

8343--A

Cal. No. 822

I N   A S S E M B L Y

January 9, 2014

---

Introduced by M. of A. HEASTIE, SILVER, WRIGHT, KAVANAGH, FARRELL, HOOPER, PEOPLES-STOKES, JACOBS, MARKEY, MILLER, ABINANTI, SKARTADOS, SEPULVEDA, BRAUNSTEIN, CLARK, DenDEKKER, DINOWITZ, FAHY, GALEF, GOTTFRIED, JAFFEE, LUPARDO, MAYER, MOYA, ROSENTHAL, CAHILL, PICHARDO, HENNESSEY, ROSA, COLTON -- Multi-Sponsored by -- M. of A. ABBATE, ARROYO, BENEDETTO, BRENNAN, BRONSON, BUCHWALD, CAMARA, COOK, CRESPO, CUSICK, CYMBROWITZ, DAVILA, GANTT, GLICK, GOLDFEDER, HIKIND, KIM, LAVINE, LENTOL, LIFTON, MILLMAN, MOSLEY, NOLAN, O'DONNELL, ORTIZ, OTIS, PAULIN, PERRY, PRETLOW, RAMOS, ROBERTS, ROBINSON, RODRIGUEZ, ROZIC, RUSSELL, RYAN, SCARBOROUGH, SCHIMEL, SIMOTAS, SKOUFIS, SOLAGES, STECK, SWEENEY, THIELE, TITONE, WEINSTEIN, WEISENBERG, WEPRIN -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Ways and Means -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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.

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

1 S 3. Subdivisions 1, 4 and 5 of section 652 of the labor law, subdivi-  
2 sion 1 as amended by section 1 of part P of chapter 57 of the laws of  
3 2013 and subdivisions 4 and 5 as amended by chapter 747 of the laws of  
4 2004, are amended to read as follows:

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

7 \$4.25 on and after April 1, 1991,

8 \$5.15 on and after March 31, 2000,

9 \$6.00 on and after January 1, 2005,

10 \$6.75 on and after January 1, 2006,

11 \$7.15 on and after January 1, 2007,

12 \$8.00 on and after December 31, 2013,

13 [\$8.75 on and after December 31, 2014,]

14 \$9.00 on and after December 31, [2015] 2014,

15 \$10.10 ON AND AFTER DECEMBER 31, 2015 AND ON AND AFTER DECEMBER 31,

16 2016 AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE COMMISSIONER SHALL  
17 CALCULATE AND ESTABLISH AN ADJUSTED MINIMUM WAGE RATE BY INCREASING THE  
18 THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST  
19 RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER THIRTY-FIRST  
20 USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U, OR A SUCCE-  
21 SOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF  
22 SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, or, if greater,  
23 such other wage as may be established by federal law pursuant to 29  
24 U.S.C. section 206 or its successors or such other wage as may be estab-  
25 lished in accordance with the provisions of this article.

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

1 5. Notwithstanding subdivisions one and two of this section, meal and  
2 lodging allowances for a food service worker receiving a cash wage  
3 amounting to three dollars and thirty cents per hour on or after March  
4 thirty-first, two thousand; three dollars and eighty-five cents on or  
5 after January first, two thousand five; four dollars and thirty-five  
6 cents on or after January first, two thousand six; [and] four dollars  
7 and sixty cents on or after January first, two thousand seven; FIVE  
8 DOLLARS AND FIFTY CENTS ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF  
9 THE LAWS OF TWO THOUSAND FOURTEEN THAT AMENDED THIS SUBDIVISION; SIX  
10 DOLLARS AND TWENTY CENTS ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND  
11 FOURTEEN; SIX DOLLARS AND NINETY-FIVE CENTS ON OR AFTER DECEMBER THIR-  
12 TY-FIRST, TWO THOUSAND FIFTEEN AND ON OR AFTER DECEMBER THIRTY-FIRST,  
13 TWO THOUSAND SIXTEEN AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE  
14 COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED CASH WAGE RATE BY  
15 INCREASING THE THEN CURRENT CASH WAGE RATE BY THE RATE OF INFLATION FOR  
16 THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER  
17 THIRTY-FIRST USING THE CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, CPI-U,  
18 OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF  
19 LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, shall not  
20 increase more than two-thirds of the increase required by subdivision  
21 two of this section as applied to state wage orders in effect pursuant  
22 to subdivision one of this section.

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

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

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

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

48 f. Applies to or affects any provision of paragraph (c) of subdivision  
49 one of section 8-100 of the election law, the labor law, EXCEPT AS  
50 PROVIDED IN SUBDIVISION TWO OF SECTION SIX HUNDRED FIFTY-FOUR OF THE  
51 LABOR LAW, sections two, three and four of chapter one thousand eleven  
52 of the laws of nineteen hundred sixty-eight, entitled "An act in  
53 relation to the maximum hours of labor of certain municipal and fire  
54 district firemen and the holidays of firemen and policemen, repealing  
55 certain sections of the labor law relating thereto, and to amend the  
56 municipal home rule law, in relation thereto," as amended, the volunteer

1 [firemen's] FIREFIGHTERS' benefit law, or the [workmen's] WORKERS'  
2 compensation law or changes any provision of the multiple residence law  
3 or the multiple dwelling law, except that in a city of one million  
4 persons or more, the provisions of local law for the enforcement of the  
5 housing code which is not less restrictive than the multiple dwelling  
6 law may be applied in the enforcement of the multiple dwelling law.

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

9 S 654. Basis of changes in minimum wage. 1. In establishing minimum  
10 wages and regulations for any occupation or occupations pursuant to the  
11 provisions of the following sections of this article, the wage board and  
12 the commissioner shall consider the amount sufficient to provide  
13 adequate maintenance and to protect health and, in addition, the wage  
14 board and the commissioner shall consider the value of the work or clas-  
15 sification of work performed, and the wages paid in the state for work  
16 of like or comparable character.

17 2. COUNTIES AND CITIES ARE AUTHORIZED TO ADOPT MINIMUM STANDARDS  
18 RELATING TO WAGES, OR MECHANISMS FOR THE ENFORCEMENT THEREOF, THAT ARE  
19 AT LEAST AS FAVORABLE TO EMPLOYEES AS THE MINIMUM STANDARDS APPLICABLE  
20 UNDER THIS ARTICLE, PROVIDED THAT ANY MINIMUM WAGE ENACTED PURSUANT TO  
21 THIS AUTHORITY FOR ANY CLASSIFICATION OF EMPLOYEES SHALL NOT BE MORE  
22 THAN THIRTY PERCENT HIGHER THAN THE MINIMUM WAGE ESTABLISHED PURSUANT TO  
23 THIS ARTICLE AND ARTICLE NINETEEN-A OF THIS CHAPTER. ANY SUCH STANDARDS  
24 MAY ALSO BE ENFORCED BY THE COMMISSIONER USING ANY AND ALL ENFORCEMENT  
25 METHODS PERMITTED BY THIS CHAPTER FOR ENFORCEMENT OF WAGE STANDARDS AND  
26 PAYMENT.

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

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

45 S 9. This act shall take effect immediately.