

# STATE OF NEW YORK

11086

## IN ASSEMBLY

October 7, 2020

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

AN ACT to amend the labor law, in relation to providing for minimum wage requirements for miscellaneous industry workers

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

1 Section 1. Section 196-d of the labor law, as added by chapter 1007  
2 of the laws of 1968, is amended to read as follows:

3 § 196-d. Gratuities. No employer or his or her agent or an officer or  
4 agent of any corporation, or any other person shall demand or accept,  
5 directly or indirectly, any part of the gratuities, received by an  
6 employee, or retain any part of a gratuity or of any charge purported to  
7 be a gratuity for an employee. This provision shall not apply to the  
8 checking of hats, coats or other apparel. Nothing in this subdivision  
9 shall be construed as affecting the allowances from the minimum wage for  
10 gratuities in the amount determined in accordance with the provisions of  
11 article nineteen of this chapter nor as affecting practices in  
12 connection with banquets and other special functions where a fixed  
13 percentage of the patron's bill is added for gratuities which are  
14 distributed to employees, nor to the sharing of tips by a waiter [~~with a~~  
15 ~~busboy or similar employee~~] with other employees.

16 § 2. Section 651 of the labor law is amended by adding a new subdivi-  
17 sion 10 to read as follows:

18 10. "Miscellaneous industry worker" means any employee covered by the  
19 minimum wage order for miscellaneous industries and occupations pursuant  
20 to the provisions of 12 NYCRR part 142, including, but not limited to,  
21 car wash attendants, nail salon workers, tow truck drivers, dog groom-  
22 ers, wedding planners, tour guides, valet parking attendants, hairdres-  
23 sers, aestheticians, golf and tennis instructors, and door-persons.

24 § 3. Subdivisions 2 and 4 of section 652 of the labor law, subdivision  
25 2 as amended by chapter 38 of the laws of 1990, the opening paragraph of  
26 subdivision 2 as amended by section 6 of part II of chapter 58 of the  
27 laws of 2020, subdivision 4 as amended by section 2 of part K of chapter  
28 54 of the laws of 2016, are amended to read as follows:

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

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1 2. Existing wage orders. The minimum wage orders in effect on the  
2 effective date of this act shall remain in full force and effect, except  
3 as modified in accordance with the provisions of this article; provided,  
4 however, that the minimum wage order for farm workers codified at part  
5 one hundred ninety of title twelve of the New York code of rules and  
6 regulations in effect on January first, two thousand twenty shall be  
7 deemed to be a wage order established and adopted under this article and  
8 shall remain in full force and effect except as modified in accordance  
9 with the provisions of this article or article nineteen-A of this chap-  
10 ter.

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

31 4. (a) Notwithstanding subdivisions one and two of this section, the  
32 wage for an employee who is a food service worker receiving tips shall  
33 be a cash wage of at least two-thirds of the minimum wage rates set  
34 forth in subdivision one of this section, rounded to the nearest five  
35 cents or seven dollars and fifty cents, whichever is higher, provided  
36 that the [~~tips~~] average daily wage of such an employee, when tips for  
37 the day are added to [~~such~~] the cash wage paid for hours worked on each  
38 such day, are equal to or exceed the minimum wage in effect pursuant to  
39 subdivision one of this section and provided further that no other cash  
40 wage is established pursuant to section six hundred fifty-three of this  
41 article. Any cash wage established pursuant to section six hundred  
42 fifty-three of this article shall not be less than the cash wage estab-  
43 lished by this subdivision.

44 (b) Notwithstanding subdivisions one and two of this section and  
45 section six hundred fifty-three of this article, the wage for an employ-  
46 ee who is a food service worker service employee receiving tips and paid  
47 pursuant to the provisions of 12 NYCRR part 146 shall be, for each hour  
48 worked in the city of New York, a cash wage of not less than:

49 \$9.00 per hour on and after December 31, 2020;

50 \$10.50 per hour on and after December 31, 2021;

51 \$12.00 per hour on and after December 31, 2022;

52 \$13.50 per hour on and after December 31, 2023;

53 \$15.00 per hour on and after December 31, 2024.

54 Beginning on December thirty-first, two thousand twenty-five, the cash  
55 wage payable to a food service worker or service worker under this para-

1 graph shall be not less than the wage established pursuant to paragraph  
2 (a) of subdivision one of this section.

3 (c) Notwithstanding subdivisions one and two of this section and  
4 section six hundred fifty-three of this article, the wage for an employ-  
5 ee who is a food service worker or service employee receiving tips and  
6 paid pursuant to the provisions of 12 NYCRR part 146 shall be, for each  
7 hour worked in the counties of Nassau, Suffolk and Westchester, a cash  
8 wage of not less than:

9 \$8.00 per hour on and after December 31, 2020;

10 \$9.50 per hour on and after December 31, 2021;

11 \$11.00 per hour on and after December 31, 2022;

12 \$13.00 per hour on and after December 31, 2023;

13 \$15.00 per hour on and after December 31, 2024.

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

18 (d) Notwithstanding subdivisions one and two of this section and  
19 section six hundred fifty-three of this article, the wage for an employ-  
20 ee who is a food service worker or service employee receiving tips and  
21 paid pursuant to the provisions of 12 NYCRR part 146 shall be, for each  
22 hour worked outside the city of New York and the counties of Nassau,  
23 Suffolk and Westchester, a cash wage of not less than:

24 \$8.00 per hour on and after December 31, 2020;

25 \$9.25 per hour on and after December 31, 2021;

26 \$10.50 per hour on and after December 31, 2022;

27 \$11.50 per hour on and after December 31, 2023;

28 \$12.50 per hour on and after December 31, 2024.

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

33 (e) Notwithstanding subdivisions one and two of this section, the wage  
34 for an employee who is a miscellaneous industry worker receiving tips  
35 and paid pursuant to the provisions of 12 NYCRR part 142 shall be for  
36 each hour worked in the city of New York, a cash wage of not less than:

37 \$13.15 or \$13.85 per hour for high tip and low tip employees, respec-  
38 tively on and after June 30, 2020;

39 \$15.00 per hour for both high tip and low tip employees on and after  
40 December 31, 2020.

41 Beginning on December thirty-first, two thousand twenty-one, the cash  
42 wage payable to a miscellaneous industry worker under this paragraph  
43 shall be not less than the wage established pursuant to paragraph (a) of  
44 subdivision one of this section.

45 (f) Notwithstanding subdivisions one and two of this section, the wage  
46 for an employee who is a miscellaneous industry worker receiving tips  
47 and paid pursuant to the provisions of 12 NYCRR part 142 be for each  
48 worked in the counties of Nassau, Suffolk and Westchester, a cash wage  
49 of not less than:

50 \$11.40 or \$12.00 per hour for high tip and low tip employees, respec-  
51 tively on and after June 30, 2020;

52 \$14.00 per hour for both high tip and low tip employees on and after  
53 December 31, 2020.

54 Beginning on December thirty-first, two thousand twenty-one, the cash  
55 wage payable to a miscellaneous industry worker under this paragraph

1 shall be not less than the wage established pursuant to paragraph (b) of  
2 subdivision one of this section.

3 (g) Notwithstanding subdivisions one and two of this section, the wage  
4 for an employee who is a miscellaneous industry worker receiving tips  
5 and paid pursuant to the provisions of 12 NYCRR part 142 be for each  
6 hour worked outside the city of New York and the counties of Nassau,  
7 Suffolk and Westchester, a cash wage of not less than:

8 \$10.35 or \$10.90 per hour for high tip and low tip employees, respec-  
9 tively on and after June 30, 2020;

10 \$12.50 per hour for both high tip and low tip employees on and after  
11 December 31, 2020.

12 Beginning on December thirty-first, two thousand twenty-one, the cash  
13 wage payable to a miscellaneous industry worker under this paragraph  
14 shall be not less than the wage established pursuant to paragraph (c) of  
15 subdivision one of this section.

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

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

38 § 5. This act shall take effect immediately.