

# STATE OF NEW YORK

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4405

2017-2018 Regular Sessions

## IN SENATE

February 14, 2017

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Introduced by Sen. 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, in relation to the minimum wage for food  
service workers and service employees who receive tips

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Subdivisions 2 and 4 of section 652 of the labor law,  
2 subdivision 2 as amended by chapter 38 of the laws of 1990 and subdivi-  
3 sion 4 as amended by section 2 of part K of chapter 54 of the laws of  
4 2016, are amended to read as follows:

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

8 Such minimum wage orders shall be modified by the commissioner to  
9 increase all monetary amounts specified therein in the same proportion  
10 as the increase in the hourly minimum wage as provided in subdivision  
11 one of this section, including the amounts specified in such minimum  
12 wage orders as allowances for gratuities, and when furnished by the  
13 employer to its employees, for meals, lodging, apparel and other such  
14 items, services and facilities, except that the hourly cash wage for  
15 food service workers and service employees who receive tips shall not be  
16 less than the cash wage as provided in subdivision four of this section  
17 and the maximum credit for tips in minimum wage orders shall be modified  
18 so that such credit, when combined with this cash wage, is equal to the  
19 minimum wage. All amounts so modified shall be rounded off to the near-  
20 est five cents. The modified orders shall be promulgated by the commis-  
21 sioner without a public hearing, and without reference to a wage board,  
22 and shall become effective on the effective date of such increases in  
23 the minimum wage except as otherwise provided in this subdivision,  
24 notwithstanding any other provision of this article.

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

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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 two-thirds of the minimum wage rates set forth in subdivision one of this section, rounded to the nearest five cents or seven dollars and fifty cents, whichever is higher, 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, except that any cash wage established pursuant to section six hundred fifty-three of this article shall not be less than the cash wage established by this subdivision.

(a) New York City. Notwithstanding subdivisions one and two of this section and section six hundred fifty-three of this article, the wage for an employee who is a food service worker or service employee receiving tips and paid in accordance with part one hundred forty-six of title twelve of the New York state compilation of codes, rules and regulations shall be, for each hour worked in the city of New York, a cash wage of not less than:

\$9.00 per hour on and after December thirty-first, two thousand seven-teen;

\$10.50 per hour on and after December thirty-first, two thousand eight-teen;

\$12.00 per hour on an after December thirty-first, two thousand nine-teen;

\$13.50 per hour on and after December thirty-first, two thousand twenty;

\$15.00 per hour on and after December thirty-first, two thousand twenty-one.

Beginning on December thirty-first, two thousand twenty-two, the cash wage payable to a food service worker or service worker under this paragraph shall be not less than the wage established pursuant to paragraph (a) of subdivision one of this section.

(b) Remainder of downstate. Notwithstanding subdivisions one and two of this section and section six hundred fifty-three of this article, the wage for an employee who is a food service worker or service employee receiving tips and paid in accordance with part one hundred forty-six of title twelve of the New York state compilation of codes, rules and regulations shall be, for each hour worked in the counties of Nassau, Suffolk and Westchester, a cash wage of not less than:

\$8.00 per hour on and after December thirty-first, two thousand seven-teen;

\$9.50 per hour on and after December thirty-first, two thousand eight-teen;

\$11.00 per hour on and after December thirty-first, two thousand nine-teen;

\$13.00 per hour on and after December thirty-first, two thousand twenty;

\$15.00 per hour on and after December thirty-first, two thousand twenty-one.

Beginning on December thirty-first, two thousand twenty-two, the cash wage payable to a food service worker or service worker under this paragraph shall be not less than the wage established pursuant to paragraph (b) of subdivision one of this section.

(c) Remainder of state. Notwithstanding subdivisions one and two of this section and section six hundred fifty-three of this article, the

1 wage for an employee who is a food service worker or service employee  
2 receiving tips and paid in accordance with part one hundred forty-six of  
3 title twelve of the New York state compilation of codes, rules and regu-  
4 lations shall be, for each hour worked outside the city of New York and  
5 the counties of Nassau, Suffolk and Westchester, a wage of not less  
6 than:

7 \$8.00 per hour on and after December thirty-first, two thousand seven-  
8 teen;

9 \$9.25 per hour on and after December thirty-first, two thousand eigh-  
10 teen;

11 \$10.50 per hour on and after December thirty-first, two thousand nine-  
12 teen;

13 \$11.50 per hour on and after December thirty-first, two thousand twen-  
14 ty;

15 \$12.50 per hour on and after December thirty-first, two thousand twen-  
16 ty-one.

17 Beginning on December thirty-first, two thousand twenty-two, the cash  
18 wage payable to a food service worker or service worker under this para-  
19 graph shall be not less than the wage established pursuant to paragraph  
20 (c) of subdivision one of this section.

21 § 2. Subdivision 2 of section 653 of the labor law, as added by chap-  
22 ter 14 of the laws of 2000, is amended to read as follows:

23 (2) The commissioner shall, within six months after enactment of any  
24 change in the statutory minimum wage set forth in subdivision one of  
25 section six hundred fifty-two of this article, appoint a wage board to  
26 inquire and report and recommend any changes to wage orders governing  
27 wages payable to food service workers. Such wage board shall be estab-  
28 lished consistent with the provisions of subdivision one of section six  
29 hundred fifty-five of this article, except the representatives of the  
30 employees shall be selected upon the nomination of the state American  
31 Federation of Labor/Congress of Industrial Organizations; and provided,  
32 further, that the representatives of the employers shall be selected  
33 upon the nomination of the New York State Business Council. [~~Any wage~~  
34 ~~order authorizing a lesser wage than the previously and statutorily~~  
35 ~~mandated minimum wage for such employees shall be reviewed by the wage~~  
36 ~~board to ascertain at what level such wage order is sufficient to~~  
37 ~~provide adequate maintenance and to protect the health and livelihood of~~  
38 ~~employees subject to such a wage order after a statutory increase in the~~  
39 ~~mandated minimum wage.] Notwithstanding section six hundred fifty-five  
40 of this article, a wage order under this subdivision shall not authorize  
41 a lesser wage than the previously and statutorily mandated minimum wage  
42 for such employees.~~

43 § 3. This act shall take effect immediately.