



129th MAINE LEGISLATURE

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Legislative Document

No. 410

H.P. 319

House of Representatives, January 29, 2019

**An Act To Eliminate the Subminimum Wage for Workers with
Disabilities and Agricultural and Tipped Workers**

Reference to the Committee on Labor and Housing suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative BROOKS of Lewiston.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §603, sub-§3, ¶D**, as amended by PL 2007, c. 640, §1, is
3 further amended to read:

4 D. An individual exempt from the definition of employee in section 663, subsection
5 3, paragraph A, C, F, G, I or J;

6 **Sec. 2. 26 MRSA §663, sub-§3, ¶A**, as amended by PL 1975, c. 717, §5, is
7 repealed.

8 **Sec. 3. 26 MRSA §664, sub-§2**, as amended by PL 2017, c. 272, §1, is further
9 amended to read:

10 **2. Tip credit.** An employer may not consider tips as part of the wages of a service
11 employee, ~~but such a tip credit may not exceed 50% of the minimum hourly wage~~
12 ~~established in this section except that from January 1, 2017 to December 31, 2017, the~~
13 ~~minimum cash wage paid directly to a tipped service employee may not be less than~~
14 ~~\$5.00 per hour. An employer who elects to use the tip credit must inform the affected~~
15 ~~employee in advance, as provided for in this subsection, and must be able to show that the~~
16 ~~employee receives at least the minimum hourly wage when direct wages and the tip credit~~
17 ~~are combined within the established 7-day workweek. Upon a satisfactory showing by~~
18 ~~the employee or the employee's representative that the actual tips received were less than~~
19 ~~the tip credit, the employer shall increase the direct wages by the difference.~~

20 The tips received by a service employee become the property of the employee and may
21 not be shared with the employer. Tips that are automatically included in the customer's
22 bill or that are charged to a credit card must be treated like tips given to the service
23 employee. A tip that is charged to a credit card must be paid by the employer to the
24 employee by the next regular payday and may not be held while the employer is awaiting
25 reimbursement from a credit card company. The employer may not deduct any amount
26 from employee tips charged to a credit card, including, but not limited to, service fees
27 assessed to the employer in connection with the credit card transaction.

28 An employer who elects to use the tip credit must inform the affected employee in
29 advance, ~~either orally or in writing, of the following information:~~ a valid tip pooling
30 arrangement limited to employees who customarily and regularly receive tips in
31 accordance with subsection 2-A shall inform the affected employee in advance, either
32 orally or in writing, of any required tip pool contribution amount from the employee.

33 ~~A. The amount of the direct wage to be paid by the employer to the tipped employee;~~

34 ~~B. The amount of tips to be credited as wages toward the minimum wage;~~

35 ~~C. That the amount of tips to be credited as wages may not exceed the value of the~~
36 ~~tips actually received by the employee;~~

37 ~~D. That all tips received by the affected employee must be retained by the employee,~~
38 ~~except for a valid tip pooling arrangement limited to employees who customarily and~~
39 ~~regularly receive tips in accordance with subsection 2-A;~~

1 E. That the tip credit may not apply to any employee who has not been informed by
2 the employer of the provisions for a tip credit; and

3 F. If the employer uses a tip pooling arrangement, any required tip pool contribution
4 amount from the employee.

5 **Sec. 4. 26 MRSA §666**, as amended by PL 2011, c. 483, §1, is further amended to
6 read:

7 **§666. Workers with disabilities**

8 ~~For any employment to which the minimum wage is applicable, the~~ The director may
9 ~~not~~ issue to an employer for ~~any~~ a person with a disability a special certificate authorizing
10 the employer to pay that person a wage less than the minimum wage, ~~based on the ability~~
11 ~~of the person to perform the duties required for that employment in comparison to the~~
12 ~~ability of a person who does not have a disability to perform the same duties.~~ The
13 ~~director may hold hearings and conduct investigations as necessary for the purpose of~~
14 ~~fixing the special minimum wage for the person. A certificate is valid for 2 years from~~
15 ~~the date of issue and may be renewed by the director. The director may issue a certificate~~
16 ~~to cover several employees with disabilities as long as the employer provides~~
17 ~~documentation justifying the special minimum wage.~~ An employer may not pay less than
18 the minimum wage to a person by virtue of that person's having a mental or physical
19 disability. A special certificate authorizing the payment of less than minimum wage to a
20 person with a mental or physical disability issued pursuant to a law of this State or to a
21 federal law before October 1, 2019 is without effect.

22 **Sec. 5. Effective date.** This Act takes effect October 1, 2019.

23 **SUMMARY**

24 This bill eliminates current exemptions from the minimum wage law that allow the
25 payment of wages at less than the minimum wage rate to individuals employed in certain
26 agricultural jobs, to individuals employed in service jobs in which tipping is customary
27 and to certain individuals with disabilities, effective October 1, 2019.