

2311--D

Cal. No. 196

2009-2010 Regular Sessions

I N   S E N A T E

February 17, 2009

---

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 -- again 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

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

LBD00150-14-0

often labor under harsh conditions, work long hours for low wages without benefits or job security, are isolated in their workplaces, and are endangered by sexual harassment and assault, as well as verbal, emotional and psychological abuse. Moreover, many domestic workers in the state of New York are women of color who, because of race and sex discrimination, are particularly vulnerable to unfair labor practices.

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

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

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

#### ARTICLE 19-C

##### LABOR STANDARDS FOR DOMESTIC WORKERS

##### SECTION 695. DEFINITIONS.

##### 696. OTHER EMPLOYMENT CONDITIONS.

##### 697. REMEDIES.

##### 698. SEVERABILITY.

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

1. "DOMESTIC WORKER" MEANS A PERSON EMPLOYED IN A HOME OR RESIDENCE FOR THE PURPOSE OF CARING FOR A CHILD, SERVING AS A COMPANION TO A SICK, CONVALESCING OR ELDERLY PERSON, HOUSEKEEPING, OR FOR ANY OTHER DOMESTIC SERVICE PURPOSE. "DOMESTIC WORKER" DOES NOT INCLUDE ANY INDIVIDUAL WHO IS ENGAGED IN PROVIDING COMPANIONSHIP SERVICES, AS DEFINED IN S 213(A)(15) OF THE FAIR LABOR STANDARDS ACT OF 1938, AND WHO IS EMPLOYED BY AN EMPLOYER OR AGENCY OTHER THAN THE FAMILY OR HOUSEHOLD USING HIS OR HER SERVICES. "DOMESTIC WORKER" ALSO DOES NOT INCLUDE ANY INDIVIDUAL WHO IS ENGAGED AS AN AU PAIR AS IS SET OUT IN TITLE 22, SECTION 62.31 OF THE CODE OF FEDERAL REGULATIONS.

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

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

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

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

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

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

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

10 (B) NO DOMESTIC WORKER WHOSE REGULAR WORK SCHEDULE FOR A GIVEN EMPLOY-  
11 ER IS AT LEAST TWENTY HOURS PER WEEK SHALL BE REQUIRED TO WORK ON A  
12 HOLIDAY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 If the commissioner determines that an employer has violated a  
55 provision of article six (payment of wages), article nineteen (minimum  
56 wage act), article nineteen-A (MINIMUM WAGE STANDARDS AND PROTECTIVE

LABOR PRACTICES FOR FARM WORKERS), ARTICLE NINETEEN-C (LABOR STANDARDS FOR DOMESTIC WORKERS), section two hundred twelve-a (MIGRANT REGISTRATION LAW), section two hundred twelve-b (FARM LABOR CAMP COMMISSARIES), section one hundred sixty-one (day of rest) or section one hundred sixty-two (meal periods) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. In addition to directing payment of wages, benefits or wage supplements found to be due, such order, if issued to an employer who previously has been found in violation of those provisions, rules or regulations, or to an employer whose violation is willful or egregious, shall direct payment to the commissioner of an additional sum as a civil penalty in an amount equal to double the total amount found to be due. In no case shall the order direct payment of an amount less than the total wages, benefits or wage supplements found by the commissioner to be due, plus the appropriate civil penalty. Where the violation is for a reason other than the employer's failure to pay wages, benefits or wage supplements found to be due, the order shall direct payment to the commissioner of a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and, in the case of wages, benefits or supplements violations, the failure to comply with recordkeeping or other non-wage requirements.

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

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

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

5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) ON A CASUAL BASIS WHILE A MINOR in service as a part time baby sitter in the home of the employer[; or someone who lives in the home of an employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping]; (b) in labor on a farm; (c) in a bona fide executive, administrative, or professional capacity; (d) as an outside salesman; (e) as a driver engaged in operating a taxicab; (f) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational

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

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

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

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

1 tered workshop or any individual employed in a charitable non-profit  
2 rehabilitation facility or sheltered workshop who has received rehabili-  
3 tative or therapeutic services and whose capacity to perform the work  
4 for which he OR SHE is engaged is substantially impaired by physical or  
5 mental deficiency or injury.

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

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

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

16 S 10. The opening paragraph of subdivision 5 and the opening paragraph  
17 of paragraph A of subdivision 6 of section 201 of the workers' compen-  
18 sation law, the opening paragraph of subdivision 5 as amended by chapter  
19 205 of the laws of 1993, the opening paragraph of paragraph A of subdi-  
20 vision 6 as amended by chapter 903 of the laws of 1986, are amended to  
21 read as follows:

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

53 "Employment" means employment in any trade, business or occupation  
54 carried on by an employer, except that the following shall not be deemed  
55 employment under this article: services performed for the state, a  
56 municipal corporation, local governmental agency, other political subdi-

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

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

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