

AN ACT to require responsible business practices by large employers regarding wages and benefits and amending and supplementing Title 34 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey

1. (New section) The Legislature finds and declares that:

a. The State has the authority to adopt laws to protect the health, safety and welfare of its citizens;

b. It is the policy of the State to maintain and improve wage and benefit standards;

c. In the past, large employers in this State provided their employees with wages and benefits at levels sufficient to provide decent living standards for those employees and their families;

d. That historic trend changed with the recent rise of certain large employers who operate superstore retail establishments with substandard wages and benefits that create destructive competition forcing many other employers to either do the same or be driven out of business;

e. Superstore retail operators conduct operations on such a large scale that they may, without proper regulation, have a significant adverse effect on the economic standards and civic life of communities in the State;

f. Taxpayers are often subject to increased costs when businesses that provide health care to their employees are replaced by those that do not and instead rely on city health clinics, public hospitals, and publicly funded programs such as Kid Care, Family Care, the Health Care Subsidy Fund and Medicaid to provide health care to their employees;

g. Most of the State's large employers continue to provide employment which pays living wages and benefits, suitable to support the well-being of families;

h. It is appropriate to set standards that large employers, with their key position in the economy, continue a leadership role in providing high-quality employment for a highly productive core of the workforce in the State;

i. To safeguard the public welfare, health, safety and prosperity of the citizens of the State, it is essential that large employers provide a living wage, along with the benefits required for employees to take care of their families, and that those standards bring the growing superstore retail sector in line with high-road employment practices common to most large employers in the State.

2. (New section) For the purposes of this act:

"Benefits" means payments for benefits made by an employer to or for its employees, including, but not limited to, medical, hospital, or other health care benefits, life insurance, or accident insurance,

pension benefits, apprenticeship or other training and education benefits, or other bona fide fringe benefits, except that "benefits" does not include any payment made by the employer for unemployment compensation, workers' compensation or temporary disability benefits, Social Security benefits, or any other employee benefits which the business is required by State or federal law to pay, and "benefits" does not include any payroll deductions or other costs paid by employees for the benefits and does not include salaries or wages, supplemental wages or paid time off.

"Department" means the Department of Labor and Workforce Development.

"Employee" means any person engaged in service for wages, salary or other compensation at a location in the State to an employer on a full or part-time, temporary, or seasonal basis, and including a contracted worker, contingent worker or worker made available to work through the services of a temporary services agency, staffing agency, employment agency or similar entity.

"Federal poverty guidelines" means the official poverty level based on family size, established and adjusted under section 673 (2) of Subtitle B of the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C. 9902 (2)).

"Large employer" means any person or corporation, partnership, individual proprietorship, limited liability company, joint venture, firm, company, association, trust or other similar legal entity, including any subsidiary of the entity, which engages the services of 10,000 or more employees in New Jersey and who directly, or indirectly through the services of a temporary services agency, staffing agency, employment agency or similar entity, pays the employee's wages, salaries or other compensation, except that "large employer" shall not include the federal government, this State or another state, or any political subdivision of this State.

3. (New section) a. Beginning on the effective date of this act, every large employer shall pay each of its employees a wage which is not less than a living wage rate of \$9.68 per hour for each hour worked for the employer in the State, and shall provide each employee not less than a benefit supplement rate of \$4.17 per hour. The employer may comply with the provisions of this section by either:

(1) Paying the living wage to the employee and providing to the employee a package of benefits where the employer's contribution to the cost of the benefits is not less than the benefits supplement rate for each hour worked by the employee; or

(2) Paying the employee at a wage rate not less than the sum of the living wage and the benefits supplement rate.

To prevent inflation from eroding their value, beginning on July 1 of 2006 and on July 1 of each year thereafter, the living wage and the benefits supplement rate shall be increased by an amount

corresponding to the prior year's increase, if any, in federal poverty guidelines for a family of four. The living wage and the benefits supplement rate required by this subsection a. shall apply to full time and part time workers.

b. No employer may fund wage or benefit increases required by this act, or otherwise respond to the requirements of this act, by reducing wages, health insurance, pension, vacation, sick time, or other non-wage benefits of any employee.

c. The department shall make available to large employers a written notice of employee rights and the current living wage and benefit supplements rates established pursuant to this section. Each large employer shall post copies of the notice in conspicuous places in every workplace or job site in a retail superstore establishment.

d. Large employers shall retain payroll and benefit records pertaining to employees for a period of four years, and shall allow the department access to such records, with appropriate notice, to monitor compliance with the requirements of this act.

e. No requirement of this section shall apply to employees covered by a bona fide collective bargaining agreement entered into after the effective date of this act to the extent that the requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms that expressly make reference to this act, or to employees covered by a bona fide collective bargaining agreement entered into upon or prior to the effective date of this act to the extent that the requirements are contrary to any provision of the collective bargaining agreement.

4. (New section) It shall be a violation of this act for an employer or any other party to discriminate in any manner or take adverse action against any individual in retaliation for exercising rights protected under this act or for informing employees of any legal rights under this act or any other law. Rights protected under this act include, but are not limited to: the right to file a complaint or inform any individual about any party's alleged noncompliance with this act or any other law; and the right to inform any individual of his rights under this act or other law and to assist him in asserting such rights. Protections of this act shall apply to any individual who mistakenly, but in good faith, alleges noncompliance with this act or any other law. Taking adverse action against an individual within 90 days of the individual's exercise of rights protected under this act shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights.

5. (New section) The department may investigate any possible violation of this act by a large employer or other person. Where the department has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the

violation, halt the continuation of any actions which are in violation, or maintain the status quo pending completion of a full investigation. Where the department, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, the payment of any back wages or benefits unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$100 to each employee or individual whose rights under this act were violated for each day or portion thereof that the violation occurred or continued. Where prompt compliance is not forthcoming, the department may take any appropriate enforcement action to secure compliance, including initiating a civil action and, except where prohibited by state or federal law, instructing State agencies or departments to revoke or suspend any registration certificates, permits or licenses held or requested by the employer or person until the violation is remedied. In order to compensate the State for the costs of investigating and remedying the violation, the department may also order the violating employer or person to pay to the state a sum of not more than \$100 for each day or portion thereof for each employee or individual as to whom the violation occurred or continued, and the sums paid shall be allocated to the department and used to offset the costs of implementing and enforcing this act. An employee or other individual may report to the department in writing any suspected violation of this act.

6. (New section) The department or any individual aggrieved by a violation of this act, any entity a member of which is aggrieved by a violation of this act, or any membership organization that represents employees, may bring a civil action in a court of competent jurisdiction against an employer or other person violating this act and, upon prevailing, shall be entitled to legal or equitable relief appropriate to remedy the violation including, but not limited to, the payment of any back wages unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of \$100 to each employee or individual whose rights under this act were violated for each day in which the violation occurred or continued, reinstatement in employment, compensatory damages and declaratory and injunctive relief, and reasonable attorneys' fees and costs. An employer shall be jointly liable for violations of this act by its subcontractors. If an employer brings an action against an individual or group for engaging in any of the activities enumerated in this section and the defendant prevails, the defendant shall recover reasonable attorneys' fees and costs.

7. (New section) This act provides for the payment of minimum wage and benefit rates shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation,

requirement, policy or standard of the State or of any political subdivision or other instrumentality of the State that provides for payment of higher or additional wages or benefits.

8. (New section) The department shall adopt regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to implement the provisions of this act

9. Section 5 of P.L.1966, c.113 (C.34:11-56a4) is amended to read as follows:

5. Every employer shall pay to each of his employees wages at a rate of not less than \$5.05 per hour as of April 1, 1992 and, after January 1, 1999 the federal minimum hourly wage rate set by section 6(a)(1) of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206(a)(1)), and, as of October 1, 2005, \$6.15 per hour, and as of October 1, 2006, \$7.15 per hour for 40 hours of working time in any week and 1 1/2 times such employee's regular hourly wage for each hour of working time in excess of 40 hours in any week, except this overtime rate shall not include any individual employed in a bona fide executive, administrative, or professional capacity or, if an applicable wage order has been issued by the commissioner under section 17 (C.34:11-56a16) of this act, not less than the wages prescribed in said order. The wage rates fixed in this section shall not be applicable to part-time employees primarily engaged in the care and tending of children in the home of the employer, to persons under the age of 18 not possessing a special vocational school graduate permit issued pursuant to section 15 of P.L.1940, c.153 (C.34:2-21.15), or to persons employed as salesmen of motor vehicles, or to persons employed as outside salesmen as such terms shall be defined and delimited in regulations adopted by the commissioner, or to persons employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association which conducts or participates in that fair.

The provisions of this section for the payment to an employee of not less than 1 1/2 times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week shall not apply to employees engaged to labor on a farm or employed in a hotel or to an employee of a common carrier of passengers by motor bus or to a limousine driver who is an employee of an employer engaged in the business of operating limousines or to employees engaged in labor relative to the raising or care of livestock.

Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid for each day worked not less than the minimum hourly wage rate multiplied by the total number of hours worked.

Full-time students may be employed by the college or university at

which they are enrolled at not less than 85% of the effective minimum wage rate.

Notwithstanding the provisions of this section to the contrary, every trucking industry employer shall pay to all drivers, helpers, loaders and mechanics for whom the Secretary of Transportation may prescribe maximum hours of work for the safe operation of vehicles, pursuant to section 31502(b) of the federal Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less than 1 1/2 times the minimum wage required pursuant to this section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking industry shall be paid no less than the minimum wage rate as provided in this section and N.J.A.C. 12:56-3.1. As used in this section, "trucking industry employer" means any business or establishment primarily operating for the purpose of conveying property from one place to another by road or highway, including the storage and warehousing of goods and property. Such an employer shall also be subject to the jurisdiction of the Secretary of Transportation pursuant to the federal Motor Carrier Act, 49 U.S.C.s.31501 et seq., whose employees are exempt under section 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29 U.S.C. s.213(b)(1), which provides an exemption to employees regulated by section 207 of the federal "Fair Labor Standards Act of 1938," 29 U.S.C.s.207, and the Interstate Commerce Act, 49 U.S.C.s.501 et al.

The provisions of this section shall not be construed as prohibiting any political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing any standard [for vendors, contractors and subcontractors of the subdivision] regarding wage rates or overtime compensation which is higher than the standards provided for in this section, and no provision of any other State or federal law establishing a minimum standard regarding wages or other terms and conditions of employment shall be construed as preventing a political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing a standard [for vendors, contractors and subcontractors of the subdivision] which is higher than the State or federal law or which otherwise provides greater protections or rights to employees [of the vendors, contractors and subcontractors of the subdivision], unless the State or federal law expressly prohibits the subdivision from adopting the ordinance, resolution, regulation or rule, or entering into the agreement.
(cf: P.L.2005, c.70, s.1)

10. (New section) This act shall take effect on the 90th day after it is adopted.

STATEMENT

This bill requires any private business which employs 10,000 or more employees in the State to pay those employees a living wage rate of not less than \$9.68 per hour and a benefit rate of not less than \$4.17 per hour.

The \$9.68 living wage indicated by the bill is the hourly wage which, based on a full-time work year of 2,000 hours of work, is sufficient to provide an annual income equal to the federal poverty guideline for a family of four in 2005. The \$4.17 benefit rate is based on the average amount paid by employers who provide health insurance to employees, plus the average additional amount for other benefits, not counting benefits which the employer is required by law to pay, and not counting supplemental wages or paid time off. The bill requires that the wage and benefit levels be annually increased by amounts corresponding to increases in federal poverty guidelines.

The pay and benefit requirements of the bill do not apply to employees covered by a collective bargaining agreement entered into after the effective date of the bill if the requirements are waived in the agreement, or to employees covered by a collective bargaining agreement entered into upon or prior to the effective date of this act to the extent that the requirements are contrary to the agreement.

The bill states that it is not to be construed as preempting, limiting or affecting the applicability of any other law, regulation or standard of the State or any of its subdivisions or instrumentalities for payment of higher or additional wages or benefits. The bill also amends the "New Jersey State Wage and Hour Law," P.L.1961, c113 (C.34:11-56a1 et seq.) to expressly affirm that law does not prevent higher wage or other standards at the local level. Currently, that law protects the right of local governmental entities to set higher wage standards for employers contracting with those entities, but does not directly address higher wage and benefit standards set by local governmental entities for other employers.

Requires responsible business practices by large employers regarding wages and benefits.