

Ordinance No. 621-16

Council Member Kelley
(by initiative petition)

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976 by enacting new sections 174.01 through 174.06 relating to Cleveland Minimum Wage.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976 are hereby supplemented by enacting new sections 174.01, 174.02, 174.03, 174.04, 174.05, and 174.06 to read, respectively, as follows:

TITLE CLEVELAND MINIMUM WAGE

Section 174.01 Definitions

For purposes of this Chapter:

(a) "An individual employed in or about the property of an employer or individual's residence", "casual basis", and "family member" have the same meaning as those terms are defined in Ohio Rev. Code Section 4111.14(D).

(b) "City" means the City of Cleveland, including all City divisions, departments, and offices.

(c) "Covered employer" means any person or entity employing 25 or more employees in the United States during the previous calendar year and who otherwise meets the definition of "employer" under Section 34a of Article II of the Ohio Constitution.

(d) "Employee" has the same meaning as in Ohio Rev. Code Section 4111.14 (B)(1), but does not include: any individual employed by a solely family owned and operated business, who is a family member of one of the owners; or any individual employed on a casual basis in or about the property of the employer or at the individual's residence.

Section 174.02 Required Minimum Wage Rate

(a) Beginning January 1, 2017, every covered employer shall pay each of its employees working within the geographical boundaries of the City of Cleveland at a wage rate of not less than \$15.00 per hour. Beginning January 1, 2018, the minimum wage rate provided in this Chapter shall be increased by the rate of inflation for the twelve month period prior to the September preceding the required increase according to the consumer price index or its successor index for all urban wage earners and

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clerical workers for all items as calculated by the federal government rounded to the nearest five cents.

(b) A covered employer is not required to pay the minimum wage rate established in this Chapter with respect to an individual employee if:

(1) The employer has received a license issued by the State of Ohio authorizing payment of a wage rate below that required by Section 34a of Article II of the Ohio Constitution to employ the individual employee with mental or physical disabilities that may otherwise adversely affect their opportunity for employment; or

(2) The employer can demonstrate that an individual employee receives tips that combined with the wages paid by the employer are equal to or greater than the minimum wage rate for all hours worked. In such a case, an employer may pay an employee less than, but not less than half, the minimum wage rate required by this Chapter if the employee earns the minimum wage rate established in this Chapter for all hours worked inclusive of tips.

Section 174.03

Prohibited Acts

(a) No covered employer shall pay or agree to pay wages at a rate less than the rate required by this Chapter. Each week or portion thereof for which the covered employer pays any employee less than the rate required by this Chapter constitutes a separate offense.

(b) No covered employer shall reduce the wage rate of any employee as a consequence of this Chapter.

(c) No covered employer shall discharge or in any other manner discriminate against any employee because the employee made any complaint that the employee has not been paid wages in accordance with this Chapter, or because the employee has or will cause any proceeding to be instituted under or related to this Chapter, or because the employee has testified or is about to testify in any proceeding related to this Chapter.

(d) No covered employer shall otherwise violate any provision of this Chapter. Each day of violation constitutes a separate offense.

Section 174.04

Civil Actions

The City, an employee, or any person acting on behalf of an employee or all similarly-situated employees may bring a civil action in a court of competent jurisdiction for such legal or equitable relief as may be appropriate to remedy a violation of Chapter 174, within three (3) years of the violation or of when the violation ceased if it was of a continuing nature. There shall be no exhaustion requirement, no procedural, pleading or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee except upon a finding that such action was frivolous in accordance with the same

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standards that apply generally in civil suits. Where a covered employer is found to have violated any provision of this Chapter, the covered employer shall within thirty (30) days of the finding pay the employee back wages, damages, and the employee's costs and reasonable attorney's fees. Damages shall be calculated as an additional two times the amount of the back wages and in the case of a violation of an anti-retaliation provision an amount set by the court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued. Payment under this paragraph shall not be stayed pending any appeal.

Section 174.05

Effect

(a) Nothing in this Chapter interferes with, impedes, or in any way diminishes the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum wage rate established in this Chapter.

(b) Nothing in chapter shall be deemed to nor shall be applied in such a manner so as to have a constitutionally prohibited effect as an ex post facto law or impairment of an existing contract within the meaning of the Ohio or federal constitutions.

Section 174.06

Severability

If any portion of Chapter 174 is held invalid, the remainder of the Chapter shall not be affected by such holding and shall continue in full force and effect.

Section 2. That this ordinance is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

KJK:rns
5-16-16

BY: Initiative Petition