STATE OF NEW YORK

7172

2021-2022 Regular Sessions

IN ASSEMBLY

April 23, 2021

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

AN ACT to amend the labor law, in relation to authorizing counties to opt out of any wage increase that eliminates the credit for tips

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

Section 1. 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 subdivision 2 as amended by section 6 of part II of chapter 58 of the laws of 2020, and 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. 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

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

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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**; provided, however, a county may opt out of any increase in the hourly cash wage for food service workers and service employees that eliminates the credit for tips**.

4. 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 of such an employee, when added to such cash wage, 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**; and provided, further, that a county may opt out of any increase in such cash wage for food service workers and service employees that eliminates such credit for tips**.

§ 2. 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, counties may opt out of any wage order under this subdivision authorizing an increase in the cash wage for such employees that eliminates the credit for tips.**

§ 3. This act shall take effect immediately.