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I N   S E N A T E

January 31, 2014

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Introduced by Sens. ESPAILLAT, STEWART-COUSINS, GIANARIS, KRUEGER,  
PERALTA -- read twice and ordered printed, and when printed to be  
committed to the Committee on Labor

AN ACT to amend the labor 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 ASSEM-  
BLY, 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,  
24    \$7.15 on and after January 1, 2007,  
25    \$8.00 on and after December 31, 2013,  
26    [\$8.75 on and after December 31, 2014,]

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

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

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

41 5. Notwithstanding subdivisions one and two of this section, meal and  
42 lodging allowances for a food service worker receiving a cash wage  
43 amounting to three dollars and thirty cents per hour on or after March  
44 thirty-first, two thousand; three dollars and eighty-five cents on or  
45 after January first, two thousand five; four dollars and thirty-five  
46 cents on or after January first, two thousand six; [and] four dollars  
47 and sixty cents on or after January first, two thousand seven; FIVE  
48 DOLLARS AND FIFTY CENTS ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF  
49 THE LAWS OF TWO THOUSAND FOURTEEN THAT AMENDED THIS SUBDIVISION; SIX  
50 DOLLARS AND TWENTY CENTS ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND  
51 FOURTEEN; AND ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN  
52 AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE COMMISSIONER SHALL  
53 CALCULATE AND ESTABLISH AN ADJUSTED CASH WAGE RATE BY INCREASING THE  
54 THEN CURRENT CASH WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT  
55 TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER THIRTY-FIRST USING  
56 THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A SUCCESSOR

1 INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH  
2 RATE OF INFLATION IS GREATER THAN ZERO PERCENT, shall not increase more  
3 than two-thirds of the increase required by subdivision two of this  
4 section as applied to state wage orders in effect pursuant to subdivi-  
5 sion one of this section.

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

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

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

28 S 6. This act shall take effect immediately.