

3273

2009-2010 Regular Sessions

I N S E N A T E

March 13, 2009

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to excluding members of certain religious sects from the term "employee"

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

1 Section 1. The opening paragraph of subdivision 4 of section 2 of the
2 workers' compensation law, as amended by chapter 205 of the laws of
3 1993, is amended to read as follows:
4 "Employee" means a person engaged in one of the occupations enumerated
5 in section three OF THIS ARTICLE or who is in the service of an employer
6 whose principal business is that of carrying on or conducting a hazard-
7 ous employment upon the premises or at the plant, or in the course of
8 his OR HER employment away from the plant of his OR HER employer;
9 "employee" shall also mean for the purposes of this chapter civil
10 defense volunteers who are personnel of volunteer agencies sponsored or
11 authorized by a local office under regulations of the civil defense
12 commission, to the extent of the provisions of groups seventeen and
13 nineteen; "employee" shall at the election of a municipal corporation
14 made pursuant to local law duly enacted also mean a member of an auxil-
15 iary police organization authorized by local law; and for the purposes
16 of this chapter only a newspaper carrier under the age of eighteen years
17 as defined in section thirty-two hundred twenty-eight of the education
18 law, and shall not include domestic servants except as provided in
19 section three of this [chapter] ARTICLE, and except where the employer
20 has elected to bring such employees under the law by securing compen-
21 sation in accordance with the terms of section fifty of this chapter.
22 The term "employee" shall not include persons who are members of a
23 supervised amateur athletic activity operated on a non-profit basis,
24 provided that said members are not also otherwise engaged or employed by
25 any person, firm or corporation participating in said athletic activity,

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

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1 nor shall it include the spouse or minor child of an employer who is a
2 farmer unless the services of such spouse or minor child shall be
3 engaged by said employer under an express contract of hire, NOR SHALL IT
4 INCLUDE PERSONS WHO ARE MEMBERS OF CERTAIN RELIGIOUS SECTS OR DIVISIONS
5 THEREOF, NOR SHALL IT INCLUDE THE SPOUSE OR MINOR CHILD OF SUCH PERSON,
6 WHO HAVE FILED APPLICATION FOR EXEMPTION FROM TAX ON SELF-EMPLOYMENT
7 INCOME, CLAIM FOR REFUND, AND WAIVER OF BENEFITS (FORM 4029) WITH THE
8 INTERNAL REVENUE SERVICE PURSUANT TO 26 USCS S 1402(G) AND SUCH FORM HAS
9 BEEN ACCEPTED BY THE INTERNAL REVENUE SERVICE, nor shall it include an
10 executive officer of a corporation who at all times during the period
11 involved owns all of the issued and outstanding stock of the corporation
12 and holds all of the offices pursuant to paragraph (e) of section seven
13 hundred fifteen of the business corporation law or two executive offi-
14 cers of a corporation who at all times during the period involved
15 between them own all of the issued and outstanding stock of such corpo-
16 ration and hold all such offices except as provided in subdivision six
17 of section fifty-four of this chapter provided, however, that where
18 there are two executive officers of a corporation each officer must own
19 at least one share of stock, nor shall it include a self-employed person
20 or a partner of a partnership as defined in section ten of the partner-
21 ship law who is not covered under a compensation insurance contract or a
22 certificate of self-insurance as provided in subdivision eight of
23 section fifty-four of this chapter, nor shall it include farm laborers
24 except as provided in group fourteen-b of section three of this [chap-
25 ter] ARTICLE. If a farm labor contractor recruits or supplies farm
26 laborers for work on a farm, such farm laborers shall for the purposes
27 of this chapter be deemed to be employees of the owner or lessee of such
28 farm. The term "employee" shall not include baby sitters as defined in
29 subdivision three of section one hundred thirty-one and subdivision
30 three of section one hundred thirty-two of the labor law or minors four-
31 teen years of age or over engaged in casual employment consisting of
32 yard work and household chores in and about a one family owner-occupied
33 residence or the premises of a non-profit, non-commercial organization,
34 not involving the use of power-driven machinery. The term "employee"
35 shall not include persons engaged by the owner in casual employment
36 consisting of yard work, household chores and making repairs to or
37 painting in and about a one-family owner-occupied residence. The term
38 "employee" shall not include the services of a licensed real estate
39 broker or sales associate if it be proven that (a) substantially all of
40 the remuneration (whether or not paid in cash) for the services
41 performed by such broker or sales associate is directly related to sales
42 or other output (including the performance of services) rather than to
43 the number of hours worked; (b) the services performed by the broker or
44 sales associate are performed pursuant to a written contract executed
45 between such broker or sales associate and the person for whom the
46 services are performed within the past twelve to fifteen months; and (c)
47 the written contract provided for in paragraph (b) herein was not
48 executed under duress and contains the following provisions:
49 S 2. This act shall take effect immediately.