

# STATE OF NEW YORK

6266--A

2019-2020 Regular Sessions

## IN SENATE

May 31, 2019

Introduced by Sens. BIAGGI, GOUNARDES, JACKSON, SKOUFIS -- 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

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 TRANSPORTATION CENTER SERVICE WORKERS

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

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

10 696-c. Minimum wage rate for covered transportation center  
11 service workers.

12 696-d. Commissioner's powers of investigation.

13 696-e. Records of employers.

14 696-f. Penalties.

15 696-g. Civil action.

16 696-h. Regulations.

17 696-i. Savings clause.

18 § 696-a. Definitions. As used in this article: 1. "Covered transporta-  
19 tion center" means John F. Kennedy International Airport, LaGuardia

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

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1 Airport, New York Stewart International Airport, the Port Authority Bus  
2 Terminal, Pennsylvania Station and Grand Central Station.

3 2. "Covered transportation center worker" means any person employed to  
4 perform work at a covered transportation center provided at least one-  
5 half of the employee's time during any workweek is performed at a  
6 covered transportation center. Covered transportation center worker  
7 shall not include persons employed in an executive, administrative, or  
8 professional capacity as defined in subparagraph one of paragraph (a) of  
9 section thirteen of the Fair Labor Standards Act of 1928.

10 3. "Franchisee" means a person to whom a franchise is offered or  
11 granted;

12 4. "Franchisor" means a person who grants a franchise to another  
13 person;

14 5. "Covered employer" means all employers that employ more than fifty  
15 employees, regardless of where those employees are employed, and all  
16 franchisees associated with a franchisor or a network of franchises with  
17 franchisees that employ more than fifty employees in aggregate;

18 6. The "standard wage rate" means:

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

20 (i) one dollar more than any minimum wage rate that would be otherwise  
21 applicable to covered transportation center service workers under any  
22 federal, state, or local law or policy; or

23 (ii) any policy of the Port Authority of New York and New Jersey.

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

25 (i) two dollars more than any minimum wage rate that would be other-  
26 wise applicable to covered transportation center service workers under  
27 any federal, state, or local law or policy; or

28 (ii) any policy of the Port Authority of New York and New Jersey.

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

30 (i) three dollars more than any minimum wage rate that would be other-  
31 wise applicable to covered transportation center service workers under  
32 any federal, state, or local law or policy; or

33 (ii) any policy of the Port Authority of New York and New Jersey.

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

36 (i) four dollars more than any minimum wage rate that would be other-  
37 wise applicable to covered transportation center service workers under  
38 any federal, state, or local law or policy; or

39 (ii) any policy of the Port Authority of New York and New Jersey.

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

42 (i) four dollars more than any minimum wage rate that would be other-  
43 wise applicable to covered transportation center service workers under  
44 any federal, state, or local law or policy;

45 (ii) any policy of the Port Authority of New York and New Jersey; or

46 (iii) the wage rate designated by the commissioner the immediately  
47 preceding August first based on the determinations made by the federal  
48 general services administration pursuant to the McNamara-O'Hara Service  
49 Contract Act of 1965, for the classification of "Guard I" for the county  
50 in which the covered transportation center is located.

51 7. The "standard benefits supplement rate" means effective September  
52 first, two thousand twenty and each September first thereafter, the  
53 supplemental benefits rate designated by the commissioner the immediate-  
54 ly preceding August first, based on the determination made by the federal  
55 general service administration pursuant to the McNamara-O'Hara

1 Service Contract Act of 1965, for the classification of "Guard I" for  
2 the county in which the covered transportation center is located.

3 8. The "standard paid leave rate" means effective September first, two  
4 thousand twenty and each September first thereafter, the paid leave  
5 requirements designated by the commissioner the immediately preceding  
6 August first, based on the determinations made by the federal general  
7 services administration pursuant to the McNamara-O'Hara Service Contract  
8 Act of 1965, for the classification of "Guard I" for the county in which  
9 the covered transportation center is located.

10 9. The "applicable standard rate" shall mean a combination of (a) the  
11 standard wage rate; (b) the standard benefits supplemental rate, and (c)  
12 the standard paid leave rate.

13 § 696-b. Designation by commissioner of applicable standard rates for  
14 covered transportation center service workers. 1. On August first, two  
15 thousand twenty and each subsequent August first the commissioner shall  
16 designate the supplemental benefits rate and paid leave requirements  
17 required under determinations made by the federal general services  
18 administration pursuant to the McNamara-O'Hara Service Contract Act of  
19 1965, for the classification of "Guard I" for the county in which the  
20 covered transportation center is located. The commissioner shall public-  
21 ly post such designated supplemental benefits rates and paid leave  
22 requirements.

23 2. On August first, two thousand twenty-four and each subsequent  
24 August first, the commissioner shall additionally designate the wage  
25 rate required under determinations made by the federal general services  
26 administration pursuant to the McNamara-O'Hara Service Contract Act of  
27 1965, for the classification of "Guard I" for the county in which the  
28 covered transportation center is located. The commissioner shall public-  
29 ly post such designated wage rate.

30 § 696-c. Minimum wage rate for covered transportation center service  
31 workers. 1. All covered employers shall ensure that every covered  
32 transportation center worker is compensated at a rate that is no less  
33 than the applicable standard rate.

34 2. Notwithstanding subdivision one of this section, the minimum wage  
35 rate for a covered transportation center worker who is a food service  
36 worker receiving tips shall be a cash wage of at least two-thirds of the  
37 minimum wage rate set forth in subdivision one of this section, rounded  
38 to the nearest five cents, provided that the tips of such an employee,  
39 when added to such cash wage, are equal to or exceed the minimum wage  
40 rate for covered transportation center workers in effect pursuant to  
41 subdivision one of this section. Food service workers shall also  
42 receive the full amount of benefits and paid leave minimums as provided  
43 under section six hundred ninety-six-b of this article.

44 § 696-d. Commissioner's powers of investigation. The commissioner or  
45 his or her authorized representative shall have the power to:

46 1. investigate the compensation of covered transportation center work-  
47 ers in the state;

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

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

1 § 696-e. Records of employers. For every employee covered by this  
2 article, every employer shall establish, maintain, and preserve for not  
3 less than six years contemporaneous, true, and accurate payroll records  
4 showing for each week worked the hours worked, the compensation  
5 provided, plus such other information as the commissioner deems material  
6 and necessary. For all covered transportation center workers who are  
7 not exempt from overtime compensation as established in the commis-  
8 ioner's minimum wage orders or otherwise provided by law, rule, or regu-  
9 lation, the payroll records shall include the compensation provided and  
10 the regular hourly rate or rates of pay, the overtime rate or rates of  
11 pay, the number of regular hours worked, the number of overtime hours  
12 worked and the cost of benefits and/or benefit supplements. On demand,  
13 the employer shall furnish to the commissioner or his or her duly  
14 authorized representative a sworn statement of the hours worked, rate or  
15 rates of compensation, for each covered transportation worker, plus such  
16 other information as the commissioner deems material and necessary.  
17 Every employer shall keep such records open to inspection by the commis-  
18 sioner or his or her duly authorized representative at any reasonable  
19 time. Every employer of a covered transportation worker shall keep a  
20 digest and summary of this article which shall be prepared by the  
21 commissioner, posted in a conspicuous place in his or her establishment  
22 and shall also keep posted such additional copies of said digest and  
23 summary as the commissioner prescribes. Employers shall, on request, be  
24 furnished with copies of this article and of orders, and of digests and  
25 summaries thereof, without charge. Employers shall permit the commis-  
26 sioner or his or her duly authorized representative to question without  
27 interference any employee of such employer in a private location at the  
28 place of employment and during working hours in respect to the wages  
29 paid to and the hours worked by such employee or other employees.

30 § 696-f. Penalties. 1. Any employer or his or her agent, or the offi-  
31 cer or agent of any corporation, partnership, or limited liability  
32 company, who pays or agrees to pay to any employee less than the appli-  
33 cable standard rate under this article shall be guilty of a misdemeanor  
34 and upon conviction therefor shall be fined not less than five hundred  
35 nor more than twenty thousand dollars or imprisoned for not more than  
36 one year, and, in the event that any second or subsequent offense occurs  
37 within six years of the date of conviction for a prior offense, shall be  
38 fined not less than five hundred nor more than twenty thousand dollars  
39 or imprisoned for not more than one year plus one day, or punished by  
40 both such fine and imprisonment, for each such offense. Each payment to  
41 any employee in any week of less than the applicable standard rate under  
42 this article shall constitute a separate offense.

43 2. Any employer or his or her agent, or the officer or agent of any  
44 corporation, partnership, or limited liability company, who fails to  
45 keep the records required under this article or to furnish such records  
46 or any information required to be furnished under this article to the  
47 commissioner or his or her authorized representative upon request, or  
48 who hinders or delays the commissioner or his or her authorized repre-  
49 sentative in the performance of his or her duties in the enforcement of  
50 this article, or refuses to admit the commissioner or his or her author-  
51 ized representative to any place of employment, or falsifies any such  
52 records or refuses to make such records accessible to the commissioner  
53 or his or her authorized representative, or refuses to furnish a sworn  
54 statement of such records or any other information required for the  
55 proper enforcement of this article to the commissioner or his or her  
56 authorized representative, shall be guilty of a misdemeanor and upon

1 conviction therefor shall be fined not less than five hundred nor more  
2 than five thousand dollars or imprisoned for not more than one year,  
3 and, in the event that any second or subsequent offense occurs within  
4 six years of the date of conviction for a prior offense, shall be guilty  
5 of a felony for the second or subsequent offense, and upon conviction  
6 therefor, shall be fined not less than five hundred nor more than twenty  
7 thousand dollars or imprisoned for not more than one year plus one day,  
8 or punished by both such fine and imprisonment, for each such offense.  
9 Each day's failure to keep the records requested under this article or  
10 to furnish such records or information to the commissioner or his or her  
11 authorized representative shall constitute a separate offense.

12 § 696-g. Civil action. 1. If any employee is paid by his or her  
13 employer less than the applicable standard rate to which he or she is  
14 entitled under the provisions of this article, he or she shall recover  
15 in a civil action the amount of any such underpayments, together with  
16 all reasonable attorney's fees, prejudgment interest as required under  
17 the civil practice law and rules, and unless the employer proves a good  
18 faith basis to believe that its underpayment of wages was in compliance  
19 with the law, an additional amount as liquidated damages equal to one  
20 hundred percent of the total of such underpayments found to be due. Any  
21 agreement between the employee and the employer to work for less than  
22 such applicable standard rate shall be no defense to such action.

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

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

46 4. In any civil action by an employee or by the commissioner, the  
47 employee or commissioner shall have the right to collect attorneys' fees  
48 and costs incurred in enforcing any court judgment. Any judgment or  
49 court order awarding remedies under this section shall provide that if  
50 any amounts remain unpaid upon the expiration of ninety days following  
51 issuance of judgment, or ninety days after expiration of the time to  
52 appeal and no appeal therefrom is then pending, whichever is later, the  
53 total amount of judgment shall automatically increase by fifteen  
54 percent.

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

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

6     3. A notice of the public hearing and a notice of the promulgation of  
7 any such regulation shall be published in the state bulletin. The notice  
8 of the promulgation of any such regulation shall be published at least  
9 twenty days before the effective date of the regulation.

10    § 696-i. Savings clause. If any provision of this article or the  
11 application thereof to any person, employer, occupation or circumstance  
12 is held invalid, the remainder of the article and the application of  
13 such provision to other persons, employees, occupations, or circum-  
14 stances shall not be affected thereby.

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