



## **129th MAINE LEGISLATURE**

### FIRST REGULAR SESSION-2019

**Legislative Document** 

No. 739

H.P. 544

House of Representatives, February 11, 2019

An Act To Help Small Businesses by Establishing an Alternate Minimum Wage

Reference to the Committee on Labor and Housing suggested and ordered printed.

R(+ B. Hunt

ROBERT B. HUNT Clerk

Presented by Representative RUDNICKI of Fairfield. Cosponsored by Senator CYRWAY of Kennebec and Representatives: BRADSTREET of Vassalboro, HANLEY of Pittston, STEWART of Presque Isle. 1 Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §42-B, sub-§1, ¶F, as enacted by PL 2017, c. 219, §2, is
 amended to read:

- F. Minimum wage and overtime provisions as described in section sections 664 and
  <u>664-A</u>.
- 6 Sec. 2. 26 MRSA §664, sub-§2, as amended by PL 2017, c. 272, §1, is further 7 amended to read:

8 2. Tip credit. An employer may consider tips as part of the wages of a service 9 employee, but such a tip credit may not exceed 50% of the minimum hourly wage 10 established in this section, or, if applicable, section 664-A, except that from January 1, 2017 to December 31, 2017, the minimum cash wage paid directly to a tipped service 11 12 employee may not be less than \$5.00 per hour. An employer who elects to use the tip credit must inform the affected employee in advance, as provided for in this subsection, 13 and must be able to show that the employee receives at least the minimum hourly wage 14 when direct wages and the tip credit are combined within the established 7-day 15 workweek. Upon a satisfactory showing by the employee or the employee's 16 representative that the actual tips received were less than the tip credit, the employer shall 17 increase the direct wages by the difference. 18

- The tips received by a service employee become the property of the employee and may 19 not be shared with the employer. Tips that are automatically included in the customer's 20 bill or that are charged to a credit card must be treated like tips given to the service 21 22 employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting 23 reimbursement from a credit card company. The employer may not deduct any amount 24 from employee tips charged to a credit card, including, but not limited to, service fees 25 assessed to the employer in connection with the credit card transaction. 26
- An employer who elects to use the tip credit must inform the affected employee in advance, either orally or in writing, of the following information:
- A. The amount of the direct wage to be paid by the employer to the tipped employee;
- 30 B. The amount of tips to be credited as wages toward the minimum wage;
- C. That the amount of tips to be credited as wages may not exceed the value of the tips actually received by the employee;
- D. That all tips received by the affected employee must be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips in accordance with subsection 2-A;
- E. That the tip credit may not apply to any employee who has not been informed by the employer of the provisions for a tip credit; and
- F. If the employer uses a tip pooling arrangement, any required tip pool contributionamount from the employee.

1 Sec. 3. 26 MRSA §664-A is enacted to read:

#### 2 §664-A. Alternate minimum wages

**1. Small employer; defined.** As used in this section, unless the context otherwise
 indicates, "small employer" means an employer whose annual gross sales made or
 business conducted is less than \$500,000, exclusive of sales and excise taxes collected at
 the retail level.

# 7 2. Minimum wages for employees of small employers, certain employees in 8 training and minor employees. Notwithstanding section 664, the minimum hourly 9 wage:

- 10A. For an employee of a small employer, starting January 1, 2020, is \$9.75. Starting11January 1, 2021, and every January 1st thereafter, the minimum hourly wage then in12effect pursuant to this paragraph must be increased by the increase, if any, in the cost13of living as determined in section 664, subsection 1;
- B. For an employee under 20 years of age, during the first 90 consecutive days of employment, starting January 1, 2020, is \$9.75. Starting January 1, 2021, and every January 1st thereafter, the minimum hourly wage then in effect pursuant to this paragraph must be increased by the increase, if any, in the cost of living as determined in section 664, subsection 1; and
- C. For an employee under 18 years of age, starting January 1, 2020, is \$9.75.
  Starting January 1, 2021, and every January 1st thereafter, the minimum hourly wage
  then in effect pursuant to this paragraph must be increased by the increase, if any, in
  the cost of living as determined in section 664, subsection 1.

3. Prohibition. An employer may not take any action to displace an employee,
 including a partial displacement through a reduction in hours, wages or employment
 benefits, in order to hire another employee at a wage authorized by this section.

26

#### SUMMARY

This bill creates an alternate minimum wage applicable to employees of a small employer, to the first 90 consecutive days of employment for employees who are under 20 years of age and to employees who are under 18 years of age. The wage is \$9.75 30 starting January 1, 2020 and will be increased by any increase in the cost of living 31 starting January 1, 2021 and every subsequent January 1st.