

STATE OF NEW YORK

8721

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

AN ACT to amend the labor law, in relation to the definition of employment

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
23 shall be considered an employee rather than an independent contractor;
24 and

25 (c) any service by a person for an employer;

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

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

4 (1-a) as a professional musician or a person otherwise engaged in the
5 performing arts, and performing services as such for a television or
6 radio station or network, a film production, a theatre, hotel, restau-
7 rant, night club or similar establishment unless, by written contract,
8 such musician or person is stipulated to be an employee of another
9 employer covered by this chapter. "Engaged in the performing arts" shall
10 mean performing services in connection with the production of or
11 performance in any artistic endeavor which requires artistic or techni-
12 cal skill or expertise; or

13 (1-b) as an employee in the construction industry unless the presump-
14 tion of employment can be overcome, as provided under section eight
15 hundred sixty-one-c of this chapter; or

16 (1-c) as an employee in the commercial goods transportation industry
17 unless the presumption of employment can be overcome, as provided under
18 section eight hundred sixty-two-b of this chapter; or

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

28 (3) as a professional model, where:

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

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

46 § 2. This act shall take effect immediately.