

EXHIBIT A

An Act to Eliminate the Sub-Minimum Wage, Increase Minimum Wages and Strengthen Protections for Workers

An Act to Eliminate the Sub-Minimum Wage, Increase the Minimum Wage and Strengthen Protections for Workers will increase the minimum wage in Portland to \$18 an hour over three years and will eliminate the sub-minimum wage for tipped workers over the same three years. Tipped workers will then earn \$18 an hour plus tips. It also provides an \$18 minimum wage for workers currently not receiving the minimum wage including taxi drivers and other ride-hailing services, personal shoppers, delivery workers, and those doing work for a unit of government. It also creates a Department of Fair Labor Practices to ensure wage and worker safety laws are enforced.

1. Chapter 2, Section 2-17(i) of the Portland City Code is hereby enacted to read as follows:

...

2-17(i) Director of Fair Labor Practices. There is hereby established the Department of Fair Labor Practices to be headed by a Director of Fair Labor Practices ("Director") to be appointed in the manner provided in the Charter for the appointment of department heads. The Director shall:

1. Exercise all powers of and perform all duties now or hereafter conferred upon or required by state law, the Charter and ordinances of the City;
2. Have the authority, personally or by his or her designated agents, to enforce all laws, ordinances, policies, and regulations pertaining to labor practices including but not limited to those set forth in Portland City Code Chapter 33, Minimum Wage; Chapter 2, Administration, Section 2-302(b)(3); or in any agreement entered into by the City that is subject to the state law wages and benefits provisions set forth at 26 M.R.S. §§1303-1317. This authority includes preventing, investigating, prosecuting, and remedying possible violations to the fullest extent of the law; and
3. Promulgate rules governing minimum wage compliance for those who work for a Driver or Delivery Service as defined in Chapter 33. The rulemaking shall adopt a method for determining the minimum Driver or Delivery Service compensation required to comply with the hourly rates in Chapter 33. In establishing such method, the rulemaking shall, at a minimum, consider the duration and distance of the trip, the expenses of operation to the driver, any applicable vehicle utilization standard, rates of fare and the adequacy of driver income considered in relation to driver expenses.

2. Chapter 33 of the Portland City Code—Definitions are hereby amended to read as follows:

...

Driver or Delivery Service: Any taxicab service or any same-day app-based delivery, personal shopper service, or personal transportation service provided to individual consumers, including but not limited to third-party delivery, courier, or ride-hailing services for transporting people, food, beverages, groceries or other goods to or from any location within the City limits.

Employer: Any individual, group of individuals, partnership, association, corporation, business trust, or any other entity or group of persons or entities who employs or exercises control over the wages, hours, or working conditions of any Employee and who has a place of business within the City limits. "Employer" shall include but not be limited to the City of Portland and any other unit of government except the federal government. "Employer" shall include any Driver or Delivery Service that offers services to or from any location within the City Limits regardless of whether it has a physical place of business within the City Limits.

Employee: Any person who performs work for an Employer for monetary compensation within the municipal limits of the City. Employee shall include persons who perform work for an employer on a full-time, part-time, seasonal or temporary basis. Employee shall include any individual who performs work for a Driver or Delivery Service or for a unit of state, county or local government, but shall not include any other person who is exempted from the definition of Employee under 26 M.R.S. §663(3) of Chapter 7, Employment Practices.

...

3. Chapter 33, Section 33.7(b) of the Portland City Code is hereby amended to read as follows:

- (b) Minimum Wage rate:
- (i) Beginning on January 1, ~~2023~~~~2022~~, the regular Minimum Wage for all employees, including, but not limited to, service employees, shall be raised to ~~\$15.00~~~~\$13.00~~ per hour;
 - (ii) Beginning on January 1, ~~2024~~~~2023~~, the regular Minimum Wage for all employees, including, but not limited to, service employees, shall be raised to ~~\$16.50~~~~\$14.00~~ per hour; and
 - (iii) Beginning on January 1, ~~2025~~~~2024~~, the regular Minimum Wage for all Employees, including, but not limited to, service employees, shall be raised to ~~\$18.00~~~~\$15.00~~ per hour; and

- (iv) On January 1, ~~2026~~2025 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for All Urban Consumers, CPI-U, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the state minimum wage established by 26 M.R.S. § 664 is increased in excess of the minimum wage in effect under this ordinance, the minimum wage under this ordinance is increased to the same amount, effective on the same date as the increase in the state minimum wage, and must be increased in accordance with this ordinance thereafter.

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4. Chapter 33, Section 33.7(c) of the Portland City Code is hereby repealed and replaced to read as follows:

~~(c) Tip Credit:~~

- ~~(i) An Employer may consider tips as part of the wages of a Service Employee toward satisfaction of the Minimum Wage established by this ordinance, in accordance with 26 M.R.S. §664(2) and until such time as the tip credit is eliminated under state law. Such a tip credit shall be no greater than half the Minimum Wage rate established by this ordinance.~~
- ~~(ii) An Employer who elects to use the tip credit, until it is eliminated under state law, must inform the affected employee in advance and must be able to show that the employee receives at least the Minimum Wage established by this ordinance when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.~~
- ~~(iii) The tips received by a Service Employee become the property of the employee and may not be shared with the employer. Tips that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips given to the Service Employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.~~

- ~~(iv) This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement among service employees that is consistent with the federal Fair Labor Standards Act and regulations made pursuant to that Act.~~
- ~~(v) The meaning of the language used in this section shall be interpreted consistently with the interpretation of the language of 26 M.R.S. §663 and 26 M.R.S. §664.~~

(c) Service Employee Minimum Direct Wage:

- (i) Between January 1, 2023 and January 1, 2025 an Employer may elect to consider tips as part of the wages of a service employee for purposes of compliance with the Minimum Wage in Section 33.7(b) only as set forth in this section.
- (ii) Irrespective of any tips received, an Employer electing to consider tips as part of wages for compliance with the Minimum Wage in Section 33.7(b) must pay direct wages equal to or exceeding the Service Employee Minimum Direct Wage, with tips on top, as follows:

<u>Service Employee Minimum Direct Wage with Tips on Top</u>	
<u>1/1/23 to 12/31/23</u>	<u>\$10.00</u>
<u>1/1/24 to 12/31/24</u>	<u>\$14.00</u>
<u>1/1/25 and after</u>	<u>same as Minimum Wage</u>

- (iii) An Employer who elects to pay the Service Employee Minimum Direct Wage rather than the Minimum Wage in Section 33.7(b) must be able to demonstrate that the sum of the Service Employee Minimum Direct Wage and actual tips received equals or exceeds the Minimum Wage in Section 33.7(b). This demonstration must be made in a reasonable manner and must consider hours, wages and tips aggregated on a weekly basis for each Employee. Any Employer who cannot make this demonstration must pay no less than the Minimum Wage in Section 33.7(b).
- (iv) The tips earned by a service Employee are the property of the Employee whether paid in cash or by credit card, and whether the tip is required or gratuitous. A tip that is charged to a credit card must be paid by the Employer to the Employee no later than the next regular payday and may not be held while the Employer is awaiting reimbursement from a credit card company.
- (v) An Employer may not take any action intended to reduce the tips received by any of their Employees.

- (vi) This section may not be construed to prohibit an Employer from establishing a tip pooling arrangement among service employees that is consistent with the federal Fair Labor Standards Act and regulations enacted pursuant to that Act.

5. Chapter 33, Sections 33.9(a) and (b) of the Portland City Code are hereby amended to read as follows:

- (a) Enforcement.
 - (i) The Director of Fair Labor Practices ("Director") appointed pursuant to Chapter 2, Section 2-17(i) City Manager or his/her designee shall enforce the provisions of this ordinance.
 - (ii) The Director City Manager is authorized to adopt rules and regulations for the proper administration and enforcement of this ordinance.
- (b) Complaint Process.
 - (i) Any employee, including, but not limited to, a service employee, receiving less than the Minimum Wage or the Service Employee Minimum Direct Wage which he or she is required to receive under this ordinance may file a written complaint with the Director City Manager's Office.
 - (ii) The Director City Manager or his or her designee may investigate and issue a response to the complaint within fifteen (15) work days following the receipt of a complaint. The City Manager's or his or her designee's response to the complaint shall be final.
 - (iii) If the Director City Manager finds that a violation of this chapter has occurred, he or she may order any and all appropriate relief including, but not limited to, the payment of any back wages withheld and/or the payment of not less than \$100.00 as a penalty for each day that a violation of this chapter has occurred, per Employee. A violation of this Ordinance may also be considered a civil violation subject to the general penalty provisions of section 1-15 of this Code.

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6. Chapter 33, Sections 33.10 of the Portland City Code is hereby amended to read as follows:

Sec. 33.10. Relationship To Other Requirements.

June 2, 2022

This ordinance provides for payment of Minimum Wage rates within the City and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement or policy, including any that provides for payment of higher wages and/or benefits. Nothing contained in this ordinance prohibits an employer from paying more than the Minimum Wage rates established herein. The wage requirement in this ordinance shall not be construed to govern the operations of a transportation network company, driver or motor vehicle used by a transportation network company driver to provide a prearranged ride as set forth in 29-A M.R.S. § 1677(1).