

1071--B

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to excluding certain seasonal fair workers from the definition of employee for purposes of the minimum wage act

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

1 Section 1. Subdivision 5 of section 651 of the labor law, as amended
2 by chapter 481 of the laws of 2010, is amended to read as follows:
3 5. "Employee" includes any individual employed or permitted to work by
4 an employer in any occupation, but shall not include any individual who
5 is employed or permitted to work: (a) on a casual basis in service as a
6 part time baby sitter in the home of the employer; (b) in labor on a
7 farm; (c) in a bona fide executive, administrative, or professional
8 capacity; (d) as an outside salesman; (e) as a driver engaged in operating a taxicab; (f) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation
9 organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the
10 benefit of any private shareholder or individual; (g) as a member of a
11 religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader;
12 (h) in or for such a religious or charitable institution, which work is
13 incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (i) in or for such a
14 religious, educational or charitable institution if such individual is a
15 student; (j) in or for such a religious, educational or charitable

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

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1 institution if the earning capacity of such individual is impaired by
2 age or by physical or mental deficiency or injury; (k) in or for a
3 summer camp or conference of such a religious, educational or charitable
4 institution for not more than three months annually; (l) as a staff
5 counselor in a children's camp; (m) in or for a college or university
6 fraternity, sorority, student association or faculty association, no
7 part of the net earnings of which inures to the benefit of any private
8 shareholder or individual, and which is recognized by such college or
9 university, if such individual is a student; (n) by a federal, state or
10 municipal government or political subdivision thereof[. The exclusions
11 from the term "employee" contained in this subdivision shall be as
12 defined by regulations of the commissioner; or]; (o) as a volunteer at a
13 recreational or amusement event run by a business that operates such
14 events, provided that no single such event lasts longer than eight
15 consecutive days and no more than one such event concerning substantial-
16 ly the same subject matter occurs in any calendar year. Any such volun-
17 teer shall be at least eighteen years of age. A business seeking cover-
18 age under this paragraph shall notify every volunteer in writing, in
19 language acceptable to the commissioner, that by volunteering his or her
20 services, such volunteer is waiving his or her right to receive the
21 minimum wage pursuant to this article. Such notice shall be signed and
22 dated by a representative of the business and the volunteer and kept on
23 file by the business for thirty-six months[.]; OR (P) AN EMPLOYEE OF A
24 TRAVELING AMUSEMENT OR RECREATIONAL ESTABLISHMENT WHO RESIDES OUTSIDE OF
25 THIS STATE, PROVIDED THAT (I) SUCH ESTABLISHMENT ADHERES TO CURRENT
26 STATE MINIMUM WAGE RATES FOR ALL EMPLOYEES, (II) SUCH ESTABLISHMENT
27 MEETS THE BUSINESS OPERATIONS CRITERIA ESTABLISHED UNDER PARAGRAPH THREE
28 OF SUBDIVISION A OF SECTION THIRTEEN OF THE FEDERAL FAIR LABOR STANDARDS
29 ACT, AND (III) SUCH PERSON IS EMPLOYED IN HIS OR HER CAPACITY AS AN
30 EMPLOYEE ON THE PREMISES OF A COUNTY OR AGRICULTURAL FAIRGROUND;
31 PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS PARAGRAPH SHALL NOT
32 SUPERSEDE THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR APPLY TO A
33 POLICY THAT IS THE RESULT OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN
34 AN EMPLOYER AND A RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION. THE
35 EXCLUSIONS FROM THE TERM "EMPLOYEE" CONTAINED IN THIS SUBDIVISION SHALL
36 BE AS DEFINED BY REGULATIONS OF THE COMMISSIONER.

37 "Employee" also includes any individual employed or permitted to work
38 in any non-teaching capacity by a school district or board of cooper-
39 ative educational services except that the provisions of sections six
40 hundred fifty-three through six hundred fifty-nine of this article shall
41 not be applicable in any such case.

42 S 2. This act shall take effect on the thirtieth day after it shall
43 have become a law.