S T A T E O F N E W Y O R K

4363--A

2015-2016 Regular Sessions

I N S E N A T E

March 17, 2015

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to employee work schedules

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

Section 1. Article 5 of the labor law is amended by adding a new title 2 to read as follows:

TITLE 2

SPECIAL REQUIREMENTS

SECTION 171. DEFINITIONS.
172. ADVANCED NOTICE REQUIREMENTS.
173. EXCHANGE OF SHIFTS.
174. PROHIBITED ACTS.
175. EXCEPTIONS.
176. ENFORCEMENT.

S 171. DEFINITIONS. AS USED IN THIS TITLE:

1. "EMPLOYER" SHALL MEAN ANY PERSON, CORPORATION, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP OR ASSOCIATION EMPLOYING FIVE HUNDRED OR MORE FULL-TIME EMPLOYEES NATIONWIDE OR A PROPORTIONAL NUMBER OF PART-TIME EMPLOYEES, WHO EMPLOYS A RETAIL EMPLOYEE, FOOD SERVICE EMPLOYEE OR CLEANING EMPLOYEE.

2. "EMPLOYEE" SHALL MEAN AN INDIVIDUAL EMPLOYED AS A RETAIL EMPLOYEE, FOOD SERVICE EMPLOYEE OR CLEANING EMPLOYEE BY AN EMPLOYER.

3. "RETAIL EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED IN THE SALE OF ITEMS AT A RETAIL STORE ENGAGED IN THE SALE OF ITEMS TO CONSUMERS.

4. "FOOD SERVICE EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED IN THE SERVICE OF FOOD OR BEVERAGE TO GUESTS, PATRONS OR CUSTOMERS IN

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

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THE HOTEL OR RESTAURANT INDUSTRY, INCLUDING BUT NOT LIMITED TO, WAIT STAFF, BARTENDERS, CAPTAINS AND BUSING PERSONNEL; AND WHO REGULARLY RECEIVES TIPS FROM SUCH GUESTS, PATRONS OR CUSTOMERS.

5. "CLEANING EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED IN ACTIVITIES INVOLVING CLEANING IN A COMMERCIAL CONTEXT AT A COMMERCIAL OR RESIDENTIAL SETTING INCLUDING, BUT NOT LIMITED TO, JANITORS, MAIDS, HOUSEKEEPING CLEANERS AND BUILDING CLEANERS.

S 172. ADVANCED NOTICE REQUIREMENTS. 1. ON OR BEFORE THE FIRST DAY OF EMPLOYMENT OF A RETAIL EMPLOYEE, FOOD SERVICE EMPLOYEE OR CLEANING EMPLOYEE, THE EMPLOYER OR ITS DESIGNEE SHALL PROVIDE NOTICE TO SUCH EMPLOYEE IN WRITING OF THE EMPLOYEE'S WORK SCHEDULE AND THE MINIMUM NUMBER OF HOURS THE EMPLOYEE WILL BE ASSIGNED ON A MONTHLY BASIS. UPON THE PROVISIONS OF SUCH NOTICE TO SUCH AN EMPLOYEE, THE EMPLOYER OR ITS DESIGNEE SHALL OBTAIN FROM THE EMPLOYEE A SIGNED AND DATED WRITTEN ACKNOWLEDGEMENT, IN ENGLISH AND IN THE PRIMARY LANGUAGE OF THE EMPLOYEE, OF RECEIPT OF THE NOTICE, WHICH THE EMPLOYER SHALL PRESERVE AND MAINTAIN FOR A PERIOD OF SIX YEARS.

2. ON OR BEFORE THE SEVENTH DAY AFTER THE EFFECTIVE DATE OF THIS SECTION AND EVERY SEVEN DAYS THEREAFTER, EACH EMPLOYER OR ITS DESIGNEE SHALL PROVIDE EACH EMPLOYEE WITH THE DAYS THAT THE EMPLOYEE HAS BEEN ASSIGNED TO WORK AND THE HOURS OF WORK ON THOSE DAYS IN WRITING. SCHEDULING NOTICES SHALL ADDITIONALLY BE POSTED IN A CONSPICUOUS PLACE IN EVERY WORKPLACE OF THE EMPLOYER AND MAY BE REQUESTED BY ELECTRONIC MEANS.

3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY DURING ANY PERIOD WHERE REGULAR OPERATIONS OF THE EMPLOYER ARE SUSPENDED AS A RESULT OF EVENTS BEYOND THE EMPLOYER'S CONTROL.

S 173. EXCHANGE OF SHIFTS. ANY EMPLOYEES WHO WORK FOR THE SAME EMPLOYER IN THE SAME OR SUBSTANTIALLY SIMILAR LINE OF WORK MAY MUTUALLY AGREE TO EXCHANGE WORK SCHEDULES BETWEEN THE TWO EMPLOYEES. FOR ANY CHANGE OF SCHEDULE AS A RESULT OF THIS SECTION, THE EMPLOYER SHALL NOT BE REQUIRED TO PROVIDE ANY NOTICE TO ANY OTHER EMPLOYEES PURSUANT TO SECTION ONE HUNDRED SEVENTY-TWO OF THIS TITLE.

S 174. PROHIBITED ACTS. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO:

1. INTERFERE WITH, RESTRAIN OR DENY THE EXERCISE OF, OR ATTEMPT TO EXERCISE ANY RIGHTS PROVIDED TO AN EMPLOYEE BY THE PROVISIONS OF THIS TITLE;

2. DISCHARGE, THREATEN TO DISCHARGE, DEMOTE, SUSPEND, REDUCE WORK HOURS OF OR TAKE ANY OTHER ADVERSE EMPLOYMENT ACTION AGAINST ANY EMPLOYEE WHO EXERCISES OR ATTEMPTS TO EXERCISE ANY RIGHTS PROVIDED BY THIS TITLE; OR

3. DISCHARGE OR DISCRIMINATE IN ANY OTHER MANNER AGAINST AN INDIVIDUAL BECAUSE SUCH INDIVIDUAL HAS FILED ANY CHARGE, INSTITUTED ANY PROCEEDING, PROVIDED ANY INFORMATION IN CONNECTION WITH AN INVESTIGATION, OR TESTIFIED OR IS ABOUT TO TESTIFY IN ANY PROCEEDING AS A RESULT OF THE PROVISIONS OF THIS TITLE.

S 175. EXCEPTIONS. NOTHING IN THIS TITLE SHALL BE CONSTRUED AS PROHIBITING OR CONFLICTING WITH ANY PROVISION OF LAW, OBLIGATION OR COLLECTIVE BARGAINING AGREEMENT THAT IMPOSES INCREASED LEVELS OF PROTECTIONS FOR EMPLOYEES.

S 176. ENFORCEMENT. 1. FOR EACH VIOLATION OF THIS TITLE BY AN EMPLOYER, THE DEPARTMENT MAY ASSESS A CIVIL PENALTY NOT TO EXCEED FIFTY DOLLARS.

2. IN ADDITION TO ANY PENALTY ASSESSED BY THE DEPARTMENT PURSUANT TO SUBDIVISION ONE OF THIS SECTION, ANY EMPLOYEE, WHO IS NOT PROVIDED WITH THE NOTICE REQUIRED BY SUBDIVISION ONE OF SECTION ONE HUNDRED

SEVENTY-TWO OF THIS TITLE ON HIS OR HER FIRST DAY OF EMPLOYMENT, SHALL HAVE A PRIVATE RIGHT OF ACTION AGAINST HIS OR HER EMPLOYER FOR DAMAGES EQUAL TO FIFTY DOLLARS FOR EACH WORK DAY, AFTER THE FIRST DAY OF EMPLOYMENT, DURING WHICH THE EMPLOYEE IS NOT PROVIDED WITH THE REQUIRED NOTICE, IN AN AMOUNT IN THE AGGREGATE NOT TO EXCEED FIVE THOUSAND DOLLARS, PLUS COURT COSTS AND ATTORNEY'S FEES.

3. IN ADDITION TO ANY PENALTY ASSESSED BY THE DEPARTMENT PURSUANT TO SUBDIVISION ONE OF THIS SECTION, ANY EMPLOYEE, WHO DURING ANY MONTH IS NOT SCHEDULED TO WORK THE MINIMUM HOURS OF WORK FOR THE MONTH AS STATED IN THE NOTICE PROVIDED TO SUCH EMPLOYEE PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED SEVENTY-TWO OF THIS TITLE, SHALL HAVE A PRIVATE RIGHT OF ACTION AGAINST HIS OR HER EMPLOYER FOR DAMAGES EQUAL TO THE EMPLOYEE'S HOURLY PAY RATE MULTIPLIED BY THE NUMBER OF HOURS WHICH IS THE RESULT OF SUBTRACTING THE HOURS THE EMPLOYEE ACTUALLY WORKED DURING THE MONTH FROM SUCH EMPLOYEE'S STATED MINIMUM HOURS OF WORK FOR A MONTH, PLUS COURT COSTS AND ATTORNEY'S FEES.

S 2. Severability. If any clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, this judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.