

6469

I N S E N A T E

January 14, 2016

Introduced by Sen. AMEDORE -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Section 511 of the labor law is amended by adding a new
2 subdivision 23 to read as follows:
3 23. NEWSPAPER DELIVERY PERSONS. THE TERM "EMPLOYMENT" SHALL NOT
4 INCLUDE SERVICE PERFORMED BY ANY PERSON IF:
5 (A) SUCH PERSON IS ENGAGED IN THE TRADE OR BUSINESS OF THE DELIVERING
6 OR DISTRIBUTION OF NEWSPAPERS OR SHOPPING NEWS (INCLUDING ANY SERVICES
7 DIRECTLY RELATED TO SUCH TRADE OR BUSINESS);
8 (B) SUBSTANTIALLY ALL THE REMUNERATION (WHETHER OR NOT PAID IN CASH)
9 FOR THE PERFORMANCE OF THE SERVICES DESCRIBED IN PARAGRAPH (A) OF THIS
10 SUBDIVISION IS DIRECTLY RELATED TO SALES OR OTHER OUTPUT (INCLUDING THE
11 PERFORMANCE OF SERVICES) RATHER THAN TO THE NUMBER OF HOURS WORKED; AND
12 (C) THE SERVICES PERFORMED BY THE PERSON ARE PERFORMED PURSUANT TO A
13 WRITTEN CONTRACT BETWEEN SUCH PERSON AND THE PERSON FOR WHOM THE
14 SERVICES ARE PERFORMED, AND SUCH CONTRACT PROVIDES THAT PERSON WILL NOT
15 BE TREATED AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICES FOR FEDERAL TAX
16 PURPOSES.
17 S 2. Subdivision 16 of section 511 of the labor law, as amended by
18 chapter 102 of the laws of 2002, is amended to read as follows:
19 16. Non-applicability of exclusions. The exclusions described in
20 subdivisions eight, nine, twelve, thirteen and fourteen of this section
21 shall not apply to services performed for a nonprofit organization as
22 defined in section five hundred sixty-three or for a governmental entity
23 as defined in section five hundred sixty-five or for an Indian tribe as
24 defined in section five hundred sixty-six of this article. THE EXCLU-
25 SIONS DESCRIBED IN SUBDIVISION TWENTY-THREE OF THIS SECTION SHALL NOT
26 APPLY TO COMMERCIAL GOODS TRANSPORTATION SERVICES PERFORMED FOR A

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

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1 COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE MEANING OF ARTICLE
2 TWENTY-FIVE-C OF THIS CHAPTER.

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

6 "Employee" includes any individual employed or permitted to work by an
7 employer in any occupation, but shall not include any individual who is
8 employed or permitted to work: (a) on a casual basis in service as a
9 part time baby sitter in the home of the employer; (b) in labor on a
10 farm; (c) in a bona fide executive, administrative, or professional
11 capacity; (d) as an outside salesman; (e) as a driver engaged in operat-
12 ing a taxicab; (f) as a volunteer, learner or apprentice by a corpo-
13 ration, unincorporated association, community chest, fund or foundation
14 organized and operated exclusively for religious, charitable or educa-
15 tional purposes, no part of the net earnings of which inures to the
16 benefit of any private shareholder or individual; (g) as a member of a
17 religious order, or as a duly ordained, commissioned or licensed minis-
18 ter, priest or rabbi, or as a sexton, or as a christian science reader;
19 (h) in or for such a religious or charitable institution, which work is
20 incidental to or in return for charitable aid conferred upon such indi-
21 vidual and not under any express contract of hire; (i) in or for such a
22 religious, educational or charitable institution if such individual is a
23 student; (j) in or for such a religious, educational or charitable
24 institution if the earning capacity of such individual is impaired by
25 age or by physical or mental deficiency or injury; (k) in or for a
26 summer camp or conference of such a religious, educational or charitable
27 institution for not more than three months annually; (l) as a staff
28 counselor in a children's camp; (m) in or for a college or university
29 fraternity, sorority, student association or faculty association, no
30 part of the net earnings of which inures to the benefit of any private
31 shareholder or individual, and which is recognized by such college or
32 university, if such individual is a student; (n) by a federal, state or
33 municipal government or political subdivision thereof[. The exclusions
34 from the term "employee" contained in this subdivision shall be as
35 defined by regulations of the commissioner]; [or] (o) as a volunteer at
36 a recreational or amusement event run by a business that operates such
37 events, provided that no single such event lasts longer than eight
38 consecutive days and no more than one such event concerning substantial-
39 ly the same subject matter occurs in any calendar year[. Any], WHERE (1)
40 ANY such volunteer shall be at least eighteen years of age[. A], (2) A
41 business seeking coverage under this paragraph shall notify every volun-
42 teer in writing, in language acceptable to the commissioner, that by
43 volunteering his or her services, such volunteer is waiving his or her
44 right to receive the minimum wage pursuant to this article[. Such], AND
45 (3) SUCH notice shall be signed and dated by a representative of the
46 business and the volunteer and kept on file by the business for thirty-
47 six months; OR (P) IN THE DELIVERY OF NEWSPAPERS OR SHOPPING NEWS TO THE
48 CONSUMER BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTA-
49 TION SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN
50 THE MEANING OF ARTICLE TWENTY-FIVE-C OF THIS CHAPTER. THE EXCLUSIONS
51 FROM THE TERM "EMPLOYEE" CONTAINED IN THIS SUBDIVISION SHALL BE AS
52 DEFINED BY REGULATIONS OF THE COMMISSIONER.

53 S 4. The opening paragraph of subdivision 3 of section 2 of the work-
54 ers' compensation law, as amended by chapter 392 of the laws of 2008, is
55 amended to read as follows:

1 "Employer," except when otherwise expressly stated, means a person,
2 partnership, association, corporation, and the legal representatives of
3 a deceased employer, or the receiver or trustee of a person, partner-
4 ship, association or corporation, having one or more persons in employ-
5 ment, including the state, a municipal corporation, fire district or
6 other political subdivision of the state, and every authority or commis-
7 sion heretofore or hereafter continued or created by the public authori-
8 ties law. For the purposes of this chapter only "employer" shall also
9 mean a person, partnership, association, corporation, and the legal
10 representatives of a deceased employer, or the receiver or trustee of a
11 person, partnership, association or corporation who delivers or causes
12 to be delivered newspapers or periodicals for delivering or selling and
13 delivering by a newspaper carrier under the age of eighteen years as
14 defined in section thirty-two hundred twenty-eight of the education law,
15 BUT SHALL NOT INCLUDE DELIVERING NEWSPAPERS OR SHOPPING NEWS (INCLUDING
16 ANY SERVICES DIRECTLY RELATED TO SUCH TRADE OR BUSINESS) BY A PERSON WHO
17 IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTATION SERVICES FOR A COMMER-
18 CIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE MEANING OF ARTICLE TWEN-
19 TY-FIVE-C OF THE LABOR LAW. For the purpose of this chapter only,
20 "employer" shall also mean a person, partnership, association, or corpo-
21 ration who leases or otherwise contracts with an operator or lessee for
22 the purpose of driving, operating or leasing a taxicab as so defined in
23 section one hundred forty-eight-a of the vehicle and traffic law, except
24 where such person is an owner-operator of such taxicab who personally
25 regularly operates such vehicle an average of forty or more hours per
26 week and leases such taxicab for some portion of the remaining time, and
27 except if the taxicab is a livery subject to section eighteen-c of this
28 chapter, in which case the livery driver's employer shall only be such
29 employer as is defined in that section. For the purposes of this section
30 only, such an owner-operator shall be deemed to be an employer if he
31 controls, directs, supervises, or has the power to hire or terminate
32 such other person who leases the vehicle.

33 S 5. The opening paragraph of subdivision 4 of section 2 of the work-
34 ers' compensation law, as amended by chapter 558 of the laws of 2013, is
35 amended to read as follows:

36 "Employee" means a person engaged in one of the occupations enumerated
37 in section three of this article or who is in the service of an employer
38 whose principal business is that of carrying on or conducting a hazard-
39 ous employment upon the premises or at the plant, or in the course of
40 his or her employment away from the plant of his or her employer;
41 "employee" shall also mean for the purposes of this chapter any individ-
42 ual performing services in construction for a contractor who does not
43 overcome the presumption of employment as provided under section eight
44 hundred sixty-one-c of the labor law; "employee" shall also mean for the
45 purposes of this chapter any individual performing services in the
46 commercial goods transportation industry for a commercial goods trans-
47 portation contractor who does not overcome the presumption of employment
48 as provided under section eight hundred sixty-two-b of the labor law;
49 "employee" shall also mean for the purposes of this chapter civil
50 defense volunteers who are personnel of volunteer agencies sponsored or
51 authorized by a local office under regulations of the civil defense
52 commission, to the extent of the provisions of groups seventeen and
53 nineteen; "employee" shall at the election of a municipal corporation
54 made pursuant to local law duly enacted also mean a member of an auxil-
55 iary police organization authorized by local law; and for the purposes
56 of this chapter only a newspaper carrier under the age of eighteen years

1 as defined in section thirty-two hundred twenty-eight of the education
2 law, BUT SHALL NOT INCLUDE DELIVERY OF NEWSPAPERS OR SHOPPING NEWS
3 (INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH TRADE OR BUSINESS) BY A
4 PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTATION SERVICES
5 FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE MEANING OF
6 ARTICLE TWENTY-FIVE-C OF THE LABOR LAW, and shall not include domestic
7 servants except as provided in section three of this chapter, and except
8 where the employer has elected to bring such employees under the law by
9 securing compensation in accordance with the terms of section fifty of
10 this chapter. The term "employee" shall not include persons who are
11 members of a supervised amateur athletic activity operated on a non-pro-
12 fit basis, provided that said members are not also otherwise engaged or
13 employed by any person, firm or corporation participating in said
14 athletic activity, nor shall it include the spouse or minor child of an
15 employer who is a farmer unless the services of such spouse or minor
16 child shall be engaged by said employer under an express contract of
17 hire nor shall it include an executive officer of a corporation who at
18 all times during the period involved owns all of the issued and
19 outstanding stock of the corporation and holds all of the offices pursu-
20 ant to paragraph (e) of section seven hundred fifteen of the business
21 corporation law or two executive officers of a corporation who at all
22 times during the period involved between them own all of the issued and
23 outstanding stock of such corporation and hold all such offices except
24 as provided in subdivision six of section fifty-four of this chapter
25 provided, however, that where there are two executive officers of a
26 corporation each officer must own at least one share of stock, nor shall
27 it include a self-employed person or a partner of a partnership as
28 defined in section ten of the partnership law who is not covered under a
29 compensation insurance contract or a certificate of self-insurance as
30 provided in subdivision eight of section fifty-four of this chapter, nor
31 shall it include farm laborers except as provided in group fourteen-b of
32 section three of this chapter. If a farm labor contractor recruits or
33 supplies farm laborers for work on a farm, such farm laborers shall for
34 the purposes of this chapter be deemed to be employees of the owner or
35 lessee of such farm. The term "employee" shall not include baby sitters
36 as defined in subdivision three of section one hundred thirty-one and
37 subdivision three of section one hundred thirty-two of the labor law or
38 minors fourteen years of age or over engaged in casual employment
39 consisting of yard work and household chores in and about a one family
40 owner-occupied residence or the premises of a non-profit, non-commercial
41 organization, not involving the use of power-driven machinery. The term
42 "employee" shall not include persons engaged by the owner in casual
43 employment consisting of yard work, household chores and making repairs
44 to or painting in and about a one-family owner-occupied residence. The
45 term "employee" shall not include the services of a licensed real estate
46 broker or sales associate if it be proven that (a) substantially all of
47 the remuneration (whether or not paid in cash) for the services
48 performed by such broker or sales associate is directly related to sales
49 or other output (including the performance of services) rather than to
50 the number of hours worked; (b) the services performed by the broker or
51 sales associate are performed pursuant to a written contract executed
52 between such broker or sales associate and the person for whom the
53 services are performed within the past twelve to fifteen months; and (c)
54 the written contract provided for in paragraph (b) of this subdivision
55 was not executed under duress and contains the following provisions:

1 S 6. The opening paragraph of subdivision 5 of section 2 of the work-
2 ers' compensation law, as separately amended by chapters 470 and 903 of
3 the laws of 1986, is amended to read as follows:
4 5. "Employment" includes employment in a trade, business or occupation
5 carried on by the employer for pecuniary gain, or in connection there-
6 with, except where the employer elects to bring his employees within the
7 provisions of this chapter as provided in section three OF THIS ARTICLE,
8 and except employment as a domestic worker as provided in section three
9 OF THIS ARTICLE, and except where a town elects to have the provisions
10 of this chapter apply to the town superintendent of highways. "Employ-
11 ment" shall also include, in connection with the civil defense effort
12 and for purposes of this chapter the service of a civil defense volun-
13 teer in authorized activities of a volunteer agency sponsored or author-
14 ized by a local office as defined in a state defense emergency act.
15 "Employment" shall also include participation with an auxiliary police
16 effort made within a municipal corporation which elected to include
17 auxiliary policemen within the definition of "employee" as authorized by
18 subdivision four of this section and for purposes of this chapter, the
19 services of members or volunteers in activities authorized by local law.
20 The service of a civil defense volunteer who is also an employee recom-
21 pensed by an employer for service to such employer, shall not be deemed
22 to be in employment of a local office when he is performing civil
23 defense service in his employment or in relation thereto. For the
24 purposes of this chapter only "employment" shall also include the deliv-
25 ery or sale and delivery of newspapers or periodicals by a newspaper
26 carrier as defined in section thirty-two hundred twenty-eight of the
27 education law, BUT SHALL NOT INCLUDE DELIVERY OF NEWSPAPERS OR SHOPPING
28 NEWS (INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH TRADE OR BUSINESS)
29 BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTATION
30 SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE
31 MEANING OF ARTICLE TWENTY-FIVE-C OF THE LABOR LAW. The term "employ-
32 ment" shall not include the services of a licensed real estate broker or
33 sales associate if it be proven that (a) substantially all of the remun-
34 eration (whether or not paid in cash) for the services performed by such
35 broker or sales associate is directly related to sales or other output
36 (including the performance of services) rather than to the number of
37 hours worked; (b) the services performed by the broker or sales associ-
38 ate are performed pursuant to a written contract executed between such
39 broker or sales associate and the person for whom the services are
40 performed within the past twelve to fifteen months; and (c) the written
41 contract provided for in paragraph (b) herein was not executed under
42 duress and contains the following provisions:
43 S 7. This act shall take effect immediately.