

STATE OF NEW YORK

4644

2017-2018 Regular Sessions

IN ASSEMBLY

February 3, 2017

Introduced by M. of A. MAGEE, McLAUGHLIN, LOPEZ, STIRPE, BRINDISI --
Multi-Sponsored by -- M. of A. CROUCH -- read once and referred to the
Committee on Labor

AN ACT to amend the labor law, in relation to excluding certain seasonal
fair workers from the definition of employee for purposes of the mini-
mum wage act

The People of the State of New York, represented in Senate and Assem-
bly, 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, the opening paragraph as amended by
3 chapter 503 of the laws of 2016, is amended to read as follows:

4 5. "Employee" includes any individual employed or permitted to work by
5 an employer in any occupation, but shall not include any individual who
6 is employed or permitted to work: (a) on a casual basis in service as a
7 part time baby sitter in the home of the employer; (b) in labor on a
8 farm; (c) in a bona fide executive, administrative, or professional
9 capacity; (d) as an outside salesman; (e) as a driver engaged in operat-
10 ing a taxicab; (f) as a volunteer, learner or apprentice by a corpo-
11 ration, unincorporated association, community chest, fund or foundation
12 organized and operated exclusively for religious, charitable or educa-
13 tional purposes, no part of the net earnings of which inures to the
14 benefit of any private shareholder or individual; (g) as a member of a
15 religious order, or as a duly ordained, commissioned or licensed minis-
16 ter, priest or rabbi, or as a sexton, or as a christian science reader;
17 (h) in or for such a religious or charitable institution, which work is
18 incidental to or in return for charitable aid conferred upon such indi-
19 vidual and not under any express contract of hire; (i) in or for such a
20 religious, educational or charitable institution if such individual is a
21 student; (j) in or for such a religious, educational or charitable
22 institution if the earning capacity of such individual is impaired by
23 age or by physical or mental deficiency or injury; (k) in or for a

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

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1 summer camp or conference of such a religious, educational or charitable
2 institution for not more than three months annually; (l) as a staff
3 counselor in a children's camp; (m) in or for a college or university
4 fraternity, sorority, student association or faculty association, no
5 part of the net earnings of which inures to the benefit of any private
6 shareholder or individual, and which is recognized by such college or
7 university, if such individual is a student; (n) by a federal, state or
8 municipal government or political subdivision thereof; (o) as a volun-
9 teer at a recreational or amusement event run by a business that oper-
10 ates such events, provided that no single such event lasts longer than
11 eight consecutive days and no more than one such event concerning
12 substantially the same subject matter occurs in any calendar year, where
13 (1) any such volunteer shall be at least eighteen years of age, (2) a
14 business seeking coverage under this paragraph shall notify every volun-
15 teer in writing, in language acceptable to the commissioner, that by
16 volunteering his or her services, such volunteer is waiving his or her
17 right to receive the minimum wage pursuant to this article, and (3) such
18 notice shall be signed and dated by a representative of the business and
19 the volunteer and kept on file by the business for thirty-six months;
20 ~~[or]~~ (p) in the delivery of newspapers or shopping news to the consumer
21 by a person who is not performing commercial goods transportation
22 services for a commercial goods transportation contractor within the
23 meaning of article twenty-five-C of this chapter; or (q) an employee of
24 a traveling amusement or recreational establishment who resides outside
25 of this state, provided that (i) such establishment adheres to current
26 state minimum wage rates for all employees, (ii) such establishment
27 meets the business operations criteria established under paragraph three
28 of subdivision a of section thirteen of the federal fair labor standards
29 act, and (iii) such person is employed in his or her capacity as an
30 employee on the premises of a county or agricultural fairground;
31 provided, however, that the provisions of this paragraph shall not
32 supersede the terms of a collective bargaining agreement or apply to a
33 policy that is the result of a collective bargaining agreement between
34 an employer and a recognized or certified employee organization. The
35 exclusions from the term "employee" contained in this subdivision shall
36 be as defined by regulations of the commissioner. The exclusions from
37 the term "employee" contained in this subdivision shall be as defined by
38 regulations of the commissioner.

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

44 § 2. This act shall take effect on the thirtieth day after it shall
45 have become a law.