

STATE OF NEW YORK

6538

2019-2020 Regular Sessions

IN SENATE

June 15, 2019

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

AN ACT to amend the labor law, in relation to dependent workers

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

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "dependent worker act".
- 3 § 2. Legislative findings and intent. 1. It is hereby declared to be
4 the public policy of the state to ensure that laborers and other workers
5 who depend for their livelihood on working for others, offering their
6 time, labor and personal services in exchange for hourly wages or other
7 compensation, are timely and fully paid and informed regarding their
8 earnings, without the uncertainty, delay and denial that may result when
9 their employment status is disputed by claims that they are independent
10 contractors rather than employees.
- 11 2. It is further declared to be the public policy of the state to
12 ensure that such dependent workers shall have the right to organize and
13 bargain collectively through representatives of their own choosing based
14 on the state's constitutional recognition that the labor of human beings
15 is not a commodity or an article of commerce and shall never be so
16 considered or construed.
- 17 3. The legislature finds that the ability of such dependent workers to
18 find opportunities for work has been transformed by technology to expand
19 day work to digital work, allowing workers to establish their availabil-
20 ity by the minute and hour, rather than simply by the day. In light of
21 this shift, the legislature finds that further examination is warranted
22 to determine the extent to which various employment benefits and
23 substantive protections that were historic bargains struck with input
24 from labor and management, through bargaining, legislation, and adminis-
25 trative rate setting and rulemaking, should be extended to such digital
26 work, regardless of employment status. The collective bargaining oppor-

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

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1 tunities and public meetings provided through this legislation can
2 provide experience and input that is not currently available to the
3 legislature to inform determinations regarding such benefits and
4 substantive protections.

5 4. This chapter shall be deemed an exercise of the police power of the
6 state for the protection of the public welfare, prosperity, health, and
7 peace of the people of the state.

8 5. Nothing herein shall diminish the rights of any worker, including
9 those already or prospectively determined by a court or administrative
10 agency to be an employee.

11 § 3. Subdivision 16 of section 2 of the labor law, as added by chapter
12 564 of the laws of 2010, is renumbered subdivision 16-a and a new subdi-
13 vision 17 is added to read as follows:

14 17. "Dependent worker" means an individual who provides personal
15 services to a consumer of such personal services through a private
16 sector third-party that: establishes the gross amounts earned by the
17 individual; establishes the amounts charged to the consumer; collects
18 payment from the consumer; pays the individual; or any combination of
19 the preceding. The term "dependent worker" applies without regard to
20 whether the individual provides such services in the name of the indi-
21 vidual or in the name of a business or as a separate business entity,
22 and without regard to whether the consumer of such personal services is
23 an individual, business, other entity, or any combination thereof. No
24 governmental entity shall be considered a third-party for purposes of
25 the definition of the term "dependent worker". Whenever the term employ-
26 ee is defined by law to include a dependent worker for certain purposes,
27 then for such statute and purposes a dependent worker shall be deemed to
28 be employed by the third-party referenced above, who shall be deemed to
29 be an employer engaged in an employment relationship with a dependent
30 worker, unless otherwise excluded from such statute or purposes. Work-
31 ers classified as employees by other means or who satisfy any other
32 legal test for employment, including those already or prospectively
33 determined by a court or administrative agency to be employees, shall
34 not have any rights or protections diminished by application of this
35 subdivision.

36 § 4. Subdivision 2 of section 190 of the labor law, as added by chap-
37 ter 548 of the laws of 1966, is amended to read as follows:

38 2. "Employee" means any person employed for hire by an employer in any
39 employment and for purposes of sections one hundred ninety-one, one
40 hundred ninety-two, one hundred ninety-five and one hundred ninety-six-d
41 of this article, as well as any regulations adopted thereunder and any
42 provisions relating to the enforcement of such sections including
43 sections one hundred ninety-six, one hundred ninety-six-a, one hundred
44 ninety-seven, one hundred ninety-eight, one hundred ninety-eight-a, two
45 hundred eleven, two hundred thirteen, two hundred fifteen, two hundred
46 eighteen, two hundred nineteen, and two hundred nineteen-c of this chap-
47 ter, shall include a dependent worker, as defined by section two of this
48 chapter.

49 § 5. Subdivision 3 of section 701 of the labor law is amended by
50 adding a new paragraph (c) to read as follows:

51 (c) The term "employee" shall also include a dependent worker, as
52 defined by section two of this chapter, for purposes of this article, of
53 article twenty-A, and of sections two hundred eight, two hundred nine,
54 two hundred nine-a, and two hundred eleven-a of this chapter, as well as
55 any regulations promulgated thereunder and any provisions relating to
56 the enforcement of such article and sections including sections one

1 hundred ninety-six, one hundred ninety-six-a, two hundred eleven, two
2 hundred thirteen, and two hundred fifteen of this chapter.

3 § 6. The commissioner of labor shall hold public meetings with repre-
4 sentatives of businesses, employees and dependent workers to examine
5 various state labor and related laws that regulate employment rights and
6 benefits to identify which provisions could be extended to provide
7 dependent workers with the same, or similar, rights and benefits as
8 employees have, consistent with the underlying purposes of each statuto-
9 ry scheme without substantially curtailing opportunities for dependent
10 workers to earn income sufficient to provide adequate maintenance for
11 themselves and their families, and whether changes should be made to the
12 definition of dependent worker, as defined by section 2 of the labor
13 law.

14 § 7. The commissioner of labor may hold separate meetings, or convene
15 committees, to examine different industries and services, including, but
16 not limited to personal transportation (including taxis, black car and
17 ride sharing services), local delivery (including messenger and food
18 delivery services), and various personal services (including temporary
19 staffing services, cleaning services, and custom errand services).

20 § 8. The commissioner of labor shall make a report of his or her find-
21 ings to the governor, the temporary president of the senate, and the
22 speaker of the assembly, within one year of the first public meeting.
23 Such report shall include recommendations for further action and legis-
24 lation.

25 § 9. The provisions of law to be examined by the commissioner of labor
26 shall include, but not be limited to, the following:

- 27 a. social safety net employment laws, including:
- 28 i. compensation for the unemployed, under the unemployment insurance
29 law, under article 18 of the labor law;
 - 30 ii. compensation and medical benefits for workplace injuries and
31 illnesses under articles 1-8 of the workers' compensation law;
 - 32 iii. compensation for non-workplace disability and family leave bene-
33 fits under the disability benefits law and the paid family leave bene-
34 fits law under article 9 of the workers' compensation law;
 - 35 iv. notices and compensation for workers laid off due to plant clos-
36 ings under the New York state worker adjustment and retraining notifica-
37 tion (WARN) act, under article 25-A of the labor law; and
 - 38 v. notification of continuation of coverage for health insurance
39 following termination under section 217 of the labor law.
- 40 b. anti-discrimination, opportunity and privacy protections, includ-
41 ing:
- 42 i. equal opportunity and anti-discrimination employment protections
43 under the human rights law under article 15 of the executive law;
 - 44 ii. licensure and employment of persons previously convicted of one or
45 more criminal offenses under article 23-A of the correction law;
 - 46 iii. related posting and sexual harassment training requirements under
47 sections 201-f and 201-g of the labor law;
 - 48 iv. prohibition on use of lie detectors and other psychological stress
49 evaluators in employment under article 20-B of the labor law;
 - 50 v. prohibition on finger printing under section 201-a of the labor
51 law;
 - 52 vi. employee privacy in connection with changing rooms, personal iden-
53 tifying information, physical examinations and nursing mothers under
54 sections 203-c, 203-d, 206-a and 206-c of the labor law;
 - 55 vii. various prohibitions on discrimination based on child-care for
56 adoptive parents, lawful outside activities, for failure to meet ticket

1 quotas and displaying the American flag under sections 201-c, 201-d,
2 215-a and 215-c of the labor law; and
3 viii. anti-retaliation and anti-discrimination protections in
4 connection with workers' compensation and labor laws under sections
5 210-a and 215 of the labor law.
6 c. laws regarding payment of wages, including:
7 i. payment of wages and related protections under article 6 of the
8 labor law;
9 ii. minimum wages and related protections under the minimum wage act
10 under article 19 of the labor law; and
11 iii. payment of fees for medical exams required for employment under
12 section 201-b of the labor law.
13 d. laws regulating hours of work, including:
14 i. employment of minors hours and permitting under article 4 of the
15 labor law;
16 ii. child performers hours, education and trust requirements under
17 article 4-A of the labor law;
18 iii. hours of labor and day of rest requirements under article 5 of
19 the labor law; and
20 iv. leave of absences for volunteer emergency first responders and
21 following child-birth under sections 202-1 and 206-b of the labor law.
22 e. laws regulating safety and health, including:
23 i. right to know protections under the toxic substances provisions of
24 article 28 of the labor law; and
25 ii. protections in connection with window cleaning, bridges and
26 tunnels, hotels and motels, eating in certain workrooms, factories,
27 high-voltage lines, mercantile establishments, mines, explosives and
28 places of public assembly under sections 202, 202-e, 202-f, 202-h, 205
29 and articles 11, 14, 15, 16 and 17 of the labor law.
30 § 10. This act shall take effect on the sixtieth day after it shall
31 have become a law.