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

1862

2011-2012 Regular Sessions

I N S E N A T E

January 13, 2011

Introduced by Sen. ESPAILLAT -- 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 granting collective bargaining rights to farm laborers and allowing farm workers one day of rest each week and including farm laborers within the provisions pertaining to overtime compensation and unemployment insurance; 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; to amend the workers' compensation law, in relation to the eligibility of farm laborers for workers' compensation benefits and the provision of claim forms to farm laborers injured in the course of employment and in relation to service as farm laborers; and to amend the labor law, in relation to labor on a farm and regulating the employment of certain employees whose earning capacity is affected or impaired by youth or age

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. Paragraph (a) of subdivision 3 of section 701 of the labor law, as amended by chapter 43 of the laws of 1989, is amended to read as follows:

(a) The term "employees" includes but is not restricted to any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the article explicitly states otherwise, but shall not include any individual employed by his parent or spouse or in the domestic service of and directly employed, controlled and paid by any person in his home,

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

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any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the purpose of serving as a companion to a sick, convalescing or elderly person or any individuals employed only for the duration of a labor dispute, [or any individuals employed as farm laborers] or[,] any individual who participates in and receives rehabilitative or therapeutic services in a charitable non-profit rehabilitation facility or sheltered workshop or any individual employed in a charitable non-profit rehabilitation facility or sheltered workshop who has received rehabilitative or therapeutic services and whose capacity to perform the work for which he is engaged is substantially impaired by physical or mental deficiency or injury.

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. 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 CIRCUMSTANCES, SUCH AS WEATHER OR CROP CONDITIONS, SHALL BE DEEMED TO CONSTITUTE THE REST REQUIRED BY THIS PARAGRAPH. NO PROVISION OF THIS PARAGRAPH SHALL PROHIBIT A FARM LABORER FROM VOLUNTARILY REFUSING THE REST REQUIRED BY THIS PARAGRAPH. THE TERM "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 THE RAISING, SHEARING, CARING FOR AND MANAGEMENT OF LIVESTOCK, POULTRY OR DAIRY. THE DAY OF REST AUTHORIZED UNDER THIS SUBDIVISION SHOULD, WHENEVER POSSIBLE, COINCIDE WITH THE TRADITIONAL DAY RESERVED BY THE FARM LABORER FOR RELIGIOUS WORSHIP.

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 opening paragraph of subdivision 3 of section 160 of the labor law, as amended by chapter 481 of the laws of 2010, is amended to read as follows:

For all other employees, except [those engaged in farm work and] those affected by subdivision four of section two hundred twenty of this chapter, eight hours.

S 6. Subdivision 1 of section 220 of the labor law is amended to read as follows:

1. Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in [farm and] domestic service unless otherwise provided by law.

S 7. The labor law is amended by adding a new section 163-a to read as follows:

S 163-A. FARM LABORERS. NO PERSON OR CORPORATION OPERATING A FARM SHALL REQUIRE ANY EMPLOYEE TO WORK MORE THAN EIGHT HOURS IN ANY DAY; PROVIDED, HOWEVER, THAT OVERTIME WORK PERFORMED BY A FARM LABORER SHALL

BE AT A RATE WHICH IS AT LEAST ONE AND ONE-HALF TIMES THE WORKER'S NORMAL WAGE RATE.

S 8. The opening paragraph of paragraph (a) of subdivision 6 of section 511 of the labor law, as amended by chapter 675 of the laws of 1977, is amended to read as follows:

The term "employment" [does not include] INCLUDES agricultural labor [unless it is covered pursuant to section five hundred sixty-four]. The term "agricultural labor" includes all service performed:

S 9. 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 CREW LEADERS. [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 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 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. 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)] 1. 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)] 2. 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 10. Paragraph (m) of subdivision 5 of section 225 of the public health law, as amended by section 51 of part A of chapter 58 of the laws of 2010, 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 and health planning 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 11. Groups 14-a and 14-b of subdivision 1 of section 3 of the workers' compensation law, Group 14-a as amended by chapter 233 of the laws of 1961 and Group 14-b as added by chapter 646 of the laws of 1966, are amended to read as follows:

Group 14-a. On and after January first, nineteen hundred sixty-two, any other employment in a trade, business, or occupation carried on by the employer for pecuniary gain in which one or more employees [other than farm laborers] are employed.

Group 14-b. Employment as a farm laborer as provided herein. A farmer shall provide coverage under this chapter for all farm laborers [employed during any part of the twelve consecutive months beginning April first of any calendar year preceded by a calendar year in which the cash remuneration paid to all farm laborers aggregated twelve hundred dollars or more].

S 12. 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] FIVE HUNDRED dollars for each violation, in addition to any other penalties imposed by law to be deposited into the uninsured employers' fund.

S 13. 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 14. 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 15. The opening paragraph of paragraph A of subdivision 6 of section 201 of the workers' compensation law, as amended by chapter 481 of the laws of 2010, 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 include domestic or personal work in a private home. 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 subparagraph (b) of this paragraph was not executed under duress and contains the following provisions:

S 16. The opening paragraph of subdivision 5 of section 651 of the labor law, as amended by chapter 481 of the laws of 2010, is amended to read as follows:

"Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is

employed or permitted to work: (a) on a casual basis in service as a part time baby sitter in the home of the employer; (b) [in labor on a farm; (c)] in a bona fide executive, administrative, or professional capacity; [(d)] (C) as an outside salesman; [(e)] (D) as a driver engaged in operating a taxicab; [(f)] (E) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; [(g)] (F) as a member of a religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; [(h)] (G) in or for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; [(i)] (H) in or for such a religious, educational or charitable institution if such individual is a student; [(j)] (I) in or for such a religious, educational or charitable institution if the earning capacity of such individual is impaired by age or by physical or mental deficiency or injury; [(k)] (J) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; [(l)] (K) as a staff counselor in a children's camp; [(m)] (L) in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; [(n)] (M) by a federal, state or municipal government or political subdivision thereof. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner; or [(o)] (N) as a volunteer at a recreational or amusement event run by a business that operates such events, provided that no single such event lasts longer than eight consecutive days and no more than one such event concerning substantially the same subject matter occurs in any calendar year. Any such volunteer shall be at least eighteen years of age. A business seeking coverage under this paragraph shall notify every volunteer in writing, in language acceptable to the commissioner, that by volunteering his or her services, such volunteer is waiving his or her right to receive the minimum wage pursuant to this article. Such notice shall be signed and dated by a representative of the business and the volunteer and kept on file by the business for thirty-six months.

S 17. 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 18. This act shall take effect immediately, provided that section ten of this act shall take effect on the thirtieth day after it shall have become a law.