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

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2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. ONORATO, BRESLIN, ADDABBO, MONTGOMERY, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to allowing farm workers one day of rest each week, mandating the use of farm labor work agreements and requiring an overtime rate

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

Section 1. Subdivision 1 of section 161 of the labor law is amended by adding a new third undesignated paragraph to read as follows:

EVERY PERSON EMPLOYED AS A FARM LABORER SHALL BE ALLOWED AT LEAST TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK. THIS REQUIREMENT SHALL NOT APPLY TO THE PARENT, CHILD, SPOUSE OR OTHER MEMBER OF THE EMPLOYER'S IMMEDIATE FAMILY. TWENTY-FOUR CONSECUTIVE HOURS SPENT AT REST BECAUSE OF WEATHER OR CROP CONDITIONS, SHALL BE DEEMED TO CONSTITUTE THE REST REQUIRED BY THIS PARAGRAPH. THIS PARAGRAPH SHALL NOT PROHIBIT A FARM LABORER FROM VOLUNTARILY REFUSING THE REST REQUIRED BY THIS PARAGRAPH. THE TERM "FARM LABOR" SHALL INCLUDE ALL SERVICES PERFORMED ON A FARM IN CONNECTION WITH CULTIVATING THE SOIL, OR IN CONNECTION WITH RAISING OR HARVESTING OF AGRICULTURAL COMMODITIES, INCLUDING THE RAISING, SHEARING, CARING FOR AND MANAGEMENT OF LIVESTOCK, POULTRY OR DAIRY. EACH FARM EMPLOYER SHALL NOTIFY HIS OR HER FARM LABORERS OF THE TWENTY-FOUR CONSECUTIVE HOURS OF REST PERIOD REQUIRED BY THIS PARAGRAPH BY POSTING SUCH NOTICE IN A DESIGNATED CENTRAL POSTING AREA AND BY INCLUDING SUCH NOTICE WITHIN THE WORK AGREEMENT REQUIRED PURSUANT TO SECTION SIX HUNDRED SEVENTY-NINE OF THIS CHAPTER. IN ADDITION, A FARM LABORER, WHO WORKS MORE THAN FORTY HOURS IN ANY WEEK SHALL BE PAID WAGES FOR SUCH OVERTIME AT A RATE NOT LESS THAN ONE-AND-ONE-HALF TIMES HIS OR HER HOURLY WAGE RATE.

S 2. Section 679 of the labor law is amended by adding a new third undesignated paragraph to read as follows:

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

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EVERY EMPLOYER SHALL KEEP A TRUE AND ACCURATE STATEMENT OF THE TERMS AND CONDITIONS OF EMPLOYMENT OR WORK AGREEMENT, EXECUTED BETWEEN THE AGRICULTURAL EMPLOYEE AND THE AGRICULTURAL EMPLOYER ON THE DATE OF HIRE FOR THE PURPOSES OF NOTIFYING EACH EMPLOYEE, IN WRITING, OF THE CONDITIONS OF EMPLOYMENT. SUCH AGREEMENT SHALL INCLUDE THE SPECIFIC LOCATION WHERE THE EMPLOYEE WILL WORK, THE TYPE OF WORK TO BE PERFORMED, THE HOURS FOR A STANDARD WORK WEEK AND WORK DAY, NOTIFICATION OF THE VOLUNTARY TWENTY-FOUR HOURS OF CONSECUTIVE REST PERIOD, HOUSING ARRANGEMENTS, IF APPLICABLE, ANY ALLOWANCES, IF APPLICABLE, TO BE DEDUCTED FOR MEALS OR LODGING, THE WAGE RATE TO BE PAID, THE LIST OF BENEFITS TO BE PROVIDED BY THE EMPLOYER, THE APPROXIMATE PERIOD OF EMPLOYMENT, TRANSPORTATION ARRANGEMENTS, IF ANY, AND THE WORKERS' COMPENSATION INSURANCE CARRIER. A SAMPLE FORM SHALL BE PROVIDED BY THE COMMISSIONER IN BOTH ENGLISH AND SPANISH.

S 3. Subdivision 2 of section 564 of the labor law is renumbered subdivision 3 and a new subdivision 2 is added to read as follows:

2. EXCLUSION FROM COVERAGE. THE TERM "EMPLOYMENT" DOES NOT INCLUDE SERVICES RENDERED BY AN INDIVIDUAL WHO IS AN ALIEN ADMITTED TO THE UNITED STATES TO PERFORM AGRICULTURAL LABOR PURSUANT TO 8 USC 1184(C) AND 8 USC 1101(A)(15)(H) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT IF, AT THE TIME SUCH SERVICES ARE RENDERED, THEY ARE EXCLUDED FROM THE DEFINITION OF EMPLOYMENT AS PROVIDED IN 26 USC 3306(C) OF THE FEDERAL UNEMPLOYMENT TAX ACT.

S 4. This act shall take effect immediately.