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

203

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sens. ESPAILLAT, AVELLA, BRESLIN, DILAN, GIANARIS, HOYLMAN, KENNEDY, KRUEGER, MONTGOMERY, PERALTA, PERKINS, RIVERA, SERRANO, SQUADRON, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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:

Section 1. Paragraph (n) of subdivision 5 of section 651 of the labor law, as amended by chapter 481 of the laws of 2010, 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, subdivision 1 as amended by section 1 of part P of chapter 57 of the laws of 2013 and subdivisions 4 and 5 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,

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

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$6.00 on and after January 1, 2005,
$6.75 on and after January 1, 2006,
$7.15 on and after January 1, 2007,
$8.00 on and after December 31, 2013,
[$8.75 on and after December 31, 2014,]
$9.00 on and after December 31, 2015,
$10.10 ON AND AFTER DECEMBER 31, 2016 AND ON AND AFTER DECEMBER 31, 2017 AND ON EACH FOLLOWING DECEMBER 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 DECEMBER 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 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; AT LEAST FIVE DOLLARS AND FIFTY CENTS ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN THAT AMENDED THIS SUBDIVISION; AND AT LEAST SIX DOLLARS AND TWENTY CENTS ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN; AND AT LEAST SIX DOLLARS AND NINETY-FIVE CENTS ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN AND ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED CASH WAGE RATE BY INCREASING THE THEN CURRENT CASH WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER 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 THAN 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; FIVE DOLLARS AND FIFTY CENTS ON OR AFTER THE EFFECTIVE DATE OF THE CHAPTER OF

THE LAWS OF TWO THOUSAND FIFTEEN THAT AMENDED THIS SUBDIVISION; SIX DOLLARS AND TWENTY CENTS ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN; SIX DOLLARS AND NINETY-FIVE CENTS ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN AND ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN AND ON EACH FOLLOWING DECEMBER THIRTY-FIRST, THE COMMISSIONER SHALL CALCULATE AND ESTABLISH AN ADJUSTED CASH WAGE RATE BY INCREASING THE THEN CURRENT CASH WAGE RATE BY THE RATE OF INFLATION FOR THE MOST RECENT TWELVE MONTH PERIOD AVAILABLE PRIOR TO EACH DECEMBER 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 THAN 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. Subdivision 6 of section 652 of the labor law is REPEALED.

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

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

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

f. Applies to or affects any provision of paragraph (c) of subdivision one of section 8-100 of the election law, the labor law, EXCEPT AS PROVIDED IN SUBDIVISION TWO OF SECTION SIX HUNDRED FIFTY-FOUR OF THE LABOR LAW, sections two, three and four of chapter one thousand eleven of the laws of nineteen hundred sixty-eight, entitled "An act in relation to the maximum hours of labor of certain municipal and fire district firemen and the holidays of firemen and policemen, repealing certain sections of the labor law relating thereto, and to amend the municipal home rule law, in relation thereto," as amended, the volunteer [firemen's] FIREFIGHTERS' benefit law, or the [workmen's] WORKERS' compensation law or changes any provision of the multiple residence law or the multiple dwelling law, except that in a city of one million persons or more, the provisions of local law for the enforcement of the housing code which is not less restrictive than the multiple dwelling law may be applied in the enforcement of the multiple dwelling law.

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

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

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

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

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

S 9. This act shall take effect immediately.