

# STATE OF NEW YORK

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6757--A

2023-2024 Regular Sessions

## IN SENATE

May 9, 2023

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Introduced by Sens. MAYER, RAMOS, COMRIE, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

- 1 Section 1. Legislative intent. The legislature finds and declares  
2 that:
- 3 1. For significant periods in our history, employers have demonstrated  
4 that they can partner with employees to ensure the provision of wages  
5 and conditions employees need to succeed in their work and achieve  
6 economic security.
- 7 2. In 1960, the state adopted a minimum wage, which has served as a  
8 wage floor that has substantially increased well-being for many workers  
9 throughout the state.
- 10 3. Since its initial adoption, the economy and the workforce have  
11 shifted and evolved in ways that require augmenting the minimum wage act  
12 to ensure that workers can provide for themselves and their families.
- 13 4. Many employers have adapted to their employees' changing needs and  
14 the shifts in the economy to provide more robust work-related benefits  
15 and more productive working conditions, thus enhancing their workers'  
16 overall well-being.
- 17 5. However, because existing law does not fully reflect these needs  
18 and the changes in the economy and workers' lives, many employers find  
19 themselves at a competitive disadvantage when they provide such benefits  
20 and working conditions for their workers, and workers who are not as

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

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1 fortunate must overcome greater struggles to succeed and thrive in their  
2 careers and in their private lives.

3 6. The state's laws must adapt to changes in the economy and needs of  
4 workers, and New York's establishment of the minimum wage provides a  
5 framework for setting additional minimum standards for benefits and  
6 working conditions that can reflect changes in the needs of workers.

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

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

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

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

38 § 3. Subdivision 3 of section 651 of the labor law, as added by chap-  
39 ter 619 of the laws of 1960, is amended and three new subdivisions 10,  
40 11 and 12 are added to read as follows:

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

43 10. "Benefits" means compensation other than wages and salary, includ-  
44 ing but not limited to health care benefits, paid family leave, sick  
45 leave, childcare and retirement benefits, or in the case of benefits  
46 that would otherwise be subject to the employee retirement income secu-  
47 rity act of 1974, as amended, their cash equivalent.

48 11. "Working conditions" means establishment of working hours and  
49 protection of the safety and health of workers, and promotion of employ-  
50 ees' participation in the decisions affecting their work.

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

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

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

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

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

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

12 (f) represents at least the lesser of one-half percent of the employ-  
13 ees in the given occupation or occupations or sector or sectors, as  
14 applicable, or one hundred employees in the given occupation or occupa-  
15 tions or sector or sectors, as applicable.

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

18 § 653. Investigation of adequacy of wages, benefits and working condi-  
19 tions. [~~1~~] 1. The commissioner shall have power on [~~his~~] the commis-  
20 sioner's own motion to cause an investigation to be made of the wages  
21 being paid, benefits being provided, and working conditions being  
22 provided to persons employed in any occupation or occupations on an  
23 occupation-specific basis or sector-specific basis, but is not limited  
24 to investigations within any particular occupation, sector or industry  
25 to ascertain whether the minimum wages established in accordance with  
26 the provisions of this article, and the benefits being provided and  
27 working conditions being provided are sufficient to provide adequate  
28 maintenance and to protect the health and well-being of the persons  
29 employed in such occupation or occupations. The commissioner shall, on  
30 the petition of fifty or more residents of the state engaged in or  
31 affected by an occupation or occupations sought to be investigated,  
32 cause such an investigation of such occupation or occupations to be  
33 conducted. [~~If, on the basis of information in his possession with or~~  
34 ~~without such an investigation, the commissioner is of the opinion that~~]  
35 The commissioner shall publish notice on the department's website of any  
36 petition of fifty or more residents of the state engaged in or affected  
37 by an occupation or occupations with respect to wages being paid, bene-  
38 fits being provided, and working conditions being provided that such  
39 petition has been received and that an investigation shall be conducted.  
40 The notice shall provide information on the status of such investi-  
41 gation, a description of the investigation's purpose, and the expected  
42 date of the completion of such investigation. The investigation shall be  
43 conducted in a timely manner not to exceed thirty days. If such investi-  
44 gation finds evidence that any substantial number of persons employed in  
45 any occupation or occupations are receiving wages and benefits or work-  
46 ing under conditions insufficient to [~~provide adequate maintenance~~]  
47 sustain them and to protect their health[~~, he~~] and well-being, the  
48 commissioner shall appoint a [~~wage~~] workers' board to inquire into and  
49 report and recommend adequate minimum wages, benefits, and working  
50 conditions and regulations for employees in such occupation or occupa-  
51 tions.

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

1 board shall be established consistent with the provisions of subdivision  
2 one of section six hundred fifty-five of this article, except the repre-  
3 sentatives of the employees shall be selected upon the nomination of the  
4 state American Federation of Labor/Congress of Industrial Organizations;  
5 and provided, further, that the representatives of the employers shall  
6 be selected upon the nomination of the New York State Business Council.

7 ~~[Any wage order authorizing]~~ No such wage order may authorize a lesser  
8 wage than the previously and statutorily mandated minimum wage for such  
9 employees ~~[shall be reviewed by the wage board to ascertain at what~~  
10 ~~level such wage order is sufficient to provide adequate maintenance and~~  
11 ~~to protect the health and livelihood of employees subject to such a wage~~  
12 ~~order after a statutory increase in the mandated minimum wage].~~

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

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

19 § 653-a. Workers' board duties. A workers' board shall:

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

25 2. make recommendations regarding:

26 (a) compensation standards, including but not limited to minimum wage  
27 rate increases;

28 (b) minimum benefits, and the provision thereof, provided that such  
29 recommendations shall include an option to provide the cash equivalent  
30 of any benefits that would otherwise be subject to the employee retire-  
31 ment income security act of 1974, as amended;

32 (c) minimum working conditions; and

33 (d) regulations appropriate to carry out the purposes of this article  
34 and to safeguard minimum wages, minimum benefits and minimum working  
35 conditions; and

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

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

40 § 654. Basis of changes in minimum wage, minimum benefits, and minimum  
41 working conditions. In establishing minimum wages, minimum benefits,  
42 and minimum working conditions and regulations for any occupation or  
43 occupations and any sector or sectors pursuant to the provisions of the  
44 following sections of this article, the [~~wage~~] workers' board and the  
45 commissioner shall consider the [~~amount~~] wages, benefits and working  
46 conditions sufficient to provide adequate maintenance and to protect  
47 health and well-being and, in addition, the [~~wage~~] workers' board and  
48 the commissioner shall consider the value of the work or classification  
49 of work performed, and the wages paid, benefits provided and working  
50 conditions provided in the state for work of like or comparable charac-  
51 ter.

52 § 7. Section 655 of the labor law, as added by chapter 619 of the laws  
53 of 1960, subdivision 1 as amended by chapter 55 of the laws of 1992,  
54 paragraph (a) of subdivision 5 as amended by chapter 439 of the laws of  
55 1962, and paragraphs (b) and (c) of subdivision 5 as amended by chapter  
56 747 of the laws of 1978, is amended to read as follows:

1 § 655. [~~Wage~~] Workers' board composition; powers; procedure; report;  
2 recommendations. 1. [~~Wage~~] Workers' board composition. A [~~wage~~] work-  
3 ers' board shall be composed of [~~not more than~~] the commissioner or  
4 their designee, the head of the relevant agency or their designee, three  
5 representatives of employers, an equal number of eligible represen-  
6 tatives of employees and [~~an equal number of~~] two persons selected from  
7 the general public[~~, The commissioner shall appoint the members of the~~  
8 ~~board, the~~], each of whom shall be appointed by the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

53 (iv) include employee organizations in helping to populate the hear-  
54 ings.

55 (b) The board may also consult with employers and employees, and their  
56 respective representatives, in the occupation or occupations involved,

1 and with such other persons, including the commissioner, as it shall  
2 determine.

3 (c) The board shall also have power to administer oaths and to require  
4 by subpoena the attendance and testimony of witnesses, and the  
5 production of all books, records, and other evidence relative to any  
6 matters under inquiry. Such subpoenas shall be signed and issued by the  
7 chairman of the board, or any other public member, and shall be served  
8 and have the same effect as if issued out of the supreme court. The  
9 board shall have power to cause depositions of witnesses residing within  
10 or without the state to be taken in the manner prescribed for like depo-  
11 sitions in civil actions in the supreme court. The board shall not be  
12 bound by common law or statutory rules of procedure or evidence.

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

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

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

51 (b) In addition to recommendations for minimum wages, the [~~wage~~] work-  
52 ers' board may recommend such regulations as it deems appropriate to  
53 carry out the purposes of this article and [~~to safeguard minimum wages~~].  
54 Such recommended regulations may include regulations defining the exclu-  
55 sions from the term "employee" set forth in subdivision five of section  
56 six hundred fifty-one of this article. Such recommended regulations may

1 also include, but are not limited to, regulations governing piece rates,  
2 incentives, and commissions in relation to time rates; overtime or part-  
3 time rates; waiting time and call-in pay rates; wage rate provisions  
4 governing split shift, excessive spread of hours and weekly guarantees;  
5 and allowances for gratuities and, when furnished by the employer to  
6 [~~his~~] the employer's employees, for meals, lodging, apparel and other  
7 such items, services and facilities.

8 ~~[(e) The wage board may also recommend, to the extent necessary in  
9 order to prevent curtailment of opportunities for employment, regu-  
10 lations for (1) the employment of learners and apprentices, under  
11 special certificates issued by the commissioner, at such wages lower  
12 than the minimum wage established by this article and subject to such  
13 limitations as to time, number, proportion and length of service as  
14 shall be prescribed in such regulation, (2) the employment of individ-  
15 uals whose earning capacity is affected or impaired by youth or age or  
16 by physical or mental deficiency or injury, under special certificates  
17 issued by the commissioner, at such wages lower than the minimum wage  
18 established by this article and for such period as shall be prescribed  
19 in such regulation, (3) the establishment of a period not extending  
20 beyond seventeen consecutive weeks during which a resort hotel or camp  
21 may employ students under special certificates issued by the commis-  
22 sioner, at such wages lower than the minimum wage established by this arti-  
23 cle as shall be prescribed in such regulation, and (4) the employment of  
24 residential employees in a non-profit making religious, charitable or  
25 educational organization or in a non-profit making college or university  
26 sorority or fraternity under special certificates issued by the commis-  
27 sioner at such weekly wage as shall be prescribed in such regulation.]~~

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

30 § 656. Action by commissioner upon [~~wage~~] workers' board report. When  
31 the [~~wage~~] workers' board submits its report and recommendations to the  
32 commissioner, the commissioner shall forthwith file them with the secre-  
33 tary of the department. Within five days of their receipt, the commis-  
34 sioner shall publish a notice of such filing in at least ten newspapers  
35 of general circulation in the state. Any objections to the report and  
36 recommendations shall be filed with the commissioner within fifteen days  
37 after such publication. The commissioner may, if [~~he~~] the commissioner  
38 deems it appropriate, order oral argument, which shall be scheduled  
39 before the commissioner, or such representative as [~~he~~] the commissioner  
40 may designate, on five days' notice to the persons who have filed  
41 objections to the report and recommendations. Whether or not oral argu-  
42 ment is scheduled, the commissioner shall by order accept or reject the  
43 board's report and recommendations within forty-five days after filing  
44 with the secretary of the department, provided that the commissioner may  
45 only reject the board's report and recommendations if the commissioner  
46 finds no substantial evidence to support such recommendations. [~~The~~  
47 ~~commissioner may by such order~~] In industries that the department deter-  
48 mines rely predominantly on the appropriation of public funds, if the  
49 cost of such recommendation exceeds existing appropriations, the commis-  
50 sioner may make acceptance of a specific recommendation contingent upon  
51 a subsequent appropriation or modify the regulations recommended by the  
52 board, provided that such modifications do not have the effect of reduc-  
53 ing the minimum wage, minimum benefits and minimum working conditions  
54 required under existing rules or regulations. If a specific recommenda-  
55 tion is rejected because of insufficient appropriations, the commis-  
56 ioner shall consult with the commissioner or director of the relevant

1 department or agency to request such appropriation. Such order of the  
2 commissioner shall become effective thirty days after publication, in  
3 the manner prescribed in this section, of a notice of such order. The  
4 commissioner may, within such forty-five days, confer with the wage  
5 board, which may make such changes in its report or recommendations as  
6 it may deem fit. [~~The commissioner also may, within such forty-five~~  
7 ~~days, remand the matter to the board for such further proceeding as he~~  
8 ~~may direct.~~] The provisions of this article shall in no way restrict any  
9 county or municipality from enacting laws or regulations which provide  
10 for minimum wages, minimum benefits, or minimum working conditions which  
11 are more favorable than those provided pursuant to any order or regu-  
12 lation issued by the commissioner under this article, nor shall any such  
13 enacted laws or regulations be preempted by the provisions of this arti-  
14 cle.

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

17 § 656-a. Modifications without workers' board determinations. If an  
18 established workers' board fails to make determinations under this  
19 section within any three-year period as required pursuant to paragraph  
20 (b) of subdivision four of section six hundred fifty-five of this arti-  
21 cle, the minimum wages and, to the extent applicable, minimum benefits,  
22 for the occupation or occupations in question shall be increased in a  
23 manner which corresponds to the rate of inflation for the most recent  
24 twelve-month period ending June of that year based on the consumer  
25 price index for all urban consumers on a national and seasonally  
26 unadjusted basis, or a successor index as calculated by the United  
27 States department of labor. Such increase shall take effect on the  
28 date which is one year after the end of such three-year period and shall  
29 account for aggregate inflation over the four years prior to such date.

30 § 10. Section 657 of the labor law, as added by chapter 619 of the  
31 laws of 1960, subdivision 2 as amended by chapter 102 of the laws of  
32 1968 and subdivision 5 as amended by chapter 310 of the laws of 1962, is  
33 amended to read as follows:

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

42 2. Review by board of standards and appeals. Any person in interest,  
43 including a labor organization, eligible representative or employer  
44 association, in any occupation for which a minimum wage, minimum bene-  
45 fits or minimum working conditions order or regulation has been issued  
46 under the provisions of this article who is aggrieved by such order or  
47 regulation may obtain review before the board of standards and appeals  
48 by filing with said board, within forty-five days after the date of the  
49 publication of the notice of such order or regulation, a written peti-  
50 tion requesting that the order or regulation be modified or set aside. A  
51 copy of such petition shall be served promptly upon the commissioner and  
52 the workers' board issuing the report and recommendations from which the  
53 applicable order or regulation arose. On such appeal, the commissioner  
54 shall certify and file with the board of standards and appeals a tran-  
55 script of the entire record, including the testimony and evidence upon  
56 which such order or regulation was made and the report of the [~~wage~~]

1 workers' board. The board of standards and appeals, upon the record  
2 certified and filed by the commissioner, shall, after oral argument,  
3 determine whether the order or regulation appealed from is contrary to  
4 law. Within forty-five days after the expiration of the time for the  
5 filing of a petition, the board of standards and appeals shall issue an  
6 order confirming, amending or setting aside the order or regulation  
7 appealed from. The appellate jurisdiction of the board of standards and  
8 appeals shall be exclusive and its order final except that the same  
9 shall be subject to an appeal taken directly to the appellate division  
10 of the supreme court, third judicial department, within sixty days after  
11 its order is issued. The commissioner and the workers' board shall each  
12 be considered an aggrieved party entitled to take an appeal from an  
13 order of the board of standards and appeals.

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

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

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

54 4. Maintenance of security. The commissioner, at the request and on  
55 behalf of the board of standards and appeals, shall have the right to  
56 inspect the books and records of every employer who appeals from an

1 order or who provides a security in accordance with subdivision [~~eight~~  
2 seven] of this section. In the event that the board of standards and  
3 appeals finds that the security provided by an employer is insufficient  
4 to cover the amount of underpayments, it shall notify the employer to  
5 increase the amount of the security. If the employer fails to increase  
6 the security to the amount requested within seven days after such  
7 notice, the stay shall be terminated. If the board of standards and  
8 appeals finds that the amount of the security is excessive, it shall  
9 decrease the amount of security required.

10 5. Review of determination as to security. Notwithstanding any  
11 provision in this chapter, any determination of the board of standards  
12 and appeals with reference to subdivisions three and four of this  
13 section shall be reviewable only by a special proceeding under article  
14 seventy-eight of the civil practice law and rules instituted in the  
15 supreme court in the third judicial district within ten days after such  
16 determination.

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

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

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

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

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

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

53 § 659. Reconsideration of [~~wage~~] orders and regulations. 1. By [~~wage~~]  
54 workers' board. At any time after a minimum wage, minimum benefits, or  
55 minimum working conditions order has been in effect for six months or  
56 more, the commissioner, on [~~his~~] the commissioner's own motion or on a

1 petition of fifty or more residents of the state engaged in or affected  
2 by the occupation or occupations to which an order is applicable, may  
3 reconvene the same [~~wage~~] workers' board or appoint a new [~~wage~~] work-  
4 ers' board to recommend whether or not the minimum wage, minimum bene-  
5 fits, minimum working conditions and regulations prescribed by such  
6 order should be modified, and the provisions of section six hundred  
7 fifty-five through six hundred fifty-seven of this article shall there-  
8 after apply.

9 2. By commissioner. The commissioner, without referral to the [~~wage~~]  
10 workers' board, may, at any time after public hearing, by order propose  
11 such modifications of or additions to any regulations as he may deem  
12 appropriate to effectuate the purposes of this article. Notice of hear-  
13 ing and promulgation of any such order shall be published in accordance  
14 with the provisions contained in section six hundred fifty-six of this  
15 article. Such order shall be effective thirty days after such publica-  
16 tion and section six hundred fifty-seven of this article shall thereaft-  
17 er apply.

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

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

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

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

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

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

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

47 § 661. Records of employers. For all employees covered by this arti-  
48 cle, every employer shall establish, maintain, and preserve for not less  
49 than six years contemporaneous, true, and accurate payroll records show-  
50 ing for each week worked the hours worked, the rate or rates of pay and  
51 basis thereof, whether paid by the hour, shift, day, week, salary,  
52 piece, commission, or other basis; gross wages; benefits; deductions;  
53 allowances, if any, claimed as part of the minimum wage; and net wages  
54 for each employee, plus such other information as the commissioner deems  
55 material and necessary. For all employees who are not exempt from over-  
56 time compensation as established in the commissioner's minimum wage

1 orders or otherwise provided by New York state law or regulation, the  
2 payroll records must include the regular hourly rate or rates of pay,  
3 the overtime rate or rates of pay, the number of regular hours worked,  
4 and the number of overtime hours worked. For all employees paid a piece  
5 rate, the payroll records shall include the applicable piece rate or  
6 rates of pay and number of pieces completed at each piece rate. On  
7 demand, the employer shall furnish to the commissioner or ~~[his]~~ the  
8 commissioner's duly authorized representative a sworn statement of the  
9 hours worked, rate or rates of pay and basis thereof, whether paid by  
10 the hour, shift, day, week, salary, piece, commission, or other basis;  
11 gross wages; benefits; deductions; and allowances, if any, claimed as  
12 part of the minimum wage, for each employee, plus such other information  
13 as the commissioner deems material and necessary. Every employer shall  
14 keep such records open to inspection by the commissioner or ~~[his]~~ the  
15 commissioner's duly authorized representative at any reasonable time.  
16 Every employer of an employee shall keep a digest and summary of this  
17 article or applicable wage, benefits or working conditions order, which  
18 shall be prepared by the commissioner, posted in a conspicuous place in  
19 ~~[his establishment]~~ the place or places of work and shall also keep  
20 posted such additional copies of said digest and summary as the commis-  
21 sioner prescribes. Employers shall, on request, be furnished with copies  
22 of this article and of orders, and of digests and summaries thereof,  
23 without charge. Employers shall permit the commissioner or ~~[his]~~ the  
24 commissioner's duly authorized representative to question without inter-  
25 ference any employee of such employer in a private location at the place  
26 of employment and during working hours in respect to the wages paid to  
27 ~~[and],~~ benefits provided to, the hours worked by, and the other working  
28 conditions for, such employee or other employees.

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

31 § 662. Penalties. 1. Failure to pay minimum wage or overtime compen-  
32 sation, provided minimum benefits, or provide minimum working  
33 conditions. Any employer or his or her agent, or the officer or agent  
34 of any corporation, partnership, or limited liability company, who pays  
35 or agrees to pay to any employee less than the wage applicable under  
36 this article, provides benefits less than benefits applicable under this  
37 article, or which subjects any employee to working conditions inferior  
38 to what is applicable under this article shall be guilty of a misdemea-  
39 nor and upon conviction therefor shall be fined not less than five  
40 hundred nor more than twenty thousand dollars or imprisoned for not more  
41 than one year, and, in the event that any second or subsequent offense  
42 occurs within six years of the date of conviction for a prior offense,  
43 shall be guilty of a felony for the second or subsequent offense, and  
44 upon conviction therefor, shall be fined not less than five hundred nor  
45 more than twenty thousand dollars or imprisoned for not more than one  
46 year plus one day, or punished by both such fine and imprisonment, for  
47 each such offense. Each ~~[payment to any employee in any week of less~~  
48 ~~than the wage applicable under this article]~~ week during which such a  
49 violation occurs shall constitute a separate offense for each such  
50 violation.

51 2. Failure to keep records. Any employer or his or her agent, or the  
52 officer or agent of any corporation, partnership, or limited liability  
53 company, who fails to keep the records required under this article or to  
54 furnish such records or any information required to be furnished under  
55 this article to the commissioner or his or her authorized representative  
56 upon request, or who hinders or delays the commissioner or his or her

1 authorized representative in the performance of his or her duties in the  
2 enforcement of this article, or refuses to admit the commissioner or his  
3 or her authorized representative to any place of employment, or falsi-  
4 fies any such records or refuses to make such records accessible to the  
5 commissioner or his or her authorized representative, or refuses to  
6 furnish a sworn statement of such records or any other information  
7 required for the proper enforcement of this article to the commissioner  
8 or his or her authorized representative, shall be guilty of a misdemea-  
9 nor and upon conviction therefor shall be fined not less than five  
10 hundred nor more than five thousand dollars or imprisoned for not more  
11 than one year, and, in the event that any second or subsequent offense  
12 occurs within six years of the date of conviction for a prior offense,  
13 shall be guilty of a felony for the second or subsequent offense, and  
14 upon conviction therefor, shall be fined not less than five hundred nor  
15 more than twenty thousand dollars or imprisoned for not more than one  
16 year plus one day, or punished by both such fine and imprisonment, for  
17 each such offense. Each day's failure to keep the records requested  
18 under this article or to furnish such records or information to the  
19 commissioner or his or her authorized representative shall constitute a  
20 separate offense.

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

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

43 2. By commissioner. On behalf of any employee paid less than the wage,  
44 provided with benefits less than the minimum benefits, or subject to  
45 working conditions inferior to the minimum working conditions, in each  
46 case, to which the employee is entitled under the provisions of this  
47 article, the commissioner may bring any legal action necessary, includ-  
48 ing administrative action, to collect such claim, and the employer shall  
49 be required to pay the full amount of the underpayment of wages, the  
50 monetary value of the deficiency in benefits, and compensation for defi-  
51 ciency in working conditions, including any damages suffered as a result  
52 thereof, plus costs, and unless the employer proves a good faith basis  
53 to believe that ~~[its underpayment]~~ such deficiency in wages, benefits or  
54 working conditions was in compliance with the law, an additional amount  
55 as liquidated damages. Liquidated damages shall be calculated by the  
56 commissioner as no more than one hundred percent of the total ~~[amount of]~~

1 ~~underpayments]~~ amounts otherwise found to be due the employee pursuant  
2 to this subdivision. In any action brought by the commissioner in a  
3 court of competent jurisdiction, liquidated damages shall be calculated  
4 as an amount equal to one hundred percent of [~~underpayments]~~ the aggregate  
5 amounts otherwise found to be due the employee pursuant to this  
6 subdivision.

7 3. By an eligible representative. If any employee is paid by his or  
8 her employer less than the wage, is provided benefits less than the  
9 minimum benefits, or is subject to working conditions inferior to the  
10 minimum working conditions, in each case, to which the employee is enti-  
11 tled under the provisions of this article, any eligible represen-  
12 tative of such employee may bring a civil action to recover the amount  
13 of any such underpayment of wages, the monetary value of the deficiency  
14 in benefits and compensation for deficiency in working conditions,  
15 including any damages suffered as a result thereof, together with costs  
16 all reasonable attorney's fees, prejudgment interest as required  
17 under the civil practice law and rules, and unless the employer  
18 proves a good faith basis to believe that such deficiency in wages,  
19 benefits or working conditions was in compliance with the law, an  
20 additional amount as liquidated damages equal to one hundred percent of  
21 the total of amounts otherwise found to be due pursuant to this  
22 subdivision. Any agreement between the employee, and the employer to  
23 work for less than the minimum wage, for less than the minimum benefits  
24 or without minimum working conditions shall be no defense to such  
25 action.

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

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

1     ~~[4.]~~ 6. Attorneys' fees. In any civil action by an employee or by the  
2 commissioner, the employee or commissioner shall have the right to  
3 collect attorneys' fees and costs incurred in enforcing any court judg-  
4 ment. Any judgment or court order awarding remedies under this section  
5 shall provide that if any amounts remain unpaid upon the expiration of  
6 ninety days following issuance of judgment, or ninety days after expira-  
7 tion of the time to appeal and no appeal therefrom is then pending,  
8 whichever is later, the total amount of judgment shall automatically  
9 increase by fifteen percent.

10     § 17. Severability clause. If any clause, sentence, paragraph, subdi-  
11 vision, section or part of this act shall be adjudged by any court of  
12 competent jurisdiction to be invalid, such judgment shall not affect,  
13 impair, or invalidate the remainder thereof, but shall be confined in  
14 its operation to the clause, sentence, paragraph, subdivision, section  
15 or part thereof directly involved in the controversy in which such judg-  
16 ment shall have been rendered. It is hereby declared to be the intent of  
17 the legislature that this act would have been enacted even if such  
18 invalid provisions had not been included herein.

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