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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 762 Session of  
2019

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INTRODUCED BY BAKER, GORDNER, K. WARD, MENSCH AND J. WARD,  
JUNE 14, 2019

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REFERRED TO LABOR AND INDUSTRY, JUNE 14, 2019

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AN ACT

1 Providing for statutory construction of Pennsylvania wage and  
2 hour laws.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Statutory  
7 Construction of Wage and Hour Laws Act.

8 Section 2. Declaration of purpose.

9 The General Assembly finds and declares as follows:

10 (1) Many employers in this Commonwealth are subject to  
11 dual coverage under the Fair Labor Standards Act of 1938 (52  
12 Stat. 1060, 29 U.S.C. § 201 et seq.) and the act of January  
13 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of  
14 1968.

15 (2) The Congress of the United States and the United  
16 States Department of Labor have a robust history of amending  
17 and revising the Fair Labor Standards Act of 1938 and its  
18 implementing regulations and interpretive guidance, including

1 29 U.S.C. Ch. 9 (relating to portal-to-portal pay) and 29 CFR  
2 Pt. 541 (relating to defining and delimiting the exemptions  
3 for executive, administrative, professional, computer and  
4 outside sales employees).

5 (3) The General Assembly seeks to avoid, to the greatest  
6 extent possible and consistent with the public policy of the  
7 Commonwealth, the burdening of employers and employees with  
8 two different sets of Federal and State standards.

9 (4) As a result of the General Assembly and the  
10 Department of Labor and Industry of the Commonwealth failing  
11 to update in accordance with the amendments and revisions to  
12 the Fair Labor Standards Act of 1938 and its implementing  
13 regulations and interpretive guidance, unintended  
14 discrepancies have arisen between Federal and State law.

15 (5) The discrepancies between Federal and State law have  
16 caused confusion for employers and employees and have  
17 resulted in instances in which good faith compliance with  
18 Federal law has nonetheless been deemed to be in violation of  
19 State law.

20 Section 3. Construction of The Minimum Wage Act of 1968.

21 The following apply:

22 (1) The act of January 17, 1968 (P.L.11, No.5), known as  
23 The Minimum Wage Act of 1968, shall be construed in pari  
24 materia with 29 U.S.C. Ch. 9 (relating to portal-to-portal  
25 pay) and sections 7 and 13 and the other provisions of the  
26 Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. §  
27 201 et seq.), including regulations in effect on or after the  
28 effective date of this act.

29 (2) The minimum cash wage for tipped employees shall be  
30 \$2.83 per hour. If the minimum cash wage for tipped employees

1 set forth in the Fair Labor Standards Act of 1938 is  
2 increased above the minimum cash wage required under this  
3 section, the minimum cash wage required under this section  
4 shall be increased by the same amounts and effective the same  
5 date as the increases under the Fair Labor Standards Act of  
6 1938. The Secretary of Labor and Industry shall transmit  
7 notice to the Legislative Reference Bureau for publication in  
8 the Pennsylvania Bulletin of any increase to the minimum cash  
9 wage as provided by this paragraph.

10 Section 4. Construction of this act.

11 Nothing in this act shall be construed:

12 (1) to modify or repeal the act of October 9, 2008  
13 (P.L.1376, No.102), known as the Prohibition of Excessive  
14 Overtime in Health Care Act; or

15 (2) to preempt Federal law or to otherwise excuse  
16 noncompliance with any Federal law establishing a higher  
17 standard than the standard established under the act of  
18 January 17, 1968 (P.L.11, No.5), known as The Minimum Wage  
19 Act of 1968.

20 Section 5. Repeals.

21 All acts and parts of acts are repealed insofar as they are  
22 inconsistent with this act.

23 Section 6. Abrogation of regulations.

24 All regulations and parts of regulations are abrogated  
25 insofar as they are inconsistent with this act.

26 Section 7. Effective date.

27 This act shall take effect in 30 days.