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I N A S S E M B L Y

January 30, 2012

Introduced by M. of A. WRIGHT, SILVER, CANESTRARI, FARRELL, HOOPER, J. RIVERA -- Multi-Sponsored by -- M. of A. ABBATE, ABINANTI, ARROYO, AUBRY, BARRON, BENEDETTO, BOYLAND, BRAUNSTEIN, BRENNAN, BRONSON, BROOK-KRASNY, CAHILL, CAMARA, CASTRO, CLARK, COLTON, COOK, CRESPO, CYMBROWITZ, DenDEKKER, DINOWITZ, ENGLEBRIGHT, ESPINAL, GALEF, GANTT, GIBSON, GLICK, GOTTFRIED, HEASTIE, HIKIND, JACOBS, JAFFEE, JEFFRIES, KAVANAGH, LANCMAN, LAVINE, LENTOL, LIFTON, LINARES, V. LOPEZ, MAGNARELLI, MAISEL, MARKEY, McENENY, MENG, M. MILLER, MILLMAN, MOYA, NOLAN, PAULIN, PEOPLES-STOKES, PERRY, PRETLOW, RAMOS, REILLY, N. RIVERA, P. RIVERA, ROBERTS, ROBINSON, RODRIGUEZ, ROSENTHAL, RUSSELL, RYAN, SCARBOROUGH, SCHIMEL, SIMANOWITZ, SIMOTAS, STEVENSON, SWEENEY, THIELE, TITONE, TITUS, WEINSTEIN, WEISENBERG, WEPRIN -- 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:

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, as
15 amended by chapter 747 of the laws of 2004, are amended to read as
16 follows:

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

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

3 \$4.25 on and after April 1, 1991,
4 \$5.15 on and after March 31, 2000,
5 \$6.00 on and after January 1, 2005,
6 \$6.75 on and after January 1, 2006,
7 \$7.15 on and after January 1, 2007,
8 \$8.50 ON AND AFTER JANUARY 1, 2013

9 AND ON AND AFTER JANUARY 1, 2014 AND ON EACH FOLLOWING JANUARY FIRST,
10 THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE
11 RATE BY INCREASING THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF
12 INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO
13 EACH JANUARY FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS,
14 CPI-U, OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPART-
15 MENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT,
16 or, if greater, such other wage as may be established by federal law
17 pursuant to 29 U.S.C. section 206 or its successors or such other wage
18 as may be established in accordance with the provisions of this article.

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

46 5. Notwithstanding subdivisions one and two of this section, meal and
47 lodging allowances for a food service worker receiving a cash wage
48 amounting to three dollars and thirty cents per hour on or after March
49 thirty-first, two thousand; three dollars and eighty-five cents on or
50 after January first, two thousand five; four dollars and thirty-five
51 cents on or after January first, two thousand six; [and] four dollars
52 and sixty cents on or after January first, two thousand seven; FIVE
53 DOLLARS AND EIGHTY-SIX CENTS ON OR AFTER MARCH THIRTY-FIRST, TWO THOU-
54 SAND THIRTEEN; AND ON OR AFTER MARCH THIRTY-FIRST, TWO THOUSAND FOURTEEN
55 AND ON EACH FOLLOWING MARCH THIRTY-FIRST, THE COMMISSIONER SHALL CALCU-
56 LATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE RATE BY INCREASING THE THEN

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

9 S 4. This act shall take effect immediately.