



Ned Lamont
GOVERNOR
STATE OF CONNECTICUT

July 12, 2019

The Honorable Denise W. Merrill
Secretary of the State
30 Trinity Street
Hartford, CT 06106

Dear Madam Secretary:

I hereby return, without my signature, House Bill No. 5001, *An Act Requiring a Study of Workforce Training Needs in the State*. This bill addresses two entirely separate and distinct issues.

Sections 1-4 of the bill amend existing state laws governing the Workforce Training Authority within the Department of Labor. Among other things, the bill: (1) makes public entities eligible for grants awarded by the Authority; (2) changes the membership of the Authority; and (3) expands the industry sectors eligible for training assistance from the Authority to include the areas of construction, health care, and early childhood education. Section 4 of the bill also requires the Department of Labor, in collaboration with workforce development boards within the state, to study programs offered to individuals seeking employment within the state.

Sections 5 and 7 of the bill address an entirely separate set of issues. Section 7 repeals section 31-62-E4 of the Regulations of Connecticut State Agencies, entitled "Diversified employment within the restaurant industry." That repeal is "effective from passage and applicable to actions pending on or filed on or after said date." Section 5 of the bill, in turn, requires the Department of Labor to promulgate new regulations replacing the repealed regulation and provides that, in doing so, the Commissioner of Labor must consult with representatives of the restaurant industry and consider the federal laws and regulations governing the issues addressed by these regulations.

Broadly speaking, the current state regulations addressed by these sections of the bill govern the minimum wage a restaurant must pay an employee who spends some, but not all, of his or her time engaged in activities for which tips or gratuities are customarily received. Under state law, employers may pay an employee a lower minimum wage if the employee is engaged in work for which such tips are customarily received. If, however, during the course of one's shift an employee performs such work but also performs work for which the higher, standard minimum

wage is required, the employer must segregate and record the hours spent doing each task and pay the employee the appropriate wage for the respective hours worked. If the employer cannot or does not so segregate and record an employee's time, the employer must pay the employee the higher minimum wage for all hours worked.

Section 7 repeals the regulation setting forth these requirements. Section 5 requires the Commissioner to adopt new regulations that look to federal law for guidance. Generally, federal law permits an employer to pay an employee engaged in both service and non-service work the lower minimum wage under a broader set of circumstances than the state law.

These sections of the bill make significant policy changes to a complex area of the law governing the rights of workers to a fair wage. While it may be reasonable to conclude that state and federal laws should be consistent in this area, that conclusion ought to be made only after sufficient study, debate and input from affected stakeholders. That did not happen here.

More problematic, however, is the provision of the bill purporting to make the repeal of the state regulation retroactive to any civil actions pending or filed on or after the bill's passage. Any such civil actions, of course, would be brought to pursue claims for wages earned at a time when the regulation at issue was in effect. This retroactive attempt to extinguish a worker's right to recover wages in an amount lawfully required and earned is patently unfair to the affected workers. It also raises serious due process and other constitutional concerns.

For these reasons, I disapprove of House Bill No. 5001, *An Act Requiring a Study of Workforce Training Needs in the State*. Pursuant to Section 15 of Article Fourth of the Constitution of the State of Connecticut, I am returning House Bill No. 5001 without my signature.

Sincerely,



Ned Lamont
Governor