
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2043 Session of
2018

INTRODUCED BY THOMAS, DEAN, DRISCOLL, SIMS, YOUNGBLOOD, KINSEY,
V. BROWN, MURT, STURLA, W. KELLER, DeLUCA, DONATUCCI, ROEBUCK
AND HILL-EVANS, JANUARY 30, 2018

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 30, 2018

AN ACT

1 Amending the act of January 17, 1968 (P.L.11, No.5), entitled
2 "An act establishing a fixed minimum wage and overtime rates
3 for employes, with certain exceptions; providing for minimum
4 rates for learners and apprentices; creating a Minimum Wage
5 Advisory Board and defining its powers and duties; conferring
6 powers and imposing duties upon the Department of Labor and
7 Industry; imposing duties on employers; and providing
8 penalties," further providing for definitions and for minimum
9 wages; providing for tipped employees; further providing for
10 minimum wage advisory board and for enforcement and rules and
11 regulations; providing for rules and regulations; and further
12 providing for civil actions and for preemption.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 3(d) and (i) of the act of January 17,
16 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, are
17 amended and the section is amended by adding a subsection to
18 read:

19 Section 3. Definitions.--As used in this act:

20 * * *

21 (d) "Wages" mean compensation due to any employe by reason
22 of his or her employment, payable in legal tender of the United

1 States or checks on banks convertible into cash on demand at
2 full face value, subject to such deductions, charges or
3 allowances as may be permitted by regulations of the secretary
4 under section [9] 9.1.

5 "Wage" paid to any employe includes the reasonable cost, as
6 determined by the secretary, to the employer for furnishing such
7 employe with board, lodging, or other facilities, if such board,
8 lodging, or other facilities are customarily furnished by such
9 employer to his or her employes: Provided, That the cost of
10 board, lodging, or other facilities shall not be included as a
11 part of the wage paid to any employe to the extent it is
12 excluded therefrom under the terms of a bona fide collective-
13 bargaining agreement applicable to the particular employe:
14 Provided, further, That the secretary is authorized to determine
15 the fair value of such board, lodging, or other facilities for
16 defined classes of employes and in defined areas, based on
17 average cost to the employer or to groups of employers similarly
18 situated, or average value to groups of employes, or other
19 appropriate measures of fair value. Such evaluations, where
20 applicable and pertinent, shall be used in lieu of actual
21 measure of cost in determining the wage paid to any employe.

22 [In determining the hourly wage an employer is required to
23 pay a tipped employe, the amount paid such employe by his or her
24 employer shall be an amount equal to: (i) the cash wage paid the
25 employe which for the purposes of the determination shall be not
26 less than the cash wage required to be paid the employe on the
27 date immediately prior to the effective date of this
28 subparagraph; and (ii) an additional amount on account of the
29 tips received by the employe which is equal to the difference
30 between the wage specified in subparagraph (i) and the wage in

1 effect under section 4 of this act. The additional amount on
2 account of tips may not exceed the value of tips actually
3 received by the employe. The previous sentence shall not apply
4 with respect to any tipped employe unless:

5 (1) Such employe has been informed by the employer of the
6 provisions of this subsection;

7 (2) All tips received by such employe have been retained by
8 the employe and shall not be surrendered to the employer to be
9 used as wages to satisfy the requirement to pay the current
10 hourly minimum rate in effect; where the gratuity is added to
11 the charge made by the establishment, either by the management,
12 or by the customer, the gratuity shall become the property of
13 the employe; except that this subsection shall not be construed
14 to prohibit the pooling of tips among employes who customarily
15 and regularly receive tips.]

16 * * *

17 (i) ["Gratuities"] "Gratuity" or "tip" means a voluntary,
18 monetary [contributions] contribution received by an employe
19 from a guest, patron or customer for services rendered.

20 (j) "Tipped employe" means an employe who customarily and
21 regularly receives a gratuity during the course of the employe's
22 employment.

23 Section 2. Section 4(a) introductory paragraph of the act is
24 amended, the subsection is amended by adding paragraphs and the
25 section is amended by adding a subsection to read:

26 Section 4. Minimum Wages.--Except as may otherwise be
27 provided under this act:

28 (a) [Every] Except as provided in subsection (a.2), every
29 employer shall pay to each of his or her employes wages for all
30 hours worked at a rate of not less than:

1 * * *

2 (9) Fifteen dollars (\$15.00) an hour beginning January 1,
3 2019.

4 (10) Beginning January 1, 2020, and for each succeeding
5 January 1 thereafter, the minimum wage shall be increased by an
6 annual cost-of-living adjustment calculated by the secretary
7 using the percentage change in the Consumer Price Index for All
8 Urban Consumers (CPI-U) for the Pennsylvania, New Jersey,
9 Delaware and Maryland area. In calculating the adjustment, the
10 secretary shall use the most recent twelve-month period for
11 which figures have been officially reported by the United States
12 Department of Labor, Bureau of Labor Statistics. At least sixty
13 days prior to the date the adjustment is due to take effect, the
14 percentage increase and the minimum wage amount, rounded to the
15 nearest multiple of five cents (5¢), shall be determined by the
16 secretary. The secretary shall, within ten days following the
17 determination, forward a notice of the determination to the
18 Legislative Reference Bureau for publication in the next
19 Pennsylvania Bulletin.

20 * * *

21 (a.2) A municipality may enact an ordinance which requires
22 an employer to pay each of his or her employes wages for all
23 hours worked at a rate higher than the rate imposed under
24 subsection (a). A copy of an ordinance adopted by a municipality
25 under this subsection shall be submitted to the department.

26 * * *

27 Section 3. The act is amended by adding a section to read:

28 Section 4.1. Tipped Employees.--(a) An employer shall pay a
29 tipped employe wages for all hours worked at a rate of not less
30 than:

1 (1) Four dollars and fifty cents (\$4.50) an hour upon the
2 effective date of this section.

3 (2) Beginning January 1, 2020, and for each succeeding
4 January 1 thereafter, the minimum wage shall be increased by an
5 annual cost-of-living adjustment calculated by the secretary
6 using the percentage change in the Consumer Price Index for All
7 Urban Consumers (CPI-U) for the Pennsylvania, New Jersey,
8 Delaware and Maryland area. In calculating the adjustment, the
9 secretary shall use the most recent twelve-month period for
10 which figures have been officially reported by the United States
11 Department of Labor, Bureau of Labor Statistics. At least sixty
12 days prior to the date the adjustment is due to take effect, the
13 percentage increase and the minimum wage amount, rounded to the
14 nearest multiple of five cents (5¢), shall be determined by the
15 secretary. The secretary shall, within ten days following the
16 determination, forward a notice of the determination to the
17 Legislative Reference Bureau for publication in the next
18 Pennsylvania Bulletin.

19 (b) The following shall apply:

20 (1) Each tipped employe shall be informed in writing by the
21 employer, no later than twenty days after the effective date of
22 this section, that the tipped employe will be paid not less than
23 the appropriate minimum wage under subsection (a).

24 (2) Each gratuity received by the employe shall be retained
25 by the employe and shall not be surrendered or paid to the
26 employer. This paragraph shall not be deemed to prohibit the
27 pooling of gratuities among tipped employes.

28 (3) If a gratuity is added, either by the employer or
29 manager of the establishment or by the guest, patron or
30 customer, to the charge to the guest, patron or customer, the

1 gratuity shall become the property of the tipped employe and
2 shall not be used by the employer to satisfy the requirement to
3 pay the wage then in effect.

4 Section 4. Sections 6(e)(2) and 9 of the act are amended to
5 read:

6 Section 6. Minimum Wage Advisory Board.--* * *

7 (e) The board shall have the power and duty to:

8 * * *

9 (2) conduct public hearings at the request of the secretary
10 in order to develop rules and regulations in accordance with
11 section [9] 9.1 of this act, in which hearings due process of
12 law shall be observed and any person may appear and be heard or
13 file statements in support of his or her position;

14 * * *

15 Section 9. [Enforcement; Rules and Regulations.--The
16 secretary shall enforce this act. The secretary shall make and,
17 from time to time, revise regulations, with the assistance of
18 the board, when requested by the secretary, which shall be
19 deemed appropriate to carry out the purposes of this act and to
20 safeguard the minimum wage rates thereby established. Such
21 regulations may include, but are not limited to, regulations
22 defining and governing bona fide executive, administrative, or
23 professional employes and outside salespersons, learners and
24 apprentices, their number, proportion, length of learning
25 period, and other working conditions; handicapped workers; part-
26 time pay; overtime standards; bonuses; allowances for board,
27 lodging, apparel, or other facilities or services customarily
28 furnished by employers to employes; allowances for gratuities;
29 or allowances for such other special conditions or circumstances
30 which may be incidental to a particular employer-employe

1 relationship.] Enforcement.--(a) The secretary shall have the
2 authority to investigate claims of violations of this act and to
3 assess administrative penalties under section 12 of this act.

4 (b) The Attorney General and the district attorneys of the
5 several counties shall have concurrent jurisdiction to bring
6 action for a criminal violation of this act under section 12 of
7 this act. A person charged by the Attorney General does not have
8 standing to challenge the authority of the Attorney General to
9 prosecute the action. If a challenge is made, the challenge
10 shall be dismissed and no relief may be available in the courts
11 of this Commonwealth to the person making the challenge.

12 Section 5. The act is amended by adding a section to read:

13 Section 9.1. Rules and Regulations.--(a) The secretary
14 shall make and revise regulations, with the assistance of the
15 board, to carry out the purposes of this act and to safeguard
16 the payment of the wage rates established under this act.

17 (b) The regulations may include regulations defining and
18 governing any of the following:

19 (1) Bona fide executive, administrative or professional
20 employees and outside salespersons.

21 (2) Learners and apprentices and the number, proportion,
22 length of learning period and other working conditions of
23 learners and apprentices.

24 (3) Handicapped workers.

25 (4) Part-time pay.

26 (5) Overtime standards.

27 (6) Bonuses.

28 (7) Allowances for apparel, board, lodging or other
29 facilities or services customarily furnished by employers to
30 employees.

1 (8) Allowances for gratuities.

2 (9) Allowances for other special conditions or circumstances
3 that may be incidental to a particular employer-employee
4 relationship.

5 Section 6. Sections 13 and 14.1 of the act are amended to
6 read:

7 Section 13. Civil Actions.--(a) If any employee is paid by
8 his or her employer less than the minimum wages provided by
9 section 4 of this act or by any regulation issued thereunder,
10 such [worker] employee may recover in a civil action the full
11 amount of such minimum wage less any amount actually paid to the
12 [worker] employee by the employer, together with costs and such
13 reasonable attorney's fees as may be allowed by the court, and
14 any agreement between the employer and the [worker] employee to
15 work for less than such minimum wage shall be no defense to such
16 action.

17 (b) At the request of any employee paid less than the minimum
18 wage to which such employee was entitled under this act and
19 regulations issued [thereunder] under this act, the secretary
20 may take an assignment of such wage claim, in trust for the
21 assigning [worker] employee and may bring any legal action
22 necessary to collect such claim, and the employer shall be
23 required to pay the cost and such reasonable attorney's fees as
24 may be allowed by the court.

25 Section 14.1. Preemption.--(a) Except as set forth in
26 subsection (b) or section 4(a.2), this act shall preempt and
27 supersede any local ordinance or rule concerning the subject
28 matter of this act.

29 (b) This section does not prohibit local regulation pursuant
30 to an ordinance which was adopted by a municipality prior to

1 January 1, 2006, and which remained in effect on January 1,
2 2006.

3 Section 7. The amendment or addition of sections 4(a.2) and
4 14.1 shall apply to contracts entered into or renewed on or
5 after the effective date of this section.

6 Section 8. This act shall take effect as follows:

7 (1) The amendment of the definition of "wage" under
8 section 3(d) of the act and the addition of section 4.1 of
9 the act shall take effect in six months.

10 (2) The remainder of this act shall take effect
11 immediately.