

STATE OF NEW YORK

8955

IN SENATE

September 2, 2020

Introduced by Sen. GOUNARDES -- 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 providing hazard payments to essential workers during a state disaster emergency

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

1 Section 1. The labor law is amended by adding a new section 196-c to
2 read as follows:

3 § 196-c. Essential worker hazard payments. 1. For the purposes of this
4 section:

5 (a) "essential worker" means any employee of an employer providing
6 essential services or functions during any state disaster emergency
7 declared pursuant to article two-B of the executive law and designated
8 as an essential worker pursuant to any law, rule, regulation or execu-
9 tive order including but not limited to essential health care operations
10 including research and laboratory services; essential infrastructure
11 including utilities, telecommunication, airports and transportation
12 infrastructure; essential retail including grocery stores and pharma-
13 cies; essential services including trash collection, mail, and shipping
14 services; news media; banks and related financial institutions; provid-
15 ers of basic necessities to economically disadvantaged populations;
16 construction; vendors of essential services necessary to maintain the
17 safety, sanitation and essential operations of residences or other
18 essential businesses; vendors that provide essential services or
19 products, including logistics and technology support, child care and
20 services needed to ensure the continuing operation of government agen-
21 cies and provide for the health, safety and welfare of the public;

22 (b) "employer" means a formula retail store, large employer, transpor-
23 tation business, or franchisee or subcontractor, and includes any indi-
24 vidual, partnership, association, corporation, limited liability compa-
25 ny, business trust, legal representative, or any organized group of
26 persons acting as such an employer;

27 (c) "formula retail store" means any employer that operates a retail
28 sales or restaurant establishment either directly or through franchisees

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

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1 and that, along with eleven or more other retail sales or restaurant
2 establishments located in the United States, maintains two or more of
3 the following features: (i) a standardized array of merchandise, a
4 standardized facade, a standardized decor and color scheme, a uniform
5 apparel, standardized signage, a trademark; or (ii) a servicemark;

6 (d) "large employer" means any employer that has annual gross revenue
7 of fifty million dollars or more, but shall not include: (i) an employer
8 whose principal industry is manufacturing; or (ii) a not-for-profit
9 organization. An employer shall be deemed to have annual gross revenue
10 of fifty million dollars or more if it had revenue at or exceeding that
11 level in any of the past three fiscal or calendar years;

12 (e) "manufacturing" means the process of working raw materials into
13 products suitable for use or which gives new shapes, new quality or new
14 combinations to matter which has already gone through some artificial
15 process by the use of machinery, tools, appliances, or other similar
16 equipment;

17 (f) "not-for-profit organization" means an entity exempt from taxation
18 under section 501(c)(3) of the federal internal revenue code;

19 (g) "transportation business" means any industry, business, or estab-
20 lishment operated for the purpose of conveying persons or property from
21 one place to another whether by rail, highway, air, or water, and all
22 operations and services in connection therewith; and

23 (h) "franchisee or subcontractor" means any employer that operates
24 under a franchise agreement with a formula retail store or large employ-
25 er, or that provides services, including but not limited to janitorial,
26 maintenance, security, staffing, passenger services, food services, or
27 temporary services to a formula retail store, large employer, or trans-
28 portation business.

29 2. During a state disaster emergency, when essential workers are
30 exposed as a result of their work assignments to an unavoidable, clear
31 and direct risk and hazard to safety and health, the commissioner shall
32 direct all employers of essential workers to make hazard payments to
33 such essential workers. Such payment shall be a percentage or a fixed
34 dollar amount, as prescribed by the commissioner, provided, however, no
35 hazard payment shall exceed twenty-five thousand dollars in any year for
36 any essential worker earning less than two hundred thousand dollars per
37 year or five thousand dollars for any essential worker earning more than
38 two hundred thousand dollars. Such payments shall be in addition to and
39 shall not be part of an essential worker's basic annual salary, and
40 shall not affect or impair any performance advancement payments,
41 performance awards, longevity payments or other rights or benefits to
42 which an essential worker may be entitled. A hazard payment shall be
43 terminated upon the cessation of the state disaster emergency.

44 3. The commissioner shall adopt regulations necessary to carry out the
45 provisions of this section.

46 § 2. This act shall take effect immediately.