

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:

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 PERSON. THE TERM "EMPLOYMENT" SHALL NOT INCLUDE
4 THE SERVICES OF A PERSON ENGAGED IN THE DELIVERY OR DISTRIBUTION OF
5 NEWSPAPERS, "PENNYSAVERS", SHOPPING NEWS OR ANY FREE DISTRIBUTION PUBLI-
6 CATIONS (INCLUDING ANY SERVICES THAT ARE DIRECTLY RELATED TO SUCH DELIV-
7 ERY OR DISTRIBUTION), IF (A) SUBSTANTIALLY ALL OF THE REMUNERATION FOR
8 THE PERFORMANCE OF THE SERVICES IS RELATED TO SALES OR OTHER OUTPUT (FOR
9 EXAMPLE, FEE PER-COPY OR BUY/SELL) RATHER THAN TO THE NUMBER OF HOURS
10 WORKED; (B) THE SERVICES ARE PERFORMED PURSUANT TO A WRITTEN CONTRACT;
11 AND (C) THE WRITTEN CONTRACT CONTAINS PROVISIONS EVIDENCING ANY SEVEN OF
12 THE FOLLOWING:
13 (1) THE PERSON IS NOT TREATED AS AN EMPLOYEE FOR FEDERAL TAX PURPOSES,
14 AND HE OR SHE WILL BE ISSUED IRS FORM 1099 FOR FEDERAL TAX PURPOSES;
15 (2) THE PERSON HAS THE RIGHT TO DETERMINE THE SEQUENCE OF DELIVERY IN
16 HIS OR HER GEOGRAPHIC AREA OR ROUTE;
17 (3) THE PERSON IS NOT REQUIRED TO ATTEND GROUP MEETINGS;
18 (4) THE PERSON HAS THE RIGHT TO ENGAGE THE SERVICES OF OTHERS TO
19 DISTRIBUTE THE PUBLICATION OR PRODUCT WITHOUT APPROVAL OF THE PUBLISHING
20 COMPANY;
21 (5) THE PERSON IS NOT REQUIRED TO SUBMIT WRITTEN REPORTS WITH RESPECT
22 TO TIME SPENT OR ACTIVITIES ENGAGED IN RELATING TO DISTRIBUTION
23 SERVICES, OTHER THAN THOSE FOR INTERNAL CIRCULATION STATISTICS, AUDITS
24 OR AS REQUIRED BY LAW;

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

LBD10624-01-5

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

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

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

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

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

15 S 2. Subdivision 5 of section 651 of the labor law, as amended by
16 chapter 481 of the laws of 2010, is amended to read as follows:

17 5. "Employee" includes any individual employed or permitted to work by
18 an employer in any occupation, but shall not include any individual who
19 is employed or permitted to work: (a) on a casual basis in service as a
20 part time baby sitter in the home of the employer; (b) in labor on a
21 farm; (c) in a bona fide executive, administrative, or professional
22 capacity; (d) as an outside salesman; (e) as a driver engaged in operat-
23 ing a taxicab; (f) as a volunteer, learner or apprentice by a corpo-
24 ration, unincorporated association, community chest, fund or foundation
25 organized and operated exclusively for religious, charitable or educa-
26 tional purposes, no part of the net earnings of which inures to the
27 benefit of any private shareholder or individual; (g) as a member of a
28 religious order, or as a duly ordained, commissioned or licensed minis-
29 ter, priest or rabbi, or as a sexton, or as a christian science reader;
30 (h) in or for such a religious or charitable institution, which work is
31 incidental to or in return for charitable aid conferred upon such indi-
32 vidual and not under any express contract of hire; (i) in or for such a
33 religious, educational or charitable institution if such individual is a
34 student; (j) in or for such a religious, educational or charitable
35 institution if the earning capacity of such individual is impaired by
36 age or by physical or mental deficiency or injury; (k) in or for a
37 summer camp or conference of such a religious, educational or charitable
38 institution for not more than three months annually; (l) as a staff
39 counselor in a children's camp; (m) in or for a college or university
40 fraternity, sorority, student association or faculty association, no
41 part of the net earnings of which inures to the benefit of any private
42 shareholder or individual, and which is recognized by such college or
43 university, if such individual is a student; (n) by a federal, state or
44 municipal government or political subdivision thereof. The exclusions
45 from the term "employee" contained in this subdivision shall be as
46 defined by regulations of the commissioner; [or] (o) as a volunteer, WHO
47 IS EIGHTEEN YEARS OF AGE OR OLDER, at a recreational or amusement event
48 run by a business that operates such events, provided that no single
49 such event lasts longer than eight consecutive days and no more than one
50 such event concerning substantially the same subject matter occurs in
51 any calendar year; OR (P) AS A NEWSPAPER DELIVERY PERSON AS REFERRED TO
52 IN SUBDIVISION TWENTY-THREE OF SECTION FIVE HUNDRED ELEVEN OF THIS CHAP-
53 TER. [Any such volunteer shall be at least eighteen years of age.] A
54 business seeking coverage under [this] paragraph (P) OF THIS SUBDIVISION
55 shall notify every volunteer in writing, in language acceptable to the
56 commissioner, that by volunteering his or her services, such volunteer

1 is waiving his or her right to receive the minimum wage pursuant to this
2 article. Such notice shall be signed and dated by a representative of
3 the business and the volunteer and kept on file by the business for
4 thirty-six months.

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

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

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

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

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

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

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

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

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

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

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

43 (IX) THE DELIVERY PERSON HAS THE ULTIMATE RESPONSIBILITY TO RESOLVE
44 SUBSCRIBER AND/OR CUSTOMER COMPLAINTS, EVEN THOUGH THE PUBLISHING COMPA-
45 NY MAY RECEIVE AND RESOLVE CUSTOMER COMPLAINTS AND MAKE APPROPRIATE
46 FINANCIAL SETTLEMENT WITH THE DELIVERY PERSON; OR

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

49 S 4. This act shall take effect on the first of January next succeed-
50 ing the date on which it shall have become a law.