

STATE OF NEW YORK

8386

IN SENATE

February 18, 2022

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the labor law, in relation to establishing the restaurant and restaurant worker recovery loan program; to amend the state finance law, in relation to establishing the restaurant and restaurant worker recovery fund; making an appropriation therefor; and to provide for the repeal of such provisions upon the expiration thereof

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

1 Section 1. This act shall be known and may be cited as the "restaurant
2 and restaurant worker recovery act of 2022".

3 § 2. The labor law is amended by adding a new section 198-f to read as
4 follows:

5 § 198-f. Restaurant and restaurant worker recovery loan program. 1.
6 There is established in the department a restaurant and restaurant work-
7 er recovery fund loan program for the purposes of supporting restaurants
8 in the state of New York and their employees to survive the financial
9 hardships created by the COVID-19 pandemic by providing loans to quali-
10 fying restaurants to assist in covering unanticipated labor costs
11 incurred as a result of the state of emergency that was executed in
12 Executive Order No. 202 on March 7, 2020, and to encourage the provision
13 of a livable wage for restaurant workers who receive gratuities.

14 2. As used in this section:

15 (a) "Equity training" means training as described in subdivision five
16 of this section.

17 (b) "Restaurant and restaurant worker recovery fund" or "fund" means
18 the restaurant and restaurant worker recovery fund created by section
19 ninety-seven-ii of the state finance law.

20 (c) "Qualifying restaurant" means a restaurant that meets the criteria
21 established in subdivision three of this section.

22 (d) "Small New York-based restaurant" means a restaurant located with-
23 in the state that is a small business as defined by section one hundred
24 thirty-one of the economic development law.

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

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1 3. (a) The department may make loans to qualifying restaurants in the
2 amount of up to fifteen thousand dollars based on a formula and process
3 to be determined by the commissioner.

4 (b) To be eligible for a loan from the fund, a small New York-based
5 restaurant must meet the following criteria:

6 (1) the restaurant pays all tipped employees not less than the full
7 minimum hourly wage rate as defined by section six hundred fifty-two of
8 this chapter as evidenced by:

9 (A) proof that such a policy and practice is in existence at the time
10 of the application for a loan from the fund; or

11 (B) execution of a sworn affidavit attesting that such a policy and
12 practice shall be instituted in the restaurant within six months of
13 receipt of a loan from the fund; and

14 (2) the restaurant agrees to participate in equity training, as
15 provided in subdivision five of this section, within six months of
16 receipt of a loan from the fund.

17 4. (a) A loan made pursuant to the provisions of this section shall be
18 forgiven in its entirety by the commissioner if the following criteria
19 are met:

20 (1) the restaurant provides proof to the commissioner that it has
21 participated in equity training within six months of receipt of the
22 interest-free loan from the fund; and

23 (2) the restaurant provides proof of implementation of a policy and
24 practice of paying its tipped employees not less than the full minimum
25 hourly wage rate as defined by section six hundred fifty-two of this
26 chapter and that such policy and practice has been in effect for not
27 less than two years from the date of receipt of the loan from the fund
28 or, alternatively, from the actual date of the implementation of such
29 policy and practice, provided that the implementation of such policy and
30 practice is not greater than six months after receipt of the loan,
31 whichever is later.

32 (b) If a restaurant that receives a loan under this section fails to
33 meet and continue the requirements for accepting such loan, as set forth
34 under this act and as the commissioner may require, shall be required to
35 pay back the total amount of the loan accepted plus a penalty of three
36 percent the total amount of the loan.

37 5. (a) The department shall develop an equity training program for
38 owners and managers of qualifying restaurants. In developing such
39 program, the department may utilize existing department resources and
40 programs and/or may consult with organizations that have a history of
41 training employers on best practices to increase wages and teaching
42 gender and racial equity.

43 (b) The equity training program shall include information and materi-
44 als pertaining to the best practices with respect to:

45 (1) raising wages to pay a full minimum wage to all workers profit-
46 ably;

47 (2) equitable sharing of tips;

48 (3) increasing race and gender equity among employees, including:

49 (i) assessing and overhauling hiring, training, promotion and evalu-
50 ation practices to ensure equity for women and people of color;

51 (ii) implicit bias testing and training for management.

52 (c) Materials provided to persons participating in the equity training
53 shall include:

54 (1) a calculator that allows employers to input the number of employ-
55 ees and the menu prices at the qualifying restaurant and provides the
56 employer with the best pricing options to increase wages profitably;

1 (2) three models and case studies of equitable wage/gratuity struc-
2 tures, including one that addresses fair wage and tip sharing, one that
3 addresses service charges, and one that addresses gratuity-free models;

4 (3) case studies of the bottom-line benefits of increasing equity
5 among employees; and

6 (4) a model policy to address sexual harassment.

7 (d) The department shall provide qualifying restaurant owners with
8 technical assistance to help such owners to develop their own wage
9 increase structure.

10 (e) The department is authorized to expend up to seven hundred fifty
11 thousand dollars for purposes of implementing the equity training
12 described in this subdivision.

13 6. Nothing in this section shall be construed to modify in any way an
14 employee's right to receive gratuities pursuant to section one hundred
15 ninety-six-d of this article.

16 7. The commissioner is authorized to promulgate, amend and/or repeal
17 rules and regulations necessary for implementation of the provisions of
18 this section.

19 § 3. The state finance law is amended by adding a new section 97-ii to
20 read as follows:

21 § 97-ii. Restaurant and restaurant worker recovery fund. There is
22 hereby established in the joint custody of the commissioner of taxation
23 and finance and the comptroller, a special fund to be known as the
24 restaurant and restaurant worker recovery fund. Monies in the fund
25 shall be kept separate from and not commingled with other funds held in
26 the custody of the commissioner of taxation and finance.

27 2. The fund shall consist of all monies appropriated for its purpose,
28 all monies required by this section or any other provisions of law to be
29 paid into or credited to such fund, and all other money appropriated,
30 credited, or transferred thereto from any other fund or source pursuant
31 to law. Nothing in this section shall prevent the state from receiving
32 grants, gifts or bequests for the purposes of the fund as defined in
33 this section and depositing them into the fund according to law.

34 3. Monies of the fund shall, after appropriation by the legislature,
35 be made available to the department of labor and shall be expended only
36 for the purposes of loans and equity training through and administrative
37 expenses of the restaurant and restaurant worker recovery fund loan
38 program established by section one hundred ninety-eight-f of the labor
39 law. Monies shall be payable from the fund by the commissioner of tax-
40 ation and finance on vouchers approved by the commissioner of labor.

41 4. On or before the first day of February each year, the commissioner
42 of labor shall provide a written report to the governor, the temporary
43 president of the senate, the speaker of the assembly, the chair of the
44 senate finance committee and the chair of the assembly ways and means
45 committee. Such report shall include how the monies of the fund were
46 utilized during the preceding calendar year and shall include:

47 (a) the amount of money disbursed from the fund;

48 (b) the recipients of loans from the fund;

49 (c) the amount awarded to each recipient;

50 (d) the purposes for which such loans were granted;

51 (e) the amount of loans that were repaid under the restaurant and
52 restaurant worker recovery fund loan program;

53 (f) the amount of loans that were forgiven under restaurant and
54 restaurant worker recovery fund loan program; and

55 (g) a summary financial plan for such monies which shall include esti-
56 mates of all receipts and all disbursements for the current and succeed-

1 ing fiscal years, along with the actual results from the prior fiscal
2 year.

3 § 4. The sum of fifty million dollars (\$50,000,000), or so much there-
4 of as may be available, is hereby appropriated to the department of
5 labor from any moneys in the state treasury in the general fund to the
6 credit of the state purposes account, not otherwise appropriated, and
7 made immediately available, for the purpose of carrying out the
8 provisions of this act. Such moneys shall be payable on the audit and
9 warrant of the comptroller on vouchers certified or approved by the
10 commissioner of labor in the manner prescribed by law.

11 § 5. Upon the expiration and repeal of this act, any monies remaining
12 in the restaurant and restaurant worker recovery fund established pursu-
13 ant to section 97-ii of the state finance law shall be refunded to the
14 state treasury in the general fund to the credit of the state purposes
15 account.

16 § 6. Severability clause. If any clause, sentence, paragraph, subdivi-
17 sion, section or part of this act shall be adjudged by any court of
18 competent jurisdiction to be invalid, such judgment shall not affect,
19 impair, or invalidate the remainder of this act, but shall be confined
20 in its operation to the clause, sentence, paragraph, subdivision,
21 section or part of this act directly involved in the controversy in
22 which such judgment shall have been rendered. It is hereby declared to
23 be the intent of the legislature that this act would have been enacted
24 even if such invalid clause, sentence, paragraph, subdivision, section
25 or part had not been included herein.

26 § 7. This act shall take effect immediately and shall expire and be
27 deemed repealed July 1, 2025.