

# RULES AND REGULATIONS

## Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[ 34 PA. CODE CH. 231 ]

### Minimum Wage; Food Employee Incentive Program

The Department of Labor and Industry (Department), under the authority in section 9 of The Minimum Wage Act of 1968 (act) (43 P.S. § 333.109), rescinds §§ 231.91—231.99 to read as set forth in Annex A. This rulemaking is submitted as a final rulemaking with proposed rulemaking omitted under section 204(3) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204(3)), known as the Commonwealth Documents Law (CDL). The statutory authority under which these regulations were adopted expired on July 14, 2004, section 5.1(k) of the act (43 P.S. § 333.105a(k)), and § 231.91(b) has not been renewed. Therefore, notice of the rulemaking is deemed to be unnecessary, impractical and not contrary to the public interest.

#### *Purpose of the Regulations*

The purpose of §§ 231.91—231.99 was to implement the Food Service Employee Incentive Program (Program) established by section 5.1 of the act. Section 5.1 of the act was added by the act of December 21, 1998 (P.L. 1290, No. 168). The Program was to take effect on the Department's adoption of implementing regulations. However, the statutory amendment creating this Program also provided that section 5.1 of the act was to "expire three years after the date on which it takes effect." The Department adopted §§ 231.91—231.99 but explicitly stated in § 231.91(b) that "[t]his section and §§ 231.92—231.99 will expire, along with section 5.1 of the act on July 14, 2004, unless section 5.1 is extended by the General Assembly." Section 5.1 of the act has not been extended. Therefore, §§ 231.91—231.99 are obsolete.

#### *Purpose of the Final-Omitted Rulemaking*

The purpose of this final-omitted rulemaking is to rescind §§ 231.91—231.99 in light of the expiration of section 5.1 of the act. Under the Program, authorized by section 5.1 of the act, new employees in the restaurant and food-service industries and their employers could voluntarily agree to a training program during which the employees would receive a training wage that was not less than the statutory minimum wage. While the employees were being trained, the difference between their training wages and the employers' entry-level wages was to be deposited into an escrow account and upon completion of the training program, or the employees' promotion, these escrow payments were to be remitted to the employees in equal installments over a period equal to the period of training. The employees covered under these regulations were dishwashers, bus-persons, servers, sales staff, cooks, hostesses/hosts and cashiers.

This final-omitted rulemaking will not affect persons or entities as both the underlying statutory authorization and implementing regulations have been defunct for more than 7 years. Moreover, the objectives of the Program can still be achieved by employers offering employees retrospective pay increases if they remain in the employers' employ for a set duration.

#### *Fiscal Impact*

Implementation of this final-omitted rulemaking will not result in the expenditure of additional funds by the Commonwealth or local municipalities.

#### *Sunset Provisions*

The Department is not establishing a sunset date to revisit this final-omitted rulemaking since this rulemaking is occasioned by a sunset date in the underlying statutory authority for the regulations.

#### *Contact Person*

The contact person for this final-omitted rulemaking is Eric Ramsay, Acting Director, Bureau of Labor Law Compliance, 1301 Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121, (717) 787-3681, eramsay@pa.gov.

#### *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on February 23, 2012, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Labor Relations Committee and Senate Labor and Industry Committee. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506). A copy of the Regulatory Analysis Form is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act, on April 4, 2012, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 5, 2012, and approved the final-omitted rulemaking.

#### *Findings*

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) as this final-omitted rulemaking rescinds obsolete regulations.

(2) There is good cause to forego public notice of the intention to rescind §§ 231.91—231.99 because notice of the amendments under the circumstances is unnecessary, impractical and not contrary to the public interest under section 204 of the CDL.

(3) Public comment cannot change the fact that the regulations are obsolete.

#### *Order*

The Department orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 231, are amended by deleting §§ 231.91—231.99 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) The Secretary shall certify this order and Annex A and deposit the same with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JULIA K. HEARTHWAY,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 2253 (April 21, 2012).)*

**Fiscal Note:** 12-95. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY  
PART XII. BUREAU OF LABOR STANDARDS  
CHAPTER 231. MINIMUM WAGE**

Sec.  
231.91—231.99. (Reserved).

[Pa.B. Doc. No. 12-761. Filed for public inspection April 27, 2012, 9:00 a.m.]