

SENATE, No. 838

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Increases minimum wage for tipped workers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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
44 promulgated pursuant to this act.

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.

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

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

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

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

27

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

30 5. Every employer shall pay to each of his employees wages at
31 a rate of not less than \$5.05 per hour as of April 1, 1992 and, after
32 January 1, 1999 the federal minimum hourly wage rate set by
33 section 6(a)(1) of the federal "Fair Labor Standards Act of 1938"
34 (29 U.S.C. s.206(a)(1)), and, as of October 1, 2005, \$6.15 per hour,
35 and as of October 1, 2006, \$7.15 per hour for 40 hours of working
36 time in any week and 1 1/2 times such employee's regular hourly
37 wage for each hour of working time in excess of 40 hours in any
38 week, except this overtime rate shall not include any individual
39 employed in a bona fide executive, administrative, or professional
40 capacity or, if an applicable wage order has been issued by the
41 commissioner under section 17 (C.34:11-56a16) of this act, not less
42 than the wages prescribed in said order. The wage rates fixed in
43 this section shall not be applicable to part-time employees primarily
44 engaged in the care and tending of children in the home of the
45 employer, to persons under the age of 18 not possessing a special
46 vocational school graduate permit issued pursuant to section 15 of
47 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
48 salesmen of motor vehicles, or to persons employed as outside

1 salesmen as such terms shall be defined and delimited in regulations
2 adopted by the commissioner, or to persons employed in a volunteer
3 capacity and receiving only incidental benefits at a county or other
4 agricultural fair by a nonprofit or religious corporation or a
5 nonprofit or religious association which conducts or participates in
6 that fair.

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

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

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

22 Notwithstanding the provisions of this section to the contrary,
23 every trucking industry employer shall pay to all drivers, helpers,
24 loaders and mechanics for whom the Secretary of Transportation
25 may prescribe maximum hours of work for the safe operation of
26 vehicles, pursuant to section 31502(b) of the federal Motor Carrier
27 Act, 49 U.S.C. s.31502(b), an overtime rate not less than 1 1/2
28 times the minimum wage required pursuant to this section **【and**
29 **N.J.A.C.12:56-3.】** Employees engaged in the trucking industry
30 shall be paid no less than the minimum wage rate as provided in this
31 section **【and N.J.A.C.12:56-3.1】**. As used in this section, "trucking
32 industry employer" means any business or establishment primarily
33 operating for the purpose of conveying property from one place to
34 another by road or highway, including the storage and warehousing
35 of goods and property. Such an employer shall also be subject to the
36 jurisdiction of the Secretary of Transportation pursuant to the
37 federal Motor Carrier Act, 49 U.S.C. s.31501 et seq., whose
38 employees are exempt under section 213(b)(1) of the federal "Fair
39 Labor Standards Act of 1938," 29 U.S.C. s.213(b)(1), which
40 provides an exemption to employees regulated by section 207 of the
41 federal "Fair Labor Standards Act of 1938," 29 U.S.C. s.207, and
42 the Interstate Commerce Act, 49 U.S.C. s.501 et al.

43 The provisions of this section shall not be construed as
44 prohibiting any political subdivision of the State from adopting an
45 ordinance, resolution, regulation or rule, or entering into any
46 agreement, establishing any standard for vendors, contractors and
47 subcontractors of the subdivision regarding wage rates or overtime
48 compensation which is higher than the standards provided for in

1 this section, and no provision of any other State or federal law
2 establishing a minimum standard regarding wages or other terms
3 and conditions of employment shall be construed as preventing a
4 political subdivision of the State from adopting an ordinance,
5 resolution, regulation or rule, or entering into any agreement,
6 establishing a standard for vendors, contractors and subcontractors
7 of the subdivision which is higher than the State or federal law or
8 which otherwise provides greater protections or rights to employees
9 of the vendors, contractors and subcontractors of the subdivision,
10 unless the State or federal law expressly prohibits the subdivision
11 from adopting the ordinance, resolution, regulation or rule, or
12 entering into the agreement.

13 After June 30, 2012, with respect to an employee who
14 customarily and regularly receives gratuities or tips, every employer
15 is entitled to a credit for the gratuities or tips received by the
16 employee against the hourly wage rate paid to the employee of no
17 more than 60 percent of the minimum hourly wage rate set forth in
18 this section, and after June 30, 2013, every employer is entitled to a
19 credit for the gratuities or tips received by the employee against the
20 hourly wage rate paid to the employee of no more than 31 percent
21 of the minimum hourly wage rate set forth in this section. Nothing
22 in this section shall be construed so as to prohibit the pooling of
23 gratuities or tips among employees who customarily and regularly
24 receive gratuities. The commissioner shall require every employer,
25 for every pay period and for every employee who customarily and
26 regularly receives gratuities or tips, to provide substantial evidence
27 that the amount claimed for the credit of gratuities or tips was
28 received by the employee and that no part of the amount claimed
29 was returned to the employer. The commissioner shall require
30 every employer to provide notification to any employee for which
31 the employer claims the credit of gratuities or tips.

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

33

34 3. This act shall take effect immediately.

35

36

37

STATEMENT

38

39 This bill increases the minimum hourly wage that must be paid
40 to employees who customarily and regularly receive gratuities or
41 tips. The bill provides that, after June 30, 2012, an employer may
42 claim a credit for gratuities or tips received by an employee against
43 the hourly wage rate paid to the employee in an amount not to
44 exceed 60 percent of the minimum hourly wage rate required by
45 law, and after June 30, 2013, an employer may claim a credit for
46 gratuities and tips in an amount not to exceed 31 percent of the
47 minimum hourly wage rate required by law.

S838 POU

1 By allowing the employer to claim these credits, this bill will
2 effectively require employers to compensate their employees at an
3 hourly rate of at least 40 percent of the minimum wage (\$2.90 per
4 hour) after June 30, 2012, and an hourly rate of at least 69% of the
5 minimum wage (\$5.00 per hour) after June 30, 2013 and beyond.
6 The remainder of the employee's compensation may be comprised
7 of tips or gratuities, as long as the employee earns at least the
8 current minimum wage required by State and federal law (\$7.25 per
9 hour). Most employees who rely on tips or gratuities are currently
10 paid the federal minimum wage for tipped workers of \$2.13 per
11 hour.

12 The bill also requires every employer, for every pay period and
13 for every employee who customarily and regularly receives
14 gratuities or tips, to provide substantial evidence that the amount
15 claimed for the credit of gratuities or tips was received by the
16 employee and that no part of the amount claimed was returned to
17 the employer. Finally, the bill requires that every employer provide
18 notification to any employee for whom the employer claims the
19 credit of gratuities or tips.