STATE OF NEW YORK

4473

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. MAGEE -- read once and referred to the Committee on Labor

AN ACT to amend the insurance law and the workers' compensation law, in relation to exempting members of supervised collegiate summer baseball leagues from the definition of employees for purposes of workers' compensation insurance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new section 3443-a to read as follows:

§ 3443-a. Supervised collegiate summer baseball leagues. Amateur, unpaid, collegiate players, except those determined to be employees pursuant to the National Labor Relations Act, in a supervised collegiate summer baseball league operated on a for-profit basis shall be exempt from the definition of employee pursuant to subdivision four of section two of the workers' compensation law. As such, an insurer issuing a workers' compensation and employers' liability insurance policy shall not be required to provide coverage to amateur, unpaid, collegiate players, except those determined to be employees pursuant to the National Labor Relations Act, in said collegiate summer baseball league.

§ 2. The opening paragraph of subdivision 4 of section 2 of the workers' compensation law, as amended by chapter 503 of the laws of 2016, is amended to read as follows:

"Employee" means a person engaged in one of the occupations enumerated in section three of this article or who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment upon the premises or at the plant, or in the course of his or her employment away from the plant of his or her employer; "employee" shall also mean for the purposes of this chapter any individual performing services in construction for a contractor who does not overcome the presumption of employment as provided under section eight

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

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hundred sixty-one-c of the labor law; "employee" shall also mean for the purposes of this chapter any individual performing services in the commercial goods transportation industry for a commercial goods transportation contractor who does not overcome the presumption of employment as provided under section eight hundred sixty-two-b of the labor law; "employee" shall also mean for the purposes of this chapter civil defense volunteers who are personnel of volunteer agencies sponsored or authorized by a local office under regulations of the civil defense commission, to the extent of the provisions of groups seventeen and nineteen; "employee" shall at the election of a municipal corporation made pursuant to local law duly enacted also mean a member of an auxiliary police organization authorized by local law; and for the purposes of this chapter only a newspaper carrier under the age of eighteen years as defined in section thirty-two hundred twenty-eight of the education law, [~~but shall not include delivery of newspapers or shopping news to the consumer (including any services directly related to such trade or business) 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 the labor law,~~] and shall not include domestic servants except as provided in section three of this [~~chapter~~] **article**, and except where the employer has elected to bring such employees under the law by securing compensation in accordance with the terms of section fifty of this chapter. The term "employee" shall not include persons who are members of a supervised amateur athletic activity operated on a non-profit basis, **or persons who are amateur, unpaid players in a supervised collegiate summer baseball league operated on a for-profit basis, except those amateur, unpaid players in a supervised collegiate summer baseball league operated on a for-profit basis who are determined to be employees pursuant to the National Labor Relations Act,** provided that said [~~members~~] **persons** are not also otherwise engaged or employed by any person, firm or corporation participating in said athletic activity **or collegiate summer baseball league**, nor shall it include the spouse or minor child of an employer who is a farmer unless the services of such spouse or minor child shall be engaged by said employer under an express contract of hire nor shall it include an executive officer of a corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices except as provided in subdivision six of section fifty-four of this chapter provided, however, that where there are two executive officers of a corporation each officer must own at least one share of stock, nor shall it include a self-employed person or a partner of a partnership as defined in section ten of the partnership law who is not covered under a compensation insurance contract or a certificate of self-insurance as provided in subdivision eight of section fifty-four of this chapter, nor shall it include farm laborers except as provided in group fourteen-b of section three of this [~~chapter~~] **article**. If a farm labor contractor recruits or supplies farm laborers for work on a farm, such farm laborers shall for the purposes of this chapter be deemed to be employees of the owner or lessee of such farm. The term "employee" shall not include baby sitters as defined in subdivision three of section one hundred thirty-one and subdivision three of section one hundred thirty-two of the labor law or minors four-

teen years of age or over engaged in casual employment consisting of yard work and household chores in and about a one family owner-occupied residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery. The term "employee" shall not include persons engaged by the owner in casual employment consisting of yard work, household chores and making repairs to or painting in and about a one-family owner-occupied residence. The term "employee" shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in paragraph (b) of this subdivision was not executed under duress and contains the following provisions:

§ 3. This act shall take effect immediately.