SENATE, No. 3205

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 19, 2020

Sponsored by:
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS

Increases minimum wage for direct support professionals.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning direct support professionals and amending P.L.1966, c.113.

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

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

2. As used in this act:

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

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

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

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

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

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

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

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

(i) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment 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 <u>thus</u> is new matter.

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

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

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

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

(n) "Seasonal employment" means employment during a year by an employer that is a seasonal employer, or employment by a non-profit or government entity of an individual who is not employed by that employer outside of the period of that year commencing on May 1 and ending September 30, or employment by a governmental entity in a recreational program or service during the period commencing on May 1 and ending September 30, except that "seasonal employment" does not include employment of employees engaged to labor on a farm on either a piece-rate or regular hourly rate basis.

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

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

of the calendar workweeks in the current calendar year and less than six employees for every working day during not less than 48 calendar workweeks in the preceding calendar year, except that, if the employer was newly established during the preceding calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during all of the weeks of that year, and during a majority of the calendar workweeks in the current calendar year, and, if the employer is newly established during the current calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during a majority of the calendar workweeks in the current calendar year.

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

(r) “Direct support professional” means a professional who provides personal care, assistance, or treatment services directly to an individual with an intellectual or a developmental disability in the course of the professional’s regular duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. The provisions of this section shall not be construed as prohibiting any political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing any standard for vendors, contractors and subcontractors of the subdivision regarding wage rates or overtime compensation which is higher than the standards provided for in this section, and no provision of any other State or federal law establishing a minimum standard regarding wages or other terms and conditions of employment shall be construed as preventing a political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing a standard for vendors, contractors and subcontractors of the subdivision which is higher than the State or federal law or which otherwise provides greater protections or rights to employees of the vendors, contractors and subcontractors of the subdivision, unless the State or federal law expressly prohibits the subdivision from adopting the ordinance, resolution, regulation or rule, or entering into the agreement.

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

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

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

3. This act shall take effect immediately.

STATEMENT

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

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

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