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I N S E N A T E

April 14, 2010

Introduced by Sens. VALESKY, MAZIARZ -- 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 excluding certain seasonal
fair workers from the definition of employee for purposes of the mini-
mum wage act

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

1 Section 1. Subdivision 5 of section 651 of the labor law, as amended
2 by chapter 640 of the laws of 2005, is amended to read as follows:
3 5. "Employee" includes any individual employed or permitted to work by
4 an employer in any occupation, but shall not include any individual who
5 is employed or permitted to work: (a) in service as a part time baby
6 sitter in the home of the employer; or someone who lives in the home of
7 an employer for the purpose of serving as a companion to a sick, conva-
8 lescing or elderly person, and whose principal duties do not include
9 housekeeping; (b) in labor on a farm; (c) in a bona fide executive,
10 administrative, or professional capacity; (d) as an outside salesman;
11 (e) as a driver engaged in operating a taxicab; (f) as a volunteer,
12 learner or apprentice by a corporation, unincorporated association,
13 community chest, fund or foundation organized and operated exclusively
14 for religious, charitable or educational purposes, no part of the net
15 earnings of which inures to the benefit of any private shareholder or
16 individual; (g) as a member of a religious order, or as a duly ordained,
17 commissioned or licensed minister, priest or rabbi, or as a sexton, or
18 as a christian science reader; (h) in or for such a religious or chari-
19 table institution, which work is incidental to or in return for charita-
20 ble aid conferred upon such individual and not under any express
21 contract of hire; (i) in or for such a religious, educational or chari-
22 table institution if such individual is a student; (j) in or for such a
23 religious, educational or charitable institution if the earning capacity
24 of such individual is impaired by age or by physical or mental deficien-
25 cy or injury; (k) in or for a summer camp or conference of such a reli-
26 gious, educational or charitable institution for not more than three
27 months annually; (l) as a staff counselor in a children's camp; (m) in

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

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1 or for a college or university fraternity, sorority, student association
2 or faculty association, no part of the net earnings of which inures to
3 the benefit of any private shareholder or individual, and which is
4 recognized by such college or university, if such individual is a
5 student; (n) by a federal, state or municipal government or political
6 subdivision thereof. The exclusions from the term "employee" contained
7 in this subdivision shall be as defined by regulations of the commis-
8 sioner; [or] (o) as a volunteer at a recreational or amusement event run
9 by a business that operates such events, provided that no single such
10 event lasts longer than eight consecutive days and no more than one such
11 event concerning substantially the same subject matter occurs in any
12 calendar year. Any such volunteer shall be at least eighteen years of
13 age. A business seeking coverage under this paragraph shall notify every
14 volunteer in writing, in language acceptable to the commissioner, that
15 by volunteering his or her services, such volunteer is waiving his or
16 her right to receive the minimum wage pursuant to this article. Such
17 notice shall be signed and dated by a representative of the business and
18 the volunteer and kept on file by the business for thirty-six months[.];
19 OR (P) AN EMPLOYEE OF AN AMUSEMENT OR RECREATIONAL ESTABLISHMENT
20 PROVIDED THAT (1) SUCH ESTABLISHMENT ADHERES TO CURRENT STATE MINIMUM
21 WAGE RATES FOR ALL EMPLOYEES, (2) MEETS THE BUSINESS OPERATIONS CRITERIA
22 ESTABLISHED UNDER PARAGRAPH THREE OF SUBDIVISION A OF SECTION THIRTEEN
23 OF THE FEDERAL FAIR LABOR STANDARDS ACT, AND (3) IS EMPLOYED IN HIS OR
24 HER CAPACITY AS AN EMPLOYEE ON THE PREMISES OF A COUNTY OR AGRICULTURAL
25 FAIRGROUND.
26 "Employee" also includes any individual employed or permitted to work
27 in any non-teaching capacity by a school district or board of cooper-
28 ative educational services except that the provisions of sections six
29 hundred fifty-three through six hundred fifty-nine of this article shall
30 not be applicable in any such case.
31 S 2. This act shall take effect immediately.