

# STATE OF NEW YORK

808--A

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. BIAGGI, BRISPORT, CLEARE, GIANARIS, HOYLMAN, JACKSON, LIU, PERSAUD, RAMOS, RIVERA, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 of  
2 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,

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

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1 car wash attendants, nail salon workers, tow truck drivers, dog groom-  
2 ers, wedding planners, tour guides, valet parking attendants, hairdres-  
3 sers, aestheticians, golf and tennis instructors, and door-persons.

4 § 3. Subdivisions 2 and 4 of section 652 of the labor law, subdivision  
5 2 as amended by chapter 38 of the laws of 1990, the opening paragraph of  
6 subdivision 2 as amended by section 6 of part II of chapter 58 of the  
7 laws of 2020, subdivision 4 as amended by section 2 of part K of chapter  
8 54 of the laws of 2016, are amended to read as follows:

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

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

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

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

1 \$9.00 per hour on and after December 31, 2021;  
2 \$10.50 per hour on and after December 31, 2022;  
3 \$12.00 per hour on and after December 31, 2023;  
4 \$13.50 per hour on and after December 31, 2024;  
5 \$15.00 per hour on and after December 31, 2025, and beginning on  
6 December thirty-first, two thousand twenty-six, and on each following  
7 December thirty-first thereafter, a cash wage payable to a food service  
8 worker or service worker shall be published by the commissioner on or  
9 before October first of such year that is equal to the then current cash  
10 wage under this paragraph increased by \$1.75, until such time as such  
11 cash wage would be equal to or greater than the cash wage under para-  
12 graph (a) of subdivision one of this section, at which point the cash  
13 wage under this paragraph shall be the same as the cash wage under para-  
14 graph (a) of subdivision one of this section and shall increase whenever  
15 the latter increases.

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

22 \$8.00 per hour on and after December 31, 2021;  
23 \$9.50 per hour on and after December 31, 2022;  
24 \$11.00 per hour on and after December 31, 2023;  
25 \$13.00 per hour on and after December 31, 2024;  
26 \$15.00 per hour on and after December 31, 2025, and beginning on  
27 December thirty-first, two thousand twenty-six, and on each following  
28 December thirty-first thereafter, a cash wage payable to a food service  
29 worker or service worker shall be published by the commissioner on or  
30 before October first of such year, that is equal to the then current  
31 cash wage under this paragraph increased by \$1.75, until such time as  
32 such cash wage would be equal to or greater than the cash wage under  
33 paragraph (b) of subdivision one of this section, at which point the  
34 cash wage payable under this paragraph shall be the same as the cash  
35 wage under paragraph (b) of subdivision one of this section and shall  
36 increase whenever the latter increases.

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

43 \$8.00 per hour on and after December 31, 2021;  
44 \$9.25 per hour on and after December 31, 2022;  
45 \$10.50 per hour on and after December 31, 2023;  
46 \$11.50 per hour on and after December 31, 2024;  
47 \$12.50 per hour on and after December 31, 2025, and beginning on  
48 December thirty-first, two thousand twenty-six, and on each following  
49 December thirty-first thereafter, a cash wage payable to a food service  
50 worker or service worker shall be published by the commissioner on or  
51 before October first of such year that is equal to the then current cash  
52 wage under this paragraph increased by \$1.75, until such time as such  
53 cash wage would be equal to or greater than the cash wage under para-  
54 graph (c) of subdivision one of this section, at which point the cash  
55 wage under this paragraph shall be the same as the wage under paragraph

1 (c) of subdivision one of this section and shall increase whenever the  
2 latter increases.

3 (e) 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 shall be for  
6 each hour worked in the city of New York, a cash wage of not less than:

7 \$13.15 or \$13.85 per hour for high tip and low tip employees, respec-  
8 tively on and after June 30, 2021;

9 \$15.00 per hour for both high tip and low tip employees on and after  
10 December 31, 2021, and beginning on December thirty-first, two thousand  
11 twenty-two, the cash wage payable under this paragraph shall be the same  
12 as the cash wage under paragraph (a) of subdivision one of this section  
13 and shall increase whenever the latter increases.

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

19 \$11.40 or \$12.00 per hour for high tip and low tip employees, respec-  
20 tively on and after June 30, 2021;

21 \$14.00 per hour for both high tip and low tip employees on and after  
22 December 31, 2021, and beginning on December thirty-first, two thousand  
23 twenty-two, the cash wage payable under this paragraph shall be the same  
24 as the cash wage under paragraph (b) of subdivision one of this section  
25 and shall increase whenever the latter increases.

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

31 \$10.35 or \$10.90 per hour for high tip and low tip employees, respec-  
32 tively on and after June 30, 2021;

33 \$12.50 per hour for both high tip and low tip employees on and after  
34 December 31, 2021, and beginning on December thirty-first, two thousand  
35 twenty-two, the cash wage payable under this paragraph shall be the same  
36 as the cash wage under paragraph (c) of subdivision one of this section  
37 and shall increase whenever the latter increases.

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

40 (2) The commissioner shall, within six months after enactment of any  
41 change in the statutory minimum wage set forth in subdivision one of  
42 section six hundred fifty-two of this article, appoint a wage board to  
43 inquire and report and recommend any changes to wage orders governing  
44 wages payable to food service workers. Such wage board shall be estab-  
45 lished consistent with the provisions of subdivision one of section six  
46 hundred fifty-five of this article, except the representatives of the  
47 employees shall be selected upon the nomination of the state American  
48 Federation of Labor/Congress of Industrial Organizations; and provided,  
49 further, that the representatives of the employers shall be selected  
50 upon the nomination of the New York State Business Council. [~~Any wage~~  
51 ~~order authorizing a lesser wage than the previously and statutorily~~  
52 ~~mandated minimum wage for such employees shall be reviewed by the wage~~  
53 ~~board to ascertain at what level such wage order is sufficient to~~  
54 ~~provide adequate maintenance and to protect the health and livelihood of~~  
55 ~~employees subject to such a wage order after a statutory increase in the~~  
56 ~~mandated minimum wage] Notwithstanding section six hundred fifty-five of~~

1 this article, a wage order under this subdivision shall not authorize a  
2 lesser wage than the previously and statutorily mandated minimum wage  
3 for such employees.

4 § 5. This act shall take effect immediately.