

2399--B

Cal. No. 396

2011-2012 Regular Sessions

I N S E N A T E

January 19, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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, in relation to excluding certain seasonal fair workers from the definition of employee for purposes of the minimum wage act

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

1 Section 1. Subdivision 5 of section 651 of the labor law, as amended
2 by chapter 481 of the laws of 2010, is amended to read as follows:
3 5. "Employee" includes any individual employed or permitted to work by
4 an employer in any occupation, but shall not include any individual who
5 is employed or permitted to work: (a) on a casual basis in service as a
6 part time baby sitter in the home of the employer; (b) in labor on a
7 farm; (c) in a bona fide executive, administrative, or professional
8 capacity; (d) as an outside salesman; (e) as a driver engaged in operat-
9 ing a taxicab; (f) as a volunteer, learner or apprentice by a corpo-
10 ration, unincorporated association, community chest, fund or foundation
11 organized and operated exclusively for religious, charitable or educa-
12 tional purposes, no part of the net earnings of which inures to the
13 benefit of any private shareholder or individual; (g) as a member of a
14 religious order, or as a duly ordained, commissioned or licensed minis-
15 ter, priest or rabbi, or as a sexton, or as a christian science reader;
16 (h) in or for such a religious or charitable institution, which work is
17 incidental to or in return for charitable aid conferred upon such indi-
18 vidual and not under any express contract of hire; (i) in or for such a
19 religious, educational or charitable institution if such individual is a
20 student; (j) in or for such a religious, educational or charitable

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

LBD03568-05-1

1 institution if the earning capacity of such individual is impaired by
2 age or by physical or mental deficiency or injury; (k) in or for a
3 summer camp or conference of such a religious, educational or charitable
4 institution for not more than three months annually; (l) as a staff
5 counselor in a children's camp; (m) in or for a college or university
6 fraternity, sorority, student association or faculty association, no
7 part of the net earnings of which inures to the benefit of any private
8 shareholder or individual, and which is recognized by such college or
9 university, if such individual is a student; (n) by a federal, state or
10 municipal government or political subdivision thereof. The exclusions
11 from the term "employee" contained in this subdivision shall be as
12 defined by regulations of the commissioner; [or] (o) as a volunteer at a
13 recreational or amusement event run by a business that operates such
14 events, provided that no single such event lasts longer than eight
15 consecutive days and no more than one such event concerning substantial-
16 ly the same subject matter occurs in any calendar year. Any such volun-
17 teer shall be at least eighteen years of age. A business seeking cover-
18 age under this paragraph shall notify every volunteer in writing, in
19 language acceptable to the commissioner, that by volunteering his or her
20 services, such volunteer is waiving his or her right to receive the
21 minimum wage pursuant to this article. Such notice shall be signed and
22 dated by a representative of the business and the volunteer and kept on
23 file by the business for thirty-six months[.]; OR (P) AN EMPLOYEE OF AN
24 AMUSEMENT OR RECREATIONAL ESTABLISHMENT PROVIDED THAT (1) SUCH ESTAB-
25 LISHMENT ADHERES TO CURRENT STATE MINIMUM WAGE RATES FOR ALL EMPLOYEES,
26 (2) MEETS THE BUSINESS OPERATIONS CRITERIA ESTABLISHED UNDER PARAGRAPH
27 THREE OF SUBDIVISION A OF SECTION THIRTEEN OF THE FEDERAL FAIR LABOR
28 STANDARDS ACT, AND (3) IS EMPLOYED IN HIS OR HER CAPACITY AS AN EMPLOYEE
29 ON THE PREMISES OF A COUNTY OR AGRICULTURAL FAIRGROUND; PROVIDED, HOWEV-
30 ER, THAT THE PROVISIONS OF THIS SECTION SHALL NOT SUPERSEDE THE TERMS OF
31 A COLLECTIVE BARGAINING AGREEMENT OR APPLY TO A POLICY THAT IS THE
32 RESULT OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND A
33 RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION.

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

39 S 2. This act shall take effect on the thirtieth day after it shall
40 have become a law.