

6518--A

I N S E N A T E

January 31, 2014

Introduced by Sens. ESPAILLAT, STEWART-COUSINS, AVELLA, BRESLIN, DILAN, GIANARIS, HOYLMAN, KENNEDY, KRUEGER, MONTGOMERY, PERALTA, PERKINS, RIVERA, SERRANO, SQUADRON, TKACZYK -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the municipal home rule law, in relation to the minimum wage and repealing subdivision 6 of section 652 of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (n) of subdivision 5 of section 651 of the labor
2 law, as amended by chapter 481 of the laws of 2010, is amended to read
3 as follows:
4 (n) by [a] THE federal[, state or municipal] government [or political
5 subdivision thereof]. The exclusions from the term "employee" contained
6 in this subdivision shall be as defined by regulations of the commis-
7 sioner; or
8 S 2. Subdivision 6 of section 651 of the labor law, as amended by
9 chapter 281 of the laws of 2002, is amended to read as follows:
10 6. "Employer" includes any individual, partnership, association,
11 corporation, limited liability company, business trust, legal represen-
12 tative, STATE OR MUNICIPAL GOVERNMENT OR POLITICAL SUBDIVISION THEREOF,
13 or any organized group of persons acting as employer.
14 S 3. Subdivisions 1, 4 and 5 of section 652 of the labor law, subdivi-
15 sion 1 as amended by section 1 of part P of chapter 57 of the laws of
16 2013 and subdivisions 4 and 5 as amended by chapter 747 of the laws of
17 2004, are amended to read as follows:
18 1. Statutory. Every employer shall pay to each of its employees for
19 each hour worked a wage of not less than:
20 \$4.25 on and after April 1, 1991,
21 \$5.15 on and after March 31, 2000,
22 \$6.00 on and after January 1, 2005,
23 \$6.75 on and after January 1, 2006,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 \$7.15 on and after January 1, 2007,
2 \$8.00 on and after December 31, 2013,
3 [\$8.75 on and after December 31, 2014,]
4 \$9.00 on and after December 31, [2015] 2014,
5 \$10.10 ON AND AFTER DECEMBER 31, 2015 AND ON AND AFTER DECEMBER 31,
6 2016 AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE COMMISSIONER SHALL
7 CALCULATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE RATE BY INCREASING THE
8 THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST
9 RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER THIRTY-FIRST
10 USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A SUCCESSOR
11 INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF
12 SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, or, if greater,
13 such other wage as may be established by federal law pursuant to 29
14 U.S.C. section 206 or its successors or such other wage as may be estab-
15 lished in accordance with the provisions of this article.

16 4. Notwithstanding subdivisions one and two of this section, the wage
17 for an employee who is a food service worker receiving tips shall be a
18 cash wage of at least three dollars and thirty cents per hour on or
19 after March thirty-first, two thousand; three dollars and eighty-five
20 cents on or after January first, two thousand five; at least four
21 dollars and thirty-five cents on or after January first, two thousand
22 six; [and] at least four dollars and sixty cents on or after January
23 first, two thousand seven; AT LEAST FIVE DOLLARS AND FIFTY CENTS ON OR
24 AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND
25 FOURTEEN THAT AMENDED THIS SUBDIVISION; AND AT LEAST SIX DOLLARS AND
26 TWENTY CENTS ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN;
27 AND AT LEAST SIX DOLLARS AND NINETY-FIVE CENTS ON OR AFTER DECEMBER
28 THIRTY-FIRST, TWO THOUSAND FIFTEEN AND ON OR AFTER DECEMBER
29 THIRTY-FIRST, TWO THOUSAND SIXTEEN AND ON EACH FOLLOWING DECEMBER THIR-
30 TY-FIRST, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED
31 CASH WAGE RATE BY INCREASING THE THEN CURRENT CASH WAGE RATE BY THE RATE
32 OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO
33 EACH DECEMBER THIRTY-FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN
34 CONSUMERS, CPI-U, OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED
35 STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN
36 ZERO PERCENT, provided that the tips of such an employee, when added to
37 such cash wage, are equal to or exceed the minimum wage in effect pursu-
38 ant to subdivision one of this section and provided further that no
39 other cash wage is established pursuant to section six hundred fifty-
40 three of this article. In the event the cash wage payable under the Fair
41 Labor Standards Act (29 United States Code Sec. 203 (m), as amended), is
42 increased after enactment of this subdivision, the cash wage payable
43 under this subdivision shall automatically be increased by the propor-
44 tionate increase in the cash wage payable under such federal law, and
45 will be immediately enforceable as the cash wage payable to food service
46 workers under this article.

47 5. Notwithstanding subdivisions one and two of this section, meal and
48 lodging allowances for a food service worker receiving a cash wage
49 amounting to three dollars and thirty cents per hour on or after March
50 thirty-first, two thousand; three dollars and eighty-five cents on or
51 after January first, two thousand five; four dollars and thirty-five
52 cents on or after January first, two thousand six; [and] four dollars
53 and sixty cents on or after January first, two thousand seven; FIVE
54 DOLLARS AND FIFTY CENTS ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF
55 THE LAWS OF TWO THOUSAND FOURTEEN THAT AMENDED THIS SUBDIVISION; SIX
56 DOLLARS AND TWENTY CENTS ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND

1 FOURTEEN; SIX DOLLARS AND NINETY-FIVE CENTS ON OR AFTER DECEMBER THIR-
2 TY-FIRST, TWO THOUSAND FIFTEEN AND ON OR AFTER DECEMBER THIRTY-FIRST,
3 TWO THOUSAND SIXTEEN AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE
4 COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED CASH WAGE RATE BY
5 INCREASING THE THEN CURRENT CASH WAGE RATE BY THE RATE OF INFLATION FOR
6 THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER
7 THIRTY-FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U,
8 OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF
9 LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, shall not
10 increase more than two-thirds of the increase required by subdivision
11 two of this section as applied to state wage orders in effect pursuant
12 to subdivision one of this section.

13 S 4. Subdivision 6 of section 652 of the labor law is REPEALED.

14 S 5. Subdivision 2 of section 653 of the labor law, as added by chap-
15 ter 14 of the laws of 2000, is amended to read as follows:

16 (2) The commissioner shall, within six months after enactment of any
17 change in the statutory minimum wage set forth in subdivision one of
18 section six hundred fifty-two of this article, appoint a wage board to
19 inquire and report and recommend any changes to wage orders governing
20 wages payable to food service workers AND SERVICE EMPLOYEES PAID IN
21 ACCORDANCE WITH PART 146 OF TITLE 12 OF THE NEW YORK STATE COMPILATION
22 OF CODES, RULES AND REGULATIONS. Such wage board shall be established
23 consistent with the provisions of subdivision one of section six hundred
24 fifty-five of this article, except the representatives of the employees
25 shall be selected upon the nomination of the state American Federation
26 of Labor/Congress of Industrial Organizations; and provided, further,
27 that the representatives of the employers shall be selected upon the
28 nomination of the New York State Business Council. Any wage order
29 authorizing a lesser wage than the previously and statutorily mandated
30 minimum wage for such employees shall be reviewed by the wage board to
31 ascertain at what level such wage order is sufficient to provide
32 adequate maintenance and to protect the health and livelihood of employ-
33 ees subject to such a wage order after a statutory increase in the
34 mandated minimum wage.

35 S 6. Paragraph f of subdivision 1 of section 11 of the municipal home
36 rule law, as amended by chapter 21 of the laws of 1992, is amended to
37 read as follows:

38 f. Applies to or affects any provision of paragraph (c) of subdivision
39 one of section 8-100 of the election law, the labor law, EXCEPT AS
40 PROVIDED IN SUBDIVISION TWO OF SECTION SIX HUNDRED FIFTY-FOUR OF THE
41 LABOR LAW, sections two, three and four of chapter one thousand eleven
42 of the laws of nineteen hundred sixty-eight, entitled "An act in
43 relation to the maximum hours of labor of certain municipal and fire
44 district firemen and the holidays of firemen and policemen, repealing
45 certain sections of the labor law relating thereto, and to amend the
46 municipal home rule law, in relation thereto," as amended, the volunteer
47 [firemen's] FIREFIGHTERS' benefit law, or the [workmen's] WORKERS'
48 compensation law or changes any provision of the multiple residence law
49 or the multiple dwelling law, except that in a city of one million
50 persons or more, the provisions of local law for the enforcement of the
51 housing code which is not less restrictive than the multiple dwelling
52 law may be applied in the enforcement of the multiple dwelling law.

53 S 7. Section 654 of the labor law, as added by chapter 619 of the laws
54 of 1960, is amended to read as follows:

55 S 654. Basis of changes in minimum wage. 1. In establishing minimum
56 wages and regulations for any occupation or occupations pursuant to the

1 provisions of the following sections of this article, the wage board and
2 the commissioner shall consider the amount sufficient to provide
3 adequate maintenance and to protect health and, in addition, the wage
4 board and the commissioner shall consider the value of the work or clas-
5 sification of work performed, and the wages paid in the state for work
6 of like or comparable character.

7 2. COUNTIES AND CITIES ARE AUTHORIZED TO ADOPT MINIMUM STANDARDS
8 RELATING TO WAGES, OR MECHANISMS FOR THE ENFORCEMENT THEREOF, THAT ARE
9 AT LEAST AS FAVORABLE TO EMPLOYEES AS THE MINIMUM STANDARDS APPLICABLE
10 UNDER THIS ARTICLE, PROVIDED THAT ANY MINIMUM WAGE ENACTED PURSUANT TO
11 THIS AUTHORITY FOR ANY CLASSIFICATION OF EMPLOYEES SHALL NOT BE MORE
12 THAN THIRTY PERCENT HIGHER THAN THE MINIMUM WAGE ESTABLISHED PURSUANT TO
13 THIS ARTICLE AND ARTICLE NINETEEN-A OF THIS CHAPTER. ANY SUCH STANDARDS
14 MAY ALSO BE ENFORCED BY THE COMMISSIONER USING ANY AND ALL ENFORCEMENT
15 METHODS PERMITTED BY THIS CHAPTER FOR ENFORCEMENT OF WAGE STANDARDS AND
16 PAYMENT.

17 S 8. Subdivision 1 of section 662 of the labor law, as amended by
18 chapter 564 of the laws of 2010, is amended to read as follows:

19 1. Failure to pay minimum wage or overtime compensation. Any employer
20 or his or her agent, or the officer or agent of any corporation, part-
21 nership, or limited liability company, who pays or agrees to pay to any
22 employee less than the wage applicable under this article, INCLUDING ANY
23 MINIMUM WAGE ESTABLISHED BY A COUNTY OR CITY, shall be guilty of a
24 misdemeanor and upon conviction therefor shall be fined not less than
25 five hundred nor more than twenty thousand dollars or imprisoned for not
26 more than one year, and, in the event that any second or subsequent
27 offense occurs within six years of the date of conviction for a prior
28 offense, shall be guilty of a felony for the second or subsequent
29 offense, and upon conviction therefor, shall be fined not less than five
30 hundred nor more than twenty thousand dollars or imprisoned for not more
31 than one year plus one day, or punished by both such fine and imprison-
32 ment, for each such offense. Each payment to any employee in any week of
33 less than the wage applicable under this article shall constitute a
34 separate offense.

35 S 9. This act shall take effect immediately.