# STATE OF NEW YORK

6266--C

2019-2020 Regular Sessions

# IN SENATE

May 31, 2019

Introduced by Sens. BIAGGI, BAILEY, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, LIU, MAYER, METZGER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SKOUFIS, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 enacting the "healthy terminals act"

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

Section 1. This act shall be known and may be cited as the "healthy terminals act".

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

**ARTICLE 19-D**
**MINIMUM WAGE RATES FOR COVERED AIRPORT WORKERS**


**Section 696-a. Definitions.**
**696-b. Designation by commissioner of applicable standard rates for covered airport workers.**
**696-c. Minimum wage rate for covered airport workers.**
**696-d. Commissioner's powers of investigation.**
**696-e. Records of employers.**
**696-f. Penalties.**
**696-g. Civil action.**
**696-h. Regulations.**


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

LBD13042-06-0

696-i. Savings clause.

§ 696-a. Definitions. As used in this article: 1. "Covered airport location" means John F. Kennedy International Airport, LaGuardia Airport, and New York Stewart International Airport.

2. "Covered airport worker" means any person employed to perform work at a covered airport location provided at least one-half of the employee's time during any workweek is performed at a covered airport location. Covered airport worker shall not include persons employed in an executive, administrative, or professional capacity as defined in subparagraph one of paragraph (a) of section thirteen of the Fair Labor Standards Act of 1938.

3. "Employer" means any person, corporation, limited liability company, or association employing any individual in an occupation, industry, trade, business or service. The term "employer" shall not include a governmental agency.

4. The "standard wage rate" means:

(a) Effective September first, two thousand twenty, the greater of:

(i) one dollar more than any minimum wage rate that would be otherwise applicable to covered airport workers established by article nineteen of this chapter; or

(ii) any otherwise applicable minimum wage rate established through a policy of the Port Authority of New York and New Jersey.

(b) Effective September first, two thousand twenty-one, the greater of:

(i) two dollars more than any minimum wage rate that would be otherwise applicable to covered airport workers established by article nineteen of this chapter; or

(ii) any otherwise applicable minimum wage rate established through a policy of the Port Authority of New York and New Jersey.

(c) Effective September first, two thousand twenty-two, the greater of:

(i) three dollars more than any minimum wage rate that would be otherwise applicable to covered airport workers established by article nineteen of this chapter; or

(ii) any otherwise applicable minimum wage rate established through a policy of the Port Authority of New York and New Jersey.

(d) Effective September first, two thousand twenty-three, the greater of:

(i) four dollars more than any minimum wage rate that would be otherwise applicable to covered airport workers established by article nineteen of this chapter; or

(ii) any otherwise applicable minimum wage rate established through a policy of the Port Authority of New York and New Jersey.

(e) Effective September first, two thousand twenty-four, and each September first thereafter, the greater of:

(i) four dollars more than any minimum wage rate that would be otherwise applicable to covered airport workers established by article nineteen of this chapter;

(ii) any otherwise applicable minimum wage rate established through a policy of the Port Authority of New York and New Jersey; or

(iii) an amount equal to the wage rate designated by the commissioner the immediately preceding August first based on the determinations made by the federal department of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 USCS § 6701, et seq.), for the classi-

fication of "Guard I" for the county in which the covered airport location is located.

5. The "standard benefits supplement rate" means an hourly supplement furnished to an employee in one of the following ways: (a) in the form of health and other benefits, not including paid leave, that cost the employer the entire required hourly supplemental amount; (b) by providing a portion of the required hourly supplement in the form of health and other benefits, not including paid leave, and the balance in cash; or (c) by providing the entire supplement in cash. Effective September first, two thousand twenty and each September first thereafter, the supplemental benefits rate designated by the commissioner the immediately preceding August first, based on the determination made by the federal department of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 USCS § 6701, et seq.), for the classification of "Guard I" for the county in which the covered airport location is located.

6. The "standard paid leave rate" means effective September first, two thousand twenty and each September first thereafter, the paid leave requirements designated by the commissioner the immediately preceding August first, based on the determinations made by the federal department of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 USCS § 6701, et seq.), for the classification of "Guard I" for the county in which the covered airport location is located.

7. The "applicable standard rate" shall mean a combination of (a) the standard wage rate; (b) the standard benefits supplemental rate; and (c) the standard paid leave rate.

§ 696-b. Designation by commissioner of applicable standard rates for covered airport workers. 1. On August first, two thousand twenty and each subsequent August first the commissioner shall designate the supplemental benefits rate and paid leave requirements required under determinations made by the federal general services administration pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 USCS § 6701, et seq.), for the classification of "Guard I" for the county in which the covered airport location is located. The commissioner shall publicly post such designated supplemental benefits rates and paid leave requirements.

2. On August first, two thousand twenty-four and each subsequent August first, the commissioner shall additionally designate the wage rate required under determinations made by the federal general services administration pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 USCS § 6701, et seq.), for the classification of "Guard I" for the county in which the covered airport location is located. The commissioner shall publicly post such designated wage rate.

§ 696-c. Minimum wage rate for covered airport workers. All covered employers shall ensure that every covered airport worker is compensated at a rate that is no less than the applicable standard rate. Nothing in this article shall alter or limit any employer's obligation to pay any otherwise applicable prevailing wage under article eight or nine of this chapter.

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

1. investigate the compensation of covered airport workers in the state;

2. 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 compensation provided to, or the hours worked by any employees,

and (b) ascertaining whether the provisions of this article and the rules and regulations promulgated hereunder are being complied with; and

3. require from any employer full and correct statements and reports in writing, at such times as the commissioner may deem necessary, of the compensation provided to and the hours by such employer's employees.

§ 696-e. Records of employers. For every employee 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 compensation provided, plus such other information as the commissioner deems material and necessary. For all covered airport workers who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by law, rule, or regulation, the payroll records shall include the compensation provided and the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, the number of overtime hours worked and the cost of benefits and/or benefit supplements. 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 compensation, for each covered airport worker, plus such other information as the commissioner deems material and necessary. Every employer shall keep such records open to inspection by the commissioner or his or her duly authorized representative at any reasonable time. Every employer of a covered airport worker shall keep a digest and summary of this article 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. Employers shall, on request, be furnished with copies of this article and of orders, and of digests and summaries thereof, without charge. 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-f. Penalties. 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 applicable standard rate 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 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 applicable standard rate 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-g. Civil action. 1. If any employee is paid by his or her employer less than the applicable standard rate 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 applicable standard rate shall be no defense to such action.

2. On behalf of any employee paid less than the applicable standard rate 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-h. 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 compensation 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-i. 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.

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