S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

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

AN ACT to amend the workers' compensation law, in relation to the definition of employee, employer and employment with respect to liveries and radio dispatchers

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

Section 1. The opening paragraph of subdivision 3 of section 2 of the workers' compensation law, as amended by chapter 392 of the laws of 2008, is amended to read as follows:

"Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, having one or more persons in employment, including the state, a municipal corporation, fire district or other political subdivision of the state, and every authority or commission heretofore or hereafter continued or created by the public authorities law. For the purposes of this chapter only "employer" shall also mean a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation who delivers or causes to be delivered newspapers or periodicals for delivering or selling and delivering by a newspaper carrier under the age of eighteen years as defined in section thirty-two hundred twenty-eight of the education law. For the purpose of this chapter only, "employer" shall also mean a person, partnership, association, or corporation who leases or otherwise contracts with an operator or lessee for the purpose of driving, operating or leasing a taxicab OR LIVERY as so defined in section one hundred forty-eight-a OR ONE HUNDRED TWENTY-ONE-E, RESPECTIVELY, of the vehicle and traffic law, except where such person is an owner-operator of such taxicab OR LIVERY OR A DIRECT LESSEE OF A LIVERY VEHICLE (ONE WHO LEASES

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

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A VEHICLE FROM A LEASING OR RENTAL COMPANY) who personally regularly operates such vehicle an average of forty or more hours per week and leases such taxicab OR LIVERY for some portion of the remaining time, and except if the taxicab is a livery subject to section eighteen-c of this chapter, in which case the livery driver's employer shall only be such employer as is defined in that section, AND EXCEPT WHERE SUCH PERSON IS A RADIO DISPATCHING BASE WHICH CONTRACTS WITH AN OWNER-OPERATOR OR A DIRECT LESSEE OF A LIVERY VEHICLE WHO PERSONALLY, REGULARLY OPERATES SUCH A VEHICLE AN AVERAGE OF FORTY OR MORE HOURS PER WEEK AND LEASES SUCH A LIVERY VEHICLE FOR A PORTION OF THE REMAINING TIME. For the purposes of this section only, such an owner-operator OR RADIO DISPATCHING BASE, OTHER THAN ONES EXEMPTED IN THIS SECTION shall be deemed to be an employer if he controls, directs, supervises, or has the power to hire or terminate such other person who leases the vehicle.

S 2. The third undesignated paragraph of subdivision 4 of section 2 of the workers' compensation law, as amended by chapter 392 of the laws of 2008, is amended to read as follows:

For the purpose of this chapter only, "employee" shall also mean a driver, operator or lessee who contracts with an owner, operator or lessor for the purpose of operating a taxicab OR LIVERY as so defined in section one hundred forty-eight-a OR ONE HUNDRED TWENTY-ONE-E, RESPECTIVELY, of the vehicle and traffic law, OR A PERSON WHO CONTRACTS WITH A RADIO DISPATCHING BASE FOR THE PURPOSE OF RECEIVING CUSTOMER-PASSENGER CALLS, EXCEPT WHERE SUCH PERSON IS AN OWNER-OPERATOR OF A LIVERY VEHICLE, OR A DIRECT LESSEE OF A LIVERY VEHICLE (ONE WHO LEASES A VEHICLE FROM A LEASING OR RENTAL COMPANY) WHO PERSONALLY, REGULARLY OPERATES SUCH A VEHICLE AN AVERAGE OF FORTY OR MORE HOURS PER WEEK AND LEASES SUCH LIVERY FOR SOME PORTION OF THE REMAINING TIME, OR except where such person leases the taxicab OR LIVERY from a person who personally, regularly operates such vehicle an average of forty or more hours per week, and except if the taxicab is a livery subject to section eighteen-c of this chapter, in which case the livery driver's employer shall only be such employer as is defined in that section. For the purposes of this section only, such person shall be deemed to be an employee of the RADIO DISPATCHING BASE OR owner-operator if the RADIO DISPATCHING BASE OR owner-operator controls, directs, supervises, or has the power to hire or terminate such person AND SUCH RADIO DISPATCHING BASE AND OWNER-OPERATOR ARE NOT EXEMPTED UNDER SUBDIVISION THREE OF THIS SECTION.

S 3. The second undesignated paragraph of subdivision 5 of section 2 of the workers' compensation law, as added by chapter 903 of the laws of 1986, is amended to read as follows:

For the purpose of this chapter only, "employment" shall also include the service of a driver, operator or lessee of a taxicab OR LIVERY as so defined in section one hundred forty-eight-a OR ONE HUNDRED TWENTY-ONE-E, RESPECTIVELY, of the vehicle and traffic law, except where a person leases a taxicab OR LIVERY from an owner-operator of a taxicab OR LIVERY who, regularly operates the vehicle an average of forty or more hours per week, OR EXCEPT A PERSON WHO CONTRACTS WITH A RADIO DISPATCHING BASE FOR THE PURPOSE OF RECEIVING CUSTOMER-PASSENGER CALLS AND THAT PERSON PERSONALLY, REGULARLY OPERATES SUCH VEHICLE AN AVERAGE OF FORTY OR MORE HOURS PER WEEK. Such a lessee shall be deemed to be in employment if the lessor controls, directs, supervises, or has the power to hire or terminate the lessee, UNLESS SUCH A LESSOR IS EXEMPTED UNDER SUBDIVISION THREE OR SUBDIVISION FOUR OF THIS SECTION.

S 4. This act shall take effect immediately.