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

8166

I N S E N A T E

June 14, 2010

Introduced by Sen. ESPADA -- 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 allowing farmworkers one day of rest each week, and including farm laborers within the provisions pertaining to overtime compensation and unemployment insurance, and regulating the farm employment of certain employees whose earning capacity is affected or impaired by youth or age; to amend the public health law, in relation to the application of the sanitary code to all farm and food processing labor camps for migrant workers; and to amend the workers' compensation law, in relation to the eligibility of farm laborers for disability benefits and the provision of claim forms to farm laborers injured in the course of employment and in relation to service as farm laborers

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

Section 1. This act shall be known and may be cited as the "Farmworkers Fair Labor Practices Act".

S 2. Section 2 of the labor law is amended by adding a new subdivision 16 to read as follows:

16. "FARM LABOR" SHALL INCLUDE ALL SERVICES PERFORMED IN AGRICULTURAL EMPLOYMENT IN CONNECTION WITH CULTIVATING THE SOIL, OR IN CONNECTION WITH RAISING OR HARVESTING OF AGRICULTURAL COMMODITIES, INCLUDING SERVICES PERFORMED ON ORCHARDS, PLANTATIONS, NURSERIES AND GREENHOUSES, AND SHALL INCLUDE THE RAISING, HATCHING, SHEARING, CARING FOR AND MANAGEMENT OF LIVESTOCK, POULTRY, DAIRY, BEES AND FUR-BEARING ANIMALS, AND SHALL INCLUDE THE HARVESTING OR PRODUCTION OF MAPLE SYRUP OR MAPLE SUGAR, AND SHALL INCLUDE THE OPERATION AND MAINTENANCE OF FARM EQUIPMENT AND IMPROVEMENT OR MAINTENANCE OF FARM WATER USE AREAS, AND SHALL INCLUDE THE PLANTING, DRYING, PACKAGING OR OTHER PROCESSING OF ANY AGRICULTURAL OR HORTICULTURAL COMMODITY RAISED ON THE EMPLOYER'S FARM. THE TERM "FARM LABOR" SHALL NOT INCLUDE SERVICES PERFORMED IN CONNECTION WITH COMMERCIAL CANNING, FREEZING, GRADING OR OTHER PROCESSING OF ANY AGRICULTURAL OR HORTICULTURAL COMMODITY NOT RAISED ON THE EMPLOYER'S FARM. THIS SUBDIVISION SHALL NOT APPLY TO THE PARENT, CHILD, SPOUSE OR

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

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OTHER MEMBER OF THE EMPLOYER'S FAMILY RELATED BY THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY.

S 3. Subdivision 1 of section 161 of the labor law is amended by adding a new 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. A FARM LABORER MAY CONSENT IN WRITING TO WAIVE THIS RIGHT AND WORK ON THE DAY OF REST, PROVIDED THAT HE OR SHE SHALL BE PAID AS PROVIDED UNDER SECTION ONE HUNDRED SIXTY-THREE-A OF THIS TITLE. THIS PARAGRAPH SHALL NOT APPLY TO THE PARENT, CHILD, SPOUSE OR OTHER MEMBER OF THE EMPLOYER'S FAMILY RELATED BY THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY. TWENTY-FOUR CONSECUTIVE HOURS SPENT AT REST BECAUSE OF CIRCUMSTANCES, SUCH AS WEATHER OR CROP CONDITIONS, SHALL BE DEEMED TO CONSTITUTE THE REST REQUIRED BY THIS PARAGRAPH. THE DAY OF REST SHOULD BE THE SAME AS THE TRADITIONAL DAY RESERVED BY THE FARM LABORER FOR RELIGIOUS WORSHIP, WHENEVER POSSIBLE.

S 4. Paragraphs b and d of subdivision 2 of section 161 of the labor law, as amended by chapter 281 of the laws of 1941, are amended to read as follows:

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;

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.

S 5. The labor law is amended by adding a new section 163-a to read as follows:

S 163-A. HOURS OF AGRICULTURAL EMPLOYMENT. NO PERSON OR CORPORATION OPERATING A FARM SHALL REQUIRE ANY FARM LABORER TO WORK MORE THAN TEN HOURS IN ANY DAY, SIXTY HOURS IN ANY CALENDAR WEEK, OR SIX DAYS IN ANY CALENDAR WEEK, UNLESS SUCH FARM LABORER IS PAID AS FOLLOWS:

A. HOURLY RATE. (1) ANY FARM LABORER WHO IS PAID ON AN HOURLY BASIS AND WHO IS EIGHTEEN YEARS OF AGE OR OVER, OR WHO IS SIXTEEN OR SEVENTEEN YEARS OF AGE AND NOT REQUIRED BY LAW TO ATTEND SCHOOL SHALL NOT BE EMPLOYED MORE THAN TEN HOURS IN ANY DAY, OR MORE THAN SIXTY HOURS IN ANY CALENDAR WEEK, OR MORE THAN SIX DAYS IN ANY CALENDAR WEEK UNLESS THE FARM LABORER RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH HE OR SHE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR SIXTY HOURS IN ANY CALENDAR WEEK. ANY FARM LABORER WHO WORKS ON THE SEVENTH DAY IN ANY CALENDAR WEEK SHALL RECEIVE ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH HE OR SHE IS EMPLOYED FOR THE FIRST EIGHT HOURS WORKED, AND TWO TIMES THE REGULAR RATE AT WHICH HE OR SHE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF EIGHT HOURS THAT DAY.

(2) BEGINNING ON JANUARY FIRST, TWO THOUSAND FOURTEEN, ANY FARM LABORER WHO IS PAID AN HOURLY WAGE RATE SHALL NOT BE EMPLOYED MORE THAN TEN HOURS IN ANY DAY OR MORE THAN FIFTY-FIVE HOURS IN ANY CALENDAR WEEK UNLESS THE FARM LABORER RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH HE OR SHE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR FIFTY-FIVE HOURS IN ANY CALENDAR WEEK. ANY FARM LABORER WHO WORKS ON THE SEVENTH DAY IN ANY CALENDAR WEEK SHALL RECEIVE ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH HE OR SHE IS EMPLOYED FOR THE FIRST EIGHT HOURS WORKED, AND TWO TIMES THE REGULAR RATE AT WHICH HE OR SHE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF EIGHT HOURS THAT DAY.

B. PIECE WORK RATE. (1) ANY FARM LABORER WHO IS PAID ON A PIECE RATE BASIS SHALL BE PAID AT A RATE WHICH SHALL BE NO LESS THAN ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGULATIONS OF THE DEPARTMENT FOR HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR SIXTY HOURS IN ANY CALENDAR WEEK.

(2) BEGINNING ON JANUARY FIRST, TWO THOUSAND THIRTEEN, ANY FARM LABORER WHO IS PAID ON A PIECE WORK BASIS SHALL BE PAID AT A RATE NO LESS THAN ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGULATIONS OF THE DEPARTMENT FOR HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR FIFTY-FIVE HOURS IN ANY CALENDAR WEEK.

(3) ANY FARM LABORER WHO IS PAID A PIECE WORK RATE WHO WORKS ON THE SEVENTH DAY IN ANY CALENDAR WEEK SHALL BE PAID AT A RATE NO LESS THAN ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGULATIONS OF THE DEPARTMENT FOR THE FIRST EIGHT HOURS AND TWO HUNDRED PERCENT OF THAT MINIMUM WAGE RATE FOR ANY HOURS WORKED IN EXCESS OF EIGHT ON THAT DAY. NOTHING IN THIS SECTION SHALL PROHIBIT A FARM EMPLOYER FROM PAYING A PIECE WORK RATE IN EXCESS OF THE RATES REQUIRED BY THIS SECTION.

S 6. Section 564 of the labor law, as added by chapter 675 of the laws of 1977, is amended to read as follows:

S 564. Agricultural labor. 1. Coverage. (a) Notwithstanding the provisions of section five hundred sixty of this article, an employer of persons engaged in agricultural labor shall become liable for contributions under this article if the employer:

(1) has paid cash remuneration of [twenty thousand] SIX THOUSAND TWO HUNDRED FIFTY dollars or more in any calendar quarter to persons employed in agricultural labor, and such liability shall commence on the first day of such quarter, or

(2) has employed in agricultural labor ten or more persons on each of twenty days during a calendar year or the preceding calendar year, each day being in a different calendar week, and the liability shall in such event commence on the first day of the calendar year, or

(3) is liable for the tax imposed under the federal unemployment tax act as an employer of agricultural labor and the liability shall in such event commence on the first day of the calendar quarter in such calendar year when he first paid remuneration for agricultural labor in this state.

(b) An employer who becomes liable for contributions under paragraph (a) of this subdivision shall cease to be liable as of the first day of a calendar quarter next following the filing of a written application provided the commissioner finds that the employer:

(1) has not paid to persons employed in agricultural labor cash remuneration of [twenty thousand] SIX THOUSAND TWO HUNDRED FIFTY dollars or more in any of the eight calendar quarters preceding such day, and

(2) has not employed in agricultural labor ten or more persons on each of twenty days during the current or the preceding calendar year, each day being in a different week, and

(3) is not liable for the tax imposed under the federal unemployment tax act as an employer of agricultural labor.

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 SECTIONS 214(C) AND 101(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 IN SECTION 3306(C) OF THE FEDERAL UNEMPLOYMENT TAX ACT.

3. Crew leader. Whenever a person renders services as a member of a crew which is paid and furnished by the crew leader to perform services in agricultural labor for another employer, such other employer shall, for the purpose of this article, be deemed to be the employer of such person, unless:

(a) the crew leader holds a valid certificate of registration under the federal farm labor contractor registration act of nineteen hundred sixty-three or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or cropdusting machinery or any other mechanized equipment which is provided by the crew leader, and

(b) the crew leader is not an employee of such other employer and has not entered into a written agreement with such employer under which he is designated as an employee.

S 7. 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 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 acceptance 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; 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 8. Paragraph (m) of subdivision 5 of section 225 of the public health law, as amended by chapter 894 of the laws of 1958 and such subdivision as renumbered by chapter 626 of the laws of 1971, is amended to read as follows:

(m) require that application be made for a permit to operate a farm or food processing labor camp as defined in the sanitary code; authorize appropriate officers or agencies to issue such a permit when the applicant is in compliance with the established regulations; prescribe standards for living quarters at farm and food processing labor camps, including provisions for sanitary conditions; light, air, and safety; protection from fire hazards; maintenance; and such other matters as may be appropriate for security of life or health, provided however, that the provisions of the sanitary code established pursuant to the provisions hereof shall apply to all farm and food processing labor camps intended to house migrant workers and which are occupied [by five or more persons]. In the preparation of such regulations, the public health council may request and shall receive technical assistance from the board of standards and appeals of the state department of labor and the state building code commission. Such regulation shall be enforced in the same manner as are other provisions of the sanitary code;

S 9. Section 51 of the workers' compensation law, as amended by chapter 561 of the laws of 2003, is amended to read as follows:

S 51. Posting of notice regarding compensation. Every employer who has complied with section fifty of this article shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed IN ENGLISH AND SPANISH notices in form

prescribed by the chairman, stating the fact that he has complied with all the rules and regulations of the chairman and the board and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter, but failure to post such notice as herein provided shall not in any way affect the exclusiveness of the remedy provided for by section eleven of this chapter. Every employer who owns or operates automotive or horse-drawn vehicles and has no minimum staff of regular employees required to report for work at an established place of business maintained by such employer and every employer who is engaged in the business of moving household goods or furniture shall post such notices in each and every vehicle owned or operated by him. Failure to post or maintain such notice in any of said vehicles shall constitute presumptive evidence that such employer has failed to secure the payment of compensation. The chairman may require any employer to furnish a written statement at any time showing the stock corporation, mutual corporation or reciprocal insurer in which such employer is insured or the manner in which such employer has complied with any provision of this chapter. Failure for a period of ten days to furnish such written statement shall constitute presumptive evidence that such employer has neglected or failed in respect of any of the matters so required. Any employer who fails to comply with the provisions of this section shall be required to pay to the board a fine of up to two hundred fifty dollars for each violation, in addition to any other penalties imposed by law to be deposited into the uninsured employers' fund.

S 10. The workers' compensation law is amended by adding a new section 110-b to read as follows:

S 110-B. REPORTING OF INJURIES TO EMPLOYER. EVERY FARM LABOR CONTRACTOR, FOREMAN OR SUPERVISOR OF FARM LABORERS WHO HAS NOTICE OF ANY INJURY TO A FARM LABORER INCURRED DURING THE COURSE OF EMPLOYMENT SHALL BE REQUIRED TO INFORM THE EMPLOYER, OWNER OR OPERATOR OF A FARM OF ANY SUCH INJURY.

S 11. The first undesignated paragraph of section 120 of the workers' compensation law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

It shall be unlawful for any employer or his or her duly authorized agent to discharge or in any other manner discriminate against an employee as to his or her employment because such employee has claimed or attempted to claim compensation from such employer, REQUESTED A CLAIM FORM FOR INJURIES RECEIVED IN THE COURSE OF EMPLOYMENT, or because he or she has testified or is about to testify in a proceeding under this chapter and no other valid reason is shown to exist for such action by the employer.

S 12. The opening paragraph of paragraph A of subdivision 6 of section 201 of the workers' compensation law, as amended by chapter 903 of the laws of 1986, is amended to read as follows:

"Employment" means employment in any trade, business or occupation carried on by an employer, except that the following shall not be deemed employment under this article: services performed for the state, a municipal corporation, local governmental agency, other political subdivision or public authority; employment subject to the federal railroad unemployment insurance act; service performed on or as an officer or member of the crew of a vessel on the navigable water of the United States or outside the United States; [service as farm laborers;] casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein; service as

golf caddies; and service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school. The term "employment" 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] SUBPARAGRAPH (b) herein was not executed under duress and contains the following provisions:

S 13. Nothing in this act shall be deemed to diminish the rights, privileges, or remedies of any farm laborer under any collective bargaining agreement entered into on or after the effective date of this act.

S 14. This act shall take effect April 1, 2011, provided that section twelve of this act shall take effect on the one hundred eightieth day after it shall have become a law, and provided further, that section five of this act shall take effect January 1, 2012.