


<h1 style="margin: 0;">Regulatory Analysis Form</h1>		<p><b>This space for use by IRRC</b></p> <p style="text-align: center;">2001 APR 26 PM 3:14</p> <p style="text-align: center;">IRRC REVIEW SUBMISSION</p> <p style="text-align: center;"></p> <p><b>IRRC Number: 2151</b></p>	
<p>(1) Agency Department of Labor &amp; Industry</p>			
<p>(2) I.D. Number (Governor's Office Use) 12-55</p>			
<p>(3) Short Title Minimum Wage Regulations (Food-Service Employee Incentive Program)</p>			
<p>(4) PA Code Cite 34 Pa. Code, Chapter 231</p>		<p>(5) Agency Contacts &amp; Telephone Numbers</p> <p><i>Primary Contact</i> Robert E. Moore (717) 787-4763</p> <p><i>Secondary Contact</i> Richard C. Lengler (717) 787-4186</p>	
<p>(6) Type of Rulemaking (Check One)</p> <p><input type="checkbox"/> Proposed Rulemaking</p> <p><input checked="" type="checkbox"/> Final Order Adopting Regulation</p> <p><input type="checkbox"/> Final Order Proposed Rulemaking Omitted</p>		<p>(7) Is a 120-Day Emergency Certification Attached?</p> <p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes: By the Attorney General</p> <p><input type="checkbox"/> Yes: By the Governor</p>	
<p>(8) Briefly explain the regulation in clear and non-technical language.</p> <p>These regulations are a result of a 1998 amendment to Pennsylvania's Minimum Wage Act (MWA), 43 P.S. § 333.105a, which established the Food-Service Employee Incentive Program. The regulations will activate this training program for both employees and employers engaged in restaurant or food service operations whereby newly-hired dishwashers, bus-persons, servers, sales staff, cooks, hostesses/hosts and cashiers, receive a training wage. Upon completion of the program, the employer has a trained employee, and the employee earns an increased wage. The regulations also define the length of training periods for particular jobs; require that participating employers maintain employee incentive accounts; require that employers provide eligible employees with written notification of the training terms; and explain how a participating employer compensates its employees upon completion of the training.</p>			
<p>(9) State the statutory authority for the regulation and any relevant state or federal court decisions.</p> <p>Section 3 of the act of December 21, 1998, P.L. 1290, No. 168, 43 P.S. § 333.105a note (Act 168).</p>			

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. Act 168 requires the Department of Labor and Industry (L&I) to promulgate regulations to enforce and carry out the newly-established Food-Service Employee Incentive Program. 43 P.S. § 333.105a note.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

These regulations are required by statute. Both Act 168 and the regulations are designed to reduce employee turnover in the restaurant and food-service industries.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Not applicable.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible, and approximate the number of people who will benefit.)

Restaurant and food-service operation employers and employees will benefit from these regulations. The Pennsylvania Restaurant Association estimates that there are approximately 19,000 restaurant and food-service operation employers currently conducting business in the Commonwealth. L&I's Center for Workforce Information and Analysis reports 313,000 employees in this industry in Pennsylvania. The regulations are intended to reduce turnover in this industry by creating incentives in the form of a promise of higher pay and the opportunity to receive additional wages escrowed during training, if the employees remain in their jobs for the prescribed training period.

Attached is an analysis by L&I's Center for Workforce Information and Analysis estimating average employer savings over training costs of \$107.07 to \$384.42 where employees leave prior to completing their training. The objective of the legislation, however, is to eliminate the training cost altogether for new hires by enticing them to stay with their jobs.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible, and approximate the number of people who will be adversely affected.)

These regulations address the implementation of a program that is strictly voluntary. Accordingly, there does not appear to be anyone who will be adversely affected by the regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Restaurant and food service operation employers participate on a voluntary basis. L&I has no way of estimating how many of the 19,000 employers in these industries will choose to participate in the program.

(16) Describe the communications with, and input from, the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

L&I identified 12 potential interested stakeholders and/or stakeholder groups consisting of the Pennsylvania Restaurant Association; the Pennsylvania AFL-CIO; the Pennsylvania Business Roundtable; the Harrisburg Travel Council; the Greater Philadelphia Chamber of Commerce; the Greater Pittsburgh Chamber of Commerce; the Pittsburgh District Office of the U.S. Small Business Administration; the Scranton Small Business Development Center; Gibson E. Armstrong, Senator; Albert V. Belan, Senator; Joseph M. Gladeck, Representative; and Robert E. Belfanti, Representative. A number of additional potential stakeholders and/or stakeholder groups were identified and contacted, but chose not to participate in the process at all. The Pennsylvania Restaurant Association and Representative Belfanti's office offered written comments and suggestions, which were taken into account in the development stage.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Employers must bear the costs of on-the-job training. Participating employers are required to establish and maintain escrow or restricted accounts for any participating employees. The cost of establishing and maintaining this account likely will vary depending on whether the employer uses its regular bank. The amount of monies deposited into this account similarly will vary depending on the agreed-upon training and post-training wages, and the length of the training period. The employer will recoup escrowed moneys if the worker quits or is fired for willful misconduct during the training period. Average employer savings over training costs range from \$107.07 to \$384.42 according to the attached model. The intent of the program, however, is to reduce employee turnover costs, and, therefore, produce benefits and savings to the regulated community.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulations, including any legal, accounting, or consulting procedures which may be required.

Act 168 requires that L&I maintain records of participating employers. Within 30 months of section 5.1 becoming effective, L&I must prepare and submit an impact report to the Senate Labor and Industry Committee and the House Labor Relations Committee. The estimated cost of these directives is minimal because current employees of L&I's Bureau of Labor Law Compliance will handle these functions. There also may be an increase in wage complaints to L&I because of the forfeiture provisions for the escrowed funds. Again, this is something that will be handled by current staff – therefore, any increase in costs probably will be minimal. No increase in actual inspections is envisioned, since compliance will be monitored through existing complaint and auditing procedures.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$N/A*	\$N/A*	\$N/A*
<b>Regulated Community</b>	See Attached	Model		N/A*	N/A*	
<b>Local Government</b>	None	None	None		N/A*	
<b>State Government</b>	None	None	None			
<b>Total Savings</b>	See Attached	Model				
<b>COSTS:</b>						
<b>Regulated Community</b>	Minimal	Minimal	Minimal			
<b>Local Government</b>	None	None	None			
<b>State Government</b>	Minimal	Minimal	Minimal			
<b>Total Costs</b>	Minimal	Minimal	Minimal			
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	None	None	None			
<b>Local Government</b>	None	None	None			
<b>State Government</b>	None	None	None			
<b>Total Revenue Losses</b>	None	None	None			

\*Section 5.1(k) of Act 168 specifies that section 5.1 shall expire three years after the date on which it takes effect. Accordingly, there are no costs or savings beyond this three-year period.

(20a) Explain how the cost estimates listed above were derived.

L&I's Center for Workforce Information and Analysis used employment data from 1998 for the relevant industries to estimate employee turnover and derive an average duration of 4.3 weeks for workers terminating employment after less than 12 weeks. Training costs were estimated at 20 % of the total wage for the training period using statewide average wages for various occupations in the industries. The escrowed payments were assumed to be the difference between the average wage and the statutory minimum wage of \$5.15 per hour. The training costs were then compared against the escrowed payments for full-time work in the various occupations using 4.3 weeks as the duration of employment.

## Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
<b>Bureau of Labor Law</b>	<b>97/98</b>	<b>98/99</b>	<b>99/00</b>	<b>00/01</b>
<b>Compliance</b>	\$1,698,750	\$1,794,735	\$2,169,947	\$2,398,921.38

These figures represent the total expenditures for the Bureau of Labor Law Compliance, which actually administers and enforces approximately 10 labor standards/ wage & hour laws. The proposed regulations are not expected to have any appreciable effect on the Bureau's expenditures.

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The objective is to reduce employee turnover in the restaurant and food-service industries, and thereby reduce future training costs. Short of achieving that goal, the employer should be able to recoup training costs from the Employee Incentive Account when employees prematurely quit during training.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Act 168 mandates regulations for implementation; no non-regulatory alternatives are available.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Act 168 largely dictates the regulatory scheme. L&I initially considered regulating the precise methods of calculating escrow payments to employees upon completion of training, but this proved to be too complicated because of variations in training periods and hours worked, and the different pay periods and pay schedules used by employers.

## **Regulatory Analysis Form**

**(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

There are no federal standards regarding a food-service employee incentive program.

**(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

Pennsylvania appears to be the first state to adopt a program like this. The regulations are intended to reduce employee-turnover costs in the restaurant and food-service industry, allowing Pennsylvania to gain a competitive advantage.

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

No.

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

No public hearings or informational meetings are planned. L&I's Bureau of Labor Law Compliance frequently holds educational sessions with employers and employer groups. These regulations will be covered in any such sessions with employers and groups from the restaurant and food-service industries.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record-keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

These regulations require that participating employers provide written notification of the training wage, the entry-level wage and the name of the financial institution where the food-service employee incentive account is located. They also require that employers obtain signed acknowledgements from the employees. Attached is a proposed form for use by participating employers.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are no special provisions; however, section 5.1(b) does specifically identify that persons on public assistance may be hired to participate in the Food-Service Employee Incentive Program.

(30) What is the anticipated effective date of the regulation, the date by which compliance with the regulation will be required, and the date by which any required permits, licenses or other approvals must be obtained?

L&I anticipates publishing final form regulations by the second quarter of 2001. The regulations will take effect upon publication. Participation in the Program is voluntary, but can begin immediately upon publication of the final form regulations. There are no requirements for permits, licenses, or other approvals.

(31) Provide the schedule for continual review of the regulation.

Act 168 expires after three years. The Department is required to prepare and submit a report to the Senate Labor and Industry Committee and the House Labor Relations Committee within 30 months after section 2 of Act 168 takes effect.

Estimated Industry Employee Turnover Data - Pennsylvania  
Eating and Drinking Places Industry

Total Employment - 1998	308,300
Estimated Employee Turnover	57.20%
New Employees That Stay Less Than 12 Weeks	30%
Average Duration with Employer	4.3 weeks

Analysis for Food Service Incentive Program

<i>Job Title</i>	<i>Employment (1997)</i>	<i>Average Training Time</i>	<i>Average Wage</i>	<i>Minimum Wage Differential</i>	<i>Average Total Escrow Amount per Employee</i>	<i>Estimated Training Cost **</i>	<i>Average Savings per Early Separation ***</i>
Hosts and Hostesses	11,110	8 Weeks or 240 Hours *	\$6.85	\$1.70	\$408.00	\$328.80	\$219.30
Waiters & Waitresses	91,590	7 Weeks or 210 Hours	5.98	\$0.83	\$199.20	\$251.16	\$107.07
Food Servers, Outside	4,120	7 Weeks or 210 Hours	8.13	\$2.98	\$715.20	\$341.46	\$384.42
Counter Attendants	17,310	7 Weeks or 210 Hours	6.42	\$1.27	\$304.80	\$269.64	\$163.83
Cooks, fast food	21,410	8 Weeks or 240 Hours	6.06	\$0.91	\$218.40	\$290.88	\$117.39
Cooks, short order	9,550	8 Weeks or 240 Hours	7.34	\$2.19	\$525.60	\$352.32	\$282.51

\* Based on 30 hours per week and training duration as described in chapter 231 of Title 34.

\*\* Estimated at 20 percent of total wage cost for training period.

\*\*\* Based on average duration with employer of 4.3 weeks.

## EMPLOYEE NOTIFICATION

\_\_\_\_\_ and \_\_\_\_\_  
(Name of Employer) (Name of Employee)

voluntarily agree to participate in the Food-Service Employee Incentive Program. This is a voluntary program open to new employees of Pennsylvania employers in the restaurant and food-service industries.

The employee will begin employment and training as a \_\_\_\_\_  
(list position)  
on \_\_\_\_\_ at a training wage of \_\_\_\_\_.  
(start date) (not less than \$5.15/hour)

The training period will last a maximum of \_\_\_\_\_ weeks. Upon completion of  
(number)  
the training period, or promotion prior to the completion of the training period, the employee will be paid an entry-level wage of \_\_\_\_\_.  
(dollar amount/hour)

The difference between the training wage and the entry-level wage will be placed into a Food-Service Employee Incentive Account maintained at:

\_\_\_\_\_  
(Name & Address of Financial Institution)

Upon completion of the training period, or promotion prior to completion of the training period, the employee will be paid all funds credited to them in the Food-Service Employee Incentive Account, in equal installments over a period equal to the period of training to be paid on or at the following dates or intervals:


*(This schedule may be revised in writing if the employee is promoted prior to completion of the training. The employee must sign the revision.)*

The employee will forfeit his or her funds in the Food-Service Employee Incentive Account if he or she quits or is fired for *willful misconduct* before the end of the training period.

A copy of this agreement must be given to the employee.

The above terms are understood and agreed to. By signing this document, the employee further acknowledges that he or she has received a copy.


\_\_\_\_\_  
Authorized Employer Rep.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Employee

\_\_\_\_\_  
(Date)

Further information about the laws that apply to this program can be obtained by calling the Bureau of Labor Law Compliance at 1-800-932-0665 or by clicking on the Bureau's Internet Web site at <http://www.dli.state.pa.us/PWAGE/pwmain.html>.

<b>CDL-1</b> <b>FACE SHEET</b> <b>FOR FILING DOCUMENTS</b> <b>WITH THE LEGISLATIVE REFERENCE BUREAU</b> <b>(Pursuant to Commonwealth Documents Law)</b>		<b>RECEIVED</b> 2001 APR 26 PM 3:14 LEGISLATIVE REFERENCE BUREAU REVIEW COMMISSION 
# 2151		Do Not Write In This Space
Copy below is hereby approved as to Form and legality. Attorney General.  By: _____ DEPUTY ATTORNEY GENERAL  _____ DATE OF APPROVAL  <input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:  <u>DEPARTMENT OF LABOR &amp; INDUSTRY</u> (AGENCY)  Document/Fiscal Note No. <u>12-55</u>  Date of Adoption: <u>8/20/01</u> By: <u>Johnny J. Butler</u> JOHNNY J. BUTLER  Title: <u>Secretary of Labor &amp; Industry</u> (Executive Officer, Chairman or Secretary)	Copy below is hereby approved as to form and legality. Executive or independent Agencies. By: <u>B. Scott Ray</u> <u>8/20/01</u> DATE OF APPROVAL  (Deputy Attorney General) ( <del>Chief Counsel, Independent Agency</del> ) (Strike inapplicable title)  <input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.

**NOTICE OF**  
**FINAL-FORM RULEMAKING**  
**TITLE 34. LABOR AND INDUSTRY.**  
**PART XII.**  
**CHAPTER 231. MINIMUM WAGE.**  
**FOOD-SERVICE EMPLOYE INCENTIVE PROGRAM**

## **PREAMBLE**

### **DEPARTMENT OF LABOR AND INDUSTRY**

#### **[34 PA. CODE, CH. 231]**

#### **Food-Service Employee Incentive Program**

The Department of Labor and Industry (Department), by this order, amends Chapter 231 (relating to minimum wage) by adding §§ 231.91—231.99, to read as set forth in Annex A.

##### *A. Statutory Authority*

These regulations implement section 3 of the act of December 21, 1998 (P.L. 1290, No. 168) (43 P.S. § 333.105a note) (Act 168), which requires the Department to adopt regulations to enforce and carry out the newly added provisions of section 5.1 of the Minimum Wage Act of 1968 (MWA) (43 P.S. § 333.105a).

##### *B. Background and Purpose*

Section 2 of Act 168 (43 P.S. § 333.105a) amended the MWA by establishing a Food-Service Employee Incentive Program (Program) for new employees hired by restaurant and food-service employers. Section 3 of Act 168, in turn, requires the Department to develop regulations to implement the Program, and postpones the effective date of section 2 until that time. The Program will be in effect for 3 years following the Department's promulgation of regulations. At that time, section 2 will expire under its own terms unless renewed by the General Assembly. The Department is required to prepare and submit a report to the Senate Labor and Industry Committee and the House Labor Relations Committee within 30 months after section 2 of Act 168 takes effect.

Under the Program, new employees in the restaurant and the food-service industry and their employers may voluntarily agree to a training program during which the employees will receive a training wage. The training wage may not be less than the statutory minimum wage. The employees covered under these regulations are dishwashers, bus-persons, servers, sales staff, cooks, hostesses/hosts and cashiers.

While the employee is being trained, the difference between the employee's training wage, and the entry-level wage that the employee is entitled upon completion of the employer's training period, will be deposited by the employer into an escrow account referred to as the Employee Incentive Account. Upon completion of the training program, or the employee's promotion, these escrow payments are to be remitted to the employee in

equal installments over a period equal to the period of training. However, if the employee quits or is fired for willful misconduct before the end of the training period, the employee forfeits the moneys deposited for them in the Employee Incentive Account.

### *C. Summary of Comments*

The Department published a notice of proposed rulemaking at 30 Pa.B. 5152 (October 7, 2000), with an invitation for public comment. No public comments were received by the Department. However, the Independent Regulatory Review Commission (IRRC) recommended four changes to the proposed rulemaking in the interests of clarity and consistency with the statute.

1. *Enforcement.* IRRC recommended adding a section incorporating the Department's enforcement procedures under the Wage Payment and Collection Law (WPCL), act of July 14, 1961, P.L. 637, *as amended*, 43 P.S. §§ 260.1—260.12, since Act 168 expressly adopts the WPCL for resolution of claims. 43 P.S. § 333.105a(j).

2. *Employee Incentive Accounts.* IRRC further suggested insertion of the phrase “no less than” between the phrases “consisting of” and “the difference” in section 231.95(b) to ensure consistency with the statute.

3. *Records Access.* In section 231.95(f), employers are required to grant the Department access to records within seven days following written or verbal notice. IRRC requested clarification as to who will give the notice.

4. *Distribution of Form.* In section 231.96(d), the Department proposed to make a recommended notification/acknowledgement form available on its Internet website and through other means. IRRC asked that the other means be spelled out in the final form regulation.

The Department accepted all of these comments and recommendations when adopting final-form regulations, as discussed below.

### *D. Summary of Changes from Proposed Rulemaking*

1. *Section 231.91(d).* This section was added to inform or remind wage employees of their rights under the WPCL, as incorporated in Act 168, to assign their claims to the Secretary of Labor and Industry (Secretary) for investigation and possible collection action. Information about wage-claim assignments can be accessed from the Department's Internet website <http://www.li.state.pa.us/PWAGE/summary.pdf>, or by contacting any of the district offices of the Department's Bureau of Labor Law Compliance. Employees, however, are not required to assign their claims to the Secretary.

The WPCL authorizes recovery of plaintiff's attorney fees for employees that successfully sue to recover unpaid wages on their own. 43 P.S. § 260.9a(f).

2. *Section 231.95(b)*. The phrase "no less than" was inserted pursuant to IRRC's specific recommendation to achieve statutory consistency.

3. *Section 231.95(f)*. Consistent with section 231.31(c) of the MWA's existing regulations, the Secretary and his authorized representatives have been designated as the persons empowered to issue notices for records. This type of notice is usually issued by either a labor investigator or supervisor in the Department's Bureau of Labor Law Compliance. The Bureau's Director or legal counsel may also issue this notice.

4. *Section 231.96(d)*. The Department defined the "other means" of making available the notification/acknowledgement form to be e-mail, fax or regular mail.

#### *E. Fiscal Impact*

These regulations will have no impact on local government. Even if a unit of local government, such as a school district, has food-service employees, they are exempt from both the MWA and the WPCL. The Commonwealth and its political subdivisions are not included in either statute's definition of the term "employer." See, 1976 Op. Atty. Gen. No. 29 (MWA); *Philipsburg-Osceola Educ. Ass'n. v. Philipsburg-Osceola Area School District*, 633 A.2d 220 (Pa. Cmwlth. 1993) (WPCL). Similarly, these regulations do not affect employers or employees outside the restaurant and food-service industries, or employers or employees in those industries that choose not to participate.

Any costs to the Commonwealth will result from the increased enforcement duties assigned to the Department by Act 168, and not by these regulations. These duties will be undertaken by existing Department staff, and are perceived to be minimal.

No precise estimate can be made as to increased costs, if any, to participating employers and employees, since their actual costs are dependent on several variables, including the number of participating employees and the agreed-upon training and entry-level wages. The objective of Act 168, however, is to create an incentive for new employees in the restaurant and food-service industries to remain at their jobs, and thereby produce mutual benefits that exceed any initial costs. If the costs exceed the benefits in the long run, employers and employees will refrain from participating.

The Department estimates the following average training costs and employer savings when employees leave prior to completing their training:

<b>Job Title</b>	<b>Estimated Training</b>	<b>Average Savings per Early Separation</b>
Hosts and Hostesses	\$328.80	\$219.30
Waiters & Waitresses	\$251.16	\$107.07
Food Servers, Outside	\$341.46	\$384.42
Counter Attendants	\$269.64	\$163.83
Cooks, fast food	\$290.88	\$117.39
Cooks, short order	\$352.32	\$282.51

***F. Paperwork Requirements***

These regulations will require written notification and acknowledgement to and from participating employees. One record of this notification and acknowledgment will suffice for both purposes. Additionally, the Department recommends that the schedule for installment payments from the Employee Incentive Account be revised if the employee is promoted before completing his training period. These records must be maintained with other payroll records required to be kept by employers under the MWA, and are considered to be important to the protection of both employers and employees who participate in the Program. The Department will develop, and make available, a sample form for use by participating employers and employees to further reduce this already minimal burden.

***G. Compliance with Executive Order 1996-1***

In accordance with Executive Order 1996-1 (relating to regulatory review and promulgation), the Department, in developing these regulations, sent preliminary drafts to the Majority and Minority Chairpersons of the Senate Labor and Industry and the House Labor Relations Committees, as well as employee and employer organizations. Additionally, Department personnel met with a representative of the Pennsylvania Restaurant Association and staff from the House Labor Relations Committee in the developmental phase.

***H. Sunset Date***

Act 168, by its own terms, provides that section 5.1 of the MWA will expire 3 years after the effective date of these regulations. Accordingly, § 231.91(b) provides that §§ 231.91 -- 231.99 will expire within 3 years unless section 5.1 of the MWA is extended by the General Assembly. The Department is required to prepare and submit a report to

the Senate Labor and Industry Committee and the House Labor Relations Committee within 30 months after section 2 of Act 168 takes effect.

*I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act 71 P.S. § 745.5(a), the Department submitted copies of the notice of proposed rulemaking, published at 30 Pa.B. 5152, to IRRC, the House Labor Relations Committee and the Senate Labor and Industry Committee for review and comment.

In adopting final-form regulations, the Department considered the comments received from IRRC. The Department did not receive comments from the public or the House or Senate Committees.

On \_\_\_\_\_, the Department submitted the final-form regulations to IRRC and the House and Senate Committees for review. Under section 5.1(g)(3) of the Regulatory Review Act, the revised final-form regulations were (approved/deemed approved) by the House Labor Relations Committee on \_\_\_\_\_, 2001, and (approved/deemed approved) by the Senate Labor and Industry Committee on \_\_\_\_\_, 2001. The final-form regulations were approved by IRRC on \_\_\_\_\_, 2001.

*J. Additional Information*

Information about these regulations can be obtained from Robert E. Moore, Director, Bureau of Labor Law Compliance, Department of Labor and Industry, Room 1301, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120, Telephone: (717) 787-4763; Fax: (717) 787-0517; e-mail: [robmoore@state.pa.us](mailto:robmoore@state.pa.us).

*K. Findings*

The Department finds that:

(1) Public notice of the Department's intention to amend Chapter 231 by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The final-form regulations adopted by this order are necessary and appropriate for the administration of Act 168.

***L. Order***

The Department, acting under its authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code, Chapter 231, are amended by adding §§ 231.91—231.99 to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of the Attorney General and the Office of General Counsel for approval, as required by law.

(c) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(d) The regulations shall take effect upon publication in the *Pennsylvania Bulletin*.

## **Annex A**

### **TITLE 34. LABOR AND INDUSTRY**

#### **PART XII.**

#### **CHAPTER 231. MINIMUM WAGE**

#### **FOOD-SERVICE EMPLOYE INCENTIVE PROGRAM**

##### **§ 231.91. Authority and effective date.**

(a) This section and §§ 231.92—231.99 set forth the rules governing the Food-Service Incentive Employee Program for participating restaurant and food-service operations employers and their employees in this Commonwealth under section 5.1 of The Minimum Wage Act of 1968 (act) (43 P.S. § 333.105a).

(b) This section and §§ 231.92—231.99 will expire, along with section 5.1 of the act on \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) unless section 5.1 is extended by the General Assembly.

(c) Under section 5.1(j) of the Act (43 P.S. § 333.105a(j)), a claim arising under the Food-Service Employee Incentive Program provisions shall be brought under the Wage Payment and Collection Law (43 P.S. §§ 260.1—260.12).

(d) Any employee, labor organization or party to whom wages are payable under the Food-Service Employee Incentive Program may request the Secretary, or his authorized representatives, to take an assignment in trust and to bring legal action to collect such wages, as provided by section 9.1 of the Wage Payment and Collection Law (43 P.S. § 260.9a).

##### **§ 231.92. Eligibility.**

(a) The Food-Service Employee Incentive Program is a voluntary program open to new employees of employers engaged as restaurant and food-service operations in this Commonwealth.

(b) A participating employee shall work a minimum of 20 hours a week.

**§231.93. Amount of training wage.**

(a) The amount of the training wage paid to participants in the Food-Service Employee Incentive Program shall be established and agreed to in writing by the employee and the employer.

(b) The training wage cannot be less than the minimum wage established by the Minimum Wage Act of 1968 (43 P.S. §§ 333.101-333.115).

(c) The employer may use tip credits toward satisfying the minimum wage for tipped employees, as provided for in section 3(d) of the Minimum Wage Act of 1968 (43 P.S. § 333.103(d)).

**§231.94. Length of training period.**

The training period shall be at least, but not more than, the following

<b>Job Title</b>	<b>Training Period</b>
Dishwashers	2--4 weeks
Bus-Persons	2--4 weeks
Servers	2--12 weeks
Sales Staff	2--6 weeks
Cooks	4--12 weeks
Hostess/Host/Cashier	4--12 weeks

**§ 231.95. Employee incentive account.**

(a) The employer shall maintain at least one escrow or restricted account designated as an Employee Incentive Account (Account) in accordance with section 5.1 of The Minimum Wage Act of 1968 (43 P.S. § 333.105a).

(b) The employer shall deposit sums consisting of no less than the difference between the training wage and the entry-level wage into the Account on each regular payday during the training period. The employer shall credit the deposit in the name of each participating employee.

(c) Funds in the Account shall be the property of the employer until the employer is required to make payments to the employee. Funds in the Account are nontransferable and nonassignable.

(d) The employer shall maintain complete, detailed payroll records. The records shall include a listing of all deposits and withdrawals from the Account.

(e) The employer shall maintain the records at the place of employment or at a central record-keeping office within or outside this Commonwealth. The employer shall maintain these records for 3 years in accordance with § 231.31 (relating to contents of record).

(f) Access to records maintained by the employer under this section shall be provided to the Department's representatives within 7 days following written or verbal notice by the Secretary or his authorized representatives.

**§231.96. Writing required.**

(a) The employer shall provide written notification to the employee prior to the commencement of the training program of the following:

(1) The training wage and the starting date of training.

(2) The length of the training period and the position for which the employee is being trained.

(3) The entry-level wage which the employee will receive upon completion of the training period.

(4) The financial institution where the employer maintains the Food-Service Employee Incentive Account.

(5) The installment-payment schedule to be following after the employee completes the training period, provided that the employer shall revise this schedule with the employee's written consent when the employee is promoted prior to completion of the training period.

(b) The employer shall obtain a signed acknowledgement that the employee has read and understands the written notification.

(c) The employer shall maintain a copy of the signed acknowledgement for 3 years, along with other records required to be kept under §§ 231.31—231.35.

(d) The Department will prepare a recommended notification and acknowledgement form that an employer may use. The Department will make these forms available on its Internet website and through other means by electronic mail, facsimile transmission or regular mail, upon request.

### **§231.97. Training.**

(a) The employer shall provide an employee with the usual and customary training associated with the position for which the employee was hired.

(b) The employer shall be responsible for all training costs, whether incurred by the employer or employee.

### **§231.98. Completion of training.**

(a) After an employee completes the training period or is promoted, the employer shall pay all funds credited to the employee in the Food-Service Employee Incentive Account (Account). Payment shall be made in equal installments over a period of time equal to the length of the training period. These installment payments shall be paid to the employee, in addition to the employee's entry-level wage, until the employee has received the full amount credited to the employee in the Account.

(b) The employer shall pay funds credited to employees in the Account, within 30 days of separation, to employees who are separated from the employer under any of the following conditions:

(1) Involuntary termination prior to completion of the training period for reasons other than willful misconduct.

(2) Voluntary termination of employment after promotion or completion of the training period.

(3) Involuntary separation from employment after promotion or completion of the training period without regard to cause.

### **§ 231.99. Forfeiture of escrowed funds.**

(a) An employee who voluntarily terminates employment with the employer prior to completion of the training period forfeits all funds credited to the employee in the Food-Service Employee Incentive Account (Account).

(b) An employee terminated from employment for willful misconduct, as that term is used in the Unemployment Compensation Law (43 P.S. §§ 751—914), prior to completion of the training period forfeits all funds credited to the employee in the Account.

(c) When investigating claims and complaints regarding payments or forfeitures of funds in the Account, the Department may rely upon any final adjudication

issued under the Unemployment Compensation Law regarding the nature of the employee's separation or whether the separation was for willful misconduct.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF LABOR AND INDUSTRY  
HARRISBURG, PENNSYLVANIA 17120

THE SECRETARY

April 26, 2001

Honorable Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor, Harristown 2  
333 Market Street  
Harrisburg, PA 17101

**Re: Final-Form Rulemaking –  
Department of Labor and Industry  
Food-Service Employee Incentive Program  
I.D. No. 12-55**

Dear Executive Director Nyce:

In accordance with the Regulatory Review Act ("Act"), enclosed are copies of the preamble, text and regulatory analysis form for final-form regulations submitted by the Department of Labor and Industry ("Department").

Proposed rulemaking was published at 30 Pa. B. 5152 (October 7, 2000), with an invitation for public comment. No comments, however, were received from the public or the designated legislative standing committees, while the recommendations of the Independent Regulatory Review Commission ("IRRC") have been accepted and are implemented in the final-form rulemaking.

Pursuant to Section 5.1 of the Act, the House Labor Relations Committee and the Senate Labor and Industry Committee ("Committees") have 20 days to review the final-form regulations and either approve or disapprove them. The IRRC has 10 days after the expiration of the Committees' review period, or until its next regularly scheduled meeting, whichever is later, to approve or disapprove the final-form regulations. If no action is taken by the Committees or the IRRC, the Department may proceed to promulgate these regulations.

Honorable Robert E. Nyce  
**Re: Final-Form Rulemaking –**  
**Department of Labor and Industry**  
**Food-Service Employee Incentive Program**  
**I.D. No. 12-55**

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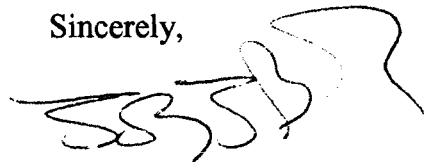
April 26, 2001

Page 2

These regulations implement a 1998 amendment to the Minimum Wage Act of 1968, requiring the Department to develop a food-service employee incentive program for the restaurant and food-service industry. Under this voluntary program, new employees and their employers may agree to a training program of a specified duration, during which the employees will receive a training wage. The difference between the training wage and the entry-level wage for the employees' respective positions will be placed in escrow, and paid to the employees after they complete the training. This program is slated to be in effect for three years, and the Department is to submit a report to the Committees within 30 months of the effective date of these regulations.

Our staff is available to discuss these regulations with you, or members of your staff, and, of course, will be available to testify at any hearings you may wish to convene. Questions concerning this rulemaking can be directed to Richard C. Lengler, Deputy Chief Counsel, Labor Law Compliance Division, Office of Chief Counsel, Tenth Floor, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120; telephone no. (717) 787-4186.

Sincerely,

A handwritten signature in black ink, appearing to read "JJ Butler", with a stylized flourish extending from the end.

Johnny J. Butler

JJB:ldw

Encls.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 12-55  
SUBJECT: Minimum Wage - Food-Service Employee Incentive Program  
AGENCY: DEPARTMENT OF LABOR & INDUSTRY

**TYPE OF REGULATION**

Proposed Regulation  
X Final Regulation  
Final Regulation with Notice of Proposed Rulemaking Omitted  
120-day Emergency Certification of the Attorney General  
120-day Emergency Certification of the Governor  
Delivery of Tolled Regulation  
a. With Revisions b. Without Revisions

RECEIVED  
2001 APR 26 PM 3:14  
ATTORNEY  
GENERAL  
REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
4/25/01	<i>Linda Luborsky</i>	HOUSE COMMITTEE ON LABOR RELATIONS
4/26/01	<i>McEckhart</i>	
4/26	<i>Rachel Dutcher</i>	SENATE COMMITTEE ON LABOR & INDUSTRY
	<i>Edel Juman</i>	
4/26/01	<i>Lydia F. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

March 20, 2001