

1835--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. ESPAILLAT, AVELLA, BRESLIN, DILAN, HASSELL-THOMPSON, HOYLMAN, KENNEDY, KRUEGER, MONTGOMERY, PARKER, PERALTA, PERKINS, SAMPSON, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to raising the statutory minimum wage

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:

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

19 \$4.25 on and after April 1, 1991

20 \$5.15 on and after March 31, 2000,

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

LBD05329-02-3

1 \$6.00 on and after January 1, 2005,
2 \$6.75 on and after January 1, 2006,
3 \$7.15 on and after January 1, 2007,
4 \$9.00 ON AND AFTER JANUARY 1, 2014,
5 \$9.50 ON AND AFTER JANUARY 1, 2015,

6 AND ON AND AFTER JANUARY 1, 2016 AND ON EACH FOLLOWING JANUARY FIRST,
7 AN ADJUSTED MINIMUM WAGE RATE THAT THE COMMISSIONER SHALL CALCULATE AND
8 ESTABLISH BY INCREASING THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE
9 OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD THAT IS AVAILABLE
10 AT THE TIME THE ADJUSTED MINIMUM WAGE RATE IS CALCULATED AND ANNOUNCED
11 USING THE CONSUMER PRICE INDEX (URBAN WAGE EARNERS AND CLERICAL WORKERS,
12 ALL ITEMS, NY-NJ-CT-PA, NOT SEASONALLY ADJUSTED), OR A SUCCESSOR INDEX
13 AS CALCULATED BY THE UNITED STATES DEPARTMENT OF LABOR, IF SUCH RATE OF
14 INFLATION IS GREATER THAN ZERO PERCENT, ROUNDED TO THE NEAREST MULTIPLE
15 OF FIVE CENTS, or, if greater, such other wage as may be established by
16 federal law pursuant to 29 U.S.C. section 206 or its successors or such
17 other wage as may be established in accordance with the provisions of
18 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-FIVE
27 CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN; AND AT LEAST SIX
28 DOLLARS AND FORTY CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN
29 AND ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN AND ON EACH FOLLOW-
30 ING JANUARY FIRST, AN ADJUSTED MINIMUM WAGE RATE THAT THE COMMISSIONER
31 SHALL CALCULATE AND ESTABLISH BY INCREASING THE THEN CURRENT MINIMUM
32 WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH
33 PERIOD AVAILABLE AT THE TIME THE ADJUSTED MINIMUM WAGE RATE IS CALCU-
34 LATED AND ANNOUNCED USING THE CONSUMER PRICE INDEX (URBAN WAGE EARNERS
35 AND CLERICAL WORKERS, ALL ITEMS, NY-NJ-CT-PA, NOT SEASONALLY ADJUSTED),
36 OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED STATES DEPARTMENT OF
37 LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN ZERO PERCENT, ROUNDED
38 TO THE NEAREST MULTIPLE OF FIVE CENTS, provided that the tips of such an
39 employee, when added to such cash wage, are equal to or exceed the mini-
40 mum wage in effect pursuant to subdivision one of this section and
41 provided further that no other cash wage is established pursuant to
42 section six hundred fifty-three of this article. In the event the cash
43 wage payable under the Fair Labor Standards Act (29 United States Code
44 Sec. 203 (m), as amended), is increased after enactment of this subdivi-
45 sion, the cash wage payable under this subdivision shall automatically
46 be increased by the proportionate increase in the cash wage payable
47 under such federal law, and will be immediately enforceable as the cash
48 wage payable to food service workers under this article.

49 5. Notwithstanding subdivisions one and two of this section, meal and
50 lodging allowances for a food service worker receiving a cash wage
51 amounting to three dollars and thirty cents per hour on or after March
52 thirty-first, two thousand; three dollars and eighty-five cents on or
53 after January first, two thousand five; four dollars and thirty-five
54 cents on or after January first, two thousand six; [and] four dollars
55 and sixty cents on or after January first, two thousand seven; FIVE
56 DOLLARS AND EIGHTY-FIVE CENTS ON OR AFTER JANUARY FIRST, TWO THOUSAND

1 FOURTEEN; AND AT LEAST SIX DOLLARS AND FORTY CENTS ON OR AFTER JANUARY
2 FIRST, TWO THOUSAND FIFTEEN AND ON OR AFTER JANUARY FIRST, TWO THOUSAND
3 SIXTEEN AND ON EACH FOLLOWING JANUARY FIRST, AN ADJUSTED MINIMUM WAGE
4 RATE THAT THE COMMISSIONER SHALL CALCULATE AND ESTABLISH BY INCREASING
5 THE THEN CURRENT MINIMUM WAGE RATE BY THE RATE OF INFLATION FOR THE MOST
6 RECENT TWELVE MONTH PERIOD AVAILABLE AT THE TIME THE ADJUSTED MINIMUM
7 WAGE RATE IS CALCULATED AND ANNOUNCED USING THE CONSUMER PRICE INDEX
8 (URBAN WAGE EARNERS AND CLERICAL WORKERS, ALL ITEMS, NY-NJ-CT-PA, NOT
9 SEASONALLY ADJUSTED), OR A SUCCESSOR INDEX AS CALCULATED BY THE UNITED
10 STATES DEPARTMENT OF LABOR, IF SUCH RATE OF INFLATION IS GREATER THAN
11 ZERO PERCENT, ROUNDED TO THE NEAREST MULTIPLE OF FIVE CENTS, shall not
12 increase more than two-thirds of the increase required by subdivision
13 two of this section as applied to state wage orders in effect pursuant
14 to subdivision one of this section.

15 S 4. Section 665 of the labor law, as added by chapter 619 of the laws
16 of 1960, is amended to read as follows:

17 S 665. Savings AND NON-PREEMPTION clause. 1. If any provision of this
18 article or the application thereof to any person, employer, occupation
19 or circumstance is held invalid, the remainder of the article and the
20 application of such provision to other persons, employees, occupations,
21 or circumstances shall not be affected thereby.

22 2. NOTHING IN THIS ARTICLE OR ANY OTHER PROVISION OF LAW SHALL BE
23 DEEMED TO RESTRICT LOCAL GOVERNMENTS FROM REQUIRING PAYMENT OF HIGHER
24 WAGES OR BENEFITS WITHIN THEIR GEOGRAPHIC BOUNDARIES.

25 S 5. This act shall take effect immediately.