

STATE OF NEW YORK

3020

2021-2022 Regular Sessions

IN ASSEMBLY

January 21, 2021

Introduced by M. of A. HYNDMAN -- read once and referred to the Committee on Labor

AN ACT to amend the labor law in relation to removing certain provisions relating to covered airport workers; and in relation to minimum wage rates for covered airport workers; to repeal certain provisions of the labor law relating thereto; and to repeal section 14 of a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E relating thereto

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

1 Section 1. Legislative findings and intent. The legislature finds that
2 the airports of John F. Kennedy International Airport and LaGuardia
3 Airport operating under the jurisdiction of the Port Authority of New
4 York and New Jersey are some of the most heavily trafficked transportation
5 centers in the world, and are vital not just to the economic health
6 of the state but to the world. The legislature further determines that
7 there is a unique public interest in the operation of the airline industry
8 with the critical role of airport workers during the COVID-19
9 pandemic, where airport workers have been placed into contact with
10 members of the public in an often uncontrolled manner. Due to such findings,
11 the legislature hereby declares that the access to health care
12 provided in this bill is intended to provide a health care benefit that
13 ensures the health and safety of workers employed at John F. Kennedy
14 International Airport and LaGuardia Airport is protected.

15 § 2. The article heading of article 9 of the labor law, as amended by
16 a chapter of the laws of 2020 amending the labor law relating to enacting
17 the "healthy terminals act", as proposed in legislative bills
18 numbers S.6266-D and A.8142-E, is amended to read as follows:

19 PREVAILING WAGE FOR BUILDING SERVICE EMPLOYEES [~~AND COVERED AIRPORT~~
20 ~~WORKERS~~]

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

LBD08714-01-1

§ 3. Subdivisions 1, 4 and 8 of section 230 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are amended to read as follows:

1. "Building service employee" or "[service] employee" means any person performing work in connection with the care or maintenance of an existing building, or in connection with the transportation of office furniture or equipment to or from such building, or in connection with the transportation and delivery of fossil fuel to such building, for a contractor under a contract with a public agency which is in excess of one thousand five hundred dollars and the principal purpose of which is to furnish services through the use of building service employees.

"Building service employee" or "[service] employee" includes, but is not limited, to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.

"Building service employee" or "[service] employee" also does not include any employee to whom the provisions of articles eight and eight-a of this chapter are applicable.

4. "Contractor" means any employer who employs employees to perform building service work under a contract with a public agency and shall include any of the contractor's subcontractors. ~~["Contractor" shall also include any covered airport employer as such term is defined in this section.]~~

8. "Fiscal officer" means the industrial commissioner, except for building service work performed by or on behalf of a city, ~~[or work involving the employment of covered airport workers at a covered airport location located in a city with a population of one million or more,]~~ in which case "fiscal officer" means the comptroller or other analogous officer of such city.

§ 4. Subdivisions 1-a, 15, 16 and 17 of section 230 of the labor law as added by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are REPEALED.

§ 5. Section 231-a of the labor law as added by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S. 6266-D and A.8142-E, is REPEALED.

§ 6. The section heading of section 231 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, is amended to read as follows:

Prevailing wage ~~[for building service employees]~~.

§ 7. Subdivisions 1 and 2 of section 233 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are amended to read as follows:

1. In all cases where service work is being performed pursuant to a contract therefor, ~~[or where work is being performed pursuant to a contract involving the employment of covered airport workers,]~~ the contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by him as true, under penalties of perjury,

1 showing the hours and days worked by each employee, the craft, trade or
2 occupation at which he was employed, and the wages paid.

3 2. Where the wages paid include sums which are not paid directly to
4 the [~~employees~~] workmen weekly and which are expended for supplements,
5 the records required to be maintained shall include a record of such
6 hourly payment on behalf of such employees, the supplement for which
7 such payment has been made, and the name and address of the person to
8 whom such payment has been made. In all such cases, the contractor shall
9 keep a true and inscribed copy of the agreement under which such
10 payments are made, a record of all net payments made thereunder, and a
11 list of all persons for whom such payments are made.

12 § 8. Paragraphs (a) and (c) of subdivision 1 of section 234 of the
13 labor law, as amended by a chapter of the laws of 2020 amending the
14 labor law relating to enacting the "healthy terminals act", as proposed
15 in legislative bills numbers S.6266-D and A.8142-E, are amended to read
16 as follows:

17 (a) to cause an investigation to be made to determine the wages
18 prevailing in any locality in all crafts, trades and occupations
19 involved in service work [~~or work involving the employment of covered~~
20 ~~airport workers~~]; in making such investigation, the fiscal officer may
21 utilize wage and fringe benefit data from various sources including, but
22 not limited to, data and determinations of federal, state or other
23 governmental agencies;

24 (c) to examine the books, documents and records pertaining to the
25 wages paid to, and the hours of work performed by, service employees;

26 § 9. Paragraph (e-1) of subdivision 1 of section 234 of the labor law
27 as added by a chapter of the laws of 2020 amending the labor law relat-
28 ing to enacting the "healthy terminals act", as proposed in legislative
29 bills numbers S.5266-D and A.8142-E is REPEALED.

30 § 10. Subdivisions 1 and 3 of section 235 of the labor law, as amended
31 by a chapter of the laws of 2020 amending the labor law relating to
32 enacting the "healthy terminals act", as proposed in legislative bills
33 numbers S.6266-D and A.8142-E, are amended to read as follows:

34 1. Whenever the fiscal officer has reason to believe that [~~an~~] a
35 service employee has been paid less than the wages stipulated in the
36 contract, or if such contract has no wage schedule attached thereto and
37 the fiscal officer has reason to believe that [~~an~~] a service employee
38 has been paid less than the wages prevailing for his craft, trade or
39 occupation, the fiscal officer may, and upon receipt of a written
40 complaint from an employee employed thereon, shall conduct a special
41 investigation to determine the facts relating thereto.

42 3. If, despite the requirements of law, the contract for the service
43 work [~~or work involving the employment of covered airport workers~~] has
44 been awarded without the annexation thereto of the schedule of wages
45 provided for in this article, the fiscal officer shall determine in the
46 proceeding before him the wages prevailing at the time the work was
47 performed for the crafts, trades or occupations of the employees
48 involved.

49 § 11. Section 236 of the labor law, as amended by a chapter of the
50 laws of 2020 amending the labor law relating to enacting the "healthy
51 terminals act", as proposed in legislative bills numbers S.6266-D and
52 A.8142-E, is amended to read as follows:

53 § 236. Failure to protest underpayments. Notwithstanding any incon-
54 sistent provision of this chapter or of any other general, special or
55 local law, ordinance, charter or administrative code, [~~an~~] a service
56 employee shall not be barred from his right to recover the difference

1 between the amount actually paid to him and the amount which should have
2 been paid to him pursuant to an order entered under the provisions of
3 this article because of the prior receipt by him without protest of
4 wages paid or on account of his failure to state orally or in writing
5 upon any payroll or receipt which he is required to sign that the wages
6 received by him are received under protest, or on account of his failure
7 to indicate his protest against the amount, or that the amount so paid
8 does not constitute payment in full of wages due him for the period
9 covered by such payment.

10 § 12. Subdivisions 1 and 4 of section 237 of the labor law, as amended
11 by a chapter of the laws of 2020 amending the labor law relating to
12 enacting the "healthy terminals act", as proposed in legislative bills
13 numbers S.6266-D and A.8142-E, are amended to read as follows:

14 1. Subcontractors engaged for service work~~[, or for work involving the~~
15 ~~employment of covered airport workers,]~~ by a contractor or its subcon-
16 tractor shall, upon receipt from the contractor or its subcontractor of
17 the schedule of wages and supplements specified in the contract, provide
18 to the contractor or its subcontractor a verified statement attesting
19 that the subcontractor has received and reviewed such schedule of wages
20 and supplements, and agrees that it will pay the applicable prevailing
21 wages and will pay or provide the supplements specified therein. Such
22 verified statement shall be filed in the manner described in subdivision
23 three of this section~~[, provided, however, that in the case of contracts~~
24 ~~for work involving the employment of covered airport workers, such veri-~~
25 ~~fied statement shall be subject to inspection upon request of the fiscal~~
26 ~~officer]~~. It shall be a violation of this article for any contractor or
27 its subcontractor to fail to provide for its subcontractor a copy of the
28 schedule of wages and supplements specified in the contract.

29 4. If any interested person shall have previously filed a protest in
30 writing objecting to the payment to any contractor or subcontractor to
31 the extent of the amount or amounts due or to become due to him for
32 daily or weekly wages for labor performed on the work for which such
33 contract was entered into, or if for any other reason it may be deemed
34 advisable, the comptroller of the state or the financial officer of the
35 public agency or other officer or person charged with the custody and
36 disbursement of the state or corporate funds applicable to the contract
37 for such work, may deduct from the whole amount of any payment on
38 account thereof the sum or sums admitted by any contractor or subcon-
39 tractor in such statement or statements as filed to be due and owing by
40 him or her on account of labor performed on such work before making
41 payment of the amount certified for payment in any estimate or voucher,
42 and may withhold the amount so deducted for the benefit of the service
43 employees whose wages are unpaid as shown by the verified statements
44 filed by any contractor or subcontractor, and may pay directly to any
45 person the amount or amounts shown by the statements filed as hereinbe-
46 fore required to be due to him or her or his or her duly authorized
47 collective bargaining labor organization receiving such payment to the
48 extent of the amount thereof.

49 § 13. Subdivision 2 of section 238 of the labor law, as amended by a
50 chapter of the laws of 2020 amending the labor law relating to enacting
51 the "healthy terminals act", as proposed in legislative bills numbers
52 S.6266-D and A.8142-E, is amended to read as follows:

53 2. When a contract for service work ~~[or work involving the employment~~
54 ~~of covered airport workers]~~ contains as part thereof a schedule of wages
55 as provided for in this article, any contractor who, after entering into
56 such contract, and any subcontractor of such contractor who fails to pay

1 to any service employee the wages stipulated in such wage schedule is
2 guilty of a misdemeanor and upon conviction shall be punished for a
3 first offense by a fine of five hundred dollars or by imprisonment for
4 not more than thirty days or by both fine and imprisonment; for a second
5 offense by a fine of one thousand dollars, and in addition thereto the
6 contract on which the violation has occurred shall be forfeited; and no
7 such contractor shall be entitled to receive any sum, nor shall any
8 officer, agent or employee of the contracting public agency pay any such
9 sum or authorize its payment from the funds under his charge or control
10 to such contractor for work done upon the contract on which the contrac-
11 tor has been convicted of a second offense. If the contractor or
12 subcontractor is a corporation, any officer of such corporation who
13 knowingly permits the corporation to fail to make such payment shall
14 also be guilty of a misdemeanor and the criminal and civil penalties
15 herein shall attach to such officer upon conviction.

16 § 14. Section 239 of the labor law, as amended by a chapter of the
17 laws of 2020 amending the labor law relating to enacting the "healthy
18 terminals act", as proposed in legislative bills numbers S.6266-D and
19 A.8142-E, is amended to read as follows:

20 § 239. Provisions in contracts prohibiting discrimination on account
21 of race, creed, color, national origin, age or sex. Every contract for
22 service work [~~or work involving the employment of covered airport work-~~
23 ~~ers~~] shall contain provisions by which the contractor agrees:

24 (1) that in the hiring of employees for the performance of work under
25 the contract or any subcontract thereunder within the territorial limits
26 of this state, no contractor, subcontractor, nor any person acting on
27 behalf of such contractor or subcontractor, shall by reason of race,
28 creed, color, national origin, age, sex or disability, discriminate
29 against any citizen of the state of New York who is qualified and avail-
30 able to perform the work to which the employment relates;

31 (2) that no contractor, subcontractor, nor any person on his behalf
32 shall, in any manner, discriminate against or intimidate any employee
33 hired for the performance of work under the contract on account of race,
34 creed, color, national origin, age, sex or disability;

35 (3) that there may be deducted from the amount payable to the contrac-
36 tor by the public agency under the contract [~~for service work~~] a penalty
37 of fifty dollars for each person for each day during which such person
38 was discriminated against or intimidated in violation of the provisions
39 of the contract;

40 (4) that the contract [~~for service work~~] may be cancelled or termi-
41 nated by the public agency, and all moneys due or to become due there-
42 under may be forfeited for a second or any subsequent violation of the
43 terms or conditions of this section of the contract.

44 § 15. Section 239-a of the labor law, as amended by a chapter of the
45 laws of 2020 amending the labor law relating to enacting the "healthy
46 terminals act", as proposed in legislative bills numbers S.6266-D and
47 A.8142-E, is amended to read as follows:

48 § 239-a. Enforcement of article. [~~1-~~] If the fiscal officer, as
49 defined herein, finds that any contractor on service work fails to
50 comply with or evades the provisions of this article, he shall present
51 evidence of such noncompliance or evasion to the public agency having
52 charge of such work for enforcement. Where such evidence indicates a
53 noncompliance or evasion on the part of a subcontractor, the contractor
54 shall be responsible for such noncompliance or evasion. It shall be the
55 duty of the public agency in charge of such service work to enforce the
56 provisions of this article.

~~2. If the fiscal officer, as defined herein, finds that any contractor on work involving the employment of covered airport workers fails to comply with or evades the provisions of this article, it shall be the duty of the fiscal officer to enforce the provisions of this article.]~~

§ 16. The labor law is amended by adding a new article 19-D to read as follows:

ARTICLE 19-D

MINIMUM WAGE RATES FOR COVERED AIRPORT WORKERS

Section 696-a. Definitions.

696-b. Certification to the commissioner.

696-c. Minimum wage rate for covered airport workers.

696-d. Commissioner's powers of investigation.

696-e. Records of employers.

696-f. Penalties.

696-g. Civil action.

696-h. Regulations.

696-i. Savings clause.

§ 696-a. Definitions. As used in this article: 1. "Covered airport location" means John F. Kennedy International Airport and LaGuardia Airport.

2. (a) "Covered airport worker" means any person employed to perform work at a covered airport location provided at least one-half of the employee's time during any workweek is performed at a covered airport location and who works in one of the following covered categories:

(i) Cleaning and related services, which shall mean:

(1) building cleaning, including warehouse, kitchen, and terminal cleaning, including common areas, gateways, gates, lounges, clubs, concession areas, terminal entryways from ramp and where planes park at the gate, and other nearby facilities used for the preparation, packaging, and storage of inflight meals and supplies; and

(2) aircraft and cabin cleaning, including lavatory and water disposal and replenishment, lift truck driving and helping, dispatching, cleaning crew driving, and sorting and packing of inflight materials, such as blankets, pillows, and magazines;

(ii) Security related services, including catering security, escorting, escort security, passenger aircraft security, fire guarding, terminal security, baggage security, traffic security, cargo screening, including guarding, warehouse security, concessions and airport lounge security, security dispatch, and security at nearby facilities used for the preparation, packaging, and storage of inflight meals; or

(iii) In terminal and passenger handling services, including baggage handling, sky cap services, wheelchair attending, wheelchair dispatching, customer and passenger services, line queue, identification checking, porter services for baggage, and passenger and employee shuttle driving.

(iv) Airline catering, including work related to the preparation or delivery of food or beverage for consumption on airplanes departing from a covered airport location or related location; or

(v) Airport lounge services, including food and retail services.

(b) "Covered airport worker" shall not include anyone who works in one of the following non-covered categories:

(i) Non-cleaning and security related cargo and ramp services, including ramp baggage and cargo handling, load control and ramp communication, aircraft mechanics and fueling of aircraft, provision of cooling, heating, and power, passenger aircraft servicing, cabin equipment

1 maintenance, guiding aircraft in and out of gates, and gate side
2 aircraft maintenance;

3 (ii) Ramp and tarmac maintenance services, including operation of snow
4 plows, ramp cleaning vehicles, and tarmac sweepers;

5 (iii) Concession services, including food service, which includes food
6 and beverage service, wait service, and cashiers, and retail service,
7 which includes news, and gifts, and duty-free;

8 (c) "Covered airport worker" shall not include direct employees of the
9 Port Authority of New York and New Jersey, or any workers hired by
10 companies contracted by the Port Authority of New York and New Jersey,
11 that are performing work under such contract.

12 (d) Covered airport worker shall include only:

13 (i) Employees employed at a covered airport location on December thir-
14 tieth, two thousand twenty and who are working an average of at least
15 thirty hours per week; and

16 (ii) Employees employed at a covered airport location on or after
17 January first, two thousand twenty-three and who are working for an
18 average of thirty hours per week.

19 (e) "Covered airport worker" shall also not include persons employed
20 in an executive, administrative, or professional capacity as defined in
21 subparagraph one of paragraph (a) of section thirteen of the Fair Labor
22 Standards Act of 1938.

23 3. "Successor airport employer" means any person who furnishes clean-
24 ing and related services, security related services, in terminal and
25 passenger handling services, airline catering, or airport lounge
26 services at a covered airport location that are substantially similar to
27 those that were provided by covered airport workers previously employed
28 by another employer at such covered airport location.

29 4. "Employer" means any person, corporation, limited liability compa-
30 ny, or association employing any individual in an occupation, industry,
31 trade, business or service. The term "employer" shall not include a
32 governmental agency.

33 5. The "standard wage rate" means the greater of:

34 (a) any minimum wage rate that would be otherwise applicable to
35 covered airport workers established by article nineteen of this chapter;
36 or

37 (b) any otherwise applicable minimum wage rate established through a
38 policy of the Port Authority of New York and New Jersey.

39 6. The "standard benefits supplement rate" means an hourly supplement
40 of four dollars and fifty-four cents furnished to an employee by provid-
41 ing at least four dollars and fifty-four cents per hour toward the cost
42 of minimum essential coverage under an eligible employer-sponsored plan
43 as defined in treasury regulation section 1.5000A-2(c)(1) beginning on
44 July first, two thousand twenty-one. The standard benefits supplement
45 rate shall apply only to the first forty hours worked by each covered
46 airport worker in each week and shall not apply to any overtime hours
47 worked by any covered airport worker. The standard benefits supplement
48 rate shall apply to any paid leave taken by a covered airport worker
49 that does not exceed forty hours in a week.

50 7. The "applicable standard rate" shall mean a combination of (a) the
51 standard wage rate; and (b) the standard benefits supplemental rate.

52 § 696-b. Certification to the commissioner. 1. No later than March
53 thirty-first, two thousand twenty-one, each employer of a covered
54 airport worker shall submit to the commissioner a sworn statement certi-
55 fying the total number of workers employed by such employer at a covered
56 airport location to perform cleaning and related services, security

1 related services, in terminal and passenger handling services, airline
2 catering, or airport lounge services, at a covered airport location on
3 December thirtieth, two thousand twenty, and identifying the number that
4 is equal to eighty percent of such total number of employees, which
5 shall be the December thirtieth, two thousand twenty benchmark for the
6 purposes of this section. Such statement shall further include an affir-
7 mation that such employer will ensure that the number of covered airport
8 workers it employs at a covered airport location between July first, two
9 thousand twenty-one and December thirty-first, two thousand twenty-two
10 is no less than the December thirtieth, two thousand twenty benchmark.
11 Such sworn statement shall be provided by the commissioner upon request
12 by any airport worker performing cleaning and related services, security
13 related services, in terminal and passenger handling services, airline
14 catering, or airport lounge services, at a covered airport location or
15 any representative of such airport workers. Prior to employing any
16 airport workers to perform cleaning and related services, security
17 related services, in terminal and passenger handling services, airline
18 catering, or airport lounge services, at a covered airport location, any
19 successor airport employer shall obtain the applicable December thirti-
20 eth, two thousand twenty benchmark from the commissioner and submit to
21 the commissioner an affirmation that such employer will ensure that the
22 number of covered airport workers it employs at a covered airport
23 location between July first, two thousand twenty-one and December thir-
24 ty-first, two thousand twenty-two is no less than the December thirti-
25 eth, two thousand twenty benchmark.

26 2. Each employer of any covered airport worker employed at a covered
27 airport location on or after January first, two thousand twenty-three
28 shall submit to the commissioner, in a form and manner proscribed by the
29 commissioner, a sworn statement affirming that such employer will
30 ensure, where applicable, that the proportion of covered airport workers
31 in each classification it employs to work an average of at least thirty
32 hours per week at a covered airport location is the same as such propor-
33 tion was compared to all workers in the same classification working at
34 such covered airport location in the calendar year two thousand nineteen
35 workforce. The commissioner shall publish a list of all covered classi-
36 fications with the corresponding proportions of all workers employed to
37 work an average of at least thirty hours a week compared to all workers
38 in the same classification employed to work at each covered airport
39 location in the calendar year two thousand nineteen. The commissioner
40 shall be empowered to promulgate rules or regulations to determine the
41 method and accounting for such information and to verify its accuracy,
42 including the ability to establish a presumed proportion where records
43 are missing or unavailable and provided further that such full-time
44 levels shall be no less than such December thirtieth, two thousand twen-
45 ty benchmark. If such proportion is not maintained, consistent with such
46 rules or regulations promulgated by the commissioner, then the hours
47 worked by such part time workers, which are outside of such proportion,
48 shall be subject to the provisions of this section as if they worked an
49 average of at least thirty hours per week at a covered airport location
50 and were otherwise a covered airport worker.

51 3. Each employer of a covered airport worker employed at a covered
52 airport location on December thirtieth, two thousand twenty and who is
53 working an average of at least thirty hours per week shall provide such
54 covered airport worker the ability to begin or change enrollment in an
55 eligible employer-sponsored plan as defined in treasury regulation

1 section 1.5000A-2(c)(1) for coverage beginning on July first, two thou-
2 sand twenty-one.

3 4. Each employer of any other covered airport worker at a covered
4 airport location shall provide such covered airport worker the ability
5 to begin or change enrollment in an eligible employer-sponsored plan as
6 defined in treasury regulation section 1.5000A-2(c)(1) for coverage
7 beginning no later than thirty days after becoming a covered airport
8 worker.

9 § 696-c. Minimum wage rate for covered airport workers. All covered
10 employers shall ensure that every covered airport worker is compensated
11 at a rate that is no less than the applicable standard rate. Nothing in
12 this article shall alter or limit any employer's obligation to pay any
13 otherwise applicable prevailing wage under article eight or nine of this
14 chapter.

15 § 696-d. Commissioner's powers of investigation. The commissioner or
16 his or her authorized representative shall have the power to:

17 1. investigate the compensation of covered airport workers in the
18 state;

19 2. enter the place of business or employment of any employer for the
20 purpose of (a) examining and inspecting any and all books, registers,
21 payrolls, and other records that in any way relate to or have a bearing
22 upon the compensation provided to, or the hours worked by any employees,
23 and (b) ascertaining whether the provisions of this article and the
24 rules and regulations promulgated hereunder are being complied with; and

25 3. require from any employer full and correct statements and reports
26 in writing, at such times as the commissioner may deem necessary, of the
27 compensation provided to and the hours by such employer's employees.

28 § 696-e. Records of employers. For every employee covered by this
29 article, every employer shall establish, maintain, and preserve for not
30 less than six years contemporaneous, true, and accurate payroll records
31 showing for each week worked the hours worked, the compensation
32 provided, plus such other information as the commissioner deems material
33 and necessary. For all covered airport workers who are not exempt from
34 overtime compensation as established in the commissioner's minimum wage
35 orders or otherwise provided by law, rule, or regulation, the payroll
36 records shall include the compensation provided and the regular hourly
37 rate or rates of pay, the overtime rate or rates of pay, the number of
38 regular hours worked, the number of overtime hours worked and the cost
39 of benefits and/or benefit supplements. On demand, the employer shall
40 furnish to the commissioner or his or her duly authorized representative
41 a sworn statement of the hours worked, rate or rates of compensation,
42 for each covered airport worker, plus such other information as the
43 commissioner deems material and necessary. Every employer shall keep
44 such records open to inspection by the commissioner or his or her duly
45 authorized representative at any reasonable time. Every employer of a
46 covered airport worker shall keep a digest and summary of this article
47 which shall be prepared by the commissioner, posted in a conspicuous
48 place in his or her establishment and shall also keep posted such addi-
49 tional copies of said digest and summary as the commissioner prescribes.
50 Employers shall, on request, be furnished with copies of this article
51 and of orders, and of digests and summaries thereof, without charge.
52 Employers shall permit the commissioner or his or her duly authorized
53 representative to question without interference any employee of such
54 employer in a private location at the place of employment and during
55 working hours in respect to the wages paid to and the hours worked by
56 such employee or other employees.

1 § 696-f. Penalties. 1. If the commissioner finds that any employer has
2 violated any provision of this article or of a rule or regulation
3 promulgated thereunder, the commissioner may, after an opportunity for a
4 hearing, and by an order which shall describe particularly the nature of
5 the violation, assess the employer a civil penalty of not more than ten
6 thousand dollars for the first such violation within six years, not more
7 than twenty thousand dollars for a second violation within six years and
8 not more than fifty thousand dollars for a third or subsequent violation
9 within six years. Such penalty shall be paid to the commissioner for
10 deposit in the treasury of the state. In assessing the amount of the
11 penalty, the commissioner shall give due consideration to the size of
12 the employer's business, the good faith of the employer, the gravity of
13 the violation, the history of previous violations and the failure to
14 comply with record-keeping or other requirements.

15 2. Any order issued under subdivision one of this section shall be
16 deemed a final order of the commissioner and not subject to review by
17 any court or agency unless the employer files a petition with the indus-
18 trial board of appeals for a review of the order, pursuant to section
19 one hundred one of this chapter.

20 3. The civil penalty provided for in this section shall be in addition
21 to and may be imposed concurrently with any other remedy or penalty
22 provided for in this chapter.

23 4. Upon a showing by an employee organization, the commissioner may
24 investigate by examining payroll records whether an employer withheld
25 hours of work to employees for the purpose of reducing the employer's
26 obligations under this article. If, after the opportunity for a hearing,
27 the commissioner determines that an employer withheld hours of work to
28 employees for the purpose of reducing the employer's obligations under
29 this article, the commissioner may, in addition to any other penalty
30 available, also require that the employer pay the standard benefits
31 supplement rate to all of the employer's employees, regardless of the
32 number of hours worked by the employees.

33 § 696-g. Civil action. 1. On behalf of any employee paid less than the
34 applicable standard rate to which the employee is entitled under the
35 provisions of this article, the commissioner may bring any legal action
36 necessary, including administrative action, to collect such claim, and
37 the employer shall be required to pay the full amount of the underpay-
38 ment, plus costs, and unless the employer proves a good faith basis to
39 believe that its underpayment was in compliance with the law, an addi-
40 tional amount as liquidated damages. Liquidated damages shall be calcu-
41 lated by the commissioner as no more than one hundred percent of the
42 total amount of underpayments found to be due the employee. In any
43 action brought by the commissioner in a court of competent jurisdiction,
44 liquidated damages shall be calculated as an amount equal to one hundred
45 percent of underpayments found to be due the employee.

46 2. Notwithstanding any other provision of law, an action to recover
47 upon a liability imposed by this article must be commenced within six
48 years. The statute of limitations shall be tolled from the date an
49 employee files a complaint with the commissioner or the commissioner
50 commences an investigation, whichever is earlier, until an order to
51 comply issued by the commissioner becomes final, or where the commis-
52 sioner does not issue an order, until the date on which the commissioner
53 notifies the complainant that the investigation has concluded.

54 3. In any civil action by the commissioner, the commissioner shall
55 have the right to collect attorneys' fees and costs incurred in enforc-
56 ing any court judgment. Any judgment or court order awarding remedies

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

6 § 696-h. Regulations. 1. The commissioner may promulgate such regu-
7 lations as he or she deems appropriate to carry out the purposes of this
8 article and to safeguard minimum compensation standards.

9 § 696-i. Savings clause. 1. If any provision of this article or the
10 application thereof to any person, occupation or circumstance is held
11 invalid, the remainder of the article and the application of such
12 provision to other persons, employees, occupations, or circumstances
13 shall not be affected thereby.

14 2. If any clause, sentence, paragraph, subdivision, section or part of
15 this article shall be adjudged by any court of competent jurisdiction to
16 be invalid, such judgment shall not affect, impair, or invalidate the
17 remainder thereof, but shall be confined in its operation to the clause,
18 sentence, paragraph, subdivision, section or part thereof directly
19 involved in the controversy in which such judgment shall have been
20 rendered. It is hereby declared to be the intent of the legislature that
21 this article would have been enacted even if such invalid provisions had
22 not been included herein.

23 3. If section six hundred ninety-six-a, section six hundred ninety-
24 six-b, or section six hundred ninety-six-c of this article or any
25 portion thereof shall be adjudged, whether by final judgment, a tempo-
26 rary restraining order, or a preliminary injunction, by any court of
27 competent jurisdiction to be preempted by federal law, then the "stand-
28 ard benefits supplement rate" defined in subdivision six of section six
29 hundred ninety-six-a of this article shall immediately mean the follow-
30 ing:

31 (a) An hourly supplement of four dollars and fifty-four cents
32 furnished to an employee by providing at least four dollars and fifty-
33 four cents per hour beginning on July first, two thousand twenty-one in
34 one of the following ways: (i) in the form of health and/or other bene-
35 fits, not including paid leave, that cost the employer the entire
36 required hourly supplemental amount; (ii) by providing a portion of the
37 required hourly supplement in the form of health and/or other benefits,
38 not including paid leave, and the balance in cash; or (iii) by providing
39 the entire supplement in cash.

40 (b) The value of such supplement shall be no less than four dollars
41 and fifty-four cents per hour.

42 (c) The standard benefits supplement rate shall apply only to the
43 first forty hours worked by each covered airport worker in each week and
44 shall not apply to any overtime hours worked by any covered airport
45 worker.

46 (d) The standard benefits supplement rate shall apply to any paid
47 leave taken by a covered airport worker that does not exceed forty hours
48 in a week.

49 4. If section six hundred ninety-six-a, section six hundred ninety-
50 six-b, or section six hundred ninety-six-c of this article or any
51 portion thereof shall be adjudged by any preliminary relief, including a
52 temporary restraining order or a preliminary injunction, by any court of
53 competent jurisdiction to be preempted by federal law but is later
54 adjudged by the same court not to be preempted by federal law in a final
55 judgment, then the definition of "standard benefits supplement rate"

1 shall immediately revert to the definition stated in subdivision six of
2 section six hundred ninety-six-a of this article.

3 § 17. Section 14 of a chapter of the laws of 2020 relating to enacting
4 the "healthy terminals act", as proposed in legislative bills numbers S.
5 6266-D and A. 8142-E is REPEALED.

6 § 18. This act shall take effect on the same date and in the same
7 manner as a chapter of the laws of 2020 amending the labor law relating
8 to enacting the "healthy terminals act", as proposed in legislative
9 bills numbers S.6266-D and A.8142-E, takes effect; provided, however
10 that the commissioner of labor shall begin no investigation of compli-
11 ance with this act before July 1, 2021 and no order issued pursuant to
12 this act shall include any time period before July 1, 2021. Effective
13 immediately, the commissioner of labor may request documents or the
14 preservation of documents relative to payroll and employee health plans
15 for purposes of determining appropriate standards for full-time or part-
16 time work.