

STATE OF NEW YORK

1710--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 20, 2023

Introduced by M. of A. GONZALEZ-ROJAS, EPSTEIN, KELLES, CLARK, DE LOS SANTOS, CRUZ, GALLAGHER, ARDILA, BURGOS, BURDICK, SIMON, SEPTIMO, SHIMSKY, RAGA, BORES, SHRESTHA, CUNNINGHAM, ROZIC, BICHOTTE HERME-LYN, SIMONE, TAYLOR, K. BROWN, DeSTEFANO, AUBRY, LEVENBERG, CARROLL, RIVERA, ANDERSON, FORREST, MAMDANI, COLTON, RAMOS, JOYNER, L. ROSEN-THAL, ALVAREZ, WALLACE -- read once and referred to the Committee on Labor -- 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.

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

LBD06920-06-3

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

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

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

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

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

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

1 \$12.77 per hour on and after January 1, 2024;
 2 \$14.88 per hour on and after January 1, 2025;
 3 \$17.00 per hour on and after January 1, 2026, and beginning on January
 4 first, two thousand twenty-seven, a cash wage rate established by the
 5 commissioner annually, indexed to inflation as described in subdivision
 6 one-b of this section.

7 (b) 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 \$12.77 per hour on and after January 1, 2024;
 14 \$14.88 per hour on and after January 1, 2025;
 15 \$17.00 per hour on and after January 1, 2026, and beginning on January
 16 first, two thousand twenty-seven, a cash wage rate established by the
 17 commissioner annually, indexed to inflation as described in subdivision
 18 one-b of this section.

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

25 \$11.50 per hour on and after January 1, 2024;
 26 \$13.00 per hour on and after January 1, 2025;
 27 \$14.50 per hour on and after January 1, 2026;
 28 \$16.00 per hour on and after January 1, 2027, and beginning on January
 29 first, two thousand twenty-eight, a cash wage rate established by the
 30 commissioner annually, indexed to inflation as described in subdivision
 31 one-b of this section.

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

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

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

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

53 (2) The commissioner shall, within six months after enactment of any
 54 change in the statutory minimum wage set forth in subdivision one of
 55 section six hundred fifty-two of this article, appoint a wage board to
 56 inquire and report and recommend any changes to wage orders governing

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

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

27 § 6. This act shall take effect immediately.