

STATE OF NEW YORK

808

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. BIAGGI, PERSAUD, SALAZAR -- read twice and ordered printed, and when printed to be committed 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.

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

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

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

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

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

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

54 \$9.00 per hour on and after December 31, 2021;

55 \$10.50 per hour on and after December 31, 2022;

56 \$12.00 per hour on and after December 31, 2023;

1 \$13.50 per hour on and after December 31, 2024;

2 \$15.00 per hour on and after December 31, 2025.

3 Beginning on December thirty-first, two thousand twenty-six, the cash
4 wage payable to a food service worker or service worker under this para-
5 graph shall be not less than the wage established pursuant to paragraph
6 (a) of subdivision one of this section.

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

13 \$8.00 per hour on and after December 31, 2021;

14 \$9.50 per hour on and after December 31, 2022;

15 \$11.00 per hour on and after December 31, 2023;

16 \$13.00 per hour on and after December 31, 2024;

17 \$15.00 per hour on and after December 31, 2025.

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

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

28 \$8.00 per hour on and after December 31, 2021;

29 \$9.25 per hour on and after December 31, 2022;

30 \$10.50 per hour on and after December 31, 2023;

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

32 \$12.50 per hour on and after December 31, 2025.

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

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

41 \$13.15 or \$13.85 per hour for high tip and low tip employees, respec-
42 tively on and after June 30, 2021;

43 \$15.00 per hour for both high tip and low tip employees on and after
44 December 31, 2021.

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

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

54 \$11.40 or \$12.00 per hour for high tip and low tip employees, respec-
55 tively on and after June 30, 2021;

1 \$14.00 per hour for both high tip and low tip employees on and after
2 December 31, 2021.

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

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

12 \$10.35 or \$10.90 per hour for high tip and low tip employees, respec-
13 tively on and after June 30, 2021;

14 \$12.50 per hour for both high tip and low tip employees on and after
15 December 31, 2021.

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

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

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

42 § 5. This act shall take effect immediately.