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I N A S S E M B L Y

June 21, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Silver, Brennan, Millman, Lentol, Glick, Gottfried, Abbate, Kavanagh, Lancman, O'Donnell, Pretlow, Rosenthal) -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to independent contractors

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

1 Section 1. The labor law is amended by adding two new sections 196-b
2 and 196-c to read as follows:
3 S 196-B. DEFINITIONS. FOR PURPOSES OF THIS SECTION THE TERM:
4 1. "COMPENSATION" MEANS THE EARNINGS OF AN INDEPENDENT CONTRACTOR.
5 THE TERM "COMPENSATION" ALSO INCLUDES REIMBURSEMENT FOR EXPENSES.
6 2. "INDEPENDENT CONTRACTOR" MEANS A SOLE PROPRIETOR WHO IS NOT AN
7 EMPLOYEE AND WHO IS HIRED OR RETAINED BY A CLIENT FOR AN AMOUNT EQUAL TO
8 OR GREATER THAN SIX HUNDRED DOLLARS.
9 3. "CLIENT" INCLUDES A CORPORATION, LIMITED LIABILITY COMPANY, PART-
10 NERSHIP, ASSOCIATION OR NON-PROFITMAKING ORGANIZATION CONTRACTING WITH
11 AN INDEPENDENT CONTRACTOR IN ANY OCCUPATION, INDUSTRY, TRADE, BUSINESS
12 OR SERVICE FOR COMPENSATION EQUAL TO OR GREATER THAN SIX HUNDRED
13 DOLLARS. THE TERM "CLIENT" SHALL NOT INCLUDE A GOVERNMENTAL ENTITY,
14 INCLUDING BUT NOT LIMITED TO, ANY AGENCY, BOARD, DEPARTMENT, COMMISSION
15 OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF; AND CLIENT SHALL NOT
16 INCLUDE A PERSON. THE TERM "CLIENT" SHALL NOT INCLUDE OWNERS OF ONE AND
17 TWO-FAMILY DWELLINGS.
18 S 196-C. PAYMENT OF INDEPENDENT CONTRACTORS. 1. AN INDEPENDENT
19 CONTRACTOR SHALL BE PAID THE COMPENSATION EARNED IN ACCORDANCE WITH THE
20 AGREED WORK TERMS BUT NOT LATER THAN THE LAST DAY OF THE MONTH FOLLOWING
21 THE MONTH IN WHICH THE COMPENSATION IS EARNED. THE AGREED WORK TERMS
22 SHALL BE REDUCED IN WRITING, SIGNED BY BOTH THE CLIENT AND THE INDEPEND-
23 ENT CONTRACTOR, KEPT ON FILE BY THE CLIENT FOR A PERIOD OF NOT LESS THAN
24 SIX YEARS AND MADE AVAILABLE TO THE COMMISSIONER UPON REQUEST. SUCH
25 WRITING SHALL INCLUDE A DESCRIPTION OF HOW COMPENSATION EARNED AND PAYA-
26 BLE SHALL BE CALCULATED. THE FAILURE OF A CLIENT TO PRODUCE SUCH WRITTEN
27 WORK TERMS, UPON REQUEST OF THE COMMISSIONER, SHALL GIVE RISE TO A

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

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1 PRESUMPTION THAT THE TERMS THAT THE INDEPENDENT CONTRACTOR HAS PRESENTED
2 ARE THE AGREED TERMS.

3 2. THE COMMISSIONER SHALL INVESTIGATE AND ATTEMPT TO ADJUST EQUITABLY
4 CONTROVERSIES BETWEEN CLIENTS AND INDEPENDENT CONTRACTORS RELATING TO
5 THIS SECTION.

6 3. THE COMMISSIONER MAY TAKE ASSIGNMENTS OF CLAIMS FOR COMPENSATION AS
7 DEFINED IN SECTION ONE HUNDRED NINETY-SIX-B OF THIS ARTICLE FROM INDE-
8 PENDENT CONTRACTORS OR THIRD PARTIES IN TRUST FOR SUCH INDEPENDENT
9 CONTRACTORS OR FOR THE VARIOUS FUNDS FOR SUCH INDEPENDENT CONTRACTORS.
10 ALL SUCH ASSIGNMENTS SHALL RUN TO THE COMMISSIONER AND HIS SUCCESSOR IN
11 OFFICE. THE COMMISSIONER MAY SUE COMPANIES ON COMPENSATION CLAIMS THUS
12 ASSIGNED. HE MAY JOIN IN A SINGLE ACTION ANY NUMBER OF COMPENSATION
13 CLAIMS AGAINST THE SAME COMPANY.

14 4. ANY INDEPENDENT CONTRACTOR MAY FILE WITH THE COMMISSIONER A
15 COMPLAINT REGARDING A VIOLATION OF THIS ARTICLE FOR AN INVESTIGATION OF
16 SUCH COMPLAINT AND STATEMENT SETTING THE APPROPRIATE REMEDY, IF ANY.
17 FAILURE OF A CLIENT TO KEEP ADEQUATE RECORDS SHALL NOT OPERATE AS A BAR
18 TO FILING OF A COMPLAINT BY AN INDEPENDENT CONTRACTOR. IN SUCH A CASE
19 THE CLIENT IN VIOLATION SHALL BEAR THE BURDEN OF PROVING THAT THE
20 COMPLAINING INDEPENDENT CONTRACTOR WAS PAID COMPENSATION.

21 5. ON BEHALF OF ANY INDEPENDENT CONTRACTOR PAID LESS THAN THE COMPEN-
22 SATION TO WHICH HE OR SHE IS ENTITLED UNDER THE AGREED WORK TERMS UNDER
23 THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER MAY BRING ANY LEGAL
24 ACTION NECESSARY, INCLUDING ADMINISTRATIVE ACTION, TO COLLECT SUCH CLAIM
25 AND AS PART OF SUCH LEGAL ACTION, IN ADDITION TO ANY OTHER REMEDIES AND
26 PENALTIES OTHERWISE AVAILABLE UNDER THIS ARTICLE, THE COMMISSIONER MAY
27 ASSESS AGAINST THE CLIENT AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES
28 EQUAL TO TWENTY-FIVE PERCENT OF THE TOTAL AMOUNT OF COMPENSATION FOUND
29 TO BE DUE, UNLESS THE CLIENT PROVES A GOOD FAITH BASIS FOR BELIEVING
30 THAT ITS UNDERPAYMENT OF COMPENSATION WAS IN COMPLIANCE WITH THE LAW. IN
31 ANY ACTION INSTITUTED IN THE COURTS UPON A COMPENSATION CLAIM BY AN
32 INDEPENDENT CONTRACTOR OR THE COMMISSIONER IN WHICH THE INDEPENDENT
33 CONTRACTOR PREVAILS, THE COURT SHALL ALLOW SUCH INDEPENDENT CONTRACTOR
34 REASONABLE ATTORNEY'S FEES AND, UNLESS THE CLIENT PROVES A GOOD FAITH
35 BASIS TO BELIEVE THAT ITS UNDERPAYMENT OF COMPENSATION WAS IN COMPLIANCE
36 WITH THE LAW, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWEN-
37 TY-FIVE PERCENT OF THE TOTAL AMOUNT OF COMPENSATION FOUND TO BE DUE. THE
38 REMEDIES PROVIDED BY THIS ARTICLE MAY BE ENFORCED SIMULTANEOUSLY OR
39 CONSECUTIVELY SO FAR AS NOT INCONSISTENT WITH EACH OTHER.

40 6. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER
41 UPON A LIABILITY IMPOSED BY THIS ARTICLE MUST BE COMMENCED WITHIN SIX
42 YEARS. ALL INDEPENDENT CONTRACTORS SHALL HAVE THE RIGHT TO RECOVER FULL
43 COMPENSATION ACCRUED DURING THE SIX YEARS PREVIOUS TO THE COMMENCING OF
44 SUCH ACTION, WHETHER SUCH ACTION IS INSTITUTED BY THE INDEPENDENT
45 CONTRACTOR OR BY THE COMMISSIONER.

46 7. EACH INDEPENDENT CONTRACTOR WHO FILES A COMPLAINT REGARDING A
47 VIOLATION OF A PROVISION OF THIS ARTICLE SHALL BE PROVIDED WITH A WRIT-
48 TEN DESCRIPTION OF THE ANTICIPATED PROCESSING OF THE COMPLAINT, INCLUD-
49 ING INVESTIGATION, CASE CONFERENCE, POTENTIAL CIVIL AND CRIMINAL PENAL-
50 TIES, AND COLLECTION PROCEDURES.

51 8. EACH INDEPENDENT CONTRACTOR AND HIS OR HER REPRESENTATIVE SHALL BE
52 NOTIFIED IN WRITING OF ANY CASE CONFERENCE BEFORE IT IS HELD AND GIVEN
53 THE OPPORTUNITY TO ATTEND.

54 9. EACH INDEPENDENT CONTRACTOR AND HIS OR HER REPRESENTATIVE SHALL BE
55 NOTIFIED IN WRITING OF ANY AWARD AND COLLECTION OF BACK COMPENSATION AND
56 CIVIL PENALTIES, AND OF ANY INTENT TO SEEK CRIMINAL PENALTIES. IN THE

1 EVENT THAT CRIMINAL PENALTIES ARE SOUGHT THE INDEPENDENT CONTRACTOR AND
2 HIS OR HER REPRESENTATIVE SHALL BE NOTIFIED OF THE OUTCOME OF PROSE-
3 CUTION.

4 10. IF THE COMMISSIONER DETERMINES THAT A CLIENT HAS VIOLATED A
5 PROVISION OF THIS ARTICLE, OR A RULE OR REGULATION PROMULGATED THERE-
6 UNDER, BY FAILING TO PAY THE COMPENSATION OF THEIR INDEPENDENT CONTRAC-
7 TORS, THE COMMISSIONER SHALL ISSUE TO THE CLIENT AN ORDER DIRECTING
8 COMPLIANCE THEREWITH, WHICH SHALL DESCRIBE PARTICULARLY THE NATURE OF
9 THE ALLEGED VIOLATION, AND ORDER THE PAYMENT OF INTEREST AT THE RATE OF
10 INTEREST THEN IN EFFECTED AS PRESCRIBED BY THE SUPERINTENDENT OF BANKS
11 PURSUANT TO SECTION FOURTEEN-A OF THE BANKING LAW PER ANNUM FROM THE
12 DATE OF THE UNDERPAYMENT TO THE DATE OF THE PAYMENT. IN ADDITION TO
13 DIRECTING PAYMENT OF COMPENSATION FOUND TO BE DUE, SUCH ORDER, IF ISSUED
14 TO A CLIENT WHO PREVIOUSLY HAS BEEN FOUND IN VIOLATION OF THOSE
15 PROVISIONS, RULES OR REGULATIONS, OR TO A CLIENT WHOSE VIOLATION IS
16 WILLFUL OR EGREGIOUS, SHALL DIRECT PAYMENT TO THE COMMISSIONER OF AN
17 ADDITIONAL SUM AS A CIVIL PENALTY IN AN AMOUNT EQUAL TO DOUBLE THE TOTAL
18 AMOUNT FOUND TO BE DUE.

19 11. EVERY CLIENT WHO DOES NOT PAY THE COMPENSATION OF ALL OF ITS INDE-
20 PENDENT CONTRACTORS IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER,
21 AND THE OFFICERS AND AGENTS OF ANY CLIENT WHO KNOWINGLY PERMIT THE
22 CLIENT TO VIOLATE THIS CHAPTER BY FAILING TO PAY THE COMPENSATION OF ANY
23 OF ITS INDEPENDENT CONTRACTORS IN ACCORDANCE WITH THE PROVISIONS THERE-
24 OF, SHALL BE GUILTY OF A MISDEMEANOR FOR THE FIRST OFFENSE AND UPON
25 CONVICTION THEREFOR SHALL BE FINED NOT LESS THAN FIVE HUNDRED NOR MORE
26 THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR,
27 AND, IN THE EVENT THAT ANY SECOND OR SUBSEQUENT OFFENSE OCCURS WITHIN
28 SIX YEARS OF THE DATE OF CONVICTION FOR A PRIOR OFFENSE, SHALL BE GUILTY
29 OF A FELONY FOR THE SECOND OR SUBSEQUENT OFFENSE, AND UPON CONVICTION
30 THEREFOR, SHALL BE FINED NOT LESS THAN FIVE HUNDRED NOR MORE THAN TWENTY
31 THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR PLUS ONE DAY,
32 OR PUNISHED BY BOTH SUCH FINE AND IMPRISONMENT, FOR EACH SUCH OFFENSE.

33 S 2. This act shall take effect immediately.