

STATE OF NEW YORK

4160

2017-2018 Regular Sessions

IN SENATE

February 6, 2017

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to eliminating the wage board; and to repeal subdivision 3 of section 651 and sections 655 and 656 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. Subdivision 3 of section 651 and sections 655 and 656 of
2 the labor law are REPEALED.

3 § 2. Subdivisions 2 and 6 of section 652 of the labor law, subdivision
4 2 as amended by chapter 38 of the laws of 1990 and subdivision 6 as
5 added by section 3 of part K of chapter 54 of the laws of 2016, are
6 amended to read as follows:

7 2. Existing wage orders. The minimum wage orders in effect on the
8 effective date of this act shall remain in full force and effect, except
9 as modified in accordance with the provisions of this article.

10 Such minimum wage orders shall be modified by the commissioner to
11 increase all monetary amounts specified therein in the same proportion
12 as the increase in the hourly minimum wage as provided in subdivision
13 one of this section, including the amounts specified in such minimum
14 wage orders as allowances for gratuities, and when furnished by the
15 employer to its employees, for meals, lodging, apparel and other such
16 items, services and facilities. All amounts so modified shall be rounded
17 off to the nearest five cents. The modified orders shall be promulgated
18 by the commissioner without a public hearing[~~and without reference to~~
19 ~~a wage board,~~] and shall become effective on the effective date of such
20 increases in the minimum wage except as otherwise provided in this
21 subdivision, notwithstanding any other provision of this article.

22 6. Notwithstanding subdivision one of this section, and [sections]
23 section six hundred fifty-three [~~and six hundred fifty-five~~] of this
24 article, on or after January first, two thousand nineteen, and each

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

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1 January first thereafter until such time as the minimum wage is fifteen
2 dollars in all areas of the state, the division of budget shall conduct
3 an analysis of the state of the economy in each region, and the effect
4 of the minimum wage increases listed in this section, to determine
5 whether there should be a temporary suspension or delay in any scheduled
6 increases. In conducting its analysis, the division of budget shall
7 consult the department, the department's division of research and
8 statistics, the United States department of labor, the federal reserve
9 bank of New York and other economic experts. The division of budget will
10 reference well-established economic indexes and accepted economic
11 factors, including those set forth in section six hundred fifty-four of
12 this article, to justify and explain its decision. After reviewing such
13 indexes and factors, the division shall determine whether scheduled
14 increases in the minimum wage shall continue up to and including fifteen
15 dollars. The division of budget will issue a report and recommendation
16 to the commissioner, who shall take action on that report ~~[and recom-~~
17 ~~endation pursuant to section six hundred fifty-six of this article].~~

18 § 3. Section 653 of the labor law, as amended by chapter 14 of the
19 laws of 2000, is amended to read as follows:

20 § 653. Investigation of adequacy of wages. ~~[(1)]~~ The commissioner
21 shall have power on his own motion to cause an investigation to be made
22 of the wages being paid to persons employed in any occupation or occupa-
23 tions to ascertain whether the minimum wages established in accordance
24 with the provisions of this article are sufficient to provide adequate
25 maintenance and to protect the health of the persons employed in such
26 occupation or occupations. The commissioner shall, on the petition of
27 fifty or more residents of the state engaged in or affected by an occu-
28 pation or occupations sought to be investigated, cause such an investi-
29 gation of such occupation or occupations to be conducted. ~~[If, on the~~
30 ~~basis of information in his possession with or without such an investi-~~
31 ~~gation, the commissioner is of the opinion that any substantial number~~
32 ~~of persons employed in any occupation or occupations are receiving wages~~
33 ~~insufficient to provide adequate maintenance and to protect their~~
34 ~~health, he shall appoint a wage board to inquire into and report and~~
35 ~~recommend adequate minimum wages and regulations for employees in such~~
36 ~~occupation or occupations.~~

37 ~~[(2)] The commissioner shall, within six months after enactment of any~~
38 ~~change in the statutory minimum wage set forth in subdivision one of~~
39 ~~section six hundred fifty-two of this article, appoint a wage board to~~
40 ~~inquire and report and recommend any changes to wage orders governing~~
41 ~~wages payable to food service workers. Such wage board shall be estab-~~
42 ~~lished consistent with the provisions of subdivision one of section six~~
43 ~~hundred fifty-five of this article, except the representatives of the~~
44 ~~employees shall be selected upon the nomination of the state American~~
45 ~~Federation of Labor/Congress of Industrial Organizations; and provided,~~
46 ~~further, that the representatives of the employers shall be selected~~
47 ~~upon the nomination of the New York State Business Council. Any wage~~
48 ~~order authorizing a lesser wage than the previously and statutorily~~
49 ~~mandated minimum wage for such employees shall be reviewed by the wage~~
50 ~~board to ascertain at what level such wage order is sufficient to~~
51 ~~provide adequate maintenance and to protect the health and livelihood of~~
52 ~~employees subject to such a wage order after a statutory increase in the~~
53 ~~mandated minimum wage.]~~

54 § 4. Section 654 of the labor law, as added by chapter 619 of the laws
55 of 1960, is amended to read as follows:

§ 654. Basis of changes in minimum wage. 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.

§ 5. Subdivisions 1 and 2 of section 657 of the labor law, subdivision 1 as added by chapter 619 of the laws of 1960 and subdivision 2 as amended by chapter 102 of the laws of 1968, are amended to read as follows:

1. Finality. Any minimum wage order and regulation issued by the commissioner pursuant to this article shall, unless appealed from as provided in this section, be final. The findings of the commissioner as to the facts shall be conclusive on any appeal from an order of the commissioner issued pursuant to ~~[sections]~~ section six hundred fifty-two~~[, six hundred fifty-six,]~~ or six hundred fifty-nine.

2. Review by board of standards and appeals. Any person in interest, including a labor organization or employer association, in any occupation for which a minimum wage order or regulation has been issued under the provisions of this article who is aggrieved by such order or regulation may obtain review before the board of standards and appeals by filing with said board, within forty-five days after the date of the publication of the notice of such order or regulation, a written petition requesting that the order or regulation be modified or set aside. A copy of such petition shall be served promptly upon the commissioner. On such appeal, the commissioner shall certify and file with the board of standards and appeals a transcript of the entire record, including the testimony and evidence upon which such order or regulation was made ~~[and the report of the wage board]~~. The board of standards and appeals, upon the record certified and filed by the commissioner, shall, after oral argument, determine whether the order or regulation appealed from is contrary to law. Within forty-five days after the expiration of the time for the filing of a petition, the board of standards and appeals shall issue an order confirming, amending or setting aside the order or regulation appealed from. The appellate jurisdiction of the board of standards and appeals shall be exclusive and its order final except that the same shall be subject to an appeal taken directly to the appellate division of the supreme court, third judicial department, within sixty days after its order is issued. The commissioner shall be considered an aggrieved party entitled to take an appeal from an order of the board of standards and appeals.

§ 6. Section 658 of the labor law, as amended by chapter 443 of the laws of 1981, is amended to read as follows:

§ 658. Appeals from compliance orders. An appeal pursuant to section two hundred eighteen or two hundred nineteen of this chapter from an order issued by the commissioner directing compliance with any provision of this article or with any minimum wage order or regulation promulgated thereunder, shall not bring under review any minimum wage order or regulation promulgated under this article. The provisions of ~~[subdivision two of section six hundred fifty-seven relating to appeals from determinations of the board and the provisions of]~~ subdivisions three through seven of section six hundred fifty-seven shall apply to an appeal from a compliance order.

1 § 7. Section 659 of the labor law, as added by chapter 619 of the laws
2 of 1960, is amended to read as follows:

3 § 659. Reconsideration of wage orders and regulations. [~~1. By wage
4 board. At any time after a minimum wage order has been in effect for six
5 months or more, the commissioner, on his own motion or on a petition of
6 fifty or more residents of the state engaged in or affected by the occu-
7 pation or occupations to which an order is applicable, may reconvene the
8 same wage board or appoint a new wage board to recommend whether or not
9 the minimum wage and regulations prescribed by such order should be
10 modified, and the provisions of section six hundred fifty five through
11 six hundred fifty seven shall thereafter apply.~~

12 ~~2. By commissioner.~~] The commissioner[, ~~without referral to the wage
13 board,~~] may, at any time after public hearing, by order propose such
14 modifications of or additions to any regulations as he may deem appro-
15 priate to effectuate the purposes of this article. Notice of hearing and
16 promulgation of any such order shall be published [~~in accordance with
17 the provisions contained in section six hundred fifty six~~]. Such order
18 shall be effective thirty days after such publication and section six
19 hundred fifty-seven shall thereafter apply.

20 § 8. This act shall take effect immediately.