

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H4/8/05

A Bill

HOUSE BILL 2499

5 By: Representatives Adcock, Elliott, Bond, Blount, Chesterfield, Dobbins, Goss, Ledbetter, Mack, L.
6 *Smith*

7 By: Senators Brown, Steele
8
9

For An Act To Be Entitled

11 AN ACT TO INCREASE THE STATEWIDE MINIMUM WAGE;
12 AND FOR OTHER PURPOSES.
13

Subtitle

15 AN ACT TO INCREASE THE STATEWIDE MINIMUM
16 WAGE.
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1 . Arkansas Code § 11-4-203 is amended to read as follows:
21 11-4-203. Definitions.

22 As used in this subchapter, unless the context otherwise requires:

23 (1) "Director" means the Director of the Department of Labor;

24 (2) "Employ" includes to suffer or to permit to work;

25 (3) "Employee" includes any individual employed by an employer

26 but shall not include:

27 (A) Any individual employed in a bona fide executive,
28 administrative, or professional capacity or as an outside commission-paid
29 salesperson who customarily performs his or her services away from his or her
30 employer's premises taking orders for goods or services;

31 (B) Students performing services for any school, college,
32 or university in which they are enrolled and are regularly attending classes;

33 (C) Any individual employed by the United States or by the
34 state or any political subdivision thereof, except public schools and school
35 districts;

36 (D) Any individual engaged in the activities of any



1 educational, charitable, religious, or nonprofit organization where the
2 employer-employee relationship does not in fact exist or where the services
3 are rendered to the organizations gratuitously;

4 (E) Any bona fide independent contractor;

5 (F) Any individual employed by an agricultural employer
6 who did not use more than five hundred (500) man-days of agricultural labor
7 in any calendar quarter of the preceding calendar year;

8 (G) The parent, spouse, child, or other member of an
9 agricultural employer's immediate family;

10 (H) An individual who:

11 (i) Is employed as a hand-harvest laborer and is
12 paid on a piece-rate basis in an operation which has been, and is customarily
13 and generally recognized as having been, paid on a piece-rate basis in the
14 region of employment;

15 (ii) Commutes daily from his or her permanent
16 residence to the farm on which he or she is so employed; and

17 (iii) Has been employed in agriculture fewer than
18 thirteen (13) weeks during the preceding calendar year;

19 (I) A migrant who:

20 (i) Is sixteen (16) years of age or under and is
21 employed as a hand-harvest laborer;

22 (ii) Is paid on a piece-rate basis in an operation
23 which has been, and is customarily and generally recognized as having been,
24 paid on a piece-rate basis in the region of employment;

25 (iii) Is employed on the same farm as his or her
26 parents; and

27 (iv) Is paid the same piece-rate as employees over
28 age sixteen (16) years are paid on the same farm;

29 (J) Any employee principally engaged in the range
30 production of livestock;

31 (K) Any employee employed in planting or tending trees,
32 cruising, surveying, or felling timber or in preparing or transporting logs
33 or other forestry products to the mill, processing plants, or railroad or
34 other transportation terminal if the number of employees employed by his or
35 her employer in the forestry or lumbering operations does not exceed eight
36 (8);

1 (L) An employee employed by a nonprofit recreational or
2 educational camp that does not operate for more than seven (7) months in any
3 calendar year; or

4 (M) A nonprofit child welfare agency employee who serves
5 as a houseparent who is:

6 (i) Directly involved in caring for children who
7 reside in residential facilities of the nonprofit child welfare agency and
8 who are orphans, in foster care, abused, neglected, abandoned, homeless, in
9 need of supervision, or otherwise in crisis situations that lead to out-of-
10 home placements; and

11 (ii) Compensated at an annual rate of not less than
12 thirteen thousand dollars (\$13,000) or at an annual rate of not less than ten
13 thousand dollars (\$10,000) if the employee resides in the residential
14 facility and receives board and lodging at no cost;

15 (4)(A) "Employer" includes any individual, partnership,
16 association, corporation, business trust, or any person or group of persons
17 acting directly or indirectly in the interest of an employer in relation to
18 an employee.

19 (B)(i) "Employer" shall not include any individual,
20 partnership, association, corporation, business trust, or any person or group
21 of persons acting directly or indirectly in the interest of an employer in
22 relation to an employee for any workweek in which fewer than four (4)
23 employees are employed.

24 (ii) *Nor shall "employer" or any provisions of this*
25 *subchapter be deemed to include or apply to any person, firm, corporation, or*
26 *other entity subject to the minimum wage and overtime provisions of the*
27 *federal Fair Labor Standards Act of 1938;*

28 (5) "Gratuities" means voluntary monetary contributions received
29 by an employee from a guest, patron, or customer for services rendered;

30 (6) "Independent contractor" means any individual who contracts
31 to perform certain work away from the premises of his or her employer, uses
32 his or her own methods to accomplish the work, and is subject to the control
33 of the employer only as to the result of his or her work;

34 (7) "Man-day" means any day during any portion of which an
35 employee performs any agricultural labor. Any individual otherwise excluded
36 as an employee under subdivision (3)(I) of this section shall be considered

1 an employee in computing man-days of agricultural labor;

2 (8) "Occupation" means any occupation, service, trade, business,
3 industry, or branch or group of industries or employment or class of
4 employment in which employees are gainfully employed; and

5 (9) "Wage" means compensation due to an employee by reason of
6 his or her employment, payable in legal tender of the United States or checks
7 on banks convertible into cash on demand at full face value, subject to such
8 deductions, charges, or allowances as may be permitted by this subchapter or
9 by regulations of the director under this subchapter.

10
11 SECTION 2. Arkansas Code § 11-4-210(a), concerning minimum wage, is
12 amended to read as follows:

13 ~~(a)(1) Beginning July 1, 1997, every employer shall pay each of his or~~
14 ~~her employees wages at the rate of not less than four dollars and seventy-~~
15 ~~five cents (\$4.75) per hour except as otherwise provided in this chapter.~~

16 ~~(2) Beginning October 1, 1997, every employer shall pay each of~~
17 ~~his or her employees wages at the rate of not less than five dollars and~~
18 ~~fifteen cents (\$5.15) per hour except as otherwise provided in this chapter.~~

19 (a) Beginning on the effective date of this act, every employer shall
20 pay each of his or her employees wages at the rate of not less than five
21 dollars and seventy-five cents (\$5.75) per hour except as otherwise provided
22 in this chapter.

23
24 SECTION 3. Arkansas Code § 11-4-212(a), concerning a tip credit or
25 allowance against the state minimum wage rate, is amended to read as follows:

26 (a) Every employer of an employee engaged in any occupation in which
27 gratuities have been customarily and usually constituted and have been
28 recognized as a part of remuneration for hiring purposes shall be entitled to
29 an allowance for gratuities as a part of the hourly wage rate provided in §
30 11-4-210 in ~~an amount not to exceed fifty percent (50%) of the minimum wage~~
31 ~~established by § 11-4-210, provided that the cash wage paid shall equal that~~
32 required under the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq.
33 and provided that the employee actually received ~~that~~ an amount in gratuities
34 and cash wage that ~~the application of the foregoing gratuity allowances~~
35 results in payment of wages other than gratuities to tipped employees,
36 including full-time students subject to the provisions of § 11-4-210, of no

1 not less than ~~fifty percent (50%)~~ of the minimum wage prescribed by § 11-4-
2 210.

3 /s/ Adcock, et al
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