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

10283

I N A S S E M B L Y

May 20, 2016

Introduced by M. of A. TITONE -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, relating to the definition of employee; and providing for the repeal of such provisions

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

Section 1. The fourth undesignated paragraph of subdivision 4 of section 2 of the workers' compensation law, as added by chapter 903 of the laws of 1986, is amended to read as follows:

"Employee" shall also mean, for purposes of this chapter ONLY, AND NOT FOR THE PURPOSES OF ANY OTHER PROVISION OR STATUTE DEPENDENT UPON THE DEFINITION OF EMPLOYEE, a professional musician or a person otherwise engaged in the performing arts who performs services as such for a television or radio station or network, a film production, a theatre, hotel, restaurant, night club or similar establishment unless, by written contract, such musician or person is stipulated to be an employee of another employer covered by this chapter. "Engaged in the performing arts" shall mean performing service in connection with the production of or performance in any artistic endeavor which requires artistic or technical skill or expertise. HOWEVER, A MUSICIAN OR PERSON WHO IS AN EXECUTIVE OFFICER OF A CORPORATION WHICH CONTRACTS FOR THE MUSICIAN OR PERSON'S SERVICES, AND WHO IF NOT A MUSICIAN OR PERSON OTHERWISE ENGAGED IN PERFORMING ARTS WOULD BE DEEMED EXCLUDED FROM COVERAGE BY PARAGRAPHS (C) AND E OF SUBDIVISION SIX OF SECTION FIFTY-FOUR OF THIS CHAPTER, WILL NOT BE AN "EMPLOYEE" FOR PURPOSES OF THIS CHAPTER IF SUCH MUSICIAN OR PERSON ESTABLISHES, BEFORE THE BOARD OR IN A COURT OF LAW, THAT HE OR SHE WOULD NOT BE AN "EMPLOYEE" AT COMMON LAW; AND IN MAKING SUCH DETERMINATION, THE BOARD OR THE COURT WILL CONSIDER THE DEGREE OF CONTROL EXERCISED BY THE PURPORTED EMPLOYER OVER THE RESULTS PRODUCED OR THE MEANS USED TO ACHIEVE THE RESULTS, EXAMINING THE FOLLOWING FACTORS: WHETHER THE MUSICIAN OR PERSON (A) WORKED AT HIS OR HER OWN CONVENIENCE, (B) WAS FREE TO ENGAGE IN OTHER EMPLOYMENT, (C) RECEIVED FRINGE BENEFITS, (D) WAS ON THE EMPLOYER'S PAYROLL, AND (E) WAS ON A FIXED SCHEDULE.

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

LBD15407-01-6

S 2. This act shall take effect immediately and shall apply to all cases, matters or proceedings pending on such date, or which have not been finally adjudicated on such date or commenced on or after such date; provided, however, that this act shall expire and be deemed repealed 3 years after such effective date.