4363

## 2015-2016 Regular Sessions

## IN SENATE

## March 17, 2015

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to employee work schedules

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

1 Section 1. Article 5 of the labor law is amended by adding a new title 2 2 to read as follows:

TITLE 2

SPECIAL REQUIREMENTS

SECTION 171. DEFINITIONS.

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- 172. ADVANCED NOTICE REQUIREMENTS.
- 173. EXCHANGE OF SHIFTS.
- 174. PROHIBITED ACTS.
- 175. EXCEPTIONS.
- 176. ENFORCEMENT.
- S 171. DEFINITIONS. AS USED IN THIS TITLE:
- 12 1. "EMPLOYER" SHALL MEAN ANY PERSON, CORPORATION, LIMITED LIABILITY
  13 COMPANY, LIMITED LIABILITY PARTNERSHIP OR ASSOCIATION EMPLOYING FIFTY OR
  14 MORE FULL-TIME EMPLOYEES WITHIN THIS STATE OR A PROPORTIONAL NUMBER OF
  15 PART-TIME EMPLOYEES, WHO EMPLOYS A RETAIL EMPLOYEE, FOOD SERVICE EMPLOY16 EE OR CLEANING EMPLOYEE.
  - 2. "EMPLOYEE" SHALL MEAN AN INDIVIDUAL EMPLOYED AS A RETAIL EMPLOYEE, FOOD SERVICE EMPLOYEE OR CLEANING EMPLOYEE BY AN EMPLOYER.
- 19 3. "RETAIL EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED IN THE 20 SALE OF ITEMS AT A RETAIL STORE ENGAGED IN THE SALE OF ITEMS TO CONSUM-21 ERS.
- 4. "FOOD SERVICE EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED IN THE SERVICE OF FOOD OR BEVERAGE TO GUESTS, PATRONS OR CUSTOMERS IN THE HOTEL OR RESTAURANT INDUSTRY, INCLUDING BUT NOT LIMITED TO, WAIT STAFF, BARTENDERS, CAPTAINS AND BUSING PERSONNEL; AND WHO REGULARLY RECEIVES TIPS FROM SUCH GUESTS, PATRONS OR CUSTOMERS.

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

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5. "CLEANING EMPLOYEE" SHALL MEAN ANY EMPLOYEE PRIMARILY ENGAGED IN ACTIVITIES INVOLVING CLEANING IN A COMMERCIAL CONTEXT AT A COMMERCIAL OR RESIDENTIAL SETTING INCLUDING, BUT NOT LIMITED TO, JANITORS, MAIDS, HOUSEKEEPING CLEANERS AND BUILDING CLEANERS.

- S 172. ADVANCED NOTICE REQUIREMENTS. 1. ON OR BEFORE THE FIRST DAY OF EMPLOYMENT OF A RETAIL EMPLOYEE, FOOD SERVICE EMPLOYEE OR CLEANING EMPLOYEE, THE EMPLOYER OR ITS DESIGNEE SHALL INFORM SUCH EMPLOYEE IN WRITING OF THE EMPLOYEE'S WORK SCHEDULE AND THE MINIMUM NUMBER OF HOURS THE EMPLOYEE WILL BE ASSIGNED ON A MONTHLY BASIS.
- 2. ON OR BEFORE THE FOURTEENTH DAY AFTER THE EFFECTIVE DATE OF THIS SECTION AND EVERY FOURTEEN DAYS THEREAFTER, EACH EMPLOYER OR ITS DESIGNEE SHALL PROVIDE EACH EMPLOYEE WITH THE DAYS THAT THE EMPLOYEE HAS BEEN ASSIGNED TO WORK AND THE HOURS OF WORK ON THOSE DAYS IN WRITING. SCHEDULING NOTICES SHALL ADDITIONALLY BE POSTED IN A CONSPICUOUS PLACE IN EVERY WORKPLACE OF THE EMPLOYER AND MAY BE REQUESTED BY ELECTRONIC MEANS.
- 3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY DURING ANY PERIOD WHERE REGULAR OPERATIONS OF THE EMPLOYER ARE SUSPENDED AS A RESULT OF EVENTS BEYOND THE EMPLOYER'S CONTROL.
- S 173. EXCHANGE OF SHIFTS. ANY EMPLOYEES WHO WORK FOR THE SAME EMPLOYER IN THE SAME OR SUBSTANTIALLY SIMILAR LINE OF WORK MAY MUTUALLY AGREE TO EXCHANGE WORK SCHEDULES BETWEEN THE TWO EMPLOYEES. FOR ANY CHANGE OF SCHEDULE AS A RESULT OF THIS SECTION, THE EMPLOYER SHALL NOT BE REQUIRED TO PROVIDE ANY NOTICE TO ANY OTHER EMPLOYEES PURSUANT TO SECTION ONE HUNDRED SEVENTY-TWO OF THIS TITLE.
  - S 174. PROHIBITED ACTS. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO:
- 1. INTERFERE WITH, RESTRAIN OR DENY THE EXERCISE OF, OR ATTEMPT TO EXERCISE ANY RIGHTS PROVIDED TO AN EMPLOYEE BY THE PROVISIONS OF THIS TITLE;
- 2. DISCHARGE, THREATEN TO DISCHARGE, DEMOTE, SUSPEND, REDUCE WORK HOURS OF OR TAKE ANY OTHER ADVERSE EMPLOYMENT ACTION AGAINST ANY EMPLOY-EE WHO EXERCISES OR ATTEMPTS TO EXERCISE ANY RIGHTS PROVIDED BY THIS TITLE; OR
- 3. DISCHARGE OR DISCRIMINATE IN ANY OTHER MANNER AGAINST AN INDIVIDUAL BECAUSE SUCH INDIVIDUAL HAS FILED ANY CHARGE, INSTITUTED ANY PROCEEDING, PROVIDED ANY INFORMATION IN CONNECTION WITH AN INVESTIGATION, OR TESTIFIED OR IS ABOUT TO TESTIFY IN ANY PROCEEDING AS A RESULT OF THE PROVISIONS OF THIS TITLE.
- S 175. EXCEPTIONS. NOTHING IN THIS TITLE SHALL BE CONSTRUED AS PROHIBITING OR CONFLICTING WITH ANY PROVISION OF LAW, OBLIGATION OR COLLECTIVE BARGAINING AGREEMENT THAT IMPOSES INCREASED LEVELS OF PROTECTIONS FOR EMPLOYEES.
- S 176. ENFORCEMENT. FOR EACH VIOLATION OF THIS TITLE BY AN EMPLOYER, THE DEPARTMENT MAY ASSESS A CIVIL PENALTY NOT TO EXCEED FIFTY DOLLARS.
- S 2. Severability. If any clause, sentence, paragraph, section, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, this judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part of this act directly involved in the controversy in which the judgment shall have been rendered.
- 52 S 3. This act shall take effect on the ninetieth day after it shall 53 have become a law.