STATE OF NEW YORK

6451--A

2017-2018 Regular Sessions

IN SENATE

May 22, 2017

Introduced by Sens. PERSAUD, ADDABBO, ALCANTARA, AVELLA, BAILEY, BENJAMIN, BROOKS, CARLUCCI, COMRIE, GIANARIS, HAMILTON, HOYLMAN, KAMINSKY, KENNEDY, KLEIN, KRUEGER, MONTGOMERY, PARKER, PERALTA, RIVERA, SAVINO, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to minimum wage rates for subcontracted transportation center workers

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

Section 1. The labor law is amended by adding a new article 19-D to read as follows:

ARTICLE 19-D

MINIMUM WAGE RATES FOR SUBCONTRACTED TRANSPORTATION CENTER SERVICE WORKERS

Section 696-a. Definitions.

696-b. Minimum wage rate for subcontracted transportation center service workers.

696-c. Commissioner's power of investigation.

696-d. Records of employers.

696-e. Penalties; failure to pay minimum wage or overtime compensation; failure to keep records.

696-f. Civil action.

696-g. Regulations.

696-h. Savings clause.

§ 696-a. Definitions. As used in this article: 1. "Covered transportation center" means John F. Kennedy International Airport, LaGuardia Airport, the Port Authority Bus Terminal, Pennsylvania Station and Grand Central Station.

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

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2. "Covered transportation center service provider" means any person or entity that employs covered transportation center services employees to provide one or more covered transportation center services under a service contract or subcontract with a private entity at a covered transportation center.

3. "Subcontracted transportation center service worker" means a worker performing covered transportation center services for a covered transportation center service provider.

4. "Covered transportation center services" means work performed at a covered transportation center and includes:

a. Passenger related security services which includes escort services; catering security; passenger aircraft, train or bus security; fireguard services; terminal or station security; and traffic security.

b. Cargo related and ramp services which includes cargo screening (including guards) and warehouse security; baggage and cargo handling; load control and ramp communication; aircraft, train or bus mechanics and fueling of aircraft, trains or buses; provision of water, cooling/heating, power; equipment and toilet services to aircraft, trains or buses; passenger aircraft, train or bus servicing; cabin equipment maintenance; guiding aircraft, trains or buses in and out of gates; gateside aircraft, train or bus maintenance; ramp area cleaning;

c. In-terminal and in-station and passenger handling services; baggage handling skycap or redcap; wheelchair attendant; ticketing agent; customer service representatives; queue managers and ID checkers; porter service for baggage; passenger and employee shuttle drivers;

d. Cleaning services; building cleaning; aircraft, cabin, train or bus cleaning; plane, train or bus washers; and

e. Concession services; food service (including, food and beverage service, wait service, busing, cashiers); retail service (including news/gifts and duty-free); cleaning for concession services; security for concession services; airport, station or terminal lounge services (food, retail, cleaning and security services);

f. Aircraft catering services; preparation, assembly and/or delivery of food, beverages, provisions or other supplies for or to the aircraft regardless of whether performed at a covered transportation center.

5. "Applicable standard rate for subcontracted passenger services" shall mean the greater of:

a. The wage and benefit rates and paid time off minimums designated by the commissioner based on the determinations made by the general services administration pursuant to the federal "Service Contract Act of 1965" (41 U.S.C. § 351 et seq.), for the classification of "Guard I" for the county of New York; or

b. The wage and benefit rates and paid time off minimums designated in the prevailing wages schedule by the fiscal officer under section two hundred thirty-one of this chapter applicable to unarmed security guards performing services in the city of New York.

§ 696-b. Minimum wage rate for subcontracted transportation center service workers. 1. Every subcontracted transportation center service worker shall be compensated at a rate that is no less than the applicable standard rate for subcontracted transportation center service workers.

2. Notwithstanding subdivision one of this section, the minimum wage rate for a subcontracted transportation center service worker who is a food service worker, a skycap or a redcap receiving tips shall be a cash wage of at least two-thirds of the minimum wage rate set forth in subdivision one of this section, rounded to the nearest five cents, provided

that the tips of such an employee, when added to such cash wage, are equal to or exceed the minimum wage rate for subcontracted transportation center service workers in effect pursuant to subdivision one of this section. Tipped skycaps, redcaps, and food service workers shall also receive the full amount of benefits and paid time off minimums as provided under subdivision one of this section.

§ 696-c. Commissioner's power of investigation. The commissioner or his or her authorized representative shall have power:

1. to investigate the wages of persons employed by a covered transportation center service provider in the state;

2. to enter the place of business or employment of any employer for the purpose of:

a. examining and inspecting any and all books, registers, payrolls and other records that in any way relate to or have a bearing upon the wages paid to, or the hours worked by any employees; and

b. ascertaining whether the provisions of this article and the orders and regulations promulgated hereunder are being complied with.

3. to require from any employer full and correct statements and reports in writing of the wages paid to and the hours worked by his or her employees, at such times as the commissioner may deem necessary.

§ 696-d. Records of employers. 1. For all employees covered by this article, every employer shall establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages for each employee, plus such other information as the commissioner deems material and necessary.

3. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by state law or regulation, the payroll records must include the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked.

4. For all employees paid a piece rate, the payroll records shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate.

5. On demand, the employer shall furnish to the commissioner or his or her duly authorized representative a sworn statement of the hours worked, rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; and allowances, if any, claimed as part of the minimum wage, for each employee, plus such other information as the commissioner deems material and necessary.

6. Every employer shall keep such records open to inspection by the commissioner or his or her duly authorized representative at any reasonable time.

7. Every employer of an employee shall keep a digest and summary of this article or applicable wage order, which shall be prepared by the commissioner, posted in a conspicuous place in his or her establishment and shall also keep posted such additional copies of said digest and summary as the commissioner prescribes.

8. Employers shall, on request, be furnished with copies of this article and of orders, and of digests and summaries thereof, without charge.

9. Employers shall permit the commissioner or his or her duly authorized representative to question without interference any employee of such employer in a private location at the place of employment and during working hours in respect to the wages paid to and the hours worked by such employee or other employees.

§ 696-e. Penalties; failure to pay minimum wage or overtime compensation; failure to keep records. 1. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, who pays or agrees to pay to any employee less than the wage applicable under this article shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. Each payment to any employee in any week of less than the wage applicable under this article shall constitute a separate offense.

2. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, who fails to keep the records required under this article or to furnish such records or any information required to be furnished under this article to the commissioner or his or her authorized representative upon request, or who hinders or delays the commissioner or his or her authorized representative in the performance of his or her duties in the enforcement of this article, or refuses to admit the commissioner or his or her authorized representative to any place of employment, or falsifies any such records or refuses to make such records accessible to the commissioner or his or her authorized representative, or refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this article to the commissioner or his or her authorized representative, shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than five thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. Each day's failure to keep the records requested under this article or to furnish such records or information to the commissioner or his or her authorized representative shall constitute a separate offense.

§ 696-f. Civil action. 1. If any employee is paid by his or her employer less than the wage to which he or she is entitled under the provisions of this article, he or she shall recover in a civil action the amount of any such underpayments, together with all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total of such underpayments found to be due. Any agreement between the employee, and the employer to work for less than such wage shall be no defense to such action.

2. On behalf of any employee paid less than the wage to which the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the full amount of the underpayment, plus costs, and unless the employer proves a good faith basis to believe that its underpayment was in compliance with the law, an additional amount as liquidated damages. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amount of underpayments found to be due the employee. In any action brought by the commissioner in a court of competent jurisdiction, liquidated damages shall be calculated as an amount equal to one hundred percent of underpayments found to be due the employee.

3. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this article.

4. In any civil action by an employee or by the commissioner, the employee or commissioner shall have the right to collect attorneys' fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal therefrom is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

§ 696-g. Regulations. 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.

2. Such regulations shall be promulgated by the commissioner after a public hearing held after due notice.

3. A notice of the public hearing and a notice of the promulgation of any such regulation shall be published in the state bulletin. The notice of the promulgation of any such regulation shall be published at least twenty days before the effective date of the regulation.

§ 696-h. Savings clause. If any provision of this article or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.

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