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

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I N S E N A T E

February 17, 2009

Introduced by Sens. SAVINO, ADDABBO, BRESLIN, DUANE, OPPENHEIMER, PARKER, SCHNEIDERMAN, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, the executive law, and the workers' compensation law, in relation to the labor standards and human rights of domestic workers

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

Section 1. Legislative findings and intent. Many thousands of domestic workers are employed in New York state as housekeepers, nannies, and companions to the elderly. The labor of domestic workers is central to the ongoing prosperity that the state enjoys, and yet, despite the value of their work, domestic workers do not receive the same protection of many state laws as do workers in other industries. Domestic workers often labor under harsh conditions, work long hours for low wages without benefits or job security, are isolated in their workplaces, and are endangered by sexual harassment and assault, as well as verbal, emotional and psychological abuse. Moreover, many domestic workers in the state of New York are women of color who, because of race and sex discrimination, are particularly vulnerable to unfair labor practices.

The legislature finds that because domestic workers care for the most important elements of their employers' lives, their families and homes, it is in the interest of employees, employers, and the people of the state of New York to ensure that the rights of domestic workers are respected, protected, and enforced.

Domestic workers have historically been excluded from many of the traditional protections afforded by the labor law. Additionally, domestic workers are not afforded by law the right to organize labor unions for the purpose of collective bargaining. Given the limited legal protections historically provided to domestic workers, and bearing in mind the unique conditions and demands of this private home-based indus-

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

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try, the legislature further finds that domestic workers are entitled to industry-specific protections and labor standards.

S 2. The labor law is amended by adding a new article 19-C to read as follows:

ARTICLE 19-C

LABOR STANDARDS FOR DOMESTIC WORKERS

SECTION 695. APPLICABILITY.
695-A. DEFINITIONS.
696. EMPLOYER CHOICE FOR HEALTH COVERAGE.
696-A. COST OF LIVING WAGE ADJUSTMENT.
696-B. OTHER EMPLOYMENT CONDITIONS.
697. IMPLEMENTATION AND ENFORCEMENT.
698. SEVERABILITY.

S 695. APPLICABILITY. THE PROVISIONS OF THIS ARTICLE SHALL APPLY WITHIN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT ESTABLISHED PURSUANT TO SECTION TWELVE HUNDRED SIXTY-TWO OF THE PUBLIC AUTHORITIES LAW.

S 695-A. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "DOMESTIC WORKER" MEANS A PERSON EMPLOYED IN A HOME OR RESIDENCE FOR THE PURPOSE OF CARING FOR A CHILD, SERVING AS A COMPANION TO A SICK, CONVALESCING OR ELDERLY PERSON, HOUSEKEEPING, OR FOR ANY OTHER DOMESTIC SERVICE PURPOSE. "DOMESTIC WORKER" DOES NOT INCLUDE ANY INDIVIDUAL WHO IS ENGAGED IN PROVIDING COMPANIONSHIP SERVICES, AS DEFINED IN S 213 (A)(15) OF THE FAIR LABOR STANDARDS ACT OF 1938, AND WHO IS EMPLOYED BY AN EMPLOYER OR AGENCY OTHER THAN THE FAMILY OR HOUSEHOLD USING HIS OR HER SERVICES.

2. "HEALTH BENEFITS" MEANS A HEALTH CARE BENEFITS PACKAGE SUBSTANTIALLY EQUIVALENT TO THE BENEFITS ESTABLISHED IN PARAGRAPH FOUR OF SUBSECTION (C) OF SECTION FOUR THOUSAND THREE HUNDRED TWENTY-SIX OF THE INSURANCE LAW.

3. "PAID TIME OFF" MEANS DAYS THAT THE DOMESTIC WORKER IS ENTITLED TO TIME OFF WITH PAY CALCULATED AT EACH DOMESTIC WORKER'S REGULAR RATE OF PAY FOR HIS OR HER REGULAR HOURS WORKED ON THAT DAY.

S 696. EMPLOYER CHOICE FOR HEALTH COVERAGE. 1. EVERY EMPLOYER MUST PROVIDE EACH DOMESTIC WORKER HEALTH BENEFITS, OR MUST SUPPLEMENT HIS OR HER HOURLY WAGE RATE BY AN AMOUNT NO LESS THAN THE LOWEST AVAILABLE COST OF HEALTH BENEFITS DESCRIBED IN PARAGRAPH FOUR OF SUBSECTION (C) OF SECTION FOUR THOUSAND THREE HUNDRED TWENTY-SIX OF THE INSURANCE LAW.

2. BEGINNING JANUARY FIRST, TWO THOUSAND TEN, AND EACH YEAR THEREAFTER, THE HEALTH BENEFITS SUPPLEMENT RATE SHALL INCREASE IN PROPORTION TO THE INCREASE, IF ANY, FOR THE PERIOD OF THE PRECEDING SEPTEMBER OVER THE LEVEL AS OF SEPTEMBER OF THE IMMEDIATELY PRECEDING YEAR IN THE CONSUMER PRICE INDEX FOR MEDICAL CARE AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY.

S 696-A. COST OF LIVING WAGE ADJUSTMENT. 1. EVERY EMPLOYER MUST PROVIDE EACH DOMESTIC WORKER AN ANNUAL COST OF LIVING ADJUSTMENT, AS DESCRIBED IN SUBDIVISION TWO OF THIS SECTION.

2. BEGINNING ON JANUARY FIRST, TWO THOUSAND TEN, AND EACH YEAR THEREAFTER, EVERY EMPLOYER SHALL INCREASE EACH DOMESTIC WORKER'S WAGES IN PROPORTION TO THE INCREASE, IF ANY, FOR THE PERIOD OF THE PRECEDING SEPTEMBER OVER THE LEVEL AS OF SEPTEMBER OF THE IMMEDIATELY PRECEDING YEAR IN THE CONSUMER PRICE INDEX FOR THE NEW YORK AREA AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY.

S 696-B. OTHER EMPLOYMENT CONDITIONS. 1. DAY OF REST. (A) A DOMESTIC WORKER SHALL BE ENTITLED TO AT LEAST TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK.

(B) NO DOMESTIC WORKER SHALL BE REQUIRED TO WORK ON HIS OR HER DAY OF REST.

(C) IN THE EVENT THAT A DOMESTIC WORKER AGREES TO WORK ON HIS OR HER DAY OF REST, HE OR SHE WILL BE COMPENSATED AT THE OVERTIME RATE FOR ALL HOURS WORKED ON HIS OR HER DAY OF REST OR AT TWICE HIS OR HER REGULAR RATE IF SUCH HOURS CONSTITUTE HOURS WORKED BEYOND FORTY HOURS IN A WORK WEEK.

2. PAID TIME OFF. (A) A DOMESTIC WORKER SHALL BE ENTITLED TO THE FOLLOWING HOLIDAYS:

(1) NEW YEAR'S DAY;

(2) MARTIN LUTHER KING JR.'S BIRTHDAY;

(3) PRESIDENT'S DAY;

(4) MEMORIAL DAY;

(5) INDEPENDENCE DAY;

(6) THANKSGIVING;

(7) LABOR DAY;

(8) CHRISTMAS DAY; AND

(9) ONE ADDITIONAL HOLIDAY OF THE DOMESTIC WORKER'S CHOOSING.

(B) NO DOMESTIC WORKER SHALL BE REQUIRED TO WORK ON A HOLIDAY.

(C) IN THE EVENT THAT A DOMESTIC WORKER AGREES TO WORK ON A HOLIDAY, HE OR SHE WILL BE COMPENSATED AT THE OVERTIME RATE FOR ALL HOURS WORKED ON THE HOLIDAY OR AT TWICE HIS OR HER REGULAR RATE IF SUCH HOURS CONSTITUTE HOURS WORKED BEYOND FORTY HOURS IN A WORK WEEK.

(D) A DOMESTIC WORKER SHALL BE ENTITLED TO THE FOLLOWING VACATION LEAVE:

(1) TWO WEEKS PER YEAR FOR EACH DOMESTIC WORKER WITH MORE THAN SIX MONTHS SERVICE AND LESS THAN THREE YEARS SERVICE.

(2) THREE WEEKS PER YEAR FOR EACH DOMESTIC WORKER WITH MORE THAN THREE YEARS SERVICE AND LESS THAN FIVE YEARS SERVICE.

(3) FOUR WEEKS PER YEAR FOR EACH DOMESTIC WORKER WITH MORE THAN FIVE YEARS SERVICE AND LESS THAN TEN YEARS SERVICE.

(4) FIVE WEEKS PER YEAR FOR EACH DOMESTIC WORKER WITH MORE THAN TEN YEARS SERVICE.

(E) NOTHING IN THIS SECTION SHALL PRECLUDE AN EMPLOYER FROM PROVIDING GREATER VACATION LEAVE THAN REQUIRED BY PARAGRAPH (D) OF THIS SUBDIVISION.

(F) A DOMESTIC WORKER SHALL BE PAID FOR VACATION DAYS ON OR BEFORE HIS OR HER LAST REGULAR WORK DAY BEFORE HIS OR HER VACATION LEAVE BEGINS.

(G) EACH DOMESTIC WORKER SHALL CHOOSE THE DATES OF HIS OR HER VACATION LEAVE. VACATION LEAVE MAY BE TAKEN IN ONE OR MORE PERIODS.

(H) EACH DOMESTIC WORKER MAY CHOOSE TO ACCRUE UNUSED VACATION LEAVE FROM YEAR TO YEAR OR MAY CHOOSE TO HAVE HIS OR HER UNUSED VACATION LEAVE PAID OUT BY HIS OR HER EMPLOYER AT THE END OF EACH CALENDAR YEAR.

(I) EACH DOMESTIC WORKER SHALL PROVIDE HIS OR HER EMPLOYER WITH REASONABLE ADVANCE NOTICE OF HIS OR HER VACATION DATES.

(J) DOMESTIC WORKERS ARE ENTITLED TO AT LEAST FIVE SICK DAYS EACH YEAR.

(K) EACH DOMESTIC WORKER MAY CHOOSE TO ACCRUE UNUSED SICK DAYS FROM YEAR TO YEAR OR MAY CHOOSE TO HAVE HIS OR HER UNUSED SICK DAYS PAID OUT BY HIS OR HER EMPLOYER AT THE END OF EACH CALENDAR YEAR.

(L) DOMESTIC WORKERS ARE ENTITLED TO AT LEAST FIVE PAID PERSONAL DAYS EACH YEAR.

(M) EACH DOMESTIC WORKER MAY CHOOSE TO ACCRUE UNUSED PERSONAL DAYS FROM YEAR TO YEAR OR MAY CHOOSE TO HAVE HIS OR HER UNUSED PERSONAL DAYS PAID OUT BY HIS OR HER EMPLOYER AT THE END OF EACH CALENDAR YEAR.

3. TERMINATION AND SEVERANCE. (A) A DOMESTIC WORKER IS ENTITLED TO WRITTEN NOTICE OF TERMINATION TWENTY-ONE DAYS BEFORE HIS OR HER FINAL DAY OF EMPLOYMENT.

(B) UPON TERMINATION, A DOMESTIC WORKER IS ENTITLED TO SEVERANCE PAY EQUAL TO ONE WEEK OF PAY FOR EACH FULL YEAR OF THE DOMESTIC WORKER'S SERVICE FOR THE EMPLOYER ON OR BEFORE HIS OR HER FINAL DAY OF EMPLOYMENT. IF AN EMPLOYER DOES NOT PROVIDE NOTICE OF TERMINATION AS REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION, THEN THE DOMESTIC WORKER IS ENTITLED TO SEVERANCE PAY EQUAL TO ONE AND ONE-HALF WEEKS OF PAY FOR EACH FULL YEAR OF THE DOMESTIC WORKER'S SERVICE FOR THE EMPLOYER.

(C) SEVERANCE PAY SHALL BE CALCULATED AT EACH DOMESTIC WORKER'S REGULAR RATE OF PAY FOR HIS OR HER REGULAR HOURS WORKED IN A WEEK.

(D) UPON TERMINATION, A DOMESTIC WORKER SHALL BE PAID FOR ALL ACCRUED VACATION LEAVE ON OR BEFORE HIS OR HER FINAL DAY OF EMPLOYMENT.

S 697. IMPLEMENTATION AND ENFORCEMENT. 1. NOTICE AND POSTING. (A) BY DECEMBER FIRST OF EACH YEAR, THE COMMISSIONER SHALL PUBLISH AND MAKE AVAILABLE TO EMPLOYERS A BULLETIN ANNOUNCING THE COST OF LIVING WAGE ADJUSTMENT AND ADJUSTED HEALTH BENEFIT SUPPLEMENT RATE FOR THE UPCOMING YEAR, WHICH SHALL TAKE EFFECT ON JANUARY FIRST. IN CONJUNCTION WITH THIS BULLETIN, THE COMMISSIONER SHALL BY DECEMBER FIRST OF EACH YEAR PUBLISH AND MAKE AVAILABLE TO EMPLOYERS A NOTICE INFORMING DOMESTIC WORKERS OF: THE CURRENT HEALTH BENEFIT SUPPLEMENT RATE; THE INCREASE, IF ANY, FOR THE PERIOD OF THE PRECEDING SEPTEMBER OVER THE LEVEL AS OF SEPTEMBER OF THE IMMEDIATELY PRECEDING YEAR IN THE CONSUMER PRICE INDEX FOR THE NEW YORK AREA; DOMESTIC WORKERS' RIGHTS UNDER THIS ARTICLE; AND OF EMPLOYER OBLIGATIONS PURSUANT TO THE LAWS, INCLUDING SOCIAL SECURITY PAYMENTS, UNEMPLOYMENT INSURANCE COVERAGE, DISABILITY INSURANCE COVERAGE AND WORKERS' COMPENSATION.

(B) BY JANUARY FIRST OF EACH YEAR, EVERY EMPLOYER SHALL PROVIDE EACH DOMESTIC WORKER A COPY OF THE NOTICE PUBLISHED EACH YEAR BY THE COMMISSIONER.

2. PENALTIES. (A) ANY EMPLOYER OR HIS OR HER AGENT, OR THE OFFICER OR AGENT OF ANY CORPORATION, WHO PAYS OR PROVIDES OR AGREES TO PAY OR PROVIDE TO ANY DOMESTIC WORKER LESS THAN THE WAGE, SUPPLEMENTS, OR BENEFITS APPLICABLE UNDER THIS ARTICLE SHALL BE SUBJECT TO CRIMINAL PENALTIES PURSUANT TO SECTIONS ONE HUNDRED NINETY-EIGHT-A AND ONE HUNDRED NINETY-EIGHT-C OF THE LABOR LAW.

(B) ANY EMPLOYER OR HIS OR HER AGENT WHO HINDERS OR DELAYS THE COMMISSIONER OR HIS OR HER AUTHORIZED REPRESENTATIVE IN THE PERFORMANCE OF HIS OR HER DUTIES IN THE ENFORCEMENT OF THIS ARTICLE, OR REFUSES TO ADMIT THE COMMISSIONER OR HIS OR HER AUTHORIZED REPRESENTATIVE TO ANY PLACE OF EMPLOYMENT, OR REFUSES TO FURNISH A SWORN STATEMENT OF ANY INFORMATION REQUIRED FOR THE PROPER ENFORCEMENT OF THIS ARTICLE TO THE COMMISSIONER OR HIS OR HER AUTHORIZED REPRESENTATIVE, SHALL BE GUILTY OF A CLASS B MISDEMEANOR AND EACH DAY'S FAILURE TO FURNISH SUCH INFORMATION TO THE COMMISSIONER OR HIS OR HER AUTHORIZED REPRESENTATIVE SHALL CONSTITUTE A SEPARATE OFFENSE.

3. CIVIL ACTION. (A) IF ANY DOMESTIC WORKER IS PAID OR PROVIDED BY HIS OR HER EMPLOYER LESS THAN THE WAGES, SUPPLEMENTS, OR BENEFITS TO WHICH HE OR SHE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, HE OR SHE MAY RECOVER IN A CIVIL ACTION THE AMOUNT OF ANY SUCH UNDERPAYMENTS OF WAGES OR SUPPLEMENTS OR THE VALUE OF SUCH BENEFITS, PUNITIVE DAMAGES, COSTS AND SUCH REASONABLE ATTORNEY'S FEES AS MAY BE ALLOWED BY THE COURT, AND IF SUCH UNDERPAYMENT OF WAGES OR SUPPLEMENTS OR FAILURE TO PROVIDE BENEFITS WAS WILLFUL, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE TOTAL OF SUCH UNDERPAYMENTS OR THE

VALUE OF BENEFITS FOUND TO BE DUE HIM OR HER AND ANY AGREEMENT BETWEEN HIM OR HER AND HIS OR HER EMPLOYER TO WORK FOR LESS THAN SUCH WAGE OR WITHOUT SUCH SUPPLEMENTS OR BENEFITS SHALL BE NO DEFENSE TO SUCH ACTION.

(B) ON BEHALF OF ANY DOMESTIC WORKER PAID OR PROVIDED LESS THAN THE WAGES, SUPPLEMENTS, OR BENEFITS TO WHICH HE OR SHE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER OR ATTORNEY GENERAL MAY BRING ANY LEGAL ACTION NECESSARY NOTWITHSTANDING ANY LAW TO THE CONTRARY TO COLLECT SUCH CLAIM AND PUNITIVE DAMAGES, AND THE EMPLOYER SHALL BE REQUIRED TO PAY THE COSTS AND, IF SUCH UNDERPAYMENT OF WAGES AND SUPPLEMENTS OR FAILURE TO PROVIDE BENEFITS WAS WILLFUL, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE TOTAL OF SUCH UNDERPAYMENTS OR THE VALUE OF BENEFITS FOUND TO BE DUE HIM OR HER. SUCH CLAIM, PUNITIVE DAMAGES, AND LIQUIDATED DAMAGES SHALL BE PAID TO THE DOMESTIC WORKER.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER UPON A LIABILITY IMPOSED BY THIS ARTICLE MUST BE COMMENCED WITHIN SIX YEARS.

S 698. SEVERABILITY. IF ANY PART OR PROVISION OF THIS ARTICLE, OR THE APPLICATION OF THIS ARTICLE TO ANY PERSON OR CIRCUMSTANCE, IS HELD INVALID, THE REMAINDER OF THIS ARTICLE, INCLUDING THE APPLICATION OF SUCH PART OR PROVISION TO OTHER PERSONS OR CIRCUMSTANCES, SHALL NOT BE AFFECTED BY SUCH A HOLDING AND SHALL CONTINUE IN FULL FORCE AND EFFECT. TO THIS END, THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE.

S 3. Subdivisions 5 and 6 of section 292 of the executive law, subdivision 5 as amended by chapter 851 of the laws of 1965 and subdivision 6 as amended by chapter 166 of the laws of 2000, are amended to read as follows:

5. The term "employer" does not include any employer with fewer than four persons in his OR HER employ. NOTWITHSTANDING THE PRECEDING SENTENCE, THE TERM "EMPLOYER" INCLUDES ANY EMPLOYER EMPLOYING ONE OR MORE DOMESTIC WORKERS, AS DEFINED BY SECTION SIX HUNDRED NINETY-FIVE-A OF THE LABOR LAW.

6. The term "employee" in this article does not include any individual employed by his or her parents, spouse or child[, or in the domestic service of any person].

S 4. Subdivision 3 of section 160 of the labor law is amended to read as follows:

3. For all other employees, except those engaged in farm [or domestic service] WORK and those affected by subdivision four of section two hundred [and] twenty OF THIS CHAPTER, eight hours.

S 5. The opening paragraph of subdivision 1 of section 218 of the labor law, as amended by chapter 304 of the laws of 2007, is amended to read as follows:

If the commissioner determines that an employer has violated a provision of article six (payment of wages), article nineteen (minimum wage act), article nineteen-A, ARTICLE NINETEEN-C, section two hundred twelve-a, section two hundred twelve-b, section one hundred sixty-one (day of rest) or section one hundred sixty-two (meal periods) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. In addition to directing payment of wages, benefits or wage supplements found to be due, such order, if issued to an employer who previously has been found in violation of those provisions, rules or regulations, or to an employer whose violation is willful or egregious, shall direct payment to the commissioner of an additional sum as a civil penalty in

an amount equal to double the total amount found to be due. In no case shall the order direct payment of an amount less than the total wages, benefits or wage supplements found by the commissioner to be due, plus the appropriate civil penalty. Where the violation is for a reason other than the employer's failure to pay wages, benefits or wage supplements found to be due, the order shall direct payment to the commissioner of a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and, in the case of wages, benefits or supplements violations, the failure to comply with recordkeeping or other non-wage requirements.

S 6. Subdivision 1 of section 219 of the labor law, as amended by chapter 417 of the laws of 1987, is amended to read as follows:

1. If the commissioner determines that an employer has failed to pay wages, benefits or wage supplements required pursuant to article six (payment of wages), article nineteen (minimum wage act) [or], article [nineteen-a] NINETEEN-A, OR ARTICLE NINETEEN-C of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment.

S 7. Subdivision 5 of section 651 of the labor law, as amended by chapter 640 of the laws of 2005, is amended to read as follows:

5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) ON A CASUAL BASIS WHILE A MINOR in service as a part time baby sitter in the home of the employer[; or someone who lives in the home of an employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping]; (b) in labor on a farm; (c) in a bona fide executive, administrative, or professional capacity; (d) as an outside salesman; (e) as a driver engaged in operating a taxi-cab; (f) as a volunteer, learner or apprentice by a corporation, unin-corporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (g) as a member of a religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; (h) in or for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (i) in or for such a religious, educational or charitable institution if such individual is a student; (j) in or for such a religious, educational or charitable institution if the earning capacity of such individual is impaired by age or by phys-ical or mental deficiency or injury; (k) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; (l) as a staff counselor in a children's camp; (m) in or for a college or university fraternity,

sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; (n) by a federal, state or municipal government or political subdivision thereof. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner; or (o) as a volunteer at a recreational or amusement event run by a business that operates such events, provided that no single such event lasts longer than eight consecutive days and no more than one such event concerning substantially the same subject matter occurs in any calendar year. Any such volunteer shall be at least eighteen years of age. A business seeking coverage under this paragraph shall notify every volunteer in writing, in language acceptable to the commissioner, that by volunteering his or her services, such volunteer is waiving his or her right to receive the minimum wage pursuant to this article. Such notice shall be signed and dated by a representative of the business and the volunteer and kept on file by the business for thirty-six months.

"Employee" also includes any individual employed or permitted to work in any non-teaching capacity by a school district or board of cooperative educational services except that the provisions of sections six hundred fifty-three through six hundred fifty-nine of this article shall not be applicable in any such case.

S 8. Paragraph (a) of subdivision 3 of section 701 of the labor law, as amended by chapter 43 of the laws of 1989, is amended to read as follows:

(a) The term "employees" includes but is not restricted to any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the article explicitly states otherwise, but shall not include any individual employed by his OR HER parent or spouse [or in the domestic service of and directly employed, controlled and paid by any person in his home, any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the purpose of serving as a companion to a sick, convalescing or elderly person] or any individuals employed only for the duration of a labor dispute, or any individuals employed as farm laborers or, any individual who participates in and receives rehabilitative or therapeutic services in a charitable non-profit rehabilitation facility or sheltered workshop or any individual employed in a charitable non-profit rehabilitation facility or sheltered workshop who has received rehabilitative or therapeutic services and whose capacity to perform the work for which he OR SHE is engaged is substantially impaired by physical or mental deficiency or injury.

S 9. Subdivisions 1 and 3 of section 875 of the labor law, as added by chapter 551 of the laws of 1980, are amended to read as follows:

1. "Employer" means any individual, partnership, corporation or association engaged in a business who has employees including the state and its political subdivisions. The term "employer" [does not include] INCLUDES the employment of domestic workers [or casual laborers] employed at the place of residence of his or her employer.

3. "Workplace" means any location [away from the home], permanent or temporary, where any employee performs any work-related duty in the course of his OR HER employment.

S 10. The opening paragraph of subdivision 5 and the opening paragraph of paragraph A of subdivision 6 of section 201 of the workers' compensation law, the opening paragraph of subdivision 5 as amended by chapter 205 of the laws of 1993, the opening paragraph of paragraph A of subdivision 6 as amended by chapter 903 of the laws of 1986, are amended to read as follows:

"Employee" means a person engaged in the service of an employer in any employment defined in subdivision six of this section, except a minor child of the employer[, except a domestic or personal worker in a private home who is employed for less than forty hours per week by any one employer,] and except a duly ordained, commissioned, or licensed minister, priest or rabbi, a sexton, a christian science reader, or member of a religious order, or an executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices provided, however, that each officer must own at least one share of stock, except as provided in section two hundred twelve of this article, or an executive officer of an incorporated religious, charitable or educational institution, or persons engaged in a professional or teaching capacity in or for a religious, charitable or educational institution, or volunteers in or for a religious, charitable or educational institution, or persons participating in and receiving rehabilitative services in a sheltered workshop operated by a religious, charitable or educational institution under a certificate issued by the United States department of labor, or recipients of charitable aid from a religious or charitable institution who perform work in or for the institution which is incidental to or in return for the aid conferred, and not under an express contract of hire. The terms "religious, charitable or educational institution" mean a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

"Employment" means employment in any trade, business or occupation carried on by an employer, except that the following shall not be deemed employment under this article: services performed for the state, a municipal corporation, local governmental agency, other political subdivision or public authority; employment subject to the federal railroad unemployment insurance act; service performed on or as an officer or member of the crew of a vessel on the navigable water of the United States or outside the United States; service as farm laborers; casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein; service as golf caddies; and service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school. THE TERM "EMPLOYMENT" SHALL INCLUDE DOMESTIC OR PERSONAL WORK IN A PRIVATE HOME. The term "employment" shall not include the services of a licensed real estate broker or sales associate if it

be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in [paragraph] SUBPARAGRAPH (b) [herein] OF THIS PARAGRAPH was not executed under duress and contains the following provisions:

S 11. This act shall take effect on January first next succeeding the date on which it shall have become a law; provided that section two of this act shall take effect on the ninetieth day after it shall have become a law.