

1743

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. ESPAILLAT, ADAMS, ADDABBO, AVELLA, BRESLIN, DIAZ, DILAN, GIANARIS, HASSELL-THOMPSON, KLEIN, KRUEGER, MONTGOMERY, PARKER, PERALTA, PERKINS, RIVERA, SAMPSON, SAVINO, SERRANO, SMITH, SQUADRON, STAVISKY, STEWART-COUSINS -- 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

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

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1 shall not be limited to the employees of a particular employer, unless
2 the article explicitly states otherwise, but shall not include any indi-
3 vidual employed by his parent or spouse or in the domestic service of
4 and directly employed, controlled and paid by any person in his home,
5 any individual whose primary responsibility is the care of a minor child
6 or children and/or someone who lives in the home of a person for the
7 purpose of serving as a companion to a sick, convalescing or elderly
8 person or any individuals employed only for the duration of a labor
9 dispute, [or any individuals employed as farm laborers] or[,] any indi-
10 vidual who participates in and receives rehabilitative or therapeutic
11 services in a charitable non-profit rehabilitation facility or sheltered
12 workshop or any individual employed in a charitable non-profit rehabili-
13 tation facility or sheltered workshop who has received rehabilitative or
14 therapeutic services and whose capacity to perform the work for which he
15 is engaged is substantially impaired by physical or mental deficiency or
16 injury.

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

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

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

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

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

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

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

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

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

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

1 S 163-A. FARM LABORERS. NO PERSON OR CORPORATION OPERATING A FARM
2 SHALL REQUIRE ANY EMPLOYEE TO WORK MORE THAN EIGHT HOURS IN ANY DAY;
3 PROVIDED, HOWEVER, THAT OVERTIME WORK PERFORMED BY A FARM LABORER SHALL
4 BE AT A RATE WHICH IS AT LEAST ONE AND ONE-HALF TIMES THE WORKER'S
5 NORMAL WAGE RATE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 such employer is insured or the manner in which such employer has
2 complied with any provision of this chapter. Failure for a period of ten
3 days to furnish such written statement shall constitute presumptive
4 evidence that such employer has neglected or failed in respect of any of
5 the matters so required. Any employer who fails to comply with the
6 provisions of this section shall be required to pay to the board a fine
7 of [up to two hundred fifty] FIVE HUNDRED dollars for each violation, in
8 addition to any other penalties imposed by law to be deposited into the
9 uninsured employers' fund.

10 S 13. The workers' compensation law is amended by adding a new section
11 110-b to read as follows:

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

17 S 14. The first undesignated paragraph of section 120 of the workers'
18 compensation law, as amended by chapter 61 of the laws of 1989, is
19 amended to read as follows:

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

28 S 15. The opening paragraph of paragraph A of subdivision 6 of section
29 201 of the workers' compensation law, as amended by chapter 481 of the
30 laws of 2010, is amended to read as follows:

31 "Employment" means employment in any trade, business or occupation
32 carried on by an employer, except that the following shall not be deemed
33 employment under this article: services performed for the state, a
34 municipal corporation, local governmental agency, other political subdivi-
35 sion or public authority; employment subject to the federal railroad
36 unemployment insurance act; service performed on or as an officer or
37 member of the crew of a vessel on the navigable water of the United
38 States or outside the United States; [service as farm laborers;] casual
39 employment and the first forty-five days of extra employment of employ-
40 ees not regularly in employment as otherwise defined herein; service as
41 golf caddies; and service during all or any part of the school year or
42 regular vacation periods as a part-time worker of any person actually in
43 regular attendance during the day time as a student in an elementary or
44 secondary school. The term "employment" shall include domestic or
45 personal work in a private home. The term "employment" shall not include
46 the services of a licensed real estate broker or sales associate if it
47 be proven that (a) substantially all of the remuneration (whether or not
48 paid in cash) for the services performed by such broker or sales associ-
49 ate is directly related to sales or other output (including the perform-
50 ance of services) rather than to the number of hours worked; (b) the
51 services performed by the broker or sales associate are performed pursu-
52 ant to a written contract executed between such broker or sales associ-
53 ate and the person for whom the services are performed within the past
54 twelve to fifteen months; and (c) the written contract provided for in
55 subparagraph (b) of this paragraph was not executed under duress and
56 contains the following provisions:

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

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

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

48 1. The commissioner may promulgate such regulations as he deems appro-
49 priate to carry out the purposes of this article and to safeguard mini-
50 mum wage standards. Such regulations may include, but are not limited
51 to, the defining of the circumstances or conditions for the acceptance
52 of non-hourly rates and piece rates as equivalent to the minimum hourly
53 rates established by this article. Such regulations also may include,
54 but are not limited to, waiting time and call-in pay rates; wage
55 provisions governing guaranteed earnings during specified periods of
56 work; allowances for meals, lodging, and other items, services and

1 facilities when furnished by the employer; [and the employment of indi-
2 viduals whose earning capacity is affected or impaired by youth or age,]
3 or by physical or mental deficiency or injury, under special certif-
4 icates issued by the commissioner, at such wages lower than the minimum
5 wage established by this article and for such period as shall be
6 prescribed in such regulations.

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