



3322

Labor & Industry Committee

State Representative Gerald J. Mullery
Democratic Chairman

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March 18, 2022

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Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Independent Regulatory
Review Commission

RE: Final Rulemaking—Minimum Wage Act #12-114 (IRRC#3322)

Dear Commissioners:

As the Democratic Chairman of the House Labor and Industry Committee, I write to express my support for the final rulemaking put forth by Pennsylvania Department of Labor and Industry regarding tipped employees and regular rate of pay under the Minimum Wage Act.

The department, in their final rulemaking, strikes a delicate balance between modernizing the Minimum Wage Act to meet the needs of Pennsylvanians while also aligning as closely as possible to the federal regulations, as requested by the opponents of the proposed rulemaking.

I addressed the proposed rulemaking package in a letter submitted to the department on December 20, 2021. In that letter I expressed my support for updating the definition of tipped employee, codifying the 80/20 rule, allowing for tip pooling for those customarily engaged in tipped work, requiring employers to pay full credit card tips to the employee, prohibiting employers from deducting credit card fees or other charges, and updating the regular rate for salaried employees who are not exempt from overtime.

The final rulemaking maintains many of the provisions that I supported in my letter but incorporates several changes requested by opponents of the bill who largely argued that Pennsylvania's regulations should mirror the federal regulations to avoid confusion for employers. Specifically, the final rulemaking:

- Almost entirely aligns the state's 80/20 rule with the federal rule, outside of the federal requirement stipulating that if any individual works more than 30 consecutive minutes performing non-tip-generating work, they must be paid the minimum wage instead of the tipped minimum wage.

- Allows non-tipped workers, excluding managers, supervisors, and business owners, to share tips if the employer does not take the tip-credit, which fully aligns with the federal regulations.
- Extends the rule to encompass a prohibition on employers deducting processing fees for debit cards or other forms of payment from an employee's tips in addition to the prohibition on employers deducting processing fees for credit cards.

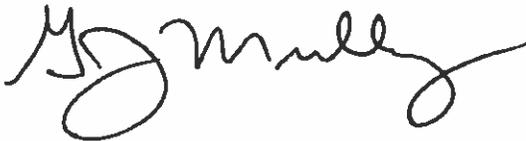
I commend the department for taking the opponent's comments into consideration and making reasonable adjustments to the rulemaking to build consensus.

I believe the department has complied with its duties under the Regulatory Review Act by incorporating several reasonable suggestions from commentators, maintaining portions of the proposed rulemaking that advance the objective of the Minimum Wage Act, and responding to the public, legislators, and the commission detailing how they came to those decisions.

In closing, thank you for the opportunity to offer comments on the final rulemaking. For the reasons stated here and in my previous letter, I respectfully urge the commission to approve the final rulemaking.

Please take this letter into account during the commission's consideration of this rule on March 10, 2022.

Sincerely,



Gerald J. Mullery, Democratic Chairman
Labor and Industry Committee
Pennsylvania House of Representatives

cc: The Honorable Jennifer Berrier, Secretary
Representative Jim Cox, Republican Chairman, House Labor & Industry Committee