

ASSEMBLY, No. 3939

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED APRIL 13, 2020

Sponsored by:
Assemblyman ERIC HOUGHTALING
District 11 (Monmouth)

SYNOPSIS

Revises definition of seasonal employment in wage and hour law to exclude all farm labor.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the payment of minimum wage to seasonal
2 workers and amending P.L.1966, c.113.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to
8 read as follows:

9 2. As used in **[this act]** chapter 11 of Title 34 of the Revised
10 Statutes:

11 (a) "Commissioner" means the Commissioner of Labor and
12 Workforce Development.

13 (b) "Director" means the director in charge of the bureau referred
14 to in section 3 of this act.

15 (c) "Wage board" means a board created as provided in section
16 10 of this act.

17 (d) "Wages" means any moneys due an employee from an
18 employer for services rendered or made available by the employee to
19 the employer as a result of their employment relationship including
20 commissions, bonus and piecework compensation and including the
21 fair value of any food or lodgings supplied by an employer to an
22 employee, and, until December 31, 2018, "wages" includes any
23 gratuities received by an employee for services rendered for an
24 employer or a customer of an employer. The commissioner may, by
25 regulation, establish the average value of gratuities received by an
26 employee in any occupation and the fair value of food and lodging
27 provided to employees in any occupation, which average values shall
28 be acceptable for the purposes of determining compliance with this
29 act in the absence of evidence of the actual value of such items.

30 (e) "Regular hourly wage" means the amount that an employee is
31 regularly paid for each hour of work as determined by dividing the
32 total hours of work during the week into the employee's total earnings
33 for the week, exclusive of overtime premium pay.

34 (f) "Employ" includes to suffer or to permit to work.

35 (g) "Employer" includes any individual, partnership, association,
36 corporation, and the State and any county, municipality, or school
37 district in the State, or any agency, authority, department, bureau, or
38 instrumentality thereof, or any person or group of persons acting
39 directly or indirectly in the interest of an employer in relation to an
40 employee.

41 (h) "Employee" includes any individual employed by an
42 employer.

43 (i) "Occupation" means any occupation, service, trade, business,
44 industry or branch or group of industries or employment or class of
45 employment in which employees are gainfully employed.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (j) "Minimum fair wage order" means a wage order promulgated
2 pursuant to this act.

3 (k) "Fair wage" means a wage fairly and reasonably
4 commensurate with the value of the service or class of service
5 rendered and sufficient to meet the minimum cost of living necessary
6 for health.

7 (l) "Oppressive and unreasonable wage" means a wage which is
8 both less than the fair and reasonable value of the service rendered
9 and less than sufficient to meet the minimum cost of living necessary
10 for health.

11 (m) "Limousine" means a motor vehicle used in the business of
12 carrying passengers for hire to provide prearranged passenger
13 transportation at a premium fare on a dedicated, nonscheduled,
14 charter basis that is not conducted on a regular route and with a
15 seating capacity in no event of more than 14 passengers, not
16 including the driver, provided, that such a motor vehicle shall not
17 have a seating capacity in excess of four passengers, not including
18 the driver, beyond the maximum passenger seating capacity of the
19 vehicle, not including the driver, at the time of manufacture.
20 "Limousine" shall not include taxicabs, hotel or airport shuttles and
21 buses, buses employed solely in transporting school children or
22 teachers to and from school, vehicles owned and operated directly or
23 indirectly by businesses engaged in the practice of mortuary science
24 when those vehicles are used exclusively for providing transportation
25 related to the provision of funeral services or vehicles owned and
26 operated without charge or remuneration by a business entity for its
27 own purposes.

28 (n) "Seasonal employment" means employment during a year by
29 an employer that is a seasonal employer ,or employment by a non-
30 profit or government entity of an individual who is not employed by
31 that employer outside of the period of that year commencing on May
32 1 and ending September 30, or employment by a governmental entity
33 in a recreational program or service during the period commencing
34 on May 1 and ending September 30, except that "seasonal
35 employment" does not include employment of employees engaged to
36 all labor on a farm, including but not limited to, labor as a clerk or
37 labor in processing, on either a piece-rate or regular hourly rate basis.

38 (o) "Seasonal employer" means an employer who exclusively
39 provides its services in a continuous period of not more than ten
40 weeks during the months of June, July, August, and September, or an
41 employer for which, during the immediately previous calendar year,
42 not less than two thirds of the employer's gross receipts were received
43 in a continuous period of not more than sixteen weeks or for which
44 not less than 75 percent of the wages paid by the employer during the
45 immediately preceding year were paid for work performed during a
46 single calendar quarter.

47 (p) "Small employer" means any employer who employed less
48 than six employees for every working day during each of a majority

1 of the calendar workweeks in the current calendar year and less than
2 six employees for every working day during not less than 48 calendar
3 workweeks in the preceding calendar year, except that, if the
4 employer was newly established during the preceding calendar year,
5 the employer shall be regarded as a "small employer" if the employer
6 employed less than six employees for every working day during all
7 of the weeks of that year, and during a majority of the calendar
8 workweeks in the current calendar year, and, if the employer is newly
9 established during the current calendar year, the employer shall be
10 regarded as a "small employer" if the employer employed less than
11 six employees for every working day during a majority of the
12 calendar workweeks in the current calendar year.
13 (cf: 2019, c.32, s.1)

14

15 2. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to
16 read as follows:

17 5. a. Except as provided in subsections c., d., e. and g. of this
18 section, each employer shall pay to each of his employees wages at a
19 rate of not less than \$8.85 per hour as of January 1, 2019 and, on
20 January 1 of 2020 and January 1 of each subsequent year, the
21 minimum wage shall be increased by any increase in the consumer
22 price index for all urban wage earners and clerical workers (CPI-W)
23 as calculated by the federal government for the 12 months prior to
24 the September 30 preceding that January 1, except that any of the
25 following rates shall apply if it exceeds the rate determined in
26 accordance with the applicable increase in the CPI-W for the
27 indicated year: on July 1, 2019, the minimum wage shall be \$10.00
28 per hour; on January 1, 2020, the minimum wage shall be \$11.00 per
29 hour; and on January 1 of each year from 2021 to 2024, inclusive, the
30 minimum wage shall be increased from the rate of the preceding year
31 by \$1.00 per hour. If the federal minimum hourly wage rate set by
32 section 6 of the federal "Fair Labor Standards Act of 1938" (29
33 U.S.C. s.206), or a successor federal law, is raised to a level higher
34 than the State minimum wage rate set by this subsection, then the
35 State minimum wage rate shall be increased to the level of the federal
36 minimum wage rate and subsequent increases based on increases in
37 the CPI-W pursuant to this section shall be applied to the higher
38 minimum wage rate. If an applicable wage order has been issued by
39 the commissioner under section 17 (C.34:11-56a16) of this act, the
40 employer shall also pay not less than the wages prescribed in said
41 order. The wage rates fixed in this section shall not be applicable to
42 part-time employees primarily engaged in the care and tending of
43 children in the home of the employer, to persons under the age of 18
44 not possessing a special vocational school graduate permit issued
45 pursuant to section 15 of P.L.1940, c.153 (C.34:2-21.15), or to
46 persons employed as salesmen of motor vehicles, or to persons
47 employed as outside salesmen as such terms shall be defined and
48 delimited in regulations adopted by the commissioner, or to persons

1 employed in a volunteer capacity and receiving only incidental
2 benefits at a county or other agricultural fair by a nonprofit or
3 religious corporation or a nonprofit or religious association which
4 conducts or participates in that fair.

5 b. (1) An employer shall also pay each employee not less than
6 1 1/2 times such employee's regular hourly rate for each hour of
7 working time in excess of 40 hours in any week, except that this
8 overtime rate shall not apply: to any individual employed in a bona
9 fide executive, administrative, or professional capacity; or to
10 employees engaged to all labor on a farm, including but not limited
11 to, labor as a clerk or labor in processing, or employed in a hotel; or
12 to an employee of a common carrier of passengers by motor bus; or
13 to a limousine driver who is an employee of an employer engaged in
14 the business of operating limousines; or to employees engaged in
15 labor relative to the raising or care of livestock.

16 (2) Employees engaged on a piece-rate or regular hourly rate
17 basis to labor on a farm shall be paid for each day worked not less
18 than the applicable minimum hourly wage rate multiplied by the total
19 number of hours worked.

20 (3) Full-time students may be employed by the college or
21 university at which they are enrolled at not less than 85% of the
22 effective applicable minimum wage rate.

23 c. Employees of a small employer, and employees who are
24 engaged in seasonal employment, except for employees who
25 customarily and regularly receive gratuities or tips who shall be
26 subject to the provisions of subsections a. and d. of this section, shall
27 be paid \$8.85 per hour as of January 1, 2019 and, on January 1 of
28 2020 and January 1 of each subsequent year, that minimum wage rate
29 shall be increased by any increase in the consumer price index for all
30 urban wage earners and clerical workers (CPI-W) as calculated by
31 the federal government for the 12 months prior to the September 30
32 preceding that January 1, except that any of the following rates shall
33 apply if it exceeds the rate determined in accordance with the
34 applicable increase in the CPI-W for the indicated year: on January
35 1, 2020, the minimum wage shall be \$10.30 per hour; and on January
36 1 of each year from 2021 to 2025, inclusive, the minimum wage shall
37 be increased from the rate of the preceding year by eighty cents per
38 hour, and, in 2026, the minimum wage shall be increased from the
39 rate of the preceding year by seventy cents per hour, and, in each year
40 from 2027 to 2028 inclusive, the minimum wage for employees
41 subject to this subsection c. shall be increased by the same amount as
42 the increase for employees subject to subsection a. of this section
43 based on CPI-W increases, plus one half of the difference between
44 \$15.00 per hour and the minimum wage in effect in 2026 for
45 employees pursuant to subsection a. of this section, so that, by 2028,
46 the minimum wage for employees subject to this subsection shall be
47 the same as the minimum wage in effect for employees subject to
48 subsection a. of this section. If the federal minimum hourly wage

1 rate set by section 6 of the federal "Fair Labor Standards Act of 1938"
2 (29 U.S.C. s.206), or a successor federal law, is raised to a level
3 higher than the State minimum wage rate set by this subsection, then
4 the State minimum wage rate shall be increased to the level of the
5 federal minimum wage rate and subsequent increases based on
6 increases in the CPI-W pursuant to this subsection shall be applied to
7 the higher minimum wage rate.

8 d. Employees engaged on a piece-rate or regular hourly rate
9 basis to labor on a farm shall be paid \$8.85 per hour as of January 1,
10 2019 and, on January 1 of 2020 and January 1 of each subsequent
11 year, that minimum wage rate shall be increased by any increase in
12 the consumer price index for all urban wage earners and clerical
13 workers (CPI-W) as calculated by the federal government for the 12
14 months prior to the September 30 preceding that January 1, except
15 that any of the following rates shall apply if it exceeds the rate
16 determined in accordance with the applicable increase in the CPI-W
17 for the indicated year:

18 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
19 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
20 hour; and on January 1 of each year from 2023 to 2024, inclusive, the
21 minimum wage shall be increased from the rate of the preceding year
22 by eighty cents per hour; and

23 (2) subject to the provisions of paragraph (3) of this subsection
24 d., minimum wage rates shall be increased as follows: on January 1
25 of 2025, the minimum wage shall be increased to \$13.40, and on
26 January 1 of each year from 2026 to 2027, inclusive, the minimum
27 wage shall be increased from the rate of the preceding year by eighty
28 cents per hour, and, in each year from 2028 to 2030 inclusive, the
29 minimum wage for employees subject to this subsection d. shall be
30 increased during that year by the same amount as the increase in that
31 year for employees subject to subsection a. of this section based on
32 CPI-W increases, plus one third of the difference between \$15.00 per
33 hour and the minimum wage in effect in 2027 for employees pursuant
34 to subsection a. of this section, so that, by 2030, the minimum wage
35 for employees subject to this subsection shall be the same as the
36 minimum wage in effect for employees subject to subsection a. of
37 this section.

38 (3) Not later than March 31, 2024, the commissioner and the
39 Secretary of Agriculture shall review the report issued by the
40 commissioner pursuant to subsection b. of section 4 of P.L.2019, c.32
41 (C.34:11-56a4.10) and shall consider any information provided by
42 the secretary regarding the impact on farm employers and the
43 viability of the State's agricultural industry of the increases of the
44 minimum wage made pursuant to paragraph (1) of this subsection,
45 and the potential impact of the increases which would be set by
46 paragraph (2) of this subsection, including comparisons with the
47 wage rates in the agricultural industries in other states, and shall
48 recommend: approval of the increases set forth in paragraph (2) of

1 this subsection; disapproval of the increases set forth in paragraph (2)
2 of this subsection; or an alternative manner of changing the minimum
3 wage after 2024 for employees engaged on a piece-rate or regular
4 hourly rate basis to labor on a farm. In contemplation of the
5 possibility that the commissioner and the secretary are unable to
6 agree on the recommendation required by this paragraph, by
7 December 31, 2021, the Governor shall appoint a public member
8 subject to advice and consent by the Senate, who will serve as a tie-
9 breaking member if needed. The increases set forth in paragraph (2)
10 of this subsection shall take effect unless there is a recommendation
11 pursuant to this paragraph to disapprove the increases or for an
12 alternative manner of changing the minimum wage after 2024 for
13 employees engaged on a piece-rate or regular hourly rate basis to
14 labor on a farm and the Legislature, not later than June 30, 2024,
15 enacts a concurrent resolution approving the implementation of that
16 recommendation. Beginning in 2024, the commissioner, secretary,
17 and public member shall meet biennially to make either a one or two
18 year recommendation to the Legislature for implementation by way
19 of concurrent resolution.

20 (4) If the federal minimum hourly wage rate set by section 6 of
21 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
22 a successor federal law, is raised to a level higher than the State
23 minimum wage rate set by this subsection, then the State minimum
24 wage rate shall be increased to the level of the federal minimum wage
25 rate and subsequent increases based on increases in the CPI-W
26 pursuant to this subsection shall be applied to the higher minimum
27 wage rate.

28 e. With respect to an employee who customarily and regularly
29 receives gratuities or tips, every employer is entitled to a credit for
30 the gratuities or tips received by the employee against the hourly
31 wage rate that would otherwise be paid to the employee pursuant to
32 subsection a. of this section of the following amounts: after
33 December 31, 2018 and before July 1, 2019, \$6.72 per hour; after
34 June 30, 2019 and before January 1, 2020, \$7.37 per hour; during
35 calendar years 2020, 2021 and 2022, \$7.87 per hour; during calendar
36 year 2023, \$8.87 per hour; and during calendar year 2024 and
37 subsequent calendar years, \$9.87 per hour.

38 f. Notwithstanding the provisions of this section to the contrary,
39 every trucking industry employer shall pay to all drivers, helpers,
40 loaders and mechanics for whom the Secretary of Transportation may
41 prescribe maximum hours of work for the safe operation of vehicles,
42 pursuant to section 31502(b) of the federal Motor Carrier Act, 49
43 U.S.C.s.31502(b), an overtime rate not less than 1 1/2 times the
44 minimum wage required pursuant to this section and N.J.A.C. 12:56-
45 3.1. Employees engaged in the trucking industry shall be paid no less
46 than the minimum wage rate as provided in this section and N.J.A.C.
47 12:56-3.1. As used in this section, "trucking industry employer"
48 means any business or establishment primarily operating for the

1 purpose of conveying property from one place to another by road or
2 highway, including the storage and warehousing of goods and
3 property. Such an employer shall also be subject to the jurisdiction
4 of the Secretary of Transportation pursuant to the federal Motor
5 Carrier Act, 49 U.S.C.s.31501 et seq., whose employees are exempt
6 under section 213(b)(1) of the federal "Fair Labor Standards Act of
7 1938," 29 U.S.C. s.213(b)(1), which provides an exemption to
8 employees regulated by section 207 of the federal "Fair Labor
9 Standards Act of 1938," 29 U.S.C. s.207, and the Interstate
10 Commerce Act, 49 U.S.C. s.501 et al.

11 g. Commencing on January 1, 2020, a training wage of not less
12 than 90 percent of the minimum wage rate otherwise set pursuant to
13 subsection a. of this section may be paid to an employee who is
14 enrolled in an established employer on-the-job or other training
15 program which meets standards set by regulations adopted by the
16 commissioner. The period during which an employer may pay the
17 training wage to the employee shall be the first 120 hours of work
18 after hiring the employee in employment in an occupation in which
19 the employee has no previous similar or related experience. An
20 employer shall not utilize any employee paid the training wage in a
21 manner which causes, induces, encourages or assists any
22 displacement or partial displacement of any currently employed
23 worker, including any previous recipient of the training wage, by
24 reducing hours of a currently employed worker, replacing a current
25 or laid off employee with a trainee, or by relocating operations
26 resulting in a loss of employment at a previous workplace, or in a
27 manner which replaces, supplants, competes with or duplicates any
28 approved apprenticeship program. An employer who pays an
29 employee a training wage shall make a good faith effort to continue
30 to employ the employee after the period of the training wage expires
31 and shall not hire the employee at the training wage unless there is a
32 reasonable expectation that there will be regular employment, paying
33 at or above the effective minimum wage, for the trainee upon the
34 successful completion of the period of the training wage. If the
35 commissioner determines that an employer has made repeated,
36 knowing violations of the provisions of this subsection regarding the
37 payment of a training wage, the commissioner shall suspend the
38 employer's right to pay a training wage for a period set pursuant to
39 regulations adopted by the commissioner, but not less than three
40 years.

41 h. The provisions of this section shall not be construed as
42 prohibiting any political subdivision of the State from adopting an
43 ordinance, resolution, regulation or rule, or entering into any
44 agreement, establishing any standard for vendors, contractors and
45 subcontractors of the subdivision regarding wage rates or overtime
46 compensation which is higher than the standards provided for in this
47 section, and no provision of any other State or federal law
48 establishing a minimum standard regarding wages or other terms and

1 conditions of employment shall be construed as preventing a political
2 subdivision of the State from adopting an ordinance, resolution,
3 regulation or rule, or entering into any agreement, establishing a
4 standard for vendors, contractors and subcontractors of the
5 subdivision which is higher than the State or federal law or which
6 otherwise provides greater protections or rights to employees of the
7 vendors, contractors and subcontractors of the subdivision, unless the
8 State or federal law expressly prohibits the subdivision from adopting
9 the ordinance, resolution, regulation or rule, or entering into the
10 agreement.

11 (cf: P.L.2019, c.32, s.2)

12

13 3. This act shall take effect immediately.

14

15

16 STATEMENT

17

18 This bill expands the scope of the definition of seasonal
19 employment with respect to the definition's exclusions. Specifically,
20 the bill would exclude all labor on a farm, including labor as a clerk
21 or labor in processing.

22 Current law allows for the payment of minimum wage according
23 to the definition of seasonal employment to certain farm workers.
24 The bill would help farmers minimize the impact of the recently
25 enacted increase in the minimum wage on their day to day operations.