STATE OF NEW YORK

2244

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by 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:

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

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

§ 2. Section 651 of the labor law is amended by adding a new subdivision 10 to read as follows:

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

§ 3. Subdivisions 2 and 4 of section 652 of the labor law, subdivision 2 as amended by chapter 38 of the laws of 1990, the opening paragraph of

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

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subdivision 2 as amended by section 6 of part II of chapter 58 of the laws of 2020, subdivision 4 as amended by section 2 of part K of chapter 54 of the laws of 2016, are amended to read as follows:

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

Such minimum wage orders shall be modified by the commissioner to increase all monetary amounts specified therein in the same proportion as the increase in the hourly minimum wage as provided in subdivision one of this section, including the amounts specified in such minimum wage orders as allowances for gratuities, and when furnished by the employer to its employees, for meals, lodging, apparel and other such items, services and facilities**, except that the hourly cash wage for food service workers, service employees and miscellaneous industry workers who receive tips shall not be less than the cash wage as provided in subdivision four of this section, and the maximum credit for tips in minimum wage orders shall be modified so that such credit, when combined with such cash wage, is equal to the minimum wage, and the hourly cash wage for miscellaneous industry workers shall not be less than the cash wage as provided in subdivision four of this section**. All amounts so modified shall be rounded off to the nearest five cents. The modified orders shall be promulgated by the commissioner without a public hearing, and without reference to a wage board, and shall become effective on the effective date of such increases in the minimum wage except as otherwise provided in this subdivision, notwithstanding any other provision of this article.

4. **(a)** 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~~] **average daily wage** of such an employee, when **tips for the day are** added to [~~such~~] **the** cash wage **paid for hours worked on each such day**, 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. **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.**

(b) 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 service employee receiving tips and paid pursuant to the provisions of 12 NYCRR part 146 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 31, 2021;

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

$12.00 per hour on and after December 31, 2023;

$13.50 per hour on and after December 31, 2024;

$15.00 per hour on and after December 31, 2025.

Beginning on December thirty-first, two thousand twenty-six, 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.

(c) 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 pursuant to the provisions of 12 NYCRR part 146 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 31, 2021;

$9.50 per hour on and after December 31, 2022;

$11.00 per hour on and after December 31, 2023;

$13.00 per hour on and after December 31, 2024;

$15.00 per hour on and after December 31, 2025.

Beginning on December thirty-first, two thousand twenty-six, 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.

(d) 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 pursuant to the provisions of 12 NYCRR part 146 shall be, for each hour worked outside the city of New York and the counties of Nassau, Suffolk and Westchester, a cash wage of not less than:

$8.00 per hour on and after December 31, 2021;

$9.25 per hour on and after December 31, 2022;

$10.50 per hour on and after December 31, 2023;

$11.50 per hour on and after December 31, 2024;

$12.50 per hour on and after December 31, 2025.

Beginning on December thirty-first, two thousand twenty-six, 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 (c) of subdivision one of this section.

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

$13.15 or $13.85 per hour for high tip and low tip employees, respectively on and after June 30, 2021;

$15.00 per hour for both high tip and low tip employees on and after December 31, 2021.

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

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

$11.40 or $12.00 per hour for high tip and low tip employees, respectively on and after June 30, 2021;

$14.00 per hour for both high tip and low tip employees on and after December 31, 2021.

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

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

$10.35 or $10.90 per hour for high tip and low tip employees, respectively on and after June 30, 2021;

$12.50 per hour for both high tip and low tip employees on and after December 31, 2021.

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

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

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

§ 5. This act shall take effect immediately.