

[First Reprint]

ASSEMBLY, No. 857

STATE OF NEW JERSEY
216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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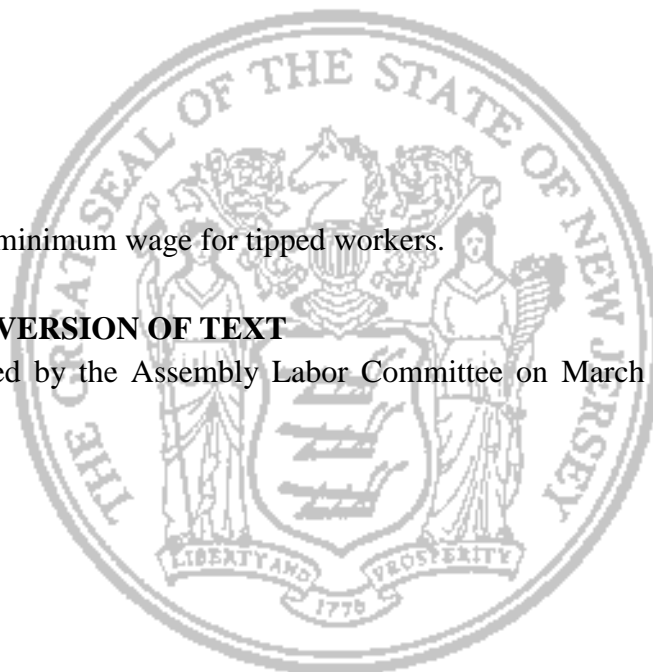
**Assemblyman Eustace, Assemblywoman Tucker and Assemblyman
McKeon**

SYNOPSIS

Increases minimum wage for tipped workers.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on March 24, 2014, with
amendments.



(Sponsorship Updated As Of: 2/6/2015)

1 AN ACT concerning the minimum wage for tipped workers and
2 amending P.L.1966, c.113.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to
8 read as follows:

9 2. As used in this act:

10 (a) "Commissioner" means the Commissioner of Labor and
11 Workforce Development.

12 (b) "Director" means the director in charge of the bureau
13 referred to in section 3 of this act.

14 (c) "Wage board" means a board created as provided in section
15 10 of this act.

16 (d) "Wages" means any moneys due an employee from an
17 employer for services rendered or made available by the employee
18 to the employer as a result of their employment relationship
19 including commissions, bonus and piecework compensation and
20 including **any gratuities received by an employee for services**
21 **rendered for an employer or a customer of an employer and** the
22 fair value of any food or lodgings supplied by an employer to an
23 employee. The commissioner may, by regulation, establish the
24 **average value of gratuities received by an employee in any**
25 **occupation and the** fair value of food and lodging provided to
26 employees in any occupation, which **average values** shall be
27 acceptable for the purposes of determining compliance with this act
28 in the absence of evidence of the actual value of such items.

29 (e) "Regular hourly wage" means the amount that an employee
30 is regularly paid for each hour of work as determined by dividing
31 the total hours of work during the week into the employee's total
32 earnings for the week, exclusive of overtime premium pay.

33 (f) "Employ" includes to suffer or to permit to work.

34 (g) "Employer" includes any individual, partnership,
35 association, corporation or any person or group of persons acting
36 directly or indirectly in the interest of an employer in relation to an
37 employee.

38 (h) "Employee" includes any individual employed by an
39 employer.

40 (i) "Occupation" means any occupation, service, trade,
41 business, industry or branch or group of industries or employment
42 or class of employment in which employees are gainfully employed.

43 (j) "Minimum fair wage order" means a wage order

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted March 24, 2014.

1 promulgated pursuant to this act.

2 (k) "Fair wage" means a wage fairly and reasonably
3 commensurate with the value of the service or class of service
4 rendered and sufficient to meet the minimum cost of living
5 necessary for health.

6 (l) "Oppressive and unreasonable wage" means a wage which is
7 both less than the fair and reasonable value of the service rendered
8 and less than sufficient to meet the minimum cost of living
9 necessary for health.

10 (m) "Limousine" means a motor vehicle used in the business of
11 carrying passengers for hire to provide prearranged passenger
12 transportation at a premium fare on a dedicated, nonscheduled,
13 charter basis that is not conducted on a regular route and with a
14 seating capacity in no event of more than 14 passengers, not
15 including the driver, provided, that such a motor vehicle shall not
16 have a seating capacity in excess of four passengers, not including
17 the driver, beyond the maximum passenger seating capacity of the
18 vehicle, not including the driver, at the time of manufacture.
19 "Limousine" shall not include taxicabs, hotel or airport shuttles and
20 buses, buses employed solely in transporting school children or
21 teachers to and from school, vehicles owned and operated directly
22 or indirectly by businesses engaged in the practice of mortuary
23 science when those vehicles are used exclusively for providing
24 transportation related to the provision of funeral services or vehicles
25 owned and operated without charge or remuneration by a business
26 entity for its own purposes.

27 (cf: P.L.2001, c.416, s.2)

28

29 2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
30 read as follows:

31 5. Every employer shall pay to each of his employees wages at
32 a rate of not less than \$5.05 per hour as of April 1, 1992 and, after
33 January 1, 1999 the federal minimum hourly wage rate set by
34 section 6(a)(1) of the federal "Fair Labor Standards Act of 1938"
35 (29 U.S.C. s.206(a)(1)), and, as of October 1, 2005, \$6.15 per hour,
36 and as of October 1, 2006, \$7.15 per hour ¹or the minimum hourly
37 wage rate set forth by Article I, paragraph 23 of the New Jersey
38 Constitution, whichever is greater,¹ for 40 hours of working time in
39 any week and 1 1/2 times such employee's regular hourly wage for
40 each hour of working time in excess of 40 hours in any week,
41 except this overtime rate shall not include any individual employed
42 in a bona fide executive, administrative, or professional capacity or,
43 if an applicable wage order has been issued by the commissioner
44 under section 17 (C.34:11-56a16) of this act, not less than the
45 wages prescribed in said order. The wage rates fixed in this section
46 shall not be applicable to part-time employees primarily engaged in
47 the care and tending of children in the home of the employer, to

1 persons under the age of 18 not possessing a special vocational
2 school graduate permit issued pursuant to section 15 of P.L.1940,
3 c.153 (C.34:2-21.15), or to persons employed as salesmen of motor
4 vehicles, or to persons employed as outside salesmen as such terms
5 shall be defined and delimited in regulations adopted by the
6 commissioner, or to persons employed in a volunteer capacity and
7 receiving only incidental benefits at a county or other agricultural
8 fair by a nonprofit or religious corporation or a nonprofit or
9 religious association which conducts or participates in that fair.

10 The provisions of this section for the payment to an employee of
11 not less than 1 1/2 times such employee's regular hourly rate for
12 each hour of working time in excess of 40 hours in any week shall
13 not apply to employees engaged to labor on a farm or employed in a
14 hotel or to an employee of a common carrier of passengers by motor
15 bus or to a limousine driver who is an employee of an employer
16 engaged in the business of operating limousines or to employees
17 engaged in labor relative to the raising or care of livestock.

18 Employees engaged on a piece-rate or regular hourly rate basis to
19 labor on a farm shall be paid for each day worked not less than the
20 minimum hourly wage rate multiplied by the total number of hours
21 worked.

22 Full-time students may be employed by the college or university
23 at which they are enrolled at not less than 85% of the effective
24 minimum wage rate.

25 Notwithstanding the provisions of this section to the contrary,
26 every trucking industry employer shall pay to all drivers, helpers,
27 loaders and mechanics for whom the Secretary of Transportation
28 may prescribe maximum hours of work for the safe operation of
29 vehicles, pursuant to section 31502(b) of the federal Motor Carrier
30 Act, 49 U.S.C.s.31502(b), an overtime rate not less than 1 1/2 times
31 the minimum ¹hourly¹ wage ¹rate¹ required pursuant to this section
32 **【and N.J.A.C. 12:56-3.1】** ¹or Article I, paragraph 23 of the New
33 Jersey Constitution, whichever is greater¹. Employees engaged in
34 the trucking industry shall be paid no less than the minimum
35 ¹hourly¹ wage rate as provided in this section **【and N.J.A.C. 12:56-**
36 **3.1】** ¹or in Article I, paragraph 23 of the New Jersey Constitution,
37 whichever is greater¹. As used in this section, "trucking industry
38 employer" means any business or establishment primarily operating
39 for the purpose of conveying property from one place to another by
40 road or highway, including the storage and warehousing of goods
41 and property. Such an employer shall also be subject to the
42 jurisdiction of the Secretary of Transportation pursuant to the
43 federal Motor Carrier Act, 49 U.S.C.s.31501 et seq., whose
44 employees are exempt under section 213(b)(1) of the federal "Fair
45 Labor Standards Act of 1938," 29 U.S.C. s.213(b)(1), which
46 provides an exemption to employees regulated by section 207 of the

1 federal "Fair Labor Standards Act of 1938," 29 U.S.C.s.207, and the
2 Interstate Commerce Act, 49 U.S.C.s.501 et al.

3 The provisions of this section shall not be construed as
4 prohibiting any political subdivision of the State from adopting an
5 ordinance, resolution, regulation or rule, or entering into any
6 agreement, establishing any standard for vendors, contractors and
7 subcontractors of the subdivision regarding wage rates or overtime
8 compensation which is higher than the standards provided for in
9 this section, and no provision of any other State or federal law
10 establishing a minimum standard regarding wages or other terms
11 and conditions of employment shall be construed as preventing a
12 political subdivision of the State from adopting an ordinance,
13 resolution, regulation or rule, or entering into any agreement,
14 establishing a standard for vendors, contractors and subcontractors
15 of the subdivision which is higher than the State or federal law or
16 which otherwise provides greater protections or rights to employees
17 of the vendors, contractors and subcontractors of the subdivision,
18 unless the State or federal law expressly prohibits the subdivision
19 from adopting the ordinance, resolution, regulation or rule, or
20 entering into the agreement.

21 After ¹【June 30, 2012】 December 31, 2014¹, with respect to an
22 employee who customarily and regularly receives gratuities or tips,
23 every employer is entitled to a credit for the gratuities or tips
24 received by the employee against the hourly wage rate paid to the
25 employee of no more than 60 percent of the minimum hourly wage
26 rate set forth in this section ¹or the minimum hourly wage rate set
27 forth in Article I, paragraph 23 of the New Jersey Constitution,
28 whichever is greater¹, and after ¹【June 30, 2013】 December 31,
29 2015¹, every employer is entitled to a credit for the gratuities or tips
30 received by the employee against the hourly wage rate paid to the
31 employee of no more than 31 percent of the minimum hourly wage
32 rate set forth in this section ¹or the minimum hourly wage rate set
33 forth in Article I, paragraph 23 of the New Jersey Constitution,
34 whichever is greater¹. Nothing in this section shall be construed so
35 as to prohibit the pooling of gratuities or tips among employees who
36 customarily and regularly receive gratuities. The commissioner
37 shall require every employer, for every pay period and for every
38 employee who customarily and regularly receives gratuities or tips,
39 to provide substantial evidence that the amount claimed for the
40 credit of gratuities or tips was received by the employee and that no
41 part of the amount claimed was returned to the employer. The
42 commissioner shall require every employer to provide notification
43 to any employee for which the employer claims the credit of
44 gratuities or tips.

45 (cf: P.L.2005, c.70, s.1)

46

47 3. This act shall take effect immediately.