

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 79

Session of 2019

INTRODUCED BY TARTAGLIONE, FONTANA, SCHWANK, STREET, HUGHES, COSTA, BREWSTER, BROWNE, HAYWOOD, YUDICHAK, LEACH, IOVINO AND L. WILLIAMS, JANUARY 23, 2019

SENATOR BARTOLOTTA, LABOR AND INDUSTRY, AS AMENDED, NOVEMBER 18, 2019

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; PROVIDING FOR <--
9 FEDERAL COMPLIANCE; AND FURTHER PROVIDING FOR MINIMUM WAGES
10 AND FOR EXEMPTIONS.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Section 3(d) of the act of January 17, 1968
14 (P.L.11, No.5), known as The Minimum Wage Act of 1968, is
15 amended to read:

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

17 * * *

18 (d) "Wages" mean compensation due to any employe by reason
19 of his or her employment, payable in legal tender of the United
20 States or checks on banks convertible into cash on demand at
21 full face value, subject to such deductions, charges or

1 allowances as may be permitted by regulations of the secretary
2 under section 9.

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

20 In determining the hourly wage an employer is required to pay
21 a tipped employe, the amount paid such employe by his or her
22 employer shall be an amount equal to: (i) the cash wage paid the
23 employe which for the purposes of the determination shall be not
24 less than the cash wage required to be paid the employe on the
25 date immediately prior to the effective date of this
26 subparagraph; and (ii) an additional amount on account of the
27 tips received by the employe which is equal to the difference
28 between the wage specified in subparagraph (i) and the wage in
29 effect under section 4 of this act. The additional amount on
30 account of tips may not exceed the value of tips actually

1 received by the employe. The previous sentence shall not apply
2 with respect to any tipped employe unless:

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

5 (2) All tips received by such employe have been retained by
6 the employe and shall not be surrendered to the employer to be
7 used as wages to satisfy the requirement to pay the current
8 hourly minimum rate in effect; where the gratuity is added to
9 the charge made by the establishment, either by the management,
10 or by the customer, the gratuity shall become the property of
11 the employe; except that this subsection shall not be construed
12 to prohibit the pooling of tips among employes who customarily
13 and regularly receive tips. An employer that permits a customer
14 to pay a gratuity by credit card shall pay the employes the full
15 amount of the gratuity that the customer indicated on the credit
16 card slip without deduction for any credit card payment
17 processing fee or cost that may be charged to the employer by
18 the credit card company. Payment of a gratuity made by a
19 customer using a credit card shall be made to the employe not
20 later than the next regular payday following the date the
21 customer authorized the credit card payment.

22 * * *

23 ~~Section 2. This act shall take effect in 60 days.~~ <--

24 SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <--

25 SECTION 3.1. FEDERAL COMPLIANCE.--THE MINIMUM WAGE AND
26 OVERTIME REQUIREMENTS UNDER THIS ACT SHALL BE APPLIED IN
27 ACCORDANCE WITH THE MINIMUM WAGE AND OVERTIME PROVISIONS OF THE
28 FAIR LABOR STANDARDS ACT OF 1938 (29 U.S.C. §§ 201-219) AND THE
29 REGULATIONS PROMULGATED UNDER THE FAIR LABOR STANDARDS ACT OF
30 1938, EXCEPT WHEN A HIGHER STANDARD IS SPECIFIED UNDER THIS ACT

1 OR REGULATIONS PROMULGATED UNDER THIS ACT.

2 SECTION 2.1. SECTION 4(A) OF THE ACT IS AMENDED BY ADDING
3 PARAGRAPHS TO READ:

4 SECTION 4. MINIMUM WAGES.--EXCEPT AS MAY OTHERWISE BE
5 PROVIDED UNDER THIS ACT:

6 (A) EVERY EMPLOYER SHALL PAY TO EACH OF HIS OR HER EMPLOYEES
7 WAGES FOR ALL HOURS WORKED AT A RATE OF NOT LESS THAN:

8 * * *

9 (9) EIGHT DOLLARS (\$8.00) AN HOUR BEGINNING JULY 1, 2020.

10 (10) EIGHT DOLLARS FIFTY CENTS (\$8.50) AN HOUR BEGINNING
11 JANUARY 1, 2021.

12 (11) NINE DOLLARS (\$9.00) AN HOUR BEGINNING JULY 1, 2021.

13 (12) NINE DOLLARS AND FIFTY CENTS (\$9.50) AN HOUR BEGINNING
14 JANUARY 1, 2022.

15 * * *

16 SECTION 3. SECTION 5(A) (3), (4), (5) AND (11) OF THE ACT ARE
17 AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
18 READ:

19 SECTION 5. EXEMPTIONS.--(A) EMPLOYMENT IN THE FOLLOWING
20 CLASSIFICATIONS SHALL BE EXEMPT FROM BOTH THE MINIMUM WAGE AND
21 OVERTIME PROVISIONS OF THIS ACT:

22 * * *

23 [(3) DELIVERY OF NEWSPAPERS TO THE CONSUMER;

24 (4) IN CONNECTION WITH THE PUBLICATION OF ANY WEEKLY,
25 SEMIWEEKLY, OR DAILY NEWSPAPER WITH A CIRCULATION OF LESS THAN
26 FOUR THOUSAND, THE MAJOR PART OF WHICH CIRCULATION IS WITHIN THE
27 COUNTY WHERE PUBLISHED OR COUNTIES CONTIGUOUS THERETO;]

28 (5) IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR
29 PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE
30 CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN

1 ELEMENTARY OR SECONDARY SCHOOLS) [OR IN THE CAPACITY OF OUTSIDE
2 SALESMAN (AS SUCH TERMS ARE DEFINED AND DELIMITED FROM TIME TO
3 TIME BY REGULATIONS OF THE SECRETARY, EXCEPT THAT AN EMPLOYEE OF
4 A RETAIL OR SERVICE ESTABLISHMENT SHALL NOT BE EXCLUDED FROM THE
5 DEFINITION OF EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE OR
6 ADMINISTRATIVE CAPACITY BECAUSE OF THE NUMBER OF HOURS IN HIS OR
7 HER WORKWEEK WHICH HE OR SHE DEVOTES TO ACTIVITIES NOT DIRECTLY
8 OR CLOSELY RELATED TO THE PERFORMANCE OF EXECUTIVE
9 ADMINISTRATIVE ACTIVITIES, IF LESS THAN FORTY PERCENT OF HIS OR
10 HER HOURS WORKED IN THE WORKWEEK ARE DEVOTED TO SUCH
11 ACTIVITIES);] OR IN THE CAPACITY OF OUTSIDE SALESMAN, A HIGHLY
12 COMPENSATED EMPLOYEE, COMPUTER SYSTEMS ANALYST, COMPUTER
13 PROGRAMMER, SOFTWARE ENGINEER OR OTHER SIMILARLY SKILLED WORKER;

14 * * *

15 [(11) IN EMPLOYMENT AS A SWITCHBOARD OPERATOR EMPLOYED BY AN
16 INDEPENDENTLY OWNED PUBLIC TELEPHONE COMPANY WHICH HAS NOT MORE
17 THAN SEVEN HUNDRED AND FIFTY STATIONS;]

18 * * *

19 (D) THE FOLLOWING SHALL APPLY TO SUBSECTION (A) (5):

20 (1) WHEN THE CLASSIFICATIONS UNDER SUBSECTION (A) (5) ARE
21 REQUIRED TO BE COMPENSATED ON A SALARY OR FEE BASIS IN
22 ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938 (29 U.S.C.
23 §§ 201-219) AND 29 CFR PT. 541 (RELATING TO DEFINING AND
24 DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE,
25 PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES), AS AMENDED,
26 EMPLOYERS MAY USE THE PAYMENT OF NONDISCRETIONARY BONUSES,
27 INCENTIVES AND COMMISSIONS, PAID ANNUALLY OR MORE FREQUENTLY, TO
28 DETERMINE UP TO TEN PERCENT OF THE SALARY OR FEE AMOUNT. AN
29 EMPLOYER MAY DESIGNATE ANY FIFTY-TWO-WEEK PERIOD IN DETERMINING
30 ANNUAL PAYMENTS. IF AN EMPLOYER FAILS TO DESIGNATE IN WRITING

1 THE ANNUAL PAYMENT TIME PERIOD IN ADVANCE, A CALENDAR YEAR WILL
2 APPLY.

3 (2) EFFECTIVE JANUARY 1, 2023, THE SALARY OR FEE BASIS UNDER
4 PARAGRAPH (1) MAY BE UPDATED AND DELIMITED FROM TIME TO TIME BY
5 REGULATIONS OF THE SECRETARY.

6 (3) THE TERMS UNDER SUBSECTION (A) (5) SHALL BE DEFINED IN
7 ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938 AND 29 CFR
8 PT. 541, AS AMENDED, EXCEPT AS OTHERWISE PROVIDED UNDER THIS ACT
9 OR UPDATED AND DELIMITED FROM TIME TO TIME BY REGULATIONS OF THE
10 SECRETARY AFTER THE EFFECTIVE DATE OF THIS SECTION.

11 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 90 DAYS.