



Minimum Wage Act

Article 19

New York State Labor Law

Effective December 31, 2013

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Effective Date: December 31, 2013

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§ 650. Statement of public policy. There are persons employed in some occupations in the state of New York at wages insufficient to provide adequate maintenance for themselves and their families. Such employment impairs the health, efficiency, and well-being of the persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires, in many instances, that wages be supplemented by the payment of public moneys for relief or other public and private assistance. Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of this state and injures the overall economy.

Accordingly, it is the declared policy of the state of New York that such conditions be eliminated as rapidly as practicable without substantially curtailing opportunities for employment or earning power. To this end minimum wage standards shall be established and maintained.

§ 651. Definitions. As used in this article:

1. "Commissioner" means the industrial commissioner.
2. "Department" means the labor department.
3. "Board" or "wage board" means a board created as provided in this article.
4. "Occupation" means an industry, trade, business or class of work in which employees are gainfully employed.

5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) on a casual basis in service as a part time baby sitter in the home of the employer; (b) in labor on a farm; (c) in a bona fide executive, administrative, or professional capacity; (d) as an outside salesman; (e) as a driver engaged in operating a taxicab; (f) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (g) as a member of a religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; (h) in or for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (i) in or for such a religious, educational or charitable institution if such individual is a student; (j) in or for such a religious, educational or charitable institution if the earning capacity of such individual is impaired by age or by physical or mental deficiency or injury; (k) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; (l) as a staff counselor in a children's camp; (m) in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; (n) by a federal, state or municipal government or political subdivision thereof. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner; or (o) as a volunteer at a recreational or amusement event run by a business that operates such events, provided that no single such event lasts longer than eight consecutive days and no more than one such event concerning substantially the same subject matter occurs in any calendar year. Any such volunteer shall be at least eighteen years of age. A business seeking coverage under this paragraph shall notify every volunteer in writing, in language acceptable to the commissioner, that by volunteering his or her services, such volunteer is waiving his or her right to receive the minimum wage pursuant to this article. Such notice shall be signed and dated by a representative of the business and the volunteer and kept on file by the business for thirty-six months.

"Employee" also includes any individual employed or permitted to work in any non-teaching capacity by a school district or board of cooperative educational services except that the provisions of sections six hundred fifty-three through six hundred fifty-nine of this article shall not be applicable in any such case.

6. "Employer" includes any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group of persons acting as employer.

7. "Wage" includes allowances, in the amount determined in accordance with the provisions of this article, for gratuities and, when furnished by the employer to employees, for meals, lodging, apparel, and other such items, services and facilities.

8. "Non-profitmaking institution" means any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

9. "Food service worker" means any employee primarily engaged in the serving of food or beverages to guests, patrons or customers in the hotel or restaurant industries, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receive tips from such guests, patrons or customers.

§ 652. Minimum wage. 1. Statutory. Every employer shall pay to each of its employees for each hour worked a wage of not less than:

\$4.25 on and after April 1, 1991,

\$5.15 on and after March 31, 2000,

\$6.00 on and after January 1, 2005,

\$6.75 on and after January 1, 2006,

\$7.15 on and after January 1, 2007,

\$8.00 on and after December 31, 2013,

\$8.75 on and after December 31, 2014,

\$9.00 on and after December 31, 2015, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

2. Existing wage orders. The minimum wage orders in effect on the effective date of this act shall remain in full force and effect, except as modified in accordance with the provisions of this article.

Such minimum wage orders shall be modified by the commissioner to increase all monetary amounts specified therein in the same proportion as the increase in the hourly minimum wage as provided in subdivision one of this section, including the amounts specified in such minimum wage orders as allowances for gratuities, and when furnished by the employer to its employees, for meals, lodging, apparel and other such items, services and facilities. All amounts so modified shall be rounded off to the nearest five cents. The modified orders shall be promulgated by the commissioner without a public hearing, and without reference to a wage board, and shall become effective on the effective date of such increases in the minimum wage except as otherwise provided in this subdivision, notwithstanding any other provision of this article.

3. Non-profitmaking institutions. (a) Application of article. This article shall apply to non-profitmaking institutions.

(b) Option available to non-profitmaking institutions. The provisions of any wage order issued under this article shall not apply, however, to any non-profitmaking institution which pays and continues to pay to each of its employees in every occupation a wage, exclusive of allowances, of not less than the minimum wage provided in subdivision one of this section provided that such institution had certified under oath to the commissioner, on or before September first, nineteen hundred sixty, that on or before October first, nineteen hundred sixty it would pay and thereafter intended to pay such wage to each of its employees in every occupation and provided further that all the provisions of this article have not become applicable to such institution by operation of paragraph (c) of this subdivision. If such institution was not organized or did not hire any employees as defined in subdivision five of section six hundred fifty-one of this chapter before September first, nineteen hundred sixty, such provisions shall not apply so long as, commencing six months after it was organized, or first employed such employees it paid and continues to pay such wage to each of its employees in every occupation, provided that such institution certified under oath within six months after it was organized or first employed such employees that it would pay and thereafter intended to pay such wage to each of its employees in every occupation and provided further that all the provisions of this article have not become applicable to such institution by operation of paragraph (c) of this subdivision.

(c) Termination of option. All the provisions of this article, including all of the provisions of any wage order issued thereunder which, but for the operation of paragraph (b) of this subdivision, would apply to any non-profitmaking institution, shall become fully applicable to such institution sixty days after such institution files a notice with the commissioner requesting that the provisions of such wage order apply to it, or immediately upon the issuance of an order by the commissioner finding that such institution has failed to pay the wages provided in paragraph (b) of this subdivision, but in no event shall any such order discharge the obligation of such institution to pay the wages provided by paragraph (b) of this subdivision for any period prior to the issuance of such order.

4. Notwithstanding subdivisions one and two of this section, the wage for an employee who is a food service worker receiving tips shall be a cash wage of at least three dollars and thirty cents per hour on or after March thirty-first, two thousand; three dollars and eighty-five cents on or after January first, two thousand five; at least four dollars and thirty-five cents on or after January first, two thousand six; and at least four dollars and sixty cents on or after January first, two thousand seven, provided that the tips of such an employee, when added to such cash wage, are equal to or exceed the minimum wage in

effect pursuant to subdivision one of this section and provided further that no other cash wage is established pursuant to section six hundred fifty-three of this article. In the event the cash wage payable under the Fair Labor Standards Act (29 United States Code Sec. 203 (m), as amended), is increased after enactment of this subdivision, the cash wage payable under this subdivision shall automatically be increased by the proportionate increase in the cash wage payable under such federal law, and will be immediately enforceable as the cash wage payable to food service workers under this article.

5. Notwithstanding subdivisions one and two of this section, meal and lodging allowances for a food service worker receiving a cash wage amounting to three dollars and thirty cents per hour on or after March thirty-first, two thousand; three dollars and eighty-five cents on or after January first, two thousand five; four dollars and thirty-five cents on or after January first, two thousand six; and four dollars and sixty cents on or after January first, two thousand seven, shall not increase more than two-thirds of the increase required by subdivision two of this section as applied to state wage orders in effect pursuant to subdivision one of this section.

6. Notwithstanding subdivision two of this section and subdivision two of section six hundred fifty-three of this article, a modification in the hourly cash wage or meal and lodging credits as applied to food service workers and service employees paid in accordance with Part 146 of Title 12 of the New York state compilation of codes, rules and regulations that would otherwise be based on the increases in the hourly minimum wage that will become effective on December thirty-first, two thousand thirteen, December thirty-first, two thousand fourteen and December thirty-first, two thousand fifteen shall be made by a wage order promulgated by the commissioner pursuant to section six hundred fifty-six of this article and provided further that, for the purposes of the modifications based on such increases provided for in subdivision two of this section only, the maximum credit for tips in such wage order shall be modified so that such credit, when combined with the cash wage, is equal to the minimum wage. Any time after the effective date of the chapter of the laws of two thousand thirteen which added this subdivision, the commissioner shall appoint a wage board pursuant to the provision of subdivision one of section six hundred fifty-five of this article to inquire and report and recommend any changes to the wage order governing wages payable to such food service workers and service employees sufficient to provide adequate maintenance and to protect the health and livelihood of employees subject to such a wage order. Such wage board shall make such report and recommendations to the commissioner within six months of its establishment. The commissioner shall act upon such report and recommendations pursuant to the provisions of section six hundred fifty-six of this article.

§ 653. Investigation of adequacy of wages. (1) The commissioner shall have power on his own motion to cause an investigation to be made of the wages being paid to persons employed in any occupation or occupations to ascertain whether the minimum wages established in accordance with the provisions of this article are sufficient to provide adequate maintenance and to protect the health of the persons employed in such occupation or occupations. The commissioner shall, on the petition of fifty or more residents of the state engaged in or affected by an occupation or occupations sought to be investigated, cause such an investigation of such occupation or occupations to be conducted. If, on the basis of information in his possession with or without such an investigation, the commissioner is of the opinion that any substantial number of persons employed in any occupation or occupations are receiving wages insufficient to provide adequate maintenance and to protect their health, he shall appoint a wage board to inquire into and report and recommend adequate minimum wages and regulations for employees in such occupation or occupations.

(2) The commissioner shall, within six months after enactment of any change in the statutory minimum wage set forth in subdivision one of section six hundred fifty-two of this article, appoint a wage board to inquire and report and recommend any changes to wage orders governing wages payable to food service workers. Such wage board shall be established consistent with the provisions of subdivision one of section six hundred fifty-five of this article, except the representatives of the employees shall be selected upon the nomination of the state American Federation of Labor/Congress of Industrial Organizations; and provided, further, that the representatives of the employers shall be selected upon the nomination of the New York State Business Council. Any wage order authorizing a

lesser wage than the previously and statutorily mandated minimum wage for such employees shall be reviewed by the wage board to ascertain at what level such wage order is sufficient to provide adequate maintenance and to protect the health and livelihood of employees subject to such a wage order after a statutory increase in the mandated minimum wage.

§ 654. Basis of changes in minimum wage. In establishing minimum wages and regulations for any occupation or occupations pursuant to the provisions of the following sections of this article, the wage board and the commissioner shall consider the amount sufficient to provide adequate maintenance and to protect health and, in addition, the wage board and the commissioner shall consider the value of the work or classification of work performed, and the wages paid in the state for work of like or comparable character.

§ 655. Wage board; procedure; report. 1. Wage board. A wage board shall be composed of not more than three representatives of employers, an equal number of representatives of employees and an equal number of persons selected from the general public. The commissioner shall appoint the members of the board, the representatives of the employers and employees to be selected so far as practicable from nominations submitted by employers and employees in such occupation or occupations. The commissioner shall designate as the chairman one of the members selected from the general public. The members of the board shall not receive a salary or other compensation, but shall be paid actual and necessary traveling expenses while engaged in the performance of their duties.

2. Organization. The chairman of the board is authorized to delegate to a panel of the members, composed of an equal number of employer, employee and public members, any or all of the powers which the board itself may exercise, except as otherwise provided in subdivision four of this section. Two-thirds of the members of the board or of a panel, as the case may be, shall constitute a quorum. The commissioner may from time to time formulate rules governing the manner in which the wage board shall function and perform its duties under this article.

3. Powers. The wage board shall have power to conduct public hearings.

The board may also consult with employers and employees, and their respective representatives, in the occupation or occupations involved, and with such other persons, including the commissioner, as it shall determine. The board shall also have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of all books, records, and other evidence relative to any matters under inquiry. Such subpoenas shall be signed and issued by the chairman of the board, or any other public member, and shall be served and have the same effect as if issued out of the supreme court. The board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the supreme court. The board shall not be bound by common law or statutory rules of procedure or evidence.

4. Report. Within forty-five days of the appointment of the wage board to inquire into wages in any occupation or occupations, the board shall (a) conduct public hearings and (b) submit to the commissioner a report, including its recommendations as to minimum wages and regulations for the employees in such occupation or occupations. The report and recommendations of the board shall be submitted only after a vote of not less than a majority of all its members in support of such report and recommendations. No report or recommendation of a panel shall be submitted without the prior vote of not less than a majority of all the members of the board in support of such report or recommendation. The commissioner may extend up to ninety days the time in which the report shall be submitted.

5. Minimum wage recommendations. (a) The minimum wage recommended by the wage board shall not be in excess of an amount sufficient to provide adequate maintenance and to protect the health of the employees. In no event, however, shall any minimum wage recommended by the board be less than the wage specified in section six hundred fifty-two of this chapter, except (1) as expressly otherwise provided in paragraph (c) of this subdivision, and (2) where the board finds conditions of employment are such as to make an hourly rate impracticable, in which event the board may recommend a wage rate other than an hourly rate, provided that such recommended rate carries out

the purposes of this article and safeguards the minimum wage specified in section six hundred fifty-two of this chapter. The board may classify employments in any occupation according to the nature of the work rendered and recommend minimum wages in accordance with such classification. The board may also recommend a minimum wage varying with localities if, in the judgment of the board, conditions make such variation appropriate.

(b) In addition to recommendations for minimum wages, the wage board may recommend such regulations as it deems appropriate to carry out the purposes of this article and to safeguard minimum wages. Such recommended regulations may include regulations defining the exclusions from the term "employee" set forth in subdivision five of section six hundred fifty-one. Such recommended regulations may also include, but are not limited to, regulations governing piece rates, incentives, and commissions in relation to time rates; overtime or part-time rates; waiting time and call-in pay rates; wage rate provisions governing split shift, excessive spread of hours and weekly guarantees; and allowances for gratuities and, when furnished by the employer to his employees, for meals, lodging, apparel and other such items, services and facilities.

(c) The wage board may also recommend, to the extent necessary in order to prevent curtailment of opportunities for employment, regulations for (1) the employment of learners and apprentices, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and subject to such limitations as to time, number, proportion and length of service as shall be prescribed in such regulation, (2) the employment of individuals whose earning capacity is affected or impaired by youth or age or by physical or mental deficiency or injury, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulation, (3) the establishment of a period not extending beyond seventeen consecutive weeks during which a resort hotel or camp may employ students under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article as shall be prescribed in such regulation, and (4) the employment of residential employees in a non-profit making religious, charitable or educational organization or in a non-profit making college or university sorority or fraternity under special certificates issued by the commissioner at such weekly wage as shall be prescribed in such regulation.

§ 656. Action by commissioner upon wage board report. When the wage board submits its report and recommendations to the commissioner, the commissioner shall forthwith file them with the secretary of the department. Within five days of their receipt, the commissioner shall publish a notice of such filing in at least ten newspapers of general circulation in the state. Any objections to the report and recommendations shall be filed with the commissioner within fifteen days after such publication. The commissioner may, if he deems it appropriate, order oral argument, which shall be scheduled before the commissioner, or such representative as he may designate, on five days' notice to the persons who have filed objections to the report and recommendations. Whether or not oral argument is scheduled, the commissioner shall by order accept or reject the board's report and recommendations within forty-five days after filing with the secretary of the department. The commissioner may by such order modify the regulations recommended by the board. Such order of the commissioner shall become effective thirty days after publication, in the manner prescribed in this section, of a notice of such order. The commissioner may, within such forty-five days, confer with the wage board, which may make such changes in its report or recommendations as it may deem fit. The commissioner also may, within such forty-five days, remand the matter to the board for such further proceeding as he may direct.

§ 657. Appeals from wage orders and regulations. 1. Finality. Any minimum wage order and regulation issued by the commissioner pursuant to this article shall, unless appealed from as provided in this section, be final. The findings of the commissioner as to the facts shall be conclusive on any appeal from an order of the commissioner issued pursuant to sections six hundred fifty-two, six hundred fifty-six, or six hundred fifty-nine.

2. Review by board of standards and appeals. Any person in interest, including a labor organization or employer association, in any occupation for which a minimum wage order or regulation has been issued under the provisions of this article who is aggrieved by such order or regulation may obtain review before the board of standards and appeals by filing with said board, within forty-five days after the date of the publication of the notice of such order or regulation, a written petition requesting that the order or regulation be modified or set aside. A copy of such petition shall be served promptly upon the commissioner. On such appeal, the commissioner shall certify and file with the board of standards and appeals a transcript of the entire record, including the testimony and evidence upon which such order or regulation was made and the report of the wage board. The board of standards and appeals, upon the record certified and filed by the commissioner, shall, after oral argument, determine whether the order or regulation appealed from is contrary to law. Within forty-five days after the expiration of the time for the filing of a petition, the board of standards and appeals shall issue an order confirming, amending or setting aside the order or regulation appealed from. The appellate jurisdiction of the board of standards and appeals shall be exclusive and its order final except that the same shall be subject to an appeal taken directly to the appellate division of the supreme court, third judicial department, within sixty days after its order is issued. The commissioner shall be considered an aggrieved party entitled to take an appeal from an order of the board of standards and appeals.

3. Security. The taking of an appeal by an employer to the board of standards and appeals shall not operate as a stay of a minimum wage order or regulation issued under this article unless and until, and only so long as, the employer shall have provided security determined by the board of standards and appeals in accordance with this section. The security shall be sufficient to guarantee to the employees affected the payment of the difference between the wage they receive and the minimum wage they would be entitled to receive under the terms of the minimum wage order or regulation (such difference being hereinafter referred to as "underpayments") in the event that such order or regulation is affirmed by the board of standards and appeals. The security shall be either:

a. A bond filed with the board of standards and appeals issued by a fidelity or surety company authorized to do business in this state. The bond shall be sufficient to cover the amount of underpayments due at the time the bond is filed with the board of standards and appeals and the amount of underpayments that can reasonably be expected to accrue within the following sixty days; or

b. An escrow account established by the employer in behalf of employees and deposited in a bank or trust company in this state, of which the employer has notified the board of standards and appeals in writing that he has established such account. The account shall be sufficient to cover the amount of underpayments due at the time of notification to the board of standards and appeals and shall be kept current by the employer depositing therein the amount of underpayments accruing each and every pay period. Such deposits shall be made no later than the day on which the wages for each pay period are payable. As an alternative thereto, an employer may deposit the amount of underpayments due at the time the deposit is made and the amount of underpayments that can reasonably be expected to accrue within the following sixty days, as determined by the board of standards and appeals. The employer shall keep accurate records showing the total amount of each deposit, the period covered, and the name and address of each employee and the amount deposited to his account. The employees' escrow account shall be deemed to be a trust fund for the benefit of the employees affected, and no bank or trust company shall release funds in such account without the written approval of the board of standards and appeals.

4. Maintenance of security. The commissioner, at the request and on behalf of the board of standards and appeals, shall have the right to inspect the books and records of every employer who appeals from an order or who provides a security in accordance with subdivision eight of this section. In the event that the board of standards and appeals finds that the security provided by an employer is insufficient to cover the amount of underpayments, it shall notify the employer to increase the amount of the security. If the employer fails to increase the security to the amount requested within seven days after such notice, the stay shall be terminated. If the board of standards and appeals finds that the amount of the security is excessive, it shall decrease the amount of security required.

5. Review of determination as to security. Notwithstanding any provision in this chapter, any determination of the board of standards and appeals with reference to subdivisions three and four of this section shall be reviewable only by a special proceeding under article seventy-eight of the civil practice law and rules instituted in the supreme court in the third judicial district within ten days after such determination.

6. Security on court review. In the event that an appeal is taken from the order of the board of standards and appeals to the supreme court in the third judicial district pursuant to subdivision two of this section, the court may continue the security in effect or require such security as it deems proper.

7. Waiver of security. Notwithstanding any provision in this section, the board of standards and appeals may, in its discretion, waive the requirement of a security for an employer who the board of standards and appeals finds is of such financial responsibility that payments to employees of any underpayments due or to accrue are assured without the security provided by this section.

8. Stay for other employers. Any employer affected by a minimum wage order or regulation from which an appeal has been taken by another employer to the board of standards and appeals or to the supreme court in the third judicial district, may obtain a stay of proceedings against him by providing a security in accordance with subdivisions three and four of this section within thirty days after the filing of the appeal by the other employer.

§ 658. Appeals from compliance orders. An appeal pursuant to section two hundred eighteen or two hundred nineteen of this chapter from an order issued by the commissioner directing compliance with any provision of this article or with any minimum wage order or regulation promulgated thereunder, shall not bring under review any minimum wage order or regulation promulgated under this article. The provisions of subdivision two of section six hundred fifty-seven relating to appeals from determinations of the board and the provisions of subdivisions three through seven of section six hundred fifty-seven shall apply to an appeal from a compliance order.

§ 659. Reconsideration of wage orders and regulations. 1. By wage board. At any time after a minimum wage order has been in effect for six months or more, the commissioner, on his own motion or on a petition of fifty or more residents of the state engaged in or affected by the occupation or occupations to which an order is applicable, may reconvene the same wage board or appoint a new wage board to recommend whether or not the minimum wage and regulations prescribed by such order should be modified, and the provisions of section six hundred fifty-five through six hundred fifty-seven shall thereafter apply.

2. By commissioner. The commissioner, without referral to the wage board, may, at any time after public hearing, by order propose such modifications of or additions to any regulations as he may deem appropriate to effectuate the purposes of this article. Notice of hearing and promulgation of any such order shall be published in accordance with the provisions contained in section six hundred fifty-six. Such order shall be effective thirty days after such publication and section six hundred fifty-seven shall thereafter apply.

§ 660. Commissioner's powers of investigation. The commissioner or his authorized representative shall have power: (a) to investigate the wages of persons in any occupation in the state;

(b) to enter the place of business or employment of any employer for the purpose of (1) examining and inspecting any and all books, registers, payrolls and other records that in any way relate to or have a bearing upon the wages paid to, or the hours worked by any employees, (2) ascertaining whether the provisions of this article and the orders and regulations promulgated hereunder are being complied with; and

(c) to require from any employer full and correct statements and reports in writing, at such times as the commissioner may deem necessary, of the wages paid to and the hours worked by his employees.

§ 661. Records of employers. For all employees covered by this article, every employer shall establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages for each employee, plus such other information as the commissioner deems material and necessary. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the payroll records must include the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the payroll records shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate. On demand, the employer shall furnish to the commissioner or his duly authorized representative a sworn statement of the hours worked, rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; and allowances, if any, claimed as part of the minimum wage, for each employee, plus such other information as the commissioner deems material and necessary. Every employer shall keep such records open to inspection by the commissioner or his duly authorized representative at any reasonable time. Every employer of an employee shall keep a digest and summary of this article or applicable wage order, which shall be prepared by the commissioner, posted in a conspicuous place in his establishment and shall also keep posted such additional copies of said digest and summary as the commissioner prescribes. Employers shall, on request, be furnished with copies of this article and of orders, and of digests and summaries thereof, without charge. Employers shall permit the commissioner or his duly authorized representative to question without interference any employee of such employer in a private location at the place of employment and during working hours in respect to the wages paid to and the hours worked by such employee or other employees.

§ 662. Penalties. 1. Failure to pay minimum wage or overtime compensation. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, who pays or agrees to pay to any employee less than the wage applicable under this article shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. Each payment to any employee in any week of less than the wage applicable under this article shall constitute a separate offense.

2. Failure to keep records. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, who fails to keep the records required under this article or to furnish such records or any information required to be furnished under this article to the commissioner or his or her authorized representative upon request, or who hinders or delays the commissioner or his or her authorized representative in the performance of his or her duties in the enforcement of this article, or refuses to admit the commissioner or his or her authorized representative to any place of employment, or falsifies any such records or refuses to make such records accessible to the commissioner or his or her authorized representative, or refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this article to the commissioner or his or her authorized representative, shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than five thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. Each day's failure to keep the records

requested under this article or to furnish such records or information to the commissioner or his or her authorized representative shall constitute a separate offense.

§ 663. Civil action. 1. By employee. If any employee is paid by his or her employer less than the wage to which he or she is entitled under the provisions of this article, he or she shall recover in a civil action the amount of any such underpayments, together with costs all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total of such underpayments found to be due. Any agreement between the employee, and the employer to work for less than such wage shall be no defense to such action.

2. By commissioner. On behalf of any employee paid less than the wage to which the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the full amount of the underpayment, plus costs, and unless the employer proves a good faith basis to believe that its underpayment was in compliance with the law, an additional amount as liquidated damages. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amount of underpayments found to be due the employee. In any action brought by the commissioner in a court of competent jurisdiction, liquidated damages shall be calculated as an amount equal to one hundred percent of underpayments found to be due the employee.

3. Limitation of time. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this article.

4. Attorneys' fees. In any civil action by an employee or by the commissioner, the employee or commissioner shall have the right to collect attorneys' fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal therefrom is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

§ 664. Referrals by employment agencies. No employment agency shall place or attempt to place any employee in an occupation at less than the wage applicable to such occupation under this article.

The term "employment agency" as used in this section shall mean an employment agency as defined in section one hundred seventy-one of the general business law.

§ 665. Savings clause. If any provision of this article or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.