

No. 1998-168

AN ACT

HB 2038

Amending the act of January 17, 1968 (P.L.11, No.5), entitled "An act establishing a fixed minimum wage and overtime rates for employes, with certain exceptions; providing for minimum rates for learners and apprentices; creating a Minimum Wage Advisory Board and defining its powers and duties; conferring powers and imposing duties upon the Department of Labor and Industry; imposing duties on employers; and providing penalties," further providing for definitions; and establishing a Food Service Employee Incentive Program.

WHEREAS, The restaurant and food service industry is the second largest employer in this Commonwealth. It is the largest retail employer in this Commonwealth, employing more than 296,984 people; and

WHEREAS, The industry has had 14 years of continuous growth, creating 77,535 new jobs since 1981; and

WHEREAS, The restaurant and food service industry provides excellent opportunities for job training, placement and advancement in a dynamic environment; and

WHEREAS, Owner/operators are required to invest substantially in training costs for entry-level positions; and

WHEREAS, Traditionally, individuals who use entry-level jobs to gain basic job skills move on to higher-paying work; and

WHEREAS, According to the March 1995 Current Population Survey, 28% of people who leave welfare work in retail; and

WHEREAS, Government cannot force business to hire unskilled and low-skilled workers, but government can provide incentives to encourage it; and

WHEREAS, Traditional job training programs are costly and have yielded mixed results; the food service industry provides hands-on, real-life job training skills that can enhance an individual's chances of success and advancement in the industry and in other industries as well.

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

Section 1. Section 3(d) of the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, amended December 15, 1988 (P.L.1232, No.150), is amended to read:

Section 3. Definitions.—As used in this act:

* * *

(d) "Wages" mean compensation due to any employe by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions,

charges or allowances as may be permitted by regulations of the secretary under section 9.

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

In determining the hourly wage ~~[of] an employer is required to pay~~ a tipped employe, the amount paid such employe by his employer shall be ~~[deemed to be increased on account of tips by] an amount [determined by the employer, but not by an amount in excess of forty-five percent of the applicable minimum wage rate upon the effective date of this amendment: Provided, That the amount of the increase] equal to:~~ *(i) the cash wage paid the employe which for the purposes of the determination shall be not less than the cash wage required to be paid the employe on the date immediately prior to the effective date of this subparagraph; and (ii) an additional amount on account of the tips received by the employe which is equal to the difference between the wage specified in subparagraph (i) and the wage in effect under section 4 of this act. The additional amount on account of tips [determined by the employer] may not exceed the value of tips actually received by the employe. The previous sentence shall not apply with respect to any tipped employe unless:*

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

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

* * *

Section 2. The act is amended by adding a section to read:

Section 5.1. Program Established.—(a) The Food Service Employee Incentive Program is established to provide an incentive for both new employes of restaurant or food service operations and employes who are

engaged as restaurant or food service operators in Pennsylvania who may choose to participate in the program and shall be subject to the provisions of this section.

(b) Individuals who a participating restaurant employer finds to be qualified for existing job vacancies, including persons on public assistance, may be hired for a training period as set forth in subsection (i), provided the employe works a minimum of twenty hours per week.

(c) Employes would receive the usual and customary training commensurate with the position for which they were hired. Any training costs incurred for the employe shall be the responsibility of the employer.

(d) An amount no less than the difference between the minimum wage and the entry-level wage for the position shall be credited on behalf of the training employe in an account named an Employe Incentive Account which shall be maintained by a participating employer.

(e) Deposits made pursuant to subsection (d) shall be credited to the Employe Incentive Account until the employe's training period is completed unless the employe is promoted prior to the conclusion of the training period. At the conclusion of the training period or sooner, in the event of the employe's promotion prior to the conclusion of the training period, the employer shall pay the employe the normal entry-level wage plus an amount equal to the amount credited to the employe's name in the Employe Incentive Account divided by the number of weeks or part thereof the employe was in the training period.

(f) All funds deposited in an employer's Employe Incentive Account shall be maintained by generally acceptable accounting principles and shall be escrowed in the aggregate. The employer shall maintain complete and detailed payroll records at the place of employment or at the employer's headquarters offices. An Employe Incentive Account is nontransferable and nonassignable from one employer to another. All funds in the Employe Incentive Account shall be the property of employer until such time as required payments are made to the employe pursuant to this section.

(g) All moneys credited in an employe's name in the employer's Employe Incentive Account shall be immediately forfeited by the employe when:

(1) the employe voluntarily terminates employment with the employer prior to completion of the training period specified in subsection (i); or

(2) the employe is terminated by the employer for willful misconduct as that term is used in the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law," prior to the completion of the training period specified in subsection (i).

(h) In addition to all responsibilities specified for employes, employers shall provide for payment to the employe of all funds credited in the employe's name in the employer's Employe Incentive Account. Payment shall be made in equal installments over a period of time equal to the length of the training period. This payment shall be in addition to the

entry-level wage for the position and shall be paid upon successful completion of the training period. In addition, prior to the commencement of training under this section, an employer shall notify the employe in a manner specified by the department of the entry-level wage that will be the basis for the provisions of this section.

(i) Under this section, the recommended training periods shall be at least, but not more than, the following:

<i>Job Title</i>	<i>Training Period</i>
<i>Dishwashers</i>	<i>2 weeks to 4 weeks</i>
<i>Bus Persons</i>	<i>2 weeks to 4 weeks</i>
<i>Servers</i>	<i>2 weeks to 12 weeks</i>
<i>Sales Staff</i>	<i>2 weeks to 6 weeks</i>
<i>Cooks</i>	<i>4 weeks to 12 weeks</i>
<i>Hostess/Host/Cashier</i>	<i>4 weeks to 12 weeks</i>

(j) Any claims arising under this section shall be brought under the act of July 14, 1961 (P.L.637, No.329), known as the "Wage Payment and Collection Law."

(k) This section shall expire three years after the date on which it takes effect.

Section 3. The Department of Labor and Industry shall:

(1) promulgate regulations to enforce and carry out the provisions of section 5.1 of the act, which is added by this act;

(2) maintain records on a calendar year basis specifying the number of applicable employers who participate in the program established by section 5.1 of the act; and

(3) within 30 months after the effective date of section 5.1 of the act, prepare and submit to the Labor and Industry Committee of the Senate and the Labor Relations Committee of the House of Representatives a report concerning the impact of the program established by section 5.1 of the act.

Section 4. This act shall take effect as follows:

(1) Sections 1 and 3 of this act and this section shall take effect immediately.

(2) Section 2 of this act shall take effect on the effective date of the regulations promulgated by the Department of Labor and Industry pursuant to section 3 of this act.

APPROVED—The 21st day of December, A.D. 1998.

THOMAS J. RIDGE