

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 2536 Session of  
2022

---

INTRODUCED BY ZABEL, D. WILLIAMS, KINSEY, McNEILL, HILL-EVANS,  
HANBIDGE, SANCHEZ, SCHLOSSBERG, ISAACSON, FREEMAN, DELLOSO,  
A. DAVIS, MALAGARI, WEBSTER, HOHENSTEIN, SAMUELSON, CIRESI,  
DEASY, O'MARA, PISCIOTTANO, GUENST, HOWARD AND N. NELSON,  
APRIL 22, 2022

---

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 22, 2022

---

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," providing for executives, administrators and  
9 professionals.

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

12 Section 1. The act of January 17, 1968 (P.L.11, No.5), known  
13 as The Minimum Wage Act of 1968, is amended by adding a section  
14 to read:

15 Section 5.2. Executives, Administrators and Professionals.--

16 (a) (1) Employment in a bona fide executive capacity means  
17 work by an individual:

18 (i) Whose primary duty is the management of the enterprise  
19 in which he is employed or of a customarily recognized  
20 department or subdivision.

1 (ii) Who customarily and regularly directs the work of two  
2 or more other employes.

3 (iii) Who has the authority to hire or fire other employes  
4 or whose suggestions and recommendations as to the hiring,  
5 firing, advancement, promotion or any other change of status of  
6 other employes are given particular weight.

7 (iv) Who is compensated for services on a salary basis at a  
8 rate:

9 (A) Of not less than six hundred eighty-four dollars (\$684)  
10 per week exclusive of board, lodging or other facilities,  
11 effective October 3, 2020.

12 (B) Of not less than seven hundred eighty dollars (\$780) per  
13 week exclusive of board, lodging or other facilities, effective  
14 October 3, 2021.

15 (C) Of not less than eight hundred seventy-five dollars  
16 (\$875) per week exclusive of board, lodging or other facilities,  
17 effective October 3, 2022.

18 (D) Effective October 3, 2023, and each third year  
19 thereafter, equal to the weighted average tenth percentile wages  
20 for Commonwealth workers who work in exempt executive,  
21 administrative or professional classifications per week as  
22 determined by the department with advice and consultation by the  
23 board and based on an annual wage survey of all worker  
24 classifications conducted by the department.

25 (2) At least ninety days prior to the effective date of the  
26 adjusted weekly salary rate for each three-year period under  
27 paragraph (1)(iv)(D), the department shall submit to the board,  
28 the adjusted weekly salary rate determined under paragraph (1)  
29 (iv)(D) and the information supporting the adjusted weekly  
30 salary rate.

1 (3) Upon review of the information submitted by the  
2 department and at a meeting to be held no later than sixty days  
3 before the effective date of the adjusted weekly salary rate for  
4 each three-year period, the board may provide advice and  
5 consultation to the secretary regarding the adjusted weekly  
6 salary rate.

7 (4) At least thirty days prior to the effective date of the  
8 adjusted weekly salary rate for each three-year period, the  
9 department shall transmit notice of the adjusted weekly salary  
10 rate to the Legislative Reference Bureau for publication in the  
11 Pennsylvania Bulletin and post the adjusted weekly salary rate  
12 on the department's publicly accessible Internet website.

13 (5) Up to ten percent of the salary amount required under  
14 paragraph (1)(iv) may be satisfied by the payment of  
15 nondiscretionary bonuses, incentives and commissions that are  
16 paid annually or more frequently. The employer may use any  
17 fifty-two-week period as the year. If the employer does not  
18 identify some other year period in advance, the calendar year  
19 will apply. If by the last pay period of the year the sum of the  
20 employee's weekly salary plus nondiscretionary bonus, incentive  
21 and commission payments received does not equal fifty-two times  
22 the weekly salary amount required under this section, the  
23 employer may make one final payment sufficient to achieve the  
24 required level no later than the next pay period after the end  
25 of the year. A final payment made after the end of the year may  
26 count only toward the prior year's salary amount and not toward  
27 the salary amount in the year it was paid.

28 (b) (1) Employment in a bona fide administrative capacity  
29 means work by an individual:

30 (i) Whose primary duty is the performance of office or

1 nonmanual work directly related to management or general  
2 business operations of the employer or the customers of the  
3 employer.

4 (ii) Whose primary duty includes the exercise of discretion  
5 and independent judgment with respect to matters of  
6 significance.

7 (iii) Who is compensated for services on a salary basis at a  
8 rate:

9 (A) Of not less than six hundred eighty-four dollars (\$684)  
10 per week exclusive of board, lodging or other facilities,  
11 effective October 3, 2020.

12 (B) Of not less than seven hundred eighty dollars (\$780) per  
13 week exclusive of board, lodging or other facilities, effective  
14 October 3, 2021.

15 (C) Of not less than eight hundred seventy-five dollars  
16 (\$875) per week exclusive of board, lodging or other facilities,  
17 effective October 3, 2022.

18 (D) Effective October 3, 2023, and each third year  
19 thereafter, equal to the weighted average tenth percentile wages  
20 for Commonwealth workers who work in exempt executive,  
21 administrative or professional classifications as determined by  
22 the department with advice and consultation by the board and  
23 based on an annual wage survey of all worker classifications  
24 conducted by the department.

25 (2) At least ninety days prior to the effective date of each  
26 three-year period under paragraph (1)(iii)(D), the department  
27 shall submit to the board, the adjusted weekly salary rate  
28 determined under paragraph (1)(iii)(D) and the information  
29 supporting the adjusted weekly salary rate.

30 (3) Upon review of the information submitted by the

1 department and a meeting to be held no later than sixty days  
2 before the effective date of the adjusted weekly salary rate  
3 determined under paragraph (1)(iii)(D), the board may provide  
4 advice and consultation to the secretary regarding the adjusted  
5 weekly salary rate.

6 (4) At least thirty days prior to the effective date of the  
7 adjusted weekly salary rate for each three-year period, the  
8 department shall transmit notice of the adjusted weekly salary  
9 rate to the Legislative Reference Bureau for publication in the  
10 Pennsylvania Bulletin and post the rate on the department's  
11 publicly accessible Internet website.

12 (5) Up to ten percent of the salary amount required under  
13 paragraph (1)(iii) may be satisfied by the payment of  
14 nondiscretionary bonuses, incentives and commissions that are  
15 paid yearly or more frequently. The employer may use any fifty-  
16 two-week period as the year. If the employer does not identify  
17 some other year period in advance, the calendar year shall  
18 apply. If by the last pay period of the year the sum of the  
19 employee's weekly salary plus nondiscretionary bonus, incentive  
20 and commission payments received does not equal fifty-two times  
21 the weekly salary amount required by this section, the employer  
22 may make one final payment sufficient to achieve the required  
23 level no later than the next pay period after the end of the  
24 year. A final payment made after the end of the year may count  
25 only toward the prior year's salary amount and not toward the  
26 salary amount in the year it was paid.

27 (c) (1) Employment in a bona fide professional capacity  
28 means work by an individual:

29 (i) Whose primary duty is the performance of work requiring  
30 either of the following:

1 (A) knowledge of an advanced type in a field of science or  
2 learning customarily acquired by a prolonged course of  
3 specialized instruction and study; and

4 (B) invention, imagination, originality or talent in a  
5 recognized field of artistic or creative endeavor.

6 (ii) Who is compensated for services on a salary or fee  
7 basis at a rate:

8 (A) Of not less than six hundred eighty-four dollars (\$684)  
9 per week exclusive of board, lodging or other facilities,  
10 effective October 3, 2020.

11 (B) Of not less than seven hundred eighty dollars (\$780) per  
12 week exclusive of board, lodging or other facilities, effective  
13 October 3, 2021.

14 (C) Of not less than eight hundred seventy-five dollars  
15 (\$875) per week exclusive of board, lodging or other facilities,  
16 effective October 3, 2022.

17 (D) Effective October 3, 2023, and each third year  
18 thereafter, equal to the weighted average tenth percentile wages  
19 for Commonwealth workers who work in exempt executive,  
20 administrative or professional classifications as determined by  
21 the department with advice and consultation by the board and  
22 based on an annual wage survey of all worker classifications  
23 conducted by the department.

24 (2) At least ninety days prior to the effective date of the  
25 adjusted weekly salary rate for each three-year period under  
26 paragraph (1)(ii)(D), the department shall submit to the board,  
27 the adjusted weekly salary rate under paragraph (1)(ii)(D) and  
28 the information supporting the adjusted weekly salary rate.

29 (3) Upon review of the information submitted by the  
30 department and a meeting to be held no later than sixty days

1 before the effective date of the adjusted weekly salary rate  
2 determined under paragraph (1) (ii) (D), the board may provide  
3 advice and consultation to the secretary regarding the adjusted  
4 weekly salary rate.

5 (4) At least thirty days prior to the effective date of the  
6 adjusted weekly salary rate for each three-year period, the  
7 department shall transmit notice of the adjusted weekly salary  
8 rate to the Legislative Reference Bureau for publication in the  
9 Pennsylvania Bulletin and post the rate on the department's  
10 publicly accessible Internet website.

11 (5) Up to ten percent of the salary required under paragraph  
12 (1) (ii) may be satisfied by the payment of nondiscretionary  
13 bonuses, incentives and commissions that are paid yearly or more  
14 frequently. The employer may use any fifty-two-week period as  
15 the year, such as a calendar year, fiscal year or anniversary of  
16 hire year. If the employer does not identify some other year  
17 period in advance, the calendar year will apply. If by the last  
18 pay period of the year the sum of the employe's weekly salary  
19 plus nondiscretionary bonus, incentive and commission payments  
20 received does not equal fifty-two times the weekly salary amount  
21 required by this section, the employer may make one final  
22 payment sufficient to achieve the required level no later than  
23 the next pay period after the end of the year. A final payment  
24 made after the end of the year may count only toward the prior  
25 year's salary amount and not toward the salary amount in the  
26 year it was paid.

27 (d) As used in this section:

28 "Directly related to management or general business  
29 operations" includes, but is not limited to, work in functional  
30 areas, including, but not limited to:

- 1        (1) Finance.
- 2        (2) Accounting.
- 3        (3) Budgeting.
- 4        (4) Auditing.
- 5        (5) Insurance.
- 6        (6) Quality control.
- 7        (7) Purchasing.
- 8        (8) Procurement.
- 9        (9) Advertising.
- 10       (10) Marketing.
- 11       (11) Research.
- 12       (12) Safety and health.
- 13       (13) Personnel management.
- 14       (14) Human resources.
- 15       (15) Employee benefits.
- 16       (16) Labor relations.
- 17       (17) Public relations and government relations.
- 18       (18) Computer network, Internet and database administration;
- 19       and
- 20       (19) Legal and regulatory compliance.
- 21       "Management" shall include, but not be limited to:
- 22       (1) activities such as interviewing, selecting and training
- 23       of employees;
- 24       (2) setting and adjusting employees' rates of pay and hours
- 25       of work;
- 26       (3) directing the work of employees;
- 27       (4) maintaining production or sales records for use in
- 28       supervision or control;
- 29       (5) appraising employees' productivity and efficiency for the
- 30       purpose of recommending promotions or other changes in status;

- 1     (6) handling employe complaints and grievances;  
2     (7) disciplining employes;  
3     (8) planning the work;  
4     (9) determining the techniques to be used to perform work;  
5     (10) apportioning the work among the employes;  
6     (11) determining the type of materials, supplies, machinery,  
7 equipment or tools to be used or merchandise to be bought,  
8 stocked and sold;  
9     (12) controlling the flow and distribution of materials or  
10 merchandise and supplies;  
11     (13) providing for the safety and security of the employes  
12 or the property;  
13     (14) planning and controlling the budget; and  
14     (15) monitoring or implementing legal compliance measures.  
15     Section 2. This act shall take effect immediately.