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HOUSE BILL NO. 1757

Offered January 9, 2019
Prefiled December 21, 2018

A BILL to amend and reenact § 40.1-28.9 of the Code of Virginia, relating to the minimum wage; tipped employees.

Patrons—Carter and Levine

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-28.9 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-28.9. Definitions.

A. As used in this article:

~~A. "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;~~

~~B.~~ "Employee" includes any individual employed by an employer, except the following:

1. Any person employed as a farm laborer or farm employee;

2. Any person employed in domestic service or in or about a private home or in an eleemosynary institution primarily supported by public funds;

3. Any person engaged in the activities of an educational, charitable, religious, or nonprofit organization where the relationship of employer-employee does not, in fact, exist, or where the services rendered to such organizations are on a voluntary basis;

4. Newsboys, shoe-shine boys, caddies on golf courses, babysitters, ushers, doormen, concession attendants, and cashiers in theaters;

5. Traveling salesmen or outside salesmen working on a commission basis~~;~~, taxicab drivers, and *taxicab* operators;

6. Any person under the age of 18 in the employ of his father, mother or legal guardian;

7. Any person confined in any penal or corrective institution of the State or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;

8. Any person employed by a ~~boys'~~ ~~and/or~~ ~~girls'~~ summer camp *for boys, girls, or both boys and girls*;

9. Any person under the age of 16, regardless of by whom employed;

10. Any person who normally works and is paid based on the amount of work done;

11. ~~[Repealed.]~~

~~12.~~ *11.* Any person whose employment is covered by the Fair Labor Standards Act of 1938 as amended;

~~13.~~ *12.* Any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability;

~~14.~~ *13.* Students participating in a bona fide educational program;

~~15.~~ *14.* Any person employed by an employer who does not have four or more persons employed at any one time; provided that husbands, wives, sons, daughters, and parents of the employer shall not be counted in determining the number of persons employed;

~~16.~~ *15.* Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education or trade school, provided the person is not employed more than 20 hours per week;

~~16A.~~ *16.* Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education or trade school and is in a work-study program or its equivalent at the institution at which he or she is enrolled as a student; *or*

17. Any person who is less than 18 years of age and who is under the jurisdiction and direction of a juvenile and domestic relations district court.

~~C.~~ *"Employer" includes any individual, partnership, association, corporation, or business trust or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee.*

"Tip" means money given to an employee by a customer, in cash or its equivalent, or transferred to the employee by the employer pursuant to directions from a credit card customer who designates a sum to be added to the bill as a tip, or added as a gratuity or service charge to a customer's bill, in

recognition of service performed.

"Tipped employee" means an employee who in the course of employment customarily and regularly receives tips totaling more than $30 each month from persons other than the employee's employer. An employee who is prohibited by applicable federal or state law or regulation from soliciting tips shall not be classified as a tipped employee.

"Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value; provided, wages may include the reasonable cost to the employer of furnishing meals and for lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee.

~~D.~~ *B.* In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.