STATE OF NEW YORK

8419

2019-2020 Regular Sessions

IN ASSEMBLY

June 16, 2019

Introduced by M. of A. NOLAN, BRONSON, D'URSO, LIFTON, MOSLEY, REYES, COLTON, SAYEGH, PERRY, SIMON, RODRIGUEZ, CRUZ, GLICK, DINOWITZ, EPSTEIN, ENGLEBRIGHT, GOTTFRIED, GRIFFIN, JAFFEE, FALL, DE LA ROSA, PRETLOW, JEAN-PIERRE, ABINANTI, ARROYO, ORTIZ, AUBRY, CRESPO, DeSTEFANO, O'DONNELL, BLAKE, HEVESI, COOK, RIVERA, WILLIAMS, WRIGHT, RICHARDSON, STECK, FERNANDEZ, L. ROSENTHAL, HYNDMAN, CAHILL, WEPRIN, BENEDETTO, SIMOTAS, CARROLL, M. G. MILLER, D. ROSENTHAL, NIOU, DenDEKKER, LAVINE, BARRON, RAMOS, SEAWRIGHT, BARNWELL, LAWRENCE, RAYNOR -- Multi-Sponsored by -- M. of A. ABBATE -- (at request of the Governor) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the labor law, in relation to granting collective bargaining rights to farm laborers and allowing farm laborers one day of rest each week and including farm laborers within the provisions pertaining to overtime compensation and unemployment insurance; to amend the public health law, in relation to the application of the sanitary code to all farm and food processing labor camps for migrant workers; to amend the workers' compensation law, in relation to the eligibility of farm laborers for workers' compensation benefits and the provision of claim forms to farm laborers injured in the course of employment and in relation to service as farm laborers; to amend the labor law, in relation to labor on a farm and regulating the employment of certain employees whose earning capacity is affected or impaired by youth or age; and to amend the labor law, in relation to unfair labor practices, impasse resolution procedures and the convening of a farm laborers wage board

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

1 Section 1. This act shall be known and may be cited as the "farm
2 laborers fair labor practices act".
3 § 2. Legislative findings and intent. 1. The legislature finds that
4 agriculture is one of New York's leading and most important industries,

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

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resulting in over $5 billion annually and making New York a global leader in many crops and agricultural products. Agriculture plays an essential role in the continued economic growth and vitality of New York state. According to the United States Department of Agriculture's 2017 Agricultural Census, 98% of New York's farms are family owned and these farms contributed $2.4 billion to the state's GDP in 2017.

2. The legislature further finds that the success of New York's robust agriculture industry is due to the collaborative work between farmers and farm laborers. However, farm laborers are one of the few classes of employees that are not covered by the Federal Fair Labor Standards Act or the National Labor Relations Act (NLRA), denying these valuable employees the same basic labor protections and the right to collective bargaining that almost all other private sector workers enjoy. Despite regularly working 50, 60, 70 or even more hours a week doing arduous and difficult work, often with heavy equipment, pesticides, fertilizers and other dangerous materials and in sometimes hazardous situations, farm laborers remain excluded from collective bargaining statutes and the right to a day of rest, overtime and other labor protections that are in place at the state and/or federal level for other workers.

3. The legislature further finds that this industry is subject to unique and unpredictable factors including climate and weather, pricing and market requirements, seasonal harvests, immigration, and various federal and state laws, rules and regulations that directly impact farmers and require a unique balance and application of traditional labor protections to ensure farm laborers have a voice in their own terms and conditions of employment and access to basic labor protections while also creating adaptability and responsiveness to the unique circumstances of farm operations.

4. The legislature further finds that the labor standards included in this bill are intended solely for the purposes of transitioning into a modern structure of rights and benefits for farm laborers that achieve harmonious labor relations and stability of operations in the agricultural industry and are not intended for any other industry or sector of the economy.

§ 3. Paragraph (a) of subdivision 3 of section 701 of the labor law, as amended by chapter 43 of the laws of 1989, is amended and a new paragraph (c) is added to read as follows:

(a) The term "employees" includes but is not restricted to any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the article explicitly states otherwise, but shall not include any individual employed by his parent or spouse or in the domestic service of and directly employed, controlled and paid by any person in his home, any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the purpose of serving as a companion to a sick, convalescing or elderly person or any individuals employed only for the duration of a labor dispute, [~~or any individuals employed as farm laborers~~] or[~~,~~] any individual who participates in and receives rehabilitative or therapeutic services in a charitable non-profit rehabilitation facility or sheltered workshop or any individual employed in a charitable non-profit rehabilitation facility or sheltered workshop who has received rehabilitative or therapeutic services and whose capacity to perform the work for which he

is engaged is substantially impaired by physical or mental deficiency or injury.

(c) The term "employee" shall also include farm laborers. "Farm laborers" shall mean any individual engaged or permitted by an employer to work on a farm, except the parent, spouse, child, or other member of the employer's immediate family.

§ 4. Subdivision 1 of section 161 of the labor law is amended by adding a new undesignated paragraph to read as follows:

Every person employed as a farm laborer shall be allowed at least twenty-four consecutive hours of rest in each and every calendar week. This requirement shall not apply to the parent, child, spouse or other member of the employer's immediate family. Twenty-four consecutive hours spent at rest because of circumstances, such as weather or crop conditions, shall be deemed to constitute the rest required by this paragraph. No provision of this paragraph shall prohibit a farm laborer from voluntarily agreeing to work on such day of rest required by this paragraph, provided that the farm laborer is compensated at an overtime rate which is at least one and one-half times the laborer's regular rate of pay for all hours worked on such day of rest. The term "farm labor" shall include all services performed in agricultural employment in connection with cultivating the soil, or in connection with raising or harvesting of agricultural commodities, including the raising, shearing, caring for and management of livestock, poultry or dairy. The day of rest authorized under this subdivision should, whenever possible, coincide with the traditional day reserved by the farm laborer for religious worship.

§ 5. Paragraphs b and d of subdivision 2 of section 161 of the labor law, as amended by chapter 281 of the laws of 1941, are amended to read as follows:

b. Employees in [~~dairies, creameries,~~] milk condenseries, milk powder factories, milk sugar factories, milk shipping stations, butter and cheese factories, ice cream manufacturing plants and milk bottling plants, where not more than seven persons are employed;

d. Employees whose duties include not more than three hours' work on Sunday in setting sponges in bakeries, [~~caring for live animals,~~] maintaining fires, or making necessary repairs to boilers or machinery.

§ 6. The labor law is amended by adding a new section 163-a to read as follows:

§ 163-a. Farm laborers. No person or corporation operating a farm shall require any employee to work more than sixty hours in any calendar week; provided, however, that any overtime work performed by a farm laborer shall be at a rate which is at least one and one-half times the laborer's regular rate of pay. No wage order subject to the provisions of this chapter shall be applicable to a farm laborer other than a wage order established pursuant to section six hundred seventy-four or six hundred seventy-four-a of this chapter.

§ 7. The opening paragraph of paragraph (a) of subdivision 6 of section 511 of the labor law, as amended by chapter 675 of the laws of 1977, is amended to read as follows:

The term "employment" [~~does not include~~] **includes** agricultural labor [~~unless it is covered pursuant to section five hundred sixty-four~~]. The term "agricultural labor" includes all service performed:

§ 8. Section 564 of the labor law, as added by chapter 675 of the laws of 1977, is amended to read as follows:

§ 564. Agricultural labor **crew leaders**. [~~1. Coverage. (a) Notwithstanding the provisions of section five hundred sixty of this article,~~

~~an employer of persons engaged in agricultural labor shall become liable for contributions under this article if the employer:~~

~~(1) has paid cash remuneration of twenty thousand dollars or more in any calendar quarter to persons employed in agricultural labor, and such liability shall commence on the first day of such quarter, or~~

~~(2) has employed in agricultural labor ten or more persons on each of twenty days during a calendar year or the preceding calendar year, each day being in a different calendar week, and the liability shall in such event commence on the first day of the calendar year, or~~

~~(3) is liable for the tax imposed under the federal unemployment tax act as an employer of agricultural labor and the liability shall in such event commence on the first day of the calendar quarter in such calendar year when he first paid remuneration for agricultural labor in this state.~~

~~(b) An employer who becomes liable for contributions under paragraph (a) of this subdivision shall cease to be liable as of the first day of a calendar quarter next following the filing of a written application provided the commissioner finds that the employer:~~

~~(1) has not paid to persons employed in agricultural labor cash remuneration of twenty thousand dollars or more in any of the eight calendar quarters preceding such day, and~~

~~(2) has not employed in agricultural labor ten or more persons on each of twenty days during the current or the preceding calendar year, each day being in a different week, and~~

~~(3) is not liable for the tax imposed under the federal unemployment tax act as an employer of agricultural labor.~~

~~2. Crew leader.~~] Whenever a person renders services as a member of a crew which is paid and furnished by the crew leader to perform services in agricultural labor for another employer, such other employer shall, for the purpose of this article, be deemed to be the employer of such person, unless:

[~~(a)~~] **1.** the crew leader holds a valid certificate of registration under the federal farm labor contractor registration act of nineteen hundred sixty-three or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or [~~cropdusting~~] **crop dusting** machinery or any other mechanized equipment which is provided by the crew leader, and

[~~(b)~~] **2.** the crew leader is not an employee of such other employer and has not entered into a written agreement with such employer under which he is designated as an employee.

§ 9. Paragraph (m) of subdivision 5 of section 225 of the public health law, as amended by section 51 of part A of chapter 58 of the laws of 2010, is amended to read as follows:

(m) require that application be made for a permit to operate a farm or food processing labor camp as defined in the sanitary code; authorize appropriate officers or agencies to issue such a permit when the applicant is in compliance with the established regulations; prescribe standards for living quarters at farm and food processing labor camps, including provisions for sanitary conditions; light, air, and safety; protection from fire hazards; maintenance; and such other matters as may be appropriate for security of life or health, provided however, that the provisions of the sanitary code established pursuant to the provisions hereof shall apply to all farm and food processing labor camps intended to house migrant workers and which are occupied [~~by five or more persons~~]. In the preparation of such regulations, the public health and health planning council may request and shall receive techni-

cal assistance from the board of standards and appeals of the state department of labor and the state building code commission. Such regulation shall be enforced in the same manner as are other provisions of the sanitary code;

§ 10. Groups 14-a and 14-b of subdivision 1 of section 3 of the workers' compensation law, Group 14-a as amended by chapter 233 of the laws of 1961 and Group 14-b as added by chapter 646 of the laws of 1966, are amended to read as follows:

Group 14-a. On and after January first, nineteen hundred sixty-two, any other employment in a trade, business, or occupation carried on by the employer for pecuniary gain in which one or more employees [~~other than farm laborers~~] are employed.

Group 14-b. Employment as a farm laborer as provided herein. A farmer shall provide coverage under this chapter for all farm laborers [~~employed during any part of the twelve consecutive months beginning April first of any calendar year preceded by a calendar year in which the cash remuneration paid to all farm laborers aggregated twelve hundred dollars or more~~].

§ 11. Section 51 of the workers' compensation law, as amended by chapter 561 of the laws of 2003, is amended to read as follows:

§ 51. Posting of notice regarding compensation. Every employer who has complied with section fifty of this article shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed **in English and Spanish** notices in form prescribed by the chairman, stating the fact that he has complied with all the rules and regulations of the chairman and the board and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter, but failure to post such notice as herein provided shall not in any way affect the exclusiveness of the remedy provided for by section eleven of this chapter. Every employer who owns or operates automotive or horse-drawn vehicles and has no minimum staff of regular employees required to report for work at an established place of business maintained by such employer and every employer who is engaged in the business of moving household goods or furniture shall post such notices in each and every vehicle owned or operated by him. Failure to post or maintain such notice in any of said vehicles shall constitute presumptive evidence that such employer has failed to secure the payment of compensation. The chairman may require any employer to furnish a written statement at any time showing the stock corporation, mutual corporation or reciprocal insurer in which such employer is insured or the manner in which such employer has complied with any provision of this chapter. Failure for a period of ten days to furnish such written statement shall constitute presumptive evidence that such employer has neglected or failed in respect of any of the matters so required. Any employer who fails to comply with the provisions of this section shall be required to pay to the board a fine of [~~up to two hundred fifty~~] **five hundred** dollars for each violation, in addition to any other penalties imposed by law to be deposited into the uninsured employers' fund.

§ 12. The workers' compensation law is amended by adding a new section 110-b to read as follows:

§ 110-b. Reporting of injuries to employer. Every farm labor contractor, foreman or supervisor of farm laborers who has notice of any injury to a farm laborer incurred during the course of employment shall be required to inform the employer, owner or operator of a farm of any such injury.

§ 13. The opening paragraph of section 120 of the workers' compensation law, as amended by section 31 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

It shall be unlawful for any employer or his or her duly authorized agent to discharge or fail to reinstate pursuant to section two hundred three-b of this chapter, or in any other manner discriminate against an employee as to his or her employment because such employee has claimed or attempted to claim compensation from such employer, **requested a claim form for injuries received in the course of employment,** or claimed or attempted to claim any benefits provided under this chapter or because he or she has testified or is about to testify in a proceeding under this chapter and no other valid reason is shown to exist for such action by the employer.

§ 14. The opening paragraph of paragraph A of subdivision 6 of section 201 of the workers' compensation law, as amended by chapter 481 of the laws of 2010, is amended to read as follows:

"Employment" means employment in any trade, business or occupation carried on by an employer, except that the following shall not be deemed employment under this article: services performed for the state, a municipal corporation, local governmental agency, other political subdivision or public authority; employment subject to the federal railroad unemployment insurance act; service performed on or as an officer or member of the crew of a vessel on the navigable water of the United States or outside the United States; [~~service as farm laborers;~~] casual employment and the first forty-five days of extra employment of employees not regularly in employment as otherwise defined herein; service as golf caddies; and service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school. The term "employment" shall include domestic or personal work in a private home. The term "employment" 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 subparagraph (b) of this paragraph was not executed under duress and contains the following provisions:

§ 15. 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)~~] **(c)** as an outside salesman; [~~(e)~~] **(d)** as a driver engaged in operating a taxicab; [~~(f)~~] **(e)** 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)~~] (f) 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)~~] (g) 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)~~] (h) in or for such a religious, educational or charitable institution if such individual is a student; [~~(j)~~] (i) 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)~~] (j) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; [~~(l)~~] (k) as a staff counselor in a children's camp; [~~(m)~~] (l) 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)~~] (m) by a federal, state or municipal government or political subdivision thereof; [~~(o)~~] (n) 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)~~] (o) 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.

§ 16. 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 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.

§ 17. Subdivision 2 of section 701 of the labor law, as amended by chapter 43 of the laws of 1989, is amended to read as follows:

2. (a) The term "employer" includes any person acting on behalf of or in the interest of an employer, directly or indirectly, with or without

his knowledge, and shall include any person who is the purchaser of services performed by a person described in paragraph (b) of subdivision three of this section, but a labor organization or any officer or agent thereof shall only be considered an employer with respect to individuals employed by such organization.

(b) The term "employer" includes agricultural employers. The term "agricultural employer" shall mean any employer engaged in cultivating the soil or in raising or harvesting any agricultural or horticultural commodity including custom harvesting operators, and employers engaged in the business of crops, livestock and livestock products as defined in section three hundred one of the agriculture and markets law, or other similar agricultural enterprises.

§ 18. Section 703 of the labor law is amended by adding a new undesignated paragraph to read as follows:

Notwithstanding any other provision of law, for farm laborers the term "concerted activities" shall not include a right to strike or other concerted stoppage of work or slowdown.

§ 19. The labor law is amended by adding a new section 704-b to read as follows:

§ 704-b. Unfair labor practices. 1. It shall be an unfair labor practice for a farm laborer or an employee organization representing farm laborers to strike any agricultural employer. The term "strike" shall mean, for the purposes of this section, any strike or other concerted stoppage of work or slowdown by farm laborers.

2. It shall be an unfair labor practice for an agricultural employer to:

a. lockout its laborers. The term "lockout" shall mean, for the purposes of this section, a refusal by an agricultural employer to permit farm laborers to work as a result of a dispute with such farm laborers or employee organization representing such farm laborers that affects wages, hours and other terms and conditions of employment of such farm laborers, provided, however, that a lockout shall not include a termination of employment for good cause that does not involve such laborers exercising any rights guaranteed by this article;

b. refuse to continue all the terms of an expired agreement until a new agreement is negotiated;

c. discourage union organization or to discourage an employee from participating in a union organizing drive, engaging in protected concerted activity, or otherwise exercising the rights guaranteed under this article.

3. Nothing in this section shall be construed as to bar any proceeding brought pursuant to section seven hundred four or seven hundred five of this article.

§ 20. Section 705 of the labor law is amended by adding a new subdivision 1-a to read as follows:

1-a. If the choice available to the employees in a negotiating unit is limited to selecting or rejecting a single employee organization, that choice shall be ascertained by the board on the basis of dues deduction authorizations instead of by an election. In such case, the employee organization involved will be certified without an election if a majority of the employees within the unit have executed a showing dues deductions authorizations.

§ 21. The labor law is amended by adding a new section 702-b to read as follows:

§ 702-b. Impasse resolution procedures for agricultural employers and farm laborers. 1. For purposes of this section, an impasse may be

deemed to exist if the parties fail to achieve agreement by the end of a forty-day period from the date of certification or recognition of an employee organization or from the expiration date of a collective bargaining agreement.

2. Upon impasse, agricultural employers or recognized employee organizations may request the board to render assistance as provided in this section. If the board determines an impasse exists in the course of collective negotiations between an agricultural employer and a recognized employee organization, the board shall aid the parties in effecting a voluntary resolution of the dispute.

3. On request of either party, as provided in subdivision two of this section, and in the event the board determines that an impasse exists in collective negotiations between such employee organization and an agricultural employer as to the conditions of employment of farm laborers, the board shall render assistance as follows:

a. to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator from a list of qualified persons maintained by the board;

b. if the mediator is unable to effect settlement of the controversy within thirty days after his or her appointment, either party may petition the board to refer the dispute to a neutral arbitrator;

c. upon petition of either party, the board shall refer the dispute to a neutral arbitrator as hereinafter provided;

i. the neutral arbitrator shall be appointed jointly by the agricultural employer and employee organization within ten days after receipt by the board of a petition for arbitration. Each of the respective parties is to share equally the cost of the neutral arbitrator. If, within seven days after the mailing date, the parties are unable to agree upon the neutral arbitrator, the board shall submit to the parties a list of qualified, disinterested persons for the selection of a neutral arbitrator. Each party shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as the neutral arbitrator. This process shall be completed within five days of receipt of this list. The parties shall notify the board of the designated neutral arbitrator;

ii. the neutral arbitrator shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The panel may grant more than one adjournment each for each party; provided, however, that a second request of either party and any subsequent adjournments may be granted on request of either party, provided that the party which requests the adjournment shall pay the arbitrator's fee. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The arbitrator shall have authority to require the production of such additional evidence, either oral or written as she or he may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be borne by the requesting party. If such record is created, it shall be shared with both parties regardless of which party paid for it;

iii. the arbitrator shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the arbitrator shall specify the basis for her or his findings, taking into consideration, in addition to any factors stipulated by the parties or any other relevant factors, the following:

A. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in agricultural employment in comparable communities;

B. the interests and welfare of the farm laborers and the financial ability of the agricultural employer to pay;

C. comparison of peculiarities in regard to other trades or professions, including specifically, (i) hazards of employment; (ii) physical qualifications; (iii) educational qualifications; (iv) mental qualifications; (v) job training and skills;

D. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits; and

E. the impact on the food supply and commodity pricing.

iv. the determination of the neutral arbitrator shall be final and binding upon the parties for the period prescribed by the arbitrator, but in no event shall such period exceed two years from the date of the arbitrator's determination;

v. the determination of the public arbitration panel shall be subject to review by a court of competent jurisdiction in the manner prescribed by law.

§ 22. The labor law is amended by adding a new section 674-a to read as follows:

§ 674-a. Farm laborers wage board. 1. Wage board. The commissioner shall hereby convene a farm laborers wage board. The wage board shall be comprised of three members: one representative of the farm bureau, one representative of the New York State AFL-CIO and one member appointed by the commissioner, who shall be selected from the general public and designated as chairperson. The wage board shall hold its first hearing no later than March first, two thousand twenty. The members of the board shall not receive a salary or other compensation, but shall be paid actual and necessary traveling expenses while engaged in the performance of their duties.

2. Organization. Two-thirds of the members of the board shall constitute a quorum. The chairperson may from time to time formulate rules governing the manner in which the wage board shall function and perform its duties under this article.

3. Powers. The wage board shall have power to conduct public hearings. The board may also consult with agricultural employers and farm laborers, and their respective representatives, in the occupation or occupations involved, and with such other persons, including the commissioner and the commissioner of agriculture and markets, as it shall determine. The board shall also have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of all books, records, and other evidence relative to any matters under inquiry. Such subpoenas shall be signed and issued by the chairperson of the board and shall be served and have the same effect as if issued out of the supreme court. The board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the supreme court. The board shall not be bound by common law or statutory rules of procedure or evidence.

4. Public hearings. Within forty-five days of the appointment of the wage board, the board shall conduct public hearings. The wage board shall only meet within the state and must hold at least three hearings

at which the public will be afforded an opportunity to provide comments. At least one Spanish language interpreter shall be present at each public hearing to interpret oral testimony delivered in Spanish. Where a witness reveals the need for an interpreter in a language other than Spanish, to the extent practicable, an interpreter in that language shall be provided. Any materials advertising such hearings shall be bilingual in English and Spanish. Any written materials disbursed at the hearing or subsequent to the hearing, including written testimony and hearing transcripts, shall be available in English, Spanish, and, to the extent practicable, any other language upon request.

5. Report. The wage board shall make a report to the governor and the legislature, including its recommendations as to overtime work for farm laborers. The report and recommendations of the board shall be submitted only after a vote of not less than a majority of all its members in support of such report and recommendations. Such report shall be submitted no later than December thirty-first, two thousand twenty. The overtime rates recommended by the wage board shall not be in excess of sixty hours, and the wage board shall specifically consider the extent to which overtime hours can be lowered below such amount set in law, and may provide for a series of successively lower overtime work thresholds and phase-in dates as part of its determinations.

6. The wage board shall consider existing overtime rates in similarly situated industries in New York state. Nothing contained in the wage board's report or recommendations shall diminish or limit any rights, protections, benefits or entitlements currently available to any farm laborer.

7. The commissioner shall comply with section six hundred fifty-six of this chapter upon receipt of the wage board's recommendations. The commissioner may reconvene the same wage board or appoint a new wage board in compliance with section six hundred fifty-nine of this chapter.

§ 23. Subdivision 2 of section 564 of the labor law is renumbered subdivision 3 and a new subdivision 2 is added to read as follows:

2. Exclusion from coverage. For purposes of this section the term "employment" shall not include services rendered by an individual who is admitted to the United States to perform agricultural labor pursuant to 8 USC 1188 if, at the time such services are rendered, they are excluded from the definition of employment in section 3306(c) of the Federal Unemployment Tax Act.

§ 24. Severability. If any word, phrase, clause, sentence, paragraph, subdivision, section or part of this article or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of this article, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 25. This act shall take effect January 1, 2020; provided, however that the provisions of section nine of this act shall take effect January 1, 2021.