

7072

I N S E N A T E

March 10, 2010

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

AN ACT to amend the workers' compensation law, in relation to exclusions to the definition of employee for workers' compensation purposes

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

1 Section 1. Subdivision 4 of section 2 of the workers' compensation law
2 is amended by adding five new undesignated paragraphs to read as
3 follows:
4 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE TERM "EMPLOY-
5 EE" SHALL NOT INCLUDE THE SERVICES OF A HARNESS RACE DRIVER IF IT BE
6 PROVEN THAT:
7 (A) SUBSTANTIALLY ALL OF THE COMPENSATION (WHETHER OR NOT PAID IN
8 CASH) FOR THE SERVICES PERFORMED BY SUCH HARNESS RACE DRIVER IS RELATED
9 TO HIS OR HER PERFORMANCE IN THE HARNESS RACE RATHER THAN THE NUMBER OF
10 HOURS WORKED;
11 (B) THE HARNESS RACE DRIVER IS FREE TO ACCEPT OR DECLINE ANY REQUEST
12 TO DRIVE HORSES;
13 (C) THE HARNESS RACE DRIVER IS FREE TO DRIVE HORSES FOR THE OWNER
14 AND/OR TRAINERS OF HIS OR HER CHOOSING AND/OR ENGAGE IN OTHER EMPLOY-
15 MENT;
16 (D) THE HARNESS RACE DRIVER MAY UNILATERALLY DETERMINE WHEN AND WHERE
17 HE OR SHE WILL WORK;
18 (E) THE HARNESS RACE DRIVER IS RESPONSIBLE FOR HIS OR HER OWN
19 EXPENSES;
20 (F) THE HARNESS RACE DRIVER IS RESPONSIBLE FOR FURNISHING HIS OR HER
21 OWN VEST, HELMET AND WHIP;
22 (G) THE HARNESS RACE DRIVER IS FREE TO TERMINATE HIS OR HER SERVICES
23 AT ANY TIME; AND
24 (H) THE PERSON OR ENTITY THAT RETAINS THE HARNESS RACE DRIVER TO
25 PROVIDE SERVICES IS NOT TREATED BY SUCH PERSON OR ENTITY AS AN EMPLOYEE
26 WITH RESPECT TO SUCH SERVICES FOR FEDERAL OR STATE TAX PURPOSES.
27 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A GROOM AND/OR
28 CARETAKER OF A HARNESS RACE HORSE SHALL NOT BE DEEMED AN "EMPLOYEE" OF A

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

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1 DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE
2 IF IT BE PROVEN THAT:

3 (A) THE COMPENSATION (WHETHER OR NOT PAID IN CASH) FOR THE SERVICES
4 PERFORMED BY SUCH GROOM AND/OR CARETAKER RELATING TO THE HARNESS RACE
5 HORSE IS NOT PAID BY THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF
6 SUCH HARNESS RACE HORSE;

7 (B) THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS
8 RACE HORSE DOES NOT CONTROL THE WORKING HOURS OF THE GROOM AND/OR CARE-
9 TAKER;

10 (C) THE GROOM AND/OR CARETAKER PROVIDING SERVICES TO THE DESIGNATED
11 TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE IS FREE TO
12 PROVIDE HIS OR HER SERVICES TO OTHER TRAINERS (INCLUDING OTHER DESIG-
13 NATED TRAINERS AND/OR SUBSTITUTE TRAINERS) OF HARNESS RACE HORSES;

14 (D) THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS
15 RACE HORSE PROVIDES NO EQUIPMENT OR SUPPLIES TO THE GROOM AND/OR CARE-
16 TAKER PROVIDING SERVICES TO THAT DESIGNATED TRAINER AND/OR SUBSTITUTE
17 TRAINER;

18 (E) THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS
19 RACE HORSE IS NOT RESPONSIBLE AND DOES NOT REIMBURSE THE GROOM AND/OR
20 CARETAKER FOR HIS OR HER EXPENSES; AND

21 (F) THE GROOM AND/OR CARETAKER PROVIDING SERVICES TO THE DESIGNATED
22 TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE IS NOT
23 TREATED AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICES FOR FEDERAL OR
24 STATE TAX PURPOSES BY THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER.

25 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE SERVICES OF A
26 SHIPPER OR TRANSPORTER OF A HARNESS RACE HORSE SHALL NOT BE DEEMED AN
27 "EMPLOYEE" OF A DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE
28 HARNESS RACE HORSE IF IT BE PROVEN THAT:

29 (A) SUBSTANTIALLY ALL OF COMPENSATION (WHETHER OR NOT PAID IN CASH)
30 FOR THE SERVICES PERFORMED BY THE SHIPPER OR TRANSPORTER OF THE HARNESS
31 RACE HORSE IS DIRECTLY RELATED TO MILEAGE OR SOME OTHER TYPE OF AGREED-
32 UPON RATE THAT IS NOT RELATED TO ACTUAL HOURS WORKED;

33 (B) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS FREE TO
34 PROVIDE SERVICES TO CUSTOMERS OF ITS CHOOSING AND/OR TO ENTER INTO OTHER
35 EMPLOYMENT RELATIONSHIPS;

36 (C) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE MAY UNILATER-
37 ALLY DETERMINE WHEN AND WHERE IT WILL WORK;

38 (D) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS RESPONSI-
39 BLE FOR ITS OWN EXPENSES;

40 (E) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS RESPONSI-
41 BLE FOR FURNISHING ITS OWN EQUIPMENT AND/OR VEHICLE;

42 (F) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS FREE TO
43 TERMINATE ITS SERVICES AT ANY TIME; AND

44 (G) THE PARTY THAT RETAINS THE SERVICES OF THE SHIPPER OR TRANSPORTER
45 OF THE HARNESS RACE HORSE DOES NOT TREAT SUCH SHIPPER OR TRANSPORTER AS
46 AN EMPLOYEE WITH RESPECT TO SUCH SERVICE FOR FEDERAL AND STATE TAX
47 PURPOSES.

48 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE SERVICES OF A
49 FARRIER WHOSE SERVICES ARE RENDERED TO A HARNESS RACE HORSE SHALL NOT BE
50 DEEMED AN "EMPLOYEE" OF A DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER
51 OF THE HARNESS RACE HORSE IF IT BE PROVEN THAT:

52 (A) SUBSTANTIALLY ALL OF COMPENSATION (WHETHER OR NOT PAID IN CASH)
53 FOR THE SERVICES RENDERED BY THE FARRIER TO THE HARNESS RACE HORSE IS
54 RELATED TO A NEGOTIATED FEE OR ONE SET BY THE FARRIER AND IS NOT RELATED
55 TO ACTUAL HOURS WORKED;

1 (B) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE
2 HORSE IF FREE TO PROVIDE HIS OR HER SERVICES TO CUSTOMERS OF HIS OR HER
3 CHOOSING, INCLUDING PROVIDING FARRIER SERVICES TO ANY OTHER HARNESS RACE
4 HORSE AND/OR TO ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS;
5 (C) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE
6 HORSE MAY UNILATERALLY DETERMINE WHERE AND WHEN HE OR SHE WILL WORK;
7 (D) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE
8 HORSE IS RESPONSIBLE FOR HIS OR HER EXPENSES;
9 (E) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE
10 HORSE IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN EQUIPMENT;
11 (F) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE
12 HORSE IS FREE TO TERMINATE OR DECLINE TO PROVIDE HIS OR HER SERVICES AT
13 ANY TIME; AND
14 (G) THE PARTY THAT RETAINS THE SERVICES OF THE FARRIER DOES NOT TREAT
15 HIM OR HER AS AN EMPLOYEE FOR FEDERAL AND STATE TAX PURPOSES WITH
16 RESPECT TO HIS OR HER SERVICES PROVIDED TO THE HARNESS RACE HORSE.
17 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE SERVICES OF A
18 VETERINARIAN RETAINED TO TREAT A HARNESS RACE HORSE SHALL NOT BE DEEMED
19 AN "EMPLOYEE" OF A DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE
20 HARNESS RACE HORSE IF IT BE PROVEN THAT:
21 (A) SUBSTANTIALLY ALL OF COMPENSATION (WHETHER OR NOT PAID IN CASH)
22 FOR THE SERVICES RENDERED BY THE VETERINARIAN TO THE HARNESS RACE HORSE
23 IS RELATED TO A FEE NEGOTIATED OR SOME OTHER TYPE OF AGREED-UPON RATE
24 AND IS NOT RELATED TO ACTUAL HOURS WORKED;
25 (B) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE
26 HORSE IS FREE TO PROVIDE HIS OR HER SERVICES TO CUSTOMERS OF HIS OR HER
27 CHOOSING, INCLUDING PROVIDING VETERINARIAN SERVICES TO ANY OTHER HARNESS
28 RACE HORSE AND/OR TO ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS;
29 (C) THE VETERINARIAN RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE
30 HORSE MAY UNILATERALLY DETERMINE WHERE AND WHEN HE OR SHE WILL WORK;
31 (D) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE
32 HORSE IS RESPONSIBLE FOR HIS OR HER EXPENSES;
33 (E) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE
34 HORSE IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN EQUIPMENT;
35 (F) THE VETERINARIAN PROVIDING SERVICES TO THE HARNESS RACE HORSE IS
36 FREE TO TERMINATE PROVIDING HIS OR HER SERVICES AT ANY TIME; AND
37 (G) THE PARTY THAT RETAINS THE SERVICES OF THE VETERINARIAN DOES NOT
38 TREAT HIM OR HER AS AN EMPLOYEE FOR FEDERAL AND STATE TAX PURPOSES WITH
39 RESPECT TO HIS OR HER SERVICES PROVIDED TO THE HARNESS RACE HORSE.
40 S 2. This act shall take effect immediately.