

# STATE OF NEW YORK

5567--A

2023-2024 Regular Sessions

## IN SENATE

March 8, 2023

Introduced by Sens. JACKSON, BRISPORT, CLEARE, COMRIE, FERNANDEZ, GIANARIS, GONZALEZ, HOYLMAN-SIGAL, LIU, MAY, MYRIE, PERSAUD, RAMOS, RIVERA, SALAZAR, SERRANO, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- 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~~] their 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, if the  
15 employer takes a credit for gratuities as permitted by subdivision two  
16 of section six hundred fifty-two of this chapter with a busboy or simi-  
17 lar employee, or, if the employer does not take a credit for gratuities  
18 as permitted by subdivision two of section six hundred fifty-two of this  
19 chapter, with any other non-managerial and non-supervisory employees.

20 § 2. Section 651 of the labor law is amended by adding a new subdivi-  
21 sion 10 to read as follows:

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

LBD06920-05-3

1 10. "Miscellaneous industry worker" means any employee covered by the  
2 minimum wage order for miscellaneous industries and occupations pursuant  
3 to the provisions of 12 NYCRR part 142, including, but not limited to,  
4 car wash attendants, nail salon workers, tow truck drivers, dog groom-  
5 ers, wedding planners, tour guides, valet parking attendants, hairdres-  
6 ers, aestheticians, golf and tennis instructors, and door-persons.

7 § 3. Subdivisions 2 and 4 of section 652 of the labor law, as amended  
8 by section 3 of part S of chapter 56 of the laws of 2023, are amended to  
9 read as follows:

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

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

40 ~~4. [Notwithstanding subdivisions one, one-a, one-b, and two of this~~  
41 ~~section, the wage for an employee who is a food service worker receiving~~  
42 ~~tips shall be a cash wage of at least two-thirds of the minimum wage~~  
43 ~~rates set forth in subdivision one of this section, rounded to the near-~~  
44 ~~est five cents or seven dollars and fifty cents, whichever is higher,~~  
45 ~~provided that the tips of such an employee, when added to such cash~~  
46 ~~wage, are equal to or exceed the minimum wage in effect pursuant to~~  
47 ~~subdivisions one, one-a, and one-b of this section and provided further~~  
48 ~~that no other cash wage is established pursuant to section six hundred~~  
49 ~~fifty-three of this article]~~ (a) Notwithstanding subdivisions one and  
50 two of this section and section six hundred fifty-three of this article,  
51 the wage for an employee who is a food service worker service employee  
52 receiving tips and paid pursuant to the provisions of 12 NYCRR part 146  
53 shall be, for each hour worked in the city of New York, a cash wage of  
54 not less than:

55 \$12.77 per hour on and after January 1, 2024;

56 \$14.88 per hour on and after January 1, 2025;

1 \$17.00 per hour on and after January 1, 2026, and beginning on January  
2 first, two thousand twenty-seven, a cash wage rate established by the  
3 commissioner annually, indexed to inflation as described in subdivision  
4 one-b of this section.

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

11 \$12.77 per hour on and after January 1, 2024;

12 \$14.88 per hour on and after January 1, 2025;

13 \$17.00 per hour on and after January 1, 2026, and beginning on January  
14 first, two thousand twenty-seven, a cash wage rate established by the  
15 commissioner annually, indexed to inflation as described in subdivision  
16 one-b of this section.

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

23 \$11.50 per hour on and after January 1, 2024;

24 \$13.00 per hour on and after January 1, 2025;

25 \$14.50 per hour on and after January 1, 2026;

26 \$16.00 per hour on and after January 1, 2027, and beginning on January  
27 first, two thousand twenty-eight, a cash wage rate established by the  
28 commissioner annually, indexed to inflation as described in subdivision  
29 one-b of this section.

30 (d) Notwithstanding subdivisions one and two of this section, the wage  
31 for an employee who is a miscellaneous industry worker receiving tips  
32 and paid pursuant to the provisions of 12 NYCRR part 142 shall be for  
33 each hour worked in the city of New York, a cash wage of not less than  
34 the cash wage rate as described in paragraph (a) of subdivision one-a of  
35 this section.

36 (e) Notwithstanding subdivisions one and two of this section, the wage  
37 for an employee who is a miscellaneous industry worker receiving tips  
38 and paid pursuant to the provisions of 12 NYCRR part 142 shall be for  
39 each hour worked in the counties of Nassau, Suffolk and Westchester, a  
40 cash wage of not less than the cash wage rate as described in paragraph  
41 (b) of subdivision one-a of this section.

42 (f) Notwithstanding subdivisions one and two of this section, the wage  
43 for an employee who is a miscellaneous industry worker receiving tips  
44 and paid pursuant to the provisions of 12 NYCRR part 142 shall be for  
45 each hour worked outside the city of New York and the counties of  
46 Nassau, Suffolk and Westchester, a cash wage of not less than the cash  
47 wage rate as described in paragraph (c) of subdivision one-a of this  
48 section.

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

51 (2) The commissioner shall, within six months after enactment of any  
52 change in the statutory minimum wage set forth in subdivision one of  
53 section six hundred fifty-two of this article, appoint a wage board to  
54 inquire and report and recommend any changes to wage orders governing  
55 wages payable to food service workers. Such wage board shall be estab-  
56 lished consistent with the provisions of subdivision one of section six

1 hundred fifty-five of this article, except the representatives of the  
2 employees shall be selected upon the nomination of the state American  
3 Federation of Labor/Congress of Industrial Organizations; and provided,  
4 further, that the representatives of the employers shall be selected  
5 upon the nomination of the New York State Business Council. [~~Any wage  
6 order authorizing a lesser wage than the previously and statutorily  
7 mandated minimum wage for such employees shall be reviewed by the wage  
8 board to ascertain at what level such wage order is sufficient to  
9 provide adequate maintenance and to protect the health and livelihood of  
10 employees subject to such a wage order after a statutory increase in the  
11 mandated minimum wage~~] Notwithstanding section six hundred fifty-five of  
12 this article, a wage order under this subdivision shall not authorize a  
13 lesser wage than the previously and statutorily mandated minimum wage  
14 for such employees.

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

25 § 6. This act shall take effect immediately.