

3705

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

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

AN ACT to amend the labor law, in relation to hours, wages and supplements for work on public work projects and the definition of public work

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

1 Section 1. Subdivision 2 of section 220 of the labor law, as amended
2 by chapter 678 of the laws of 2007, is amended to read as follows:
3 2. Each contract, LEASE, GRANT, BOND, COVENANT, DEBT AGREEMENT OR
4 PERMIT to which the state or a public benefit corporation or a municipal
5 corporation or a commission appointed pursuant to law is a party,
6 INCLUDING ALL PROJECTS INVOLVING THE CONSTRUCTION, DEMOLITION, RECON-
7 STRUCTION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION OR ALTERATION
8 OF A BUILDING, CHARTER SCHOOL OR IMPROVEMENT TO PROPERTY FINANCED, IN
9 WHOLE OR IN PART, THROUGH AN INDUSTRIAL DEVELOPMENT AGENCY, JOB DEVELOP-
10 MENT AUTHORITY, DORMITORY AUTHORITY, CORRECTIONAL AUTHORITY, OR SIMILAR
11 PUBLIC ENTITY, and any contract for public work entered into by a third
12 party acting in place of, on behalf of and for the benefit of such
13 public entity pursuant to any lease, permit or other agreement between
14 such third party and the public entity, and which may involve the
15 employment of laborers, workers or mechanics shall contain a stipulation
16 that no laborer, worker or mechanic in the employ of the contractor,
17 subcontractor or other person doing or contracting to do the whole or a
18 part of the work contemplated by the contract shall be permitted or
19 required to work more than eight hours in any one calendar day or more
20 than five days in any one week except in cases of extraordinary emergen-
21 cy including fire, flood or danger to life or property. No such person
22 shall be so employed more than eight hours in any day or more than five
23 days in any one week except in such emergency. Extraordinary emergency
24 within the meaning of this section shall be deemed to include situations

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

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1 in which sufficient laborers, workers and mechanics cannot be employed
2 to carry on public work expeditiously as a result of such restrictions
3 upon the number of hours and days of labor and the immediate commence-
4 ment or prosecution or completion without undue delay of the public work
5 is necessary in the judgment of the commissioner for the preservation of
6 the contract site and for the protection of the life and limb of the
7 persons using the same. Upon the application of any person interested,
8 the commissioner shall make a determination as to whether or not on any
9 public project or on all public projects in any area of this state,
10 sufficient laborers, workers and mechanics of any or all classifications
11 can be employed to carry on work expeditiously if their labor is
12 restricted to eight hours per day and five days per week, and in the
13 event that the commissioner determines that there are not sufficient
14 workers, laborers and mechanics of any or all classifications which may
15 be employed to carry on such work expeditiously if their labor is
16 restricted to eight hours per day and five days per week, and the imme-
17 diate commencement or prosecution or completion without undue delay of
18 the public work is necessary in the judgment of the commissioner for the
19 preservation of the contract site and for the protection of the life and
20 limb of the persons using the same, the commissioner shall grant a
21 dispensation permitting all laborers, workers and mechanics, or any
22 classification of such laborers, workers and mechanics, to work such
23 additional hours or days per week on such public project or in such
24 areas the commissioner shall determine. Whenever such a dispensation is
25 granted, all work in excess of eight hours per day and five days per
26 week shall be considered overtime work, and the laborers, workers and
27 mechanics performing such work shall be paid a premium wage commensurate
28 with the premium wages prevailing in the area in which the work is
29 performed. No such dispensation shall be effective with respect to any
30 public work unless and until the department of jurisdiction, as defined
31 in this section, certifies to the commissioner that such public work is
32 of an important nature and that a delay in carrying it to completion
33 would result in serious disadvantage to the public. Time lost in any
34 week because of inclement weather by employees engaged in the
35 construction, reconstruction and maintenance of highways outside of the
36 limits of cities and villages may be made up during that week and/or the
37 succeeding three weeks.

38 S 2. Subdivision 2 of section 220 of the labor law, as amended by
39 chapter 851 of the laws of 1947, is amended to read as follows:

40 2. Each contract, LEASE, GRANT, BOND, COVENANT, DEBT AGREEMENT OR
41 PERMIT to which the state or a public benefit corporation or a municipal
42 corporation or a commission appointed pursuant to law is a party,
43 INCLUDING ALL PROJECTS INVOLVING THE CONSTRUCTION, DEMOLITION, RECON-
44 STRUCTION, EXCAVATION, REHABILITATION, REPAIR, RENOVATION OR ALTERATION
45 OF A BUILDING, CHARTER SCHOOL OR IMPROVEMENT TO PROPERTY FINANCED, IN
46 WHOLE OR IN PART, THROUGH AN INDUSTRIAL DEVELOPMENT AGENCY, JOB DEVELOP-
47 MENT AUTHORITY, DORMITORY AUTHORITY, CORRECTIONAL AUTHORITY, OR SIMILAR
48 PUBLIC ENTITY, and which may involve the employment of laborers, workmen
49 or mechanics shall contain a stipulation that no laborer, workman or
50 mechanic in the employ of the contractor, subcontractor or other person
51 doing or contracting to do the whole or a part of the work contemplated
52 by the contract shall be permitted or required to work more than eight
53 hours in any one calendar day or more than five days in any one week
54 except in cases of extraordinary emergency including fire, flood or
55 danger to life or property. No such person shall be so employed more
56 than eight hours in any day or more than five days in any one week

1 except in such emergency. Extraordinary emergency within the meaning of
2 this section shall be deemed to include situations in which sufficient
3 laborers, workmen and mechanics cannot be employed to carry on public
4 work expeditiously as a result of such restrictions upon the number of
5 hours and days of labor and the immediate commencement or prosecution or
6 completion without undue delay of the public work is necessary in the
7 judgment of the [industrial] commissioner for the preservation of the
8 contract site and for the protection of the life and limb of the persons
9 using the same. Upon the application of any person interested, the
10 [industrial] commissioner shall make a determination as to whether or
11 not on any public project or on all public projects in any area of this
12 state, sufficient laborers, workmen and mechanics of any or all classi-
13 fications can be employed to carry on work expeditiously if their labor
14 is restricted to eight hours per day and five days per week, and in the
15 event that the [industrial] commissioner determines that there are not
16 sufficient workmen, laborers and mechanics of any or all classifications
17 which may be employed to carry on such work expeditiously if their labor
18 is restricted to eight hours per day and five days per week, and the
19 immediate commencement or prosecution or completion without undue delay
20 of the public work is necessary in the judgment of the [industrial]
21 commissioner for the preservation of the contract site and for the
22 protection of the life and limb of the persons using the same, the
23 [industrial] commissioner shall grant a dispensation permitting all
24 laborers, workmen and mechanics, or any classification of such laborers,
25 workmen and mechanics, to work such additional hours or days per week on
26 such public project or in such areas the [industrial] commissioner shall
27 determine. Whenever such a dispensation is granted, all work in excess
28 of eight hours per day and five days per week shall be considered over-
29 time work, and the laborers, workmen and mechanics performing such work
30 shall be paid a premium wage commensurate with the premium wages
31 prevailing in the area in which the work is performed. No such dispensa-
32 tion shall be effective with respect to any public work unless and until
33 the department of jurisdiction, as defined in this section, certifies to
34 the [industrial] commissioner that such public work is of an important
35 nature and that a delay in carrying it to completion would result in
36 serious disadvantage to the public. Time lost in any week because of
37 inclement weather by employees engaged in the construction, recon-
38 struction and maintenance of highways outside of the limits of cities
39 and villages may be made up during that week and/or the succeeding three
40 weeks.

41 S 3. Subdivision 5 of section 220 of the labor law is amended by
42 adding a new paragraph m to read as follows:

43 M. "PUBLIC WORK", FOR THE INTENTS AND PURPOSES OF THIS ARTICLE,
44 INCLUDES ALL WORK PERFORMED UNDER EACH CONTRACT TO WHICH THE STATE OR A
45 PUBLIC BENEFIT CORPORATION OR A MUNICIPAL CORPORATION OR A COMMISSION
46 APPOINTED PURSUANT TO LAW IS A PARTY, INCLUDING ALL PROJECTS FINANCED,
47 IN WHOLE OR IN PART, THROUGH AN INDUSTRIAL DEVELOPMENT AGENCY, JOB
48 DEVELOPMENT AUTHORITY, DORMITORY AUTHORITY, CORRECTIONAL AUTHORITY, OR
49 SIMILAR PUBLIC ENTITY, THE ISSUANCE OF BONDS, GRANTS, TAX EXEMPTIONS OR
50 ABATEMENTS OR OTHER FINANCIAL SUBSIDIES, AND WHICH MAY INVOLVE THE
51 EMPLOYMENT OF LABORERS, WORKMEN OR MECHANICS, AS SET FORTH IN SUBDIVI-
52 SION TWO OF THIS SECTION. ADDITIONALLY, "PUBLIC WORK" INCLUDES ALL
53 CONSTRUCTION, DEMOLITION, RECONSTRUCTION, EXCAVATION, REPAIR, RENO-
54 VATION, OR REHABILITATION OF BUILDINGS OR PROPERTY BY A PRIVATE OWNER OR
55 DEVELOPER OR NOT-FOR-PROFIT ENTITY OR CHARTER SCHOOL THAT IS PERFORMED
56 IN CONJUNCTION WITH A STATE OR PUBLIC GRANT OR PURSUANT TO AN AGREEMENT

1 FOR THE PURCHASE OR LEASING OF SUCH BUILDINGS OR PROPERTY BY THE STATE
2 OR A PUBLIC BENEFIT CORPORATION, OR A MUNICIPAL CORPORATION, OR A
3 COMMISSION APPOINTED PURSUANT TO LAW, INCLUDING INDUSTRIAL DEVELOPMENT
4 AGENCIES, JOB DEVELOPMENT AUTHORITIES, DORMITORY AUTHORITIES, CORREC-
5 TIONAL AUTHORITIES, OR SIMILAR ENTITIES.
6 S 4. This act shall take effect immediately; provided that the amend-
7 ments to subdivision 2 of section 220 of the labor law made by section
8 one of this act shall be subject to the expiration and reversion of such
9 subdivision pursuant to section 5 of chapter 678 of the laws of 2007, as
10 amended, when upon such date the provisions of section two of this act
11 shall take effect.