STATE OF NEW YORK

6757

2023-2024 Regular Sessions

IN SENATE

May 9, 2023

Introduced by Sen. MAYER -- 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 extending the authority and oversight of wage boards to include benefits and working conditions and changes the reference to such boards as workers' boards

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

Section 1. Legislative intent. The legislature finds and declares that:

1. For significant periods in our history, employers have demonstrated that they can partner with employees to ensure the provision of wages and conditions employees need to succeed in their work and achieve economic security.

2. In 1960, the state adopted a minimum wage, which has served as a wage floor that has substantially increased well-being for many workers throughout the state.

3. Since its initial adoption, the economy and the workforce have shifted and evolved in ways that require augmenting the minimum wage act to ensure that workers can provide for themselves and their families.

4. Many employers have adapted to their employees' changing needs and the shifts in the economy to provide more robust work-related benefits and more productive working conditions, thus enhancing their workers' overall well-being.

5. However, because existing law does not fully reflect these needs and the changes in the economy and workers' lives, many employers find themselves at a competitive disadvantage when they provide such benefits and working conditions for their workers, and workers who are not as fortunate must overcome greater struggles to succeed and thrive in their careers and in their private lives.

6. The state's laws must adapt to changes in the economy and needs of workers, and New York's establishment of the minimum wage provides a

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

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framework for setting additional minimum standards for benefits and working conditions that can reflect changes in the needs of workers.

7. Extending the authority of wage boards under the minimum wage act to consider additional minimum standards for benefits and working conditions will lead to higher levels of financial stability, health, well-being, and satisfaction for workers, reduce the state's expenditures on public benefits, and will create opportunities for employers and workers to collaborate to develop mutually beneficial strategies for workplace improvements and career pathways.

§ 2. Section 650 of the labor law, as amended by chapter 439 of the laws of 1962, is amended to read as follows:

§ 650. Statement of public policy. There are persons employed [~~in some occupations~~] in the state of New York at wages**, with benefits and under working conditions** insufficient to [~~provide adequate maintenance for~~] **sustain** themselves and their families. Such **conditions of** employment [~~impairs~~] **impair** the health, [~~efficiency~~] **financial security**, and well-being of the persons so employed, [~~constitutes~~] **constitute** unfair competition against other employers and their employees, [~~threatens~~] **threaten** the stability of industry, [~~reduces~~] **reduce** the purchasing power of employees, [~~and requires~~] **require**, in many instances, that wages **and benefits** be supplemented by the payment of public moneys for relief or other public and private assistance**, and result in additional burdens on the state and its people to support those with inadequate benefits and to combat the ills caused by unacceptable working conditions**. Employment of persons at [~~these~~] insufficient rates of pay**, with insufficient benefits and under unacceptable working conditions** threatens the health**, safety** and well-being of the people of this state and injures the overall economy.

Accordingly, it is the declared policy of the state of New York that such conditions be eliminated as rapidly as practicable [~~without substantially curtailing opportunities for employment or earning power~~]. To this end**,** minimum wage**, minimum benefits and minimum working condition** standards shall be established and maintained.

§ 3. Subdivision 3 of section 651 of the labor law, as added by chapter 619 of the laws of 1960, is amended and three new subdivisions 10, 11 and 12 are added to read as follows:

3. "Board" or [~~"wage~~] **"workers'** board" means a board created as provided in this article.

10. "Benefits" means compensation other than wages and salary, including but not limited to health care benefits, paid family leave, sick leave, childcare and retirement benefits, or in the case of benefits that would otherwise be subject to the employee retirement income security act of 1974, as amended, their cash equivalent.

11. "Working conditions" means establishment of working hours and protection of the safety and health of workers, and promotion of employees' participation in the decisions affecting their work.

12. "Eligible representative" means an organization or association eligible to represent employees in a given occupation or occupations through a workers' board. Such an organization or association is eligible if it:

(a) is not an employer, employment agency, referral agency, or an agent thereof;

(b) has a conflict of interest policy prohibiting the participation of any individual in a decision-making role if the individual pays employees to complete services in the occupation or occupations for which the organization is seeking representation rights;

(c) meets the requirements of subdivision (3), (4), (5), or (6) of section 501 (c) of title 26 of the Internal Revenue Code and is an organization or association that exists for the betterment of employees;

(d) engages in public advocacy to promote the health and well-being of employees;

(e) has a governing structure that promotes employees' decision-making power; and

(f) represents at least the lesser of one-half percent of the employees in the given occupation or occupations or sector or sectors, as applicable, or one hundred employees in the given occupation or occupations or sector or sectors, as applicable.

§ 4. Section 653 of the labor law, as amended by chapter 14 of the laws of 2000, is amended to read as follows:

§ 653. Investigation of adequacy of wages, benefits and working conditions. [~~(1)~~] 1. The commissioner shall have power on [~~his~~] the commissioner's own motion to cause an investigation to be made of the wages being paid, benefits being provided, and working conditions being provided to persons employed in any occupation or occupations on an occupation-specific basis or sector-specific basis, but is not limited to investigations within any particular occupation, sector or industry to ascertain whether the minimum wages established in accordance with the provisions of this article, and the benefits being provided and working conditions being provided are sufficient to provide adequate maintenance and to protect the health and well-being of the persons employed in such occupation or occupations. The commissioner shall, on the petition of fifty or more residents of the state engaged in or affected by an occupation or occupations sought to be investigated, cause such an investigation of such occupation or occupations to be conducted. [~~If, on the basis of information in his possession with or without such an investigation, the commissioner is of the opinion that~~] The commissioner shall publish notice on the department's website of any petition of fifty or more residents of the state engaged in or affected by an occupation or occupations with respect to wages being paid, benefits being provided, and working conditions being provided that such petition has been received and that an investigation shall be conducted. The notice shall provide information on the status of such investigation, a description of the investigation's purpose, and the expected date of the completion of such investigation. The investigation shall be conducted in a timely manner not to exceed thirty days. If such investigation finds evidence that any substantial number of persons employed in any occupation or occupations are receiving wages and benefits or working under conditions insufficient to [~~provide adequate maintenance~~] sustain them and to protect their health[~~, he~~] and well-being, the commissioner shall appoint a [~~wage~~] workers' board to inquire into and report and recommend adequate minimum wages, benefits, and working conditions and regulations for employees in such occupation or occupations.

[~~(2)~~] 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~~] workers' board to inquire [~~and~~], report and recommend any changes to wage orders governing wages payable to food service workers. Such [~~wage~~] workers' 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~~] **No such wage order may authorize** 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~~].

3. In addition to the commissioner's power to appoint a workers' board pursuant to subdivision one of this section, the legislature shall have the power, by joint resolution, to direct the commissioner to appoint a workers' board with respect to one or more occupations.

§ 5. The labor law is amended by adding a new section 653-a to read as follows:

§ 653-a. Workers' board duties. A workers' board shall:

1. evaluate and make findings regarding factors that may contribute to why a substantial number of persons employed in the relevant occupation or occupations is receiving insufficient wages and benefits or working under conditions insufficient to protect their health and well-being; and

2. make recommendations regarding:

a. compensation standards, including but not limited to minimum wage rate increases;

b. minimum benefits, and the provision thereof, provided that such recommendations shall include an option to provide the cash equivalent of any benefits that would otherwise be subject to the employee retirement income security act of 1974, as amended;

c. minimum working conditions; and

d. regulations appropriate to carry out the purposes of this article and to safeguard minimum wages, minimum benefits and minimum working conditions; and

3. conduct its inquiries in a manner that encourages engagement, discussion, negotiation, and agreement between employers and employees.

§ 6. Section 654 of the labor law, as added by chapter 619 of the laws of 1960, is amended to read as follows:

§ 654. Basis of changes in minimum wage**, minimum benefits, and minimum working conditions**. In establishing minimum wages**, minimum benefits, and minimum working conditions** and regulations for any occupation or occupations **and any sector or sectors** pursuant to the provisions of the following sections of this article, the [~~wage~~] **workers'** board and the commissioner shall consider the [~~amount~~] **wages, benefits and working conditions** sufficient to provide adequate maintenance and to protect health **and well-being** and, in addition, the [~~wage~~] **workers'** board and the commissioner shall consider the value of the work or classification of work performed, and the wages paid**, benefits provided and working conditions provided** in the state for work of like or comparable character.

§ 7. Section 655 of the labor law, as added by chapter 619 of the laws of 1960, subdivision 1 as amended by chapter 55 of the laws of 1992, paragraph (a) of subdivision 5 as amended by chapter 439 of the laws of 1962, and paragraphs (b) and (c) of subdivision 5 as amended by chapter 747 of the laws of 1978, is amended to read as follows:

§ 655. [~~Wage~~] **Workers'** board **composition; powers**; procedure; report**; recommendations**. 1. [~~Wage~~] **Workers'** board **composition**. A [~~wage~~] **workers'** board shall be composed of not more than three representatives of employers, an equal number of **eligible** representatives of employees and

an equal number of persons selected from the general public[~~. The commissioner shall appoint the members of the board, the~~], each of whom shall be appointed by the commissioner.

(a) The representatives of the employers [~~and employees to~~] shall be selected so far as practicable from nominations submitted by employers [~~and employees~~] in such occupation or occupations.

(b) The representatives of the employees shall be selected among eligible representatives indicating an interest in so serving. Where multiple eligible representatives have indicated interest in serving on a workers' board, the eligible representatives most representative of affected employees shall be selected. In cases where there are not yet any organizations or associations that can demonstrate they represent a sufficient number of employees in the occupation or occupations to qualify as an eligible representative, appointments shall be made from the organizations most likely to represent the interests of such employees.

(c) The members of the general public shall be representative of the geographic, racial, and ethnic diversity of the state and shall have significant experience in labor matters or the occupation or occupations in question.

(d) The commissioner shall designate as the chairman one of the members selected from the general public.

(e) The members of the board shall not receive a salary or other compensation, but shall be paid actual and necessary traveling and other expenses [~~while engaged~~] incurred in the performance of their duties.

(f) Members shall serve five year terms unless they resign, become deceased or otherwise unable to perform the functions of the position, or are removed by the commissioner for good cause shown.

(g) Vacancies on the board shall be filled in the same manner as provided for in paragraphs (a), (b), and (c) of this subdivision.

2. [~~Organization. The chairman of the board is authorized to delegate to a panel of the members, composed of an equal number of employer, employee and public members, any or all of the powers which the board itself may exercise, except as otherwise provided in subdivision four of this section.~~] Quorum. Two-thirds of the members of the board [~~or of a panel, as the case may be,~~] shall constitute a quorum. [~~The commissioner may from time to time formulate rules governing the manner in which the wage board shall function and perform its duties under this article.~~]

3. Powers. (a) The [~~wage~~] workers' board shall have power to conduct public hearings. Any such public hearings shall:

(i) be held at such a time, in such a location, and in such a facility that ensures accessibility for employees;

(ii) include interpretation services in the eight languages most commonly spoken by employees in the relevant occupation or occupations in the geographic region of the hearing;

(iii) be held in each of the regions served by the regional offices of the department in which the relevant occupation or occupations exists; and

(iv) include employee organizations in helping to populate the hearings.

(b) The board may also consult with employers and employees, and their respective representatives, in the occupation or occupations involved, and with such other persons, including the commissioner, as it shall determine.

(c) The board shall also have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of all books, records, and other evidence relative to any

matters under inquiry. Such subpoenas shall be signed and issued by the chairman of the board, or any other public member, and shall be served and have the same effect as if issued out of the supreme court. The board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the supreme court. The board shall not be bound by common law or statutory rules of procedure or evidence.

4. Report. **(a)** Within [~~forty-five~~] **ninety** days of the appointment of the [~~wage~~] **workers'** board to inquire into wages**, benefits or working conditions** in any occupation or occupations, the board shall [~~(a)~~] **(i)** conduct public hearings **in accordance with paragraph (a) of subdivision three of this section** and [~~(b)~~] **(ii)** submit to the commissioner a report, including its recommendations as to minimum wages**, minimum benefits, and minimum working conditions** and regulations for the employees in such occupation or occupations **as required by section six hundred fifty-three-a of this article**. The report and recommendations of the board shall be submitted only after a vote of not less than a majority of all its members in support of such report and recommendations. No report or recommendation of a panel shall be submitted without the prior vote of not less than a majority of all the members of the board in support of such report or recommendation. The commissioner may extend up to ninety days the time in which the report shall be submitted.

(b) Every three years after the initial appointment of the workers' board, the board shall submit to the commissioner a subsequent report conforming to the requirements of paragraph (a) of this subdivision.

5. Minimum wage**, minimum benefits and minimum working conditions** recommendations. (a) The minimum wage**, minimum benefits and minimum working conditions** recommended by the [~~wage~~] **workers'** board shall not be [~~in excess of an amount~~] **less than what is** sufficient to provide adequate maintenance and to protect the health **and well-being** of the employees. In no event, however, shall any minimum wage recommended by the board be less than the wage specified in section six hundred fifty-two of this [~~chapter~~] **article**, except [~~(1) as expressly otherwise provided in paragraph (c) of this subdivision, and (2)~~] where the board finds conditions of employment are such as to make an hourly rate impracticable, in which event the board may recommend a wage rate other than an hourly rate, provided that such recommended rate carries out the purposes of this article and safeguards the minimum wage specified in section six hundred fifty-two of this [~~chapter~~] **article**. The board may classify [~~employments~~] **employment** in any occupation according to the nature of the work rendered and recommend minimum wages**, minimum benefits and minimum working conditions** in accordance with such classification. The board may also recommend [~~a~~] minimum [~~wage~~] **wages, minimum benefits and minimum working conditions** varying with localities if, in the judgment of the board, conditions make such variation appropriate.

(b) In addition to recommendations for minimum wages, the [~~wage~~] **workers'** board may recommend such regulations as it deems appropriate to carry out the purposes of this article and [~~to safeguard minimum wages~~]. Such recommended regulations may include regulations defining the exclusions from the term "employee" set forth in subdivision five of section six hundred fifty-one **of this article**. Such recommended regulations may also include, but are not limited to, regulations governing piece rates, incentives, and commissions in relation to time rates; overtime or part-time rates; waiting time and call-in pay rates; wage rate provisions governing split shift, excessive spread of hours and weekly guarantees; and allowances for gratuities and, when furnished by the employer to

[~~his~~] **the employer's** employees, for meals, lodging, apparel and other such items, services and facilities.

[~~(c) The wage board may also recommend, to the extent necessary in order to prevent curtailment of opportunities for employment, regulations for (1) the employment of learners and apprentices, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and subject to such limitations as to time, number, proportion and length of service as shall be prescribed in such regulation, (2) the employment of individuals whose earning capacity is affected or impaired by youth or age or by physical or mental deficiency or injury, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulation, (3) the establishment of a period not extending beyond seventeen consecutive weeks during which a resort hotel or camp may employ students under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article as shall be prescribed in such regulation, and (4) the employment of residential employees in a non-profit making religious, charitable or educational organization or in a non-profit making college or university sorority or fraternity under special certificates issued by the commissioner at such weekly wage as shall be prescribed in such regulation.~~]

§ 8. Section 656 of the labor law, as added by chapter 619 of the laws of 1960, is amended to read as follows:

§ 656. Action by commissioner upon [~~wage~~] **workers'** board report. When the [~~wage~~] **workers'** board submits its report and recommendations to the commissioner, the commissioner shall forthwith file them with the secretary of the department. Within five days of their receipt, the commissioner shall publish a notice of such filing in at least ten newspapers of general circulation in the state. Any objections to the report and recommendations shall be filed with the commissioner within fifteen days after such publication. The commissioner may, if [~~he~~] **the commissioner** deems it appropriate, order oral argument, which shall be scheduled before the commissioner, or such representative as [~~he~~] **the commissioner** may designate, on five days' notice to the persons who have filed objections to the report and recommendations. Whether or not oral argument is scheduled, the commissioner shall by order accept or reject the board's report and recommendations within forty-five days after filing with the secretary of the department**, provided that the commissioner may only reject the board's report and recommendations if the commissioner finds no substantial evidence to support such recommendations**. The commissioner may by such order modify the regulations recommended by the board**, provided that such modifications do not have the effect of reducing the minimum wage, minimum benefits and minimum working conditions that would be applicable were such regulations not modified**. Such order of the commissioner shall become effective thirty days after publication, in the manner prescribed in this section, of a notice of such order. The commissioner may, within such forty-five days, confer with the wage board, which may make such changes in its report or recommendations as it may deem fit. [~~The commissioner also may, within such forty-five days, remand the matter to the board for such further proceeding as he may direct.~~] **The provisions of this article shall in no way restrict any county or municipality from enacting laws or regulations which provide for minimum wages, minimum benefits, or minimum working conditions which are more favorable than those provided pursuant to any order or regulation issued by the commissioner under this arti-**

cle, nor shall any such enacted laws or regulations be preempted by the provisions of this article.

§ 9. The labor law is amended by adding a new section 656-a to read as follows:

§ 656-a. Modifications without workers' board determinations. If an established workers' board fails to make determinations under this section within any three-year period as required pursuant to paragraph (b) of subdivision four of section six hundred fifty-five of this article, the minimum wages and, to the extent applicable, minimum benefits, for the occupation or occupations in question shall be increased in a manner which corresponds to the rate of inflation for the most recent twelve-month period ending June of that year based on the consumer price index for all urban consumers on a national and seasonally unadjusted basis, or a successor index as calculated by the United States department of labor. Such increase shall take effect on the date which is one year after the end of such three-year period and shall account for aggregate inflation over the four years prior to such date.

§ 10. Section 657 of the labor law, as added by chapter 619 of the laws of 1960, subdivision 2 as amended by chapter 102 of the laws of 1968 and subdivision 5 as amended by chapter 310 of the laws of 1962, is amended to read as follows:

§ 657. Appeals from [~~wage~~] orders and regulations. 1. Finality. Any minimum wage, minimum benefits or minimum working conditions order and regulation issued by the commissioner pursuant to this article shall, unless appealed from as provided in this section, be final. The findings of the commissioner as to the facts shall be conclusive on any appeal from an order of the commissioner issued pursuant to [~~sections~~] section six hundred fifty-two, six hundred fifty-six, or six hundred fifty-nine of this article.

2. Review by board of standards and appeals. Any person in interest, including a labor organization, eligible representative or employer association, in any occupation for which a minimum wage, minimum benefits or minimum working conditions order or regulation has been issued under the provisions of this article who is aggrieved by such order or regulation may obtain review before the board of standards and appeals by filing with said board, within forty-five days after the date of the publication of the notice of such order or regulation, a written petition requesting that the order or regulation be modified or set aside. A copy of such petition shall be served promptly upon the commissioner and the workers' board issuing the report and recommendations from which the applicable order or regulation arose. On such appeal, the commissioner shall certify and file with the board of standards and appeals a transcript of the entire record, including the testimony and evidence upon which such order or regulation was made and the report of the [~~wage~~] workers' board. The board of standards and appeals, upon the record certified and filed by the commissioner, shall, after oral argument, determine whether the order or regulation appealed from is contrary to law. Within forty-five days after the expiration of the time for the filing of a petition, the board of standards and appeals shall issue an order confirming, amending or setting aside the order or regulation appealed from. The appellate jurisdiction of the board of standards and appeals shall be exclusive and its order final except that the same shall be subject to an appeal taken directly to the appellate division of the supreme court, third judicial department, within sixty days after its order is issued. The commissioner and the workers' board shall each

be considered an aggrieved party entitled to take an appeal from an order of the board of standards and appeals.

3. Security. The taking of an appeal by an employer to the board of standards and appeals **shall in no event operate as a stay of a minimum working conditions order or regulation issued under this article and** shall not operate as a stay of a minimum wage **or minimum benefits** order or regulation issued under this article unless and until, and only so long as, the employer shall have provided security determined by the board of standards and appeals in accordance with this section. The security shall be sufficient to guarantee to the employees affected the payment of the difference between the wage **and the cash value of the benefits** they receive and the minimum wage **and the cash value of the minimum benefits** they would be entitled to receive under the terms of the minimum wage order**, minimum benefits order** or regulation (such [~~difference~~] **differences** being hereinafter referred to as "underpayments") in the event that such order or regulation is affirmed by the board of standards and appeals. The security shall be either:

a. A bond filed with the board of standards and appeals issued by a fidelity or surety company authorized to do business in this state. The bond shall be sufficient to cover the amount of underpayments due at the time the bond is filed with the board of standards and appeals and the amount of underpayments that can reasonably be expected to accrue within the following sixty days; or

b. An escrow account established by the employer [~~in~~] **on** behalf of employees and deposited in a bank or trust company in this state, of which the employer has notified the board of standards and appeals in writing that he **or she** has established such account. The account shall be sufficient to cover the amount of underpayments due at the time of notification to the board of standards and appeals and shall be kept current by the employer depositing therein the amount of underpayments accruing each and every pay period. Such deposits shall be made no later than the day on which the wages for each pay period are payable. As an alternative thereto, an employer may deposit the amount of underpayments due at the time the deposit is made and the amount of underpayments that can reasonably be expected to accrue within the following sixty days, as determined by the board of standards and appeals. The employer shall keep accurate records showing the total amount of each deposit, the period covered, and the name and address of each employee and the amount deposited to his **or her** account. The employees' escrow account shall be deemed to be a trust fund for the benefit of the employees affected, and no bank or trust company shall release funds in such account without the written approval of the board of standards and appeals.

4. Maintenance of security. The commissioner, at the request and on behalf of the board of standards and appeals, shall have the right to inspect the books and records of every employer who appeals from an order or who provides a security in accordance with subdivision [~~eight~~] **seven** of this section. In the event that the board of standards and appeals finds that the security provided by an employer is insufficient to cover the amount of underpayments, it shall notify the employer to increase the amount of the security. If the employer fails to increase the security to the amount requested within seven days after such notice, the stay shall be terminated. If the board of standards and appeals finds that the amount of the security is excessive, it shall decrease the amount of security required.

5. Review of determination as to security. Notwithstanding any provision in this chapter, any determination of the board of standards

and appeals with reference to subdivisions three and four of this section shall be reviewable only by a special proceeding under article seventy-eight of the civil practice law and rules instituted in the supreme court in the third judicial district within ten days after such determination.

6. Security on court review. In the event that an appeal is taken from the order of the board of standards and appeals to the supreme court in the third judicial district pursuant to subdivision two of this section, the court may continue the security in effect or require such security as it deems proper.

7. [~~Waiver of security. Notwithstanding any provision in this section, the board of standards and appeals may, in its discretion, waive the requirement of a security for an employer who the board of standards and appeals finds is of such financial responsibility that payments to employees of any underpayments due or to accrue are assured without the security provided by this section.~~

~~8.~~] Stay for other employers. Any employer affected by a minimum wage~~,~~ **minimum benefits or minimum working conditions** order or regulation from which an appeal has been taken by another employer to the board of standards and appeals or to the supreme court in the third judicial district, may obtain [~~a~~] **the employer's own respective** stay of proceedings [~~against him~~] **with respect to minimum wages or minimum benefits** by providing a security in accordance with subdivisions three and four of this section within thirty days after the filing of the appeal by the other employer.

§ 11. Section 658 of the labor law, as amended by chapter 443 of the laws of 1981, is amended to read as follows:

§ 658. Appeals from compliance orders. An appeal pursuant to section two hundred eighteen or two hundred nineteen of this chapter from an order issued by the commissioner directing compliance with any provision of this article or with any minimum wage**, minimum benefits or minimum working conditions** order or regulation promulgated thereunder, shall not bring under review any minimum wage**, minimum benefits or minimum working conditions** order or regulation promulgated under this article. The provisions of subdivision two of section six hundred fifty-seven **of this article** relating to appeals from determinations of the board and the provisions of subdivisions three through [~~seven~~] **six** of section six hundred fifty-seven **of this article** shall apply to an appeal from a compliance order.

§ 12. Section 659 of the labor law, as added by chapter 619 of the laws of 1960, is amended to read as follows:

§ 659. Reconsideration of [~~wage~~] orders and regulations. 1. By [~~wage~~] **workers'** board. At any time after a minimum wage**, minimum benefits, or minimum working conditions** order has been in effect for six months or more, the commissioner, on [~~his~~] **the commissioner's** own motion or on a petition of fifty or more residents of the state engaged in or affected by the occupation or occupations to which an order is applicable, may reconvene the same [~~wage~~] **workers'** board or appoint a new [~~wage~~] **workers'** board to recommend whether or not the minimum wage**, minimum benefits, minimum working conditions** and regulations prescribed by such order should be modified, and the provisions of section six hundred fifty-five through six hundred fifty-seven **of this article** shall thereafter apply.

2. By commissioner. The commissioner, without referral to the [~~wage~~] **workers'** board, may, at any time after public hearing, by order propose such modifications of or additions to any regulations as he may deem

appropriate to effectuate the purposes of this article. Notice of hearing and promulgation of any such order shall be published in accordance with the provisions contained in section six hundred fifty-six **of this article**. Such order shall be effective thirty days after such publication and section six hundred fifty-seven **of this article** shall thereafter apply.

3. Notwithstanding subdivisions one and two of this section, no modification may be made pursuant to this section which has the effect of reducing the minimum wage, reducing benefits, making working conditions less favorable to employees, or affecting the regulations in a manner that adversely affects employees of the applicable occupation or occupations or sector or sectors without the unanimous approval of the workers' board which submitted the report out of which arose the applicable minimum wage, minimum benefits, or minimum working conditions order.

§ 13. Section 660 of the labor law, as added by chapter 619 of the laws of 1960, is amended to read as follows:

§ 660. Commissioner's powers of investigation. The commissioner or [~~his~~] **the commissioner's** authorized representative shall have power:

[~~(a)~~] **1.** to investigate the wages**, benefits and working conditions** of persons in any occupation in the state;

[~~(b)~~] **2.** to enter the place of business or employment of any employer for the purpose of [~~(1)~~] **(a)** examining and inspecting any and all books, registers, payrolls and other records that in any way relate to or have a bearing upon the wages paid to, [~~or~~] **the benefits provided to,** the hours worked by**, or other working conditions for,** any employees, [~~(2)~~] **(b)** ascertaining whether the provisions of this article and the orders and regulations promulgated hereunder are being complied with; and

[~~(c)~~] **3.** to require from any employer full and correct statements and reports in writing, at such times as the commissioner may deem necessary, of the wages paid to [~~and~~]**, the benefits provided to,** the hours worked by**, and other working conditions applicable to,** his employees.

§ 14. Section 661 of the labor law, as amended by chapter 564 of the laws of 2010, is amended to read as follows:

§ 661. Records of employers. For all employees covered by this article, every employer shall establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; **benefits;** deductions; allowances, if any, claimed as part of the minimum wage; and net wages for each employee, plus such other information as the commissioner deems material and necessary. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the payroll records must include the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the payroll records shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate. On demand, the employer shall furnish to the commissioner or [~~his~~] **the commissioner's** duly authorized representative a sworn statement of the hours worked, rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; **benefits;** deductions; and allowances, if any, claimed as

part of the minimum wage, for each employee, plus such other information as the commissioner deems material and necessary. Every employer shall keep such records open to inspection by the commissioner or [~~his~~] **the commissioner's** duly authorized representative at any reasonable time. Every employer of an employee shall keep a digest and summary of this article or applicable wage**, benefits or working conditions** order, which shall be prepared by the commissioner, posted in a conspicuous place in [~~his establishment~~] **the place or places of work** and shall also keep posted such additional copies of said digest and summary as the commissioner prescribes. Employers shall, on request, be furnished with copies of this article and of orders, and of digests and summaries thereof, without charge. Employers shall permit the commissioner or [~~his~~] **the commissioner's** duly authorized representative to question without interference any employee of such employer in a private location at the place of employment and during working hours in respect to the wages paid to [~~and~~]**, benefits provided to,** the hours worked by**, and the other working conditions for,** such employee or other employees.

§ 15. Section 662 of the labor law, as amended by chapter 564 of the laws of 2010, is amended to read as follows:

§ 662. Penalties. 1. Failure to pay minimum wage or overtime compensation**, provided minimum benefits, or provide minimum working conditions**. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, who pays or agrees to pay to any employee less than the wage applicable under this article**, provides benefits less than benefits applicable under this article, or which subjects any employee to working conditions inferior to what is applicable under this article** shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. Each [~~payment to any employee in any week of less than the wage applicable under this article~~] **week during which such a violation occurs** shall constitute a separate offense **for each such violation**.

2. Failure to keep records. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, who fails to keep the records required under this article or to furnish such records or any information required to be furnished under this article to the commissioner or his or her authorized representative upon request, or who hinders or delays the commissioner or his or her authorized representative in the performance of his or her duties in the enforcement of this article, or refuses to admit the commissioner or his or her authorized representative to any place of employment, or falsifies any such records or refuses to make such records accessible to the commissioner or his or her authorized representative, or refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this article to the commissioner or his or her authorized representative, shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than five thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense

occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. Each day's failure to keep the records requested under this article or to furnish such records or information to the commissioner or his or her authorized representative shall constitute a separate offense.

§ 16. Section 663 of the labor law, as amended by chapter 564 of the laws of 2010, subdivision 3 as amended by chapter 2 of the laws of 2015, is amended to read as follows:

§ 663. Civil action. 1. By employee. If any employee is paid by his or her employer less than the wage**, is provided benefits less than the minimum benefits, or is subject to working conditions inferior to the minimum working conditions, in each case,** to which [**he or she**] **the employee** is entitled under the provisions of this article, [**he or she**] **the employee** shall recover in a civil action the amount of any such [**underpayments**] **underpayment of wages, the monetary value of the deficiency in benefits and compensation for deficiency in working conditions, including any damages suffered as a result thereof**, together with costs**,** all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and unless the employer proves a good faith basis to believe that [**its underpayment of**] **such deficiency in** wages**, benefits or working conditions** was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total of [**such underpayments**] **amounts otherwise** found to be due **pursuant to this subdivision**. Any agreement between the employee, and the employer to work for less than [**such**] **the minimum** wage**, for less than the minimum benefits or without minimum working conditions** shall be no defense to such action.

2. By commissioner. On behalf of any employee paid less than the wage**, provided with benefits less than the minimum benefits, or subject to working conditions inferior to the minimum working conditions, in each case,** to which the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the full amount of the underpayment **of wages, the monetary value of the deficiency in benefits, and compensation for deficiency in working conditions, including any damages suffered as a result thereof**, plus costs, and unless the employer proves a good faith basis to believe that [**its underpayment**] **such deficiency in wages, benefits or working conditions** was in compliance with the law, an additional amount as liquidated damages. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total [**amount of underpayments**] **amounts otherwise** found to be due the employee **pursuant to this subdivision**. In any action brought by the commissioner in a court of competent jurisdiction, liquidated damages shall be calculated as an amount equal to one hundred percent of [**underpayments**] **the aggregate amounts otherwise** found to be due the employee **pursuant to this subdivision**.

3. **By an eligible representative. If any employee is paid by his or her employer less than the wage, is provided benefits less than the minimum benefits, or is subject to working conditions inferior to the minimum working conditions, in each case, to which the employee is entitled under the provisions of this article, any eligible represen-**

tative of such employee may bring a civil action to recover the amount of any such underpayment of wages, the monetary value of the deficiency in benefits and compensation for deficiency in working conditions, including any damages suffered as a result thereof, together with costs all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and unless the employer proves a good faith basis to believe that such deficiency in wages, benefits or working conditions was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total of amounts otherwise found to be due pursuant to this subdivision. Any agreement between the employee, and the employer to work for less than the minimum wage, for less than the minimum benefits or without minimum working conditions shall be no defense to such action.

4. By the attorney general. On behalf of any employee paid less than the minimum wage, provided with benefits less than the minimum benefits, or subject to working conditions inferior to the minimum working conditions, in each case, to which the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the full amount of the underpayment of wages, the monetary value of the deficiency in benefits, and compensation for deficiency in working conditions, including any damages suffered as a result thereof, plus costs, and unless the employer proves a good faith basis to believe that such deficiency in wages, benefits or working conditions was in compliance with the law, an additional amount as liquidated damages. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amounts otherwise found to be due the employee pursuant to this subdivision. In any action brought by the commissioner in a court of competent jurisdiction, liquidated damages shall be calculated as an amount equal to one hundred percent of the aggregate amounts otherwise found to be due the employee pursuant to this subdivision.

5. Limitation of time. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this article.

[~~4.~~] 6. Attorneys' fees. In any civil action by an employee or by the commissioner, the employee or commissioner shall have the right to collect attorneys' fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal therefrom is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

§ 17. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect,

impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 18. This act shall take effect one year after it shall have become a law.