

# STATE OF NEW YORK

8142--C

2019-2020 Regular Sessions

## IN ASSEMBLY

June 4, 2019

Introduced by M. of A. HYNDMAN, CARROLL, TAYLOR, REYES, CRESPO, GRIFFIN, GOTTFRIED, PAULIN, DINOWITZ, NIOU -- Multi-Sponsored by -- M. of A. LENTOL -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- 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 TRANSPORTATION CENTER SERVICE WORKERS

##### Section 696-a. Definitions.

696-b. Designation by commissioner of applicable standard rates for covered transportation center service workers.

696-c. Minimum wage rate for covered transportation center service 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.

LBD13101-05-9

1           696-i. Savings clause.

2       § 696-a. Definitions. As used in this article: 1. "Covered transportation center" means John F. Kennedy International Airport, LaGuardia Airport, New York Stewart International Airport, the Port Authority Bus Terminal, Pennsylvania Station and Grand Central Station.

3       2. "Covered transportation center worker" means any person employed to perform work at a covered transportation center provided at least one-half of the employee's time during any workweek is performed at a covered transportation center, provided, however, work performed for a mercantile establishment, a restaurant or other eating place, or a drinking place shall not count as work performed at a covered transportation center for the purposes of this article. Covered transportation center 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.

4       3. The "standard wage rate" means:

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

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

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

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

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

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

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

12       (i) three dollars more than any minimum wage rate that would be otherwise applicable to covered transportation center service workers set by any federal or state minimum wage law; or

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

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

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

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

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

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

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

20       (iii) an amount equal to the wage rate designated by the commissioner the immediately preceding August first based on the determinations made by the United States department of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. §6701, et seq.), for the classification of "Guard I" for the county in which the covered transportation center is located.

1     4. The "standard benefits supplement rate" means an hourly supplement  
2 furnished by a contractor to an employee in one of the following ways:  
3 (a) in the form of health and other benefits (not including paid leave)  
4 that cost the employer the entire required hourly supplemental amount;  
5 (b) by providing a portion of the required hourly supplement in the form  
6 of health and other benefits (not including paid leave) and the balance  
7 in cash; or (c) by providing the entire supplement in cash. Effective  
8 September first, two thousand twenty and each September first thereaft-  
9 er, the required hourly supplemental rates shall be an amount equal to  
10 the supplemental benefits rate designated by the commissioner the imme-  
11 diately preceding August first, based on the determination made by the  
12 United States department of labor pursuant to the McNamara-O'Hara  
13 Service Contract Act of 1965 (41 U.S.C. §6701, et seq.), for the classi-  
14 fication of "Guard I" for the county in which the covered transportation  
15 center is located.

16     5. The "standard paid leave rate" means effective September first, two  
17 thousand twenty and each September first thereafter, the paid leave  
18 requirements designated by the commissioner the immediately preceding  
19 August first, based on the determinations made by the United States  
20 department of labor pursuant to the McNamara-O'Hara Service Contract Act  
21 of 1965 (41 U.S.C. §6701, et seq.), for the classification of "Guard I"  
22 for the county in which the covered transportation center is located.

23     6. The "applicable standard rate" shall mean a combination of (a) the  
24 standard wage rate; (b) the standard benefits supplemental rate, and (c)  
25 the standard paid leave rate.

26     7. "Mercantile establishment" shall mean a place where one or more  
27 persons are employed in which goods, wares or merchandise are offered  
28 for sale.

29     8. "Restaurants and other eating places" shall mean establishments  
30 primarily engaged in one of the following: (a) providing food services  
31 to patrons who order and are served while seated (i.e., waiter/waitress  
32 service) and pay after eating; (b) providing food services to patrons  
33 who generally order or select items (e.g., at a counter, in a buffet  
34 line, or at a computer terminal) and pay before eating; or (c) preparing  
35 and/or serving a specialty snack (e.g., ice cream, frozen yogurt, cook-  
36 ies) and/or nonalcoholic beverages (e.g., coffee, juices, sodas) for  
37 consumption on or near the premises.

38     9. "Drinking places" shall mean establishments known as bars, taverns,  
39 nightclubs, or drinking places primarily engaged in preparing and serv-  
40 ing alcoholic beverages for immediate consumption. These establishments  
41 may also provide limited food services.

42     § 696-b. Designation by commissioner of applicable standard rates for  
43 covered transportation center service workers. 1. On August first, two  
44 thousand twenty and each subsequent August first the commissioner shall  
45 designate the supplemental benefits rate and paid leave requirements  
46 required under determinations made by the United States department of  
47 labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41  
48 U.S.C. §6701, et seq.), for the classification of "Guard I" for the  
49 county in which the covered transportation center is located. The  
50 commissioner shall publicly post such designated supplemental benefits  
51 rates and paid leave requirements.

52     2. On August first, two thousand twenty-four and each subsequent  
53 August first, the commissioner shall additionally designate the wage  
54 rate required under determinations made by the federal general services  
55 administration pursuant to the McNamara-O'Hara Service Contract Act of  
56 1965 (41 U.S.C. § 6701, et seq.) for the classification of "Guard I"

1 for the county in which the covered transportation center is located.  
2 The commissioner shall publicly post such designated wage rate.

3 § 696-c. Minimum wage rate for covered transportation center service  
4 workers. All covered employers shall ensure that every covered transpor-  
5 tation center worker is compensated at a rate that is no less than the  
6 applicable standard rate. Nothing in this article shall alter or limit  
7 any employer's obligation to pay any otherwise applicable prevailing  
8 wage under article eight or nine of this chapter.

9 § 696-d. Commissioner's powers of investigation. The commissioner or  
10 his or her authorized representative shall have the power to:

11 1. investigate the compensation of covered transportation center work-  
12 ers in the state;

13 2. enter the place of business or employment of any employer for the  
14 purpose of (a) examining and inspecting any and all books, registers,  
15 payrolls, and other records that in any way relate to or have a bearing  
16 upon the compensation provided to, or the hours worked by any employees,  
17 and (b) ascertaining whether the provisions of this article and the  
18 rules and regulations promulgated hereunder are being complied with; and

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

22 § 696-e. Records of employers. For every employee covered by this  
23 article, every employer shall establish, maintain, and preserve for not  
24 less than six years contemporaneous, true, and accurate payroll records  
25 showing for each week worked the hours worked, the compensation  
26 provided, plus such other information as the commissioner deems material  
27 and necessary. For all covered transportation center workers who are  
28 not exempt from overtime compensation as established in the commis-  
29 sioner's minimum wage orders or otherwise provided by law, rule, or regu-  
30 lation, the payroll records shall include the compensation provided and  
31 the regular hourly rate or rates of pay, the overtime rate or rates of  
32 pay, the number of regular hours worked, the number of overtime hours  
33 worked and the cost of benefits and/or benefit supplements. On demand,  
34 the employer shall furnish to the commissioner or his or her duly  
35 authorized representative a sworn statement of the hours worked, rate or  
36 rates of compensation, for each covered transportation worker, plus such  
37 other information as the commissioner deems material and necessary.  
38 Every employer shall keep such records open to inspection by the commis-  
39 sioner or his or her duly authorized representative at any reasonable  
40 time. Every employer of a covered transportation worker shall keep a  
41 digest and summary of this article which shall be prepared by the  
42 commissioner, posted in a conspicuous place in his or her establishment  
43 and shall also keep posted such additional copies of said digest and  
44 summary as the commissioner prescribes. Employers shall, on request, be  
45 furnished with copies of this article and of orders, and of digests and  
46 summaries thereof, without charge. Employers shall permit the commis-  
47 sioner or his or her duly authorized representative to question without  
48 interference any employee of such employer in a private location at the  
49 place of employment and during working hours in respect to the wages  
50 paid to and the hours worked by such employee or other employees.

51 § 696-f. Penalties. 1. Any employer or his or her agent, or the offi-  
52 cer or agent of any corporation, partnership, or limited liability  
53 company, who pays or agrees to pay to any employee less than the appli-  
54 cable standard rate under this article shall be guilty of a misdemeanor  
55 and upon conviction therefor shall be fined not less than five hundred  
56 nor more than twenty thousand dollars or imprisoned for not more than

1 one year, and, in the event that any second or subsequent offense occurs  
2 within six years of the date of conviction for a prior offense, shall be  
3 fined not less than five hundred nor more than twenty thousand dollars  
4 or imprisoned for not more than one year plus one day, or punished by  
5 both such fine and imprisonment, for each such offense. Each payment to  
6 any employee in any week of less than the applicable standard rate under  
7 this article shall constitute a separate offense.

8 2. Any employer or his or her agent, or the officer or agent of any  
9 corporation, partnership, or limited liability company, who fails to  
10 keep the records required under this article or to furnish such records  
11 or any information required to be furnished under this article to the  
12 commissioner or his or her authorized representative upon request, or  
13 who hinders or delays the commissioner or his or her authorized repre-  
14 sentative in the performance of his or her duties in the enforcement of  
15 this article, or refuses to admit the commissioner or his or her author-  
16 ized representative to any place of employment, or falsifies any such  
17 records or refuses to make such records accessible to the commissioner  
18 or his or her authorized representative, or refuses to furnish a sworn  
19 statement of such records or any other information required for the  
20 proper enforcement of this article to the commissioner or his or her  
21 authorized representative, shall be guilty of a misdemeanor and upon  
22 conviction therefor shall be fined not less than five hundred nor more  
23 than five thousand dollars or imprisoned for not more than one year,  
24 and, in the event that any second or subsequent offense occurs within  
25 six years of the date of conviction for a prior offense, shall be guilty  
26 of a felony for the second or subsequent offense, and upon conviction  
27 therefor, shall be fined not less than five hundred nor more than twenty  
28 thousand dollars or imprisoned for not more than one year plus one day,  
29 or punished by both such fine and imprisonment, for each such offense.  
30 Each day's failure to keep the records requested under this article or  
31 to furnish such records or information to the commissioner or his or her  
32 authorized representative shall constitute a separate offense.

33 § 696-g. Civil action. 1. If any employee is paid by his or her  
34 employer less than the applicable standard rate to which he or she is  
35 entitled under the provisions of this article, he or she shall recover  
36 in a civil action the amount of any such underpayments, together with  
37 all reasonable attorney's fees, prejudgment interest as required under  
38 the civil practice law and rules, and unless the employer proves a good  
39 faith basis to believe that its underpayment of wages was in compliance  
40 with the law, an additional amount as liquidated damages equal to one  
41 hundred percent of the total of such underpayments found to be due. Any  
42 agreement between the employee and the employer to work for less than  
43 such applicable standard rate shall be no defense to such action.

44 2. On behalf of any employee paid less than the applicable standard  
45 rate to which the employee is entitled under the provisions of this  
46 article, the commissioner may bring any legal action necessary, includ-  
47 ing administrative action, to collect such claim, and the employer shall  
48 be required to pay the full amount of the underpayment, plus costs, and  
49 unless the employer proves a good faith basis to believe that its under-  
50 payment was in compliance with the law, an additional amount as liqui-  
51 dated damages. Liquidated damages shall be calculated by the commission-  
52 er as no more than one hundred percent of the total amount of  
53 underpayments found to be due the employee. In any action brought by the  
54 commissioner in a court of competent jurisdiction, liquidated damages  
55 shall be calculated as an amount equal to one hundred percent of under-  
56 payments found to be due the employee.

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

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

20     § 696-h. Regulations. 1. The commissioner may promulgate such regu-  
21 lations as he or she deems appropriate to carry out the purposes of this  
22 article and to safeguard minimum compensation standards.

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

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

29     § 696-i. Savings clause. If any provision of this article or the  
30 application thereof to any person, employer, occupation or circumstance  
31 is held invalid, the remainder of the article and the application of  
32 such provision to other persons, employees, occupations, or circum-  
33 stances shall not be affected thereby.

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