
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1405 Session of
2023

INTRODUCED BY GREEN, SANCHEZ, ISAACSON, KINSEY, DELLOSO,
N. NELSON, FLEMING, KRAJEWSKI AND OTTEN, JUNE 14, 2023

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JUNE 14, 2023

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 civil actions and for preemption.

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 and the section is amended by adding a subsection to
16 read:

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

18 * * *

19 (d) "Wages" mean compensation due to any employe by reason
20 of his or her employment, payable in legal tender of the United
21 States or checks on banks convertible into cash on demand at
22 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
21 pay 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.]

14 * * *

15 (j) "Tipped employe" means an employe who customarily and
16 regularly receives a gratuity during the course of the employe's
17 employment.

18 Section 2. Section 4(a) of the act is amended by adding
19 paragraphs to read:

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

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

24 * * *

25 (9) Fifteen dollars (\$15) an hour beginning January 1, 2024.

26 (10) Beginning January 1, 2025, and for each succeeding
27 January 1 thereafter, the minimum wage shall be increased by an
28 annual cost-of-living adjustment calculated by the secretary
29 using the percentage change in the Consumer Price Index for All
30 Urban Consumers (CPI-U) for the Pennsylvania, New Jersey,

1 Delaware and Maryland area. In calculating the adjustment, the
2 secretary shall use the most recent twelve-month period for
3 which figures have been officially reported by the United States
4 Department of Labor, Bureau of Labor Statistics. At least sixty
5 days prior to the date the adjustment is due to take effect, the
6 percentage increase and the minimum wage amount, rounded to the
7 nearest multiple of five cents (5¢), shall be determined by the
8 secretary. The secretary shall, within ten days following the
9 determination, transmit a notice of the determination to the
10 Legislative Reference Bureau for publication in the next
11 available issue of the Pennsylvania Bulletin.

12 * * *

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

14 Section 4.1. Tipped Employees.--An employer shall pay a
15 tipped employe the amount in subparagraph (1) or (2) and an
16 additional amount on account of the tips received by the employe
17 which is equal to the difference between the wage specified in
18 paragraph (1) or (2) and the wage in effect under section 4.
19 Unless an employe is informed by an employer, the additional
20 amount on account of tips may not exceed the value of tips
21 received by the employe. All tips received by an employe shall
22 be retained by the employe and shall not be surrendered to the
23 employer to be used as wages to satisfy the requirement to pay
24 the current hourly minimum rate in effect. Where a gratuity is
25 added to the charge made by the establishment, either by the
26 management, or by the customer, the gratuity shall become the
27 property of the employe. Notwithstanding any provision of law to
28 the contrary, this section shall not be construed to prohibit
29 the pooling of tips among employes who customarily and regularly
30 receive tips. The wage of a tipped employe for all hours worked

1 shall be at a rate of not less than:

2 (1) Five dollars (\$5) an hour beginning January 1, 2024.

3 (2) Beginning January 1, 2025, 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, transmit a notice of the determination to the

17 Legislative Reference Bureau for publication in the next

18 available issue of the Pennsylvania Bulletin.

19 Section 4. Sections 13 and 14.1 of the act are amended to
20 read:

21 Section 13. Civil Actions.--(a) If any employe is paid by

22 his or her employer less than the minimum wages provided by

23 section 4 or 4.1 of this act or by any regulation issued

24 thereunder, such worker may recover in a civil action the full

25 amount of such minimum wage less any amount actually paid to the

26 worker by the employer, together with costs and such reasonable

27 attorney's fees as may be allowed by the court, and any

28 agreement between the employer and the worker to work for less

29 than such minimum wage shall be no defense to such action. [At

30 the request of any employe paid less than the minimum wage to

1 which such employe was entitled under this act and regulations
2 issued thereunder, the secretary may take an assignment of such
3 wage claim, in trust for the assigning worker and may bring any
4 legal action necessary to collect such claim, and the employer
5 shall be required to pay the cost and such reasonable attorney's
6 fees as may be allowed by the court.]

7 (b) The secretary may bring any legal action necessary to
8 collect the wages of any employe who is paid by his or her
9 employer less than the minimum wages provided by section 4 or
10 4.1 of this act or by any regulation issued under this act. The
11 employer shall be required to pay the cost and reasonable
12 attorney fees as permitted by the court.

13 (c) In a successful action brought under this section,
14 whether by the worker or by the secretary, the employer shall be
15 liable for any fees and costs associated with enforcement of
16 this act and liquidated damages in an amount equal to the wages
17 of overtime compensation owed to the employe unless the employer
18 shows that the act or omission resulting in the nonpayment of
19 wages was in good faith and the employer has reasonable grounds
20 for believing that the act or omission was not in violation of
21 this act.

22 Section 14.1. [Preemption.--(a) Except as set forth in
23 subsection (b), this act shall preempt and supersede any local
24 ordinance or rule concerning the subject matter of this act.

25 (b) This section does not prohibit local regulation pursuant
26 to an ordinance which was adopted by a municipality prior to
27 January 1, 2006, and which remained in effect on January 1,
28 2006.] Prohibition on Preemption.--(a) Notwithstanding any
29 other provision of law, a municipality shall be permitted to
30 pass local ordinances or rules regulating the minimum wage for

1 that municipality. Nothing in this act shall permit a
2 municipality to pass a wage lower than the minimum wage as
3 required by the Commonwealth of Pennsylvania, or that are
4 required under section 4 or 4.1 of this act and 29 U.S.C. § 201
5 et seq. (Fair Labor Standards Act of 1938).

6 (b) A municipality that adopts a minimum wage ordinance or
7 other measure may adopt provisions for the local enforcement of
8 the ordinance or measure, including enforcement by private
9 parties. Nothing in this section shall preclude the secretary
10 from enforcing the provisions of this act.

11 (c) As used in this section, the term "municipality" means a
12 county, city, borough, incorporated town, township, home rule
13 municipality, optional plan municipality or optional charter
14 municipality.

15 Section 5. This act shall take effect as follows:

16 (1) The amendment of the definition of "wage" under
17 section 3(d) of the act shall take effect January 1, 2024.

18 (2) This section shall take effect immediately.

19 (3) The remainder of this act shall take effect in 60
20 days.