

ASSEMBLY, No. 1972

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

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Assemblywoman MARLENE CARIDE

District 36 (Bergen and Passaic)

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District 4 (Camden and Gloucester)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Co-Sponsored by:

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

SYNOPSIS

Increases minimum wage for tipped workers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 10/30/2018)

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 or the minimum hourly
36 wage rate set forth by Article I, paragraph 23 of the New Jersey
37 Constitution, whichever is greater, for 40 hours of working time in
38 any week and 1 1/2 times such employee's regular hourly wage for
39 each hour of working time in excess of 40 hours in any week,
40 except this overtime rate shall not include any individual employed
41 in a bona fide executive, administrative, or professional capacity or,
42 if an applicable wage order has been issued by the commissioner
43 under section 17 (C.34:11-56a16) of this act, not less than the
44 wages prescribed in said order. The wage rates fixed in this section
45 shall not be applicable to part-time employees primarily engaged in
46 the care and tending of children in the home of the employer, to
47 persons under the age of 18 not possessing a special vocational
48 school graduate permit issued pursuant to section 15 of P.L.1940,

1 c.153 (C.34:2-21.15), or to persons employed as salesmen of motor
2 vehicles, or to persons employed as outside salesmen as such terms
3 shall be defined and delimited in regulations adopted by the
4 commissioner, or to persons employed in a volunteer capacity and
5 receiving only incidental benefits at a county or other agricultural
6 fair by a nonprofit or religious corporation or a nonprofit or
7 religious association which conducts or participates in that fair.

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

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

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

23 Notwithstanding the provisions of this section to the contrary,
24 every trucking industry employer shall pay to all drivers, helpers,
25 loaders and mechanics for whom the Secretary of Transportation
26 may prescribe maximum hours of work for the safe operation of
27 vehicles, pursuant to section 31502(b) of the federal Motor Carrier
28 Act, 49 U.S.C.s.31502(b), an overtime rate not less than 1 1/2 times
29 the minimum hourly wage rate required pursuant to this section
30 **【and N.J.A.C. 12:56-3.1】** or Article I, paragraph 23 of the New
31 Jersey Constitution, whichever is greater. Employees engaged in
32 the trucking industry shall be paid no less than the minimum hourly
33 wage rate as provided in this section 【and N.J.A.C. 12:56-3.1】 or in
34 Article I, paragraph 23 of the New Jersey Constitution, whichever is
35 greater. As used in this section, "trucking industry employer" means
36 any business or establishment primarily operating for the purpose of
37 conveying property from one place to another by road or highway,
38 including the storage and warehousing of goods and property. Such
39 an employer shall also be subject to the jurisdiction of the Secretary
40 of Transportation pursuant to the federal Motor Carrier Act, 49
41 U.S.C.s.31501 et seq., whose employees are exempt under section
42 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
43 U.S.C. s.213(b)(1), which provides an exemption to employees
44 regulated by section 207 of the federal "Fair Labor Standards Act of
45 1938," 29 U.S.C.s.207, and the Interstate Commerce Act, 49
46 U.S.C.s.501 et al.

47 The provisions of this section shall not be construed as
48 prohibiting any political subdivision of the State from adopting an

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

17 After December 31, 2014, with respect to an employee who
18 customarily and regularly receives gratuities or tips, every employer
19 is entitled to a credit for the gratuities or tips received by the
20 employee against the hourly wage rate paid to the employee of no
21 more than 60 percent of the minimum hourly wage rate set forth in
22 this section or the minimum hourly wage rate set forth in Article I,
23 paragraph 23 of the New Jersey Constitution, whichever is greater,
24 and after December 31, 2015, every employer is entitled to a credit
25 for the gratuities or tips received by the employee against the hourly
26 wage rate paid to the employee of no more than 31 percent of the
27 minimum hourly wage rate set forth in this section or the minimum
28 hourly wage rate set forth in Article I, paragraph 23 of the New
29 Jersey Constitution, whichever is greater. Nothing in this section
30 shall be construed so as to prohibit the pooling of gratuities or tips
31 among employees who customarily and regularly receive gratuities.
32 The commissioner shall require every employer, for every pay
33 period and for every employee who customarily and regularly
34 receives gratuities or tips, to provide substantial evidence that the
35 amount claimed for the credit of gratuities or tips was received by
36 the employee and that no part of the amount claimed was returned
37 to the employer. The commissioner shall require every employer to
38 provide notification to any employee for which the employer claims
39 the credit of gratuities or tips.

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

41

42 3. This act shall take effect immediately.

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44

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STATEMENT

46

47 This bill increases the minimum hourly wage that must be paid to
48 employees who customarily and regularly receive gratuities or tips.

1 The bill provides that, after December 31, 2014, an employer may
2 claim a credit for gratuities or tips received by an employee against the
3 hourly wage rate paid to the employee in an amount not to exceed 60
4 percent of the minimum hourly wage rate required by law or Article I,
5 paragraph 23 of the New Jersey constitution, whichever is greater, and
6 after December 31, 2015, an employer may claim a credit for gratuities
7 and tips in an amount not to exceed 31 percent of the minimum hourly
8 wage rate.

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

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