

ASSEMBLY, No. 4984

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 16, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Co-Sponsored by:

Assemblyman Giblin

SYNOPSIS

Increases minimum wage for direct support professionals.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/19/2020)

1 AN ACT concerning direct support professionals and amending
2 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:

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

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

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

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

30 (e) "Regular hourly wage" means the amount that an employee
31 is regularly paid for each hour of work as determined by dividing
32 the total hours of work during the week into the employee's total
33 earnings 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,
36 association, corporation, and the State and any county,
37 municipality, or school district in the State, or any agency,
38 authority, department, bureau, or instrumentality thereof, or any
39 person or group of persons acting directly or indirectly in the
40 interest of an employer in relation to an employee.

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

43 (i) "Occupation" means any occupation, service, trade,
44 business, industry or branch or group of industries or employment
45 or class of 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
2 promulgated 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
6 necessary 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
10 necessary 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
23 or indirectly by businesses engaged in the practice of mortuary
24 science when those vehicles are used exclusively for providing
25 transportation related to the provision of funeral services or vehicles
26 owned and operated without charge or remuneration by a business
27 entity for its 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
32 May 1 and ending September 30, or employment by a governmental
33 entity in a recreational program or service during the period
34 commencing on May 1 and ending September 30, except that
35 "seasonal employment" does not include employment of employees
36 engaged to labor on a farm on either a piece-rate or regular hourly
37 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
41 an employer for which, during the immediately previous calendar
42 year, not less than two thirds of the employer's gross receipts were
43 received in a continuous period of not more than sixteen weeks or
44 for which not less than 75 percent of the wages paid by the
45 employer during the immediately preceding year were paid for work
46 performed during a 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
3 calendar workweeks in the preceding calendar year, except that, if
4 the employer was newly established during the preceding calendar
5 year, the employer shall be regarded as a "small employer" if the
6 employer employed less than six employees for every working day
7 during all of the weeks of that year, and during a majority of the
8 calendar workweeks in the current calendar year, and, if the
9 employer is newly established during the current calendar year, the
10 employer shall be regarded as a "small employer" if the employer
11 employed less than six employees for every working day during a
12 majority of the calendar workweeks in the current calendar year.

13 (q) "Long-term care facility direct care staff member" means
14 any health care professional licensed or certified pursuant to Title
15 26 or Title 45 of the Revised Statutes who is employed by a long-
16 term care facility and who provides personal care, assistance, or
17 treatment services directly to residents of the facility in the course
18 of the professional's regular duties.

19 (r) "Direct support professional" means a professional who
20 provides personal care, assistance, or treatment services directly to
21 an individual with an intellectual or a developmental disability in
22 the course of the professional's regular duties.

23 (cf: P.L.2020, c.89, s.1)
24

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

27 5. a. Except as provided in subsections c., d., e. g., and i. of this
28 section, each employer shall pay to each of his employees wages at
29 a rate of not less than \$8.85 per hour as of January 1, 2019 and, on
30 January 1 of 2020 and January 1 of each subsequent year, the
31 minimum wage shall be increased by any increase in the consumer
32 price index for all urban wage earners and clerical workers (CPI-W)
33 as calculated by the federal government for the 12 months prior to
34 the September 30 preceding that January 1, except that any of the
35 following rates shall apply if it exceeds the rate determined in
36 accordance with the applicable increase in the CPI-W for the
37 indicated year: on July 1, 2019, the minimum wage shall be \$10.00
38 per hour; on January 1, 2020, the minimum wage shall be \$11.00
39 per hour; and on January 1 of each year from 2021 to 2024,
40 inclusive, the minimum wage shall be increased from the rate of the
41 preceding year by \$1.00 per hour. If the federal minimum hourly
42 wage rate set by section 6 of the federal "Fair Labor Standards Act
43 of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
44 level higher than the State minimum wage rate set by this
45 subsection, then the State minimum wage rate shall be increased to
46 the level of the federal minimum wage rate and subsequent
47 increases based on increases in the CPI-W pursuant to this section
48 shall be applied to the higher minimum wage rate. If an applicable

1 wage order has been issued by the commissioner under section 17
2 (C.34:11-56a16) of this act, the employer shall also pay not less
3 than the wages prescribed in said order. The wage rates fixed in
4 this section shall not be applicable to part-time employees primarily
5 engaged in the care and tending of children in the home of the
6 employer, to persons under the age of 18 not possessing a special
7 vocational school graduate permit issued pursuant to section 15 of
8 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
9 salesmen of motor vehicles, or to persons employed as outside
10 salesmen as such terms shall be defined and delimited in regulations
11 adopted by the commissioner, or to persons employed in a volunteer
12 capacity and receiving only incidental benefits at a county or other
13 agricultural fair by a nonprofit or religious corporation or a
14 nonprofit or religious association which conducts or participates in
15 that fair.

16 b. (1) An employer shall also pay each employee not less than 1
17 1/2 times such employee's regular hourly rate for each hour of
18 working time in excess of 40 hours in any week, except that this
19 overtime rate shall not apply: to any individual employed in a bona
20 fide executive, administrative, or professional capacity; or to
21 employees engaged to labor on a farm or employed in a hotel; or to
22 an employee of a common carrier of passengers by motor bus; or to
23 a limousine driver who is an employee of an employer engaged in
24 the business of operating limousines; or to employees engaged in
25 labor relative to the raising or care of livestock.

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

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

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

1 wage shall be increased from the rate of the preceding year by
2 seventy cents per hour, and, in each year from 2027 to 2028
3 inclusive, the minimum wage for employees subject to this
4 subsection c. shall be increased by the same amount as the increase
5 for employees subject to subsection a. of this section based on CPI-
6 W increases, plus one half of the difference between \$15.00 per
7 hour and the minimum wage in effect in 2026 for employees
8 pursuant to subsection a. of this section, so that, by 2028, the
9 minimum wage for employees subject to this subsection shall be the
10 same as the minimum wage in effect for employees subject to
11 subsection a. of this section. If the federal minimum hourly wage
12 rate set by section 6 of the federal "Fair Labor Standards Act of
13 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
14 level higher than the State minimum wage rate set by this
15 subsection, then the State minimum wage rate shall be increased to
16 the level of the federal minimum wage rate and subsequent
17 increases based on increases in the CPI-W pursuant to this
18 subsection shall be applied to the higher minimum wage rate.

19 d. Employees engaged on a piece-rate or regular hourly rate
20 basis to labor on a farm shall be paid \$8.85 per hour as of January
21 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent
22 year, that minimum wage rate shall be increased by any increase in
23 the consumer price index for all urban wage earners and clerical
24 workers (CPI-W) as calculated by the federal government for the 12
25 months prior to the September 30 preceding that January 1, except
26 that any of the following rates shall apply if it exceeds the rate
27 determined in accordance with the applicable increase in the CPI-W
28 for the indicated year:

29 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
30 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
31 hour; and on January 1 of each year from 2023 to 2024, inclusive,
32 the minimum wage shall be increased from the rate of the preceding
33 year by eighty cents per hour; and

34 (2) subject to the provisions of paragraph (3) of this subsection
35 d., minimum wage rates shall be increased as follows: on January 1
36 of 2025, the minimum wage shall be increased to \$13.40, and on
37 January 1 of each year from 2026 to 2027, inclusive, the minimum
38 wage shall be increased from the rate of the preceding year by
39 eighty cents per hour, and, in each year from 2028 to 2030
40 inclusive, the minimum wage for employees subject to this
41 subsection d. shall be increased during that year by the same
42 amount as the increase in that year for employees subject to
43 subsection a. of this section based on CPI-W increases, plus one
44 third of the difference between \$15.00 per hour and the minimum
45 wage in effect in 2027 for employees pursuant to subsection a. of
46 this section, so that, by 2030, the minimum wage for employees
47 subject to this subsection shall be the same as the minimum wage in
48 effect for employees subject to subsection a. of this section.

1 (3) Not later than March 31, 2024, the commissioner and the
2 Secretary of Agriculture shall review the report issued by the
3 commissioner pursuant to subsection b. of section 4 of P.L.2019,
4 c.32 (C.34:11-56a4.10) and shall consider any information provided
5 by the secretary regarding the impact on farm employers and the
6 viability of the State's agricultural industry of the increases of the
7 minimum wage made pursuant to paragraph (1) of this subsection,
8 and the potential impact of the increases which would be set by
9 paragraph (2) of this subsection, including comparisons with the
10 wage rates in the agricultural industries in other states, and shall
11 recommend: approval of the increases set forth in paragraph (2) of
12 this subsection; disapproval of the increases set forth in paragraph
13 (2) of this subsection; or an alternative manner of changing the
14 minimum wage after 2024 for employees engaged on a piece-rate or
15 regular hourly rate basis to labor on a farm. In contemplation of the
16 possibility that the commissioner and the secretary are unable to
17 agree on the recommendation required by this paragraph, by
18 December 31, 2021, the Governor shall appoint a public member
19 subject to advice and consent by the Senate, who will serve as a tie-
20 breaking member if needed. The increases set forth in paragraph
21 (2) of this subsection shall take effect unless there is a
22 recommendation pursuant to this paragraph to disapprove the
23 increases or for an alternative manner of changing the minimum
24 wage after 2024 for employees engaged on a piece-rate or regular
25 hourly rate basis to labor on a farm and the Legislature, not later
26 than June 30, 2024, enacts a concurrent resolution approving the
27 implementation of that recommendation. Beginning in 2024, the
28 commissioner, secretary, and public member shall meet biennially
29 to make either a one or two year recommendation to the Legislature
30 for implementation by way of concurrent resolution.

31 (4) If the federal minimum hourly wage rate set by section 6 of
32 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
33 a successor federal law, is raised to a level higher than the State
34 minimum wage rate set by this subsection, then the State minimum
35 wage rate shall be increased to the level of the federal minimum
36 wage rate and subsequent increases based on increases in the CPI-
37 W pursuant to this subsection shall be applied to the higher
38 minimum wage rate.

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

1 f. Notwithstanding the provisions of this section to the
2 contrary, every trucking industry employer shall pay to all drivers,
3 helpers, loaders and mechanics for whom the Secretary of
4 Transportation may prescribe maximum hours of work for the safe
5 operation of vehicles, pursuant to section 31502(b) of the federal
6 Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less
7 than 1 1/2 times the minimum wage required pursuant to this
8 section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
9 industry shall be paid no less than the minimum wage rate as
10 provided in this section and N.J.A.C. 12:56-3.1. As used in this
11 section, "trucking industry employer" means any business or
12 establishment primarily operating for the purpose of conveying
13 property from one place to another by road or highway, including
14 the storage and warehousing of goods and property. Such an
15 employer shall also be subject to the jurisdiction of the Secretary of
16 Transportation pursuant to the federal Motor Carrier Act, 49
17 U.S.C.s.31501 et seq., whose employees are exempt under section
18 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
19 U.S.C. s.213(b)(1), which provides an exemption to employees
20 regulated by section 207 of the federal "Fair Labor Standards Act of
21 1938," 29 U.S.C. s.207, and the Interstate Commerce Act, 49
22 U.S.C. s.501 et al.

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

1 subsection regarding the payment of a training wage, the
2 commissioner shall suspend the employer's right to pay a training
3 wage for a period set pursuant to regulations adopted by the
4 commissioner, but not less than three years.

5 h. The provisions of this section shall not be construed as
6 prohibiting any political subdivision of the State from adopting an
7 ordinance, resolution, regulation or rule, or entering into any
8 agreement, establishing any standard for vendors, contractors and
9 subcontractors of the subdivision regarding wage rates or overtime
10 compensation which is higher than the standards provided for in
11 this section, and no provision of any other State or federal law
12 establishing a minimum standard regarding wages or other terms
13 and conditions of employment shall be construed as preventing a
14 political subdivision of the State from adopting an ordinance,
15 resolution, regulation or rule, or entering into any agreement,
16 establishing a standard for vendors, contractors and subcontractors
17 of the subdivision which is higher than the State or federal law or
18 which otherwise provides greater protections or rights to employees
19 of the vendors, contractors and subcontractors of the subdivision,
20 unless the State or federal law expressly prohibits the subdivision
21 from adopting the ordinance, resolution, regulation or rule, or
22 entering into the agreement.

23 i. Effective on the first day of the second month next following
24 the effective date of P.L.2020, c.89 (C.30:4D-7cc et al.), the
25 minimum wage for long-term care facility direct care staff members
26 shall be in an amount that is \$3 higher than the prevailing minimum
27 wage established pursuant to subsection a. of this section.

28 j. Effective on the first day of the second month next following
29 the effective date of P.L. , c. (pending before the Legislature as
30 this bill), the minimum wage for direct support professionals shall
31 be in an amount that is \$3 higher than the prevailing minimum wage
32 established pursuant to subsection a. of this section.

33 (cf: P.L.2020, c.89, s.2)

34
35 3. This act shall take effect immediately.
36
37

38 STATEMENT

39
40 This bill requires that the minimum wage for direct support
41 professionals be an amount that is \$3 higher than the prevailing
42 minimum wage in the State. Direct support professionals are
43 professionals who provide personal care, assistance, or treatment
44 services directly to individuals with an intellectual or a
45 developmental disability in the course of the professional's regular
46 duties.

47 In April 2020, the Department of Human Services announced
48 that direct support professionals would be provided with a

1 temporary wage increase of \$3 per hour through July 2020 using a
2 combination of State and federal funds. The FY 2021
3 Appropriations Act included an appropriation to continue the
4 temporary wage increase for the period running from October
5 through December 2020. This bill would make the wage increase
6 for direct support professionals permanent.