

No. 1978-135

AN ACT

HB 2302

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 amending the minimum wages and exceptions and exclusions from the minimum wage and overtime provisions of the act; providing for minimum rates for students; and amending overtime provisions for certain employes of hotels, motels and restaurants.

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

Section 1. Subsection (d) of section 3, act of January 17, 1968 (P.L.11, No.5), known as "The Minimum Wage Act of 1968," amended December 10, 1974 (P.L.916, No.303), 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 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 [fifty percent of the applicable minimum wage rate] *forty-five*

percent of the applicable minimum wage rate upon the effective date of this amendment, until January 1, 1980 and thereafter forty percent of the applicable minimum wage rate: [except] Provided, That the amount of the increase 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. Subsections (a) and (b) of section 4 of the act, amended December 10, 1974 (P.L.916, No.303), are amended to read:

Section 4. Minimum Wages.—Except as may otherwise be provided under this act:

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

(1) [**One dollar ninety cents (\$1.90)**] *Two dollars sixty-five cents (\$2.65)* an hour upon the effective date of this amendment.

(2) [**Two dollars (\$2.00)**] *Two dollars ninety cents (\$2.90)* an hour [effective] *during the year beginning* January 1, [1975] 1979.

(3) [**Two dollars twenty cents (\$2.20)**] *Three dollars ten cents (\$3.10)* an hour [effective January 1, 1976] *during the year beginning January 1, 1980.*

(4) [**Two dollars thirty cents (\$2.30)**] *Three dollars thirty-five cents (\$3.35)* an hour [effective January 1, 1977] *after December 31, 1980.*

(b) The secretary, to the extent necessary to prevent curtailment of employment opportunities, shall by regulations provide for the employment of learners and students, under special certificates at wages lower than the minimum wage applicable under this section, and subject to such limitations as to number, proportion and length of service as the secretary shall prescribe: Provided, That the minimum wage prescribed under this subsection (b) shall not be less than eighty-five percent of the otherwise applicable wage rate in effect under section 4. A special certificate issued under this subsection shall provide that for [four] *six* or less students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek at a sub-minimum rate.

In the case of an employer who intends to employ [five] *seven* or more students, at a sub-minimum rate, the secretary may issue a special

certificate only if the employer certifies to the secretary that employment of such students will not create a substantial probability of reducing the full-time employment opportunities for other workers.

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Section 3. Paragraph (9) of subsection (a) and subsection (c) of section 5 of the act, amended or added December 10, 1974 (P.L.916, No.303), are amended to read:

Section 5. Exemptions.—(a) Employment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act:

* * *

(9) In employment by an establishment which is a public amusement or recreational establishment, *organized camp, or religious or nonprofit educational conference center*, if (i) it does not operate for more than seven months in any calendar year, or (ii) during the preceding calendar year, its average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of such year;

* * *

(c) Employment in the following classifications shall be compensated for overtime in the manner hereinafter set out:

(1) Employes of hotels, motels and restaurants (other than maids and custodial workers in hotels and motels);

Upon effective date of amendment overtime after [48] 44 hours

[May 1, 1975 overtime after 46 hours, and thereafter.

(2) Maids and custodial workers in motels and hotels;

Upon effective date of amendment..... overtime after 48 hours

May 1, 1975..... overtime after 46 hours

May 1, 1976..... overtime after 44 hours

May 1, 1977..... overtime after 40 hours

(3) Primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb service, to the public, to employes, or to members or guests of members of clubs (other than hotels, motels and restaurants);

Upon effective date of amendment overtime after 48 hours

May 1, 1975 overtime after 44 hours

May 1, 1976 overtime after 40 hours

(4) Any employe of a bowling establishment;

Upon effective date of amendment overtime after 48 hours

May 1, 1975 overtime after 44 hours

May 1, 1976 overtime after 40 hours]

Section 4. Subsection (c) of section 5 of the act, added December 10, 1974 (P.L.916, No.303), shall be repealed effective January 1, 1979.

Section 5. This act shall take effect July 16, 1978.

APPROVED—The 1st day of July, A. D. 1978.

MILTON J. SHAPP