

STATE OF NEW YORK

10636

IN ASSEMBLY

May 10, 2018

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

AN ACT to amend the labor law, in relation to authorizing counties to opt out of any wage increase that eliminates the credit for tips

The People of the State of New York, represented in Senate and Assembly, 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. All amounts so modified shall be rounded
15 off to the nearest five cents. The modified orders shall be promulgated
16 by the commissioner without a public hearing, and without reference to a
17 wage board, and shall become effective on the effective date of such
18 increases in the minimum wage except as otherwise provided in this
19 subdivision, notwithstanding any other provision of this article;
20 provided, however, a county may opt out of any increase in the hourly
21 cash wage for food service workers and service employees that eliminates
22 the credit for tips.

23 4. Notwithstanding subdivisions one and two of this section, the wage
24 for an employee who is a food service worker receiving tips shall be a
25 cash wage of at least two-thirds of the minimum wage rates set forth in
26 subdivision one of this section, rounded to the nearest five cents or
27 seven dollars and fifty cents, whichever is higher, provided that the
28 tips of such an employee, when added to such cash wage, are equal to or

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

LBD15549-01-8

1 exceed the minimum wage in effect pursuant to subdivision one of this
2 section and provided further that no other cash wage is established
3 pursuant to section six hundred fifty-three of this article; and
4 provided, further, that a county may opt out of any increase in such
5 cash wage for food service workers and service employees that eliminates
6 such credit for tips.

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

9 (2) The commissioner shall, within six months after enactment of any
10 change in the statutory minimum wage set forth in subdivision one of
11 section six hundred fifty-two of this article, appoint a wage board to
12 inquire and report and recommend any changes to wage orders governing
13 wages payable to food service workers. Such wage board shall be estab-
14 lished consistent with the provisions of subdivision one of section six
15 hundred fifty-five of this article, except the representatives of the
16 employees shall be selected upon the nomination of the state American
17 Federation of Labor/Congress of Industrial Organizations; and provided,
18 further, that the representatives of the employers shall be selected
19 upon the nomination of the New York State Business Council. Any wage
20 order authorizing a lesser wage than the previously and statutorily
21 mandated minimum wage for such employees shall be reviewed by the wage
22 board to ascertain at what level such wage order is sufficient to
23 provide adequate maintenance and to protect the health and livelihood of
24 employees subject to such a wage order after a statutory increase in the
25 mandated minimum wage. Notwithstanding section six hundred fifty-five of
26 this article, counties may opt out of any wage order under this subdivi-
27 sion authorizing an increase in the cash wage for such employees that
28 eliminates the credit for tips.

29 § 3. This act shall take effect immediately.