S T A T E O F N E W Y O R K

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I N A S S E M B L Y

May 12, 2010

Introduced by M. of A. JOHN, WRIGHT, BENEDETTO, TITUS, LANCMAN, JACOBS -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the minimum wage and making technical corrections relating thereto

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

Section 1. Paragraph (n) of subdivision 5 of section 651 of the labor law, as amended by chapter 640 of the laws of 2005, is amended to read as follows:

(n) by [a] THE federal[, state or municipal] government [or political subdivision thereof]. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner; or

S 2. Subdivision 6 of section 651 of the labor law, as amended by chapter 281 of the laws of 2002, is amended to read as follows:

6. "Employer" includes any individual, partnership, association, corporation, limited liability company, business trust, legal representative, STATE OR MUNICIPAL GOVERNMENT OR POLITICAL SUBDIVISION THEREOF, or any organized group of persons acting as employer.

S 3. Subdivisions 1, 4 and 5 of section 652 of the labor law, as amended by chapter 747 of the laws of 2004, are amended to read as follows:

1. Statutory. Every employer shall pay to each of its employees for each hour worked a wage of not less than:

$4.25 on and after April 1, 1991,
$5.15 on and after March 31, 2000,
$6.00 on and after January 1, 2005,
$6.75 on and after January 1, 2006,
$7.15 on and after January 1, 2007,
$7.75 ON AND AFTER JANUARY 1, 2011,
$8.00 ON AND AFTER JANUARY 1, 2012,
$8.75 ON AND AFTER JANUARY 1, 2013,
$9.25 ON OR AFTER JANUARY 1, 2014

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

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AND ON AND AFTER JANUARY 1, 2015 AND ON EACH FOLLOWING JANUARY FIRST, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE RATE BY INCREASING THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH JANUARY FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

4. Notwithstanding subdivisions one and two of this section, the wage for an employee who is a food service worker receiving tips shall be a cash wage of at least three dollars and thirty cents per hour on or after March thirty-first, two thousand; three dollars and eighty-five cents on or after January first, two thousand five; at least four dollars and thirty-five cents on or after January first, two thousand six; [and] at least four dollars and sixty cents on or after January first, two thousand seven; AND AT LEAST FOUR DOLLARS AND NINETY-FIVE CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN; AND AT LEAST FIVE DOLLARS AND TEN CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE; AND AT LEAST FIVE DOLLARS AND SIXTY CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN; AND AT LEAST FIVE DOLLARS AND SEVENTY-FIVE CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN; AND ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN AND ON EACH FOLLOWING JANUARY FIRST, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE RATE BY INCREASING THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH JANUARY FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THEN ZERO PERCENT, provided that the tips of such an employee, when added to such cash wage, are equal to or exceed the minimum wage in effect pursuant to subdivision one of this section and provided further that no other cash wage is established pursuant to section six hundred fifty-three of this article. In the event the cash wage payable under the Fair Labor Standards Act (29 United States Code Sec. 203 (m), as amended), is increased after enactment of this subdivision, the cash wage payable under this subdivision shall automatically be increased by the proportionate increase in the cash wage payable under such federal law, and will be immediately enforceable as the cash wage payable to food service workers under this article.

5. Notwithstanding subdivisions one and two of this section, meal and lodging allowances for a food service worker receiving a cash wage amounting to three dollars and thirty cents per hour on or after March thirty-first, two thousand; three dollars and eighty-five cents on or after January first, two thousand five; four dollars and thirty-five cents on or after January first, two thousand six; [and] four dollars and sixty cents on or after January first, two thousand seven; FOUR DOLLARS AND NINETY-FIVE CENTS ON OR AFTER MARCH THIRTY-FIRST, TWO THOUSAND ELEVEN; FIVE DOLLARS AND TEN CENTS ON OR AFTER MARCH THIRTY-FIRST, TWO THOUSAND TWELVE; FIVE DOLLARS AND SIXTY CENTS ON OR AFTER MARCH THIRTY-FIRST, TWO THOUSAND THIRTEEN; AND AT LEAST FIVE DOLLARS AND SEVENTY-FIVE CENTS ON OR AFTER MARCH THIRTY-FIRST, TWO THOUSAND FOURTEEN; AND ON OR AFTER MARCH THIRTY-FIRST, TWO THOUSAND FIFTEEN AND ON EACH FOLLOWING MARCH THIRTY-FIRST, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE RATE BY INCREASING THE THEN CURRENT

MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH MARCH THIRTY-FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THEN ZERO PERCENT, shall not increase more than two-thirds of the increase required by subdivision two of this section as applied to state wage orders in effect pursuant to subdivision one of this section.

S 4. This act shall take effect immediately.