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

190

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. SAMPSON -- 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 establishing a presumption relating to the daily employment of unskilled or untrained workers

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

Section 1. The labor law is amended by adding a new section 202-l to read as follows:

S 202-L. UNSKILLED OR UNTRAINED WORKERS; REBUTTABLE PRESUMPTION. 1. IN A CRIMINAL PROCEEDING COMMENCED AGAINST AN EMPLOYER OR CONTRACTOR, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT ANY EMPLOYER OR CONTRACTOR WHO HIRES A WORKER OR LABORER ON A DAILY BASIS FOR A BUILDING CONSTRUCTION PROJECT OR CONSTRUCTION JOB AND REQUIRES SUCH WORKER OR LABORER TO PERFORM TASKS WHICH SUCH WORKER IS NOT SKILLED OR TRAINED TO PERFORM IS CRIMINALLY NEGLIGENT.

2. THE PRESUMPTION ESTABLISHED BY THIS SECTION SHALL BE REBUTTED BY CREDIBLE AND RELIABLE EVIDENCE WHICH TENDS TO SHOW THAT SUCH EMPLOYER OR CONTRACTOR IS NOT CRIMINALLY NEGLIGENT. IN AN ACTION TRIED BEFORE A JURY, THE JURY SHALL BE SO INSTRUCTED. ANY SWORN TESTIMONY OF A DEFENDANT OFFERED TO REBUT THE PRESUMPTION AND ANY OTHER EVIDENCE WHICH IS OBTAINED AS A RESULT OF SUCH TESTIMONY, SHALL BE INADMISSIBLE IN ANY SUBSEQUENT PROCEEDING RELATING TO SUCH CRIMINAL ACTION. IN AN ACTION TRIED BEFORE A JURY, AT THE COMMENCEMENT OF THE TRIAL, OR AT SUCH OTHER TIME AS THE COURT REASONABLY DIRECTS, THE PROSECUTOR SHALL PROVIDE NOTICE TO THE COURT AND TO THE DEFENDANT OF ITS INTENT TO REQUEST THAT THE COURT CHARGE SUCH PRESUMPTION.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

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

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