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

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:

Section 1. The opening paragraph of subdivision 4 of section 2 of the workers' compensation law, as amended by chapter 205 of the laws of 1993, is amended to read as follows:

"Employee" means a person engaged in one of the occupations enumerated in section three OF THIS ARTICLE or who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment upon the premises or at the plant, or in the course of his OR HER employment away from the plant of his OR HER employer; "employee" shall also mean for the purposes of this chapter civil defense volunteers who are personnel of volunteer agencies sponsored or authorized by a local office under regulations of the civil defense commission, to the extent of the provisions of groups seventeen and nineteen; "employee" shall at the election of a municipal corporation made pursuant to local law duly enacted also mean a member of an auxiliary police organization authorized by local law; and for the purposes of this chapter only a newspaper carrier under the age of eighteen years as defined in section thirty-two hundred twenty-eight of the education law, and shall not include domestic servants except as provided in section three of this [chapter] ARTICLE, and except where the employer has elected to bring such employees under the law by securing compensation in accordance with the terms of section fifty of this chapter. The term "employee" shall not include persons who are members of a supervised amateur athletic activity operated on a non-profit basis, provided that said members are not also otherwise engaged or employed by 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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nor shall it include the spouse or minor child of an employer who is a farmer unless the services of such spouse or minor child shall be engaged by said employer under an express contract of hire, NOR SHALL IT INCLUDE PERSONS WHO ARE MEMBERS OF CERTAIN RELIGIOUS SECTS OR DIVISIONS THEREOF, NOR SHALL IT INCLUDE THE SPOUSE OR MINOR CHILD OF SUCH PERSON, WHO HAVE FILED APPLICATION FOR EXEMPTION FROM TAX ON SELF-EMPLOYMENT INCOME, CLAIM FOR REFUND, AND WAIVER OF BENEFITS (FORM 4029) WITH THE INTERNAL REVENUE SERVICE PURSUANT TO 26 USCS S 1402(G) AND SUCH FORM HAS BEEN ACCEPTED BY THE INTERNAL REVENUE SERVICE, nor shall it include 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 except as provided in subdivision six of section fifty-four of this chapter provided, however, that where there are two executive officers of a corporation each officer must own at least one share of stock, nor shall it include a self-employed person or a partner of a partnership as defined in section ten of the partnership law who is not covered under a compensation insurance contract or a certificate of self-insurance as provided in subdivision eight of section fifty-four of this chapter, nor shall it include farm laborers except as provided in group fourteen-b of section three of this [chapter] ARTICLE. If a farm labor contractor recruits or supplies farm laborers for work on a farm, such farm laborers shall for the purposes of this chapter be deemed to be employees of the owner or lessee of such farm. The term "employee" shall not include baby sitters as defined in subdivision three of section one hundred thirty-one and subdivision three of section one hundred thirty-two of the labor law or minors fourteen years of age or over engaged in casual employment consisting of yard work and household chores in and about a one family owner-occupied residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery. The term "employee" shall not include persons engaged by the owner in casual employment consisting of yard work, household chores and making repairs to or painting in and about a one-family owner-occupied residence. The term "employee" 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 (b) herein was not executed under duress and contains the following provisions:

S 2. This act shall take effect immediately.