

# STATE OF NEW YORK

11290

## IN ASSEMBLY

July 25, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Skoufis) --  
read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the minimum wage for  
employees with disabilities

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

1 Section 1. The opening paragraph of subdivision 5 of section 651 of  
2 the labor law, as amended by chapter 503 of the laws of 2016, is amended  
3 to read as follows:  
4 "Employee" includes any individual employed or permitted to work by an  
5 employer in any occupation, but shall not include any individual who is  
6 employed or permitted to work: (a) on a casual basis in service as a  
7 part time baby sitter in the home of the employer; (b) in labor on a  
8 farm; (c) in a bona fide executive, administrative, or professional  
9 capacity; (d) as an outside salesman; (e) as a driver engaged in operat-  
10 ing a taxicab; (f) as a volunteer, learner or apprentice by a corpo-  
11 ration, unincorporated association, community chest, fund or foundation  
12 organized and operated exclusively for religious, charitable or educa-  
13 tional purposes, no part of the net earnings of which inures to the  
14 benefit of any private shareholder or individual; (g) as a member of a  
15 religious order, or as a duly ordained, commissioned or licensed minis-  
16 ter, priest or rabbi, or as a sexton, or as a christian science reader;  
17 (h) in or for such a religious or charitable institution, which work is  
18 incidental to or in return for charitable aid conferred upon such indi-  
19 vidual and not under any express contract of hire; (i) in or for such a  
20 religious, educational or charitable institution if such individual is a  
21 student; (j) in or for such a religious, educational or charitable  
22 institution if the earning capacity of such individual is impaired by  
23 age [~~or by physical or mental deficiency or injury~~]; (k) in or for a  
24 summer camp or conference of such a religious, educational or charitable  
25 institution for not more than three months annually; (l) as a staff  
26 counselor in a children's camp; (m) in or for a college or university  
27 fraternity, sorority, student association or faculty association, no  
28 part of the net earnings of which inures to the benefit of any private

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

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1 shareholder or individual, and which is recognized by such college or  
2 university, if such individual is a student; (n) by a federal, state or  
3 municipal government or political subdivision thereof; (o) as a volun-  
4 teer at a recreational or amusement event run by a business that oper-  
5 ates such events, provided that no single such event lasts longer than  
6 eight consecutive days and no more than one such event concerning  
7 substantially the same subject matter occurs in any calendar year, where  
8 (1) any such volunteer shall be at least eighteen years of age, (2) a  
9 business seeking coverage under this paragraph shall notify every volun-  
10 teer in writing, in language acceptable to the commissioner, that by  
11 volunteering his or her services, such volunteer is waiving his or her  
12 right to receive the minimum wage pursuant to this article, and (3) such  
13 notice shall be signed and dated by a representative of the business and  
14 the volunteer and kept on file by the business for thirty-six months; or  
15 (p) in the delivery of newspapers or shopping news to the consumer by a  
16 person who is not performing commercial goods transportation services  
17 for a commercial goods transportation contractor within the meaning of  
18 article twenty-five-C of this chapter. The exclusions from the term  
19 "employee" contained in this subdivision shall be as defined by regu-  
20 lations of the commissioner.

21 § 2. Section 652 of the labor law is amended by adding a new subdivi-  
22 sion 7 to read as follows:

23 7. No employer shall pay to any employee a wage that is less than the  
24 wage established pursuant to subdivisions one and two of this section on  
25 the basis that such employee has an actual or perceived disability. For  
26 the purposes of this subdivision, the term "disability" shall have the  
27 same meaning as set forth in subdivision twenty-one of section two  
28 hundred ninety-two of the executive law. Nothing in this subdivision  
29 shall be construed to limit the provisions of any other law or any mini-  
30 imum wage order issued under this article that authorizes an employer to  
31 pay a wage that is less than the wage established pursuant to subdivi-  
32 sions one and two of this section, provided that, in such case, an  
33 employee that has a disability shall be paid a wage that is consistent  
34 with an employee in a comparable position that does not have a disabili-  
35 ty.

36 § 3. Paragraph (c) of subdivision 5 of section 655 of the labor law,  
37 as amended by chapter 747 of the laws of 1978, is amended to read as  
38 follows:

39 (c) The wage board may also recommend, to the extent necessary in  
40 order to prevent curtailment of opportunities for employment, regu-  
41 lations for (1) the employment of learners and apprentices, under  
42 special certificates issued by the commissioner, at such wages lower  
43 than the minimum wage established by this article and subject to such  
44 limitations as to time, number, proportion and length of service as  
45 shall be prescribed in such regulation, (2) the employment of individ-  
46 uals whose earning capacity is affected or impaired by youth or age [~~or~~  
47 ~~by physical or mental deficiency or injury~~], under special certificates  
48 issued by the commissioner, at such wages lower than the minimum wage  
49 established by this article and for such period as shall be prescribed  
50 in such regulation, (3) the establishment of a period not extending  
51 beyond seventeen consecutive weeks during which a resort hotel or camp  
52 may employ students under special certificates issued by the commission-  
53 er, at such wages lower than the minimum wage established by this arti-  
54 cle as shall be prescribed in such regulation, and (4) the employment of  
55 residential employees in a non-profit making religious, charitable or  
56 educational organization or in a non-profit making college or university

1 sorority or fraternity under special certificates issued by the commis-  
2 sioner at such weekly wage as shall be prescribed in such regulation.

3 § 4. Section 673 of the labor law is amended by adding a new subdivi-  
4 sion 3 to read as follows:

5 3. No employer shall pay to any employee a wage that is less than the  
6 wage established pursuant to subdivisions one and two of section six  
7 hundred fifty-two of this chapter on the basis that such employee has an  
8 actual or perceived disability. For the purposes of this subdivision,  
9 the term "disability" shall have the same meaning as set forth in subdivi-  
10 vision twenty-one of section two hundred ninety-two of the executive  
11 law. Nothing in this subdivision shall be construed to limit the  
12 provisions of any other law or any minimum wage order issued under this  
13 article that authorizes an employer to pay a wage that is less than the  
14 wage established pursuant to subdivisions one and two of section six  
15 hundred fifty-two of this chapter, provided that, in such case, an  
16 employee that has a disability shall be paid a wage that is consistent  
17 with an employee in a comparable position that does not have a disabili-  
18 ty.

19 § 5. Subdivision 1 of section 674 of the labor law, as added by chap-  
20 ter 552 of the laws of 1969, is amended to read as follows:

21 1. The commissioner may promulgate such regulations as he or she deems  
22 appropriate to carry out the purposes of this article and to safeguard  
23 minimum wage standards. Such regulations may include, but are not limit-  
24 ed to, the defining of the circumstances or conditions for the accept-  
25 ance of non-hourly rates and piece rates as equivalent to the minimum  
26 hourly rates established by this article. Such regulations also may  
27 include, but are not limited to, waiting time and call-in pay rates;  
28 wage provisions governing guaranteed earnings during specified periods  
29 of work; allowances for meals, lodging, and other items, services and  
30 facilities when furnished by the employer; and the employment of indi-  
31 viduals whose earning capacity is affected or impaired by youth or age[  
32 ~~or by physical or mental deficiency or injury~~], under special certif-  
33 icates issued by the commissioner, at such wages lower than the minimum  
34 wage established by this article and for such period as shall be  
35 prescribed in such regulations.

36 § 6. This act shall take effect on the thirty-first of December next  
37 succeeding the date upon which it shall have become a law. Effective  
38 immediately, the addition, amendment and/or repeal of any rule or regu-  
39 lation by the department of labor necessary for the implementation of  
40 this act on its effective date are authorized to be made and completed  
41 on or before such effective date.