

1543

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 12, 2015

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Introduced by M. of A. MAGEE, McLAUGHLIN, LOPEZ, STIRPE, BRINDISI --  
Multi-Sponsored by -- M. of A. CROUCH -- read once and referred to  
the Committee on Labor

AN ACT to amend the labor law, in relation to excluding certain seasonal  
fair workers from the definition of employee for purposes of the mini-  
mum wage act

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

1     Section 1. Subdivision 5 of section 651 of the labor law, as amended  
2     by chapter 481 of the laws of 2010, is amended to read as follows:  
3     5. "Employee" includes any individual employed or permitted to work by  
4     an employer in any occupation, but shall not include any individual who  
5     is employed or permitted to work: (a) on a casual basis in service as a  
6     part time baby sitter in the home of the employer; (b) in labor on a  
7     farm; (c) in a bona fide executive, administrative, or professional  
8     capacity; (d) as an outside salesman; (e) as a driver engaged in operat-  
9     ing a taxicab; (f) as a volunteer, learner or apprentice by a corpo-  
10    ration, unincorporated association, community chest, fund or foundation  
11    organized and operated exclusively for religious, charitable or educa-  
12    tional purposes, no part of the net earnings of which inures to the  
13    benefit of any private shareholder or individual; (g) as a member of a  
14    religious order, or as a duly ordained, commissioned or licensed minis-  
15    ter, priest or rabbi, or as a sexton, or as a christian science reader;  
16    (h) in or for such a religious or charitable institution, which work is  
17    incidental to or in return for charitable aid conferred upon such indi-  
18    vidual and not under any express contract of hire; (i) in or for such a  
19    religious, educational or charitable institution if such individual is a  
20    student; (j) in or for such a religious, educational or charitable  
21    institution if the earning capacity of such individual is impaired by  
22    age or by physical or mental deficiency or injury; (k) in or for a  
23    summer camp or conference of such a religious, educational or charitable

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

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1 institution for not more than three months annually; (l) as a staff  
2 counselor in a children's camp; (m) in or for a college or university  
3 fraternity, sorority, student association or faculty association, no  
4 part of the net earnings of which inures to the benefit of any private  
5 shareholder or individual, and which is recognized by such college or  
6 university, if such individual is a student; (n) by a federal, state or  
7 municipal government or political subdivision thereof[. The exclusions  
8 from the term "employee" contained in this subdivision shall be as  
9 defined by regulations of the commissioner; or]; (o) as a volunteer at a  
10 recreational or amusement event run by a business that operates such  
11 events, provided that no single such event lasts longer than eight  
12 consecutive days and no more than one such event concerning substantial-  
13 ly the same subject matter occurs in any calendar year. Any such volun-  
14 teer shall be at least eighteen years of age. A business seeking cover-  
15 age under this paragraph shall notify every volunteer in writing, in  
16 language acceptable to the commissioner, that by volunteering his or her  
17 services, such volunteer is waiving his or her right to receive the  
18 minimum wage pursuant to this article. Such notice shall be signed and  
19 dated by a representative of the business and the volunteer and kept on  
20 file by the business for thirty-six months[.]; OR (P) AN EMPLOYEE OF A  
21 TRAVELING AMUSEMENT OR RECREATIONAL ESTABLISHMENT WHO RESIDES OUTSIDE OF  
22 THIS STATE, PROVIDED THAT (I) SUCH ESTABLISHMENT ADHERES TO CURRENT  
23 STATE MINIMUM WAGE RATES FOR ALL EMPLOYEES, (II) SUCH ESTABLISHMENT  
24 MEETS THE BUSINESS OPERATIONS CRITERIA ESTABLISHED UNDER PARAGRAPH THREE  
25 OF SUBDIVISION A OF SECTION THIRTEEN OF THE FEDERAL FAIR LABOR STANDARDS  
26 ACT, AND (III) SUCH PERSON IS EMPLOYED IN HIS OR HER CAPACITY AS AN  
27 EMPLOYEE ON THE PREMISES OF A COUNTY OR AGRICULTURAL FAIRGROUND;  
28 PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS PARAGRAPH SHALL NOT  
29 SUPERSEDE THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR APPLY TO A  
30 POLICY THAT IS THE RESULT OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN  
31 AN EMPLOYER AND A RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION. THE  
32 EXCLUSIONS FROM THE TERM "EMPLOYEE" CONTAINED IN THIS SUBDIVISION SHALL  
33 BE AS DEFINED BY REGULATIONS OF THE COMMISSIONER.

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

39 S 2. This act shall take effect on the thirtieth day after it shall  
40 have become a law.