
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 405 Session of
2019

INTRODUCED BY NEILSON, McNEILL, FREEMAN, DALEY, HILL-EVANS,
SCHLOSSBERG, CONKLIN, READSHAW, WARREN, CALTAGIRONE, DRISCOLL
AND DeLUCA, FEBRUARY 6, 2019

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 6, 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 and for minimum
9 wages; providing for tipped employees; and further providing
10 for exemptions.

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

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

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

17 (a) "Secretary" means the Secretary of Labor and Industry.

18 (b) "Department" means the Department of Labor and Industry.

19 (c) "Board" means the Minimum Wage Advisory Board created by
20 this act.

21 (d) "Wages" mean compensation due to any employe by reason

1 of his or her employment, payable in legal tender of the United
2 States or checks on banks convertible into cash on demand at
3 full face value, subject to such deductions, charges or
4 allowances as may be permitted by regulations of the secretary
5 under section 9.

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

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

1 between the wage specified in subparagraph (i) and the wage in
2 effect under section 4 of this act. The additional amount on
3 account of tips may not exceed the value of tips actually
4 received by the employe. The previous sentence shall not apply
5 with respect to any tipped employe unless:

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

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

17 (e) "Occupation" means any industry, trade, business,
18 service, or employment or class or group thereof in which
19 individuals are gainfully employed.

20 (f) "Employe" includes to suffer or to permit to work.

21 (g) "Employer" includes any individual, partnership,
22 association, corporation, business trust, or any person or group
23 of persons acting, directly or indirectly, in the interest of an
24 employer in relation to any employe.

25 (h) "Employe" includes any individual employed by an
26 employer.

27 (i) "Gratuities" means voluntary, monetary contributions
28 received by an employe from a guest, patron or customer for
29 services rendered.

30 (j) "Minor" means an individual under the age of eighteen

1 years.

2 (k) "Tipped employe" means an employe who engages in an
3 occupation in which the employe customarily and regularly
4 receives a gratuity.

5 Section 2. Section 4(a) of the act is amended and the
6 section is amended by adding a subsection to read:

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

9 (a) Every employer shall pay to each of his or her employes
10 wages for all hours worked at a rate of not less than:

11 (1) Two dollars sixty-five cents (\$2.65) an hour upon the
12 effective date of this amendment.

13 (2) Two dollars ninety cents (\$2.90) an hour during the year
14 beginning January 1, 1979.

15 (3) Three dollars ten cents (\$3.10) an hour during the year
16 beginning January 1, 1980.

17 (4) Three dollars thirty-five cents (\$3.35) an hour after
18 December 31, 1980.

19 (5) Three dollars seventy cents (\$3.70) an hour beginning
20 February 1, 1989.

21 (6) Five dollars fifteen cents (\$5.15) an hour beginning
22 September 1, 1997.

23 (7) Six dollars twenty-five cents (\$6.25) an hour beginning
24 January 1, 2007.

25 (8) Seven dollars fifteen cents (\$7.15) an hour beginning
26 July 1, 2007.

27 (9) Nine dollars fifty cents (\$9.50) an hour beginning sixty
28 days after the effective date of this paragraph. After the
29 increase in the minimum wage to nine dollars fifty cents (\$9.50)
30 an hour, the minimum wage shall be increased by eighteen and

1 three-quarter cents (\$0.1875) every two months for a period of
2 two years. After the two-year period, the minimum wage shall be
3 increased by an annual cost-of-living adjustment calculated by
4 the secretary using the percentage change in the Consumer Price
5 Index for All Urban Consumers (CPI-U) for the Pennsylvania, New
6 Jersey, Delaware and Maryland area. In calculating the
7 adjustment, the secretary shall use the most recent twelve-month
8 period for which figures have been officially reported by the
9 United States Department of Labor, Bureau of Labor Statistics.
10 At least sixty days prior to the date the adjustment is due to
11 take effect, the percentage increase and the minimum wage
12 amount, rounded to the nearest multiple of five cents (5¢),
13 shall be determined by the secretary. The secretary shall,
14 within ten days following the determination, forward a notice of
15 the determination to the Legislative Reference Bureau for
16 publication in the next Pennsylvania Bulletin.

17 * * *

18 (a.2) Except as provided under subsections (b) and (d), an
19 employer shall pay a minor employe a minimum wage rate equal to
20 the Federal minimum wage.

21 * * *

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

23 Section 4.1. Tipped employes.--(a) An employer shall pay a
24 tipped employe a minimum wage for all hours worked at a rate of
25 not less than:

26 (1) Two dollars eighty-three cents (\$2.83) an hour upon the
27 effective date of this section.

28 (2) Beginning sixty days after the effective date of this
29 section, the minimum wage rate under paragraph (1) shall be
30 increased by twenty-four and three-quarter cents (\$0.2475) every

1 two months for a period of two years. After the two-year period,
2 the minimum wage shall be increased by an annual cost-of-living
3 adjustment calculated by the secretary using the percentage
4 change in the Consumer Price Index for All Urban Consumers (CPI-
5 U) for the Pennsylvania, New Jersey, Delaware and Maryland area.
6 In calculating the adjustment, the secretary shall use the most
7 recent twelve-month period for which figures have been
8 officially reported by the United States Department of Labor,
9 Bureau of Labor Statistics.

10 (b) An employer shall inform a tipped employe of the
11 provisions of this section.

12 (c) All tips received by a tipped employe shall be retained
13 by the tipped employe and shall not be surrendered to the
14 employer to be used as wages to satisfy the requirement to pay
15 the current hourly minimum rate in effect.

16 (d) Where a gratuity is added to the charge made by the
17 establishment, either by the management or by the customer, the
18 gratuity shall become the property of the employe. This
19 subsection may not be construed to prohibit the pooling of tips
20 among tipped employes.

21 Section 4. Section 5(c) of the act is amended and the
22 section is amended by adding a subsection to read:

23 Section 5. Exemptions.--* * *

24 (c) (1) Notwithstanding the provisions of section 4(a) (7)
25 and (8), an employer unless otherwise exempt from the minimum
26 wage provisions of section 4(a) (6) whose employe complement is
27 composed of the equivalent of ten or less full-time employes to
28 be calculated on a forty-hour workweek shall pay:

29 (i) Five dollars sixty-five cents (\$5.65) an hour beginning
30 January 1, 2007.

1 (ii) Six dollars sixty-five cents (\$6.65) an hour beginning
2 July 1, 2007.

3 (2) Such employer shall pay the full amount of the minimum
4 wage under [~~section 4(a)(8)~~] section 4(a) beginning July 1,
5 2008.

6 (d) Upon application to the department, an employer with
7 less than two hundred thousand dollars (\$200,000) in gross
8 annual sales shall pay employes a minimum wage rate that is
9 equal to the minimum wage rate established under section 4(a)
10 (9), minus ten percent of the Federal minimum wage rate.

11 Section 5. This act shall take effect in 60 days.