

STATE OF NEW YORK

1710

2023-2024 Regular Sessions

IN ASSEMBLY

January 20, 2023

Introduced by M. of A. GONZALEZ-ROJAS, EPSTEIN, KELLES, CLARK,
DE LOS SANTOS, CRUZ, GALLAGHER -- 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 and 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 expiration thereof

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,

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

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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 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, 2023;
\$10.50 per hour on and after December 31, 2024;
\$12.00 per hour on and after December 31, 2025;
\$13.50 per hour on and after December 31, 2026;
\$15.00 per hour on and after December 31, 2027, and beginning on
December thirty-first, two thousand twenty-eight, and on each following
December thirty-first thereafter, a cash wage payable to a food service
worker or service worker shall be published by the commissioner on or
before October first of such year that is equal to the then current cash
wage under this paragraph increased by \$1.75, until such time as such
cash wage would be equal to or greater than the cash wage under para-
graph (a) of subdivision one of this section, at which point the cash
wage under this paragraph shall be the same as the cash wage under para-
graph (a) of subdivision one of this section and shall increase whenever
the latter increases.

(c) Notwithstanding subdivisions one and two of this section and
section six hundred fifty-three of this article, the wage for an employ-
ee 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, 2023;
\$9.50 per hour on and after December 31, 2024;
\$11.00 per hour on and after December 31, 2025;
\$13.00 per hour on and after December 31, 2026;
\$15.00 per hour on and after December 31, 2027, and beginning on
December thirty-first, two thousand twenty-eight, and on each following
December thirty-first thereafter, a cash wage payable to a food service
worker or service worker shall be published by the commissioner on or
before October first of such year, that is equal to the then current
cash wage under this paragraph increased by \$1.75, until such time as
such cash wage would be equal to or greater than the cash wage under
paragraph (b) of subdivision one of this section, at which point the
cash wage payable under this paragraph shall be the same as the cash
wage under paragraph (b) of subdivision one of this section and shall
increase whenever the latter increases.

(d) Notwithstanding subdivisions one and two of this section and
section six hundred fifty-three of this article, the wage for an employ-
ee 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, 2023;
\$9.25 per hour on and after December 31, 2024;
\$10.50 per hour on and after December 31, 2025;
\$11.50 per hour on and after December 31, 2026;
\$12.50 per hour on and after December 31, 2027, and beginning on
December thirty-first, two thousand twenty-eight, and on each following
December thirty-first thereafter, a cash wage payable to a food service
worker or service worker shall be published by the commissioner on or
before October first of such year that is equal to the then current cash
wage under this paragraph increased by \$1.75, until such time as such
cash wage would be equal to or greater than the cash wage under para-
graph (c) of subdivision one of this section, at which point the cash
wage under this paragraph shall be the same as the wage under paragraph

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

(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, 2023;

\$15.00 per hour for both high tip and low tip employees on and after December 31, 2023, and beginning on December thirty-first, two thousand twenty-four, the cash wage payable under this paragraph shall be the same as the cash wage under paragraph (a) of subdivision one of this section and shall increase whenever the latter increases.

(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, 2023;

\$14.00 per hour for both high tip and low tip employees on and after December 31, 2023, and beginning on December thirty-first, two thousand twenty-four, the cash wage payable under this paragraph shall be the same as the cash wage under paragraph (b) of subdivision one of this section and shall increase whenever the latter increases.

(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, 2023;

\$12.50 per hour for both high tip and low tip employees on and after December 31, 2023, and beginning on December thirty-first, two thousand twenty-four, the cash wage payable under this paragraph shall be the same as the cash wage under paragraph (c) of subdivision one of this section and shall increase whenever the latter increases.

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

§ 198-f. Restaurant and restaurant worker recovery fund loan program.

1. There is established in the department a restaurant and restaurant worker recovery fund loan program for the purposes of supporting restaurants in the state and helping their employees to survive the financial hardships created by the COVID-19 pandemic by providing loans to qualifying restaurants to assist in covering unanticipated labor costs incurred as a result of the state of emergency that was declared by executive order number two hundred two of two thousand twenty, and any further amendments or modifications thereto, and to encourage providing a livable wage for restaurant workers who receive gratuities.

2. As used in this section:

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

(b) "Restaurant and restaurant worker recovery fund" or "fund" means the restaurant and restaurant worker recovery fund established pursuant to section ninety-seven-ii of the state finance law.

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

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

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

(b) To be eligible for a loan from the fund, a small New York-based restaurant shall pay all tipped employees not less than the full minimum hourly wage rate as defined by section six hundred fifty-two of this chapter as evidenced by:

(i) Proof that such a policy and practice is in existence at the time of the application for a loan from the fund; or

(ii) Execution of a sworn affidavit attesting that such a policy and practice shall be instituted in the restaurant within six months of receipt of a loan from the fund.

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

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

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

(b) If a restaurant that receives a loan under this section fails to meet and continue the requirements for accepting such loan, as set forth pursuant to this section and as the commissioner may require, such restaurant shall be required to pay back the total amount of the loan

1 accepted plus a penalty of three percent of the total amount of the
2 loan.

3 5. (a) The department shall develop an equity training program for
4 owners and managers of qualifying restaurants. In developing such
5 program, the department may utilize existing department resources and
6 programs and may consult with organizations that have a history of
7 training employers on best practices to increase wages and teaching
8 gender and racial equity.

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

11 (i) Raising wages to profitably pay a full minimum wage to all work-
12 ers;

13 (ii) Equitable sharing of tips;

14 (iii) Increasing race and gender equity among employees, including:

15 (A) Assessing and overhauling hiring, training, promotion and evalu-
16 ation practices to ensure equity for women and people of color;

17 (B) Implicit bias testing and training for management.

18 (c) Materials provided to persons participating in the equity training
19 shall include:

20 (i) A calculation that allows employers to input the number of employ-
21 ees and the menu process at the qualifying restaurant and provides the
22 employer with the best pricing options to increase wages profitably;

23 (ii) Three models and case studies of equitable wage/gratuity struc-
24 tures, including one that addresses service charges and one that
25 addresses gratuity-free models;

26 (iii) case studies of the bottom-line benefits of increasing equity
27 among employees; and

28 (iv) a model policy to address sexual harassment.

29 (d) The department shall provide qualifying restaurant owners with
30 technical assistance to help such owners to develop their own wage
31 increase structure.

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

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

38 7. The commissioner is authorized to promulgate, amend and/or repeal
39 such rules and regulations as may be necessary to implement the
40 provisions of this section.

41 § 6. The state finance law is amended by adding a new section 97-ii to
42 read as follows:

43 § 97-ii. Restaurant and restaurant worker recovery fund. There is
44 hereby established in the joint custody of the commissioner of taxation
45 and finance and the comptroller, a special fund to be known as the
46 restaurant and restaurant worker recovery fund. Monies in the fund shall
47 be kept separate from and not commingled with other funds held in the
48 custody of the commissioner of taxation and finance.

49 2. The fund shall consist of all monies appropriated for its purpose,
50 all monies required by this section or any other provisions of law to be
51 paid into or credited to such fund, and all other money appropriated,
52 credited, or transferred thereto from any other fund or source pursuant
53 to law. Nothing in this section shall prevent the state from receiving
54 grants, gifts or bequests for the purposes of the fund as defined in
55 this section and depositing them into the fund according to law.

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

8 4. On or before the first day of February each year, the commissioner
9 of labor shall provide a written report to the governor, the temporary
10 president of the senate, the speaker of the assembly, the chair of the
11 senate finance committee and the chair of the assembly ways and means
12 committee. Such report shall include how the monies of the fund were
13 utilized during the preceding calendar year and shall include: (a) the
14 amount of money disbursed from the fund; (b) the recipients of loans
15 from the fund; (c) the amount awarded to each recipient; (d) the
16 purposes for which such loans were granted; (e) the amount of loans that
17 were repaid under the restaurant and restaurant worker recovery fund
18 loan program; (f) the amount of loans that were forgiven under the
19 restaurant and restaurant worker recovery fund loan program; and (g) a
20 summary financial plan for such monies which shall include estimates of
21 all receipts and all disbursements for the current and succeeding fiscal
22 years, along with the actual results from the prior fiscal year.

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

31 § 8. Upon the expiration and repeal of this act, any monies remaining
32 in the restaurant and restaurant worker recovery fund established pursu-
33 ant to section 97-ii of the state finance law shall be refunded to the
34 state treasury in the general fund to the credit of the state purposes
35 account.

36 § 9. Severability clause. If any clause, sentence, paragraph, subdivi-
37 sion, section or part of this act shall be adjudged by any court of
38 competent jurisdiction to be invalid, such judgment shall not affect,
39 impair, or invalidate the remainder of this act, but shall be confined
40 in its operation to the clause, sentence, paragraph, subdivision,
41 section or part of this act directly involved in the controversy in
42 which such judgment shall have been rendered. It is hereby declared to
43 be the intent of the legislature that this act would have been enacted
44 even if such invalid clause, sentence, paragraph, subdivision, section
45 or part of this act had not been included herein.

46 § 10. This act shall take effect immediately and shall expire and be
47 deemed repealed July 1, 2025.