

STATE OF NEW YORK

4018

2019-2020 Regular Sessions

IN SENATE

February 25, 2019

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to the minimum wage for employees with disabilities

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

1 Section 1. The opening paragraph of subdivision 5 of section 651 of
2 the labor law, as amended by chapter 503 of the laws of 2016, is amended
3 to read as follows:

4 "Employee" includes any individual employed or permitted to work by an
5 employer in any occupation, but shall not include any individual who is
6 employed or permitted to work: (a) on a casual basis in service as a
7 part time baby sitter in the home of the employer; (b) in labor on a
8 farm; (c) in a bona fide executive, administrative, or professional
9 capacity; (d) as an outside salesman; (e) as a driver engaged in operat-
10 ing a taxicab; (f) as a volunteer, learner or apprentice by a corpo-
11 ration, unincorporated association, community chest, fund or foundation
12 organized and operated exclusively for religious, charitable or educa-
13 tional purposes, no part of the net earnings of which inures to the
14 benefit of any private shareholder or individual; (g) as a member of a
15 religious order, or as a duly ordained, commissioned or licensed minis-
16 ter, priest or rabbi, or as a sexton, or as a christian science reader;
17 (h) in or for such a religious or charitable institution, which work is
18 incidental to or in return for charitable aid conferred upon such indi-
19 vidual and not under any express contract of hire; (i) in or for such a
20 religious, educational or charitable institution if such individual is a
21 student; (j) in or for such a religious, educational or charitable
22 institution if the earning capacity of such individual is impaired by
23 age [~~or by physical or mental deficiency or injury~~]; (k) in or for a
24 summer camp or conference of such a religious, educational or charitable
25 institution for not more than three months annually; (l) as a staff

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

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1 counselor in a children's camp; (m) in or for a college or university
2 fraternity, sorority, student association or faculty association, no
3 part of the net earnings of which inures to the benefit of any private
4 shareholder or individual, and which is recognized by such college or
5 university, if such individual is a student; (n) by a federal, state or
6 municipal government or political subdivision thereof; (o) as a volun-
7 teer at a recreational or amusement event run by a business that oper-
8 ates such events, provided that no single such event lasts longer than
9 eight consecutive days and no more than one such event concerning
10 substantially the same subject matter occurs in any calendar year, where
11 (1) any such volunteer shall be at least eighteen years of age, (2) a
12 business seeking coverage under this paragraph shall notify every volun-
13 teer in writing, in language acceptable to the commissioner, that by
14 volunteering his or her services, such volunteer is waiving his or her
15 right to receive the minimum wage pursuant to this article, and (3) such
16 notice shall be signed and dated by a representative of the business and
17 the volunteer and kept on file by the business for thirty-six months; or
18 (p) in the delivery of newspapers or shopping news to the consumer by a
19 person who is not performing commercial goods transportation services
20 for a commercial goods transportation contractor within the meaning of
21 article twenty-five-C of this chapter. The exclusions from the term
22 "employee" contained in this subdivision shall be as defined by regu-
23 lations of the commissioner.

24 § 2. Section 652 of the labor law is amended by adding a new subdivi-
25 sion 7 to read as follows:

26 7. No employer shall pay to any employee a wage that is less than the
27 wage established pursuant to subdivisions one and two of this section on
28 the basis that such employee has an actual or perceived disability. For
29 the purposes of this subdivision, the term "disability" shall have the
30 same meaning as set forth in subdivision twenty-one of section two
31 hundred ninety-two of the executive law. Nothing in this subdivision
32 shall be construed to limit the provisions of any other law or any mini-
33 imum wage order issued under this article that authorizes an employer to
34 pay a wage that is less than the wage established pursuant to subdivi-
35 sions one and two of this section, provided that, in such case, an
36 employee that has a disability shall be paid a wage that is consistent
37 with an employee in a comparable position that does not have a disabili-
38 ty.

39 § 3. Paragraph (c) of subdivision 5 of section 655 of the labor law,
40 as amended by chapter 747 of the laws of 1978, is amended to read as
41 follows:

42 (c) The wage board may also recommend, to the extent necessary in
43 order to prevent curtailment of opportunities for employment, regu-
44 lations for (1) the employment of learners and apprentices, under
45 special certificates issued by the commissioner, at such wages lower
46 than the minimum wage established by this article and subject to such
47 limitations as to time, number, proportion and length of service as
48 shall be prescribed in such regulation, (2) the employment of individ-
49 uals whose earning capacity is affected or impaired by youth or age [~~or~~
50 ~~by physical or mental deficiency or injury~~], under special certificates
51 issued by the commissioner, at such wages lower than the minimum wage
52 established by this article and for such period as shall be prescribed
53 in such regulation, (3) the establishment of a period not extending
54 beyond seventeen consecutive weeks during which a resort hotel or camp
55 may employ students under special certificates issued by the commission-
56 er, at such wages lower than the minimum wage established by this arti-

1 cle as shall be prescribed in such regulation, and (4) the employment of
2 residential employees in a non-profit making religious, charitable or
3 educational organization or in a non-profit making college or university
4 sorority or fraternity under special certificates issued by the commis-
5 sioner at such weekly wage as shall be prescribed in such regulation.

6 § 4. Section 673 of the labor law is amended by adding a new subdivi-
7 sion 3 to read as follows:

8 3. No employer shall pay to any employee a wage that is less than the
9 wage established pursuant to subdivisions one and two of section six
10 hundred fifty-two of this chapter on the basis that such employee has an
11 actual or perceived disability. For the purposes of this subdivision,
12 the term "disability" shall have the same meaning as set forth in subdivi-
13 vision twenty-one of section two hundred ninety-two of the executive
14 law. Nothing in this subdivision shall be construed to limit the
15 provisions of any other law or any minimum wage order issued under this
16 article that authorizes an employer to pay a wage that is less than the
17 wage established pursuant to subdivisions one and two of section six
18 hundred fifty-two of this chapter, provided that, in such case, an
19 employee that has a disability shall be paid a wage that is consistent
20 with an employee in a comparable position that does not have a disabili-
21 ty.

22 § 5. Subdivision 1 of section 674 of the labor law, as added by chap-
23 ter 552 of the laws of 1969, is amended to read as follows:

24 1. The commissioner may promulgate such regulations as he or she deems
25 appropriate to carry out the purposes of this article and to safeguard
26 minimum wage standards. Such regulations may include, but are not limit-
27 ed to, the defining of the circumstances or conditions for the accept-
28 ance of non-hourly rates and piece rates as equivalent to the minimum
29 hourly rates established by this article. Such regulations also may
30 include, but are not limited to, waiting time and call-in pay rates;
31 wage provisions governing guaranteed earnings during specified periods
32 of work; allowances for meals, lodging, and other items, services and
33 facilities when furnished by the employer; and the employment of indi-
34 viduals whose earning capacity is affected or impaired by youth or age[
35 ~~or by physical or mental deficiency or injury~~], under special certif-
36 icates issued by the commissioner, at such wages lower than the minimum
37 wage established by this article and for such period as shall be
38 prescribed in such regulations.

39 § 6. This act shall take effect on the thirty-first of December next
40 succeeding the date upon which it shall have become a law. Effective
41 immediately, the addition, amendment and/or repeal of any rule or regu-
42 lation by the department of labor necessary for the implementation of
43 this act on its effective date are authorized to be made and completed
44 on or before such effective date.