

STATEMENTS OF POLICY

Title 34--LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 231]

Minimum Wage Increase and Training Wage

[37 Pa.B. 4880]

[Saturday, September 8, 2007]

The Department of Labor and Industry (Department), through its Bureau of Labor Law Compliance (Bureau), amends §§ 231.101--231.103 (relating to minimum wage increase; small business; and training wage) to read as set forth in Annex A. The statement of policy is amended under sections 4(a)(6)--(8) and (e) and 5(c) of The Minimum Wage Act of 1968 (act) (43 P. S. §§ 333.104(a)(6)--(8) and (e) and 333.105(c)), added by the act of July 9, 2006 (P. L. 1077, No. 112) (Act 112).

A. *Effective Date*

The amendments to this statement of policy will be effective immediately upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

The contact person for this statement of policy is James A. Holzman, Deputy Chief Counsel, Bureau of Labor Law Compliance, 10th Floor, Labor and Industry Building, 7th and Forster Streets, Harrisburg, PA 17120, (717) 787-4186, fax (717) 783-5027, jholzman@state.pa.us.

C. *Statutory Authority*

On July 9, 2006, amendments to sections 4(a)(6)--(8) and (e) and 5(c) of the act were approved which, among other things, raised the minimum wage, addressed the minimum wage for small business and provided a training wage for workers under 20 years of age. Following these legislative amendments, the Department published a statement of policy at 36 Pa.B. 6547 (October 28, 2006).

This statement of policy is published under the authority of section 9 of the act (43 P. S. § 333.109), which authorizes the Secretary of the Department to enforce the act and to draft and amend regulations that are deemed appropriate to carry out the act's provisions. This statement of policy contains an interpretation of the act, without enumerating further requirements, since

passage of amendments to the Fair Labor Standards Act of 1938 (FLSA) (29 U.S.C.A. §§ 201-219) raising the Federal minimum wage.

D. Purpose of the Statement of Policy

On May 25, 2007, the Federal Fair Minimum Wage Act of 2007 was signed into law. This act, among other things, amended the Federal minimum wage in section 6(a)(1) of FLSA (29 U.S.C.A. § 206(a)(1)). The Federal minimum wage was raised from \$5.15 to \$5.85 per hour on July 24, 2004, to \$6.55 per hour effective July 24, 2007, and to \$7.25 per hour effective July 24, 2009.

The Commonwealth's minimum wage does not change under section 4(a.1) of the act (43 P. S. § 333.104(a.1)) except when Federal law requires a higher minimum wage as described in this statement of policy. See also section 8 of the FLSA (29 U.S.C.A. § 218) and *Manliguez v. Joseph*, 226 F. Supp. 2d. 377 (E.D. N.Y. 2002).

Section 231.101 contains the required minimum wage for most employers and the effective dates. This section is amended to incorporate the raise in the Federal minimum wage which, at \$7.25 per hour, will be 10¢ higher than the Pennsylvania minimum wage on July 24, 2009. Accordingly, employers in this Commonwealth must utilize the higher Federal minimum wage on July 24, 2009, according to section 4(a.1) of the act.

Section 231.102 contains the interpretation of section 5(c) of the act pertaining to new minimum wage requirements for employers that have an employee complement of the equivalent of ten or less full-time employees based on a 40-hour workweek. Subsection (a) contains the minimum wage increase schedule for these employers. For clarity, this subsection is amended to reflect the increase of the Pennsylvania minimum wage to \$7.25 per hour on July 24, 2009.

Section 231.103 pertains to section 4(e) of the act when an employer may pay a 60-day training wage to an employee under 20 years of age. This training wage is based upon the Federal minimum wage under section 6(a) of the FLSA. Accordingly, this section was amended to reflect the raises in the Federal minimum wage from \$5.15 to \$5.85 per hour on July 24, 2007, and to \$6.55 per hour on July 24, 2008. The raise of the Federal minimum wage to \$7.25 effectively eliminates this training wage in this Commonwealth on July 24, 2009.

STEPHEN M. SCHMERIN,
Secretary

(Editor's Note: Title 34 of the Pa. Code is amended by amending statements of policy in §§ 231.101--231.103 to read as set forth in Annex A.)

Fiscal Note: 12-81. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART XII. BUREAU OF LABOR STANDARDS

CHAPTER 231. MINIMUM WAGE

MINIMUM WAGE INCREASE AND TRAINING WAGE--STATEMENT OF POLICY

§ 231.101. Minimum wage increase.

(a) Under section 4(a) of the act (43 P. S. § 104(a)), an employer shall pay the following wage rates to all employees for all hours worked subject to exclusions and exemptions contained in the act and this chapter:

- (1) Until December 31, 2006, \$5.15 an hour.
- (2) Beginning January 1, 2007, \$6.25 an hour.
- (3) Beginning July 1, 2007, \$7.15 an hour.
- (4) Beginning July 24, 2009, \$7.25 an hour.

(b) The minimum wage credit for tipped employees is \$2.83 per hour under section 3(d) of the act (43 P. S. § 333.103(d)) with all of the following conditions:

(1) An employer shall pay the difference when the employee's tips plus the credit for tipped employees does not meet the Pennsylvania minimum wage contained in subsection (a).

(2) The tip credit applies only if an employee received over \$30 in tips for a month.

§ 231.102. Small business.

(a) Under section 5(c) of the act (43 P. S. § 333.105(c)), an employer who has an employee complement comprised of the equivalent of ten or less full-time employees shall pay the following wage rates to all employees for all hours worked subject to exclusions and exemptions contained in the act and in this chapter:

- (1) Until December 31, 2006, \$5.15 an hour.
- (2) Beginning January 1, 2007, \$5.65 an hour.
- (3) Beginning July 1, 2007, \$6.65 an hour.
- (4) Beginning July 1, 2008, \$7.15 an hour.
- (5) Beginning July 24, 2009, \$7.25 an hour.

(b) The equivalent of ten or less full-time employees is calculated on a 40-hour workweek. A workweek is a period of 7 consecutive days starting on any day selected by the employer.

(c) If the total number of hours worked by all employees in a workweek exceeds 400 hours, the employer may not utilize the minimum wage contained in subsection (a). All of the following also applies:

(1) An employer may be ineligible for the minimum wage contained in subsection (a) if the total hours worked is less than 400 hours per workweek if the employer classifies employees as

full-time and the employees work less than 40 hours per week according to the employer's customary and regular practices.

(2) An employer's customary and regular practice is the employer's normal practice over time for scheduling and payment of employees.

(d) An owner is not considered an employee under this section. An employee includes all of the following:

- (1) A manager.
- (2) A supervisor.
- (3) An officer.
- (4) An individual employed by the employer.

(e) An employer is any individual, partnership, association, corporation, business trust or any person or groups of persons acting, directly or indirectly, in the interest of an employer in relation to any employee.

§ 231.103. Training wage.

(a) Under section 4(e) of the act (43 P. S. § 333.104(e)), an employer may pay a 60-day training wage to an employee under 20 years of age based upon the minimum wage required under section 6(a) of the Fair Labor Standards Act (29 U.S.C.A. § 206(a)).

(1) The training wage under section 4(e) of the act is as follows:

- (i) Until July 23, 2007, \$5.15 an hour.
- (ii) Beginning July 24, 2007, \$5.85 an hour.
- (iii) Beginning July 24, 2008, \$6.55 an hour.

(2) The training wage may not be utilized after July 23, 2009. An employer shall pay the minimum wage of \$7.25 to all employees subject to exclusions contained in the act commencing on July 24, 2009.

(b) An employer may pay an employee the training wage up to the day before the employee's 20th birthday. On and after an employee's 20th birthday, the employer shall increase the employee's pay to the minimum wage required under § 231.101 (relating to minimum wage increase) even if the 60-day period has not expired.

(c) The 60-day period is calculated as follows:

- (1) The 60-day period starts on the first day of work.
- (2) The 60-day period is counted as consecutive calendar days and not as days worked or business days.
- (3) A break in employment does not affect the calculation of the 60-day period of eligibility

and does not allow the employer to restart the 60-day period.

(4) An employee under 20 years old may be paid the training wage for up to 60 consecutive calendar days after initial employment with any employer and not just the first employer who hired the employee.

(5) An employee eligible for the training wage may be employed at the same time by more than one employer if the employers are separate and distinct.

(6) An employee may be initially employed only once by any one employer even if there are breaks in employment.

(d) An employer shall notify an employee at the time of hire of the training wage under this section and the right to receive the Pennsylvania minimum wage contained in § 231.101 after 60 calendar days or at the employee's 20th birthday if the employer utilizes this training wage.

(e) An employer may not take any action to displace or partially displace an existing employee to allow hiring of persons eligible for the training wage under this section. This includes any of the following:

(1) Reducing an employee's hours.

(2) Reducing an employee's wages or employment benefits.

(f) An employer may not do any of the following:

(1) Utilize the exclusions and exemptions contained in the act and this chapter if the employer is paying an employee the training wage under this section.

(2) Utilize the wage payment exclusions and exemptions of the act and this chapter for an employee when the 60-day training period has concluded or when the employee is ineligible for the training wage under this section. The employer shall pay the employee the minimum wage required under § 231.101 when the 60-day training period concludes or when the employee is ineligible for the training wage.

(g) An employer is not required to provide training to an employee paid the training wage under this section.

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