

STATE OF NEW YORK

8142--D

2019-2020 Regular Sessions

IN ASSEMBLY

June 4, 2019

Introduced by M. of A. HYNDMAN, CARROLL, TAYLOR, REYES, CRESPO, GRIFFIN, GOTTFRIED, PAULIN, DINOWITZ, NIOU, BLAKE, WEPRIN, DE LA ROSA, SIMON, SIMOTAS, D. ROSENTHAL, AUBRY, PERRY, BARNWELL, MOSLEY, ORTIZ, SEAWRIGHT, JEAN-PIERRE, WALKER, QUART, DenDEKKER, RYAN, NOLAN, BENEDETTO, SOLAGES, BRAUNSTEIN, ABBATE, KIM, JACOBSON -- 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 -- again reported from said committee with amendments, 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 labor law is amended by adding a new article 19-D to read as
4 follows:

ARTICLE 19-D

MINIMUM WAGE RATES FOR COVERED AIRPORT WORKERS

Section 696-a. Definitions.

8 696-b. Designation by commissioner of applicable standard rates
9 for covered airport workers.

10 696-c. Minimum wage rate for covered airport workers.

11 696-d. Commissioner's powers of investigation.

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

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- 1 696-e. Records of employers.
- 2 696-f. Penalties.
- 3 696-g. Civil action.
- 4 696-h. Regulations.
- 5 696-i. Savings clause.

6 § 696-a. Definitions. As used in this article: 1. "Covered airport
 7 location" means John F. Kennedy International Airport, LaGuardia
 8 Airport, and New York Stewart International Airport.

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

16 3. "Employer" means any person, corporation, limited liability compa-
 17 ny, or association employing any individual in an occupation, industry,
 18 trade, business or service. The term "employer" shall not include a
 19 governmental agency.

20 4. The "standard wage rate" means:

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

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

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

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

29 (i) two dollars more than any minimum wage rate that would be other-
 30 wise applicable to covered airport workers established by article nine-
 31 teen of this chapter; or

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

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

36 (i) three dollars more than any minimum wage rate that would be other-
 37 wise applicable to covered airport workers established by article nine-
 38 teen of this chapter; or

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

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

43 (i) four dollars more than any minimum wage rate that would be other-
 44 wise applicable to covered airport workers established by article nine-
 45 teen of this chapter; or

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

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

50 (i) four dollars more than any minimum wage rate that would be other-
 51 wise applicable to covered airport workers established by article nine-
 52 teen of this chapter;

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

1 (iii) an amount equal to the wage rate designated by the commissioner
2 the immediately preceding August first based on the determinations made
3 by the federal department of labor pursuant to the McNamara-O'Hara
4 Service Contract Act of 1965 (41 USCS § 6701, et seq.), for the classi-
5 fication of "Guard I" for the county in which the covered airport
6 location is located.

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

20 6. The "standard paid leave rate" means effective September first, two
21 thousand twenty and each September first thereafter, the paid leave
22 requirements designated by the commissioner the immediately preceding
23 August first, based on the determinations made by the federal department
24 of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965
25 (41 USCS § 6701, et seq.), for the classification of "Guard I" for the
26 county in which the covered airport location is located.

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

30 § 696-b. Designation by commissioner of applicable standard rates for
31 covered airport workers. 1. On August first, two thousand twenty and
32 each subsequent August first the commissioner shall designate the
33 supplemental benefits rate and paid leave requirements required under
34 determinations made by the federal general services administration
35 pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 USCS §
36 6701, et seq.), for the classification of "Guard I" for the county in
37 which the covered airport location is located. The commissioner shall
38 publicly post such designated supplemental benefits rates and paid leave
39 requirements.

40 2. On August first, two thousand twenty-four and each subsequent
41 August first, the commissioner shall additionally designate the wage
42 rate required under determinations made by the federal general services
43 administration pursuant to the McNamara-O'Hara Service Contract Act of
44 1965 (41 USCS § 6701, et seq.), for the classification of "Guard I" for
45 the county in which the covered airport location is located. The commis-
46 sioner shall publicly post such designated wage rate.

47 § 696-c. Minimum wage rate for covered airport workers. All covered
48 employers shall ensure that every covered airport worker is compensated
49 at a rate that is no less than the applicable standard rate. Nothing in
50 this article shall alter or limit any employer's obligation to pay any
51 otherwise applicable prevailing wage under article eight or nine of this
52 chapter.

53 § 696-d. Commissioner's powers of investigation. The commissioner or
54 his or her authorized representative shall have the power to:

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

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

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

10 § 696-e. Records of employers. For every employee covered by this
11 article, every employer shall establish, maintain, and preserve for not
12 less than six years contemporaneous, true, and accurate payroll records
13 showing for each week worked the hours worked, the compensation
14 provided, plus such other information as the commissioner deems material
15 and necessary. For all covered airport workers who are not exempt from
16 overtime compensation as established in the commissioner's minimum wage
17 orders or otherwise provided by law, rule, or regulation, the payroll
18 records shall include the compensation provided and the regular hourly
19 rate or rates of pay, the overtime rate or rates of pay, the number of
20 regular hours worked, the number of overtime hours worked and the cost
21 of benefits and/or benefit supplements. On demand, the employer shall
22 furnish to the commissioner or his or her duly authorized representative
23 a sworn statement of the hours worked, rate or rates of compensation,
24 for each covered airport worker, plus such other information as the
25 commissioner deems material and necessary. Every employer shall keep
26 such records open to inspection by the commissioner or his or her duly
27 authorized representative at any reasonable time. Every employer of a
28 covered airport worker shall keep a digest and summary of this article
29 which shall be prepared by the commissioner, posted in a conspicuous
30 place in his or her establishment and shall also keep posted such addi-
31 tional copies of said digest and summary as the commissioner prescribes.
32 Employers shall, on request, be furnished with copies of this article
33 and of orders, and of digests and summaries thereof, without charge.
34 Employers shall permit the commissioner or his or her duly authorized
35 representative to question without interference any employee of such
36 employer in a private location at the place of employment and during
37 working hours in respect to the wages paid to and the hours worked by
38 such employee or other employees.

39 § 696-f. Penalties. 1. Any employer or his or her agent, or the offi-
40 cer or agent of any corporation, partnership, or limited liability
41 company, who pays or agrees to pay to any employee less than the appli-
42 cable standard rate under this article shall be guilty of a misdemeanor
43 and upon conviction therefor shall be fined not less than five hundred
44 nor more than twenty thousand dollars or imprisoned for not more than
45 one year, and, in the event that any second or subsequent offense occurs
46 within six years of the date of conviction for a prior offense, shall be
47 fined not less than five hundred nor more than twenty thousand dollars
48 or imprisoned for not more than one year plus one day, or punished by
49 both such fine and imprisonment, for each such offense. Each payment to
50 any employee in any week of less than the applicable standard rate under
51 this article shall constitute a separate offense.

52 2. Any employer or his or her agent, or the officer or agent of any
53 corporation, partnership, or limited liability company, who fails to
54 keep the records required under this article or to furnish such records
55 or any information required to be furnished under this article to the
56 commissioner or his or her authorized representative upon request, or

1 who hinders or delays the commissioner or his or her authorized repre-
2 sentative in the performance of his or her duties in the enforcement of
3 this article, or refuses to admit the commissioner or his or her author-
4 ized representative to any place of employment, or falsifies any such
5 records or refuses to make such records accessible to the commissioner
6 or his or her authorized representative, or refuses to furnish a sworn
7 statement of such records or any other information required for the
8 proper enforcement of this article to the commissioner or his or her
9 authorized representative, shall be guilty of a misdemeanor and upon
10 conviction therefor shall be fined not less than five hundred nor more
11 than five thousand dollars or imprisoned for not more than one year,
12 and, in the event that any second or subsequent offense occurs within
13 six years of the date of conviction for a prior offense, shall be guilty
14 of a felony for the second or subsequent offense, and upon conviction
15 therefor, shall be fined not less than five hundred nor more than twenty
16 thousand dollars or imprisoned for not more than one year plus one day,
17 or punished by both such fine and imprisonment, for each such offense.
18 Each day's failure to keep the records requested under this article or
19 to furnish such records or information to the commissioner or his or her
20 authorized representative shall constitute a separate offense.

21 § 696-g. Civil action. 1. If any employee is paid by his or her
22 employer less than the applicable standard rate to which he or she is
23 entitled under the provisions of this article, he or she shall recover
24 in a civil action the amount of any such underpayments, together with
25 all reasonable attorney's fees, prejudgment interest as required under
26 the civil practice law and rules, and unless the employer proves a good
27 faith basis to believe that its underpayment of wages was in compliance
28 with the law, an additional amount as liquidated damages equal to one
29 hundred percent of the total of such underpayments found to be due. Any
30 agreement between the employee and the employer to work for less than
31 such applicable standard rate shall be no defense to such action.

32 2. On behalf of any employee paid less than the applicable standard
33 rate to which the employee is entitled under the provisions of this
34 article, the commissioner may bring any legal action necessary, includ-
35 ing administrative action, to collect such claim, and the employer shall
36 be required to pay the full amount of the underpayment, plus costs, and
37 unless the employer proves a good faith basis to believe that its under-
38 payment was in compliance with the law, an additional amount as liqui-
39 dated damages. Liquidated damages shall be calculated by the commis-
40 sioner as no more than one hundred percent of the total amount of
41 underpayments found to be due the employee. In any action brought by the
42 commissioner in a court of competent jurisdiction, liquidated damages
43 shall be calculated as an amount equal to one hundred percent of under-
44 payments found to be due the employee.

45 3. Notwithstanding any other provision of law, an action to recover
46 upon a liability imposed by this article must be commenced within six
47 years. The statute of limitations shall be tolled from the date an
48 employee files a complaint with the commissioner or the commissioner
49 commences an investigation, whichever is earlier, until an order to
50 comply issued by the commissioner becomes final, or where the commis-
51 sioner does not issue an order, until the date on which the commissioner
52 notifies the complainant that the investigation has concluded. Investi-
53 gation by the commissioner shall not be a prerequisite to nor a bar
54 against a person bringing a civil action under this article.

55 4. In any civil action by an employee or by the commissioner, the
56 employee or commissioner shall have the right to collect attorneys' fees

1 and costs incurred in enforcing any court judgment. Any judgment or
2 court order awarding remedies under this section shall provide that if
3 any amounts remain unpaid upon the expiration of ninety days following
4 issuance of judgment, or ninety days after expiration of the time to
5 appeal and no appeal therefrom is then pending, whichever is later, the
6 total amount of judgment shall automatically increase by fifteen
7 percent.

8 § 696-h. Regulations. 1. The commissioner may promulgate such regu-
9 lations as he or she deems appropriate to carry out the purposes of this
10 article and to safeguard minimum compensation standards.

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

13 3. A notice of the public hearing and a notice of the promulgation of
14 any such regulation shall be published in the state bulletin. The notice
15 of the promulgation of any such regulation shall be published at least
16 twenty days before the effective date of the regulation.

17 § 696-i. Savings clause. If any provision of this article or the
18 application thereof to any person, employer, occupation or circumstance
19 is held invalid, the remainder of the article and the application of
20 such provision to other persons, employees, occupations, or circum-
21 stances shall not be affected thereby.

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