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

May 16, 2016

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

AN ACT to amend the labor law, in relation to the tipping and hourly wages of food service workers and back-of-the-house employees

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

Section 1. Section 651 of the labor law is amended by adding three new subdivisions 10, 11 and 12 to read as follows:

10. "BACK-OF-THE-HOUSE EMPLOYEE" MEANS AN EMPLOYEE PRIMARILY ENGAGED IN THE PREPARING OF FOOD OR BEVERAGES OR WORK DIRECTLY RELATED TO THE FUNCTIONALITY OF A KITCHEN OR FOOD AND BEVERAGE PREPARATION AREA WHEREBY THE EMPLOYEE DOES NOT INTERACT WITH PATRONS OR CUSTOMERS A MAJORITY OF THE TIME. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, EMPLOYEES IN THE HOTEL OR RESTAURANT INDUSTRIES WHO SERVE AS CHEFS, PANTRY OR PREP COOKS, LINE COOKS, SHORT ORDER COOKS, EXPEDITERS, KITCHEN HANDS AND DISHWASHERS WHO ARE PROHIBITED FROM RECEIVING TIPS FROM GUESTS, PATRONS OR CUSTOMERS.

11. "TIP SHARING" IS THE PRACTICE BY WHICH A DIRECTLY TIPPED EMPLOYEE GIVES A PORTION OF HIS OR HER TIPS TO ANOTHER SERVICE EMPLOYEE OR FOOD SERVICE WORKER WHO PARTICIPATED IN PROVIDING SERVICE TO CUSTOMERS AND KEEPS THE BALANCE.

12. "TIP POOLING" IS THE PRACTICE BY WHICH THE TIP EARNINGS OF DIRECTLY TIPPED EMPLOYEES ARE INTERMINGLED IN A COMMON POOL AND THEN REDISTRIBUTED AMONG DIRECTLY AND INDIRECTLY TIPPED EMPLOYEES.

S 2. The labor law is amended by adding a new section 652-a to read as follows:

S 652-A. TIP SHARING AND TIP POOLING. 1. RESTAURANTS AND HOSPITALITY BUSINESSES MAY PERMIT TIP SHARING AND TIP POOLING AS DEFINED IN SUBDIVISIONS ELEVEN AND TWELVE OF SECTION SIX HUNDRED FIFTY-ONE OF THIS ARTICLE AMONG BACK-OF-THE-HOUSE EMPLOYEES PROVIDED THAT SUCH BUSINESSES PAY FOOD SERVICE WORKERS AND BACK-OF-THE-HOUSE EMPLOYEES NOT LESS THAN THE MINIMUM WAGE ESTABLISHED PURSUANT TO SUBDIVISION ONE OF SECTION SIX HUNDRED FIFTY-TWO OF THIS ARTICLE.

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

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2. (A) ANY RESTAURANT OR HOSPITALITY BUSINESS THAT CHOOSES TO PERMIT TIP SHARING AND TIP POOLING AS AUTHORIZED IN THIS SECTION IS REQUIRED TO INFORM THEIR EMPLOYEES OF SUCH POLICY THROUGH A CONSPICUOUSLY POSTED NOTICE OR OTHER EFFECTIVE MEANS OF DISCLOSURE WITH AS MUCH ADVANCE NOTICE AS POSSIBLE.

(B) IF AT ANY TIME SUCH BUSINESS THAT WAS PREVIOUSLY PERMITTING TIP SHARING AND TIP POOLING AS AUTHORIZED IN THIS SECTION CEASES TO DO SO, THAT BUSINESS IS REQUIRED TO INFORM THEIR EMPLOYEES OF SUCH ACTION THROUGH A CONSPICUOUSLY POSTED NOTICE OR OTHER EFFECTIVE MEANS OF DISCLOSURE AT LEAST SEVEN DAYS PRIOR TO IMPLEMENTING SUCH A POLICY OR WITH AS MUCH ADVANCE NOTICE AS POSSIBLE.

S 3. The commissioner of labor shall promulgate such rules and regulations necessary for the purposes of carrying out the provisions of this act.

S 4. This act shall take effect January 1, 2017.