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

106

Second Extraordinary Session

I N S E N A T E

June 24, 2009

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the labor law, in relation to minimum wage and rest standards for farm workers

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

Section 1. Subdivision 2 of section 671 of the labor law, as added by chapter 552 of the laws of 1969, is amended and a new subdivision 8 is added to read as follows:

2. "Employee" includes any individual employed or permitted to work by an employer on a farm but shall not include: (a) domestic service in the home of the employer; (b) the parent, spouse, child or other member of the employer's immediate family; (c) [a minor under seventeen years of age employed as a hand harvest worker on the same farm as his parent or guardian and who is paid on a piece-rate basis at the same piece rate as employees seventeen years of age or over; (d)] an individual employed or permitted to work for a federal, state, or a municipal government or political subdivision thereof; or [(e)] (D) an individual to whom the provisions of article nineteen of this chapter are applicable.

8. "REGULAR HOURLY WAGE" MEANS THE AMOUNT THAT THE EMPLOYEE IS REGULARLY PAID FOR EACH HOUR OF WORK. WHEN AN EMPLOYEE IS PAID ON A PIECE WORK BASIS, SALARY OR ANY BASIS OTHER THAN HOURLY RATE, THE REGULAR HOURLY WAGE RATE SHALL BE DETERMINED BY DIVIDING THE TOTAL HOURS WORKED DURING THE WEEK INTO THE EMPLOYEE'S TOTAL EARNINGS.

S 2. Subdivision 1 of section 674 of the labor law, as added by chapter 552 of the laws of 1969, is amended to read as follows:

1. The commissioner may promulgate such regulations as he OR SHE deems appropriate to carry out the purposes of this article and to safeguard minimum wage standards. Such regulations may include, but are not limited to, the defining of the circumstances or conditions for the accept-

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

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ance of non-hourly rates and piece rates as equivalent to the minimum hourly rates established by this article. Such regulations also may include, but are not limited to, waiting time and call-in pay rates; MATTERS RELATING TO THE PAYMENT OF OVERTIME; wage provisions governing guaranteed earnings during specified periods of work; allowances for meals, lodging, and other items, services and facilities when furnished by the employer; and the employment of individuals whose earning capacity is affected or impaired by youth or age, or by physical or mental deficiency or injury, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulations.

S 3. Subdivision 2 of section 673 of the labor law is renumbered subdivision 3, and a new subdivision 2 is added to read as follows:

2. OVERTIME RATE. EVERY EMPLOYER SUBJECT TO THE PROVISIONS OF THIS ARTICLE SHALL PAY TO EACH OF ITS EMPLOYEES FOR EACH HOUR WORKED IN EXCESS OF FORTY HOURS PER WEEK A WAGE OF NOT LESS THAN ONE AND ONE-HALF TIMES THE EMPLOYEE'S REGULAR HOURLY WAGE.

S 4. The labor law is amended by adding a new section 675 to read as follows:

S 675. ADVISORY COUNCIL. 1. AN ADVISORY COUNCIL ON MINIMUM WAGE STANDARDS FOR FARM WORKERS IS HEREBY ESTABLISHED TO ADVISE AND MAKE RECOMMENDATIONS TO THE COMMISSIONER IN RELATION TO THE COMMISSIONER'S RESPONSIBILITIES UNDER THIS ARTICLE. THE COUNCIL SHALL CONSIST OF SEVEN MEMBERS APPOINTED BY THE COMMISSIONER; THREE MEMBERS SHALL REPRESENT THE INTERESTS OF FARMERS AND GROWERS, THREE MEMBERS SHALL REPRESENT THE INTERESTS OF FARM EMPLOYEES AND ONE MEMBER SHALL REPRESENT THE PUBLIC AND SHALL BE DESIGNATED BY THE COMMISSIONER AS IMPARTIAL CHAIR.

2. THE TERM OF EACH MEMBER OF THE ADVISORY COUNCIL SHALL BE FIVE YEARS, OR UNTIL A SUCCESSOR IS APPOINTED, EXCEPT THAT OF THE MEMBERS FIRST APPOINTED, ONE MEMBER REPRESENTING FARMERS AND GROWERS AND ONE MEMBER REPRESENTING FARM EMPLOYEES SHALL BE APPOINTED FOR A TERM OF ONE YEAR, ONE MEMBER OF EACH SUCH TWO GROUPS SHALL BE APPOINTED FOR A TERM OF TWO YEARS, ONE MEMBER OF EACH SUCH TWO GROUPS SHALL BE APPOINTED FOR A TERM OF THREE YEARS; AND THE MEMBER FIRST APPOINTED AS CHAIR SHALL BE APPOINTED FOR A TERM OF THREE YEARS.

3. THE ADVISORY COUNCIL SHALL CONSIDER ALL MATTERS IN CONNECTION WITH MINIMUM WAGES FOR FARM WORKERS REFERRED TO IT BY THE COMMISSIONER AND ADVISE THE COMMISSIONER WITH RESPECT THERETO, AND MAY MAKE SUCH RECOMMENDATIONS TO THE COMMISSIONER IN CONNECTION WITH MINIMUM WAGES FOR FARM WORKERS AS IT MAY DEEM NECESSARY.

4. THE ADVISORY COUNCIL MAY TAKE TESTIMONY, SUBPOENA WITNESSES AND REQUIRE THE PRODUCTION OF BOOKS, RECORDS AND PAPERS, AND HOLD PUBLIC OR PRIVATE HEARINGS.

5. THE ADVISORY COUNCIL MAY REQUEST AND SHALL RECEIVE SUCH ASSISTANCE, SERVICE AND DATA FROM ANY AGENCY OF THE STATE OR FROM ANY POLITICAL SUBDIVISION THEREOF AS WILL ENABLE IT PROPERLY TO CARRY OUT ITS RESPONSIBILITIES.

6. THE MEMBERS OF THE ADVISORY COUNCIL SHALL SERVE WITHOUT COMPENSATION BUT SHALL BE ALLOWED ACTUAL AND NECESSARY TRAVELING EXPENSES WHILE ENGAGED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

7. THE COMMISSIONER SHALL DESIGNATE AN EMPLOYEE OF THE DEPARTMENT TO SERVE AS SECRETARY TO THE ADVISORY COUNCIL, WHO SHALL NOT BE A MEMBER OF SUCH COUNCIL AND WHO SHALL NOT RECEIVE ANY ADDITIONAL COMPENSATION THEREFOR.

8. THE ADVISORY COUNCIL MAY ADOPT SUCH RULES AND REGULATIONS TO GOVERN ITS OWN PROCEEDINGS. THE SECRETARY SHALL KEEP A RECORD OF ALL

PROCEEDINGS OF THE ADVISORY COUNCIL WHICH SHALL SHOW THE NAME OF EACH MEMBER PRESENT AT THE MEETINGS AND OF EVERY MATTER CONSIDERED BY THE ADVISORY COUNCIL AND THE ACTION TAKEN THEREON. SUCH RECORDS SHALL BE FILED IN THE OFFICE OF THE COMMISSIONER OR SUCH OTHER LOCATION SPECIFIED BY THE COMMISSIONER FOR THIS PURPOSE.

S 5. Subdivisions 1 and 2 of section 161 of the labor law, as amended by chapter 281 of the laws of 1941, paragraph e of subdivision 2 as amended by chapter 187 of the laws of 1952, paragraph f of subdivision 2 as added by chapter 872 of the laws of 1947, are amended to read as follows:

1. Every employer operating a factory, mercantile establishment, hotel, restaurant, or freight or passenger elevator in any building or place shall, except as herein otherwise provided, allow every person employed in such establishment or in the care, custody or operation of any such elevator, at least twenty-four consecutive hours of rest in any calendar week. Every employer operating a place in which motion pictures are shown shall allow the projectionist or operator of the motion picture machine and engineers and firemen therein at least twenty-four consecutive hours of rest in any calendar week. Every employer operating a place in which legitimate theatre productions such as dramatic and musical productions are shown or exhibited shall allow all employees, including the performers in the cast therein and engineers and firemen, at least twenty-four consecutive hours of rest in each and every calendar week, but this shall not apply to any place wherein motion pictures, vaudeville or incidental stage presentations or a combination thereof are regularly given throughout the week as the established policy of such place; except that engineers and firemen employed in such place shall be allowed at least twenty-four consecutive hours of rest in any calendar week. No employer shall operate such establishment, place or elevator on Sunday unless he shall comply with subdivision three. This section does not authorize any work on Sunday not permitted now or hereafter by law.

Every owner, lessee and operator of a dwelling, apartment, loft and office building, garage, storage place and building, wherein or whereat a watchman or watchmen or engineer or fireman are employed, shall allow such person or persons so employed at least twenty-four consecutive hours of rest in each and every calendar week.

Every owner, lessee or operator of a warehouse, storagehouse, office, dwelling, apartment, loft and any other building or structure wherein a janitor, superintendent, supervisor or manager or engineer or fireman is employed, shall allow such person or persons so employed at least twenty-four consecutive hours of rest in each and every calendar week.

EVERY EMPLOYER OF AN EMPLOYEE, AS DEFINED IN ARTICLE NINETEEN-A OF THIS CHAPTER, SHALL ALLOW SUCH EMPLOYEE AT LEAST TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK; PROVIDED, HOWEVER, THAT SUCH EMPLOYEE MAY WAIVE HIS OR HER RIGHT TO SUCH DAY OF REST SO LONG AS SUCH WAIVER IS DONE KNOWINGLY AND WITH THE FULL AND VOLUNTARY CONSENT OF THE EMPLOYEE.

2. [This] EXCEPT AS SET FORTH ELSEWHERE IN THIS SECTION, THIS section shall not apply to:

a. Foreman in charge;

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

c. Employees, if the board in its discretion approves, engaged in an industrial or manufacturing process necessarily continuous, in which no employee is permitted to work more than eight hours in any calendar day;

d. Employees whose duties include not more than three hours' work on Sunday in setting sponges in bakeries, caring for live animals, maintaining fires, or making necessary repairs to boilers or machinery.

e. Employees in resort or seasonal hotels and restaurants in rural communities and in cities and villages having a population of less than fifteen thousand inhabitants, excluding that portion of the population of a third class city residing outside of its corporation tax district where such city embraces the entire area of a former township. As used in this subdivision, the term "resort" shall apply to any establishment enumerated herein which operates for not more than four calendar months and fifteen days in each year, and the term "seasonal" shall apply to any establishment enumerated herein in which the number of employees is increased by at least one hundred per cent from the slack to the busiest season.

f. Employees in dry dock plants engaged in making repairs to ships.

S 6. This act shall take effect on the sixtieth day after it shall have become a law.