

STATE OF NEW YORK

8721--A

2019-2020 Regular Sessions

IN ASSEMBLY

October 25, 2019

Introduced by M. of A. GLICK, DINOWITZ, MOSLEY, COLTON, ORTIZ, MAGNARELLI -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the workers' compensation law, in relation to the employee status of an individual

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

1 Section 1. Paragraphs (a) and (b) of subdivision 1 of section 511 of
2 the labor law, as amended by chapter 607 of the laws of 1971, subpara-
3 graph 1-a of paragraph (b) as added by chapter 903 of the laws of 1986,
4 subparagraph 1-b of paragraph (b) as added by chapter 418 of the laws of
5 2010, subparagraph 1-c of paragraph (b) as added by chapter 558 of the
6 laws of 2013, and subparagraph 3 of paragraph (b) as added by chapter
7 668 of the laws of 1992, are amended to read as follows:

8 (a) any service under any contract of employment for hire, express or
9 implied, written, or oral; and

10 (b) (1) any service by a person providing labor or services for remun-
11 eration unless the hiring entity demonstrates that all of the following
12 conditions are satisfied:

13 (i) the person is free from the control and direction of the hiring
14 entity in connection with the performance of the work, both under the
15 contract for the performance of the work and in fact; and

16 (ii) the person performs work that is outside the usual course of the
17 hiring entity's business; and

18 (iii) the person is customarily engaged in an independently estab-
19 lished trade, occupation, or business of the same nature as that
20 involved in the work performed.

21 (2) for the purposes of this section, any person providing labor or
22 services for remuneration pursuant to subparagraph one of this paragraph

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

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1 shall be considered an employee rather than an independent contractor;
2 and

3 (c) any service by a person for an employer:

4 (1) as an agent-driver or commission-driver engaged in distributing
5 meat, vegetable, fruit, or bakery products; beverages other than milk;
6 or laundry or dry-cleaning services; or

7 (1-a) as a professional musician or a person otherwise engaged in the
8 performing arts, and performing services as such for a television or
9 radio station or network, a film production, a theatre, hotel, restau-
10 rant, night club or similar establishment unless, by written contract,
11 such musician or person is stipulated to be an employee of another
12 employer covered by this chapter. "Engaged in the performing arts" shall
13 mean performing services in connection with the production of or
14 performance in any artistic endeavor which requires artistic or techni-
15 cal skill or expertise; or

16 (1-b) as an employee in the construction industry unless the presump-
17 tion of employment can be overcome, as provided under section eight
18 hundred sixty-one-c of this chapter; or

19 (1-c) as an employee in the commercial goods transportation industry
20 unless the presumption of employment can be overcome, as provided under
21 section eight hundred sixty-two-b of this chapter; or

22 (2) as a traveling or city salesman engaged on a full-time basis in
23 soliciting orders for merchandise for resale or supplies for use in the
24 purchaser's business operations if the contract of service contemplates
25 that substantially all of such services are to be performed personally
26 by such person; such person does not have a substantial investment in
27 facilities used in connection with the performance of such services,
28 excepting facilities for transportation; and the services are not in the
29 nature of a single transaction which is not part of a continuing
30 relationship with the employer.

31 (3) as a professional model, where:

32 (i) the professional model performs modeling services for; or

33 (ii) consents in writing to the transfer of his or her exclusive legal
34 right to the use of his or her name, portrait, picture or image, for
35 advertising purposes or for the purposes of trade, directly to a retail
36 store, a manufacturer, an advertising agency, a photographer, a publish-
37 ing company or any other such person or entity, which dictates such
38 professional model's assignments, hours of work or performance locations
39 and which compensates such professional model in return for a waiver of
40 his or her privacy rights enumerated above, unless such services are
41 performed pursuant to a written contract wherein it is stated that the
42 professional model is the employee of another employer covered by this
43 chapter. For purposes of this subparagraph, the term "professional
44 model" means a person who, in the course of his or her trade, occupation
45 or profession, performs modeling services. For purposes of this subpara-
46 graph, the term "modeling services" means the appearance by a profes-
47 sional model in photographic sessions or the engagement of such model in
48 live, filmed or taped modeling performances for remuneration.

49 § 2. Subdivision 3 of section 160 of the labor law, the opening para-
50 graph of such subdivision as amended by chapter 481 of the laws of 2010,
51 is amended to read as follows:

52 3. a. For all other employees, except those engaged in farm work and
53 those affected by subdivision four of section two hundred twenty of this
54 chapter, eight hours.

55 b. For the purposes of this subdivision, an individual providing labor
56 or services for remuneration has the status of an employee rather than

1 an independent contractor unless the hiring entity demonstrates all of
2 the following conditions:

3 (i) The individual is free from the control and direction of the
4 hiring entity in connection with the performance of the work, both under
5 the contract for the performance of the work and in fact.

6 (ii) The individual performs work that is outside the usual course of
7 the hiring entity's business.

8 (iii) The individual is customarily engaged in an independently estab-
9 lished trade, occupation, or business of the same nature as that
10 involved in the work performed.

11 c. This subdivision shall not prevent an agreement for overwork at an
12 increased compensation, except upon work by or for the state or a munic-
13 ipal corporation, or by contractors or subcontractors therewith, and
14 except as otherwise provided in this chapter.

15 § 3. Subdivision 5 of section 651 of the labor law is amended by
16 adding a new closing paragraph to read as follows:

17 Unless otherwise excluded by the provisions of this subdivision or by
18 regulations promulgated by the commissioner, an individual providing
19 labor or services for remuneration has the status of an employee rather
20 than an independent contractor unless the hiring entity demonstrates all
21 of the following conditions:

22 (a) The individual is free from the control and direction of the
23 hiring entity in connection with the performance of the work, both under
24 the contract for the performance of the work and in fact.

25 (b) The individual performs work that is outside the usual course of
26 the hiring entity's business.

27 (c) The individual is customarily engaged in an independently estab-
28 lished trade, occupation, or business of the same nature as that
29 involved in the work performed.

30 § 4. Subdivision 6 of section 201 of the workers' compensation law is
31 amended by adding a new paragraph E to read as follows:

32 E. (A) The term "employment" includes, unless specifically excluded by
33 a provision of this subdivision, any service by a person providing labor
34 or services for remuneration unless the hiring entity demonstrates that
35 all of the following conditions are satisfied:

36 (i) the person is free from the control and direction of the hiring
37 entity in connection with the performance of the work, both under the
38 contract for the performance of the work and in fact; and

39 (ii) the person performs work that is outside the usual course of the
40 hiring entity's business; and

41 (iii) the person is customarily engaged in an independently estab-
42 lished trade, occupation, or business of the same nature as that
43 involved in the work performed.

44 (B) For the purposes of this section, any person providing labor or
45 services for remuneration pursuant to subparagraph (A) of this paragraph
46 shall be considered an employee rather than an independent contractor.

47 § 5. This act shall take effect immediately.