ASSEMBLY, No. 1972

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Assemblyman Eustace, Assemblywoman Tucker, Assemblymen McKeon, Benson, Assemblywomen McKnight, Pinkin and Jasey

SYNOPSIS
Increases minimum wage for tipped workers.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 12/18/2018)
AN ACT concerning the minimum wage for tipped workers and amending P.L.1966, c.113.

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

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

2. As used in this act:
   (a) "Commissioner" means the Commissioner of Labor and Workforce Development.
   (b) "Director" means the director in charge of the bureau referred to in section 3 of this act.
   (c) "Wage board" means a board created as provided in section 10 of this act.
   (d) "Wages" means any moneys due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including [any gratuities received by an employee for services rendered for an employer or a customer of an employer and] the fair value of any food or lodgings supplied by an employer to an employee. The commissioner may, by regulation, establish the [average value of gratuities received by an employee in any occupation and the] fair value of food and lodging provided to employees in any occupation, which [average values] shall be acceptable for the purposes of determining compliance with this act in the absence of evidence of the actual value of such items.
   (e) "Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.
   (f) "Employ" includes to suffer or to permit to work.
   (g) "Employer" includes any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.
   (h) "Employee" includes any individual employed by an employer.
   (i) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.
   (j) "Minimum fair wage order" means a wage order 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.
(k) "Fair wage" means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the minimum cost of living necessary for health.

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

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

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

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

5. Every employer shall pay to each of his employees wages at a rate of not less than $5.05 per hour as of April 1, 1992 and, after January 1, 1999 the federal minimum hourly wage rate set by section 6(a)(1) of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206(a)(1)), and, as of October 1, 2005, $6.15 per hour, and as of October 1, 2006, $7.15 per hour or the minimum hourly wage rate set forth by Article I, paragraph 23 of the New Jersey Constitution, whichever is greater, for 40 hours of working time in any week and 1 1/2 times such employee's regular hourly wage for each hour of working time in excess of 40 hours in any week, except this overtime rate shall not include any individual employed in a bona fide executive, administrative, or professional capacity or, if an applicable wage order has been issued by the commissioner under section 17 (C.34:11-56a16) of this act, not less than the wages prescribed in said order. The wage rates fixed in this section shall not be applicable to part-time employees primarily engaged in the care and tending of children in the home of the employer, to persons under the age of 18 not possessing a special vocational school graduate permit issued pursuant to section 15 of P.L.1940,
c.153 (C.34:2-21.15), or to persons employed as salesmen of motor
vehicles, or to persons employed as outside salesmen as such terms
shall be defined and delimited in regulations adopted by the
commissioner, or to persons employed in a volunteer capacity and
receiving only incidental benefits at a county or other agricultural
fair by a nonprofit or religious corporation or a nonprofit or
religious association which conducts or participates in that fair.

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

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

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

Notwithstanding the provisions of this section to the contrary,
every trucking industry employer shall pay to all drivers, helpers,
loaders and mechanics for whom the Secretary of Transportation
may prescribe maximum hours of work for the safe operation of
vehicles, pursuant to section 31502(b) of the federal Motor Carrier
Act, 49 U.S.C.s.31502(b), an overtime rate not less than 1 1/2 times
the minimum hourly wage rate required pursuant to this section
[and N.J.A.C. 12:56-3.1] or Article I, paragraph 23 of the New
Jersey Constitution, whichever is greater. Employees engaged in
the trucking industry shall be paid no less than the minimum hourly
wage rate as provided in this section [and N.J.A.C. 12:56-3.1] or in
Article I, paragraph 23 of the New Jersey Constitution, whichever is
greater. As used in this section, "trucking industry employer" means
any business or establishment primarily operating for the purpose of
conveying property from one place to another by road or highway,
including the storage and warehousing of goods and property. Such
an employer shall also be subject to the jurisdiction of the Secretary
of Transportation pursuant to the federal Motor Carrier Act, 49
U.S.C.s.31501 et seq., whose employees are exempt under section
213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
U.S.C. s.213(b)(1), which provides an exemption to employees
regulated by section 207 of the federal "Fair Labor Standards Act of
U.S.C.s.501 et al.

The provisions of this section shall not be construed as
prohibiting any political subdivision of the State from adopting an
ordinance, resolution, regulation or rule, or entering into any agreement, establishing any standard for vendors, contractors and subcontractors of the subdivision regarding wage rates or overtime compensation which is higher than the standards provided for in this section, and no provision of any other State or federal law establishing a minimum standard regarding wages or other terms and conditions of employment shall be construed as preventing a political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing a standard for vendors, contractors and subcontractors of the subdivision which is higher than the State or federal law or which otherwise provides greater protections or rights to employees of the vendors, contractors and subcontractors of the subdivision, unless the State or federal law expressly prohibits the subdivision from adopting the ordinance, resolution, regulation or rule, or entering into the agreement.

After December 31, 2014, with respect to an employee who customarily and regularly receives gratuities or tips, every employer is entitled to a credit for the gratuities or tips received by the employee against the hourly wage rate paid to the employee of no more than 60 percent of the minimum hourly wage rate set forth in this section or the minimum hourly wage rate set forth in Article I, paragraph 23 of the New Jersey Constitution, whichever is greater, and after December 31, 2015, every employer is entitled to a credit for the gratuities or tips received by the employee against the hourly wage rate paid to the employee of no more than 31 percent of the minimum hourly wage rate set forth in this section or the minimum hourly wage rate set forth in Article I, paragraph 23 of the New Jersey Constitution, whichever is greater. Nothing in this section shall be construed so as to prohibit the pooling of gratuities or tips among employees who customarily and regularly receive gratuities.

The commissioner shall require every employer, for every pay period and for every employee who customarily and regularly receives gratuities or tips, to provide substantial evidence that the amount claimed for the credit of gratuities or tips was received by the employee and that no part of the amount claimed was returned to the employer. The commissioner shall require every employer to provide notification to any employee for which the employer claims the credit of gratuities or tips.

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

3. This act shall take effect immediately.

STATEMENT

This bill increases the minimum hourly wage that must be paid to employees who customarily and regularly receive gratuities or tips.
The bill provides that, after December 31, 2014, an employer may claim a credit for gratuities or tips received by an employee against the hourly wage rate paid to the employee in an amount not to exceed 60 percent of the minimum hourly wage rate required by law or Article I, paragraph 23 of the New Jersey constitution, whichever is greater, and after December 31, 2015, an employer may claim a credit for gratuities and tips in an amount not to exceed 31 percent of the minimum hourly wage rate.

By limiting the amount of tips and gratuities that may be applied to compliance with minimum wage requirements, this bill will effectively require employers to compensate their employees at an hourly rate of at least 40 percent of the minimum wage after December 31, 2014, and an hourly rate of at least 69 percent of the minimum wage after December 31, 2015 and beyond. The remainder of the employee’s compensation may be comprised of tips or gratuities, as long as the employee earns at least the minimum hourly wage rate. Most employees who rely on tips or gratuities are currently paid the federal minimum wage for tipped workers of $2.13 per hour.

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