Rules are applicable to all current and future employees of Contractors providing Covered Services or Port District Covered Services. In addition, the Port Authority will take further appropriate steps, including, but not limited to, the inclusion of appropriate provisions in new or amended agreements, permits, contracts, and consents, as a condition for such Contractors doing business at the Airports. In the future, all agreements entered into between the Port Authority and those Contractors, including leases, permits, contracts, and consents, shall contain a clause which states that the Contractor has reviewed the Policy and Rules and that it will comply with the Policy and Rules, as amended by the Port Authority from time to time. Additionally, Contractors shall be required to include such a clause in their subleases and subcontracts.

The effective date for all minimum wage increases is November 1, 2018.

Beginning on January 1, 2019, employers at John F. Kennedy International Airport and LaGuardia Airport ("New York Airports"), will generally be required to institute thoroughgoing changes to their payrolls, because of changes to take effect on January 1 with respect to New York State minimum wage law. For some New York Airports employers, altering their payrolls on November 1, 2018 (to accommodate the Port Authority's new minimum wage rules) and then again on January 1, 2019 (to accommodate New York State's new minimum wage rules) would be a large administrative burden and expense. Accordingly, Contractors at the New York Airports may elect to defer their obliged payments under these Rules to employees at the New York Airports until January 1, 2019. Contractors who choose

this option must continue to pay their New York Airports employees at their currently scheduled rates until January 1, 2019. Thereafter, the employers must retroactively pay their employees the difference between (a) the employees' currently-scheduled pay rates, and (b) \$13.60 per hour, for each hour worked between November 1, 2018, and January 1, 2019. That retroactive payment must be made on the first regular payday after January 1, 2019. Any Contractor who wishes to elect this deferred-payment option must inform the Port Authority of this decision by October 29, 2018.

The Port Authority acknowledges that there may be circumstances which warrant an exception to the Rules, which exception may be granted by the Port Authority, for good cause, at its sole and absolute discretion.

Certification:

By November 1, 2018, and, at least, on an annual basis thereafter, a responsible officer of each Contractor providing Covered Services or Port District Covered Services shall deliver to the Port Authority a statement certifying, in a form to be approved by the Port Authority, that it is in compliance with the Policy and Rules. The Port Authority reserves the right to audit such compliance at any time.

Severability:

Should a court of competent jurisdiction determine that any part of the Policy and/or these Rules is invalid, illegal, or unenforceable, such determination shall in no way affect or impair the validity, legality, and enforceability of the remaining parts of the Policy and/or these Rules.

Amendments to Rules:

The Port Authority reserves the right to amend these Rules, from time to time.

ADDENDUM – COVERED SERVICES

Passenger Related Security Services

- Escorts
- Catering Security
- Passenger Aircraft Security
- Fireguards
- Terminal Security
- Traffic Security

Cargo Related and Ramp Services

- Cargo Screening (including Guards) and Warehouse Security
- Baggage and Cargo Handling
- Load Control and Ramp Communication
- Aircraft Mechanics and Fueling of Aircraft
- Provision of water, cooling/heating, power
- Equipment and toilet services to Aircraft
- Passenger Aircraft Servicing
- Cabin Equipment Maintenance
- Guiding Aircraft in and out of Gates
- Gateside Aircraft Maintenance
- Ramp area cleaning

In-Terminal and Passenger Handling Services

- Baggage handling
- Skycap
- Wheelchair attendant
- Ticketing agent
- Customer Service Representatives
- Queue Managers
- ID Checkers
- Porter Service for Baggage
- Passenger and Employee Shuttle Drivers

Cleaning Services

- Building Cleaning
- Aircraft and Cabin cleaning
- Plane washers

Concession Services

- Food Service (including, food and beverage service, wait service, busing, cashiers)
- Retail Service (including news/gifts and duty-free)
- Cleaning for concession services
- Security for concession services
- Airport Lounge Services (Food, Retail, Cleaning and Security Services)

Airport Catering Workers

With respect to food or beverages prepared and packaged for the specific purpose of in-flight consumption by Airport aircraft crew or Airport passengers in aircraft departing from the Airports ("In-Flight Meals"):

- Preparing and packaging In-Flight Meals
- Inspecting In-Flight Meals, to ensure food safety and to detect contraband
- Cleaning dishes, utensils, and glassware used for In-Flight Meals
- Cleaning and operating kitchens or other nearby facilities (such as warehouses) used for the preparation, packaging, and storage of In-Flight Meals
- Direct delivery of In-Flight Meals to Airport locations where they are needed, from kitchens where they are prepared or from nearby facilities (such as warehouses) where they are stored

ADDENDUM - PORT DISTRICT COVERED SERVICES

Airport Catering Workers

With respect to food or beverages prepared and packaged for the specific purpose of in-flight consumption by Airport aircraft crew or Airport passengers in aircraft departing from the Airports ("In-Flight Meals"):

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- Inspecting In-Flight Meals, to ensure food safety and to detect contraband
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