

REFERENCE TITLE: minimum wage; fast food employees

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2546

Introduced by
Representatives Andrade, Alston, Benally, Cardenas, Gabaldón, Hale,
Mendez, Saldate, Velasquez: Clark, Espinoza, Fernandez, Gonzales, McCune
Davis, Plumlee, Rios, Steele

AN ACT

REPEALING SECTION 23-204, ARIZONA REVISED STATUTES; REPEALING SECTION 23-362, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1997, CHAPTER 51, SECTION 1; AMENDING SECTION 23-362, ARIZONA REVISED STATUTES, AS ADDED BY PROPOSITION 202, SECTION 2, ELECTION OF NOVEMBER 7, 2006; AMENDING SECTION 23-363, ARIZONA REVISED STATUTES; RELATING TO THE MINIMUM WAGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 A. Section 23-204, Arizona Revised Statutes, is repealed.

4 B. Subject to the requirements of article IV, part 1, section 1,
5 Constitution of Arizona, section 23-362, Arizona Revised Statutes, as added
6 by Laws 1997, chapter 51, section 1, is repealed.

7 Sec. 2. Subject to the requirements of article IV, part 1, section 1,
8 Constitution of Arizona, section 23-362, Arizona Revised Statutes, as added
9 by Proposition 202, section 2, election of November 7, 2006, is amended to
10 read:

11 23-362. Definitions

12 As used in this article, unless the context otherwise requires:

13 ~~G.~~ 1. "Commission" means the industrial commission of Arizona, any
14 successor agency, or such other agency as the governor shall designate to
15 implement this article.

16 ~~D.~~ 2. "Employ" includes to suffer or permit to work; whether a person
17 is an independent contractor or an employee shall be determined according to
18 the standards of the federal fair labor standards act, but the burden of
19 proof shall be upon the party for whom the work is performed to show
20 independent contractor status by clear and convincing evidence.

21 ~~A.~~ 3. "Employee" means any person who is or was employed by an
22 employer but does not include any person who is employed by a parent or a
23 sibling, or who is employed performing babysitting services in the employer's
24 home on a casual basis.

25 ~~B.~~ 4. "Employer" includes any corporation, proprietorship,
26 partnership, joint venture, limited liability company, trust, association,
27 political subdivision of the state, individual or other entity acting
28 directly or indirectly in the interest of an employer in relation to an
29 employee, but does not include the state of Arizona, the United States, or a
30 small business.

31 5. "FAST FOOD EMPLOYEE" MEANS ANY PERSON WHO IS EMPLOYED BY A FAST
32 FOOD EMPLOYER AND WHOSE JOB DUTIES INCLUDE AT LEAST ONE OF THE FOLLOWING:

- 33 (a) CUSTOMER SERVICE.
- 34 (b) COOKING.
- 35 (c) FOOD OR DRINK PREPARATION.
- 36 (d) DELIVERY.
- 37 (e) SECURITY.
- 38 (f) STOCKING SUPPLIES OR EQUIPMENT.
- 39 (g) CLEANING.
- 40 (h) ROUTINE MAINTENANCE.

41 6. "FAST FOOD EMPLOYER" MEANS ANY ESTABLISHMENT THAT HAS OR IS A PART
42 OF A CHAIN OR FRANCHISE THAT HAS AT LEAST THIRTY ESTABLISHMENTS NATIONALLY
43 AND THAT SERVES FOOD AND DRINK AS ITS PRIMARY PURPOSE, OFFERS LIMITED
44 SERVICE, ALLOWS PATRONS TO ORDER AND PAY FOR FOOD OR DRINK ITEMS BEFORE

EATING AND ALLOWS FOOD OR DRINK ITEMS TO BE CONSUMED ON THE PREMISES, TAKEN OUT OR DELIVERED TO THE CONSUMER.

~~F.~~ 7. "Law enforcement officer" means the attorney general, a city attorney, a county attorney or a town attorney.

~~E.~~ 8. "Small business" means any corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than five hundred thousand dollars in gross annual revenue and that is exempt from having to pay a minimum wage under section 206(a) of title 29 of the United States Code.

~~E.~~ 9. "Wage" means monetary compensation due to an employee by reason of employment, including an employee's commissions, but not tips or gratuities.

Sec. 3. Subject to the requirements of article IV, part 1, section 1, Constitution of Arizona, section 23-363, Arizona Revised Statutes, is amended to read:

23-363. Minimum wage

A. Employers shall pay employees no less than the minimum wage, which shall be six dollars and seventy-five cents (\$6.75) an hour beginning on January 1, 2007.

B. The minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, ~~U.S.~~ UNITED STATES city average for all items) or its successor index as published by the ~~U.S.~~ UNITED STATES department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents.

C. For any employee who customarily and regularly receives tips or gratuities from patrons or others, the employer may pay a wage up to \$3.00 per hour less than the minimum wage if the employer can establish by ~~its~~ THE EMPLOYER'S records of charged tips or by the employee's declaration for federal insurance contributions act (FICA) purposes that for each week, when adding tips received to wages paid, the employee received not less than the minimum wage for all hours worked. Compliance with this ~~provision~~ SUBSECTION will be determined by averaging tips received by the employee over the course of the employer's payroll period or any other period selected by the employer that complies with regulations adopted by the commission.

D. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, THE MINIMUM WAGE THAT A FAST FOOD EMPLOYER SHALL PAY A FAST FOOD EMPLOYEE IS AS FOLLOWS:

1. BEGINNING FROM AND AFTER DECEMBER 31, 2016 THROUGH DECEMBER 31, 2017, NINE DOLLARS PER HOUR.

2. BEGINNING FROM AND AFTER DECEMBER 31, 2017 THROUGH DECEMBER 31, 2018, TEN DOLLARS PER HOUR.

1 3. BEGINNING FROM AND AFTER DECEMBER 31, 2018 THROUGH DECEMBER 31,
2 2019, ELEVEN DOLLARS PER HOUR.

3 4. BEGINNING FROM AND AFTER DECEMBER 31, 2019 THROUGH DECEMBER 31,
4 2020, TWELVE DOLLARS PER HOUR.

5 5. BEGINNING FROM AND AFTER DECEMBER 31, 2020 THROUGH DECEMBER 31,
6 2021, THIRTEEN DOLLARS PER HOUR.

7 6. BEGINNING FROM AND AFTER DECEMBER 31, 2021 THROUGH DECEMBER 31,
8 2022, FOURTEEN DOLLARS PER HOUR.

9 7. BEGINNING FROM AND AFTER DECEMBER 31, 2022, FIFTEEN DOLLARS PER
10 HOUR.

11 E. IF THE COST OF LIVING INCREASE PROVIDED BY SUBSECTION B OF THIS
12 SECTION WOULD RESULT IN A MINIMUM WAGE THAT IS MORE THAN THE MINIMUM WAGE FOR
13 A FAST FOOD EMPLOYEE PROVIDED BY SUBSECTION D OF THIS SECTION, THE MINIMUM
14 WAGE FOR A FAST FOOD EMPLOYEE SHALL BE WHICHEVER WAGE IS HIGHER.

15 Sec. 4. Requirements for enactment; three-fourths vote

16 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
17 section 23-362, Arizona Revised Statutes, as added by Laws 1997, chapter 51,
18 section 1 and repealed by this act, section 23-362, Arizona Revised Statutes,
19 as added by Proposition 202, section 2, election of November 7, 2006, and
20 amended by this act, and section 23-363, Arizona Revised Statutes, as amended
21 by this act, are effective only on the affirmative vote of at least
22 three-fourths of the members of each house of the legislature.