

5016

2015-2016 Regular Sessions

I N   S E N A T E

April 28, 2015

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Introduced by Sen. AVELLA -- 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 the definition of "employee" for the purpose of the minimum wage act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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] SALESPERSON IF SUCH INDIVIDUAL IS  
9     NOT CONTRACTUALLY BOUND TO ANY PERSON, FIRM, CORPORATION OR OTHER ENTITY  
10    AS A CAPTIVE SALESPERSON, SOLICITOR, AGENT, VENDOR, OR OTHER REPRESENTATIVE;  
11    (e) as a driver engaged in operating a taxicab; (f) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated  
12    exclusively for religious, charitable or educational purposes, no part  
13    of the net earnings of which inures to the benefit of any private shareholder or individual; (g) as a member of a religious order, or as a duly  
14    ordained, commissioned or licensed minister, priest or rabbi, or as a  
15    sexton, or as a christian science reader; (h) in or for such a religious  
16    or charitable institution, which work is incidental to or in return for  
17    charitable aid conferred upon such individual and not under any express  
18    contract of hire; (i) in or for such a religious, educational or charitable  
19    institution if such individual is a student; (j) in or for such a  
20    religious, educational or charitable institution if the earning capacity  
21    of such individual is impaired by age or by physical or mental deficiency  
22    or injury; (k) in or for a summer camp or conference of such a reli-

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

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1 gious, educational or charitable institution for not more than three  
2 months annually; (l) as a staff counselor in a children's camp; (m) in  
3 or for a college or university fraternity, sorority, student association  
4 or faculty association, no part of the net earnings of which inures to  
5 the benefit of any private shareholder or individual, and which is  
6 recognized by such college or university, if such individual is a  
7 student; (n) by a federal, state or municipal government or political  
8 subdivision thereof. The exclusions from the term "employee" contained  
9 in this subdivision shall be as defined by regulations of the commis-  
10 sioner; or (o) as a volunteer at a recreational or amusement event run  
11 by a business that operates such events, provided that no single such  
12 event lasts longer than eight consecutive days and no more than one such  
13 event concerning substantially the same subject matter occurs in any  
14 calendar year. Any such volunteer shall be at least eighteen years of  
15 age. A business seeking coverage under this paragraph shall notify every  
16 volunteer in writing, in language acceptable to the commissioner, that  
17 by volunteering his or her services, such volunteer is waiving his or  
18 her right to receive the minimum wage pursuant to this article. Such  
19 notice shall be signed and dated by a representative of the business and  
20 the volunteer and kept on file by the business for thirty-six months.  
21 "Employee" also includes any individual employed or permitted to work  
22 in any non-teaching capacity by a school district or board of cooper-  
23 ative educational services except that the provisions of sections six  
24 hundred fifty-three through six hundred fifty-nine of this article shall  
25 not be applicable in any such case.  
26 S 2. This act shall take effect on the first of January next succeed-  
27 ing the date on which it shall have become a law.