

# Overview of Vermont's Wage and Hour Statutes

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# A Little Historical Background

- Vermont's wage and hour statutes were enacted by Act 303 of 1957.
- The statutes were modeled on the federal Fair Labor Standards Act.
- Vermont's original minimum wage was \$0.75 per hour, which was increased to \$1.00 per hour in 1959.
- From 1959 through 2016, Vermont's nominal minimum wage increased by an average of 4.6% per year.
  - When adjusted for inflation by the CPI, the minimum wage increased by an average of 0.8% per year.

# 21 V.S.A. § 381. Declaration of Policy

## § 381. DECLARATION OF POLICY

- It is the declared public policy of the State of Vermont that workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered.
- Unchanged from original 1957 language.

# 21 V.S.A. § 382. Coverage

## § 382. COVERAGE

- Employers employing two employees or more are covered by this subchapter.
- Unchanged from original 1957 language.

# 21 V.S.A. § 383. Definitions

## § 383. DEFINITIONS

\* \* \*

- (2) “Employee,” any individual employed or permitted to work by an employer except:
  - (A) any individual employed in agriculture;
  - (B) any individual employed in domestic service in or about a private home;

# What is “Agriculture”?

- “Agriculture” includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural . . . , the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.
  - 29 U.S.C. § 203(f)

# What is “Domestic Service”?

- The term domestic service employment means services of a household nature performed by an employee in or about a private home (permanent or temporary). The term includes services performed by employees such as companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides, and chauffeurs of automobiles for family use. This listing is illustrative and not exhaustive.
  - 29 C.F.R. § 552.3

# 21 V.S.A. § 383. Definitions (continued)

- (2) “Employee,” any individual employed or permitted to work by an employer except:

\* \* \*

- (C) any individual employed by the United States;
  - *Originally included an exemption for State employees that was deleted in 1993, and an exemption for political subdivisions of the State that was deleted in 1977.*
- (D) any individual employed in the activities of a public supported nonprofit organization, except laundry employees, nurses’ aides, or practical nurses;
  - *Original language also included an exemption for employees subject to the FLSA that was deleted in 1967.*



## 21 V.S.A. § 383. Definitions (continued)

- (2) “Employee,” any individual employed or permitted to work by an employer except:

\* \* \*

- (E) any individual employed in a bona fide executive, administrative, or professional capacity;
- (F) any individual making home deliveries of newspapers or advertising;
- (G) taxi-cab drivers;
- (H) outside salespersons; and

# 21 V.S.A. § 383. Definitions (continued)

- (2) “Employee,” any individual employed or permitted to work by an employer except:

\* \* \*

- (l) students working during all or any part of the school year or regular vacation periods.

- *Original exception was for “students attending school and working part time.”*
- *Was amended in 1959 and is proposed to be amended in S.23.*

\* \* \*

- The original 1957 law also included an exemption for “any switchboard operator employed in a public telephone exchange which has not more than seven hundred and fifty stations.”

# 21 V.S.A. § 384. Employment; Wages

## § 384. EMPLOYMENT; WAGES

- (a) . . . . Beginning on January 1, 2018, an employer shall not employ any employee at a rate of less than \$10.50, and beginning on January 1, 2019 and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1, whichever is smaller, but in no event shall the minimum wage be decreased.
- Current minimum wage is \$10.78.

## 21 V.S.A. § 384. Employment; Wages (continued)

- . . . An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than one-half the minimum wage. As used in this subsection, “a service or tipped employee” means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than \$120.00 per month in tips for direct and personal customer service. . . .
- This is known as the basic wage or the tipped wage.
- If a tipped employee does not earn enough tips in a workweek to make minimum wage, the employer is required to make up the difference.

## 21 V.S.A. § 384. Employment; Wages (continued)

- (b) Notwithstanding subsection (a) of this section, an employer shall not pay an employee less than one and one-half times the regular wage rate for any work done by the employee in excess of 40 hours during a workweek. However, this subsection shall not apply to:
  - (1) Employees of any retail or service establishment.
  - (2) Employees of an establishment which is an amusement or recreational establishment, if:
    - (A) it does not operate for more than seven months in any calendar year; or
    - (B) during the preceding calendar year its average receipts for any 6 months . . . were not more than 1/3 of its average receipts for the other 6 months . . . .
  - (3) Employees of an establishment which is a hotel, motel, or restaurant.

# 21 V.S.A. § 384. Employment; Wages (continued)

\* \* \*

- (4) Employees of hospitals, public health centers, nursing homes, maternity homes, therapeutic community residences, and residential care homes as those terms are defined in Title 18, provided:
  - (A) the employer pays the employee on a biweekly basis; and
  - (B) the employer files an election to be governed by this section with the Commissioner; and
  - (C) the employee receives not less than one and one-half times the regular wage rate for any work done by the employee:
    - (i) in excess of eight hours for any workday; or
    - (ii) in excess of 80 hours for any biweekly period.

# 21 V.S.A. § 384. Employment; Wages (continued)

\* \* \*

- (5) Those employees of a business engaged in the transportation of persons or property to whom the overtime provisions of the federal Fair Labor Standards Act do not apply, but shall apply to all other employees of such businesses.
- (6) Those employees of a political subdivision of this State.
- (7) State employees who are covered by the federal Fair Labor Standards Act.

## 21 V.S.A. § 384. Employment; Wages (continued)

- (c) However, an employer may deduct from the rates required in subsections (a) and (b) of this section the amounts for board, lodging, apparel, rent, or utilities paid or furnished or other items or services or such other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities as determined by the wage order made under this subchapter.
- (d) For the purposes of earned sick time, an employer shall comply with the provisions required under subchapter 4B of this chapter.



# 21 V.S.A. § 385. Administration

## § 385. ADMINISTRATION

- The Commissioner [has] full power and authority for all the following:
  - To enforce and administer the provisions of this chapter, including the power to conduct investigations and take any other action considered necessary or suitable . . . . In the discharge of duties under this chapter, the Commissioner may administer oaths, take depositions, certify to official acts, subpoena witnesses, and compel production of any documents and records necessary and material to the administration of this chapter.
  - To enter and inspect any place of business or employment, question any employees, and investigate any records, facts, conditions, or matters that are deemed appropriate and . . . have a bearing upon the question of wages due under the provisions of this chapter.
  - To require from any employer full and correct statements in writing of the wages paid to all employees employed by that employer . . . .

# 21 V.S.A. § 385. Administration (continued)

- (4) To recommend and determine the amount of deductions for board, lodging, or other items or services supplied by the employer or any other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities; provided, however, that in no case shall the total remuneration received by an employee . . . be less than the minimum wage rate set forth in section 384 of this title. No deduction may be made for the care, cleaning, or maintenance of required apparel. No deduction for required apparel shall be made without the employee's express written authorization and the deduction shall not:
  - (A) reduce the total remuneration received by an employee below the hourly minimum wage;
  - (B) include any administrative fees or charges; or
  - (C) amend, nullify, or violate the terms and conditions of any collective bargaining agreement.
- (5) To recommend a suitable scale of rates for learners, apprentices, and persons with disabilities, which may be less than the regular minimum wage rate for experienced workers without disabilities.
  - *These provisions are powers that were originally granted to the Wage Board.*

# The Wage Board

364

PUBLIC ACTS, 1957

[ No. 303

IV. To appoint with the approval of the governor a wage board with authority:

(a) to recommend and determine the amount of deductions for board, lodging, apparel or other items or services supplied by the employer or such other conditions or circumstances as may be usual in a particular employer-employee relationship, including gratuities, provided, however, that in no case shall the total remuneration received by an employee, including wages, board, lodging, apparel or other items or services supplied by the employer or such other conditions or circumstances, including gratuities, equal a sum less than the minimum wage rate set forth in section 4 of this act, and

(b) to recommend a suitable scale of rates for learners, apprentices and handicapped persons, which may be less than the regular minimum wage rate for experienced and nonhandicapped workers.

# 21 V.S.A. § 386. Investigations

- § 386. INVESTIGATIONS
- The Commissioner may, and on a petition of 50 or more residents of the State shall, make an investigation of any industry, business, occupation, or employment as set forth in section 385 of this title, to ascertain whether any violations of this subchapter have occurred.

# The Wage Board

§ 387 related to the composition of the Wage Board.

§ 388 related to the powers of the Wage Board.

§ 389 related to the scope of assistance provided by the Commissioner of Labor to the Wage Board.

§ 390 related to the issuance of a report by the Wage Board following an investigation.

**Sec. 10. *Wage boards; report.*** A wage board shall hold a public hearing and submit within sixty days after its appointment a report of its findings as to the conditions in the industry, business, occupation or employment, and its recommendations regarding an increase in the minimum wage rate or rates for the employees employed in the industry, business or occupation for which the wage board was appointed, provided, however, that the wage board shall not report or recommend a minimum wage rate or rates higher than the minimum wage rate set forth in section 4 of this act. They may recommend a suitable scale of rates for

# 21 V.S.A. §§ 390a. Wage Board Report

## Sec. 3. Wage Board, investigation and report

Each wage board created under 21 V.S.A. § 387 shall investigate the employment of students in its industry for the purpose of determining whether there have been or are any abuses or problems in connection with the student exemption under 21 V.S.A. § 383(2)(I). The commissioner of industrial relations shall investigate all other industries for the same purpose. He shall report his findings and those of the wage boards to the general assembly by January 3, 1968 and annually thereafter.

# Repeal of Wage Board

- The statutes related to the Wage Board were repealed in Act 188 of 1996 in a section repealing 15 inactive boards and commissions.
- By that point, the Department had been using the administrative rulemaking process to adopt changes to the minimum wage laws since 1988.
- The General Assembly also recognized the obsolescence of the Wage Board provisions and directed the Department of Labor to adopt rules incorporating provisions from wage orders in 1995 and 1997.

# Act 150 of 1996

## Sec. 2. RULE CHANGE; MINIMUM WAGE ORDER; TIP CREDIT RATE; INCREASE

- The Commissioner of Labor and Industry shall adopt rules to be effective January 1, 1997, to amend the minimum wage order affecting the hotel, motel, tourist place and restaurant industry by increasing the tip credit rate to 47 percent of the state minimum wage rate so that the state basic wage rate will be \$2.65 after December 31, 1996, when the state minimum wage rate becomes \$5.00 an hour, and effective January 1, 1998, by increasing the tip credit rate to 48 percent of the state minimum wage so that the state basic wage rate will be \$2.68 after December 31, 1997, when the state minimum wage rate becomes \$5.15 an hour.



# Act 4 of 1997

- Sec. 2. RULE CHANGE; MINIMUM WAGE ORDER; TIP CREDIT RATE
- The Commissioner of Labor and Industry shall adopt rules to be effective July 1, 1997, to amend the minimum wage order affecting the hotel, motel, tourist place and restaurant industry by making the tip credit rate 45 percent of the state minimum wage rate, thereby establishing the state basic wage rate as \$2.83 after June 30, 1997, and \$2.89 after
  - *This was repealed by Act 67 of 2003, § 25b. Sec. 25a of Act 67 enacted tipped wage language in 21 V.S.A. § 384.*

# 21 V.S.A. § 391. Modification of Wage Orders

## § 391. MODIFICATION OF WAGE ORDERS

- The Commissioner with the approval of the Governor may from time to time propose modifications of or additions to any regulations included in any minimum wage order which the Commissioner deems appropriate.
  - *Significant portions of this section that referred to the Wage Board were repealed by Act 47 of 2001.*

# 2001 Acts and Resolves No. 47, § 4

Sec. 4. 21 V.S.A. § 391 is amended to read:

§ 391. ~~FURTHER PROCEEDINGS, ORDER~~ MODIFICATION OF WAGE ORDERS

\* \* \*

~~(c) The commissioner with the approval of the governor may from time to time propose such modifications of or additions to any regulations included in any minimum wage order of the commissioner without reference to a wage board, as he may deem to effectuate the purposes of this subchapter, provided such the proposed modifications or additions could have been included legally in the original order, and shall give notice of a public hearing to be held not less than fifteen days after such publication at which all persons may be heard in respect to such proposed modifications or additions. After such hearing, the commissioner may make an order putting into effect such of the proposed modifications of or additions to the regulations as he~~ which the commissioner deems appropriate.

# 21 V.S.A. § 392. Court Proceedings

## § 392. COURT PROCEEDINGS

- If any employer covered by a wage order has failed to comply with the wage order within 14 days after receiving notification of the violation, the Commissioner shall take court action to enforce the order.
  - *The majority of this section relating to procedures for enforcing a wage order, was also repealed by Act 47 of 2001.*

# 21 V.S.A. § 393. Employers' Records

## § 393. EMPLOYERS' RECORDS

- Every employer, subject to the provisions of this subchapter or of any regulation or order issued thereunder, shall keep a true and accurate record of the hours worked by each employee and of the wages paid to him or her and shall furnish to the Commissioner upon demand a sworn statement of the same. Such records shall be open to inspection by the Commissioner, his or her deputy, or any authorized agent of the Department at any reasonable time. Every employer subject to the provisions of this subchapter or of any regulation or order issued under the provisions thereof shall keep a copy of them posted in a conspicuous place in the area where employees are employed. The Commissioner shall furnish copies of such orders and regulations to employers without charge.
  - *Unchanged from original 1957 law.*

# 21 V.S.A. § 394. Penalties

## § 394. PENALTIES

- (a) Any employer, subject to this subchapter or any regulations or orders issued thereunder, or any of the employer's agents or the officer or agent of any corporation who pays or permits to be paid or agrees to pay to any employee engaged in any industry or occupation less than the applicable rate to which the employee is entitled under this subchapter, shall be fined not more than \$100.00 for each day the employee is paid less than the rate required under this subchapter.
- (b) Any employer or any of the employer's agents or the officer or agent of any corporation who fails to keep the records required under this subchapter or refuses to permit the Commissioner to enter the place of business or who fails to furnish the records to the Commissioner upon demand shall be fined not more than \$100.00.
  - *A subsection protecting employees against retaliation for serving on or testifying before a wage board was repealed by Act 47 of 2001.*

# 21 V.S.A. § 395. Civil Actions

## § 395. CIVIL ACTIONS

- If any employee is paid by an employer less than the applicable wage rate to which the employee is entitled under this subchapter, the employee shall recover, in a civil action, twice the amount of the minimum wage less any amount actually paid by the employer, together with costs and reasonable attorney's fees, and any agreement between an employer and an employee to work for less than the wage rates is no defense to the action.
  - *Was amended for style by Act 47 of 2001, but is essentially unchanged from the original 1957 law.*

# 21 V.S.A. § 396. Appeals from Commissioner's Decisions

## § 396. APPEALS FROM COMMISSIONER'S DECISIONS

- (a) Appeals to Superior Court wherein a civil action between the parties would be triable. Any person aggrieved by any decision of the Commissioner may appeal to the Superior Court.
- (b) Procedure. The court shall direct the record in the matter appealed from to be laid before it, hear the evidence, and make such order approving in whole or in part or setting aside in whole or in part the decision appealed from as justice may require, and may refer any matter or issue arising in the proceedings to the Commissioner for further consideration. However, in no case shall such an appeal operate as a supersedeas or stay unless the Commissioner or the court to which such appeal is taken shall so order.
- (c) Certifying record. An order of court to send up the record may be complied with by filing either the original papers or duly certified copies thereof, or of such portions thereof as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.



# 21 V.S.A. § 396. Appeals from Commissioner's Decisions (continued)

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- (d) Hearing. The court may take evidence or may appoint a referee to take such evidence as it may direct and to report the same with findings of fact.
- (e) Costs. In any proceedings under this subchapter, the court may make such award of costs as may seem equitable and just.
- (f) Appeal, Supreme Court. Appeal from the decision of the Superior Court may be had to the Supreme Court.
  - *This section has been amended several times since 1957, but the essential nature of the section has not changed.*

# 21 V.S.A. § 397. Retaliation Prohibited

## § 397. RETALIATION PROHIBITED

- (a) An employer shall not discharge or in any other manner retaliate against an employee because:
  - (1) the employee lodged a complaint of a violation of this subchapter;
  - (2) the employee has cooperated with the Commissioner in an investigation of a violation of this subchapter; or
  - (3) the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.
- (b) Any person aggrieved by a violation of this section may bring an action in the Civil Division of the Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.
  - *Added in Act 15 of 2013.*

Any Questions?