

2017 -- S 0510

LC001770

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WAGES

Introduced By: Senators Calkin, Felag, Goodwin, Seveney, and DiPalma

Date Introduced: March 02, 2017

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-12-3 and 28-12-5 of the General Laws in Chapter 28-12
2 entitled "Minimum Wages" are hereby amended to read as follows:

3 **28-12-3. Minimum wages.**

4 (a) Every employer shall pay to each of his or her employees: commencing July 1, 1999,
5 at least the minimum wage of five dollars and sixty-five cents (\$5.65) per hour. Commencing
6 September 1, 2000, the minimum wage is six dollars and fifteen cents (\$6.15) per hour.

7 (b) Commencing January 1, 2004, the minimum wage is six dollars and seventy-five
8 cents (\$6.75) per hour.

9 (c) Commencing March 1, 2006, the minimum wage is seven dollars and ten cents
10 (\$7.10) per hour.

11 (d) Commencing January 1, 2007, the minimum wage is seven dollars and forty cents
12 (\$7.40) per hour.

13 (e) Commencing January 1, 2013, the minimum wage is seven dollars and seventy-five
14 cents (\$7.75) per hour.

15 (f) Commencing January 1, 2014, the minimum wage is eight dollars (\$8.00) per hour.

16 (g) Commencing January 1, 2015, the minimum wage is nine dollars (\$9.00) per hour.

17 (h) Commencing January 1, 2016, the minimum wage is nine dollars and sixty cents
18 (\$9.60) per hour.

19 (i) Commencing January 1, 2018, the minimum wage is eleven dollars (\$11.00) per hour.

1 (j) Commencing January 1, 2019, the minimum wage is twelve dollars (\$12.00) per hour.

2 (k) Commencing January 1, 2020, the minimum wage is thirteen dollars (\$13.00) per
3 hour.

4 (l) Commencing January 1, 2021, the minimum wage is fourteen dollars (\$14.00) per
5 hour.

6 (m) Commencing January 1, 2022, the minimum wage is fifteen dollars (\$15.00) per hour.

7 (n) Commencing on January 1, 2023 and on each January 1 thereafter, the minimum wage
8 under this section shall be increased by the percentage increase, if any, in the cost of living. The
9 increase in the cost of living shall be measured by the percentage increase, if any, as of August of
10 the previous year over the level, as of August of the year preceding that, of the Consumer Price
11 Index for Urban Wage Earners and Clerical Workers (CPI-W), or its successor index as published
12 by the United States Department of Labor or its successor agency, with the amount of the
13 minimum hourly wage increase rounded up to the nearest multiple of five cents (\$.05).

14 **28-12-5. Employees receiving gratuities.**

15 (a) Every employer shall pay to each of his or her employees who are engaged in any
16 work or employment in which gratuities have customarily and usually constituted a part of his or
17 her weekly income, the rate as provided by §§ 28-12-3 and 28-12-3.1.

18 (b) Allowance for gratuities as part of the hourly wage rate for restaurants, hotels, and
19 other industries, except taxicabs and limited public motor vehicles, shall be an amount equal to
20 the applicable minimum rates as provided by §§ 28-12-3 and 28-12-3.1 less two dollars and
21 eighty-nine cents (\$2.89) per hour. "Gratuities" means voluntary monetary compensation received
22 directly or indirectly by the employee for services rendered.

23 (c) Each employer desiring to deduct for gratuities as part of the minimum rates as
24 provided in §§ 28-12-3 and 28-12-3.1 wages paid to an employee shall provide substantial
25 evidence that the amount shall be set out in the formula in subsection (b) of this section; however,
26 the cash wage shall not be less than two dollars and eighty-nine cents (\$2.89) per hour; provided,
27 however, that commencing January 1, 2016, the cash wage shall increase by fifty cents (\$.50) to
28 an amount not less than three dollars and thirty-nine cents (\$3.39) per hour; provided further, that
29 commencing January 1, 2017, the cash wage shall increase by fifty cents (\$.50) to an amount not
30 less than three dollars and eighty-nine cents (\$3.89) per hour; provided further, that commencing
31 January 1, 2018, the cash wage shall increase by one dollar and eleven cents (\$1.11) to an amount
32 not less than five dollars (\$5.00) per hour; provided further, that commencing January 1, 2019,
33 the cash wage shall increase by one dollar and twenty five cents (\$1.25) to an amount not less
34 than six dollars and twenty five cents (\$6.25) per hour; provided further, that commencing

1 January 1, 2020, the cash wage shall increase by one dollar and twenty five cents (\$1.25) to an
2 amount not less than seven dollars and fifty cents (\$7.50) per hour; provided further, that
3 commencing January 1, 2021, the cash wage shall increase by one dollar and twenty five cents
4 (\$1.25) to an amount not less than eight dollars and seventy five cents (\$8.75) per hour; provided
5 further, that commencing January 1, 2022, the cash wage shall increase by one dollar and twenty
6 five cents (\$1.25) to an amount not less than ten dollars (\$10.00) per hour; provided further, that
7 commencing January 1, 2023, the cash wage shall increase by one dollar and twenty five cents
8 (\$1.25) to an amount not less than eleven dollars and twenty five cents (\$11.25) per hour;
9 provided further, that commencing January 1, 2024, the cash wage shall increase by one dollar
10 and twenty five cents (\$1.25) to an amount not less twelve dollars and fifty cents (\$12.50) per
11 hour; provided further, that commencing January 1, 2025, the cash wage shall increase by one
12 dollar and twenty five cents (\$1.25) to an amount not less than thirteen dollars and seventy five
13 cents (\$13.75) per hour; provided further, that commencing January 1, 2026, the cash wage shall
14 increase by one dollar and twenty five cents (\$1.25) to an amount not less than fifteen dollars
15 (\$15.00) per hour. Commencing January 1, 2027, the cash wage shall be an amount not less than
16 the applicable minimum hourly rates as provided by §§ 28-12-3 and 28-12-3.1.

17 (d) The director of labor and training shall notify employers concerning what type of
18 proof shall be accepted as substantial evidence for the purpose of this subsection. Employees
19 involved shall be entitled to a hearing on the question of the amount of deduction if they so
20 desire.

21 (e) In cases where wages are figured by the employer on an incentive basis in such a
22 manner that an employee of reasonable average ability earns at least the minimum wage
23 established by §§ 28-12-3 and 28-12-3.1, it shall be taken that the employer has complied with
24 this statute. It shall be of no concern to the director of labor and training how the employer arrives
25 at its wage scale so long as it is not unreasonable in its demands on the employee.

26 (f) Where, in the case of the employment of a full-time student who has not attained his
27 or her nineteenth (19th) birthday engaged in the activities of a nonprofit association or
28 corporation, whose aims and objectives are religious, educational, librarial, or community service
29 in nature, the employer-employee relationship does exist, the employer shall pay to each such
30 employee wages at a rate of not less than ninety percent (90%) of the minimum wage as specified
31 in § 28-12-3. In case of any conflict between provisions of this section and those of § 28-12-3.1,
32 the provisions of § 28-12-3.1 shall govern.

33 SECTION 2. Sections 28-14-19 and 28-14-19.2 of the General Laws in Chapter 28-14
34 entitled "Payment of Wages" are hereby amended to read as follows:

1 **28-14-19. Enforcement powers and duties of director of labor and training.**

2 (a) It shall be the duty of the director to ~~insure~~ ensure compliance with the provisions of
3 this chapter 28-14 and 28-12. The director or his or her designee may investigate any violations
4 thereof, institute or cause to be instituted actions for the collection of wages and institute action
5 for penalties or other relief as provided for within and pursuant to those chapters. The director or
6 his or her authorized representatives are empowered to hold hearings and he or she shall
7 cooperate with any employee in the enforcement of a claim against his or her employer in any
8 case whenever, in his or her opinion, the claim is just and valid.

9 (b) Upon receipt of a complaint or conducting an inspection under applicable law, the
10 director or his or her appropriate departmental designee is authorized to investigate to determine
11 compliance with the chapters 28-12 and/or 28-14.

12 (c) With respect to all complaints deemed just and valid, the director or his or her
13 designee shall order a hearing thereon at a time and place to be specified, and shall give notice
14 thereof, together with a copy of the complaint or the purpose thereof, or a statement of the facts
15 disclosed upon investigation, which notice shall be served personally or by mail on any person,
16 business, corporation, or entity of any kind affected thereby. The hearing shall be scheduled
17 within thirty (30) days of ~~service of a formal complaint~~ determination that the claim is just and
18 valid as provided herein. The person, business, corporation, or entity shall have an opportunity to
19 be heard in respect to the matters complained of at the time and place specified in the notice. The
20 hearing shall be conducted by the director or his or her designee. The hearing officer in the
21 hearing shall be deemed to be acting in a judicial capacity, and shall have the right to issue
22 subpoenas, administer oaths, and examine witnesses. The enforcement of a subpoena issued
23 under this section shall be regulated by Rhode Island civil practice law and rules. The hearing
24 shall be expeditiously conducted and upon such hearing the hearing officer shall determine the
25 issues raised thereon and shall make a determination and enter an order within thirty (30) days of
26 the close of the hearing, and forthwith serve a copy of the order, with a notice of the filing
27 thereof, upon the parties to the proceeding, personally or by mail. The order shall dismiss the
28 complaint or direct payment of any wages and/or benefits found to be due and/or award such
29 other appropriate relief or penalties authorized under chapter 28-12 and/or 28-14, and the order
30 may direct payment of reasonable attorneys' fees and costs to the complaining party. Interest at
31 the rate of twelve percent (12%) per annum shall be awarded in the order from the date of the
32 nonpayment to the date of payment.

33 (d) The order shall also require payment of a further sum as a civil penalty in an amount
34 up to ~~two (2)~~ three (3) times the total wages and/or benefits found to be due, exclusive of interest,

1 which shall be shared equally between the department and the aggrieved party. In determining the
2 amount of any penalty to impose, the director or his or her designee shall consider the size of the
3 employer's business, the good faith of the employer, the gravity of the violation, the previous
4 violations and whether or not the violation was an innocent mistake or willful.

5 (e) The director may institute any action to recover unpaid wages or other compensation
6 or obtain relief as provided under this section with or without the consent of the employee or
7 employees affected.

8 (f) No agreement between the employee and employer to work for less than the
9 applicable wage and/or benefit rate or to otherwise work under and/or conditions in violation of
10 applicable law is a defense to an action brought pursuant to this section.

11 (g) The director shall notify the contractors' registration board of any order issued or any
12 determination hereunder that an employer has violated chapters 28-12, 28-14 and/or 37-13. The
13 director shall notify the tax administrator of any determination hereunder that may affect liability
14 for an employer's payment of wages and/or payroll taxes.

15 **28-14-19.2. Private right of action to collect wages or benefits and for equitable**
16 **relief.**

17 (a) Any employee or former employee, or any organization representing such an
18 employee or former employee aggrieved by the failure to pay wages and/or benefits or
19 misclassification in violation of chapters 28-12 and/or 28-14 may file a civil action in any court of
20 competent jurisdiction to obtain relief. An aggrieved party shall be entitled to recover any unpaid
21 wages and/or benefits, compensatory damages, and liquidated damages in an amount up to two
22 (2) times the amount of unpaid wages and/or benefits owed, as well as an award of appropriate
23 equitable relief, including reinstatement of employment, fringe benefits and seniority rights, and
24 reasonable attorneys' fees and costs, and/or such other appropriate relief or penalties authorized
25 under chapters 28-12 and/or 28-14. In determining the amount of any penalty imposed under this
26 section, consideration shall be given to the size of the employer's business, the good faith of the
27 employer, the gravity of the violation, the history of previous violations, and whether or not the
28 violation was an innocent mistake or willful. Any unpaid fringe benefit contributions owed
29 pursuant to this section in any form shall be paid to the appropriate benefit fund: however, in the
30 absence of an appropriate fund, the benefit shall be paid directly to the aggrieved employee.

31 (b) An action instituted pursuant to this section may be brought by one or more
32 employees or former employees individually and/or on behalf of other employees similarly
33 situated.

34 (c) No agreement between the employee and employer to work for less than the

1 applicable wage and/or benefit rate or to otherwise work under terms and/or conditions in
2 violation of applicable law is a defense to an action brought pursuant to this section.

3 (d) An employer's responsibility and liability hereunder is solely to the employer's own
4 employees.

5 (e) ~~A civil action filed under this section may be instituted instead of, but not in addition~~
6 ~~to, the director of labor and training enforcement procedures authorized by the above referenced~~
7 ~~chapters, provided the civil action is filed prior to the date the director of labor and training issues~~
8 ~~notice of an administrative hearing.~~

9 (f) The filing of a civil action under this section shall not preclude the director of labor
10 and training from investigating the matter and/or referring the matter to the attorney general,
11 contractors ' registration board and/or the tax administrator.

12 (g) Any claim hereunder shall be forever barred unless commenced within ~~three (3)~~ six
13 (6) years after the cause of action accrued.

14 SECTION 3. This act shall take effect upon passage.

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LC001770
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- WAGES

1 This act would gradually increase the hourly minimum wage from nine dollars and sixty
2 cents (\$9.60) to fifteen dollars (\$15.00) on January 1, 2022, as well as gradually increasing the
3 hourly minimum wage for employees receiving gratuities from three dollars and eighty-nine cents
4 (\$3.89) an hour to fifteen dollars (\$15.00) an hour on January 1, 2026.

5 This act would take effect upon passage.

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