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

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2013-2014 Regular Sessions

I N S E N A T E

June 18, 2013

Introduced by Sens. SAVINO, ESPAILLAT, KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT establishing the "farmworkers' fair labor practices act"; to amend the labor law, in relation to allowing farm workers one day of rest each week, and including farm laborers within the provisions pertaining to overtime compensation and unemployment insurance; and to amend the workers' compensation law, 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. Subdivision 16 of section 2 of the labor law, as added by chapter 564 of the laws of 2010, is renumbered subdivision 22 and five new subdivisions 17, 18, 19, 20 and 21 are added to read as follows:

17. "FARM" SHALL MEAN AN AGRICULTURAL FOR-PROFIT BUSINESS INVOLVED IN COMMERCIAL ENTERPRISE WITH RESPECT TO STOCK, DAIRY, POULTRY, FUR-BEARING ANIMAL, FRUIT AND TRUCK FARMS; PLANTATIONS; ORCHARDS; NURSERIES; GREENHOUSES AND SIMILAR STRUCTURES USED PRIMARILY FOR THE RAISING OF AGRICULTURAL OR HORTICULTURAL COMMODITIES.

18. "FARM EMPLOYMENT" SHALL MEAN THE SERVICES PERFORMED BY AN EMPLOYEE ON A FARM IN THE EMPLOY OF THE OWNER, FARM CONTRACTOR, LESSEE OR OPERATOR OF A FARM IN CONNECTION WITH:

(A) CULTIVATING THE SOIL;

(B) RAISING OR HARVESTING ANY AGRICULTURAL OR HORTICULTURAL COMMODITY, INCLUDING THE RAISING OR HATCHING OF POULTRY, THE RAISING, SHEARING, FEEDING, CARING FOR, TRAINING, MANAGEMENT OF LIVESTOCK, BEES, FUR-BEARING ANIMALS AND WILDLIFE;

(C) THE PRODUCTION OR HARVESTING OF MAPLE SYRUP OR MAPLE SUGAR;

(D) THE OPERATION, MANAGEMENT, CONSERVATION, IMPROVEMENT OR MAINTENANCE OF A FARM AND ITS TOOLS AND EQUIPMENT;

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

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(E) THE OPERATION OR MAINTENANCE OF DITCHES, CANALS, RESERVOIRS OR WATERWAYS USED EXCLUSIVELY FOR REMOVING, SUPPLYING AND STORING WATER FOR FARMING PURPOSES; AND

(F) THE HANDLING, PLANTING, DRYING, PACKING, PACKAGING, PROCESSING, FREEZING, GRADING, STORING OR DELIVERING TO MARKET OR TO A CARRIER FOR TRANSPORTATION TO MARKET, OF ANY AGRICULTURAL OR HORTICULTURAL COMMODITY RAISED ON THE EMPLOYER'S FARM.

FARM EMPLOYMENT SHALL NOT MEAN 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.

19. "FARM EMPLOYER" SHALL MEAN ANY INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORATION, COOPERATIVE, BUSINESS TRUST, LEGAL REPRESENTATIVE OR ORGANIZED GROUP OF PERSONS ACTING AS AN EMPLOYER OF A FARM EMPLOYEE. IF A FARM LABOR CONTRACTOR RECRUITS OR SUPPLIES FARM WORKERS FOR WORK ON A FARM, SUCH FARM WORKERS SHALL BE DEEMED TO BE EMPLOYEES OF THE OWNER, LESSEE OR OPERATOR OF SUCH FARM.

20. "FARM EMPLOYEE" SHALL MEAN ANY INDIVIDUAL ENGAGED OR PERMITTED BY AN EMPLOYER TO WORK ON A FARM, EXCEPT:

(A) THE PARENT, SPOUSE, CHILD OR OTHER MEMBER OF THE EMPLOYER'S IMMEDIATE FAMILY RELATED TO THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY;

(B) AN INDIVIDUAL EMPLOYED BY THE FEDERAL, STATE OR MUNICIPAL GOVERNMENT OR A POLITICAL SUBDIVISION THEREOF; AND

(C) FOR THAT PART OF THE WORKING TIME COVERED BY THE PROVISIONS OF ANOTHER MINIMUM WAGE ORDER PROMULGATED BY THE COMMISSIONER.

21. "TEMPORARY VISA WORKER" SHALL MEAN 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 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 FARM EMPLOYER OPERATING A FARM SHALL REQUIRE ANY FARM EMPLOYEE TO WORK MORE THAN TEN WORK HOURS IN ANY DAY, SIXTY WORK HOURS IN ANY CALENDAR WEEK, OR SIX DAYS IN ANY CALENDAR WEEK, UNLESS SUCH FARM EMPLOYEE IS PAID AS FOLLOWS:

1. HOURLY RATE. ANY FARM EMPLOYEE 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 OVERTIME HOURS UNLESS THE FARM EMPLOYEE RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE FOR SUCH OVERTIME WORK HOURS.

2. PIECE WORK RATE. ANY FARM EMPLOYEE PAID AT A PIECE RATE 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 OVERTIME HOURS UNLESS THE FARM EMPLOYEE RECEIVES ONE AND ONE-HALF TIMES THE PREVAILING PIECE RATE SET BY THE UNITED STATES DEPARTMENT OF LABOR PURSUANT TO THE H-2A TEMPORARY VISA PROGRAM AUTHORIZED BY THE FEDERAL IMMIGRATION AND NATIONALITY ACT OF 1952, AS AMENDED, FOR ALL OVERTIME WORK HOURS.

3. SALARIED RATE. ANY FARM EMPLOYEE PAID AT A SALARIED RATE AND NOT WORKING AS A MANAGER OR SUPERVISOR 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 OVERTIME HOURS UNLESS HE OR SHE RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH HE OR SHE IS EMPLOYED DIVIDED BY FORTY FOR ALL OVERTIME WORK HOURS.

4. A CONTRACT BETWEEN A FARM EMPLOYER AND A FARM EMPLOYEE MAY ALLOW FOR DISCIPLINE OR DISMISSAL OF A FARM EMPLOYEE WHO REFUSES TO WORK OVERTIME HOURS OTHER THAN ON THE DAY OF REST WITHOUT A MEDICAL OR SUCH OTHER EXCUSE PERMITTED BY REGULATION OF THE COMMISSIONER.

FOR PURPOSES OF THIS SECTION, "WORK HOURS" SHALL MEAN THE HOURS THAT A FARM EMPLOYEE IS PERMITTED TO WORK OR IS REQUIRED TO BE AVAILABLE FOR WORK AT THE ASSIGNED PLACE OF WORK, AND SHALL INCLUDE TIME SPENT IN GOING FROM ONE FIELD TO ANOTHER, IN WAITING FOR BASKETS, PICKUP OR BREAKDOWN OF MACHINERY OR EQUIPMENT WHERE THE FARM EMPLOYER REQUIRES THE FARM EMPLOYEE TO REMAIN AT THE SITE OF THE BREAKDOWN DURING REPAIRS. TIME NOT WORKED BECAUSE OF WEATHER CONDITIONS SHALL NOT BE CONSIDERED AS HOURS WORKED. AN EMPLOYEE WHO LIVES ON THE PREMISES OF THE EMPLOYER, OR IN COMPARABLE FACILITIES AT THE WORK SITE, SHALL NOT BE CONSIDERED TO HAVE WORKED OR TO HAVE BEEN AVAILABLE FOR WORK: (A) DURING NORMAL SLEEPING HOURS SOLELY BECAUSE THE EMPLOYEE IS REQUIRED TO BE ON CALL DURING SUCH HOURS; OR (B) AT ANY OTHER TIME WHEN THE EMPLOYEE IS FREE TO LEAVE THE PLACE OF EMPLOYMENT.

FOR PURPOSES OF THIS SECTION, "OVERTIME HOURS" SHALL MEAN HOURS WORKED BY A FARM EMPLOYEE OF MORE THAN TEN HOURS IN ANY DAY, SIXTY HOURS IN A CALENDAR WEEK, OR SIX DAYS IN A CALENDAR WEEK.

S 6. 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 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 mini-

mum 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; AND 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. 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;] SERVICE AS A TEMPORARY VISA WORKER AS DEFINED BY SUBDIVISION TWENTY-ONE OF SECTION TWO OF THE LABOR LAW; 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 9. The commissioner of labor shall report to the governor, the speaker of the assembly and the temporary president of the senate before April 1, 2014 on the feasibility and practicality of allowing farm employees to organize for purposes of collective bargaining. In preparing such report, the commissioner of labor will consult with representatives of and advocates for farm employees, individuals and agencies that employ farm employees, and relevant state agencies including but not limited to the department of agriculture and markets and the public employment relations board. The report shall address the feasibility of an employee organization formed in accordance with the State Labor Relations Act, how bargaining units for such organizations could be formed, whether there are any unique issues which arise in this context and whether there are other possible frameworks for collective organiza-

tion or for ensuring the benefits that accompany organization for farm employees. The commissioner of labor shall also report, with the assistance of an interagency working group which shall include but not be limited to the chair of the workers' compensation board and the commissioner of agriculture and markets, on how best to provide easily accessible educational and informational material for farm employers and farm employees. Such material shall cover employment benefits and applicable tax and insurance laws.

S 10. This act shall take effect April 1, 2014.