

STATE OF NEW YORK

6266

2019-2020 Regular Sessions

IN SENATE

May 31, 2019

Introduced by Sen. BIAGGI -- 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 enacting the "healthy terminals act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "healthy terminals act".

3 § 2. The labor law is amended by adding a new article 19-d to read as
4 follows:

ARTICLE 19-D

HEALTHY TERMINALS

Section 696-a. Definitions.

6 696-b. Designation by commissioner of applicable standard rates
7 for covered transportation center service workers.

8 696-c. Minimum wage rate for covered transportation center
9 service workers.

10 696-d. Commissioner's powers of investigation.

11 696-e. Records of employers.

12 696-f. Penalties.

13 696-g. Civil action.

14 696-h. Regulations.

15 696-i. Severability clause.

16 § 696-a. Definitions. For the purposes of this article, the following
17 terms shall have the following meanings:

18 1. "Covered transportation center" means John F. Kennedy International
19 Airport, LaGuardia Airport, New York Stewart International Airport, the
20 Port Authority Bus Terminal, Pennsylvania Station and Grand Central
21 Station.

22 2. "Covered transportation center worker" means any person employed to
23 perform work at a covered transportation center provided at least one-
24

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

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1 half of the employee's time during any workweek is performed at a
2 covered transportation center. "Covered transportation center worker"
3 shall not include persons employed in an executive, administrative, or
4 professional capacity as defined by the secretary of labor under §
5 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 213(a)(1)).

6 3. "Franchise" shall have the same meaning as the definition provided
7 under subdivision three of section six hundred eighty-one of the general
8 business law.

9 4. "Franchisee" shall have the same meaning as the definition provided
10 under subdivision four of section six hundred eighty-one of the general
11 business law.

12 5. "Franchisor" shall have the same meaning as the definition provided
13 under subdivision five of section six hundred eighty-one of the general
14 business law.

15 6. "Covered employer" means all employers that employ more than fifty
16 employees, regardless of where those employees are employed, and all
17 franchisees associated with a franchisor or a network of franchises with
18 franchisees that employ more than fifty employees in aggregate.

19 7. The "standard wage rate" means:

20 (a) Effective September 1, 2020 the greater of:

21 (i) \$1.00 more than any minimum wage rate that would be otherwise
22 applicable to covered transportation center service workers under any
23 federal, state or local law or policy; or

24 (ii) any policy of the Port Authority of New York and New Jersey.

25 (b) Effective September 1, 2021 the greater of:

26 (i) \$2.00 more than any minimum wage rate that would be otherwise
27 applicable to covered transportation center service workers under any
28 federal, state or local law or policy; or

29 (ii) any policy of the Port Authority of New York and New Jersey.

30 (c) Effective September 1, 2022 the greater of:

31 (i) \$3.00 more than any minimum wage rate that would be otherwise
32 applicable to covered transportation center service workers under any
33 federal, state or local law or policy; or

34 (ii) any policy of the Port Authority of New York and New Jersey.

35 (d) Effective September 1, 2023 the greater of:

36 (i) \$4.00 more than any minimum wage rate that would be otherwise
37 applicable to covered transportation center service workers under any
38 federal, state or local law or policy; or

39 (ii) any policy of the Port Authority of New York and New Jersey.

40 (e) Effective September 1, 2024, and each September 1 thereafter, the
41 greater of:

42 (i) \$4.00 more than any minimum wage rate that would be otherwise
43 applicable to covered transportation center service workers under any
44 federal, state or local law or policy;

45 (ii) any policy of the Port Authority of New York and New Jersey; or

46 (iii) the wage rate designated by the commissioner the immediately
47 preceding August first based on the determinations made by the general
48 services administration pursuant to the federal "Service Contract Act of
49 1965" (41 U.S.C. § 351 et seq.), for the classification of "Guard I" for
50 the county in which the covered transportation center is located.

51 8. The "standard benefits supplement rate" means: effective September
52 1, 2020 and each September first thereafter, the supplemental benefits
53 rate designated by the commissioner the immediately preceding August
54 first, based on the determinations made by the general services adminis-
55 tration pursuant to the federal "Service Contract Act of 1965" (41

1 U.S.C. § 351 et seq.), for the classification of "Guard I" for the coun-
2 ty in which the covered transportation center is located.

3 9. The "standard paid leave rate" means: effective September 1, 2020
4 and each September first thereafter, the paid leave requirements desig-
5 nated by the commissioner the immediately preceding August first, based
6 on the determinations made by the general services administration pursu-
7 ant to the federal "Service Contract Act of 1965" (41 U.S.C. § 351 et
8 seq.), for the classification of "Guard I" for the county in which the
9 covered transportation center is located.

10 10. The "applicable standard rate" shall mean a combination of (a) the
11 standard wage rate; (b) the standard benefits supplement rate; and (c)
12 the standard paid leave rate.

13 § 696-b. Designation by commissioner of applicable standard rates for
14 covered transportation center service workers. 1. On August 1, 2020 and
15 on each subsequent August first, the commissioner shall designate the
16 supplemental benefits rate and paid leave requirements required under
17 determinations made by the general services administration pursuant to
18 the federal "Service Contract Act of 1965" (41 U.S.C. § 351 et seq.),
19 for the classification of "Guard I" for the county in which the covered
20 transportation center is located. The commissioner shall publicly post
21 such designated supplemental benefits rate and paid leave requirements.

22 2. On August 1, 2024 and on each subsequent August first, the commis-
23 sioner shall additionally designate the wage rate required under deter-
24 minations made by the general services administration pursuant to the
25 federal "Service Contract Act of 1965" (41 U.S.C. § 351 et seq.), for
26 the classification of "Guard I" for the county in which the covered
27 transportation center is located. The commissioner shall publicly post
28 such designated wage rate.

29 § 696-c. Minimum wage rate for covered transportation center service
30 workers. 1. All covered employers shall ensure that every covered trans-
31 portation center worker is compensated at a rate that is no less than
32 the applicable standard rate.

33 2. Notwithstanding subdivision one of this section, the minimum wage
34 rate for a covered transportation center worker who is a food service
35 worker receiving tips shall be a cash wage of at least two-thirds of the
36 minimum wage rate set forth in subdivision one of this section, rounded
37 to the nearest five cents, provided that the tips of such an employee,
38 when added to such cash wage, are equal to or exceed the minimum wage
39 rate for covered transportation center workers in effect pursuant to
40 subdivision one of this section. Food service workers shall also receive
41 the full amount of benefits and standard paid leave rate as provided
42 under subdivision one of this section.

43 § 696-d. Commissioner's powers of investigation. The commissioner or
44 his or her authorized representative shall have power: (a) to investi-
45 gate the wages of persons in any occupation in the state; (b) to enter
46 the place of business or employment of any employer for the purposes of
47 (1) examining and inspecting any and all books, registers, payrolls and
48 other records that in any way relate to or have a bearing upon the wages
49 paid to, or the hours worked by any employees, and (2) ascertaining
50 whether the provisions of this article and the orders and regulations
51 promulgated hereunder are being complied with; and (c) to require from
52 any employer full and correct statements and reports in writing, at such
53 times as the commissioner may deem necessary, of the wages paid to and
54 the hours worked by his or her employees.

55 § 696-e. Records of employers. For all employees covered by this arti-
56 cle, every employer shall establish, maintain, and preserve for not less

1 than six years contemporaneous, true, and accurate payroll records show-
2 ing for each week worked the hours worked; the rate or rates of pay and
3 basis thereof, whether paid by the hour, shift, day, week, salary,
4 piece, commission, or other basis; gross wages; deductions; allowances,
5 if any, claimed as part of the minimum wage; and net wages for each
6 employee, plus such other information as the commissioner deems material
7 and necessary. For all employees who are not exempt from overtime
8 compensation as established in the commissioner's minimum wage orders or
9 otherwise provided by New York state law or regulation, the payroll
10 records must include the regular hourly rate or rates of pay, the over-
11 time rate or rates of pay, the number of regular hours worked, and the
12 number of overtime hours worked. For all employees paid a piece rate,
13 the payroll records shall include the applicable piece rate or rates of
14 pay and number of pieces completed at each piece rate. On demand, the
15 employer shall furnish to the commissioner or his or her duly authorized
16 representative a sworn statement of the hours worked, rate or rates of
17 pay and basis thereof, whether paid by the hour, shift, day, week, sala-
18 ry, piece, commission, or other basis; gross wages; deductions; and
19 allowances, if any, claimed as part of the minimum wage, for each
20 employee, plus such other information as the commissioner deems material
21 and necessary. Every employer shall keep such records open to inspection
22 by the commissioner or his or her duly authorized representative at any
23 reasonable time. Every employer of an employee shall keep a digest and
24 summary of this article or applicable wage order, which shall be
25 prepared by the commissioner, posted in a conspicuous place in his or
26 her establishment and shall also keep posted such additional copies of
27 said digest and summary as the commissioner prescribes. Employers shall,
28 on request, be furnished with copies of this article and of orders, and
29 of digests and summaries thereof, without charge. Employers shall
30 permit the commissioner or his or her duly authorized representative to
31 question without interference any employee of such employer in a private
32 location at the place of employment and during working hours in respect
33 to the wages paid to and the hours worked by such employee or other
34 employees.

35 § 696-f. Penalties. 1. Failure to pay minimum wage or overtime compen-
36 sation. Any employer or his or her agent, or the officer or agent of any
37 corporation, partnership, or limited liability company, who pays or
38 agrees to pay to any employee less than the wage applicable under this
39 article shall be guilty of a misdemeanor and upon conviction therefor
40 shall be fined not less than five hundred nor more than twenty thousand
41 dollars or imprisoned for not more than one year, and, in the event that
42 any second or subsequent offense occurs within six years of the date of
43 conviction for a prior offense, shall be guilty of a felony for the
44 second or subsequent offense, and upon conviction therefor, shall be
45 fined not less than five hundred nor more than twenty thousand dollars
46 or imprisoned for not more than one year plus one day, or punished by
47 both such fine and imprisonment, for each such offense. Each payment to
48 any employee in any week of less than the wage applicable under this
49 article shall constitute a separate offense.

50 2. Failure to keep records. Any employer or his or her agent, or the
51 officer or agent of any corporation, partnership, or limited liability
52 company, who fails to keep the records required under this article or to
53 furnish such records or any information required to be furnished under
54 this article to the commissioner or his or her authorized representative
55 upon request, or who hinders or delays the commissioner or his or her
56 authorized representative in the performance of his or her duties in the

1 enforcement of this article, or refuses to admit the commissioner or his
2 or her authorized representative to any place of employment, or falsi-
3 fies any such records or refuses to make such records accessible to the
4 commissioner or his or her authorized representative, or refuses to
5 furnish a sworn statement of such records or any other information
6 required for the proper enforcement of this article to the commissioner
7 or his or her authorized representative, shall be guilty of a misdemea-
8 nor and upon conviction therefor shall be fined not less than five
9 hundred nor more than five thousand dollars or imprisoned for not more
10 than one year, and, in the event that any second or subsequent offense
11 occurs within six years of the date of conviction for a prior offense,
12 shall be guilty of a felony for the second or subsequent offense, and
13 upon conviction therefor, shall be fined not less than five hundred nor
14 more than twenty thousand dollars or imprisoned for not more than one
15 year plus one day, or punished by both such fine and imprisonment, for
16 each such offense. Each day's failure to keep the records required under
17 this article or to furnish such records or information to the commis-
18 sioner or his or her authorized representative shall constitute a sepa-
19 rate offense.

20 § 696-g. Civil action. 1. If any employee is paid by his or her
21 employer less than the wage to which he or she is entitled under the
22 provisions of this article, he or she shall recover in a civil action
23 the amount of any such underpayments, together with costs, all reason-
24 able attorneys' fees, prejudgment interest as required under the civil
25 practice law and rules, and unless the employer proves a good faith
26 basis to believe that its underpayment of wages was in compliance with
27 the law, an additional amount as liquidated damages equal to one hundred
28 percent of the total of such underpayments found to be due. Any agree-
29 ment between the employee and the employer to work for less than such
30 wage shall be no defense to such action.

31 2. On behalf of any employee paid less than the wage to which the
32 employee is entitled under the provisions of this article, the commis-
33 sioner may bring any legal action necessary, including administrative
34 action, to collect such claim, and the employer shall be required to pay
35 the full amount of the underpayment, plus costs, and unless the employer
36 proves a good faith basis to believe that its underpayment was in
37 compliance with the law, an additional amount as liquidated damages.
38 Liquidated damages shall be calculated by the commissioner as no more
39 than one hundred percent of the total amount of underpayments found to
40 be due the employee. In any action brought by the commissioner in a
41 court of competent jurisdiction, liquidated damages shall be calculated
42 as an amount equal to one hundred percent of underpayments found to be
43 due the employee.

44 3. Notwithstanding any other provision of law, an action to recover
45 upon a liability imposed by this article must be commenced within six
46 years. The statute of limitations shall be tolled from the date an
47 employee files a complaint with the commissioner or the commissioner
48 commences an investigation, whichever is earlier, until an order to
49 comply issued by the commissioner becomes final, or where the commis-
50 sioner does not issue an order, until the date on which the commissioner
51 notifies the complainant that the investigation has concluded. Investi-
52 gation by the commissioner shall not be a prerequisite to nor a bar
53 against a person bringing a civil action under this article.

54 4. In any civil action by an employee or by the commissioner, the
55 employee or commissioner shall have the right to collect attorneys' fees
56 and costs incurred in enforcing any court judgment. Any judgment or

1 court order awarding remedies under this section shall provide that if
2 any amounts remain unpaid upon the expiration of ninety days following
3 issuance of judgment, or ninety days after expiration of the time to
4 appeal and no appeal therefrom is then pending, whichever is later, the
5 total amount of judgment shall automatically increase by fifteen
6 percent.

7 § 696-h. Regulations. 1. The commissioner may promulgate such regu-
8 lations as he or she deems appropriate to carry out the purposes of this
9 article and to safeguard minimum wage standards.

10 2. Such regulations shall be promulgated by the commissioner after a
11 public hearing held after due notice. A notice of the public hearing and
12 a notice of the promulgation of any such regulation shall be published
13 in the state bulletin. The notice of the promulgation of any such regu-
14 lation shall be published at least twenty days before the effective date
15 of the regulation.

16 § 696-i. Severability clause. If any provision of this article or the
17 application thereof to any person, employer, occupation or circumstance
18 is held invalid, the remainder of the article and the application of
19 such provision to other persons, employees, occupations, or circum-
20 stances shall not be affected thereby.

21 § 3. This act shall take effect August 1, 2020.