

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 891
May 4, 2021
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10437-LR-127

Short Title: Up Minimum Wages/No Subminimum or Exemptions. (Public)

Sponsors: Representative Hawkins.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT INCREASING THE REGULAR MINIMUM WAGE TO FIFTEEN DOLLARS PER
3 HOUR BY 2023, INCREASING AND PHASING OUT THE TIPPED EMPLOYEE
4 MINIMUM WAGE THROUGH 2025, PROVIDING FOR INFLATIONARY
5 ADJUSTMENTS TO THE MINIMUM WAGE BASED UPON INCREASES IN THE
6 CONSUMER PRICE INDEX, REPEALING THE SUBMINIMUM WAGE FOR
7 SPECIFIED WORKERS, AND REPEALING EXEMPTIONS FROM THE MINIMUM
8 WAGE FOR AGRICULTURAL AND DOMESTIC WORKERS.

9 The General Assembly of North Carolina enacts:

10
11 **INCREASE STATE MINIMUM WAGE/INFLATION ADJUSTMENT/REPEAL**
12 **SUBMINIMUM WAGE PROVISIONS**

13 **SECTION 1.** G.S. 95-25.3 reads as rewritten:

14 **"§ 95-25.3. Minimum wage.**

15 (a) Every employer shall pay to each employee who in any workweek performs any work,
16 wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in
17 paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage
18 may change from time to time, whichever is higher, except as otherwise provided in this
19 section:the following amounts:

- 20 (1) Effective January 1, 2022, ten dollars and thirty-five cents (\$10.35) per hour
21 or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor
22 Standards Act, 29 U.S.C. § 206(a)(1), as that wage may change from time to
23 time, whichever is higher, except as otherwise provided in this section.
24 (2) Effective January 1, 2023, fifteen dollars (\$15.00) per hour or the minimum
25 wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act,
26 29 U.S.C. § 206(a)(1), as that wage may change from time to time, whichever
27 is higher, except as otherwise provided in this section.
28 (3) Beginning September 30, 2023, and on each September 30 thereafter, the
29 Commissioner of Labor shall calculate an adjusted minimum wage rate using
30 the Consumer Price Index (All 29 Urban Consumers, U.S. City Average for
31 All Items), CPI-I, or its successor index, as calculated by the U.S. Department
32 of Labor for the 12-month period preceding the previous September 1. Each
33 adjusted minimum wage rate calculated shall be published on September 30
34 and take effect on the following January 1.

35 (b) ~~In order to prevent curtailment of opportunities for employment, the wage rate for~~
36 ~~full-time students, learners, apprentices, and messengers, as defined under the Fair Labor~~



Standards Act, shall be ninety percent (90%) of the rate in effect under subsection (a) above, rounded to the lowest nickel.

(e) The Commissioner, in order to prevent curtailment of opportunities for employment, may, by regulation, establish a wage rate less than the wage rate in effect under section (a) which may apply to persons whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, as such persons are defined under the Fair Labor Standards Act.

(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (i) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are, receiving Work First Family Assistance or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for such subminimum wage shall be issued by the Division of Employment Security.

The regulation issued by the Commissioner shall not permit employment at the subminimum rate for a period in excess of 52 weeks.

(e) The Commissioner, in order to prevent curtailment of opportunities for employment, and to not adversely affect the viability of seasonal establishments, may, by regulation, establish a wage rate not less than eighty five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) that shall apply to any employee employed by an establishment that is a seasonal food service establishment.

(f) Tips earned by a tipped employee may be counted as wages only up to the amount permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped employee is notified in advance, is permitted to retain all tips and the employer maintains accurate and complete records of tips received by each employee as such tips are certified by the employee monthly or for each pay period. Even if the employee refuses to certify tips accurately, tips may still be counted as wages when the employer complies with the other requirements of this section and can demonstrate by monitoring tips that the employee regularly receives tips in the amount for which the credit is taken. Tip pooling shall also be permissible among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling arrangement.

(g) Repealed by Session Laws 2006-259, s. 18, effective August 23, 2006."

INCREASE TIPPED EMPLOYEE MINIMUM WAGE

SECTION 2.(a) Effective January 1, 2022, until December 31, 2022, G.S. 95-25.3(f) reads as rewritten:

"(f) Tips earned by a tipped employee may be counted as wages only up to the amount permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped employee is notified in advance, is permitted to retain all tips and the employer maintains accurate and complete records of tips received by each employee as such tips are certified by the employee monthly or for each pay period. Even if the employee refuses to certify tips accurately, tips may still be counted as wages when the employer complies with the other requirements of this section and can demonstrate by monitoring tips that the employee regularly receives tips in the amount for which the credit is taken. of six dollars and fifty cents (\$6.50) per hour. Tip pooling shall also be is permissible among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling arrangement."

SECTION 2.(b) Effective January 1, 2023, until December 31, 2023, G.S. 95-25.3(f) reads as rewritten:

1 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
2 ~~six dollars and fifty cents (\$6.50)~~ nine dollars and fifty cents (\$9.50) per hour per hour. Tip
3 pooling is permissible among employees who customarily and regularly receive tips; however,
4 no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
5 arrangement."

6 **SECTION 2.(c)** Effective January 1, 2024, until December 31, 2024, G.S. 95-25.3(f)
7 reads as rewritten:

8 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
9 ~~nine dollars and fifty cents (\$9.50)~~ twelve dollars and fifty cents (\$12.50) per hour. Tip pooling
10 is permissible among employees who customarily and regularly receive tips; however, no
11 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
12 arrangement."

13 **SECTION 2.(d)** Effective January 1, 2025, G.S. 95-25.3(f) reads as rewritten:

14 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
15 ~~twelve dollars and fifty cents (\$12.50)~~ fifteen dollars (\$15.00) per hour. Tip pooling is
16 permissible among employees who customarily and regularly receive tips; however, no
17 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
18 arrangement."

19 **SECTION 2.(e)** Effective January 1, 2026, G.S. 95-25.3(f) reads as rewritten:

20 "(f) ~~Tips earned by a tipped employee may be counted as wages only up to the amount of~~
21 fifteen dollars (\$15.00) per hour. Beginning January 1, 2026, the minimum wage rate of a tipped
22 employee is the amount set under subdivision (3) of subsection (a) of this section, and tips shall
23 not be counted as wages. Tip pooling is permissible among employees who customarily and
24 regularly receive tips; ~~however, no tips. No employee's tips wages may be reduced by more than~~
25 fifteen percent (15%) under a tip pooling arrangement."
26

27 **REPEAL EXEMPTIONS FOR AGRICULTURAL AND DOMESTIC WORKERS**

28 **SECTION 3.** G.S. 95-25.14 reads as rewritten:

29 **"§ 95-25.14. Exemptions.**

30 (a) The provisions of G.S. 95-25.3 (Minimum Wage), ~~G.S. 95-25.4~~ (Overtime), and
31 ~~G.S. 95-25.5~~ (Youth Employment), and the provisions of G.S. 95-25.15(b) (Record Keeping) as
32 they relate to these exemptions, do not apply ~~to~~ to any of the following:

- 33 (1) Any person employed in an enterprise engaged in commerce or in the
34 production of goods for commerce as defined in the Fair Labor Standards Act:
 - 35 a. Except as otherwise specifically provided in
36 ~~G.S. 95-25.5;G.S. 95-25.5.~~
 - 37 b. Notwithstanding the above, any employee other than a learner,
38 apprentice, student, or handicapped worker as defined in the Fair
39 Labor Standards Act who is not otherwise exempt under the other
40 provisions of this section, and for whom the applicable minimum wage
41 under the Fair Labor Standards Act is less than the minimum wage
42 provided in G.S. 95-25.3, is not exempt from the provisions of
43 G.S. 95-25.3 or ~~G.S. 95-25.4;G.S. 95-25.4.~~
 - 44 c. Notwithstanding the above, any employer or employee exempt from
45 the minimum wage, overtime, or child labor requirements of the Fair
46 Labor Standards Act for whom there is no comparable exemption
47 under this Article shall not be exempt under this subsection except that
48 where an exemption in the Fair Labor Standards Act provides a
49 method of computing overtime which is an alternative to the method
50 required in 29 U.S.C.S. § 207(a), the employer or employee subject to
51 that alternate method shall be exempt from the provisions of

1 G.S. 95-25.4(a); provided that, persons not employed at an enterprise
2 described in subdivision (1) of this subsection shall also be subject to
3 the same alternative methods of overtime calculation in the
4 circumstances described in the Fair Labor Standards Act exemptions
5 providing those alternative ~~methods;~~methods.

6 (2) ~~Any person employed in agriculture, as defined under the Fair Labor~~
7 ~~Standards Act;~~

8 (3) ~~Any person employed as a domestic, including baby sitters and companions,~~
9 ~~as defined under the Fair Labor Standards Act;~~

10 (4) Any person employed as a page in the North Carolina General Assembly or
11 in the Governor's ~~Office;~~Office.

12 (5) Bona fide volunteers in medical, educational, religious, or nonprofit
13 organizations where an employer-employee relationship does not ~~exist;~~exist.

14 (6) Persons confined in and working for any penal, correctional or mental
15 institution of the State or local ~~government;~~government.

16 (7) Any person employed as a model, or as an actor or performer in motion
17 pictures or theatrical, radio or television productions, as defined under the Fair
18 Labor Standards Act, except as otherwise specifically provided in
19 ~~G.S. 95-25.5;~~G.S. 95-25.5.

20 (8) Any person employed by an outdoor drama in a production role, including
21 lighting, costumes, properties and special effects, except as otherwise
22 specifically provided in G.S. 95-25.5; but this exemption does not include
23 such positions as office workers, ticket takers, ushers and parking lot
24 attendants.

25 (b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and
26 the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not
27 apply ~~to~~to any of the following:

28 (1) Any employee of a boys' or girls' summer camp or of a seasonal religious or
29 nonprofit educational conference ~~center;~~center.

30 (2) Any person employed in the catching, processing or first sale of seafood, as
31 defined under the Fair Labor Standards ~~Act;~~Act.

32 (3) The spouse, child, or parent of the employer or any person qualifying as a
33 dependent of the employer under the income tax laws of North
34 ~~Carolina;~~Carolina.

35 (4) Any person employed in a bona fide executive, administrative, professional
36 or outside sales capacity, as defined under the Fair Labor Standards ~~Act;~~Act.

37 (5) Repealed by Session Laws 1989, c. 687, s. 2.

38 (6) Any person while participating in a ridesharing arrangement as defined in
39 ~~G.S. 136-44.21;~~G.S. 136-44.21.

40 (7) Any person who is employed as a computer systems analyst, computer
41 programmer, software engineer, or other similarly skilled worker, as defined
42 in the Fair Labor Standards Act.

43 (b1) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and
44 the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to the exemptions provided
45 for in this subsection, do not apply to any of the following:

46 (1) Hours worked as a bona fide volunteer firefighter in an incorporated, nonprofit
47 volunteer or community fire department.

48 (2) Hours worked as a bona fide volunteer rescue and emergency medical services
49 personnel in an incorporated, nonprofit volunteer or community fire
50 department, or an incorporated, nonprofit rescue squad.

1 Hours worked in accordance with this subsection shall not be considered hours worked for
2 purposes of G.S. 95-25.3 or G.S. 95-25.4.

3 (c) The provisions of G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b)
4 (Record Keeping) as they relate to this exemption, do not apply to:

5 (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair
6 Labor Standards ~~Act~~; Act.

7 (2) Taxicab ~~drivers~~; drivers.

8 (3) Seamen, employees of railroads, and employees of air carriers, as defined
9 under the Fair Labor Standards ~~Act~~; Act.

10 (4) Salespersons, mechanics and partsmen employed by automotive, truck, and
11 farm implement dealers, as defined under the Fair Labor Standards ~~Act~~; Act.

12 (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under
13 the Fair Labor Standards ~~Act~~; Act.

14 (6) Live-in child care workers or other live-in employees in homes for dependent
15 ~~children~~; children.

16 (7) Radio and television announcers, news editors, and chief engineers, as defined
17 under the Fair Labor Standards Act.

18 (8) Any employee of a seasonal amusement or recreational establishment.

19 (d) The provisions of this Article do not apply to the State of North Carolina, any city,
20 town, county, or municipality, or any State or local agency or instrumentality of government,
21 except for the following provisions, which do apply:

22 (1) The minimum wage provisions of ~~G.S. 95-25.3~~; G.S. 95-25.3.

23 (2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable
24 ~~provisions~~; provisions.

25 (3) The exemptions of subsections (a) and (b) of this ~~section~~; section.

26 (4) The complainant protection provisions of G.S. 95-25.20.

27 (e) Employment in a seasonal recreation program by the State of North Carolina, any
28 city, town, county, or municipality, or any State or local agency or instrumentality of government,
29 is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage)."
30

31 EFFECTIVE DATE

32 SECTION 4. Except as otherwise provided, this act is effective when it becomes
33 law.