

STATE OF NEW YORK

8142

2019-2020 Regular Sessions

IN ASSEMBLY

June 4, 2019

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

AN ACT to amend the labor law, in relation to minimum wage rates for covered transportation center service workers

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

1 Section 1. The labor law is amended by adding a new article 19-D to
2 read as follows:

ARTICLE 19-D

MINIMUM WAGE RATES FOR TRANSPORTATION CENTER SERVICE WORKERS

Section 696-a. Definitions.

696-b. Designation by commissioner of applicable standard rates for covered transportation center service workers.

696-c. Minimum wage rate for covered transportation center service workers.

696-d. Commissioner's powers of investigation.

696-e. Records of employers.

696-f. Penalties.

696-g. Civil action.

696-h. Regulations.

696-i. Savings clause.

§ 696-a. Definitions. As used in this article: 1. "Covered transportation center" means John F. Kennedy International Airport, LaGuardia Airport, New York Stewart International Airport, the Port Authority Bus Terminal, Pennsylvania Station and Grand Central Station.

2. "Covered transportation center worker" means any person employed to perform work at a covered transportation center provided at least one-half of the employee's time during any workweek is performed at a

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

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1 covered transportation center. Covered transportation center worker
2 shall not include persons employed in an executive, administrative, or
3 professional capacity as defined in subparagraph one of paragraph (a) of
4 section thirteen of the Fair Labor Standards Act of 1928.

5 3. "Franchise" means a person to whom a franchise is offered or grant-
6 ed;

7 4. "Franchisor" means a person who grants a franchise to another
8 person;

9 5. "Covered employer" means all employers that employ more than fifty
10 employees, regardless of where those employees are employed, and all
11 franchisees associated with a franchisor or a network of franchises with
12 franchisees that employ more than fifty employees in aggregate;

13 6. The "standard wage rate" means:

14 (a) Effective September first, two thousand twenty, the greater of:

15 (i) one dollar more than any minimum wage rate that would be otherwise
16 applicable to covered transportation center service workers under any
17 federal, state, or local law or policy; or

18 (ii) any policy of the Port Authority of New York and New Jersey.

19 (b) Effective September first, two thousand twenty-one the greater of:

20 (i) two dollars more than any minimum wage rate that would be other-
21 wise applicable to covered transportation center service workers under
22 any federal, state, or local law or policy; or

23 (ii) any policy of the Port Authority of New York and New Jersey.

24 (c) Effective September first, two thousand twenty-two the greater of:

25 (i) three dollars more than any minimum wage rate that would be other-
26 wise applicable to covered transportation center service workers under
27 any federal, state, or local law or policy; or

28 (ii) any policy of the Port Authority of New York and New Jersey.

29 (d) Effective September first, two thousand twenty-three the greater
30 of:

31 (i) four dollars more than any minimum wage rate that would be other-
32 wise applicable to covered transportation center service workers under
33 any federal, state, or local law or policy; or

34 (ii) any policy of the Port Authority of New York and New Jersey.

35 (e) Effective September first two thousand twenty-four, and each
36 September first thereafter, the greater of:

37 (i) four dollars more than any minimum wage rate that would be other-
38 wise applicable to covered transportation center service workers under
39 any federal, state, or local law or policy;

40 (ii) any policy of the Port Authority of New York and New Jersey; or

41 (iii) the wage rate designated by the commissioner the immediately
42 preceding August first based on the determinations made by the federal
43 general services administration pursuant to the McNamara-O'Hara Service
44 Contract Act of 1965, for the classification of "Guard I" for the county
45 in which the covered transportation center is located.

46 7. The "standard benefits supplement rate" means effective September
47 first, two thousand twenty and each September first thereafter, the
48 supplemental benefits rate designated by the commissioner the immediate-
49 ly preceding August first, based on the determination made by the feder-
50 al general service administration pursuant to the McNamara-O'Hara
51 Service Contract Act of 1965, for the classification of "Guard I" for
52 the county in which the covered transportation center is located.

53 8. The "standard paid leave rate" means effective September first, two
54 thousand twenty and each September first thereafter, the paid leave
55 requirements designated by the commissioner the immediately preceding
56 August first, based on the determinations made by the federal general

1 services administration pursuant to the McNamara-O'Hara Service Contract
2 Act of 1965, for the classification of "Guard I" for the county in which
3 the covered transportation center is located.

4 9. The "applicable standard rate" shall mean a combination of (a) the
5 standard wage rate; (b) the standard benefits supplemental rate, and (c)
6 the standard paid leave rate.

7 § 696-b. Designation by commissioner of applicable standard rates for
8 covered transportation center service workers. 1. On August first, two
9 thousand twenty and each subsequent August first the commissioner shall
10 designate the supplemental benefits rate and paid leave requirements
11 required under determinations made by the federal general services
12 administration pursuant to the McNamara-O'Hara Service Contract Act of
13 1965, for the classification of "Guard I" for the county in which the
14 covered transportation center is located. The commissioner shall public-
15 ly post such designated supplemental benefits rates and paid leave
16 requirements.

17 2. On August first, two thousand twenty-four and each subsequent
18 August first, the commissioner shall additionally designate the wage
19 rate required under determinations made by the federal general services
20 administration pursuant to the McNamara-O'Hara Service Contract Act of
21 1965, for the classification of "Guard I" for the county in which the
22 covered transportation center is located. The commissioner shall public-
23 ly post such designated wage rate.

24 § 696-c. Minimum wage rate for covered transportation center service
25 workers. 1. All covered employers shall ensure that every covered
26 transportation center worker is compensated at a rate that is no less
27 than the applicable standard wage rate.

28 2. Notwithstanding subdivision one of this section, the minimum wage
29 rate for a covered transportation center worker who is a food service
30 worker receiving tips shall be a cash wage of at least two-thirds of the
31 minimum wage rate set forth in subdivision one of this section, rounded
32 to the nearest five cents, provided that the tips of such an employee,
33 when added to such cash wage, are equal to or exceed the minimum wage
34 rate for covered transportation center workers in effect pursuant to
35 subdivision one of this section. Food service workers shall also
36 receive the full amount of benefits and paid leave minimums as provided
37 under section six hundred ninety-six-b of this article.

38 § 696-d. Commissioner's powers of investigation. The commissioner or
39 his or her authorized representative shall have the power to:

40 1. investigate the wages of persons in any occupation in the state;

41 2. enter the place of business or employment of any employer for the
42 purpose of (a) examining and inspecting any and all books, registers,
43 payrolls, and other records that in any way relate to or have a bearing
44 upon the wages paid to, or the hours worked by any employees, and (b)
45 ascertaining whether the provisions of this article and the rules and
46 regulations promulgated hereunder are being complied with; and

47 3. require from any employer full and correct statements and reports
48 in writing, at such times as the commissioner may deem necessary, of the
49 wages paid to and the hours by such employer's employees.

50 § 696-e. Records of employers. For every employee covered by this
51 article, every employer shall establish, maintain, and preserve for not
52 less than six years contemporaneous, true, and accurate payroll records
53 showing for each week worked the hours worked, the rate of rates of pay
54 and basis thereof, whether paid by the hour, shift, day, week, salary,
55 piece, commission, or other basis; gross wages; deductions; allowances,
56 if any, claimed as part of the minimum wage; and net wages for each

1 employee, plus such other information as the commissioner deems material
2 and necessary. For all employees who are not exempt from overtime
3 compensation as established in the commissioner's minimum wage orders or
4 otherwise provided by law, rule, or regulation, the payroll records
5 shall include the regular hourly rate or rates of pay, the overtime rate
6 or rates of pay, the number of regular hours worked, and the number of
7 overtime hours worked. For all employees paid a piece rate, the payroll
8 records shall include the applicable piece rate or rates of pay and
9 number of pieces completed at each piece rate. On demand, the employer
10 shall furnish to the commissioner or his or her duly authorized repre-
11 sentative a sworn statement of the hours worked, rate or rates of pay
12 and basis thereof, whether paid by the hour, shift, day, week, salary,
13 piece, commission, or other basis; gross wages; deductions; and allow-
14 ance, if any, claimed as part of the minimum wage, for each employee,
15 plus such other information as the commissioner deems material and
16 necessary. Every employer shall keep such records open to inspection by
17 the commissioner or his or her duly authorized representative at any
18 reasonable time. Every employer of an employee shall keep a digest and
19 summary of this article or applicable wage order, which shall be
20 prepared by the commissioner, posted in a conspicuous place in his or
21 her establishment and shall also keep posted such additional copies of
22 said digest and summary as the commissioner prescribes. Employers shall,
23 on request, be furnished with copies of this article and of orders, and
24 of digests and summaries thereof, without charge. Employers shall permit
25 the commissioner or his or her duly authorized representative to ques-
26 tion without interference any employee of such employer in a private
27 location at the place of employment and during working hours in respect
28 to the wages paid to and the hours worked by such employee or other
29 employees.

30 § 696-f. Penalties. 1. Any employer or his or her agent, or the offi-
31 cer or agent of any corporation, partnership, or limited liability
32 company, who pays or agrees to pay to any employee less than the wage
33 applicable under this article shall be guilty of a misdemeanor and upon
34 conviction therefor shall be fined not less than five hundred nor more
35 than twenty thousand dollars or imprisoned for not more than one year,
36 and, in the event that any second or subsequent offense occurs within
37 six years of the date of conviction for a prior offense, shall be fined
38 not less than five hundred nor more than twenty thousand dollars or
39 imprisoned for not more than one year plus one day, or punished by both
40 such fine and imprisonment, for each such offense. Each payment to any
41 employee in any week of less than the wage applicable under this article
42 shall constitute a separate offense.

43 2. Any employer or his or her agent, or the officer or agent of any
44 corporation, partnership, or limited liability company, who fails to
45 keep the records required under this article or to furnish such records
46 or any information required to be furnished under this article to the
47 commissioner or his or her authorized representative upon request, or
48 who hinders or delays the commissioner or his or her authorized repre-
49 sentative in the performance of his or her duties in the enforcement of
50 this article, or refuses to admit the commissioner or his or her author-
51 ized representative to any place of employment, or falsifies any such
52 records or refuses to make such records accessible to the commissioner
53 or his or her authorized representative, or refuses to furnish a sworn
54 statement of such records or any other information required for the
55 proper enforcement of this article to the commissioner or his or her
56 authorized representative, shall be guilty of a misdemeanor and upon

1 conviction therefor shall be fined not less than five hundred nor more
2 than five thousand dollars or imprisoned for not more than one year,
3 and, in the event that any second or subsequent offense occurs within
4 six years of the date of conviction for a prior offense, shall be guilty
5 of a felony for the second or subsequent offense, and upon conviction
6 therefor, shall be fined not less than five hundred nor more than twenty
7 thousand dollars or imprisoned for not more than one year plus one day,
8 or punished by both such fine and imprisonment, for each such offense.
9 Each day's failure to keep the records requested under this article or
10 to furnish such records or information to the commissioner or his or her
11 authorized representative shall constitute a separate offense.

12 § 696-g. Civil action. 1. If any employee is paid by his or her
13 employer less than the wage to which he or she is entitled under the
14 provisions of this article, he or she shall recover in a civil action
15 the amount of any such underpayments, together with all reasonable
16 attorney's fees, prejudgment interest as required under the civil prac-
17 tice law and rules, and unless the employer proves a good faith basis to
18 believe that its underpayment of wages was in compliance with the law,
19 an additional amount as liquidated damages equal to one hundred percent
20 of the total of such underpayments found to be due. Any agreement
21 between the employee, and the employer to work for less than such wage
22 shall be no defense to such action.

23 2. On behalf of any employee paid less than the wage to which the
24 employee is entitled under the provisions of this article, the commis-
25 sioner may bring any legal action necessary, including administrative
26 action, to collect such claim, and the employer shall be required to pay
27 the full amount of the underpayment, plus costs, and unless the employer
28 proves a good faith basis to believe that its underpayment was in
29 compliance with the law, an additional amount as liquidated damages.
30 Liquidated damages shall be calculated by the commissioner as no more
31 than one hundred percent of the total amount of underpayments found to
32 be due the employee. In any action brought by the commissioner in a
33 court of competent jurisdiction, liquidated damages shall be calculated
34 as an amount equal to one hundred percent of underpayments found to be
35 due the employee.

36 3. Notwithstanding any other provision of law, an action to recover
37 upon a liability imposed by this article must be commenced within six
38 years. The statute of limitations shall be tolled from the date an
39 employee files a complaint with the commissioner or the commissioner
40 commences an investigation, whichever is earlier, until an order to
41 comply issued by the commissioner becomes final, or where the commis-
42 sioner does not issue an order, until the date on which the commissioner
43 notifies the complainant that the investigation has concluded. Investi-
44 gation by the commissioner shall not be a prerequisite to nor a bar
45 against a person bringing a civil action under this article.

46 4. In any civil action by an employee or by the commissioner, the
47 employee or commissioner shall have the right to collect attorneys' fees
48 and costs incurred in enforcing any court judgment. Any judgment or
49 court order awarding remedies under this section shall provide that if
50 any amounts remain unpaid upon the expiration of ninety days following
51 issuance of judgment, or ninety days after expiration of the time to
52 appeal and no appeal therefrom is then pending, whichever is later, the
53 total amount of judgment shall automatically increase by fifteen
54 percent.

1 § 696-h. Regulations. 1. The commissioner may promulgate such regu-
2 lations as he or she deems appropriate to carry out the purposes of this
3 article and to safeguard minimum wage standards.

4 2. Such regulations shall be promulgated by the commissioner after a
5 public hearing held after due notice.

6 3. A notice of the public hearing and a notice of the promulgation of
7 any such regulation shall be published in the state bulletin. The notice
8 of the promulgation of any such regulation shall be published at least
9 twenty days before the effective date of the regulation.

10 § 696-i. Savings clause. If any provision of this article or the
11 application thereof to any person, employer, occupation or circumstance
12 is held invalid, the remainder of the article and the application of
13 such provision to other persons, employees, occupations, or circum-
14 stances shall not be affected thereby.

15 § 2. This act shall take effect on the ninetieth day after it shall
16 have become a law.