

2311

2009-2010 Regular Sessions

I N   S E N A T E

February 17, 2009

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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:

1     Section 1. Legislative findings and intent. Many thousands of domestic  
2     workers are employed in New York state as housekeepers, nannies, and  
3     companions to the elderly. The labor of domestic workers is central to  
4     the ongoing prosperity that the state enjoys, and yet, despite the value  
5     of their work, domestic workers do not receive the same protection of  
6     many state laws as do workers in other industries. Domestic workers  
7     often labor under harsh conditions, work long hours for low wages without  
8     benefits or job security, are isolated in their workplaces, and are  
9     endangered by sexual harassment and assault, as well as verbal,  
10    emotional and psychological abuse. Moreover, many domestic workers in  
11    the state of New York are women of color who, because of race and sex  
12    discrimination, are particularly vulnerable to unfair labor practices.  
13    The legislature finds that because domestic workers care for the most  
14    important elements of their employers' lives, their families and homes,  
15    it is in the interest of employees, employers, and the people of the  
16    state of New York to ensure that the rights of domestic workers are  
17    respected, protected, and enforced.  
18    Domestic workers have historically been excluded from many of the  
19    traditional protections afforded by the labor law. Additionally, domestic  
20    workers are not afforded by law the right to organize labor unions  
21    for the purpose of collective bargaining. Given the limited legal  
22    protections historically provided to domestic workers, and bearing in  
23    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.

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

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

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

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

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

29 (B) BY JANUARY FIRST OF EACH YEAR, EVERY EMPLOYER SHALL PROVIDE EACH  
30 DOMESTIC WORKER A COPY OF THE NOTICE PUBLISHED EACH YEAR BY THE COMMIS-  
31 SIONER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 S 10. The opening paragraph of subdivision 5 and the opening paragraph  
5 of paragraph A of subdivision 6 of section 201 of the workers' compen-  
6 sation law, the opening paragraph of subdivision 5 as amended by chapter  
7 205 of the laws of 1993, the opening paragraph of paragraph A of subdi-  
8 vision 6 as amended by chapter 903 of the laws of 1986, are amended to  
9 read as follows:

10 "Employee" means a person engaged in the service of an employer in any  
11 employment defined in subdivision six of this section, except a minor  
12 child of the employer[, except a domestic or personal worker in a  
13 private home who is employed for less than forty hours per week by any  
14 one employer,] and except a duly ordained, commissioned, or licensed  
15 minister, priest or rabbi, a sexton, a christian science reader, or  
16 member of a religious order, or an executive officer of a corporation  
17 who at all times during the period involved owns all of the issued and  
18 outstanding stock of the corporation and holds all of the offices pursu-  
19 ant to paragraph (e) of section seven hundred fifteen of the business  
20 corporation law or two executive officers of a corporation who at all  
21 times during the period involved between them own all of the issued and  
22 outstanding stock of such corporation and hold all such offices  
23 provided, however, that each officer must own at least one share of  
24 stock, except as provided in section two hundred twelve of this article,  
25 or an executive officer of an incorporated religious, charitable or  
26 educational institution, or persons engaged in a professional or teach-  
27 ing capacity in or for a religious, charitable or educational institu-  
28 tion, or volunteers in or for a religious, charitable or educational  
29 institution, or persons participating in and receiving rehabilitative  
30 services in a sheltered workshop operated by a religious, charitable or  
31 educational institution under a certificate issued by the United States  
32 department of labor, or recipients of charitable aid from a religious or  
33 charitable institution who perform work in or for the institution which  
34 is incidental to or in return for the aid conferred, and not under an  
35 express contract of hire. The terms "religious, charitable or educa-  
36 tional institution" mean a corporation, unincorporated association,  
37 community chest, fund or foundation organized and operated exclusively  
38 for religious, charitable or educational purposes, no part of the net  
39 earnings of which inure to the benefit of any private shareholder or  
40 individual.

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



1 be proven that (a) substantially all of the remuneration (whether or not  
2 paid in cash) for the services performed by such broker or sales associ-  
3 ate is directly related to sales or other output (including the perform-  
4 ance of services) rather than to the number of hours worked; (b) the  
5 services performed by the broker or sales associate are performed pursu-  
6 ant to a written contract executed between such broker or sales associ-  
7 ate and the person for whom the services are performed within the past  
8 twelve to fifteen months; and (c) the written contract provided for in  
9 [paragraph] SUBPARAGRAPH (b) [herein] OF THIS PARAGRAPH was not executed  
10 under duress and contains the following provisions:

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