STATE OF NEW YORK

11290

IN ASSEMBLY

July 25, 2018

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Skoufis) -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the minimum wage for employees with disabilities

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

Section 1. The opening paragraph of subdivision 5 of section 651 of the labor law, as amended by chapter 503 of the laws of 2016, 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

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

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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; (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, where (1) any such volunteer shall be at least eighteen years of age, (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, 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.

§ 2. Section 652 of the labor law is amended by adding a new subdivision 7 to read as follows:

7. No employer shall pay to any employee a wage that is less than the wage established pursuant to subdivisions one and two of this section on the basis that such employee has an actual or perceived disability. For the purposes of this subdivision, the term "disability" shall have the same meaning as set forth in subdivision twenty-one of section two hundred ninety-two of the executive law. Nothing in this subdivision shall be construed to limit the provisions of any other law or any minimum wage order issued under this article that authorizes an employer to pay a wage that is less than the wage established pursuant to subdivisions one and two of this section, provided that, in such case, an employee that has a disability shall be paid a wage that is consistent with an employee in a comparable position that does not have a disability.

§ 3. Paragraph (c) of subdivision 5 of section 655 of the labor law, as amended by chapter 747 of the laws of 1978, is amended to read as follows:

(c) The wage board may also recommend, to the extent necessary in order to prevent curtailment of opportunities for employment, regulations for (1) the employment of learners and apprentices, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and subject to such limitations as to time, number, proportion and length of service as shall be prescribed in such regulation, (2) the employment of individuals whose earning capacity is affected or impaired by youth or age [~~or by physical or mental deficiency or injury~~], under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulation, (3) the establishment of a period not extending beyond seventeen consecutive weeks during which a resort hotel or camp may employ students under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article as shall be prescribed in such regulation, and (4) the employment of residential employees in a non-profit making religious, charitable or educational organization or in a non-profit making college or university

sorority or fraternity under special certificates issued by the commissioner at such weekly wage as shall be prescribed in such regulation.

§ 4. Section 673 of the labor law is amended by adding a new subdivision 3 to read as follows:

3. No employer shall pay to any employee a wage that is less than the wage established pursuant to subdivisions one and two of section six hundred fifty-two of this chapter on the basis that such employee has an actual or perceived disability. For the purposes of this subdivision, the term "disability" shall have the same meaning as set forth in subdivision twenty-one of section two hundred ninety-two of the executive law. Nothing in this subdivision shall be construed to limit the provisions of any other law or any minimum wage order issued under this article that authorizes an employer to pay a wage that is less than the wage established pursuant to subdivisions one and two of section six hundred fifty-two of this chapter, provided that, in such case, an employee that has a disability shall be paid a wage that is consistent with an employee in a comparable position that does not have a disability.

§ 5. Subdivision 1 of section 674 of the labor law, as added by chapter 552 of the laws of 1969, is amended to read as follows:

1. The commissioner may promulgate such regulations as he **or she** deems appropriate to carry out the purposes of this article and to safeguard minimum wage standards. Such regulations may include, but are not limited to, the defining of the circumstances or conditions for the acceptance of non-hourly rates and piece rates as equivalent to the minimum hourly rates established by this article. Such regulations also may include, but are not limited to, waiting time and call-in pay rates; wage provisions governing guaranteed earnings during specified periods of work; allowances for meals, lodging, and other items, services and facilities when furnished by the employer; and the employment of individuals whose earning capacity is affected or impaired by youth or age[~~, or by physical or mental deficiency or injury~~], under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulations.

§ 6. This act shall take effect on the thirty-first of December next succeeding the date upon which it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation by the department of labor necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.