

9110--A

I N   A S S E M B L Y

January 28, 2016

---

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the workers' compensation law, in relation to the application of unemployment, the minimum wage and workers' compensation coverage to newspaper delivery persons

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

1     Section 1. Section 511 of the labor law is amended by adding a new  
2     subdivision 23 to read as follows:  
3     23. NEWSPAPER DELIVERY PERSONS.     THE TERM "EMPLOYMENT" SHALL NOT  
4     INCLUDE SERVICE PERFORMED BY ANY PERSON IF:  
5     (A) SUCH PERSON IS ENGAGED IN THE TRADE OR BUSINESS OF THE DELIVERING  
6     OR DISTRIBUTION OF NEWSPAPERS OR SHOPPING NEWS (INCLUDING ANY SERVICES  
7     DIRECTLY RELATED TO SUCH TRADE OR BUSINESS);  
8     (B) SUBSTANTIALLY ALL THE REMUNERATION (WHETHER OR NOT PAID IN CASH)  
9     FOR THE PERFORMANCE OF THE SERVICES DESCRIBED IN PARAGRAPH (A) OF THIS  
10    SUBDIVISION IS DIRECTLY RELATED TO SALES OR OTHER OUTPUT (INCLUDING THE  
11    PERFORMANCE OF SERVICES) RATHER THAN TO THE NUMBER OF HOURS WORKED; AND  
12    (C) THE SERVICES PERFORMED BY THE PERSON ARE PERFORMED PURSUANT TO A  
13    WRITTEN CONTRACT BETWEEN SUCH PERSON AND THE PERSON FOR WHOM THE  
14    SERVICES ARE PERFORMED, AND SUCH CONTRACT PROVIDES THAT PERSON WILL NOT  
15    BE TREATED AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICES FOR FEDERAL TAX  
16    PURPOSES.  
17    S 2. Subdivision 16 of section 511 of the labor law, as amended by  
18    chapter 102 of the laws of 2002, is amended to read as follows:  
19    16. Non-applicability of exclusions. The exclusions described in  
20    subdivisions eight, nine, twelve, thirteen and fourteen of this section  
21    shall not apply to services performed for a nonprofit organization as  
22    defined in section five hundred sixty-three or for a governmental entity  
23    as defined in section five hundred sixty-five or for an Indian tribe as  
24    defined in section five hundred sixty-six of this article. THE EXCLUS-  
25    SIONS DESCRIBED IN SUBDIVISION TWENTY-THREE OF THIS SECTION SHALL NOT  
26    APPLY TO COMMERCIAL GOODS TRANSPORTATION SERVICES PERFORMED FOR A

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

LBD13647-04-6

1 COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE MEANING OF ARTICLE  
2 TWENTY-FIVE-C OF THIS CHAPTER.

3 S 3. The opening paragraph of subdivision 5 of section 651 of the  
4 labor law, as amended by chapter 481 of the laws of 2010, is amended to  
5 read as follows:

6 "Employee" includes any individual employed or permitted to work by an  
7 employer in any occupation, but shall not include any individual who is  
8 employed or permitted to work: (a) on a casual basis in service as a  
9 part time baby sitter in the home of the employer; (b) in labor on a  
10 farm; (c) in a bona fide executive, administrative, or professional  
11 capacity; (d) as an outside salesman; (e) as a driver engaged in operat-  
12 ing a taxicab; (f) as a volunteer, learner or apprentice by a corpo-  
13 ration, unincorporated association, community chest, fund or foundation  
14 organized and operated exclusively for religious, charitable or educa-  
15 tional purposes, no part of the net earnings of which inures to the  
16 benefit of any private shareholder or individual; (g) as a member of a  
17 religious order, or as a duly ordained, commissioned or licensed minis-  
18 ter, priest or rabbi, or as a sexton, or as a christian science reader;  
19 (h) in or for such a religious or charitable institution, which work is  
20 incidental to or in return for charitable aid conferred upon such indi-  
21 vidual and not under any express contract of hire; (i) in or for such a  
22 religious, educational or charitable institution if such individual is a  
23 student; (j) in or for such a religious, educational or charitable  
24 institution if the earning capacity of such individual is impaired by  
25 age or by physical or mental deficiency or injury; (k) in or for a  
26 summer camp or conference of such a religious, educational or charitable  
27 institution for not more than three months annually; (l) as a staff  
28 counselor in a children's camp; (m) in or for a college or university  
29 fraternity, sorority, student association or faculty association, no  
30 part of the net earnings of which inures to the benefit of any private  
31 shareholder or individual, and which is recognized by such college or  
32 university, if such individual is a student; (n) by a federal, state or  
33 municipal government or political subdivision thereof[. The exclusions  
34 from the term "employee" contained in this subdivision shall be as  
35 defined by regulations of the commissioner]; [or] (o) as a volunteer at  
36 a recreational or amusement event run by a business that operates such  
37 events, provided that no single such event lasts longer than eight  
38 consecutive days and no more than one such event concerning substantial-  
39 ly the same subject matter occurs in any calendar year[. Any], WHERE (1)  
40 ANY such volunteer shall be at least eighteen years of age[. A], (2) A  
41 business seeking coverage under this paragraph shall notify every volun-  
42 teer in writing, in language acceptable to the commissioner, that by  
43 volunteering his or her services, such volunteer is waiving his or her  
44 right to receive the minimum wage pursuant to this article[. Such], AND  
45 (3) SUCH notice shall be signed and dated by a representative of the  
46 business and the volunteer and kept on file by the business for thirty-  
47 six months; OR (P) IN THE DELIVERY OF NEWSPAPERS OR SHOPPING NEWS TO THE  
48 CONSUMER BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTA-  
49 TION SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN  
50 THE MEANING OF ARTICLE TWENTY-FIVE-C OF THIS CHAPTER. THE EXCLUSIONS  
51 FROM THE TERM "EMPLOYEE" CONTAINED IN THIS SUBDIVISION SHALL BE AS  
52 DEFINED BY REGULATIONS OF THE COMMISSIONER.

53 S 4. The opening paragraph of subdivision 3 of section 2 of the work-  
54 ers' compensation law, as amended by chapter 392 of the laws of 2008, is  
55 amended to read as follows:

1 "Employer," except when otherwise expressly stated, means a person,  
2 partnership, association, corporation, and the legal representatives of  
3 a deceased employer, or the receiver or trustee of a person, partner-  
4 ship, association or corporation, having one or more persons in employ-  
5 ment, including the state, a municipal corporation, fire district or  
6 other political subdivision of the state, and every authority or commis-  
7 sion heretofore or hereafter continued or created by the public authori-  
8 ties law. For the purposes of this chapter only "employer" shall also  
9 mean a person, partnership, association, corporation, and the legal  
10 representatives of a deceased employer, or the receiver or trustee of a  
11 person, partnership, association or corporation who delivers or causes  
12 to be delivered newspapers or periodicals for delivering or selling and  
13 delivering by a newspaper carrier under the age of eighteen years as  
14 defined in section thirty-two hundred twenty-eight of the education law,  
15 BUT SHALL NOT INCLUDE DELIVERING NEWSPAPERS OR SHOPPING NEWS TO THE  
16 CONSUMER (INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH TRADE OR BUSI-  
17 NESS) BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTATION  
18 SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE  
19 MEANING OF ARTICLE TWENTY-FIVE-C OF THE LABOR LAW. For the purpose of  
20 this chapter only, "employer" shall also mean a person, partnership,  
21 association, or corporation who leases or otherwise contracts with an  
22 operator or lessee for the purpose of driving, operating or leasing a  
23 taxicab as so defined in section one hundred forty-eight-a of the vehi-  
24 cle and traffic law, except where such person is an owner-operator of  
25 such taxicab who personally regularly operates such vehicle an average  
26 of forty or more hours per week and leases such taxicab for some portion  
27 of the remaining time, and except if the taxicab is a livery subject to  
28 section eighteen-c of this chapter, in which case the livery driver's  
29 employer shall only be such employer as is defined in that section. For  
30 the purposes of this section only, such an owner-operator shall be  
31 deemed to be an employer if he controls, directs, supervises, or has the  
32 power to hire or terminate such other person who leases the vehicle.

33 S 5. The opening paragraph of subdivision 4 of section 2 of the work-  
34 ers' compensation law, as amended by chapter 558 of the laws of 2013, is  
35 amended to read as follows:

36 "Employee" means a person engaged in one of the occupations enumerated  
37 in section three of this article or who is in the service of an employer  
38 whose principal business is that of carrying on or conducting a hazard-  
39 ous employment upon the premises or at the plant, or in the course of  
40 his or her employment away from the plant of his or her employer;  
41 "employee" shall also mean for the purposes of this chapter any individ-  
42 ual performing services in construction for a contractor who does not  
43 overcome the presumption of employment as provided under section eight  
44 hundred sixty-one-c of the labor law; "employee" shall also mean for the  
45 purposes of this chapter any individual performing services in the  
46 commercial goods transportation industry for a commercial goods trans-  
47 portation contractor who does not overcome the presumption of employment  
48 as provided under section eight hundred sixty-two-b of the labor law;  
49 "employee" shall also mean for the purposes of this chapter civil  
50 defense volunteers who are personnel of volunteer agencies sponsored or  
51 authorized by a local office under regulations of the civil defense  
52 commission, to the extent of the provisions of groups seventeen and  
53 nineteen; "employee" shall at the election of a municipal corporation  
54 made pursuant to local law duly enacted also mean a member of an auxil-  
55 iary police organization authorized by local law; and for the purposes  
56 of this chapter only a newspaper carrier under the age of eighteen years

1 as defined in section thirty-two hundred twenty-eight of the education  
2 law, BUT SHALL NOT INCLUDE DELIVERY OF NEWSPAPERS OR SHOPPING NEWS TO  
3 THE CONSUMER (INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH TRADE OR  
4 BUSINESS) BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTA-  
5 TION SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN  
6 THE MEANING OF ARTICLE TWENTY-FIVE-C OF THE LABOR LAW, and shall not  
7 include domestic servants except as provided in section three of this  
8 chapter, and except where the employer has elected to bring such employ-  
9 ees under the law by securing compensation in accordance with the terms  
10 of section fifty of this chapter. The term "employee" shall not include  
11 persons who are members of a supervised amateur athletic activity oper-  
12 ated on a non-profit basis, provided that said members are not also  
13 otherwise engaged or employed by any person, firm or corporation partic-  
14 ipating in said athletic activity, nor shall it include the spouse or  
15 minor child of an employer who is a farmer unless the services of such  
16 spouse or minor child shall be engaged by said employer under an express  
17 contract of hire nor shall it include an executive officer of a corpo-  
18 ration who at all times during the period involved owns all of the  
19 issued and outstanding stock of the corporation and holds all of the  
20 offices pursuant to paragraph (e) of section seven hundred fifteen of  
21 the business corporation law or two executive officers of a corporation  
22 who at all times during the period involved between them own all of the  
23 issued and outstanding stock of such corporation and hold all such  
24 offices except as provided in subdivision six of section fifty-four of  
25 this chapter provided, however, that where there are two executive offi-  
26 cers of a corporation each officer must own at least one share of stock,  
27 nor shall it include a self-employed person or a partner of a partner-  
28 ship as defined in section ten of the partnership law who is not covered  
29 under a compensation insurance contract or a certificate of self-insu-  
30 rance as provided in subdivision eight of section fifty-four of this  
31 chapter, nor shall it include farm laborers except as provided in group  
32 fourteen-b of section three of this chapter. If a farm labor contractor  
33 recruits or supplies farm laborers for work on a farm, such farm labor-  
34 ers shall for the purposes of this chapter be deemed to be employees of  
35 the owner or lessee of such farm. The term "employee" shall not include  
36 baby sitters as defined in subdivision three of section one hundred  
37 thirty-one and subdivision three of section one hundred thirty-two of  
38 the labor law or minors fourteen years of age or over engaged in casual  
39 employment consisting of yard work and household chores in and about a  
40 one family owner-occupied residence or the premises of a non-profit,  
41 non-commercial organization, not involving the use of power-driven  
42 machinery. The term "employee" shall not include persons engaged by the  
43 owner in casual employment consisting of yard work, household chores and  
44 making repairs to or painting in and about a one-family owner-occupied  
45 residence. The term "employee" shall not include the services of a  
46 licensed real estate broker or sales associate if it be proven that (a)  
47 substantially all of the remuneration (whether or not paid in cash) for  
48 the services performed by such broker or sales associate is directly  
49 related to sales or other output (including the performance of services)  
50 rather than to the number of hours worked; (b) the services performed by  
51 the broker or sales associate are performed pursuant to a written  
52 contract executed between such broker or sales associate and the person  
53 for whom the services are performed within the past twelve to fifteen  
54 months; and (c) the written contract provided for in paragraph (b) of  
55 this subdivision was not executed under duress and contains the follow-  
56 ing provisions:

1 S 6. The opening paragraph of subdivision 5 of section 2 of the work-  
2 ers' compensation law, as separately amended by chapters 470 and 903 of  
3 the laws of 1986, is amended to read as follows:

4 "Employment" includes employment in a trade, business or occupation  
5 carried on by the employer for pecuniary gain, or in connection there-  
6 with, except where the employer elects to bring his employees within the  
7 provisions of this chapter as provided in section three OF THIS ARTICLE,  
8 and except employment as a domestic worker as provided in section three  
9 OF THIS ARTICLE, and except where a town elects to have the provisions  
10 of this chapter apply to the town superintendent of highways. "Employ-  
11 ment" shall also include, in connection with the civil defense effort  
12 and for purposes of this chapter the service of a civil defense volun-  
13 teer in authorized activities of a volunteer agency sponsored or author-  
14 ized by a local office as defined in a state defense emergency act.  
15 "Employment" shall also include participation with an auxiliary police  
16 effort made within a municipal corporation which elected to include  
17 auxiliary policemen within the definition of "employee" as authorized by  
18 subdivision four of this section and for purposes of this chapter, the  
19 services of members or volunteers in activities authorized by local law.  
20 The service of a civil defense volunteer who is also an employee recom-  
21 pensed by an employer for service to such employer, shall not be deemed  
22 to be in employment of a local office when he is performing civil  
23 defense service in his employment or in relation thereto. For the  
24 purposes of this chapter only "employment" shall also include the deliv-  
25 ery or sale and delivery of newspapers or periodicals by a newspaper  
26 carrier as defined in section thirty-two hundred twenty-eight of the  
27 education law, BUT SHALL NOT INCLUDE DELIVERY OF NEWSPAPERS OR SHOPPING  
28 NEWS TO THE CONSUMER (INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH  
29 TRADE OR BUSINESS) BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS  
30 TRANSPORTATION SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR  
31 WITHIN THE MEANING OF ARTICLE TWENTY-FIVE-C OF THE LABOR LAW. The term  
32 "employment" shall not include the services of a licensed real estate  
33 broker or sales associate if it be proven that (a) substantially all of  
34 the remuneration (whether or not paid in cash) for the services  
35 performed by such broker or sales associate is directly related to sales  
36 or other output (including the performance of services) rather than to  
37 the number of hours worked; (b) the services performed by the broker or  
38 sales associate are performed pursuant to a written contract executed  
39 between such broker or sales associate and the person for whom the  
40 services are performed within the past twelve to fifteen months; and (c)  
41 the written contract provided for in paragraph (b) herein was not  
42 executed under duress and contains the following provisions:

43 S 7. This act shall take effect immediately.