

STATE OF NEW YORK

6451

2017-2018 Regular Sessions

IN SENATE

May 22, 2017

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to minimum wage rates for subcontracted transportation center workers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new article 19-D to
2 read as follows:

ARTICLE 19-D

MINIMUM WAGE RATES FOR SUBCONTRACTED TRANSPORTATION CENTER SERVICE WORKERS

Section 696-a. Definitions.

7 696-b. Minimum wage rate for subcontracted transportation center
8 service workers.

9 696-c. Commissioner's power of investigation.

10 696-d. Records of employers.

11 696-e. Penalties; failure to pay minimum wage or overtime
12 compensation; failure to keep records.

13 696-f. Civil action.

14 696-g. Regulations.

15 696-h. Savings clause.

16 § 696-a. Definitions. As used in this article: 1. "Covered transporta-
17 tion center" means John F. Kennedy International Airport, LaGuardia
18 Airport, the Port Authority Bus Terminal, Pennsylvania Station and Grand
19 Central Station.

20 2. "Covered transportation center service provider" means any person
21 or entity that employs covered transportation center services employees
22 to provide one or more covered transportation center services under a
23 service contract or subcontract with a private entity at a covered
24 transportation center.

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

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1 3. "Subcontracted transportation center service worker" means a worker
2 performing covered transportation center services for a covered trans-
3 portation center service provider.

4 4. "Covered transportation center services" means work performed at a
5 covered transportation center and includes:

6 a. Passenger related security services which includes escort services;
7 catering security; passenger aircraft, train or bus security; fireguard
8 services; terminal or station security; and traffic security.

9 b. Cargo related and ramp services which includes cargo screening
10 (including guards) and warehouse security; baggage and cargo handling;
11 load control and ramp communication; aircraft, train or bus mechanics
12 and fueling of aircraft, trains or buses; provision of water,
13 cooling/heating, power; equipment and toilet services to aircraft,
14 trains or buses; passenger aircraft, train or bus servicing; cabin
15 equipment maintenance; guiding aircraft, trains or buses in and out of
16 gates; gateside aircraft, train or bus maintenance; ramp area cleaning;

17 c. In-terminal and in-station and passenger handling services; baggage
18 handling skycap or redcap; wheelchair attendant; ticketing agent;
19 customer service representatives; queue managers and ID checkers; porter
20 service for baggage; passenger and employee shuttle drivers;

21 d. Cleaning services; building cleaning; aircraft, cabin, train or bus
22 cleaning; plane, train or bus washers; and

23 e. Concession services; food service (including, food and beverage
24 service, wait service, busing, cashiers); retail service (including
25 news/gifts and duty-free); cleaning for concession services; security
26 for concession services; airport, station or terminal lounge services
27 (food, retail, cleaning and security services);

28 5. "Applicable standard rate for subcontracted passenger services"
29 shall mean the greater of:

30 a. The wage and benefit rates and paid time off minimums designated by
31 the commissioner based on the determinations made by the general
32 services administration pursuant to the federal "Service Contract Act of
33 1965" (41 U.S.C. § 351 et seq.), for the classification of "Guard I" for
34 the county of New York; or

35 b. The wage and benefit rates and paid time off minimums designated in
36 the prevailing wages schedule by the fiscal officer under section two
37 hundred thirty-one of this chapter applicable to unarmed security guards
38 performing services in the city of New York.

39 § 696-b. Minimum wage rate for subcontracted transportation center
40 service workers. 1. Every subcontracted transportation center service
41 worker shall be compensated at a rate that is no less than the applica-
42 ble standard rate for subcontracted transportation center service work-
43 ers.

44 2. Notwithstanding subdivision one of this section, the minimum wage
45 rate for a subcontracted transportation center service worker who is a
46 food service worker, a skycap or a redcap receiving tips shall be a cash
47 wage of at least two-thirds of the minimum wage rate set forth in subdi-
48 vision one of this section, rounded to the nearest five cents, provided
49 that the tips of such an employee, when added to such cash wage, are
50 equal to or exceed the minimum wage rate for subcontracted transporta-
51 tion center service workers in effect pursuant to subdivision one of
52 this section. Tipped skycaps, redcaps, and food service workers shall
53 also receive the full amount of benefits and paid time off minimums as
54 provided under subdivision one of this section.

55 § 696-c. Commissioner's power of investigation. The commissioner or
56 his or her authorized representative shall have power:

1 1. to investigate the wages of persons employed by a covered transpor-
2 tation center service provider in the state;

3 2. to enter the place of business or employment of any employer for
4 the purpose of:

5 a. examining and inspecting any and all books, registers, payrolls and
6 other records that in any way relate to or have a bearing upon the wages
7 paid to, or the hours worked by any employees; and

8 b. ascertaining whether the provisions of this article and the orders
9 and regulations promulgated hereunder are being complied with.

10 3. to require from any employer full and correct statements and
11 reports in writing of the wages paid to and the hours worked by his or
12 her employees, at such times as the commissioner may deem necessary.

13 § 696-d. Records of employers. 1. For all employees covered by this
14 article, every employer shall establish, maintain, and preserve for not
15 less than six years contemporaneous, true, and accurate payroll records
16 showing for each week worked the hours worked, the rate or rates of pay
17 and basis thereof, whether paid by the hour, shift, day, week, salary,
18 piece, commission, or other basis; gross wages; deductions; allowances,
19 if any, claimed as part of the minimum wage; and net wages for each
20 employee, plus such other information as the commissioner deems material
21 and necessary.

22 3. For all employees who are not exempt from overtime compensation as
23 established in the commissioner's minimum wage orders or otherwise
24 provided by state law or regulation, the payroll records must include
25 the regular hourly rate or rates of pay, the overtime rate or rates of
26 pay, the number of regular hours worked, and the number of overtime
27 hours worked.

28 4. For all employees paid a piece rate, the payroll records shall
29 include the applicable piece rate or rates of pay and number of pieces
30 completed at each piece rate.

31 5. On demand, the employer shall furnish to the commissioner or his or
32 her duly authorized representative a sworn statement of the hours
33 worked, rate or rates of pay and basis thereof, whether paid by the
34 hour, shift, day, week, salary, piece, commission, or other basis; gross
35 wages; deductions; and allowances, if any, claimed as part of the mini-
36 imum wage, for each employee, plus such other information as the commis-
37 sioner deems material and necessary.

38 6. Every employer shall keep such records open to inspection by the
39 commissioner or his or her duly authorized representative at any reason-
40 able time.

41 7. Every employer of an employee shall keep a digest and summary of
42 this article or applicable wage order, which shall be prepared by the
43 commissioner, posted in a conspicuous place in his or her establishment
44 and shall also keep posted such additional copies of said digest and
45 summary as the commissioner prescribes.

46 8. Employers shall, on request, be furnished with copies of this arti-
47 cle and of orders, and of digests and summaries thereof, without charge.

48 9. Employers shall permit the commissioner or his or her duly author-
49 ized representative to question without interference any employee of
50 such employer in a private location at the place of employment and
51 during working hours in respect to the wages paid to and the hours
52 worked by such employee or other employees.

53 § 696-e. Penalties; failure to pay minimum wage or overtime compen-
54 sation; failure to keep records. 1. Any employer or his or her agent, or
55 the officer or agent of any corporation, partnership, or limited liabil-
56 ity company, who pays or agrees to pay to any employee less than the

1 wage applicable under this article shall be guilty of a misdemeanor and
2 upon conviction therefor shall be fined not less than five hundred nor
3 more than twenty thousand dollars or imprisoned for not more than one
4 year, and, in the event that any second or subsequent offense occurs
5 within six years of the date of conviction for a prior offense, shall be
6 guilty of a felony for the second or subsequent offense, and upon
7 conviction therefor, shall be fined not less than five hundred nor more
8 than twenty thousand dollars or imprisoned for not more than one year
9 plus one day, or punished by both such fine and imprisonment, for each
10 such offense. Each payment to any employee in any week of less than the
11 wage applicable under this article shall constitute a separate offense.

12 2. Any employer or his or her agent, or the officer or agent of any
13 corporation, partnership, or limited liability company, who fails to
14 keep the records required under this article or to furnish such records
15 or any information required to be furnished under this article to the
16 commissioner or his or her authorized representative upon request, or
17 who hinders or delays the commissioner or his or her authorized repre-
18 sentative in the performance of his or her duties in the enforcement of
19 this article, or refuses to admit the commissioner or his or her author-
20 ized representative to any place of employment, or falsifies any such
21 records or refuses to make such records accessible to the commissioner
22 or his or her authorized representative, or refuses to furnish a sworn
23 statement of such records or any other information required for the
24 proper enforcement of this article to the commissioner or his or her
25 authorized representative, shall be guilty of a misdemeanor and upon
26 conviction therefor shall be fined not less than five hundred nor more
27 than five thousand dollars or imprisoned for not more than one year,
28 and, in the event that any second or subsequent offense occurs within
29 six years of the date of conviction for a prior offense, shall be guilty
30 of a felony for the second or subsequent offense, and upon conviction
31 therefor, shall be fined not less than five hundred nor more than twenty
32 thousand dollars or imprisoned for not more than one year plus one day,
33 or punished by both such fine and imprisonment, for each such offense.
34 Each day's failure to keep the records requested under this article or
35 to furnish such records or information to the commissioner or his or her
36 authorized representative shall constitute a separate offense.

37 § 696-f. Civil action. 1. If any employee is paid by his or her
38 employer less than the wage to which he or she is entitled under the
39 provisions of this article, he or she shall recover in a civil action
40 the amount of any such underpayments, together with all reasonable
41 attorney's fees, prejudgment interest as required under the civil prac-
42 tice law and rules, and unless the employer proves a good faith basis to
43 believe that its underpayment of wages was in compliance with the law,
44 an additional amount as liquidated damages equal to one hundred percent
45 of the total of such underpayments found to be due. Any agreement
46 between the employee, and the employer to work for less than such wage
47 shall be no defense to such action.

48 2. On behalf of any employee paid less than the wage to which the
49 employee is entitled under the provisions of this article, the commis-
50 sioner may bring any legal action necessary, including administrative
51 action, to collect such claim, and the employer shall be required to pay
52 the full amount of the underpayment, plus costs, and unless the employer
53 proves a good faith basis to believe that its underpayment was in
54 compliance with the law, an additional amount as liquidated damages.
55 Liquidated damages shall be calculated by the commissioner as no more
56 than one hundred percent of the total amount of underpayments found to

1 be due the employee. In any action brought by the commissioner in a
2 court of competent jurisdiction, liquidated damages shall be calculated
3 as an amount equal to one hundred percent of underpayments found to be
4 due the employee.

5 3. Notwithstanding any other provision of law, an action to recover
6 upon a liability imposed by this article must be commenced within six
7 years. The statute of limitations shall be tolled from the date an
8 employee files a complaint with the commissioner or the commissioner
9 commences an investigation, whichever is earlier, until an order to
10 comply issued by the commissioner becomes final, or where the commis-
11 sioner does not issue an order, until the date on which the commissioner
12 notifies the complainant that the investigation has concluded. Investi-
13 gation by the commissioner shall not be a prerequisite to nor a bar
14 against a person bringing a civil action under this article.

15 4. In any civil action by an employee or by the commissioner, the
16 employee or commissioner shall have the right to collect attorneys' fees
17 and costs incurred in enforcing any court judgment. Any judgment or
18 court order awarding remedies under this section shall provide that if
19 any amounts remain unpaid upon the expiration of ninety days following
20 issuance of judgment, or ninety days after expiration of the time to
21 appeal and no appeal therefrom is then pending, whichever is later, the
22 total amount of judgment shall automatically increase by fifteen
23 percent.

24 § 696-g. Regulations. 1. The commissioner may promulgate such regu-
25 lations as he or she deems appropriate to carry out the purposes of this
26 article and to safeguard minimum wage standards.

27 2. Such regulations shall be promulgated by the commissioner after a
28 public hearing held after due notice.

29 3. A notice of the public hearing and a notice of the promulgation of
30 any such regulation shall be published in the state bulletin. The notice
31 of the promulgation of any such regulation shall be published at least
32 twenty days before the effective date of the regulation.

33 § 696-h. Savings clause. If any provision of this article or the
34 application thereof to any person, employer, occupation or circumstance
35 is held invalid, the remainder of the article and the application of
36 such provision to other persons, employees, occupations, or circum-
37 stances shall not be affected thereby.

38 § 2. This act shall take effect on the ninetieth day after it shall
39 have become a law.