

9004

2009-2010 Regular Sessions

I N A S S E M B L Y

June 18, 2009

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

AN ACT to amend the labor law, in relation to enacting the broadcast employees' freedom to work act; and to repeal certain provisions of such law relating thereto

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

1 Section 1. This act shall be known and may be cited as the "broadcast  
2 employees' freedom to work act".

3 S 2. Section 202-k of the labor law is REPEALED and a new section  
4 202-k is added to read as follows:

5 S 202-K. PROTECTION OF PERSONS EMPLOYED IN THE BROADCAST INDUSTRY. 1.  
6 DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:

7 (A) "BROADCASTING INDUSTRY EMPLOYER" INCLUDES (I) TELEVISION STATIONS  
8 OR NETWORKS, RADIO STATIONS OR NETWORKS, OR CABLE STATIONS OR NETWORKS,  
9 (II) INTERNET OR SATELLITE-BASED SERVICES SIMILAR TO A BROADCAST STATION  
10 OR NETWORK AND THAT PROVIDE COVERED BROADCASTING SERVICES, AND (III) ANY  
11 OTHER ENTITY THAT PROVIDES COVERED BROADCASTING SERVICES.

12 (B) "COVERED BROADCASTING SERVICES" SHALL MEAN THE PROVISION OF BROAD-  
13 CASTING SERVICES SUCH AS NEWS, WEATHER, TRAFFIC, SPORTS, OR ENTER-  
14 TAINMENT REPORTS, OR OTHER FORMS OF CONTENT PROGRAMMING; PROVIDED THAT  
15 FOR PURPOSES OF THIS SECTION, AN ENTITY SHALL NOT BE PRESUMED TO BE  
16 ACTIVELY ENGAGED IN THE PROVISION OF COVERED BROADCASTING SERVICES  
17 UNLESS AT LEAST THIRTY PERCENT OF ITS ASSETS OR EMPLOYEES ARE DEDICATED  
18 PRIMARILY TO THE PROVISION OF SUCH SERVICES.

19 (C) "BROADCAST EMPLOYEE" SHALL MEAN (I) ANY ON-AIR EMPLOYEE OR (II)  
20 OFF-AIR EMPLOYEE OF A BROADCASTING INDUSTRY EMPLOYER PROVIDING DIRECT  
21 SUPPORT OR SERVICES TO ANY ON-AIR EMPLOYEE, EXCLUDING MANAGEMENT EMPLOY-  
22 EES.

23 (D) "MANAGEMENT EMPLOYEE" SHALL MEAN AN EMPLOYEE (I) WHOSE PRIMARY  
24 DUTY CONSISTS OF THE MANAGEMENT OF THE ENTERPRISE IN WHICH SUCH INDIVID-

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

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1 UAL IS EMPLOYED OR OF A CUSTOMARILY RECOGNIZED DEPARTMENT OR SUBDIVISION  
2 THEREOF; (II) WHO CUSTOMARILY AND REGULARLY DIRECTS THE WORK OF TWO OR  
3 MORE OTHER EMPLOYEES THEREIN; (III) WHO HAS AUTHORITY TO HIRE OR FIRE  
4 OTHER EMPLOYEES OR MAKE SUGGESTIONS AND RECOMMENDATIONS AS TO HIRING OR  
5 FIRING AND AS TO THE ADVANCEMENT AND PROMOTION OR ANY OTHER CHANGE OF  
6 STATUS OF EMPLOYEES; AND (IV) WHO CUSTOMARILY AND REGULARLY EXERCISES  
7 DISCRETIONARY POWERS.

8 (E) "REQUIRE AS A CONDITION OF EMPLOYMENT" SHALL MEAN TO IMPOSE ON ANY  
9 BROADCAST EMPLOYEE A COVENANT NOT TO COMPETE AS AN EXPRESS MANDATORY  
10 OBLIGATION IN CONNECTION WITH (I) AN OFFER OF EMPLOYMENT OR PROPOSED  
11 CONTRACT FOR EMPLOYMENT OR REEMPLOYMENT OR (II) CONTINUED EMPLOYMENT;  
12 PROVIDED THAT THE GRANT OF ANY AWARD OR BENEFIT THE FORFEITURE OF WHICH  
13 MAY RESULT FROM A BREACH OF A COVENANT NOT TO COMPETE SHALL NOT BE  
14 DEEMED TO IMPOSE ON ANY BROADCAST EMPLOYEE A COVENANT NOT TO COMPETE.

15 (F) "COVENANT NOT TO COMPETE" SHALL MEAN ANY CONDITION OF EMPLOYMENT  
16 FALLING WITHIN THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION.

17 2. NONCOMPETITION. A BROADCASTING INDUSTRY EMPLOYER SHALL NOT REQUIRE  
18 AS A CONDITION OF EMPLOYMENT, WHETHER IN AN EMPLOYMENT CONTRACT OR  
19 OTHERWISE, THAT A BROADCAST EMPLOYEE OR PROSPECTIVE BROADCAST EMPLOYEE  
20 REFRAIN FROM OBTAINING EMPLOYMENT:

21 (A) IN ANY SPECIFIED GEOGRAPHIC AREA;

22 (B) FOR A SPECIFIC PERIOD OF TIME; OR

23 (C) WITH ANY PARTICULAR EMPLOYER OR IN ANY PARTICULAR INDUSTRY;

24 IN EACH CASE, AFTER THE CONCLUSION OF EMPLOYMENT WITH SUCH BROADCASTING  
25 INDUSTRY EMPLOYER. THIS SECTION SHALL NOT APPLY TO PREVENTING THE  
26 ENFORCEMENT OF SUCH A COVENANT DURING THE TERM OF AN EMPLOYMENT  
27 CONTRACT.

28 3. EXCLUSIONS. THIS SECTION SHALL NOT PREVENT:

29 (A) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF SUCH A  
30 COVENANT NOT TO COMPETE DURING THE REMAINING TERM OF EMPLOYMENT AS SET  
31 FORTH IN AN EMPLOYMENT AGREEMENT BETWEEN A BROADCAST EMPLOYEE AND A  
32 BROADCASTING INDUSTRY EMPLOYER, IN THE EVENT THAT THE EMPLOYMENT OF THE  
33 BROADCAST EMPLOYEE IS TERMINATED FOR ANY REASON;

34 (B) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF A COVENANT  
35 NOT TO COMPETE, NOT REQUIRED AS A CONDITION OF EMPLOYMENT, BUT AGREED TO  
36 BY A BROADCAST EMPLOYEE IN EXCHANGE FOR ADDITIONAL AND INDEPENDENT  
37 CONSIDERATION SUCH AS SEVERANCE OR ANY OTHER POST-TERMINATION BENEFIT OR  
38 ARRANGEMENT;

39 (C) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF AN EXCLU-  
40 SIVE GOOD-FAITH NEGOTIATION PROVISION UNDER WHICH, DURING THE TERM OF  
41 EMPLOYMENT AND FOR A REASONABLE PERIOD (BUT IN ANY EVENT AT LEAST NINETY  
42 DAYS FROM THE TERMINATION OF A BROADCAST EMPLOYEE'S EMPLOYMENT AGREEMENT  
43 OR ARRANGEMENT), SUCH BROADCAST EMPLOYEE HAS AGREED TO NEGOTIATE EXCLU-  
44 SIVELY AND IN GOOD FAITH WITH HIS OR HER EMPLOYER OR FORMER EMPLOYER (AS  
45 THE CASE MAY BE) BEFORE ENTERING INTO NEGOTIATIONS WITH, OR ACCEPTING  
46 EMPLOYMENT WITH, ANY OTHER PARTY;

47 (D) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF A RIGHT OF  
48 FIRST REFUSAL UNDER WHICH, FOR A REASONABLE PERIOD (BUT IN ANY EVENT AT  
49 LEAST NINETY DAYS FROM THE TERMINATION OF A BROADCAST EMPLOYEE'S EMPLOY-  
50 MENT AGREEMENT OR ARRANGEMENT), SUCH BROADCAST EMPLOYEE HAS AGREED TO

51 (I) PROVIDE HIS OR HER FORMER EMPLOYER WITH NOTICE OF THE MATERIAL TERMS  
52 OF ANY OTHER OFFER OF EMPLOYMENT; (II) PROVIDE HIS OR HER FORMER EMPLOY-  
53 ER WITH A RIGHT TO MATCH THAT OFFER; AND (III) ACCEPT A MATCHING OFFER  
54 MADE BY THE FORMER EMPLOYER;

1 (E) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OR ANY  
2 POST-CONTRACTUAL RESTRICTION FOR A BROADCAST EMPLOYEE EARNING MORE THAN  
3 ONE HUNDRED THOUSAND DOLLARS ANNUALLY; OR

4 (F) THE ENFORCEMENT BY A BROADCASTING INDUSTRY EMPLOYER OF ANY  
5 POST-CONTRACTUAL CONFIDENTIALITY OR NON-DISCLOSURE PROVISION IN THE  
6 BROADCAST EMPLOYEE'S CONTRACT.

7 4. DAMAGES. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE CIVILLY  
8 LIABLE TO A BROADCAST EMPLOYEE FOR DIRECT AND ACTUAL DAMAGES ONLY (AND  
9 NOT CONSEQUENTIAL OR PUNITIVE DAMAGES), AS WELL AS ATTORNEY'S FEES AND  
10 COSTS.

11 S 3. Waiver. The protections provided by section 202-k of the labor  
12 law, as added by section two of this act, may not be waived, and any  
13 clause, covenant or agreement to waive such prohibition shall be null  
14 and void and may not be enforced against the parties in any court or  
15 other jurisdiction.

16 S 4. This act shall take effect immediately; provided that the  
17 provisions of this act are retroactive and shall apply only to contracts  
18 entered into, renewed, or extended on or after August 5, 2008; provided  
19 further that the provisions of this section shall not apply to any  
20 broadcasting industry employer seeking to enforce a written covenant not  
21 to compete that was in effect prior to August 5, 2008 and that has not  
22 otherwise been renewed or extended after such date, regardless of wheth-  
23 er the termination of employment of a broadcast employee occurs prior to  
24 or after the effective date of this act.