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

7753

2015-2016 Regular Sessions

I N A S S E M B L Y

May 26, 2015

Introduced by M. of A. MORELLE, FAHY, STECK, McDONALD -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the workers' compensation law, in relation to the application of unemployment, the minimum wage and workers' compensation coverage to newspaper delivery persons

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

Section 1. Section 511 of the labor law is amended by adding a new subdivision 23 to read as follows:

23. NEWSPAPER DELIVERY PERSON. THE TERM "EMPLOYMENT" SHALL NOT INCLUDE THE SERVICES OF A PERSON ENGAGED IN THE DELIVERY OR DISTRIBUTION OF NEWSPAPERS, "PENNYSAVERS", SHOPPING NEWS OR ANY FREE DISTRIBUTION PUBLICATIONS (INCLUDING ANY SERVICES THAT ARE DIRECTLY RELATED TO SUCH DELIVERY OR DISTRIBUTION), IF (A) SUBSTANTIALLY ALL OF THE REMUNERATION FOR THE PERFORMANCE OF THE SERVICES IS RELATED TO SALES OR OTHER OUTPUT (FOR EXAMPLE, FEE PER-COPY OR BUY/SELL) RATHER THAN TO THE NUMBER OF HOURS WORKED; (B) THE SERVICES ARE PERFORMED PURSUANT TO A WRITTEN CONTRACT; AND (C) THE WRITTEN CONTRACT CONTAINS PROVISIONS EVIDENCING ANY SEVEN OF THE FOLLOWING:

(1) THE PERSON IS NOT TREATED AS AN EMPLOYEE FOR FEDERAL TAX PURPOSES, AND HE OR SHE WILL BE ISSUED IRS FORM 1099 FOR FEDERAL TAX PURPOSES;

(2) THE PERSON HAS THE RIGHT TO DETERMINE THE SEQUENCE OF DELIVERY IN HIS OR HER GEOGRAPHIC AREA OR ROUTE;

(3) THE PERSON IS NOT REQUIRED TO ATTEND GROUP MEETINGS;

(4) THE PERSON HAS THE RIGHT TO ENGAGE THE SERVICES OF OTHERS TO DISTRIBUTE THE PUBLICATION OR PRODUCT WITHOUT APPROVAL OF THE PUBLISHING COMPANY;

(5) THE PERSON IS NOT REQUIRED TO SUBMIT WRITTEN REPORTS WITH RESPECT TO TIME SPENT OR ACTIVITIES ENGAGED IN RELATING TO DISTRIBUTION SERVICES, OTHER THAN THOSE FOR INTERNAL CIRCULATION STATISTICS, AUDITS OR AS REQUIRED BY LAW;

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

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(6) THE PERSON HAS THE RIGHT TO INCREASE THE NUMBER OF SUBSCRIBERS OR CUSTOMERS ON THE ROUTE OR GEOGRAPHIC AREA, EVEN THOUGH NOTICE TO THE PUBLISHING COMPANY MAY BE REQUIRED;

(7) THE PERSON HAS THE RIGHT TO ENGAGE IN OTHER BUSINESS ACTIVITIES, INCLUDING THE DELIVERY OF OTHER NEWSPAPERS, SHOPPING GUIDES OR PRODUCTS;

(8) THE PERSON IS NOT IDENTIFIED AS REPRESENTING THE PUBLISHING COMPANY BY THE PROVISION OF BUSINESS CARDS, UNIFORMS OR SIGNS TO PLACE ON THE DELIVERY PERSON'S VEHICLE;

(9) THE PERSON HAS THE ULTIMATE RESPONSIBILITY TO RESOLVE SUBSCRIBER AND/OR CUSTOMER COMPLAINTS, EVEN THOUGH THE PUBLISHING COMPANY MAY RECEIVE AND RESOLVE CUSTOMER COMPLAINTS AND MAKE APPROPRIATE FINANCIAL SETTLEMENT WITH THE DELIVERY PERSON; OR

(10) THE PERSON IS RESPONSIBLE TO PROVIDE ANY NEEDED VEHICLE AND TO PAY FOR ALL MAINTENANCE AND INSURANCE ON SUCH VEHICLE.

S 2. 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:

5. "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) 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 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) 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) 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) in or for such a religious, educational or charitable institution if such individual is a student; (j) 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) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; (l) as a staff counselor in a children's camp; (m) 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) 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) as a volunteer, WHO IS EIGHTEEN YEARS OF AGE OR OLDER, 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; OR (P) AS A NEWSPAPER DELIVERY PERSON AS REFERRED TO IN SUBDIVISION TWENTY-THREE OF SECTION FIVE HUNDRED ELEVEN OF THIS CHAPTER. [Any such volunteer shall be at least eighteen years of age.] A business seeking coverage under [this] paragraph (P) OF THIS SUBDIVISION 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.

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

S 3. Subdivision 4 of section 2 of the workers' compensation law is amended by adding a new closing paragraph to read as follows:

"EMPLOYEE" SHALL NOT INCLUDE A NEWSPAPER DELIVERY PERSON ENGAGED IN THE DELIVERY OR DISTRIBUTION OF NEWSPAPERS, "PENNYSAVERS", SHOPPING NEWS OR ANY FREE DISTRIBUTION PUBLICATIONS (INCLUDING ANY SERVICES THAT ARE DIRECTLY RELATED TO SUCH DELIVERY OR DISTRIBUTION), IF (A) SUBSTANTIALLY ALL OF THE REMUNERATION FOR THE PERFORMANCE OF THE SERVICES IS RELATED TO SALES OR OTHER OUTPUT (FOR EXAMPLE, FEE PER-COPY OR BUY/SELL) RATHER THAN TO THE NUMBER OF HOURS WORKED; (B) THE SERVICES ARE PERFORMED PURSUANT TO A WRITTEN CONTRACT; AND (C) THE WRITTEN CONTRACT CONTAINS PROVISIONS EVIDENCING ANY SEVEN OF THE FOLLOWING:

(I) THE DELIVERY PERSON IS NOT TREATED AS AN EMPLOYEE FOR FEDERAL TAX PURPOSES AND SUCH PERSON WILL BE ISSUED IRS FORM 1099 FOR FEDERAL TAX PURPOSES;

(II) THE DELIVERY PERSON HAS THE RIGHT TO DETERMINE THE SEQUENCE OF DELIVERY IN HIS OR HER GEOGRAPHIC AREA OR ROUTE;

(III) THE DELIVERY PERSON IS NOT REQUIRED TO ATTEND GROUP MEETINGS;

(IV) THE DELIVERY PERSON HAS THE RIGHT TO ENGAGE THE SERVICES OF OTHERS TO DISTRIBUTE THE PUBLICATION OR PRODUCT WITHOUT APPROVAL OF THE PUBLISHING COMPANY;

(V) THE DELIVERY PERSON IS NOT REQUIRED TO SUBMIT WRITTEN REPORTS WITH RESPECT TO TIME SPENT OR ACTIVITIES ENGAGED IN RELATING TO DISTRIBUTION SERVICES, OTHER THAN THOSE FOR INTERNAL CIRCULATION STATISTICS, AUDITS OR AS REQUIRED BY LAW;

(VI) THE DELIVERY PERSON HAS THE RIGHT TO INCREASE THE NUMBER OF SUBSCRIBERS OR CUSTOMERS ON THE ROUTE OR GEOGRAPHIC AREA, EVEN THOUGH NOTICE TO THE PUBLISHING COMPANY MAY BE REQUIRED;

(VII) THE DELIVERY PERSON HAS THE RIGHT TO ENGAGE IN OTHER BUSINESS ACTIVITIES, INCLUDING THE DELIVERY OF OTHER NEWSPAPERS, SHOPPING GUIDES OR PRODUCTS;

(VIII) THE DELIVERY PERSON IS NOT IDENTIFIED AS REPRESENTING THE PUBLISHING COMPANY BY THE PROVISION OF BUSINESS CARDS, UNIFORMS OR SIGNS TO PLACE ON THE DELIVERY PERSON'S VEHICLE;

(IX) THE DELIVERY PERSON HAS THE ULTIMATE RESPONSIBILITY TO RESOLVE SUBSCRIBER AND/OR CUSTOMER COMPLAINTS, EVEN THOUGH THE PUBLISHING COMPANY MAY RECEIVE AND RESOLVE CUSTOMER COMPLAINTS AND MAKE APPROPRIATE FINANCIAL SETTLEMENT WITH THE DELIVERY PERSON; OR

(X) THE DELIVERY PERSON IS RESPONSIBLE TO PROVIDE ANY NEEDED VEHICLE AND TO PAY FOR ALL MAINTENANCE AND INSURANCE ON SUCH VEHICLE.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.