

1743--B

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sens. ESPAILLAT, ADAMS, ADDABBO, AVELLA, BRESLIN, DIAZ, DILAN, GIANARIS, HASSELL-THOMPSON, HOYLMAN, KENNEDY, KLEIN, KRUEGER, LATIMER, MONTGOMERY, PARKER, PERALTA, PERKINS, RIVERA, SAMPSON, SANDERS, SAVINO, SERRANO, SMITH, SQUADRON, STAVISKY, STEWART-COUSINS -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to granting collective bargaining rights to farm laborers and allowing farm workers one day of rest each week and including farm laborers within the provisions pertaining to overtime compensation and unemployment insurance; to amend the workers' compensation law, in relation to the eligibility of farm laborers for workers' compensation benefits and the provision of claim forms to farm laborers injured in the course of employment and in relation to service as farm laborers; and to amend the labor law, in relation to labor on a farm and regulating the employment of certain employees whose earning capacity is affected or impaired by youth or age

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

1     Section 1. This act shall be known and may be cited as the "farm fair  
2     labor practices act".

3     S 2. Definitions. For the purposes of this act, the following defi-  
4     nitions shall apply:

5     1. "Farm" shall mean an agricultural for-profit business involved in  
6     commercial enterprise with respect to stock, dairy, poultry, fur-bearing  
7     animal, fruit and truck farms; plantations; orchards; nurseries; green-

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

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1 houses and similar structures used primarily for the raising of agricul-  
2 tural or horticultural commodities.

3 2. "Farm employment" shall mean the services performed by an employee  
4 on a farm in the employ of the owner, farm contractor, lessee or opera-  
5 tor of a farm in connection with:

6 (a) cultivating the soil;

7 (b) raising or harvesting any agricultural or horticultural commodity,  
8 including the raising or hatching of poultry, the raising, shearing,  
9 feeding, caring for, training, management of livestock, bees, fur-bear-  
10 ing animals and wildlife;

11 (c) the production or harvesting of maple syrup or maple sugar;

12 (d) the operation, management, conservation, improvement or mainte-  
13 nance of a farm and its tools and equipment;

14 (e) the operation or maintenance of ditches, canals, reservoirs or  
15 waterways used exclusively for removing, supplying and storing water for  
16 farming purposes;

17 (f) the handling, planting, drying, packing, packaging, processing,  
18 freezing, grading, storing or delivering to market or to a carrier for  
19 transportation to market, of any agricultural or horticultural commodity  
20 raised on the employer's farm.

21 Farm employment shall not mean services performed in connection with  
22 commercial canning, freezing, grading or other processing of any agri-  
23 cultural or horticultural commodity not raised on the employer's farm.

24 3. "Farm employer" shall mean any individual, partnership, associ-  
25 ation, corporation, cooperative, business trust, legal representative or  
26 organized group of persons acting as an employer of an individual  
27 engaged or permitted to work on a farm. If a farm labor contractor  
28 recruits or supplies farm workers for work on a farm, such farm worker  
29 shall be deemed to be employees of the owner, lessee or operator of such  
30 farm.

31 4. "Farm employee" shall mean any individual engaged or permitted by  
32 an employer to work on a farm, except:

33 (a) the parent, spouse, child or other member of the employer's imme-  
34 diate family related to the third degree of consanguinity or affinity;

35 (b) an individual employed by the Federal, State or municipal govern-  
36 ment or a political subdivision thereof; and

37 (c) for that part of the working time covered by the provisions of  
38 another minimum wage order promulgated by the commissioner.

39 5. "Commissioner" means the Commissioner of Labor of the State of New  
40 York.

41 6. "Temporary visa worker" shall mean an alien admitted to the United  
42 States to perform agricultural labor pursuant to 8 USC 1184(c) and 8 USC  
43 1101(a)(15)(H) of the federal immigration and nationality act if, at the  
44 time such services are rendered, they are excluded from the definition  
45 of employment as provided in 26 USC 3306(c) of the federal unemployment  
46 tax act certified to work for a farm employer pursuant to the H-2A  
47 Program authorized under the federal Immigration and Nationality Act of  
48 1952, as amended.

49 7. "Work hours" shall mean the hours that a farm employee is permitted  
50 to work or is required to be available for work at the assigned place of  
51 work, and shall include time spent in going from one field to another,  
52 in waiting for baskets, pickup or breakdown of machinery or equipment  
53 where the farm employer requires the farm employee to remain at the site  
54 of the breakdown during repairs. Time not worked because of weather  
55 conditions shall not be considered as hours worked. An employee who  
56 lives on the premises of the employer, or in comparable facilities at

1 the work site, shall not be considered to have worked or to have been  
2 available for work:

3 (a) during normal sleeping hours solely because the employee is  
4 required to be on call during such hours; or

5 (b) at any other time when the employee is free to leave the place of  
6 employment.

7 8. "Overtime hours" shall mean hours worked by a farm employee of more  
8 than ten hours in any day, sixty hours in a calendar week, or six days  
9 in a calendar week.

10 S 3. Subdivision 1 of section 161 of the labor law is amended by  
11 adding a new undesignated paragraph to read as follows:

12 EVERY PERSON EMPLOYED AS A FARM EMPLOYER SHALL BE ALLOWED AT LEAST  
13 TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK. A  
14 FARM EMPLOYEE MAY CONSENT IN WRITING TO WAIVE THIS RIGHT AND WORK ON THE  
15 DAY OF REST, PROVIDED THAT HE OR SHE SHALL BE PAID AS PROVIDED UNDER  
16 SECTION ONE HUNDRED SIXTY-THREE-A OF THIS TITLE. TWENTY-FOUR CONSEC-  
17 UTIVE HOURS SPENT AT REST BECAUSE OF CIRCUMSTANCES, SUCH AS WEATHER OR  
18 CROP CONDITIONS, SHALL BE DEEMED TO CONSTITUTE THE REST REQUIRED BY THIS  
19 PARAGRAPH. THE DAY OF REST SHOULD BE THE SAME AS THE TRADITIONAL DAY  
20 RESERVED BY THE FARM LABORER FOR RELIGIOUS WORSHIP, WHENEVER POSSIBLE.  
21 EACH FARM EMPLOYER SHALL NOTIFY HIS OR HER FARM LABORERS OF THE TWENTY-  
22 FOUR CONSECUTIVE HOURS OF REST PERIOD REQUIRED BY THIS PARAGRAPH BY  
23 POSTING SUCH PARAGRAPH IN A DESIGNATED CENTRAL POSTING AREA AND BY  
24 INCLUDING SUCH PARAGRAPH WITHIN THE WORK AGREEMENT REQUIRED PURSUANT TO  
25 SECTION SIX HUNDRED SEVENTY-NINE OF THIS CHAPTER.

26 S 4. Paragraphs b and d of subdivision 2 of section 161 of the labor  
27 law, as amended by chapter 281 of the laws of 1941, are amended to read  
28 as follows:

29 b. Employees in [dairies, creameries,] milk condenseries, milk powder  
30 factories, milk sugar factories, milk shipping stations, butter and  
31 cheese factories, ice cream manufacturing plants and milk bottling  
32 plants, where not more than seven persons are employed;

33 d. Employees whose duties include not more than three hours' work on  
34 Sunday in setting sponges in bakeries, [caring for live animals,] main-  
35 taining fires, or making necessary repairs to boilers or machinery.

36 S 5. The labor law is amended by adding a new section 163-a to read as  
37 follows:

38 S 163-A. FARM WORKERS RESTRICTIONS ON HOURS OF WORK. NO FARM EMPLOYER  
39 OPERATING A FARM SHALL REQUIRE ANY FARM EMPLOYEE TO WORK MORE THAN TEN  
40 WORK HOURS IN ANY DAY, SIXTY WORK HOURS IN ANY CALENDAR WEEK, OR SIX  
41 DAYS IN ANY CALENDAR WEEK, UNLESS SUCH FARM LABORER IS PAID AS FOLLOWS:

42 1. HOURLY RATE. ANY FARM EMPLOYEE WHO IS PAID ON AN HOURLY BASIS AND WHO  
43 IS EIGHTEEN YEARS OF AGE OR OVER, OR WHO IS SIXTEEN OR SEVENTEEN YEARS  
44 OF AGE AND NOT REQUIRED BY LAW TO ATTEND SCHOOL SHALL NOT BE EMPLOYED  
45 OVERTIME HOURS UNLESS THE FARM EMPLOYER RECEIVES ONE AND ONE-HALF TIMES  
46 THE REGULAR RATE FOR SUCH OVERTIME WORK HOURS.

47 2. PIECE RATE. ANY FARM EMPLOYEE PAID AT A PIECE RATE WHO IS EIGHTEEN  
48 YEARS OF AGE OR OVER, OR WHO IS SIXTEEN OR SEVENTEEN YEARS OF AGE AND  
49 NOT REQUIRED BY LAW TO ATTEND SCHOOL SHALL NOT BE EMPLOYED OVERTIME  
50 HOURS UNLESS THE FARM EMPLOYEE RECEIVES ONE AND ONE-HALF TIMES THE  
51 PREVAILING PIECE RATE SET BY THE UNITED STATES DEPARTMENT OF LABOR  
52 PURSUANT TO THE H-2A TEMPORARY VISA PROGRAM AUTHORIZED BY THE FEDERAL  
53 IMMIGRATION AND NATIONALITY ACT OF 1952, AS AMENDED, FOR ALL OVERTIME  
54 WORK HOURS.

55 3. SALARIED RATE. ANY FARM EMPLOYEE PAID AT A SALARIED RATE AND NOT  
56 WORKING AS A MANAGER OR SUPERVISOR WHO IS EIGHTEEN YEARS OF AGE OR OVER,

1 OR WHO IS SIXTEEN OR SEVENTEEN YEARS OF AGE AND NOT REQUIRED BY LAW TO  
2 ATTEND SCHOOL SHALL NOT BE EMPLOYED OVERTIME HOURS UNLESS HE RECEIVES  
3 ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED DIVIDED  
4 BY FORTY FOR ALL OVERTIME WORK HOURS.

5 4. A CONTRACT BETWEEN A FARM EMPLOYER AND A FARM EMPLOYEE MAY ALLOW  
6 FOR DISCIPLINE OR DISMISSAL OF A FARM EMPLOYEE WHO REFUSES TO WORK  
7 OVERTIME HOURS OTHER THAN ON THE DAY OF REST WITHOUT A MEDICAL OR SUCH  
8 OTHER EXCUSE PERMITTED BY REGULATION OF THE COMMISSIONER.

9 S 6. The opening paragraph of paragraph A of subdivision 6 of section  
10 201 of the workers' compensation law, as amended by chapter 481 of the  
11 laws of 2010, is amended to read as follows:

12 "Employment" means employment in any trade, business or occupation  
13 carried on by an employer, except that the following shall not be deemed  
14 employment under this article: services performed for the state, a  
15 municipal corporation, local governmental agency, other political subdi-  
16 vision or public authority; employment subject to the federal railroad  
17 unemployment insurance act; service performed on or as an officer or  
18 member of the crew of a vessel on the navigable water of the United  
19 States or outside the United States; [service as farm laborers;] SERVICE  
20 AS A TEMPORARY VISA WORKER AS DEFINED BY THE CHAPTER OF THE LAWS OF TWO  
21 THOUSAND THIRTEEN THAT AMENDED THIS PARAGRAPH, casual employment and the  
22 first forty-five days of extra employment of employees not regularly in  
23 employment as otherwise defined herein; service as golf caddies; and  
24 service during all or any part of the school year or regular vacation  
25 periods as a part-time worker of any person actually in regular attend-  
26 ance during the day time as a student in an elementary or secondary  
27 school. The term "employment" shall include domestic or personal work in  
28 a private home. The term "employment" shall not include the services of  
29 a licensed real estate broker or sales associate if it be proven that  
30 (a) substantially all of the remuneration (whether or not paid in cash)  
31 for the services performed by such broker or sales associate is directly  
32 related to sales or other output (including the performance of services)  
33 rather than to the number of hours worked; (b) the services performed by  
34 the broker or sales associate are performed pursuant to a written  
35 contract executed between such broker or sales associate and the person  
36 for whom the services are performed within the past twelve to fifteen  
37 months; and (c) the written contract provided for in subparagraph (b) of  
38 this paragraph was not executed under duress and contains the following  
39 provisions:

40 S 7. The labor law is amended by adding a new section 703-a to read as  
41 follows:

42 S 703-A. FARM EMPLOYEES. 1. FARM EMPLOYEES OTHER THAN THOSE COVERED BY  
43 PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION SEVEN HUNDRED ONE OF THIS  
44 ARTICLE SHALL HAVE THE RIGHT OF SELF-ORGANIZATION, TO FORM, JOIN, OR  
45 ASSIST LABOR ORGANIZATIONS, TO BARGAIN COLLECTIVELY THROUGH REPRESENTATIVES  
46 OF THEIR OWN CHOOSING, AND TO ENGAGE IN CONCERTED ACTIVITIES,  
47 FOR THE PURPOSE OF COLLECTIVE BARGAINING OR OTHER MUTUAL AID OR  
48 PROTECTION, FREE FROM INTERFERENCE, RESTRAINT, OR COERCION OF EMPLOYERS,  
49 BUT NOTHING CONTAINED IN THIS ARTICLE SHALL BE INTERPRETED TO PROHIBIT  
50 EMPLOYEES FROM EXERCISING THE RIGHT TO CONFER WITH THEIR EMPLOYER AT ANY  
51 TIME, PROVIDED THAT DURING SUCH CONFERENCE THERE IS NO ATTEMPT BY THE  
52 EMPLOYER, DIRECTLY OR INDIRECTLY, TO INTERFERE WITH, RESTRAIN OR COERCE  
53 EMPLOYEES IN THE EXERCISE OF THE RIGHTS GUARANTEED BY THIS SECTION.

54 2. NO FARM EMPLOYER OR HIS OR HER AGENT OR ANY OTHER PERSON, SHALL  
55 DISCHARGE, THREATEN, PENALIZE, BLACKLIST, EVICT, OR IN ANY OTHER MANNER  
56 DISCRIMINATE OR RETALIATE AGAINST ANY FARM EMPLOYEE BECAUSE THE EMPLOYEE

1 HAS (A) ENGAGED IN CONCERTED ACTIVITY FOR THE PURPOSE OF COLLECTIVE  
2 BARGAINING OR MUTUAL AID OR PROTECTION; (B) ATTEMPTED TO COLLECTIVELY  
3 BARGAIN; (C) FORMED, JOINED, OR ASSISTED A LABOR ORGANIZATION; (D)  
4 ATTEMPTED TO FORM, JOIN, OR ASSIST A LABOR ORGANIZATION; (E) PLACED A  
5 COMPLAINT WITH ANY GOVERNMENT AGENCY REGARDING CONCERTED PROTECTED  
6 ACTIVITY OR COLLECTIVE BARGAINING; (F) FILED OR THREATENED TO FILE AN  
7 ACTION IN COURT TO ENFORCE THE RIGHTS CONTAINED IN THIS SECTION; (G)  
8 PROVIDED INFORMATION OR TESTIMONY TO ANY GOVERNMENT AGENCY REGARDING THE  
9 RIGHTS CONTAINED IN THIS SECTION; (H) PROVIDED INFORMATION TO AN ATTOR-  
10 NEY IN PREPARATION FOR OR AS PART OF AN ACTION IN COURT REGARDING THE  
11 RIGHTS CONTAINED IN THIS SECTION; OR (I) BECAUSE THE FARM EMPLOYER  
12 BELIEVES THAT THE FARM EMPLOYEE HAS ENGAGED IN ANY OF THE FOREGOING  
13 ACTIVITIES.

14 3. (A) A FARM EMPLOYEE WHO HAS BEEN THE SUBJECT OF AN ACTION IN  
15 VIOLATION OF THIS SECTION MAY INSTITUTE A CIVIL ACTION IN A COURT OF  
16 COMPETENT JURISDICTION FOR RELIEF AS SET FORTH IN THIS SECTION WITHIN  
17 TWO YEARS OF THE DATE ON WHICH SUCH VIOLATION OCCURRED OR WITHIN TWO  
18 YEARS OF THE DATE ON WHICH THE EMPLOYEE LEARNED ABOUT THE VIOLATION,  
19 WHICHEVER IS LATER.

20 (B) ANY ACTION AUTHORIZED BY THIS SECTION MAY BE BROUGHT IN THE COUNTY  
21 IN WHICH THE VIOLATION OCCURRED, IN THE COUNTY IN WHICH THE PLAINTIFF  
22 RESIDES, OR IN THE COUNTY IN WHICH THE EMPLOYER HAS ITS PRINCIPAL PLACE  
23 OF BUSINESS.

24 (C) AT OR BEFORE THE COMMENCEMENT OF ANY ACTION UNDER THIS SECTION,  
25 NOTICE THEREOF SHALL BE SERVED UPON THE ATTORNEY GENERAL BY THE EMPLOY-  
26 EE.

27 (D) IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION, THE COURT MAY  
28 ORDER ALL APPROPRIATE RELIEF, INCLUDING ENJOINING THE CONTINUED  
29 VIOLATION OF THIS SECTION; ORDERING REINSTATEMENT OF THE EMPLOYEE OR  
30 EMPLOYEES OR ORDERING FRONT PAY IN LIEU OF REINSTATEMENT; AND ORDERING  
31 PAYMENT TO THE EMPLOYEE OF LIQUIDATED DAMAGES, LOST COMPENSATION, ATTOR-  
32 NEY'S FEES, COSTS AND DAMAGES. LIQUIDATED DAMAGES SHALL BE CALCULATED AS  
33 AN AMOUNT NOT MORE THAN TEN THOUSAND DOLLARS, AND SHALL BE IN ADDITION  
34 TO ANY OTHER REMEDIES PERMITTED BY THIS SECTION. WHERE THE VIOLATION  
35 LEADS TO A LOSS OF LODGING FOR THE EMPLOYEE OR EMPLOYEES, DAMAGES SHALL  
36 ALSO INCLUDE THE COST OF OBTAINING ALTERNATE LODGING.

37 4. EVERY FARM EMPLOYER COVERED BY THIS SECTION SHALL POST A COPY OF  
38 THIS SECTION IN A LOCATION WHICH IS CONSPICUOUS AND ACCESSIBLE TO HIS OR  
39 HER EMPLOYEES. IF A FOREIGN LANGUAGE TRANSLATION OF THIS SECTION IS MADE  
40 PUBLICLY AVAILABLE ON THE WEBSITE OF THE NEW YORK STATE PUBLIC EMPLOY-  
41 MENT RELATIONS BOARD, THE COMMISSIONER, OR THE ATTORNEY GENERAL, EVERY  
42 FARM EMPLOYER COVERED BY THIS SECTION SHALL POST A COPY IN THAT FOREIGN  
43 LANGUAGE AS WELL.

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

47 (a) The term "employees" includes but is not restricted to any indi-  
48 vidual employed by a labor organization; any individual whose employment  
49 has ceased as a consequence of, or in connection with, any current labor  
50 dispute or because of any unfair labor practice, and who has not  
51 obtained any other regular and substantially equivalent employment; and  
52 shall not be limited to the employees of a particular employer, unless  
53 the article explicitly states otherwise, but shall not include any indi-  
54 vidual employed by his parent or spouse or in the domestic service of  
55 and directly employed, controlled and paid by any person in his home,  
56 any individual whose primary responsibility is the care of a minor child

1 or children and/or someone who lives in the home of a person for the  
2 purpose of serving as a companion to a sick, convalescing or elderly  
3 person or any individuals employed only for the duration of a labor  
4 dispute, or any individuals employed as farm laborers OR EMPLOYEES BY A  
5 FARM EMPLOYER WITH SALES OF UNDER FIVE MILLION DOLLARS DURING THE PREVI-  
6 OUS CALENDAR YEAR ACCORDING TO THE UNITED STATES DEPARTMENT OF AGRICUL-  
7 TURE NATIONAL AGRICULTURAL STATISTICS SERVICE, or, any individual who  
8 participates in and receives rehabilitative or therapeutic services in a  
9 charitable non-profit rehabilitation facility or sheltered workshop or  
10 any individual employed in a charitable non-profit rehabilitation facil-  
11 ity or sheltered workshop who has received rehabilitative or therapeutic  
12 services and whose capacity to perform the work for which he is engaged  
13 is substantially impaired by physical or mental deficiency or injury.

14 S 9. The labor law is amended by adding a new section 704-b to read as  
15 follows:

16 S 704-B. UNFAIR LABOR PRACTICES; AGRICULTURE. 1. IT IS THE POLICY OF  
17 THE STATE TO PROTECT THE RIGHTS OF FARM LABORERS OR EMPLOYERS WITHOUT  
18 CAUSING IMMEDIATE AND IRREPARABLE HARM TO FARM EMPLOYERS OR THE FOOD  
19 SUPPLY. IN RECOGNITION OF THE NEED TO AVOID INTERRUPTION OF THE AGRICUL-  
20 TURAL PRODUCTION OF CROPS WITH A SHORT PEAK HARVEST SEASON OR DEATH OR  
21 SERIOUS INJURY TO ANIMALS INVOLVED IN COMMERCIAL FARM ACTIVITY ESSENTIAL  
22 TO THE MAINTENANCE OF THE FOOD SUPPLY, THIS POLICY IS BEST ACHIEVED BY  
23 PROVIDING FARM EMPLOYERS AND THEIR EMPLOYEES WITH A SHORT TEMPORARY  
24 PERIOD TO SETTLE THEIR LABOR DISPUTE WITHOUT CAUSING IMMEDIATE OR IRRE-  
25 PARABLE HARM TO THE EMPLOYER. FOR PURPOSES OF THIS SECTION, A FARM  
26 EMPLOYER MAY PETITION THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE  
27 AND MARKETS FOR A CERTIFICATION THAT A WORK STOPPAGE CONDUCTED PURSUANT  
28 TO THIS ARTICLE COULD CAUSE DEATH OR SERIOUS INJURY TO SUCH FARM ANIMALS  
29 OR THE FOOD SUPPLY.

30 2. DEFINITIONS. WHEN USED IN THIS SECTION THE TERMS:

31 (A) "SHORT PEAK HARVEST SEASON" MEANS THE PERIOD FOR FRUITS AND VEGE-  
32 TABLES THAT HAVE A MAXIMUM HARVEST PERIOD OF NO MORE THAN SIX WEEKS  
33 DURING WHICH SUCH AGRICULTURAL PRODUCT IS HARVESTED FOR SALE, AS DETER-  
34 MINED BY THE DEPARTMENT OF AGRICULTURE AND MARKETS.

35 (B) "WORK STOPPAGE" MEANS ANY STRIKE, OR CONCERTED CESSATION OR SLOW-  
36 DOWN OF WORK BY EMPLOYEES.

37 (C) "LOCKOUT" MEANS A WORK STOPPAGE DURING WHICH AN EMPLOYER PREVENTS  
38 EMPLOYEES FROM WORKING.

39 3. IN THE EVENT THAT THE BOARD AND ITS EMPLOYEES RECEIVE NOTICE THAT A  
40 LABOR DISPUTE HAS ARISEN BETWEEN A FARM EMPLOYER THAT WILL OR MAY RESULT  
41 IN A WORK STOPPAGE OR LOCKOUT, THE BOARD SHALL IMMEDIATELY INITIATE  
42 SETTLEMENT PROCEEDINGS UNDER SECTION SEVEN HUNDRED TWO-A OF THIS ARTI-  
43 CLE.

44 (A) AFTER THE INITIATION OF SETTLEMENT PROCEEDINGS, ANY WORK STOPPAGE  
45 OR LOCKOUT SHALL CEASE FOR A PERIOD OF NOT MORE THAN TWENTY-ONE DAYS IF  
46 BOTH OF THE FOLLOWING CIRCUMSTANCES EXIST:

47 (I) THE WORK STOPPAGE OR LOCKOUT OCCURS DURING A SHORT PEAK HARVEST  
48 SEASON; AND

49 (II) THE WORK STOPPAGE OR LOCKOUT WILL CAUSE IMMEDIATE AND IRREPARABLE  
50 INJURY, LOSS OR DAMAGE TO THE EMPLOYER.

51 (B) DURING SUCH TWENTY-ONE DAY PERIOD, BOTH PARTIES SHALL ENTER INTO  
52 GOOD FAITH NEGOTIATIONS TO SETTLE THE LABOR DISPUTE, WHICH PERIOD SHALL  
53 BE REFERRED TO AS A COOLING OFF PERIOD.

54 (C) THE BOARD SHALL CONDUCT AN IMMEDIATE AND EXPEDITED FACT-FINDING  
55 HEARING TO DETERMINE WHETHER THE CIRCUMSTANCES UNDER PARAGRAPH (A) OF  
56 THIS SUBDIVISION EXIST. EACH PARTY SHALL HAVE THE OPPORTUNITY TO SUBMIT

1 WRITTEN AND ORAL TESTIMONY AT THE HEARING. THE BOARD SHALL NOT BE BOUND  
2 BY TECHNICAL RULES OF EVIDENCE PREVAILING IN COURTS OF LAW OR EQUITY.

3 (D) THE BOARD SHALL ISSUE ITS DETERMINATION IN WRITING WITHIN  
4 FORTY-EIGHT HOURS OF THE CONCLUSION OF THE HEARING, WHICH SHALL INCLUDE  
5 FINDINGS OF FACT AND A RATIONALE FOR ITS DETERMINATION. A COPY OF THE  
6 BOARD'S DETERMINATION SHALL BE PROVIDED TO EACH PARTY WITHIN TWENTY-FOUR  
7 HOURS.

8 (E) FOR PURPOSES OF THIS SECTION, AN EMPLOYEE WHO IS ABSENT FROM WORK  
9 WITHOUT PERMISSION, OR WHO ABSTAINS WHOLLY OR IN PART FROM THE FULL  
10 PERFORMANCE OF HIS OR HER EMPLOYMENT DUTIES WITHOUT PERMISSION ON THE  
11 DATE WHEN A WORK STOPPAGE OR LOCKOUT OCCURS SHALL BE PRESUMED TO HAVE  
12 ENGAGED IN SUCH WORK STOPPAGE OR LOCKOUT.

13 4. IF EITHER PARTY IS FOUND TO BE IN VIOLATION OF THE BOARD'S DETERMI-  
14 NATION, THE BOARD MAY FILE A PETITION WITH THE SUPREME COURT IN ALBANY  
15 COUNTY UPON NOTICE TO ALL PARTIES FOR TEMPORARY INJUNCTIVE RELIEF. THE  
16 BOARD SHALL NOT BE REQUIRED TO PROVIDE ANY UNDERTAKINGS OR BOND AND  
17 SHALL NOT BE LIABLE FOR ANY DAMAGES OR COSTS WHICH MAY HAVE BEEN  
18 SUSTAINED BY REASON OF ANY TEMPORARY INJUNCTIVE RELIEF ORDERED. IF THE  
19 BOARD FAILS TO ACT WITHIN TEN DAYS, THE BOARD SHALL BE DEEMED TO HAVE  
20 MADE A FINAL DETERMINATION NOT TO SEEK TEMPORARY INJUNCTIVE RELIEF.

21 S 10. Subdivision 2 of section 564 of the labor law is renumbered  
22 subdivision 3 and a new subdivision 2 is added to read as follows:

23 2. EXCLUSION FROM COVERAGE. THE TERM "EMPLOYMENT" DOES NOT INCLUDE  
24 SERVICES RENDERED BY AN INDIVIDUAL WHO IS AN ALIEN ADMITTED TO THE  
25 UNITED STATES TO PERFORM AGRICULTURAL LABOR PURSUANT TO 8 USC 1184(C)  
26 AND 8 USC 1101(A)(15)(H) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT  
27 IF, AT THE TIME SUCH SERVICES ARE RENDERED, THEY ARE EXCLUDED FROM THE  
28 DEFINITION OF EMPLOYMENT AS PROVIDED IN 26 USC 3306(C) OF THE FEDERAL  
29 UNEMPLOYMENT TAX ACT.

30 S 11. Subdivision 1 of section 674 of the labor law, as added by chap-  
31 ter 552 of the laws of 1969, is amended to read as follows:

32 1. The commissioner may promulgate such regulations as he deems appro-  
33 priate to carry out the purposes of this article and to safeguard mini-  
34 mum wage standards. Such regulations may include, but are not limited  
35 to, the defining of the circumstances or conditions for the acceptance  
36 of non-hourly rates and piece rates as equivalent to the minimum hourly  
37 rates established by this article. Such regulations also may include,  
38 but are not limited to, waiting time and call-in pay rates; wage  
39 provisions governing guaranteed earnings during specified periods of  
40 work; AND allowances for meals, lodging, and other items, services and  
41 facilities when furnished by the employer[; and the employment of indi-  
42 viduals whose earning capacity is affected or impaired by youth or age,  
43 or by physical or mental deficiency or injury, under special certif-  
44 icates issued by the commissioner, at such wages lower than the minimum  
45 wage established by this article and for such period as shall be  
46 prescribed in such regulations].

47 S 12. This act shall take effect on the first of April next succeeding  
48 the date on which it shall have become a law, except that sections  
49 seven, eight and nine shall take effect 365 days after it shall have  
50 become a law.