

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:

1 Section 1. This act shall be known and may be cited as "the farmwork-
2 ers fair labor practices act".
3 S 2. Paragraph (a) of subdivision 3 of section 701 of the labor law,
4 as amended by chapter 43 of the laws of 1989, is amended to read as
5 follows:
6 (a) The term "employees" includes but is not restricted to any indi-
7 vidual employed by a labor organization; any individual whose employment
8 has ceased as a consequence of, or in connection with, any current labor
9 dispute or because of any unfair labor practice, and who has not
10 obtained any other regular and substantially equivalent employment; and
11 shall not be limited to the employees of a particular employer, unless
12 the article explicitly states otherwise, but shall not include any indi-
13 vidual employed by his parent or spouse or in the domestic service of
14 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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1 any individual whose primary responsibility is the care of a minor child
2 or children and/or someone who lives in the home of a person for the
3 purpose of serving as a companion to a sick, convalescing or elderly
4 person or any individuals employed only for the duration of a labor
5 dispute, [or any individuals employed as farm laborers] or[,] any indi-
6 vidual who participates in and receives rehabilitative or therapeutic
7 services in a charitable non-profit rehabilitation facility or sheltered
8 workshop or any individual employed in a charitable non-profit rehabili-
9 tation facility or sheltered workshop who has received rehabilitative or
10 therapeutic services and whose capacity to perform the work for which he
11 is engaged is substantially impaired by physical or mental deficiency or
12 injury.

13 S 3. Subdivision 1 of section 161 of the labor law is amended by
14 adding a new undesignated paragraph to read as follows:

15 EVERY PERSON EMPLOYED AS A FARM LABORER SHALL BE ALLOWED AT LEAST
16 TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK.
17 THIS REQUIREMENT SHALL NOT APPLY TO THE PARENT, CHILD, SPOUSE OR OTHER
18 MEMBER OF THE EMPLOYER'S IMMEDIATE FAMILY. TWENTY-FOUR CONSECUTIVE HOURS
19 SPENT AT REST BECAUSE OF CIRCUMSTANCES, SUCH AS WEATHER OR CROP CONDI-
20 TIONS, SHALL BE DEEMED TO CONSTITUTE THE REST REQUIRED BY THIS PARA-
21 GRAPH. NO PROVISION OF THIS PARAGRAPH SHALL PROHIBIT A FARM LABORER FROM
22 VOLUNTARILY REFUSING THE REST REQUIRED BY THIS PARAGRAPH. THE TERM
23 "FARM LABOR" SHALL INCLUDE ALL SERVICES PERFORMED IN AGRICULTURAL
24 EMPLOYMENT IN CONNECTION WITH CULTIVATING THE SOIL, OR IN CONNECTION
25 WITH RAISING OR HARVESTING OF AGRICULTURAL COMMODITIES, INCLUDING THE
26 RAISING, SHEARING, CARING FOR AND MANAGEMENT OF LIVESTOCK, POULTRY OR
27 DAIRY. THE DAY OF REST AUTHORIZED UNDER THIS SUBDIVISION SHOULD, WHEN-
28 EVER POSSIBLE, COINCIDE WITH THE TRADITIONAL DAY RESERVED BY THE FARM
29 LABORER FOR RELIGIOUS WORSHIP.

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

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

37 d. Employees whose duties include not more than three hours' work on
38 Sunday in setting sponges in bakeries, [caring for live animals,] main-
39 taining fires, or making necessary repairs to boilers or machinery.

40 S 5. The opening paragraph of subdivision 3 of section 160 of the
41 labor law, as amended by chapter 481 of the laws of 2010, is amended to
42 read as follows:

43 For all other employees, except [those engaged in farm work and] those
44 affected by subdivision four of section two hundred twenty of this chap-
45 ter, eight hours.

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

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

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

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

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

3 S 8. The opening paragraph of paragraph (a) of subdivision 6 of
4 section 511 of the labor law, as amended by chapter 675 of the laws of
5 1977, is amended to read as follows:

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

9 S 9. Section 564 of the labor law, as added by chapter 675 of the laws
10 of 1977, is amended to read as follows:

11 S 564. Agricultural labor CREW LEADERS. [1. Coverage. (a) Notwith-
12 standing the provisions of section five hundred sixty of this article,
13 an employer of persons engaged in agricultural labor shall become liable
14 for contributions under this article if the employer:

15 (1) has paid cash remuneration of twenty thousand dollars or more in
16 any calendar quarter to persons employed in agricultural labor, and such
17 liability shall commence on the first day of such quarter, or

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

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

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

31 (1) has not paid to persons employed in agricultural labor cash remun-
32 eration of twenty thousand dollars or more in any of the eight calendar
33 quarters preceding such day, and

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

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

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

44 [(a)] 1. the crew leader holds a valid certificate of registration
45 under the federal farm labor contractor registration act of nineteen
46 hundred sixty-three or substantially all the members of the crew operate
47 or maintain tractors, mechanized harvesting or cropdusting machinery or
48 any other mechanized equipment which is provided by the crew leader, and

49 [(b)] 2. the crew leader is not an employee of such other employer and
50 has not entered into a written agreement with such employer under which
51 he is designated as an employee.

52 S 10. Paragraph (m) of subdivision 5 of section 225 of the public
53 health law, as amended by section 51 of part A of chapter 58 of the laws
54 of 2010, is amended to read as follows:

55 (m) require that application be made for a permit to operate a farm or
56 food processing labor camp as defined in the sanitary code; authorize

1 appropriate officers or agencies to issue such a permit when the appli-
2 cant is in compliance with the established regulations; prescribe stand-
3 ards for living quarters at farm and food processing labor camps,
4 including provisions for sanitary conditions; light, air, and safety;
5 protection from fire hazards; maintenance; and such other matters as may
6 be appropriate for security of life or health, provided however, that
7 the provisions of the sanitary code established pursuant to the
8 provisions hereof shall apply to all farm and food processing labor
9 camps intended to house migrant workers and which are occupied [by five
10 or more persons]. In the preparation of such regulations, the public
11 health and health planning council may request and shall receive techni-
12 cal assistance from the board of standards and appeals of the state
13 department of labor and the state building code commission. Such regu-
14 lation shall be enforced in the same manner as are other provisions of
15 the sanitary code;

16 S 11. Groups 14-a and 14-b of subdivision 1 of section 3 of the work-
17 ers' compensation law, Group 14-a as amended by chapter 233 of the laws
18 of 1961 and Group 14-b as added by chapter 646 of the laws of 1966, are
19 amended to read as follows:

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

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

30 S 12. Section 51 of the workers' compensation law, as amended by
31 chapter 561 of the laws of 2003, is amended to read as follows:

32 S 51. Posting of notice regarding compensation. Every employer who has
33 complied with section fifty of this article shall post and maintain in a
34 conspicuous place or places in and about his place or places of business
35 typewritten or printed IN ENGLISH AND SPANISH notices in form prescribed
36 by the chairman, stating the fact that he has complied with all the
37 rules and regulations of the chairman and the board and that he has
38 secured the payment of compensation to his employees and their depen-
39 dents in accordance with the provisions of this chapter, but failure to
40 post such notice as herein provided shall not in any way affect the
41 exclusiveness of the remedy provided for by section eleven of this chap-
42 ter. Every employer who owns or operates automotive or horse-drawn vehi-
43 cles and has no minimum staff of regular employees required to report
44 for work at an established place of business maintained by such employer
45 and every employer who is engaged in the business of moving household
46 goods or furniture shall post such notices in each and every vehicle
47 owned or operated by him. Failure to post or maintain such notice in any
48 of said vehicles shall constitute presumptive evidence that such employ-
49 er has failed to secure the payment of compensation. The chairman may
50 require any employer to furnish a written statement at any time showing
51 the stock corporation, mutual corporation or reciprocal insurer in which
52 such employer is insured or the manner in which such employer has
53 complied with any provision of this chapter. Failure for a period of ten
54 days to furnish such written statement shall constitute presumptive
55 evidence that such employer has neglected or failed in respect of any of
56 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

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

41 S 17. Subdivision 1 of section 674 of the labor law, as added by chap-
42 ter 552 of the laws of 1969, is amended to read as follows:

43 1. The commissioner may promulgate such regulations as he deems appro-
44 priate to carry out the purposes of this article and to safeguard mini-
45 mum wage standards. Such regulations may include, but are not limited
46 to, the defining of the circumstances or conditions for the acceptance
47 of non-hourly rates and piece rates as equivalent to the minimum hourly
48 rates established by this article. Such regulations also may include,
49 but are not limited to, waiting time and call-in pay rates; wage
50 provisions governing guaranteed earnings during specified periods of
51 work; allowances for meals, lodging, and other items, services and
52 facilities when furnished by the employer; [and the employment of indi-
53 viduals whose earning capacity is affected or impaired by youth or age,]
54 or by physical or mental deficiency or injury, under special certifi-
55 cates issued by the commissioner, at such wages lower than the minimum

1 wage established by this article and for such period as shall be
2 prescribed in such regulations.
3 S 18. This act shall take effect immediately, provided that section
4 ten of this act shall take effect on the thirtieth day after it shall
5 have become a law.