

# STATE OF NEW YORK

6266--C

2019-2020 Regular Sessions

## IN SENATE

May 31, 2019

Introduced by Sens. BIAGGI, BAILEY, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, LIU, MAYER, METZGER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SKOUFIS, STAVISKY, THOMAS -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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 COVERED AIRPORT WORKERS

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

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

##### 696-c. Minimum wage rate for covered airport 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.

LBD13042-06-0

696-i. Savings clause.

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

2. "Covered airport worker" means any person employed to perform work at a covered airport location provided at least one-half of the employee's time during any workweek is performed at a covered airport location. Covered airport 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.

3. "Employer" means any person, corporation, limited liability company, or association employing any individual in an occupation, industry, trade, business or service. The term "employer" shall not include a governmental agency.

4. The "standard wage rate" means:

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

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

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

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

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

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

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

(i) three dollars more than any minimum wage rate that would be otherwise applicable to covered airport workers established by article nineteen of this chapter; or

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

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

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

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

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

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

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

(iii) an amount equal to the wage rate designated by the commissioner the immediately preceding August first based on the determinations made by the federal department of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 USCS § 6701, et seq.), for the classi-

1 fication of "Guard I" for the county in which the covered airport  
2 location is located.

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

16 6. 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 federal department  
20 of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965  
21 (41 USCS § 6701, et seq.), for the classification of "Guard I" for the  
22 county in which the covered airport location is located.

23 7. 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 § 696-b. Designation by commissioner of applicable standard rates for  
27 covered airport workers. 1. On August first, two thousand twenty and  
28 each subsequent August first the commissioner shall designate the  
29 supplemental benefits rate and paid leave requirements required under  
30 determinations made by the federal general services administration  
31 pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 USCS §  
32 6701, et seq.), for the classification of "Guard I" for the county in  
33 which the covered airport location is located. The commissioner shall  
34 publicly post such designated supplemental benefits rates and paid leave  
35 requirements.

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

43 § 696-c. Minimum wage rate for covered airport workers. All covered  
44 employers shall ensure that every covered airport worker is compensated  
45 at a rate that is no less than the applicable standard rate. Nothing in  
46 this article shall alter or limit any employer's obligation to pay any  
47 otherwise applicable prevailing wage under article eight or nine of this  
48 chapter.

49 § 696-d. Commissioner's powers of investigation. The commissioner or  
50 his or her authorized representative shall have the power to:

51 1. investigate the compensation of covered airport workers in the  
52 state;

53 2. enter the place of business or employment of any employer for the  
54 purpose of (a) examining and inspecting any and all books, registers,  
55 payrolls, and other records that in any way relate to or have a bearing  
56 upon the compensation provided to, or the hours worked by any employees,

1 and (b) ascertaining whether the provisions of this article and the  
2 rules and regulations promulgated hereunder are being complied with; and  
3 3. require from any employer full and correct statements and reports  
4 in writing, at such times as the commissioner may deem necessary, of the  
5 compensation provided to and the hours by such employer's employees.

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

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

48 2. Any employer or his or her agent, or the officer or agent of any  
49 corporation, partnership, or limited liability company, who fails to  
50 keep the records required under this article or to furnish such records  
51 or any information required to be furnished under this article to the  
52 commissioner or his or her authorized representative upon request, or  
53 who hinders or delays the commissioner or his or her authorized repre-  
54 sentative in the performance of his or her duties in the enforcement of  
55 this article, or refuses to admit the commissioner or his or her author-  
56 ized representative to any place of employment, or falsifies any such

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

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

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

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

51 4. In any civil action by an employee or by the commissioner, the  
52 employee or commissioner shall have the right to collect attorneys' fees  
53 and costs incurred in enforcing any court judgment. Any judgment or  
54 court order awarding remedies under this section shall provide that if  
55 any amounts remain unpaid upon the expiration of ninety days following  
56 issuance of judgment, or ninety days after expiration of the time to

1 appeal and no appeal therefrom is then pending, whichever is later, the  
2 total amount of judgment shall automatically increase by fifteen  
3 percent.

4 § 696-h. Regulations. 1. The commissioner may promulgate such regu-  
5 lations as he or she deems appropriate to carry out the purposes of this  
6 article and to safeguard minimum compensation standards.

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

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

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

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