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

April 23, 2014

Introduced by M. of A. ROZIC, KAVANAGH -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing a living wage rate

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

Section 1. The labor law is amended by adding a new article 19-D to read as follows:

ARTICLE 19-D
FAIR WAGES ACT

SECTION 696. DEFINITIONS.
696-A. LIVING WAGE RATE.
696-B. PAYMENT OF LIVING WAGE.
696-C. IMPLEMENTATION.
696-D. COMMISSIONER'S POWERS OF INVESTIGATION.
696-E. CIVIL ACTION.

S 696. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE TERM:

1. "EMPLOYER" MEANS A FORMULA RETAIL STORE, LARGE EMPLOYER, TRANSPORTATION BUSINESS, OR FRANCHISEE OR SUBCONTRACTOR, AND INCLUDES ANY INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORATION, LIMITED LIABILITY COMPANY, BUSINESS TRUST, LEGAL REPRESENTATIVE, OR ANY ORGANIZED GROUP OF PERSONS ACTING AS EMPLOYER.

2. "FORMULA RETAIL STORE" MEANS ANY EMPLOYER THAT OPERATES A RETAIL SALES OR RESTAURANT ESTABLISHMENT EITHER DIRECTLY OR THROUGH FRANCHISEES AND THAT, ALONG WITH ELEVEN OR MORE OTHER RETAIL SALES OR RESTAURANT ESTABLISHMENTS LOCATED IN THE UNITED STATES, MAINTAINS TWO OR MORE OF THE FOLLOWING FEATURES: (A) A STANDARDIZED ARRAY OF MERCHANDISE, A STANDARDIZED FACADE, A STANDARDIZED DECOR AND COLOR SCHEME, A UNIFORM APPAREL, STANDARDIZED SIGNAGE, A TRADEMARK; OR (B) A SERVICEMARK.

3. "LARGE EMPLOYER" MEANS ANY EMPLOYER THAT HAS ANNUAL GROSS REVENUE OF FIFTY MILLION DOLLARS OR MORE, BUT SHALL NOT INCLUDE (A) AN EMPLOYER WHOSE PRINCIPAL INDUSTRY IS MANUFACTURING; OR (B) A NOT-FOR-PROFIT ORGANIZATION. AN EMPLOYER SHALL BE DEEMED TO HAVE ANNUAL GROSS REVENUE

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

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OF FIFTY MILLION DOLLARS OR MORE IF IT HAD REVENUE AT OR EXCEEDING THAT LEVEL IN ANY OF THE PAST THREE FISCAL OR CALENDAR YEARS.

4. "MANUFACTURING" MEANS THE PROCESS OF WORKING RAW MATERIALS INTO PRODUCTS SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR NEW COMBINATIONS TO MATTER WHICH HAS ALREADY GONE THROUGH SOME ARTIFICIAL PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES, OR OTHER SIMILAR EQUIPMENT.

5. "NOT-FOR-PROFIT ORGANIZATION" MEANS AN ENTITY EXEMPT FROM TAXATION UNDER SECTION 501(C)(3) OF THE FEDERAL INTERNAL REVENUE CODE.

6. "TRANSPORTATION BUSINESS" MEANS ANY INDUSTRY, BUSINESS, OR ESTABLISHMENT OPERATED FOR THE PURPOSE OF CONVEYING PERSONS OR PROPERTY FROM ONE PLACE TO ANOTHER WHETHER BY RAIL, HIGHWAY, AIR, OR WATER, AND ALL OPERATIONS AND SERVICES IN CONNECTION THEREWITH.

7. "FRANCHISEE OR SUBCONTRACTOR" MEANS ANY EMPLOYER THAT OPERATES UNDER A FRANCHISE AGREEMENT WITH A FORMULA RETAIL STORE OR LARGE EMPLOYER, OR THAT PROVIDES SERVICES, INCLUDING BUT NOT LIMITED TO JANITORIAL, MAINTENANCE, SECURITY, STAFFING, PASSENGER SERVICES, FOOD SERVICES, OR TEMPORARY SERVICES TO A FORMULA RETAIL STORE, LARGE EMPLOYER, OR TRANSPORTATION BUSINESS.

8. "EMPLOYEE" HAS THE MEANING PROVIDED IN SUBDIVISION FIVE OF SECTION SIX HUNDRED FIFTY-ONE OF THIS CHAPTER.

9. "LIVING WAGE RATE" SHALL HAVE THE MEANING SET FORTH IN SECTION SIX HUNDRED NINETY-SIX-A OF THIS TITLE.

S 696-A. LIVING WAGE RATE. 1. BEGINNING ON THE EFFECTIVE DATE OF THIS ARTICLE, THE LIVING WAGE RATE SHALL BE AN HOURLY RATE OF FIFTEEN DOLLARS.

2. NO LATER THAN JANUARY FIRST OF EACH SUCCESSIVE YEAR, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED LIVING WAGE RATE BY INCREASING THE THEN CURRENT LIVING 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.

S 696-B. PAYMENT OF LIVING WAGE. 1. AN EMPLOYER SHALL PAY EMPLOYEES AN HOURLY WAGE OF NO LESS THAN THE LIVING WAGE RATE FOR EACH HOUR THAT THE EMPLOYEE WORKS WITHIN THE GEOGRAPHIC BOUNDARIES OF THE STATE.

2. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, EMPLOYERS SHALL PAY EMPLOYEES WHO CUSTOMARILY AND REGULARLY RECEIVE TIPS NO LESS THAN SEVENTY PERCENT OF THE LIVING WAGE RATE, ROUNDED TO THE NEAREST FIVE CENTS, PROVIDED THAT AT ALL TIMES THE COMBINATION OF THE CASH WAGE PAID BY THE EMPLOYER AND THE TIPS RECEIVED BY THE EMPLOYEE TOTALS NO LESS THAN THE LIVING WAGE RATE FOR EACH HOUR WORKED WITHIN THE GEOGRAPHIC BOUNDARIES OF THE STATE. SUCH CALCULATION MAY BE MADE BASED ON THE TOTAL WAGES AND TIPS RECEIVED BY THE EMPLOYEE OVER THE COURSE OF HIS OR HER SHIFT.

3. FORMULA RETAIL STORES, LARGE EMPLOYERS, AND TRANSPORTATION BUSINESSES SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE FOR ANY VIOLATION OF THIS ARTICLE BY A FRANCHISEE OR SUBCONTRACTOR OF THE FORMULA RETAIL STORE, LARGE EMPLOYER OR TRANSPORTATION BUSINESS.

4. THE PROVISIONS OF THIS SECTION MAY BE WAIVED BY THE WRITTEN TERMS OF A BONA FIDE COLLECTIVE BARGAINING AGREEMENT.

S 696-C. IMPLEMENTATION. 1. BY DECEMBER FIRST OF EACH YEAR, THE STATE SHALL PUBLISH AND MAKE AVAILABLE TO EMPLOYERS A BULLETIN ANNOUNCING THE

ADJUSTED LIVING WAGE AND BENEFITS RATE FOR THE UPCOMING YEAR, WHICH SHALL TAKE EFFECT ON JANUARY FIRST.

2. BY DECEMBER FIRST OF EACH YEAR, THE STATE SHALL PUBLISH AND MAKE AVAILABLE TO EMPLOYERS, IN ENGLISH AND SPANISH, AND ON-LINE, A NOTICE SUITABLE FOR POSTING IN THE WORKPLACE INFORMING EMPLOYEES OF THE CURRENT LIVING WAGE AND OF THEIR RIGHTS UNDER THIS ARTICLE.

3. EVERY EMPLOYER SHALL POST IN A CONSPICUOUS PLACE AT ANY WORKPLACE OR JOB SITE WHERE AN EMPLOYEE WORKS THE NOTICE PUBLISHED EACH YEAR BY THE AGENCY INFORMING EMPLOYEES OF THE CURRENT LIVING WAGE AND OF THEIR RIGHTS UNDER THIS ARTICLE. EVERY LARGE EMPLOYER SHALL POST SUCH NOTICES IN ENGLISH AND SPANISH.

4. EMPLOYERS SHALL RETAIN PAYROLL RECORDS PERTAINING TO EMPLOYEES FOR A PERIOD OF FOUR YEARS. EMPLOYERS SHALL PERMIT AN EMPLOYEE OR AN EMPLOYEE'S DESIGNATED REPRESENTATIVE TO INSPECT THE EMPLOYER'S PAYROLL PERTAINING TO THE EMPLOYEE.

S 696-D. COMMISSIONER'S POWERS OF INVESTIGATION. THE COMMISSIONER OR HIS OR HER AUTHORIZED REPRESENTATIVE SHALL HAVE POWER:

1. TO INVESTIGATE THE WAGES OF PERSONS IN ANY OCCUPATION IN THE STATE;

2. TO ENTER THE PLACE OF BUSINESS OR EMPLOYMENT OF ANY EMPLOYER FOR THE PURPOSE OF: (A) EXAMINING AND INSPECTING ANY AND ALL BOOKS, REGISTERS, PAYROLLS AND OTHER RECORDS THAT IN ANY WAY RELATE TO OR HAVE A BEARING UPON THE WAGES PAID TO, OR THE HOURS WORKED BY ANY EMPLOYEES; (B) ASCERTAINING WHETHER THE PROVISIONS OF THIS ARTICLE AND THE ORDERS AND REGULATIONS PROMULGATED HEREUNDER ARE BEING COMPLIED WITH; AND

3. TO REQUIRE FROM ANY EMPLOYER FULL AND CORRECT STATEMENTS AND REPORTS IN WRITING, AT SUCH TIMES AS THE COMMISSIONER MAY DEEM NECESSARY, OF THE WAGES PAID TO AND THE HOURS WORKED BY HIS OR HER EMPLOYEES.

S 696-E. CIVIL ACTION. 1. IF ANY EMPLOYEE IS PAID BY HIS OR HER EMPLOYER LESS THAN THE WAGE TO WHICH HE OR SHE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, HE OR SHE SHALL RECOVER IN A CIVIL ACTION THE AMOUNT OF ANY SUCH UNDERPAYMENTS, TOGETHER WITH COSTS, ALL REASONABLE ATTORNEY'S FEES, PREJUDGMENT INTEREST AS REQUIRED UNDER THE CIVIL PRACTICE LAW AND RULES, AND UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS UNDERPAYMENT OF WAGES WAS IN COMPLIANCE WITH THE LAW, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO ONE HUNDRED PERCENT OF THE TOTAL OF SUCH UNDERPAYMENTS FOUND TO BE DUE. ANY AGREEMENT BETWEEN THE EMPLOYEE, AND THE EMPLOYER TO WORK FOR LESS THAN SUCH WAGE SHALL BE NO DEFENSE TO SUCH ACTION.

2. ON BEHALF OF ANY EMPLOYEE PAID LESS THAN THE WAGE TO WHICH THE EMPLOYEE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRATIVE ACTION, TO COLLECT SUCH CLAIM, AND THE EMPLOYER SHALL BE REQUIRED TO PAY THE FULL AMOUNT OF THE UNDERPAYMENT, PLUS COSTS, AND UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS UNDERPAYMENT WAS IN COMPLIANCE WITH THE LAW, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES. LIQUIDATED DAMAGES SHALL BE CALCULATED BY THE COMMISSIONER AS NO MORE THAN ONE HUNDRED PERCENT OF THE TOTAL AMOUNT OF UNDERPAYMENTS FOUND TO BE DUE THE EMPLOYEE. IN ANY ACTION BROUGHT BY THE COMMISSIONER IN A COURT OF COMPETENT JURISDICTION, LIQUIDATED DAMAGES SHALL BE CALCULATED AS AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF UNDERPAYMENTS FOUND TO BE DUE THE EMPLOYEE.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER UPON A LIABILITY IMPOSED BY THIS ARTICLE MUST BE COMMENCED WITHIN SIX YEARS. THE STATUTE OF LIMITATIONS SHALL BE TOLLED FROM THE DATE AN EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE COMMISSIONER COMMENCES AN INVESTIGATION, WHICHEVER IS EARLIER, UNTIL AN ORDER TO

COMPLY ISSUED BY THE COMMISSIONER BECOMES FINAL, OR WHERE THE COMMISSIONER DOES NOT ISSUE AN ORDER, UNTIL THE DATE ON WHICH THE COMMISSIONER NOTIFIES THE COMPLAINANT THAT THE INVESTIGATION HAS CONCLUDED. INVESTIGATION BY THE COMMISSIONER SHALL NOT BE A PREREQUISITE TO NOR A BAR AGAINST A PERSON BRINGING A CIVIL ACTION UNDER THIS ARTICLE.

4. IN ANY CIVIL ACTION BY AN EMPLOYEE OR BY THE COMMISSIONER, THE EMPLOYEE OR COMMISSIONER SHALL HAVE THE RIGHT TO COLLECT ATTORNEYS' FEES AND COSTS INCURRED IN ENFORCING ANY COURT JUDGMENT. ANY JUDGMENT OR COURT ORDER AWARDING REMEDIES UNDER THIS SECTION SHALL PROVIDE THAT IF ANY AMOUNTS REMAIN UNPAID UPON THE EXPIRATION OF NINETY DAYS FOLLOWING ISSUANCE OF JUDGMENT, OR NINETY DAYS AFTER EXPIRATION OF THE TIME TO APPEAL AND NO APPEAL THEREFROM IS THEN PENDING, WHICHEVER IS LATER, THE TOTAL AMOUNT OF JUDGMENT SHALL AUTOMATICALLY INCREASE BY FIFTEEN PERCENT.

S 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.