

2311--C

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I N S E N A T E

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Introduced by Sens. SAVINO, ADAMS, ADDABBO, BRESLIN, DIAZ, DILAN, DUANE, ESPADA, FOLEY, HASSELL-THOMPSON, HUNTLEY, KLEIN, KRUEGER, OPPENHEIMER, PADAVAN, PARKER, PERALTA, PERKINS, SAMPSON, SCHNEIDERMAN, SERRANO, SQUADRON, STACHOWSKI, STAVISKY, STEWART-COUSINS, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the labor law, the executive law and the workers' compensation law, in relation to establishing regulations regarding employment of domestic workers including hours of labor, wages and employment contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and intent. Many thousands of domes-
2 tic workers are employed in New York state as housekeepers, nannies, and
3 companions to the elderly. The labor of domestic workers is central to
4 the ongoing prosperity that the state enjoys, and yet, despite the value
5 of their work, domestic workers do not receive the same protection of
6 many state laws as do workers in other industries. Domestic workers
7 often labor under harsh conditions, work long hours for low wages with-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 out benefits or job security, are isolated in their workplaces, and are
2 endangered by sexual harassment and assault, as well as verbal,
3 emotional and psychological abuse. Moreover, many domestic workers in
4 the state of New York are women of color who, because of race and sex
5 discrimination, are particularly vulnerable to unfair labor practices.

6 The legislature finds that because domestic workers care for the most
7 important elements of their employers' lives, their families and homes,
8 it is in the interest of employees, employers, and the people of the
9 state of New York to ensure that the rights of domestic workers are
10 respected, protected, and enforced.

11 Domestic workers have historically been excluded from many of the
12 traditional protections afforded by the labor law. Additionally, domes-
13 tic workers are not afforded by law the right to organize labor unions
14 for the purpose of collective bargaining. Given the limited legal
15 protections historically provided to domestic workers, and bearing in
16 mind the unique conditions and demands of this private home-based indus-
17 try, the legislature further finds that domestic workers are entitled to
18 industry-specific protections and labor standards.

19 S 2. The labor law is amended by adding a new article 19-C to read as
20 follows:

21 ARTICLE 19-C

22 LABOR STANDARDS FOR DOMESTIC WORKERS

23 SECTION 695. DEFINITIONS.

24 696. OTHER EMPLOYMENT CONDITIONS.

25 697. REMEDIES.

26 698. SEVERABILITY.

27 S 695. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS
28 SHALL HAVE THE FOLLOWING MEANINGS:

29 1. "DOMESTIC WORKER" MEANS A PERSON EMPLOYED IN A HOME OR RESIDENCE
30 FOR THE PURPOSE OF CARING FOR A CHILD, SERVING AS A COMPANION TO A SICK,
31 CONVALESCING OR ELDERLY PERSON, HOUSEKEEPING, OR FOR ANY OTHER DOMESTIC
32 SERVICE PURPOSE. "DOMESTIC WORKER" DOES NOT INCLUDE ANY INDIVIDUAL WHO
33 IS ENGAGED IN PROVIDING COMPANIONSHIP SERVICES, AS DEFINED IN S
34 213(A)(15) OF THE FAIR LABOR STANDARDS ACT OF 1938, AND WHO IS EMPLOYED
35 BY AN EMPLOYER OR AGENCY OTHER THAN THE FAMILY OR HOUSEHOLD USING HIS OR
36 HER SERVICES.

37 2. "PAID TIME OFF" MEANS DAYS THAT THE DOMESTIC WORKER IS ENTITLED TO
38 TIME OFF WITH PAY CALCULATED AT EACH DOMESTIC WORKER'S REGULAR RATE OF
39 PAY FOR HIS OR HER REGULAR HOURS WORKED ON THAT DAY.

40 S 696. OTHER EMPLOYMENT CONDITIONS. 1. HOURS OF LABOR FOR DOMESTIC
41 WORKERS. NO PERSON OR CORPORATION EMPLOYING A DOMESTIC WORKER AS DEFINED
42 IN SUBDIVISION ONE OF SECTION SIX HUNDRED NINETY-FIVE OF THIS ARTICLE
43 SHALL REQUIRE ANY DOMESTIC WORKER TO WORK MORE THAN EIGHT HOURS IN A
44 DAY; PROVIDED HOWEVER THAT OVERTIME WORK PERFORMED BY AGREEMENT BETWEEN
45 A DOMESTIC WORKER AND HIS OR HER EMPLOYER SHALL BE AT A RATE WHICH IS AT
46 LEAST ONE AND ONE-HALF TIMES THE WORKER'S NORMAL HOURLY RATE.

47 2. DAY OF REST. (A) A DOMESTIC WORKER SHALL BE ENTITLED TO AT LEAST
48 TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK.

49 (B) NO DOMESTIC WORKER SHALL BE REQUIRED TO WORK ON HIS OR HER DAY OF
50 REST.

51 (C) IN THE EVENT THAT A DOMESTIC WORKER AGREES TO WORK ON HIS OR HER
52 DAY OF REST, HE OR SHE WILL BE COMPENSATED AT THE OVERTIME RATE FOR ALL
53 HOURS WORKED ON HIS OR HER DAY OF REST.

54 3. PAID TIME OFF. (A) A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE
55 FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS A WEEK SHALL BE ENTITLED
56 TO PAID TIME OFF ON THE FOLLOWING HOLIDAYS:

- (1) NEW YEAR'S DAY;
- (2) MARTIN LUTHER KING JR.'S BIRTHDAY;
- (3) INDEPENDENCE DAY;
- (4) THANKSGIVING;
- (5) LABOR DAY;
- (6) CHRISTMAS DAY.

(B) NO DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS PER WEEK SHALL BE REQUIRED TO WORK ON A HOLIDAY.

(C) IN THE EVENT THAT A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS A WEEK AGREES TO WORK ON A HOLIDAY, HE OR SHE WILL BE COMPENSATED AT THE OVERTIME RATE FOR ALL HOURS WORKED ON THE HOLIDAY.

(D) A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST FORTY HOURS A WEEK SHALL BE ENTITLED TO SEVEN DAYS OF PAID TIME OFF FOR SICK LEAVE EACH YEAR. A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS A WEEK BUT LESS THAN FORTY HOURS A WEEK SHALL BE ENTITLED TO FOUR DAYS OF PAID TIME OFF FOR SICK LEAVE EACH YEAR. NOTHING IN THIS PROVISION SHALL PROHIBIT EMPLOYERS FROM PROVIDING MORE GENEROUS PAID TIME OFF FOR SICK LEAVE.

(E) A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST FORTY HOURS A WEEK SHALL BE ENTITLED TO FIVE DAYS OF PAID TIME OFF FOR VACATION EACH YEAR. A DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOYER IS AT LEAST TWENTY HOURS A WEEK BUT LESS THAN FORTY HOURS A WEEK SHALL BE ENTITLED TO THREE DAYS OF PAID TIME OFF FOR VACATION EACH YEAR. VACATION SHALL BE AGREED UPON WITH THE EMPLOYER AT LEAST THIRTY DAYS IN ADVANCE OF THE FIRST VACATION DAY. NOTHING IN THIS PROVISION SHALL PROHIBIT EMPLOYERS FROM PROVIDING MORE GENEROUS PAID TIME OFF FOR VACATION.

4. TERMINATION AND SEVERANCE. (A) A DOMESTIC WORKER IS ENTITLED TO WRITTEN NOTICE OF TERMINATION FOURTEEN DAYS BEFORE HIS OR HER FINAL DAY OF EMPLOYMENT. AN EMPLOYER WHO FAILS TO GIVE NOTICE AS REQUIRED BY THIS ARTICLE IS LIABLE TO EACH EMPLOYEE ENTITLED TO NOTICE WHO LOST HIS OR HER EMPLOYMENT FOR:

(I) BACK PAY FOR THE PERIOD IN WHICH THE EMPLOYEE WAS ENTITLED TO NOTICE AT THE AVERAGE REGULAR RATE OF COMPENSATION RECEIVED BY THE EMPLOYEE DURING THE LAST THREE YEARS OF HIS OR HER EMPLOYMENT, OR THE EMPLOYEE'S FINAL RATE OF COMPENSATION, WHICHEVER IS HIGHER.

(II) THE VALUE OF THE COST OF ANY BENEFITS TO WHICH THE EMPLOYEE WOULD HAVE BEEN ENTITLED DURING THE PERIOD IN WHICH THE EMPLOYEE WAS ENTITLED TO NOTICE.

(B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, NO EMPLOYER SHALL BE LIABLE FOR FAILURE TO PROVIDE NOTICE OF TERMINATION.

(I) TO AN EMPLOYEE WHO IS CONVICTED OF COMMITTING AN UNLAWFUL ACT OF THEFT OR DESTRUCTION OF PROPERTY; OR

(II) WHEN THE EMPLOYER HAS A REASONABLE GOOD FAITH BELIEF THAT THE EMPLOYEE HAS COMMITTED ASSAULT, NEGLIGENCE OR ABUSE IN THE WORKPLACE. IN SUCH A CASE, THE EMPLOYER SHALL HAVE THE BURDEN OF SHOWING SUCH AN ACT.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE REMEDIES PROVIDED IN SUBDIVISION ONE OF SECTION SIX HUNDRED NINETY-SEVEN OF THIS ARTICLE SHALL NOT BE APPLICABLE TO AN EMPLOYER'S FAILURE TO PROVIDE NOTICE OF TERMINATION.

5. BACK PAY. BACK PAY AND OTHER LIABILITY UNDER THIS SECTION IS CALCULATED FOR THE PERIOD OF THE EMPLOYER'S VIOLATION, UP TO A MAXIMUM OF SIXTY DAYS, OR ONE-HALF THE NUMBER OF DAYS THAT THE EMPLOYEE WAS EMPLOYED BY THE EMPLOYER, WHICHEVER PERIOD IS SMALLER.

1 S 697. REMEDIES. 1. CRIMINAL PENALTIES. ANY EMPLOYER OR HIS OR HER
2 AGENT, OR THE OFFICER OR AGENT OF ANY CORPORATION, WHO PAYS OR PROVIDES
3 OR AGREES TO PAY OR PROVIDE TO ANY DOMESTIC WORKER LESS THAN THE WAGE,
4 OR BENEFITS APPLICABLE UNDER THIS ARTICLE SHALL BE SUBJECT TO CRIMINAL
5 PENALTIES PURSUANT TO SECTIONS ONE HUNDRED NINETY-EIGHT-A AND ONE
6 HUNDRED NINETY-EIGHT-C OF THIS CHAPTER.

7 2. CIVIL ACTIONS. (A) IF ANY DOMESTIC WORKER IS PAID OR PROVIDED BY
8 HIS OR HER EMPLOYER LESS THAN THE WAGES, OR BENEFITS TO WHICH HE OR SHE
9 IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, HE OR SHE MAY RECOVER
10 IN A CIVIL ACTION THE AMOUNT OF ANY SUCH UNDERPAYMENTS OF WAGES AND THE
11 VALUE OF SUCH BENEFITS COSTS AND MAY SEEK ANY OTHER REMEDY AVAILABLE TO
12 THE COMMISSIONER UNDER SECTION ONE HUNDRED NINETY-EIGHT OF THIS CHAPTER
13 AND SECTION SIX HUNDRED SIXTY-THREE OF THIS CHAPTER.

14 (B) ON BEHALF OF ANY DOMESTIC WORKER PAID OR PROVIDED LESS THAN THE
15 WAGES, OR BENEFITS TO WHICH HE OR SHE IS ENTITLED UNDER THE PROVISIONS
16 OF THIS ARTICLE, THE COMMISSIONER OR ATTORNEY GENERAL MAY BRING ANY
17 LEGAL ACTION NECESSARY NOTWITHSTANDING ANY LAW TO THE CONTRARY TO
18 COLLECT SUCH CLAIM AND MAY SEEK ANY OTHER REMEDY AVAILABLE TO THE
19 COMMISSIONER UNDER SECTION ONE HUNDRED NINETY-EIGHT OF THIS CHAPTER AND
20 SECTION SIX HUNDRED SIXTY-THREE OF THIS CHAPTER.

21 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER
22 UPON A LIABILITY IMPOSED BY THIS ARTICLE MUST BE COMMENCED WITHIN SIX
23 YEARS.

24 S 698. SEVERABILITY. IF ANY PART OR PROVISION OF THIS ARTICLE, OR THE
25 APPLICATION OF THIS ARTICLE TO ANY PERSON OR CIRCUMSTANCE, IS HELD
26 INVALID, THE REMAINDER OF THIS ARTICLE, INCLUDING THE APPLICATION OF
27 SUCH PART OR PROVISION TO OTHER PERSONS OR CIRCUMSTANCES, SHALL NOT BE
28 AFFECTED BY SUCH A HOLDING AND SHALL CONTINUE IN FULL FORCE AND EFFECT.
29 TO THIS END, THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

30 S 3. Subdivisions 5 and 6 of section 292 of the executive law, subdi-
31 vision 5 as amended by chapter 851 of the laws of 1965 and subdivision 6
32 as amended by chapter 166 of the laws of 2000, are amended to read as
33 follows:

34 5. The term "employer" does not include any employer with fewer than
35 four persons in his OR HER employ. NOTWITHSTANDING THE PRECEDING
36 SENTENCE, THE TERM "EMPLOYER" INCLUDES ANY EMPLOYER EMPLOYING ONE OR
37 MORE DOMESTIC WORKERS, AS DEFINED BY SECTION SIX HUNDRED NINETY-FIVE OF
38 THE LABOR LAW.

39 6. The term "employee" in this article does not include any individual
40 employed by his or her parents, spouse or child[, or in the domestic
41 service of any person].

42 S 4. Subdivision 3 of section 160 of the labor law is amended to read
43 as follows:

44 3. For all other employees, except those engaged in farm [or domestic
45 service] WORK and those affected by subdivision four of section two
46 hundred [and] twenty OF THIS CHAPTER, eight hours.

47 S 5. The opening paragraph of subdivision 1 of section 218 of the
48 labor law, as amended by chapter 304 of the laws of 2007, is amended to
49 read as follows:

50 If the commissioner determines that an employer has violated a
51 provision of article six (payment of wages), article nineteen (minimum
52 wage act), article nineteen-A (MINIMUM WAGE STANDARDS AND PROTECTIVE
53 LABOR PRACTICES FOR FARM WORKERS), ARTICLE NINETEEN-C (LABOR STANDARDS
54 FOR DOMESTIC WORKERS), section two hundred twelve-a (MIGRANT REGISTRA-
55 TION LAW), section two hundred twelve-b (FARM LABOR CAMP COMMISSARIES),
56 section one hundred sixty-one (day of rest) or section one hundred

1 sixty-two (meal periods) of this chapter, or a rule or regulation
2 promulgated thereunder, the commissioner shall issue to the employer an
3 order directing compliance therewith, which shall describe particularly
4 the nature of the alleged violation. In addition to directing payment of
5 wages, benefits or wage supplements found to be due, such order, if
6 issued to an employer who previously has been found in violation of
7 those provisions, rules or regulations, or to an employer whose
8 violation is willful or egregious, shall direct payment to the commis-
9 sioner of an additional sum as a civil penalty in an amount equal to
10 double the total amount found to be due. In no case shall the order
11 direct payment of an amount less than the total wages, benefits or wage
12 supplements found by the commissioner to be due, plus the appropriate
13 civil penalty. Where the violation is for a reason other than the
14 employer's failure to pay wages, benefits or wage supplements found to
15 be due, the order shall direct payment to the commissioner of a civil
16 penalty in an amount not to exceed one thousand dollars for a first
17 violation, two thousand dollars for a second violation or three thousand
18 dollars for a third or subsequent violation. In assessing the amount of
19 the penalty, the commissioner shall give due consideration to the size
20 of the employer's business, the good faith of the employer, the gravity
21 of the violation, the history of previous violations and, in the case of
22 wages, benefits or supplements violations, the failure to comply with
23 recordkeeping or other non-wage requirements.

24 S 6. Subdivision 1 of section 219 of the labor law, as amended by
25 chapter 417 of the laws of 1987, is amended to read as follows:

26 1. If the commissioner determines that an employer has failed to pay
27 wages, benefits or wage supplements required pursuant to article six
28 (payment of wages), article nineteen (minimum wage act) [or], article
29 [nineteen-a] NINETEEN-A (MINIMUM WAGE STANDARDS AND PROTECTIVE LABOR
30 PRACTICES FOR FARM WORKERS), OR ARTICLE NINETEEN-C (LABOR STANDARDS FOR
31 DOMESTIC WORKERS) of this chapter, or a rule or regulation promulgated
32 thereunder, the commissioner shall issue to the employer an order
33 directing compliance therewith, which shall describe particularly the
34 nature of the alleged violation. Such order shall direct payment of
35 wages or supplements found to be due, including interest at the rate of
36 interest then in effect as prescribed by the superintendent of banks
37 pursuant to section fourteen-a of the banking law per annum from the
38 date of the underpayment to the date of the payment.

39 S 7. Subdivision 5 of section 651 of the labor law, as amended by
40 chapter 640 of the laws of 2005, is amended to read as follows:

41 5. "Employee" includes any individual employed or permitted to work by
42 an employer in any occupation, but shall not include any individual who
43 is employed or permitted to work: (a) ON A CASUAL BASIS WHILE A MINOR
44 in service as a part time baby sitter in the home of the employer[; or
45 someone who lives in the home of an employer for the purpose of serving
46 as a companion to a sick, convalescing or elderly person, and whose
47 principal duties do not include housekeeping]; (b) in labor on a farm;
48 (c) in a bona fide executive, administrative, or professional capacity;
49 (d) as an outside salesman; (e) as a driver engaged in operating a taxi-
50 cab; (f) as a volunteer, learner or apprentice by a corporation, unin-
51 corporated association, community chest, fund or foundation organized
52 and operated exclusively for religious, charitable or educational
53 purposes, no part of the net earnings of which inures to the benefit of
54 any private shareholder or individual; (g) as a member of a religious
55 order, or as a duly ordained, commissioned or licensed minister, priest
56 or rabbi, or as a sexton, or as a christian science reader; (h) in or

1 for such a religious or charitable institution, which work is incidental
2 to or in return for charitable aid conferred upon such individual and
3 not under any express contract of hire; (i) in or for such a religious,
4 educational or charitable institution if such individual is a student;
5 (j) in or for such a religious, educational or charitable institution if
6 the earning capacity of such individual is impaired by age or by phys-
7 ical or mental deficiency or injury; (k) in or for a summer camp or
8 conference of such a religious, educational or charitable institution
9 for not more than three months annually; (l) as a staff counselor in a
10 children's camp; (m) in or for a college or university fraternity,
11 sorority, student association or faculty association, no part of the net
12 earnings of which inures to the benefit of any private shareholder or
13 individual, and which is recognized by such college or university, if
14 such individual is a student; (n) by a federal, state or municipal
15 government or political subdivision thereof. The exclusions from the
16 term "employee" contained in this subdivision shall be as defined by
17 regulations of the commissioner; or (o) as a volunteer at a recreational
18 or amusement event run by a business that operates such events, provided
19 that no single such event lasts longer than eight consecutive days and
20 no more than one such event concerning substantially the same subject
21 matter occurs in any calendar year. Any such volunteer shall be at least
22 eighteen years of age. A business seeking coverage under this paragraph
23 shall notify every volunteer in writing, in language acceptable to the
24 commissioner, that by volunteering his or her services, such volunteer
25 is waiving his or her right to receive the minimum wage pursuant to this
26 article. Such notice shall be signed and dated by a representative of
27 the business and the volunteer and kept on file by the business for
28 thirty-six months.

29 "Employee" also includes any individual employed or permitted to work
30 in any non-teaching capacity by a school district or board of cooper-
31 ative educational services except that the provisions of sections six
32 hundred fifty-three through six hundred fifty-nine of this article shall
33 not be applicable in any such case.

34 S 8. Paragraph (a) of subdivision 3 of section 701 of the labor law,
35 as amended by chapter 43 of the laws of 1989, is amended to read as
36 follows:

37 (a) The term "employees" includes but is not restricted to any indi-
38 vidual employed by a labor organization; any individual whose employment
39 has ceased as a consequence of, or in connection with, any current labor
40 dispute or because of any unfair labor practice, and who has not
41 obtained any other regular and substantially equivalent employment; and
42 shall not be limited to the employees of a particular employer, unless
43 the article explicitly states otherwise, but shall not include any indi-
44 vidual employed by his OR HER parent or spouse [or in the domestic
45 service of and directly employed, controlled and paid by any person in
46 his home, any individual whose primary responsibility is the care of a
47 minor child or children and/or someone who lives in the home of a person
48 for the purpose of serving as a companion to a sick, convalescing or
49 elderly person] or any individuals employed only for the duration of a
50 labor dispute, or any individuals employed as farm laborers or, any
51 individual who participates in and receives rehabilitative or therapeu-
52 tic services in a charitable non-profit rehabilitation facility or shel-
53 tered workshop or any individual employed in a charitable non-profit
54 rehabilitation facility or sheltered workshop who has received rehabili-
55 tative or therapeutic services and whose capacity to perform the work

1 for which he OR SHE is engaged is substantially impaired by physical or
2 mental deficiency or injury.

3 S 9. Subdivisions 1 and 3 of section 875 of the labor law, as added by
4 chapter 551 of the laws of 1980, are amended to read as follows:

5 1. "Employer" means any individual, partnership, corporation or asso-
6 ciation engaged in a business who has employees including the state and
7 its political subdivisions. The term "employer" [does not include]
8 INCLUDES the employment of domestic workers [or casual laborers]
9 employed at the place of residence of his or her employer.

10 3. "Workplace" means any location [away from the home], permanent or
11 temporary, where any employee performs any work-related duty in the
12 course of his OR HER employment.

13 S 10. The opening paragraph of subdivision 5 and the opening paragraph
14 of paragraph A of subdivision 6 of section 201 of the workers' compen-
15 sation law, the opening paragraph of subdivision 5 as amended by chapter
16 205 of the laws of 1993, the opening paragraph of paragraph A of subdi-
17 vision 6 as amended by chapter 903 of the laws of 1986, are amended to
18 read as follows:

19 "Employee" means a person engaged in the service of an employer in any
20 employment defined in subdivision six of this section, except a minor
21 child of the employer[, except a domestic or personal worker in a
22 private home who is employed for less than forty hours per week by any
23 one employer,] and except a duly ordained, commissioned, or licensed
24 minister, priest or rabbi, a sexton, a christian science reader, or
25 member of a religious order, or an executive officer of a corporation
26 who at all times during the period involved owns all of the issued and
27 outstanding stock of the corporation and holds all of the offices pursu-
28 ant to paragraph (e) of section seven hundred fifteen of the business
29 corporation law or two executive officers of a corporation who at all
30 times during the period involved between them own all of the issued and
31 outstanding stock of such corporation and hold all such offices
32 provided, however, that each officer must own at least one share of
33 stock, except as provided in section two hundred twelve of this article,
34 or an executive officer of an incorporated religious, charitable or
35 educational institution, or persons engaged in a professional or teach-
36 ing capacity in or for a religious, charitable or educational institu-
37 tion, or volunteers in or for a religious, charitable or educational
38 institution, or persons participating in and receiving rehabilitative
39 services in a sheltered workshop operated by a religious, charitable or
40 educational institution under a certificate issued by the United States
41 department of labor, or recipients of charitable aid from a religious or
42 charitable institution who perform work in or for the institution which
43 is incidental to or in return for the aid conferred, and not under an
44 express contract of hire. The terms "religious, charitable or educa-
45 tional institution" mean a corporation, unincorporated association,
46 community chest, fund or foundation organized and operated exclusively
47 for religious, charitable or educational purposes, no part of the net
48 earnings of which inure to the benefit of any private shareholder or
49 individual.

50 "Employment" means employment in any trade, business or occupation
51 carried on by an employer, except that the following shall not be deemed
52 employment under this article: services performed for the state, a
53 municipal corporation, local governmental agency, other political subdi-
54 vision or public authority; employment subject to the federal railroad
55 unemployment insurance act; service performed on or as an officer or
56 member of the crew of a vessel on the navigable water of the United

1 States or outside the United States; service as farm laborers; casual
2 employment and the first forty-five days of extra employment of employ-
3 ees not regularly in employment as otherwise defined herein; service as
4 golf caddies; and service during all or any part of the school year or
5 regular vacation periods as a part-time worker of any person actually in
6 regular attendance during the day time as a student in an elementary or
7 secondary school. THE TERM "EMPLOYMENT" SHALL INCLUDE DOMESTIC OR
8 PERSONAL WORK IN A PRIVATE HOME. The term "employment" shall not include
9 the services of a licensed real estate broker or sales associate if it
10 be proven that (a) substantially all of the remuneration (whether or not
11 paid in cash) for the services performed by such broker or sales associ-
12 ate is directly related to sales or other output (including the perform-
13 ance of services) rather than to the number of hours worked; (b) the
14 services performed by the broker or sales associate are performed pursu-
15 ant to a written contract executed between such broker or sales associ-
16 ate and the person for whom the services are performed within the past
17 twelve to fifteen months; and (c) the written contract provided for in
18 [paragraph] SUBPARAGRAPH (b) [herein] OF THIS PARAGRAPH was not executed
19 under duress and contains the following provisions:

20 S 11. The commissioner of labor shall report to the speaker of the
21 assembly and the temporary president of the senate before December 1,
22 2011 on the feasibility and practicality of full- and part-time domestic
23 workers being able to obtain common employment benefits such as vacation
24 pay, severance pay, personal leave, or health insurance or other health
25 coverage through collective bargaining or by law. The commissioner shall
26 recommend measures to make these benefits affordable to employers and
27 attainable for workers. The commissioner shall also convene an intera-
28 gency task force to report to the speaker and majority leader before
29 December 1, 2011, which shall include but not be limited to the chair of
30 the workers' compensation board, the superintendent of insurance, the
31 commissioner of health and the executive director of the department of
32 economic development, to provide easily accessible educational and
33 informational material for domestic employers and workers. Such material
34 shall cover employment benefit, tax and insurance laws.

35 S 12. This act shall take effect on January first next succeeding the
36 date on which it shall have become a law; provided that section two of
37 this act shall take effect on the ninetieth day after it shall have
38 become a law.