

STATE OF NEW YORK

866

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. GLICK, DINOWITZ, COLTON, MAGNARELLI, SIMON, REYES, GONZALEZ-ROJAS, BURDICK, GALLAGHER, MAMDANI, RIVERA, MITAYNES, SIMONE, R. CARROLL -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the workers' compensation law, in relation to the employee status of an individual

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

1 Section 1. Paragraphs (a) and (b) of subdivision 1 of section 511 of
2 the labor law, as amended by chapter 607 of the laws of 1971, subpara-
3 graph 1-a of paragraph (b) as added by chapter 903 of the laws of 1986,
4 subparagraph 1-b of paragraph (b) as added by chapter 418 of the laws of
5 2010, subparagraph 1-c of paragraph (b) as added by chapter 558 of the
6 laws of 2013, and subparagraph 3 of paragraph (b) as added by chapter
7 668 of the laws of 1992, are amended to read as follows:

8 (a) any service under any contract of employment for hire, express or
9 implied, written, or oral; and

10 (b) (1) any service by a person providing labor or services for remun-
11 eration unless the hiring entity demonstrates that all of the following
12 conditions are satisfied:

13 (i) the person is free from the control and direction of the hiring
14 entity in connection with the performance of the work, both under the
15 contract for the performance of the work and in fact; and

16 (ii) the person performs work that is outside the usual course of the
17 hiring entity's business; and

18 (iii) the person is customarily engaged in an independently estab-
19 lished trade, occupation, or business of the same nature as that
20 involved in the work performed.

21 (2) for the purposes of this section, any person providing labor or
22 services for remuneration pursuant to subparagraph one of this paragraph

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

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1 shall be considered an employee rather than an independent contractor;
2 and

3 (c) any service by a person for an employer:

4 (1) as an agent-driver or commission-driver engaged in distributing
5 meat, vegetable, fruit, or bakery products; beverages other than milk;
6 or laundry or dry-cleaning services; or

7 (1-a) as a professional musician or a person otherwise engaged in the
8 performing arts, and performing services as such for a television or
9 radio station or network, a film production, a theatre, hotel, restau-
10 rant, night club or similar establishment unless, by written contract,
11 such musician or person is stipulated to be an employee of another
12 employer covered by this chapter. "Engaged in the performing arts" shall
13 mean performing services in connection with the production of or
14 performance in any artistic endeavor which requires artistic or techni-
15 cal skill or expertise; or

16 (1-b) as an employee in the construction industry unless the presump-
17 tion of employment can be overcome, as provided under section eight
18 hundred sixty-one-c of this chapter; or

19 (1-c) as an employee in the commercial goods transportation industry
20 unless the presumption of employment can be overcome, as provided under
21 section eight hundred sixty-two-b of this chapter; or

22 (2) as a traveling or city ~~salesman~~ salesperson engaged on a full-
23 time basis in soliciting orders for merchandise for resale or supplies
24 for use in the purchaser's business operations if the contract of
25 service contemplates that substantially all of such services are to be
26 performed personally by such person; such person does not have a
27 substantial investment in facilities used in connection with the
28 performance of such services, excepting facilities for transportation;
29 and the services are not in the nature of a single transaction which is
30 not part of a continuing relationship with the employer.

31 (3) as a professional model, where:

32 (i) the professional model performs modeling services for; or

33 (ii) consents in writing to the transfer of ~~[his or her]~~ such profes-
34 sional model's exclusive legal right to the use of ~~[his or her]~~ such
35 professional model's name, portrait, picture or image, for advertising
36 purposes or for the purposes of trade, directly to a retail store, a
37 manufacturer, an advertising agency, a photographer, a publishing compa-
38 ny or any other such person or entity, which dictates such professional
39 model's assignments, hours of work or performance locations and which
40 compensates such professional model in return for a waiver of ~~[his or~~
41 ~~her]~~ such professional model's privacy rights enumerated above, unless
42 such services are performed pursuant to a written contract wherein it is
43 stated that the professional model is the employee of another employer
44 covered by this chapter. For purposes of this subparagraph, the term
45 "professional model" means a person who, in the course of ~~[his or her]~~
46 such person's trade, occupation or profession, performs modeling
47 services. For purposes of this subparagraph, the term "modeling
48 services" means the appearance by a professional model in photographic
49 sessions or the engagement of such model in live, filmed or taped model-
50 ing performances for remuneration.

51 § 2. Subdivision 3 of section 160 of the labor law, the opening para-
52 graph as amended by chapter 481 of the laws of 2010, is amended to read
53 as follows:

54 3. a. For all other employees, except those engaged in farm work and
55 those affected by subdivision four of section two hundred twenty of this
56 chapter, eight hours.

b. For the purposes of this subdivision, an individual providing labor or services for remuneration has the status of an employee rather than an independent contractor unless the hiring entity demonstrates all of the following conditions:

(i) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(ii) The individual performs work that is outside the usual course of the hiring entity's business.

(iii) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

c. This subdivision shall not prevent an agreement for overwork at an increased compensation, except upon work by or for the state or a municipal corporation, or by contractors or subcontractors therewith, and except as otherwise provided in this chapter.

§ 3. Subdivision 5 of section 651 of the labor law is amended by adding a new closing paragraph to read as follows:

Unless otherwise excluded by the provisions of this subdivision or by regulations promulgated by the commissioner, an individual providing labor or services for remuneration has the status of an employee rather than an independent contractor unless the hiring entity demonstrates all of the following conditions:

(a) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(b) The individual performs work that is outside the usual course of the hiring entity's business.

(c) The individual is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

§ 4. Subdivision 6 of section 201 of the workers' compensation law is amended by adding a new paragraph E to read as follows:

E. (A) The term "employment" includes, unless specifically excluded by a provision of this subdivision, any service by a person providing labor or services for remuneration unless the hiring entity demonstrates that all of the following conditions are satisfied:

(i) the person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and

(ii) the person performs work that is outside the usual course of the hiring entity's business; and

(iii) the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(B) For the purposes of this section, any person providing labor or services for remuneration pursuant to subparagraph (A) of this paragraph shall be considered an employee rather than an independent contractor.

§ 5. This act shall take effect immediately.