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Cal. No. 98

I N S E N A T E

January 14, 2016

Introduced by Sens. AMEDORE, BRESLIN, LITTLE, RANZENHOFER, RITCHIE, SERINO, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 PERSONS. THE TERM "EMPLOYMENT" SHALL NOT
4 INCLUDE SERVICE PERFORMED BY ANY PERSON IF:
5 (A) SUCH PERSON IS ENGAGED IN THE TRADE OR BUSINESS OF THE DELIVERING
6 OR DISTRIBUTION OF NEWSPAPERS OR SHOPPING NEWS (INCLUDING ANY SERVICES
7 DIRECTLY RELATED TO SUCH TRADE OR BUSINESS);
8 (B) SUBSTANTIALLY ALL THE REMUNERATION (WHETHER OR NOT PAID IN CASH)
9 FOR THE PERFORMANCE OF THE SERVICES DESCRIBED IN PARAGRAPH (A) OF THIS
10 SUBDIVISION IS DIRECTLY RELATED TO SALES OR OTHER OUTPUT (INCLUDING THE
11 PERFORMANCE OF SERVICES) RATHER THAN TO THE NUMBER OF HOURS WORKED; AND
12 (C) THE SERVICES PERFORMED BY THE PERSON ARE PERFORMED PURSUANT TO A
13 WRITTEN CONTRACT BETWEEN SUCH PERSON AND THE PERSON FOR WHOM THE
14 SERVICES ARE PERFORMED, AND SUCH CONTRACT PROVIDES THAT PERSON WILL NOT
15 BE TREATED AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICES FOR FEDERAL TAX
16 PURPOSES.
17 S 2. Subdivision 16 of section 511 of the labor law, as amended by
18 chapter 102 of the laws of 2002, is amended to read as follows:
19 16. Non-applicability of exclusions. The exclusions described in
20 subdivisions eight, nine, twelve, thirteen and fourteen of this section
21 shall not apply to services performed for a nonprofit organization as
22 defined in section five hundred sixty-three or for a governmental entity
23 as defined in section five hundred sixty-five or for an Indian tribe as

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

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defined in section five hundred sixty-six of this article. THE EXCLUSIONS DESCRIBED IN SUBDIVISION TWENTY-THREE OF THIS SECTION SHALL NOT APPLY TO COMMERCIAL GOODS TRANSPORTATION SERVICES PERFORMED FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE MEANING OF ARTICLE TWENTY-FIVE-C OF THIS CHAPTER.

S 3. The opening paragraph of subdivision 5 of section 651 of the labor law, as amended by chapter 481 of the laws of 2010, is amended to read as follows:

"Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) on a casual basis in service as a part time baby sitter in the home of the employer; (b) in labor on a farm; (c) in a bona fide executive, administrative, or professional capacity; (d) as an outside salesman; (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 exclusively for religious, charitable or educational purposes, no part 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 ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; (h) in or for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (i) in or for such a religious, educational or charitable institution if such individual is a student; (j) in or for such a religious, educational or charitable institution if the earning capacity of such individual is impaired by age or by physical or mental deficiency or injury; (k) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; (l) as a staff counselor in a children's camp; (m) in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; (n) by a federal, state or municipal government or political subdivision thereof[. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner]; [or] (o) as a volunteer at a recreational or amusement event run by a business that operates such events, provided that no single such event lasts longer than eight consecutive days and no more than one such event concerning substantially the same subject matter occurs in any calendar year[. Any], WHERE (1) ANY such volunteer shall be at least eighteen years of age[. A], (2) A business seeking coverage under this paragraph shall notify every volunteer in writing, in language acceptable to the commissioner, that by volunteering his or her services, such volunteer is waiving his or her right to receive the minimum wage pursuant to this article[. Such], AND (3) SUCH notice shall be signed and dated by a representative of the business and the volunteer and kept on file by the business for thirty-six months; OR (P) IN THE DELIVERY OF NEWSPAPERS OR SHOPPING NEWS TO THE CONSUMER BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTATION SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE MEANING OF ARTICLE TWENTY-FIVE-C OF THIS CHAPTER. THE EXCLUSIONS FROM THE TERM "EMPLOYEE" CONTAINED IN THIS SUBDIVISION SHALL BE AS DEFINED BY REGULATIONS OF THE COMMISSIONER.

1 S 4. The opening paragraph of subdivision 3 of section 2 of the work-
2 ers' compensation law, as amended by chapter 392 of the laws of 2008, is
3 amended to read as follows:

4 "Employer," except when otherwise expressly stated, means a person,
5 partnership, association, corporation, and the legal representatives of
6 a deceased employer, or the receiver or trustee of a person, partner-
7 ship, association or corporation, having one or more persons in employ-
8 ment, including the state, a municipal corporation, fire district or
9 other political subdivision of the state, and every authority or commis-
10 sion heretofore or hereafter continued or created by the public authori-
11 ties law. For the purposes of this chapter only "employer" shall also
12 mean a person, partnership, association, corporation, and the legal
13 representatives of a deceased employer, or the receiver or trustee of a
14 person, partnership, association or corporation who delivers or causes
15 to be delivered newspapers or periodicals for delivering or selling and
16 delivering by a newspaper carrier under the age of eighteen years as
17 defined in section thirty-two hundred twenty-eight of the education law,
18 BUT SHALL NOT INCLUDE DELIVERING NEWSPAPERS OR SHOPPING NEWS TO THE
19 CONSUMER (INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH TRADE OR BUSI-
20 NESS) BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTATION
21 SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN THE
22 MEANING OF ARTICLE TWENTY-FIVE-C OF THE LABOR LAW. For the purpose of
23 this chapter only, "employer" shall also mean a person, partnership,
24 association, or corporation who leases or otherwise contracts with an
25 operator or lessee for the purpose of driving, operating or leasing a
26 taxicab as so defined in section one hundred forty-eight-a of the vehi-
27 cle and traffic law, except where such person is an owner-operator of
28 such taxicab who personally regularly operates such vehicle an average
29 of forty or more hours per week and leases such taxicab for some portion
30 of the remaining time, and except if the taxicab is a livery subject to
31 section eighteen-c of this chapter, in which case the livery driver's
32 employer shall only be such employer as is defined in that section. For
33 the purposes of this section only, such an owner-operator shall be
34 deemed to be an employer if he controls, directs, supervises, or has the
35 power to hire or terminate such other person who leases the vehicle.

36 S 5. The opening paragraph of subdivision 4 of section 2 of the work-
37 ers' compensation law, as amended by chapter 558 of the laws of 2013, is
38 amended to read as follows:

39 "Employee" means a person engaged in one of the occupations enumerated
40 in section three of this article or who is in the service of an employer
41 whose principal business is that of carrying on or conducting a hazard-
42 ous employment upon the premises or at the plant, or in the course of
43 his or her employment away from the plant of his or her employer;
44 "employee" shall also mean for the purposes of this chapter any individ-
45 ual performing services in construction for a contractor who does not
46 overcome the presumption of employment as provided under section eight
47 hundred sixty-one-c of the labor law; "employee" shall also mean for the
48 purposes of this chapter any individual performing services in the
49 commercial goods transportation industry for a commercial goods trans-
50 portation contractor who does not overcome the presumption of employment
51 as provided under section eight hundred sixty-two-b of the labor law;
52 "employee" shall also mean for the purposes of this chapter civil
53 defense volunteers who are personnel of volunteer agencies sponsored or
54 authorized by a local office under regulations of the civil defense
55 commission, to the extent of the provisions of groups seventeen and
56 nineteen; "employee" shall at the election of a municipal corporation

1 made pursuant to local law duly enacted also mean a member of an auxil-
2 iary police organization authorized by local law; and for the purposes
3 of this chapter only a newspaper carrier under the age of eighteen years
4 as defined in section thirty-two hundred twenty-eight of the education
5 law, BUT SHALL NOT INCLUDE DELIVERY OF NEWSPAPERS OR SHOPPING NEWS TO
6 THE CONSUMER (INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH TRADE OR
7 BUSINESS) BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS TRANSPORTA-
8 TION SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR WITHIN
9 THE MEANING OF ARTICLE TWENTY-FIVE-C OF THE LABOR LAW, and shall not
10 include domestic servants except as provided in section three of this
11 chapter, and except where the employer has elected to bring such employ-
12 ees under the law by securing compensation in accordance with the terms
13 of section fifty of this chapter. The term "employee" shall not include
14 persons who are members of a supervised amateur athletic activity oper-
15 ated on a non-profit basis, provided that said members are not also
16 otherwise engaged or employed by any person, firm or corporation partic-
17 ipating in said athletic activity, nor shall it include the spouse or
18 minor child of an employer who is a farmer unless the services of such
19 spouse or minor child shall be engaged by said employer under an express
20 contract of hire nor shall it include an executive officer of a corpo-
21 ration who at all times during the period involved owns all of the
22 issued and outstanding stock of the corporation and holds all of the
23 offices pursuant to paragraph (e) of section seven hundred fifteen of
24 the business corporation law or two executive officers of a corporation
25 who at all times during the period involved between them own all of the
26 issued and outstanding stock of such corporation and hold all such
27 offices except as provided in subdivision six of section fifty-four of
28 this chapter provided, however, that where there are two executive offi-
29 cers of a corporation each officer must own at least one share of stock,
30 nor shall it include a self-employed person or a partner of a partner-
31 ship as defined in section ten of the partnership law who is not covered
32 under a compensation insurance contract or a certificate of self-insu-
33 rance as provided in subdivision eight of section fifty-four of this
34 chapter, nor shall it include farm laborers except as provided in group
35 fourteen-b of section three of this chapter. If a farm labor contractor
36 recruits or supplies farm laborers for work on a farm, such farm labor-
37 ers shall for the purposes of this chapter be deemed to be employees of
38 the owner or lessee of such farm. The term "employee" shall not include
39 baby sitters as defined in subdivision three of section one hundred
40 thirty-one and subdivision three of section one hundred thirty-two of
41 the labor law or minors fourteen years of age or over engaged in casual
42 employment consisting of yard work and household chores in and about a
43 one family owner-occupied residence or the premises of a non-profit,
44 non-commercial organization, not involving the use of power-driven
45 machinery. The term "employee" shall not include persons engaged by the
46 owner in casual employment consisting of yard work, household chores and
47 making repairs to or painting in and about a one-family owner-occupied
48 residence. The term "employee" shall not include the services of a
49 licensed real estate broker or sales associate if it be proven that (a)
50 substantially all of the remuneration (whether or not paid in cash) for
51 the services performed by such broker or sales associate is directly
52 related to sales or other output (including the performance of services)
53 rather than to the number of hours worked; (b) the services performed by
54 the broker or sales associate are performed pursuant to a written
55 contract executed between such broker or sales associate and the person
56 for whom the services are performed within the past twelve to fifteen

1 months; and (c) the written contract provided for in paragraph (b) of
2 this subdivision was not executed under duress and contains the follow-
3 ing provisions:

4 S 6. The opening paragraph of subdivision 5 of section 2 of the work-
5 ers' compensation law, as separately amended by chapters 470 and 903 of
6 the laws of 1986, is amended to read as follows:

7 "Employment" includes employment in a trade, business or occupation
8 carried on by the employer for pecuniary gain, or in connection there-
9 with, except where the employer elects to bring his employees within the
10 provisions of this chapter as provided in section three OF THIS ARTICLE,
11 and except employment as a domestic worker as provided in section three
12 OF THIS ARTICLE, and except where a town elects to have the provisions
13 of this chapter apply to the town superintendent of highways. "Employ-
14 ment" shall also include, in connection with the civil defense effort
15 and for purposes of this chapter the service of a civil defense volun-
16 teer in authorized activities of a volunteer agency sponsored or author-
17 ized by a local office as defined in a state defense emergency act.
18 "Employment" shall also include participation with an auxiliary police
19 effort made within a municipal corporation which elected to include
20 auxiliary policemen within the definition of "employee" as authorized by
21 subdivision four of this section and for purposes of this chapter, the
22 services of members or volunteers in activities authorized by local law.
23 The service of a civil defense volunteer who is also an employee recom-
24 pensed by an employer for service to such employer, shall not be deemed
25 to be in employment of a local office when he is performing civil
26 defense service in his employment or in relation thereto. For the
27 purposes of this chapter only "employment" shall also include the deliv-
28 ery or sale and delivery of newspapers or periodicals by a newspaper
29 carrier as defined in section thirty-two hundred twenty-eight of the
30 education law, BUT SHALL NOT INCLUDE DELIVERY OF NEWSPAPERS OR SHOPPING
31 NEWS TO THE CONSUMER (INCLUDING ANY SERVICES DIRECTLY RELATED TO SUCH
32 TRADE OR BUSINESS) BY A PERSON WHO IS NOT PERFORMING COMMERCIAL GOODS
33 TRANSPORTATION SERVICES FOR A COMMERCIAL GOODS TRANSPORTATION CONTRACTOR
34 WITHIN THE MEANING OF ARTICLE TWENTY-FIVE-C OF THE LABOR LAW. The term
35 "employment" shall not include the services of a licensed real estate
36 broker or sales associate if it be proven that (a) substantially all of
37 the remuneration (whether or not paid in cash) for the services
38 performed by such broker or sales associate is directly related to sales
39 or other output (including the performance of services) rather than to
40 the number of hours worked; (b) the services performed by the broker or
41 sales associate are performed pursuant to a written contract executed
42 between such broker or sales associate and the person for whom the
43 services are performed within the past twelve to fifteen months; and (c)
44 the written contract provided for in paragraph (b) herein was not
45 executed under duress and contains the following provisions:

46 S 7. This act shall take effect immediately.