

2247--A

2009-2010 Regular Sessions

I N S E N A T E

February 13, 2009

Introduced by Sens. ONORATO, BRESLIN, ADAMS, ADDABBO, DIAZ, DUANE, ESPADA, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, KLEIN, KRUEGER, MARCELLINO, MONSERRATE, MONTGOMERY, OPPENHEIMER, PADAVAN, PARKER, PERKINS, ROBACH, SAMPSON, SAVINO, SCHNEIDERMAN, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to allowing farm workers one day of rest each week, and including farm laborers within the provisions pertaining to overtime compensation and unemployment insurance, and regulating the farm employment of certain employees whose earning capacity is affected or impaired by youth or age, and granting collective bargaining rights to certain farm laborers and establishing an advisory committee on collective bargaining; to amend the public health law, in relation to the application of the sanitary code to all farm and food processing labor camps for migrant workers; and to amend the workers' compensation law, in relation to the eligibility of farm laborers for workers' compensation benefits and the provision of claim forms to farm laborers injured in the course of employment and in relation to service as farm laborers

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

1 Section 1. This act shall be known and may be cited as the "Farmwork-
2 ers Fair Labor Practices Act".

3 S 2. Section 2 of the labor law is amended by adding a new subdivision
4 16 to read as follows:

5 16. "FARM LABOR" SHALL INCLUDE ALL SERVICES PERFORMED IN AGRICULTURAL
6 EMPLOYMENT IN CONNECTION WITH CULTIVATING THE SOIL, OR IN CONNECTION
7 WITH RAISING OR HARVESTING OF AGRICULTURAL COMMODITIES, INCLUDING

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

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1 SERVICES PERFORMED ON ORCHARDS, PLANTATIONS, NURSERIES AND GREENHOUSES,
2 AND SHALL INCLUDE THE RAISING, HATCHING, SHEARING, CARING FOR AND
3 MANAGEMENT OF LIVESTOCK, POULTRY, DAIRY, BEES AND FUR-BEARING ANIMALS,
4 AND SHALL INCLUDE THE HARVESTING OR PRODUCTION OF MAPLE SYRUP OR MAPLE
5 SUGAR, AND SHALL INCLUDE THE OPERATION AND MAINTENANCE OF FARM EQUIPMENT
6 AND IMPROVEMENT OR MAINTENANCE OF FARM WATER USE AREAS, AND SHALL
7 INCLUDE THE PLANTING, DRYING, PACKAGING OR OTHER PROCESSING OF ANY AGRI-
8 CULTURAL OR HORTICULTURAL COMMODITY RAISED ON THE EMPLOYER'S FARM. THE
9 TERM "FARM LABOR" SHALL NOT INCLUDE SERVICES PERFORMED IN CONNECTION
10 WITH COMMERCIAL CANNING, FREEZING, GRADING OR OTHER PROCESSING OF ANY
11 AGRICULTURAL OR HORTICULTURAL COMMODITY NOT RAISED ON THE EMPLOYER'S
12 FARM. THIS PARAGRAPH SHALL NOT APPLY TO THE PARENT, CHILD, SPOUSE OR
13 OTHER MEMBER OF THE EMPLOYER'S FAMILY RELATED BY THE THIRD DEGREE OF
14 CONSANGUINITY OR AFFINITY.

15 S 3. Subdivision 1 of section 161 of the labor law is amended by
16 adding a new undesignated paragraph to read as follows:

17 EVERY PERSON EMPLOYED AS A FARM LABORER SHALL BE ALLOWED AT LEAST
18 TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK. A
19 FARM LABORER MAY CONSENT IN WRITING TO WAIVE THIS RIGHT AND WORK ON THE
20 DAY OF REST, PROVIDED THAT HE OR SHE SHALL BE PAID AS PROVIDED UNDER
21 SECTION ONE HUNDRED SIXTY-THREE-A OF THIS TITLE. THIS PARAGRAPH SHALL
22 NOT APPLY TO THE PARENT, CHILD, SPOUSE OR OTHER MEMBER OF THE EMPLOYER'S
23 FAMILY RELATED BY THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY. TWEN-
24 TY-FOUR CONSECUTIVE HOURS SPENT AT REST BECAUSE OF CIRCUMSTANCES, SUCH
25 AS WEATHER OR CROP CONDITIONS, SHALL BE DEEMED TO CONSTITUTE THE REST
26 REQUIRED BY THIS PARAGRAPH. THE DAY OF REST SHOULD BE THE SAME AS THE
27 TRADITIONAL DAY RESERVED BY THE FARM LABORER FOR RELIGIOUS WORSHIP,
28 WHENEVER POSSIBLE.

29 S 4. Paragraphs b and d of subdivision 2 of section 161 of the labor
30 law, as amended by chapter 281 of the laws of 1941, are amended to read
31 as follows:

32 b. Employees in [dairies, creameries,] milk condenseries, milk powder
33 factories, milk sugar factories, milk shipping stations, butter and
34 cheese factories, ice cream manufacturing plants and milk bottling
35 plants, where not more than seven persons are employed;

36 d. Employees whose duties include not more than three hours' work on
37 Sunday in setting sponges in bakeries, [caring for live animals,] main-
38 taining fires, or making necessary repairs to boilers or machinery.

39 S 5. The labor law is amended by adding a new section 163-a to read as
40 follows:

41 S 163-A. HOURS OF AGRICULTURAL EMPLOYMENT. NO PERSON OR CORPORATION
42 OPERATING A FARM SHALL REQUIRE ANY FARM LABORER TO WORK MORE THAN TEN
43 HOURS IN ANY DAY, SIXTY HOURS IN ANY CALENDAR WEEK, OR SIX DAYS IN ANY
44 CALENDAR WEEK, UNLESS SUCH FARM LABORER IS PAID AS FOLLOWS:

45 A. HOURLY RATE. (1) ANY FARM LABORER WHO IS PAID ON AN HOURLY BASIS
46 AND WHO IS EIGHTEEN YEARS OF AGE OR OVER, OR WHO IS SIXTEEN OR SEVENTEEN
47 YEARS OF AGE AND NOT REQUIRED BY LAW TO ATTEND SCHOOL SHALL NOT BE
48 EMPLOYED MORE THAN TEN HOURS IN ANY DAY, OR MORE THAN SIXTY HOURS IN ANY
49 CALENDAR WEEK, OR MORE THAN SIX DAYS IN ANY CALENDAR WEEK UNLESS THE
50 FARM LABORER RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH
51 HE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR
52 SIXTY HOURS IN ANY CALENDAR WEEK. ANY FARM LABORER WHO WORKS ON THE
53 SEVENTH DAY IN ANY CALENDAR WEEK SHALL RECEIVE ONE AND ONE-HALF TIMES
54 THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR THE FIRST EIGHT HOURS
55 WORKED, AND TWO TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR ALL
56 HOURS WORKED IN EXCESS OF EIGHT HOURS THAT DAY.

1 (2) BEGINNING ON JANUARY FIRST, TWO THOUSAND THIRTEEN, ANY FARM LABOR-
2 ER WHO IS PAID AN HOURLY WAGE RATE SHALL NOT BE EMPLOYED MORE THAN TEN
3 HOURS IN ANY DAY OR MORE THAN FIFTY-FIVE HOURS IN ANY CALENDAR WEEK
4 UNLESS THE FARM LABORER RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE
5 AT WHICH HE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF TEN HOURS IN
6 ANY DAY OR FIFTY-FIVE HOURS IN ANY CALENDAR WEEK. ANY FARM LABORER WHO
7 WORKS ON THE SEVENTH DAY IN ANY CALENDAR WEEK SHALL RECEIVE ONE AND
8 ONE-HALF TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR THE FIRST
9 EIGHT HOURS WORKED, AND TWO TIMES THE REGULAR RATE AT WHICH HE IS
10 EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF EIGHT HOURS THAT DAY.

11 B. PIECE WORK RATE. (1) ANY FARM LABORER WHO IS PAID ON A PIECE RATE
12 BASIS SHALL BE PAID AT A RATE WHICH SHALL BE NO LESS THAN ONE HUNDRED
13 FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGULATIONS OF THE
14 DEPARTMENT FOR HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR SIXTY
15 HOURS IN ANY CALENDAR WEEK.

16 (2) BEGINNING ON JANUARY FIRST, TWO THOUSAND THIRTEEN, ANY FARM LABOR-
17 ER WHO IS PAID ON A PIECE WORK BASIS SHALL BE PAID AT A RATE NO LESS
18 THAN ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY
19 REGULATIONS OF THE DEPARTMENT FOR HOURS WORKED IN EXCESS OF TEN HOURS IN
20 ANY DAY OR FIFTY-FIVE HOURS IN ANY CALENDAR WEEK.

21 (3) ANY FARM LABORER WHO IS PAID A PIECE WORK RATE WHO WORKS ON THE
22 SEVENTH DAY IN ANY CALENDAR WEEK SHALL BE PAID AT A RATE NO LESS THAN
23 ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGU-
24 LATIONS OF THE DEPARTMENT FOR THE FIRST EIGHT HOURS AND TWO HUNDRED
25 PERCENT OF THAT MINIMUM WAGE RATE FOR ANY HOURS WORKED IN EXCESS OF
26 EIGHT ON THAT DAY. NOTHING IN THIS SECTION SHALL PROHIBIT A FARM EMPLOY-
27 ER FROM PAYING A PIECE WORK RATE IN EXCESS OF THE RATES REQUIRED BY THIS
28 SECTION.

29 S 6. Section 564 of the labor law, as added by chapter 675 of the laws
30 of 1977, is amended to read as follows:

31 S 564. Agricultural labor. 1. Coverage. (a) Notwithstanding the
32 provisions of section five hundred sixty of this article, an employer of
33 persons engaged in agricultural labor shall become liable for contrib-
34 utions under this article if the employer:

35 (1) has paid cash remuneration of [twenty thousand] SIXTY-TWO HUNDRED
36 FIFTY dollars or more in any calendar quarter to persons employed in
37 agricultural labor, and such liability shall commence on the first day
38 of such quarter, or

39 (2) has employed in agricultural labor [ten] THREE or more persons on
40 each of twenty days during a calendar year or the preceding calendar
41 year, each day being in a different calendar week, and the liability
42 shall in such event commence on the first day of the calendar year, or

43 (3) is liable for the tax imposed under the federal unemployment tax
44 act as an employer of agricultural labor and the liability shall in such
45 event commence on the first day of the calendar quarter in such calendar
46 year when he first paid remuneration for agricultural labor in this
47 state.

48 (b) An employer who becomes liable for contributions under paragraph
49 (a) of this subdivision shall cease to be liable as of the first day of
50 a calendar quarter next following the filing of a written application
51 provided the commissioner finds that the employer:

52 (1) has not paid to persons employed in agricultural labor cash remun-
53 eration of [twenty thousand] SIXTY-TWO HUNDRED FIFTY dollars or more in
54 any of the eight calendar quarters preceding such day, and

1 (2) has not employed in agricultural labor [ten] THREE or more persons
2 on each of twenty days during the current or the preceding calendar
3 year, each day being in a different week, and

4 (3) is not liable for the tax imposed under the federal unemployment
5 tax act as an employer of agricultural labor.

6 2. EXCLUSION FROM COVERAGE. THE TERM "EMPLOYMENT" DOES NOT INCLUDE
7 SERVICES RENDERED BY AN INDIVIDUAL WHO IS AN ALIEN ADMITTED TO THE
8 UNITED STATES TO PERFORM AGRICULTURAL LABOR PURSUANT TO SECTIONS 214(C)
9 AND 101(A)(15)(H) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT IF, AT
10 THE TIME SUCH SERVICES ARE RENDERED, THEY ARE EXCLUDED FROM THE DEFINI-
11 TION OF EMPLOYMENT IN SECTION 3306(C) OF THE FEDERAL UNEMPLOYMENT TAX
12 ACT.

13 3. Crew leader. Whenever a person renders services as a member of a
14 crew which is paid and furnished by the crew leader to perform services
15 in agricultural labor for another employer, such other employer shall,
16 for the purpose of this article, be deemed to be the employer of such
17 person, unless:

18 (a) the crew leader holds a valid certificate of registration under
19 the federal farm labor contractor registration act of nineteen hundred
20 sixty-three or substantially all the members of the crew operate or
21 maintain tractors, mechanized harvesting or cropdusting machinery or any
22 other mechanized equipment which is provided by the crew leader, and

23 (b) the crew leader is not an employee of such other employer and has
24 not entered into a written agreement with such employer under which he
25 is designated as an employee.

26 S 7. The opening paragraph of subdivision 5 of section 651 of the
27 labor law, as amended by chapter 640 of the laws of 2005, is amended to
28 read as follows:

29 "Employee" includes any individual employed or permitted to work by an
30 employer in any occupation, but shall not include any individual who is
31 employed or permitted to work: (a) in service as a part time baby sitter
32 in the home of the employer; or someone who lives in the home of an
33 employer for the purpose of serving as a companion to a sick, convalesc-
34 ing or elderly person, and whose principal duties do not include house-
35 keeping; (b) [in labor on a farm; (c)] in a bona fide executive, admin-
36 istrative, or professional capacity; [(d)] (C) as an outside salesman;
37 [(e)] (D) as a driver engaged in operating a taxicab; [(f)] (E) as a
38 volunteer, learner or apprentice by a corporation, unincorporated asso-
39 ciation, community chest, fund or foundation organized and operated
40 exclusively for religious, charitable or educational purposes, no part
41 of the net earnings of which inures to the benefit of any private share-
42 holder or individual; [(g)] (F) as a member of a religious order, or as
43 a duly ordained, commissioned or licensed minister, priest or rabbi, or
44 as a sexton, or as a christian science reader; [(h)] (G) in or for such
45 a religious or charitable institution, which work is incidental to or in
46 return for charitable aid conferred upon such individual and not under
47 any express contract of hire; [(i)] (H) in or for such a religious,
48 educational or charitable institution if such individual is a student;
49 [(j)] (I) in or for such a religious, educational or charitable institu-
50 tion if the earning capacity of such individual is impaired by age or by
51 physical or mental deficiency or injury; [(k)] (J) in or for a summer
52 camp or conference of such a religious, educational or charitable insti-
53 tution for not more than three months annually; [(l)] (K) as a staff
54 counselor in a children's camp; [(m)] (L) in or for a college or univer-
55 sity fraternity, sorority, student association or faculty association,
56 no part of the net earnings of which inures to the benefit of any

1 private shareholder or individual, and which is recognized by such
2 college or university, if such individual is a student; [(n)] (M) by a
3 federal, state or municipal government or political subdivision thereof.
4 The exclusions from the term "employee" contained in this subdivision
5 shall be as defined by regulations of the commissioner; or [(o)] (N) as
6 a volunteer at a recreational or amusement event run by a business that
7 operates such events, provided that no single such event lasts longer
8 than eight consecutive days and no more than one such event concerning
9 substantially the same subject matter occurs in any calendar year. Any
10 such volunteer shall be at least eighteen years of age. A business seek-
11 ing coverage under this paragraph shall notify every volunteer in writ-
12 ing, in language acceptable to the commissioner, that by volunteering
13 his or her services, such volunteer is waiving his or her right to
14 receive the minimum wage pursuant to this article. Such notice shall be
15 signed and dated by a representative of the business and the volunteer
16 and kept on file by the business for thirty-six months.

17 S 8. Subdivision 1 of section 674 of the labor law, as added by chap-
18 ter 552 of the laws of 1969, is amended to read as follows:

19 1. The commissioner may promulgate such regulations as he deems appro-
20 priate to carry out the purposes of this article and to safeguard mini-
21 mum wage standards. Such regulations may include, but are not limited
22 to, the defining of the circumstances or conditions for the acceptance
23 of non-hourly rates and piece rates as equivalent to the minimum hourly
24 rates established by this article. Such regulations also may include,
25 but are not limited to, waiting time and call-in pay rates; wage
26 provisions governing guaranteed earnings during specified periods of
27 work; allowances for meals, lodging, and other items, services and
28 facilities when furnished by the employer; [and the employment of indi-
29 viduals whose earning capacity is affected or impaired by youth or age,]
30 or by physical or mental deficiency or injury, under special certif-
31 icates issued by the commissioner, at such wages lower than the minimum
32 wage established by this article and for such period as shall be
33 prescribed in such regulations.

34 S 9. Paragraph (a) of subdivision 3 of section 701 of the labor law,
35 as amended by chapter 43 of the laws of 1989, is amended to read as
36 follows:

37 (a) The term "employees" includes but is not restricted to any indi-
38 vidual employed by a labor organization; any individual whose employment
39 has ceased as a consequence of, or in connection with, any current labor
40 dispute or because of any unfair labor practice, and who has not
41 obtained any other regular and substantially equivalent employment; and
42 shall not be limited to the employees of a particular employer, unless
43 the article explicitly states otherwise, but shall not include any indi-
44 vidual employed by his parent or spouse or in the domestic service of
45 and directly employed, controlled and paid by any person in his home,
46 any individual whose primary responsibility is the care of a minor child
47 or children and/or someone who lives in the home of a person for the
48 purpose of serving as a companion to a sick, convalescing or elderly
49 person or any individuals employed only for the duration of a labor
50 dispute, or any individuals employed as farm laborers BY A FARM EMPLOYER
51 WITH SALES OF UNDER FIVE HUNDRED THOUSAND DOLLARS DURING THE PREVIOUS
52 CALENDAR YEAR ACCORDING TO THE UNITED STATES DEPARTMENT OF AGRICULTURE
53 NATIONAL AGRICULTURAL STATISTICS SERVICE, or, any individual who partic-
54 ipates in and receives rehabilitative or therapeutic services in a char-
55 itable non-profit rehabilitation facility or sheltered workshop or any
56 individual employed in a charitable non-profit rehabilitation facility

1 or sheltered workshop who has received rehabilitative or therapeutic
2 services and whose capacity to perform the work for which he is engaged
3 is substantially impaired by physical or mental deficiency or injury.

4 S 10. The labor law is amended by adding a new section 719 to read as
5 follows:

6 S 719. ADVISORY COMMITTEE ON AGRICULTURAL COLLECTIVE BARGAINING. 1.
7 THERE IS HEREBY ESTABLISHED AN ADVISORY COMMITTEE ON COLLECTIVE BARGAIN-
8 ING BETWEEN FARM EMPLOYERS AND FARM LABORERS WHOSE MEMBERS SHALL BE
9 APPOINTED BY THE GOVERNOR ON OR BEFORE APRIL FIRST, TWO THOUSAND TEN.
10 THE ADVISORY COMMITTEE SHALL CONSIST OF SEVEN MEMBERS, INCLUDING THE
11 COMMISSIONER OR HIS OR HER DESIGNEE, THE COMMISSIONER OF THE DEPARTMENT
12 OF AGRICULTURE AND MARKETS OR HIS OR HER DESIGNEE, ONE UPON THE NOMI-
13 NATION OF THE SPEAKER OF THE ASSEMBLY, ONE UPON NOMINATION OF THE TEMPO-
14 RARY PRESIDENT OF THE SENATE, ONE UPON NOMINATION BY THE PRESIDENT OF
15 THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL
16 ORGANIZATIONS, ONE UPON THE NOMINATION OF THE NEW YORK STATE FARM
17 BUREAU, AND ONE MEMBER WITH EXPERIENCE AND EXPERTISE IN COLLECTIVE
18 BARGAINING AND LABOR RELATIONS WHO SHALL BE APPOINTED TO CHAIR THE ADVI-
19 SORY COMMITTEE.

20 2. THE ADVISORY COMMITTEE SHALL MAKE RECOMMENDATIONS FOR LEGISLATION
21 TO IMPLEMENT COLLECTIVE BARGAINING STRUCTURES AND PROCEDURES WHERE
22 APPROPRIATE, AND TO FOSTER LABOR-MANAGEMENT COOPERATION AND DISPUTE
23 RESOLUTION BETWEEN FARM EMPLOYERS AND FARM LABORERS. IN MAKING ITS
24 RECOMMENDATIONS, THE ADVISORY COMMITTEE SHALL CONSIDER THE PROVISIONS OF
25 THE STATE LABOR RELATIONS ACT, THE LAWS OF OTHER STATES RELATING TO
26 COLLECTIVE BARGAINING AND LABOR RELATIONS IN FARM EMPLOYMENT, AND THE
27 UNIQUE CHARACTERISTICS OF THE AGRICULTURE INDUSTRY INCLUDING BUT NOT
28 LIMITED TO LENGTH OF HARVEST AND GROWING SEASONS, SEASONAL FLUCTUATIONS
29 IN EMPLOYMENT, ANNUAL SALES, AND IMPORT AND EXPORT CONDITIONS AFFECTING
30 NEW YORK AGRICULTURE. THE ADVISORY COMMITTEE SHALL REPORT TO THE GOVER-
31 NOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE
32 SENATE ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN.

33 3. THE MEMBERS OF THE ADVISORY COMMITTEE SHALL RECEIVE NO COMPENSATION
34 FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY
35 EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

36 S 11. Paragraph (m) of subdivision 5 of section 225 of the public
37 health law, as amended by chapter 894 of the laws of 1958 and such
38 subdivision as renumbered by chapter 626 of the laws of 1971, is amended
39 to read as follows:

40 (m) require that application be made for a permit to operate a farm or
41 food processing labor camp as defined in the sanitary code; authorize
42 appropriate officers or agencies to issue such a permit when the appli-
43 cant is in compliance with the established regulations; prescribe stand-
44 ards for living quarters at farm and food processing labor camps,
45 including provisions for sanitary conditions; light, air, and safety;
46 protection from fire hazards; maintenance; and such other matters as may
47 be appropriate for security of life or health, provided however, that
48 the provisions of the sanitary code established pursuant to the
49 provisions hereof shall apply to all farm and food processing labor
50 camps intended to house migrant workers and which are occupied [by five
51 or more persons]. In the preparation of such regulations, the public
52 health council may request and shall receive technical assistance from
53 the board of standards and appeals of the state department of labor and
54 the state building code commission. Such regulation shall be enforced in
55 the same manner as are other provisions of the sanitary code;

1 S 12. Section 51 of the workers' compensation law, as amended by chap-
2 ter 561 of the laws of 2003, is amended to read as follows:

3 S 51. Posting of notice regarding compensation. Every employer who has
4 complied with section fifty of this article shall post and maintain in a
5 conspicuous place or places in and about his place or places of business
6 typewritten or printed IN ENGLISH AND SPANISH notices in form prescribed
7 by the chairman, stating the fact that he has complied with all the
8 rules and regulations of the chairman and the board and that he has
9 secured the payment of compensation to his employees and their depen-
10 dents in accordance with the provisions of this chapter, but failure to
11 post such notice as herein provided shall not in any way affect the
12 exclusiveness of the remedy provided for by section eleven of this chap-
13 ter. Every employer who owns or operates automotive or horse-drawn vehi-
14 cles and has no minimum staff of regular employees required to report
15 for work at an established place of business maintained by such employer
16 and every employer who is engaged in the business of moving household
17 goods or furniture shall post such notices in each and every vehicle
18 owned or operated by him. Failure to post or maintain such notice in any
19 of said vehicles shall constitute presumptive evidence that such employ-
20 er has failed to secure the payment of compensation. The chairman may
21 require any employer to furnish a written statement at any time showing
22 the stock corporation, mutual corporation or reciprocal insurer in which
23 such employer is insured or the manner in which such employer has
24 complied with any provision of this chapter. Failure for a period of ten
25 days to furnish such written statement shall constitute presumptive
26 evidence that such employer has neglected or failed in respect of any of
27 the matters so required. Any employer who fails to comply with the
28 provisions of this section shall be required to pay to the board a fine
29 of [up to two hundred fifty] FIVE HUNDRED dollars for each violation, in
30 addition to any other penalties imposed by law to be deposited into the
31 uninsured employers' fund.

32 S 13. The workers' compensation law is amended by adding a new section
33 110-b to read as follows:

34 S 110-B. REPORTING OF INJURIES TO EMPLOYER. EVERY FARM LABOR CONTRAC-
35 TOR, FOREMAN OR SUPERVISOR OF FARM LABORERS WHO HAS NOTICE OF ANY INJURY
36 TO A FARM LABORER INCURRED DURING THE COURSE OF EMPLOYMENT SHALL BE
37 REQUIRED TO INFORM THE EMPLOYER, OWNER OR OPERATOR OF A FARM OF ANY SUCH
38 INJURY.

39 S 14. The first undesignated paragraph of section 120 of the workers'
40 compensation law, as amended by chapter 61 of the laws of 1989, is
41 amended to read as follows:

42 It shall be unlawful for any employer or his or her duly authorized
43 agent to discharge or in any other manner discriminate against an
44 employee as to his or her employment because such employee has claimed
45 or attempted to claim compensation from such employer, REQUESTED A CLAIM
46 FORM FOR INJURIES RECEIVED IN THE COURSE OF EMPLOYMENT, or because he or
47 she has testified or is about to testify in a proceeding under this
48 chapter and no other valid reason is shown to exist for such action by
49 the employer.

50 S 15. The opening paragraph of paragraph A of subdivision 6 of section
51 201 of the workers' compensation law, as amended by chapter 903 of the
52 laws of 1986, is amended to read as follows:

53 "Employment" means employment in any trade, business or occupation
54 carried on by an employer, except that the following shall not be deemed
55 employment under this article: services performed for the state, a
56 municipal corporation, local governmental agency, other political subdi-

1 vision or public authority; employment subject to the federal railroad
2 unemployment insurance act; service performed on or as an officer or
3 member of the crew of a vessel on the navigable water of the United
4 States or outside the United States; [service as farm laborers;] casual
5 employment and the first forty-five days of extra employment of employ-
6 ees not regularly in employment as otherwise defined herein; service as
7 golf caddies; and service during all or any part of the school year or
8 regular vacation periods as a part-time worker of any person actually in
9 regular attendance during the day time as a student in an elementary or
10 secondary school. The term "employment" shall not include the services
11 of a licensed real estate broker or sales associate if it be proven that
12 (a) substantially all of the remuneration (whether or not paid in cash)
13 for the services performed by such broker or sales associate is directly
14 related to sales or other output (including the performance of services)
15 rather than to the number of hours worked; (b) the services performed by
16 the broker or sales associate are performed pursuant to a written
17 contract executed between such broker or sales associate and the person
18 for whom the services are performed within the past twelve to fifteen
19 months; and (c) the written contract provided for in [paragraph] SUBPAR-
20 AGRAPH (b) herein was not executed under duress and contains the follow-
21 ing provisions:

22 S 16. Nothing in this act shall be deemed to diminish the rights,
23 privileges, or remedies of any farm laborer under any collective
24 bargaining agreement entered into on or after the effective date of this
25 act.

26 S 17. This act shall take effect April 1, 2010, provided that section
27 fifteen of this act shall take effect on the one hundred eightieth day
28 after it shall have become a law, provided further, that section five of
29 this act shall take effect January 1, 2011 and section nine of this act
30 shall take effect April 1, 2011.