

# STATE OF NEW YORK

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6266--D

2019-2020 Regular Sessions

## IN SENATE

May 31, 2019

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Introduced by Sens. BIAGGI, ADDABBO, BAILEY, BENJAMIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KAPLAN, KAVANAGH, KENNEDY, LIU, MARTINEZ, MAYER, METZGER, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, 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 -- 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:

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

3 § 2. The article heading of article 9 of the labor law, as added by  
4 chapter 777 of the laws of 1971, is amended to read as follows:

5 PREVAILING WAGE FOR BUILDING SERVICE EMPLOYEES AND COVERED AIRPORT  
6 WORKERS

7 § 3. Subdivisions 1, 4 and 8 of section 230 of the labor law, subdivi-  
8 sion 1 as amended by chapter 542 of the laws of 1984, subdivision 4 as  
9 amended by chapter 678 of the laws of 2007, and subdivision 8 as added  
10 by chapter 777 of the laws of 1971, are amended and four new subdivi-  
11 sions 1-a, 15, 16 and 17 are added to read as follows:

12 1. "Building service employee" or "service employee" means any person  
13 performing work in connection with the care or maintenance of an exist-

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

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ing building, or in connection with the transportation of office furniture or equipment to or from such building, or in connection with the transportation and delivery of fossil fuel to such building, for a contractor under a contract with a public agency which is in excess of one thousand five hundred dollars and the principal purpose of which is to furnish services through the use of building service employees.

"Building service employee" or "service employee" includes, but is not limited, to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.

"Building service employee" or "service employee" also does not include any employee to whom the provisions of articles eight and eight-a of this chapter are applicable.

1-a. "Employee" means a building service employee or a covered airport worker.

4. "Contractor" means any employer who employs employees to perform building service work under a contract with a public agency and shall include any of the contractor's subcontractors. "Contractor" shall also include any covered airport employer as such term is defined in this section.

8. "Fiscal officer" means the industrial commissioner, except for building service work performed by or on behalf of a city, or work involving the employment of covered airport workers at a covered airport location located in a city with a population of one million or more, in which case "fiscal officer" means the comptroller or other analogous officer of such city.

15. "Covered airport location" means any airport operating under the jurisdiction of the Port Authority of New York and New Jersey within the state.

16. "Covered airport worker" means any person employed by a covered airport employer 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 any person employed in an executive, administrative, or professional capacity as defined in 29 U.S.C. 213 (a)(1). "Covered airport worker" does not include any employee to whom the provisions of article eight or eight-A of this chapter are applicable.

17. "Covered airport employer" means any person, corporation, limited liability company, or association employing any covered airport worker in an occupation, industry, trade, business or service. The term "covered airport employer" shall not include a public agency.

§ 4. The labor law is amended by adding a new section 231-a to read as follows:

§ 231-a. Prevailing wage for covered airport workers. 1. Notwithstanding any other provision of law, rule, or regulation to the contrary, as used in this section, the term "wage" shall mean: (a) basic hourly cash rate of pay; and (b) supplements. The term "supplements" shall mean fringe benefits including medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, and other bona fide fringe benefits not otherwise

1 required by federal, state or local law to be provided by a covered  
2 airport employer.

3 2. Not earlier than September first, two thousand twenty-one, every  
4 covered airport employer shall pay a covered airport worker working at a  
5 covered airport location a wage of not less than the prevailing wage in  
6 the locality for the craft, trade, or occupation of such covered airport  
7 worker.

8 3. The obligation of a covered airport employer to pay prevailing  
9 supplements may be discharged by furnishing any equivalent combinations  
10 of fringe benefits or by making equivalent or differential payments in  
11 cash under rules and regulations established by the fiscal officer.

12 4. Notwithstanding any other provisions of law, rule, or regulation to  
13 the contrary, for the purposes of this section "prevailing wage" shall  
14 mean the wage determined by the fiscal officer to be prevailing for the  
15 various classes of covered airport workers in the locality; provided,  
16 however, that in no event shall the prevailing wage applicable to a  
17 covered airport worker on and after September first, two thousand twen-  
18 ty-one and every year thereafter be less than the following: (a) any  
19 otherwise applicable minimum wage rate established through a policy of  
20 the Port Authority of New York and New Jersey; and

21 (b) an amount of wages or supplements equal to the rate for health and  
22 welfare for all occupations, designated by the fiscal officer based on  
23 the determinations made by the federal department of labor pursuant to  
24 the McNamara-O'Hara Service Contract Act of 1965 41 U.S.C. 6701 et seq  
25 for the geographic region in which the covered airport location is  
26 located and in effect on the date of the designation by the fiscal offi-  
27 cer.

28 5. On or before September first, two thousand twenty-one and each  
29 subsequent September first, the fiscal officer shall designate the wage  
30 and supplemental benefits rate required under this section by classi-  
31 fication and region in which each covered airport is located. The fiscal  
32 officer shall publicly post such designated wage rate.

33 6. Nothing in this article shall be deemed to alter or limit any  
34 employer's obligation to pay any otherwise applicable prevailing wage  
35 under any other provision of this article or article eight of this chap-  
36 ter.

37 § 5. The section heading of section 231 of the labor law, as added by  
38 chapter 777 of the laws of 1971, is amended to read as follows:

39 Prevailing wage for building service employees.

40 § 6. Subdivisions 1 and 2 of section 233 of the labor law, as added by  
41 chapter 777 of the laws of 1971, are amended to read as follows:

42 1. In all cases where service work is being performed pursuant to a  
43 contract therefor, or where work is being performed pursuant to a  
44 contract involving the employment of covered airport workers, the  
45 contractor shall keep original payrolls or transcripts thereof,  
46 subscribed and confirmed by him as true, under penalties of perjury,  
47 showing the hours and days worked by each employee, the craft, trade or  
48 occupation at which he was employed, and the wages paid.

49 2. Where the wages paid include sums which are not paid directly to  
50 the [~~workmen~~] employees weekly and which are expended for supplements,  
51 the records required to be maintained shall include a record of such  
52 hourly payment on behalf of such employees, the supplement for which  
53 such payment has been made, and the name and address of the person to  
54 whom such payment has been made. In all such cases, the contractor shall  
55 keep a true and inscribed copy of the agreement under which such

1 payments are made, a record of all net payments made thereunder, and a  
2 list of all persons for whom such payments are made.

3 § 7. Paragraphs (a) and (c) of subdivision 1 of section 234 of the  
4 labor law, as added by chapter 777 of the laws of 1971, are amended and  
5 a new paragraph (e-1) is added to read as follows:

6 (a) to cause an investigation to be made to determine the wages  
7 prevailing in any locality in all crafts, trades and occupations  
8 involved in service work or work involving the employment of covered  
9 airport workers; in making such investigation, the fiscal officer may  
10 utilize wage and fringe benefit data from various sources including, but  
11 not limited to, data and determinations of federal, state or other  
12 governmental agencies;

13 (c) to examine the books, documents and records pertaining to the  
14 wages paid to, and the hours of work performed by, [~~service~~] employees;

15 (e-1) to make a classification by craft, trade or other generally  
16 recognized occupational category of the covered airport workers and to  
17 determine whether such work has been performed by the employees in such  
18 classification;

19 § 8. Subdivisions 1 and 3 of section 235 of the labor law, as added by  
20 chapter 777 of the laws of 1971, are amended to read as follows:

21 1. Whenever the fiscal officer has reason to believe that [~~a-service~~]  
22 an employee has been paid less than the wages stipulated in the  
23 contract, or if such contract has no wage schedule attached thereto and  
24 the fiscal officer has reason to believe that [~~a-service~~] an employee  
25 has been paid less than the wages prevailing for his craft, trade or  
26 occupation, the fiscal officer may, and upon receipt of a written  
27 complaint from an employee employed thereon, shall conduct a special  
28 investigation to determine the facts relating thereto.

29 3. If, despite the requirements of law, the contract for the service  
30 work or work involving the employment of covered airport workers has  
31 been awarded without the annexation thereto of the schedule of wages  
32 provided for in this article, the fiscal officer shall determine in the  
33 proceeding before him the wages prevailing at the time the work was  
34 performed for the crafts, trades or occupations of the employees  
35 involved.

36 § 9. Section 236 of the labor law, as added by chapter 777 of the laws  
37 of 1971, is amended to read as follows:

38 § 236. Failure to protest underpayments. Notwithstanding any incon-  
39 sistent provision of this chapter or of any other general, special or  
40 local law, ordinance, charter or administrative code, [~~a-service~~] an  
41 employee shall not be barred from his right to recover the difference  
42 between the amount actually paid to him and the amount which should have  
43 been paid to him pursuant to an order entered under the provisions of  
44 this article because of the prior receipt by him without protest of  
45 wages paid or on account of his failure to state orally or in writing  
46 upon any payroll or receipt which he is required to sign that the wages  
47 received by him are received under protest, or on account of his failure  
48 to indicate his protest against the amount, or that the amount so paid  
49 does not constitute payment in full of wages due him for the period  
50 covered by such payment.

51 § 10. Subdivisions 1 and 4 of section 237 of the labor law, as amended  
52 by chapter 698 of the laws of 1988, are amended to read as follows:

53 1. Subcontractors engaged for service work, or for work involving the  
54 employment of covered airport workers, by a contractor or its subcon-  
55 tractor shall, upon receipt from the contractor or its subcontractor of  
56 the schedule of wages and supplements specified in the contract, provide

1 to the contractor or its subcontractor a verified statement attesting  
2 that the subcontractor has received and reviewed such schedule of wages  
3 and supplements, and agrees that it will pay the applicable prevailing  
4 wages and will pay or provide the supplements specified therein. Such  
5 verified statement shall be filed in the manner described in subdivision  
6 three of this section, provided, however, that in the case of contracts  
7 for work involving the employment of covered airport workers, such veri-  
8 fied statement shall be subject to inspection upon request of the fiscal  
9 officer. It shall be a violation of this article for any contractor or  
10 its subcontractor to fail to provide for its subcontractor a copy of the  
11 schedule of wages and supplements specified in the contract.

12 4. If any interested person shall have previously filed a protest in  
13 writing objecting to the payment to any contractor or subcontractor to  
14 the extent of the amount or amounts due or to become due to him for  
15 daily or weekly wages for labor performed on the work for which such  
16 contract was entered into, or if for any other reason it may be deemed  
17 advisable, the comptroller of the state or the financial officer of the  
18 public agency or other officer or person charged with the custody and  
19 disbursement of the state or corporate funds applicable to the contract  
20 for such work, may deduct from the whole amount of any payment on  
21 account thereof the sum or sums admitted by any contractor or subcon-  
22 tractor in such statement or statements as filed to be due and owing by  
23 him or her on account of labor performed on such work before making  
24 payment of the amount certified for payment in any estimate or voucher,  
25 and may withhold the amount so deducted for the benefit of the [service]  
26 employees whose wages are unpaid as shown by the verified statements  
27 filed by any contractor or subcontractor, and may pay directly to any  
28 person the amount or amounts shown by the statements filed as hereinbe-  
29 fore required to be due to him or her or his or her duly authorized  
30 collective bargaining labor organization receiving such payment to the  
31 extent of the amount thereof.

32 § 11. Subdivision 2 of section 238 of the labor law, as added by chap-  
33 ter 777 of the laws of 1971, is amended to read as follows:

34 2. When a contract for service work or work involving the employment  
35 of covered airport workers contains as part thereof a schedule of wages  
36 as provided for in this article, any contractor who, after entering into  
37 such contract, and any subcontractor of such contractor who fails to pay  
38 to any [service] employee the wages stipulated in such wage schedule is  
39 guilty of a misdemeanor and upon conviction shall be punished for a  
40 first offense by a fine of five hundred dollars or by imprisonment for  
41 not more than thirty days or by both fine and imprisonment; for a second  
42 offense by a fine of one thousand dollars, and in addition thereto the  
43 contract on which the violation has occurred shall be forfeited; and no  
44 such contractor shall be entitled to receive any sum, nor shall any  
45 officer, agent or employee of the contracting public agency pay any such  
46 sum or authorize its payment from the funds under his charge or control  
47 to such contractor for work done upon the contract on which the contrac-  
48 tor has been convicted of a second offense. If the contractor or  
49 subcontractor is a corporation, any officer of such corporation who  
50 knowingly permits the corporation to fail to make such payment shall  
51 also be guilty of a misdemeanor and the criminal and civil penalties  
52 herein shall attach to such officer upon conviction.

53 § 12. Section 239 of the labor law, as added by chapter 777 of the  
54 laws of 1971, subdivisions 1, 2, and 3 as amended by chapter 770 of the  
55 laws of 1986, is amended to read as follows:

§ 239. Provisions in contracts prohibiting discrimination on account of race, creed, color, national origin, age or sex. Every contract for service work or work involving the employment of covered airport workers shall contain provisions by which the contractor agrees:

(1) that in the hiring of employees for the performance of work under the contract or any subcontract thereunder within the territorial limits of this state, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, national origin, age, sex or disability, discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

(2) that no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, national origin, age, sex or disability;

(3) that there may be deducted from the amount payable to the contractor by the public agency under the contract for service work a penalty of fifty dollars for each person for each day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(4) that the contract for service work may be cancelled or terminated by the public agency, and all moneys due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract.

§ 13. Section 239-a of the labor law, as added by chapter 777 of the laws of 1971, is amended to read as follows:

§ 239-a. Enforcement of article. 1. If the fiscal officer, as defined herein, finds that any contractor on service work fails to comply with or evades the provisions of this article, he shall present evidence of such noncompliance or evasion to the public agency having charge of such work for enforcement. Where such evidence indicates a noncompliance or evasion on the part of a subcontractor, the contractor shall be responsible for such noncompliance or evasion. It shall be the duty of the public agency in charge of such service work to enforce the provisions of this article.

2. If the fiscal officer, as defined herein, finds that any contractor on work involving the employment of covered airport workers fails to comply with or evades the provisions of this article, it shall be the duty of the fiscal officer to enforce the provisions of this article.

§ 14. 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.

§ 15. This act shall take effect on January 1, 2021. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.