

CHAPTER 32

AN ACT raising the minimum wage, amending and supplementing P.L.1966, c.113, and supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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

1. Section 2 of P.L.1966, c.113 (C.34:11-56a1) is amended to read as follows:

C.34:11-56a1 Definitions relative to minimum wages.

2. As used in this act:
 - (a) "Commissioner" means the Commissioner of Labor and Workforce Development.
 - (b) "Director" means the director in charge of the bureau referred to in section 3 of this act.
 - (c) "Wage board" means a board created as provided in section 10 of this act.
 - (d) "Wages" means any moneys due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including the fair value of any food or lodgings supplied by an employer to an employee, and, until December 31, 2018, "wages" includes any gratuities received by an employee for services rendered for an employer or a customer of an employer. The commissioner may, by regulation, establish the average value of gratuities received by an employee in any occupation and the fair value of food and lodging provided to employees in any occupation, which average values shall be acceptable for the purposes of determining compliance with this act in the absence of evidence of the actual value of such items.
 - (e) "Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.
 - (f) "Employ" includes to suffer or to permit to work.
 - (g) "Employer" includes any individual, partnership, association, corporation, and the State and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality thereof, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.
 - (h) "Employee" includes any individual employed by an employer.
 - (i) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.
 - (j) "Minimum fair wage order" means a wage order promulgated pursuant to this act.
 - (k) "Fair wage" means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the minimum cost of living necessary for health.
 - (l) "Oppressive and unreasonable wage" means a wage which is both less than the fair and reasonable value of the service rendered and less than sufficient to meet the minimum cost of living necessary for health.
 - (m) "Limousine" means a motor vehicle used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than 14 passengers, not including the driver, provided, that such a motor vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. "Limousine" shall not include taxicabs, hotel or airport shuttles and buses, buses employed solely in transporting school children or teachers to and from school, vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services or vehicles owned and operated without charge or remuneration by a business entity for its own purposes.

(n) "Seasonal employment" means employment during a year by an employer that is a seasonal employer, or employment by a non-profit or government entity of an individual who is not employed by that employer outside of the period of that year commencing on May 1 and ending September 30, or employment by a governmental entity in a recreational program or service during the period commencing on May 1 and ending September 30, except that "seasonal employment" does not include employment of employees engaged to labor on a farm on either a piece-rate or regular hourly rate basis .

(o) "Seasonal employer" means an employer who exclusively provides its services in a continuous period of not more than ten weeks during the months of June, July, August, and September, or an employer for which, during the immediately previous calendar year, not less than two thirds of the employer's gross receipts were received in a continuous period of not more than sixteen weeks or for which not less than 75 percent of the wages paid by the employer during the immediately preceding year were paid for work performed during a single calendar quarter.

(p) "Small employer" means any employer who employed less than six employees for every working day during each of a majority of the calendar workweeks in the current calendar year and less than six employees for every working day during not less than 48 calendar workweeks in the preceding calendar year, except that, if the employer was newly established during the preceding calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during all of the weeks of that year, and during a majority of the calendar workweeks in the current calendar year, and, if the employer is newly established during the current calendar year, the employer shall be regarded as a "small employer" if the employer employed less than six employees for every working day during a majority of the calendar workweeks in the current calendar year.

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

C.34:11-56a4 Minimum wage rate; exemptions.

5. a. Except as provided in subsections c., d., e. and g. of this section, each employer shall pay to each of his employees wages at a rate of not less than \$8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, the minimum wage shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year: on July 1, 2019, the minimum wage shall be \$10.00 per hour; on January 1, 2020, the minimum wage shall be \$11.00 per hour; and on January 1 of each year from 2021 to 2024, inclusive, the minimum wage shall be increased from the rate of the preceding year by \$1.00 per hour. If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this section shall be applied to the higher minimum wage rate. If an applicable wage order has been issued by the commissioner under section 17 (C.34:11-56a16) of this act, the employer shall also pay 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.

b. (1) An employer shall also pay each employee 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, except that this overtime rate shall not apply: to any individual employed in a bona fide executive, administrative, or professional capacity; or 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.

(2) 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 applicable minimum hourly wage rate multiplied by the total number of hours worked.

(3) Full-time students may be employed by the college or university at which they are enrolled at not less than 85% of the effective applicable minimum wage rate.

c. Employees of a small employer, and employees who are engaged in seasonal employment, except for employees who customarily and regularly receive gratuities or tips who shall be subject to the provisions of subsections a. and d. of this section, shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, that minimum wage rate shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year: on January 1, 2020, the minimum wage shall be \$10.30 per hour; and on January 1 of each year from 2021 to 2025, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour, and, in 2026, the minimum wage shall be increased from the rate of the preceding year by seventy cents per hour, and, in each year from 2027 to 2028 inclusive, the minimum wage for employees subject to this subsection c. shall be increased by the same amount as the increase for employees subject to subsection a. of this section based on CPI-W increases, plus one half of the difference between \$15.00 per hour and the minimum wage in effect in 2026 for employees pursuant to subsection a. of this section, so that, by 2028, the minimum wage for employees subject to this subsection shall be the same as the minimum wage in effect for employees subject to subsection a. of this section. If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this subsection shall be applied to the higher minimum wage rate.

d. Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent year, that minimum wage rate shall be increased by any increase in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government for the 12 months prior to the September 30 preceding that January 1, except that any of the following rates shall apply if it exceeds the rate determined in accordance with the applicable increase in the CPI-W for the indicated year:

(1) on January 1, 2020, the minimum wage shall be \$10.30 per hour; on January 1, 2022, the minimum wage shall be \$10.90 per hour; and on January 1 of each year from 2023 to 2024, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour; and

(2) subject to the provisions of paragraph (3) of this subsection d., minimum wage rates shall be increased as follows: on January 1 of 2025, the minimum wage shall be increased to \$13.40, and on January 1 of each year from 2026 to 2027, inclusive, the minimum wage shall be increased from the rate of the preceding year by eighty cents per hour, and, in each year from 2028 to 2030 inclusive, the minimum wage for employees subject to this subsection d. shall be increased during that year by the same amount as the increase in that year for employees subject to subsection a. of this section based on CPI-W increases, plus one third of the difference between \$15.00 per hour and the minimum wage in effect in 2027 for employees pursuant to subsection a. of this section, so that, by 2030, the minimum wage for employees subject to this subsection shall be the same as the minimum wage in effect for employees subject to subsection a. of this section.

(3) Not later than March 31, 2024, the commissioner and the Secretary of Agriculture shall review the report issued by the commissioner pursuant to subsection b. of section 4 of P.L.2019, c.32 (C.34:11-56a4.10) and shall consider any information provided by the secretary regarding the impact on farm employers and the viability of the State's agricultural industry of the increases of the minimum wage made pursuant to paragraph (1) of this subsection, and the potential impact of the increases which would be set by paragraph (2) of this subsection, including comparisons with the wage rates in the agricultural industries in other states, and shall recommend: approval of the increases set forth in paragraph (2) of this subsection; disapproval of the increases set forth in paragraph (2) of this subsection; or an alternative manner of changing the minimum wage after 2024 for employees engaged on a piece-rate or regular hourly rate basis to labor on a farm. In contemplation of the possibility that the commissioner and the secretary are unable to agree on the recommendation required by this paragraph, by December 31, 2021, the Governor shall appoint a public member subject to advice and consent by the Senate, who will serve as a tie-breaking member if needed. The increases set forth in paragraph (2) of this subsection shall take effect unless there is a recommendation pursuant to this paragraph to disapprove the increases or for an alternative manner of changing the minimum wage after 2024 for employees engaged on a piece-rate or regular hourly rate basis to labor on a farm and the Legislature, not later than June 30, 2024, enacts a concurrent resolution approving the implementation of that recommendation. Beginning in 2024, the commissioner, secretary, and public member shall meet biennially to make either a one or two year recommendation to the Legislature for implementation by way of concurrent resolution.

(4) If the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate set by this subsection, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and subsequent increases based on increases in the CPI-W pursuant to this subsection shall be applied to the higher minimum wage rate.

e. With respect to an employee who customarily and regularly receives gratuities or tips, every employer is entitled to a credit for the gratuities or tips received by the employee against the hourly wage rate that would otherwise be paid to the employee pursuant to subsection a. of this section of the following amounts: after December 31, 2018 and before July 1, 2019, \$6.72 per hour; after June 30, 2019 and before January 1, 2020, \$7.37 per hour; during calendar years 2020, 2021 and 2022, \$7.87 per hour; during calendar year 2023, \$8.87 per hour; and during calendar year 2024 and subsequent calendar years, \$9.87 per hour.

f. 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.

g. Commencing on January 1, 2020, a training wage of not less than 90 percent of the minimum wage rate otherwise set pursuant to subsection a. of this section may be paid to an employee who is enrolled in an established employer on-the-job or other training program which meets standards set by regulations adopted by the commissioner. The period during which an employer may pay the training wage to the employee shall be the first 120 hours of work after hiring the employee in employment in an occupation in which

the employee has no previous similar or related experience. An employer shall not utilize any employee paid the training wage in a manner which causes, induces, encourages or assists any displacement or partial displacement of any currently employed worker, including any previous recipient of the training wage, by reducing hours of a currently employed worker, replacing a current or laid off employee with a trainee, or by relocating operations resulting in a loss of employment at a previous workplace, or in a manner which replaces, supplants, competes with or duplicates any approved apprenticeship program. An employer who pays an employee a training wage shall make a good faith effort to continue to employ the employee after the period of the training wage expires and shall not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment, paying at or above the effective minimum wage, for the trainee upon the successful completion of the period of the training wage. If the commissioner determines that an employer has made repeated, knowing violations of the provisions of this subsection regarding the payment of a training wage, the commissioner shall suspend the employer's right to pay a training wage for a period set pursuant to regulations adopted by the commissioner, but not less than three years.

h. 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.

C.34:11-56a4.9 “Task Force on Wages and State Benefits.”

3. a. There is established, in but not of the Department of Labor and Workforce Development, the “Task Force on Wages and State Benefits.” The task force shall consist of 11 members, including the Commissioners of Health, Human Services, Education, Community Affairs, and Labor and Workforce Development, and the State Treasurer, or their designees, all who shall serve ex officio, and five public members appointed by the Governor with the advice and consent of the Senate as follows: one person nominated by an organization which represents the interests of the business community in this State, one person nominated by the New Jersey State AFL-CIO, two persons nominated by organizations representing the interests of low-income individuals, and one person representing the interests of other disadvantaged individuals who rely on services and benefits provided or administered by the State or its instrumentalities. Public members shall be appointed for four-year terms and may be re-appointed for any number of terms. Any public member of the task force may be removed from office by the Governor, for cause, upon notice and opportunity to be heard. Vacancies shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member shall continue to serve upon the expiration of the member’s term until a successor is appointed and qualified, unless the member is removed by the Governor.

b. Action may be taken by the task force by an affirmative vote of a majority of its members and a majority of the task force shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the task force. Members of the task force shall serve without compensation, but may be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the task force within the limits of funds appropriated or otherwise made available for that purpose.

c. The purpose of the task force is to evaluate how changes in required minimum wage levels pursuant to P.L.2019, c.32 (C.34:11-56a4.9 et al.) may affect the eligibility of low-income individuals, and other disadvantaged individuals, for a variety of services and benefits provided or administered by the State or its instrumentalities, including, but not

limited to, health, human services, childcare, education, housing and tax benefits, and how the combination of changes in minimum wage and eligibility standards may impact the living standards of the individuals and their families. The task force shall produce annual reports of its findings, which shall include any recommendations the task force deems appropriate for adjustments in eligibility standards for the benefits, changes in benefit subsidy rates, and other relevant reforms, to ensure that the combination of minimum wage increases and State services and benefits are coordinated effectively so as to further advance the overall goal of raising the living standards of working families.

d. In furtherance of its evaluation, the task force may hold public meetings or hearings within the State and call to its assistance and avail itself of the services of the employees of any other State department, board, or agency which the task force determines possesses relevant data, analytical and professional expertise or other resources which may assist the task force in discharging its duties under this section. Each department, board, or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate fully with the task force and to furnish such information and assistance as is necessary to accomplish the purposes of this section.

e. The task force shall issue its first annual report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature not later than September 30, 2019, and make the report available to the public by means including the posting of the report on the web sites of all of the State departments represented on the task force. Each subsequent annual report shall be issued and made available to the public not later than September 30 of the respective year and shall include a review of any administrative and legislative actions taken in response to recommendations of previous reports of the task force, together with an evaluation of the effectiveness of the actions in facilitating the overall goal of raising the living standards of working families, and any further recommendation deemed appropriate by the task force.

C.34:11-56a4.10 Impact reports in 2019-2023 calendar years.

4. a. The commissioner shall, not later than September 30, 2024, issue and post on the Department of Labor and Workforce Development website a report which evaluates the impacts on employers and employees of the credits provided in calendar years 2019 through 2023 to employers for gratuities and tips pursuant to subsection e. of section 5 of P.L.1966, c.113 (C.34:11-56a4). The report shall evaluate the adequacy of the minimum wage of employees who customarily and regularly receive gratuities or tips after adjustment for the credits provided to employers pursuant to subsection 5 of P.L.1966, c.113 (C.34:11-56a4).

b. The commissioner, in consultation with the State Treasurer, shall, not later than September 30, 2024, issue and post on the Department of Labor and Workforce Development website a report which evaluates the impacts on employers and employees of the tax credits provided in calendar years 2019 through 2023 to employers of employees with impairments pursuant to sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18). The report will include recommendations regarding the continuation of the tax credits.

C.34:11-56a39 Definitions relative to C.34:11-56a39 et al.

5. As used in sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18):

“Commissioner” means the Commissioner of Labor and Workforce Development.

“Employee with an impairment” means an employee earning at least the minimum wage on the effective date of P.L.2019, c.32 (C.34:11-56a4.9 et al.) whose work capacity is significantly impaired by age or physical or mental deficiency or injury and who, based on a determination by the State, is found eligible for personal assistance services or prescribed drugs because without such services or drugs the individual would be unable to perform the essential functions of the employment position that the individual holds.

“Employer” means any nongovernmental business entity including, but not limited to, a nonprofit organization, a corporation, S corporation, limited liability company, partnership, limited partnership, and sole proprietorship, and shall include all entities related by common ownership or control.

“Tax year” means the calendar year or fiscal year in which a taxpayer’s gross income tax or corporation business tax liability is due and payable.

C.34:11-56a40 Tax credit program to employers of employees with impairments.

6. a. There is established in the Department of Labor and Workforce Development a program, administered by the commissioner, to provide tax credits to employers of employees with impairments. The purpose of the program is to provide tax credits to employers of employees with impairments to help to offset the cost to the employer of any wage increases for those employees caused by the enactment of P.L.2019, c.32 (C.34:11-56a4.9 et al.), including the cost to the employer of corresponding increases in payroll taxes that the employer paid on those workers’ wages.

b. Prior to January 1, 2025, an employer subject to the provisions of subsections a. and e. of section 5 of P.L. 1966, c.113 (C.34:11-56a4) may apply to the commissioner for an award of tax credits under this section. A tax credit allowed pursuant to this section shall be in the amount provided in subsections d. and e. of this section against the corporation business tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or the gross income tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., whichever of the two taxes is applicable to the employer.

c. Prior to January 1, 2028, an employer subject to the provisions of subsections c. and d. of section 5 of P.L. 1966, c.113 (C.34:11-56a4) may apply to the commissioner for an award of tax credits under this section. A tax credit allowed pursuant to this section shall be in the amount provided in subsections d. and e. of this section against the corporation business tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or the gross income tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., whichever of the two taxes is applicable to the employer.

d. (1) The final amount of the tax credit provided to an employer for employees with impairments employed by the employer during a tax year shall be a preliminary amount of the tax credit, which is the amount by which the wages and payroll taxes which the employer is required to pay each employee with an impairment the employer employs pursuant to P.L.2019, c.32 (C.34:11-56a4.9 et al.) during the tax year exceeds the amount that the employer actually paid for the employee with an impairment in wages and payroll taxes in the last preceding calendar year (as adjusted pursuant to subparagraph (c) of this paragraph), provided that:

(a) if the number of hours worked during the tax year by an employee with an impairment employed by the employer is equal to the number of hours the employee with an impairment worked for the employer during the last preceding calendar year, then the preliminary amount of the tax credit for each of the hours worked shall be in the amount that remains after the amount actually paid for the employee with an impairment in wages and payroll taxes during the last preceding calendar year (as adjusted pursuant to subparagraph (c) of this paragraph) is subtracted from the amount which is required to be paid for the employee with an impairment in payroll taxes and in wages pursuant to the minimum wage rate which applies to the tax year pursuant to P.L.2019, c.32 (C.34:11-56a4.9 et al.);

(b) if the number of hours worked during the tax year by an employee with an impairment employed by the employer is greater than the number of hours worked by the employee with an impairment employed by the employer during the last preceding calendar year, then the preliminary amount of the tax credit shall be calculated in two parts and the sum of the two parts shall be the preliminary amount of the tax credit. In the first part of the calculation, regarding the hours worked during the tax year which are equal to the number of hours worked during the last preceding calendar year, the preliminary amount of the tax credit shall be calculated in the same manner as the credit is calculated in subparagraph (a) of this paragraph. In the second part of the calculation, regarding the hours worked during the tax year which are in addition to the number of hours worked during the last preceding calendar year, the preliminary amount of the tax credit for each additional hour shall be calculated in the same manner as the credit is calculated in subparagraph (a) of this paragraph, except that it shall be presumed that the additional number of hours worked by the employee with an impairment would have been paid at the minimum wage rate in effect during the last preceding calendar year (as adjusted pursuant to subparagraph (c) of this paragraph), and the preliminary amount of the tax credit for

each of those hours of work shall be calculated by subtracting that presumed rate from the actual minimum wage rate for the tax year; and

(c) In making any of the calculations in this paragraph, the actual rate of pay paid to an employee with an impairment in the preceding calendar year shall be increased by whichever is the larger of:

(i) the increase in the State minimum wage that would have occurred, for the applicable tax year, if P.L.2019, c.32 (C.34:11-56a4.9 et al.) had not been enacted; or

(ii) any increase in the federal minimum hourly wage rate set for the applicable tax year pursuant to section 6(a)(1) of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206(a)(1)).

(2) If the number of hours worked during the tax year by an employee with an impairment employed by the employer is less than the number of hours worked during the last preceding calendar year, then the employer shall not be eligible for a tax credit under this section for that tax year for that employee with an impairment.

e. An employer may qualify for a tax credit pursuant to sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18) in a taxable year or privilege period beginning on or after January 1, 2019. An employer who qualifies for a tax credit pursuant to this section with respect to hours worked during a tax year may use the tax credit when determining the employer's estimated tax for the purpose of making installment payments of the tax during that tax year. The commissioner shall, upon request, provide assistance to the employer in estimating the likely amount of the tax credit to assist the employer in determining the amount of the tax credit and the installment payments of the tax during a tax year. For tax years 2019 and 2020, the Director of the Division of Taxation may waive in part, or entirely, penalties for underpayment of taxes in connection with installment payments to the extent that the director finds that the underpayment occurred because of a good faith error of the employer in calculating the amount of the credit. Any misclassification of an employee by an employer who knowingly, in applying for the tax credit, falsely represents an employee as an employee with an impairment shall be regarded as a violation of the applicable State tax law and shall be subject to three times the amount of penalties otherwise provided in that law for violations of the law and, for that violation, the penalty shall not be waived, including during tax years 2019 and 2020.

f. An employer shall not be eligible for a tax credit pursuant to sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18) if the commissioner determines that the employer reduced the wages that the employer paid to any employee with an impairment employed by the employer to be eligible for a tax credit under sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18) in a future year.

g. The combined value of all tax credits approved annually by the commissioner pursuant to this section shall not exceed \$10,000,000 in a calendar year. The commissioner shall annually review and report to the Legislature in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1) on the sufficiency of the tax credit cap authorized pursuant to this subsection and have any recommendations with respect thereto to the Legislature.

C.34:11-56a41 Regulations.

7. a. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commissioner, in consultation with the State Treasurer, may adopt, upon filing with the Office of Administrative Law, such regulations that the commissioner deems necessary to implement the provisions of sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The commissioner shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.). The regulations adopted by the commissioner shall include the following:

(1) standards and procedures for determining which employees are employees with impairments for the purpose of determining the eligibility of employers for tax credits;

(2) any additions to, or modifications of, wage record-keeping requirements needed to calculate the amounts of tax credits under sections 5 through 9 of P.L.2019, c.32 (C.34:11-

56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18);

(3) continuing to provide the calculation, for each year, of what the minimum wage would have been under section 5 of P.L.1966 (C.34:11-56a4) and paragraph 23 of Article I of the New Jersey Constitution if P.L.2019, c.32 (C.34:11-56a4.9 et al.) had not been enacted ; and

(4) a method for employers to submit certificates of credit to the Division of Taxation pursuant to sections 8 and 9 of P.L.2019, c.32 (C.54:10A-5.42 and C.54A:4-18).

b. Beginning the year next following the year in which P.L.2019, c.32 (C.34:11-56a4.9 et al.) takes effect and every two years thereafter, the commissioner shall prepare a report concerning the award of tax credits under sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18), and submit the report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. Each biennial report required under this subsection shall include the names and locations of, and the amount of tax credits allowed to, each employer allowed a tax credit under sections 5 through 9 of P.L.2019, c.32 (C.34:11-56a39 to 34:11-56a41, 54:10A-5.42, and 54A:4-18).

C.54:10A-5.42 Credit against corporation business tax.

8. a. The Director of the Division of Taxation in the Department of the Treasury shall allow an employer a credit against the corporation business tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in the amount certified by the Commissioner of Labor and Workforce Development as the taxpayer's tax credit amount pursuant to section 6 of P.L.2019, c.32 (C.34:11-56a40). To claim the tax credit amount for a privilege period, the taxpayer shall submit to the director the certificate of credit issued for that privilege period by the commissioner pursuant to section 6 of P.L.2019, c.32 (C.34:11-56a40).

b. An employer shall apply the credit awarded against the employer's liability under section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period during which the director allows the employer a tax credit pursuant to this section. An employer shall not carry forward an unused credit.

c. The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

C.54A:4-18 Credit against gross income tax.

9. a. The Director of the Division of Taxation in the Department of the Treasury shall allow an employer a credit against the gross income tax imposed pursuant to the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. in the amount certified by the Commissioner of Labor and Workforce Development as the taxpayer's tax credit amount pursuant to section 6 of P.L.2019, c.32 (C.34:11-56a40). To claim the tax credit amount for a taxable year, the taxpayer shall submit to the director the certificate of credit issued for that taxable year by the commissioner pursuant to section 6 of P.L.2019, c.32 (C.34:11-56a40).

b. An employer shall apply the credit awarded against the employer's liability under the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. for the taxable year during which the director allows the employer a tax credit pursuant to this section. An employer shall not carry forward an unused credit.

c. The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. The amount of the credit applied under this section against the tax imposed pursuant to the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. for a taxable year, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than zero. No tax credit shall be allowed pursuant to this section for any wages and payroll taxes included in the calculation of any other tax credit granted pursuant to a claim made on a

tax return filed with the director for a period of time that coincides with the taxable year for which a tax credit authorized pursuant to this section is allowed.

d. A business entity that is classified as a partnership for federal income tax purposes shall not be allowed the tax credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of the taxpayer in respect of a distributive share of partnership income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year.

A taxpayer that is a New Jersey S corporation shall not be allowed the tax credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of a taxpayer in respect of a pro-rata share of S corporation income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the New Jersey S corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro-rata share of S corporation income of the New Jersey S corporation for its privilege period ending within or with the taxpayer's taxable year.

10. This act shall take effect immediately.

Approved February 4, 2019.