

STATE OF NEW YORK

5569

2021-2022 Regular Sessions

IN ASSEMBLY

February 19, 2021

Introduced by M. of A. WILLIAMS -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to exempting farm laborer internships earning college credit from the definition of employee and employment

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 4 of section 2 of the
2 workers' compensation law, as amended by chapter 503 of the laws of
3 2016, is amended to read as follows:
4 "Employee" means a person engaged in one of the occupations enumerated
5 in section three of this article or who is in the service of an employer
6 whose principal business is that of carrying on or conducting a hazard-
7 ous employment upon the premises or at the plant, or in the course of
8 his or her employment away from the plant of his or her employer;
9 "employee" shall also mean for the purposes of this chapter any individ-
10 ual performing services in construction for a contractor who does not
11 overcome the presumption of employment as provided under section eight
12 hundred sixty-one-c of the labor law; "employee" shall also mean for the
13 purposes of this chapter any individual performing services in the
14 commercial goods transportation industry for a commercial goods trans-
15 portation contractor who does not overcome the presumption of employment
16 as provided under section eight hundred sixty-two-b of the labor law;
17 "employee" shall also mean for the purposes of this chapter civil
18 defense volunteers who are personnel of volunteer agencies sponsored or
19 authorized by a local office under regulations of the civil defense
20 commission, to the extent of the provisions of groups seventeen and
21 nineteen; "employee" shall at the election of a municipal corporation
22 made pursuant to local law duly enacted also mean a member of an auxil-
23 iary police organization authorized by local law; and for the purposes
24 of this chapter only a newspaper carrier under the age of eighteen years

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

LBD08801-01-1

1 as defined in section thirty-two hundred twenty-eight of the education
2 law, but shall not include delivery of newspapers or shopping news to
3 the consumer (including any services directly related to such trade or
4 business) by a person who is not performing commercial goods transporta-
5 tion services for a commercial goods transportation contractor within
6 the meaning of article twenty-five-C of the labor law, and shall not
7 include domestic servants except as provided in section three of this
8 chapter, and except where the employer has elected to bring such employ-
9 ees under the law by securing compensation in accordance with the terms
10 of section fifty of this chapter. The term "employee" shall not include
11 persons who are members of a supervised amateur athletic activity oper-
12 ated on a non-profit basis, provided that said members are not also
13 otherwise engaged or employed by any person, firm or corporation partic-
14 ipating in said athletic activity, nor shall it include the spouse or
15 minor child of an employer who is a farmer unless the services of such
16 spouse or minor child shall be engaged by said employer under an express
17 contract of hire nor shall it include an executive officer of a corpo-
18 ration who at all times during the period involved owns all of the
19 issued and outstanding stock of the corporation and holds all of the
20 offices pursuant to paragraph (e) of section seven hundred fifteen of
21 the business corporation law or two executive officers of a corporation
22 who at all times during the period involved between them own all of the
23 issued and outstanding stock of such corporation and hold all such
24 offices except as provided in subdivision six of section fifty-four of
25 this chapter provided, however, that where there are two executive offi-
26 cers of a corporation each officer must own at least one share of stock,
27 nor shall it include a self-employed person or a partner of a partner-
28 ship as defined in section ten of the partnership law who is not covered
29 under a compensation insurance contract or a certificate of self-insu-
30 rance as provided in subdivision eight of section fifty-four of this
31 chapter, nor shall it include farm laborers except as provided in group
32 fourteen-b of subdivision one of section three of this chapter. If a
33 farm labor contractor recruits or supplies farm laborers for work on a
34 farm, such farm laborers shall for the purposes of this chapter be
35 deemed to be employees of the owner or lessee of such farm. The term
36 "employee" shall not include interns receiving college credit for
37 service as farm laborers. The term "employee" shall not include baby
38 sitters as defined in subdivision three of section one hundred thirty-
39 one and subdivision three of section one hundred thirty-two of the labor
40 law or minors fourteen years of age or over engaged in casual employment
41 consisting of yard work and household chores in and about a one family
42 owner-occupied residence or the premises of a non-profit, non-commercial
43 organization, not involving the use of power-driven machinery. The term
44 "employee" shall not include persons engaged by the owner in casual
45 employment consisting of yard work, household chores and making repairs
46 to or painting in and about a one-family owner-occupied residence. The
47 term "employee" shall not include the services of a licensed real estate
48 broker or sales associate if it be proven that (a) substantially all of
49 the remuneration (whether or not paid in cash) for the services
50 performed by such broker or sales associate is directly related to sales
51 or other output (including the performance of services) rather than to
52 the number of hours worked; (b) the services performed by the broker or
53 sales associate are performed pursuant to a written contract executed
54 between such broker or sales associate and the person for whom the
55 services are performed within the past twelve to fifteen months; and (c)

1 the written contract provided for in paragraph (b) of this subdivision
2 was not executed under duress and contains the following provisions:

3 § 2. The opening paragraph of paragraph A of subdivision 6 of section
4 201 of the workers' compensation law, as amended by chapter 105 of the
5 laws of 2019, is amended to read as follows:

6 "Employment" means employment in any trade, business or occupation
7 carried on by an employer, except that the following shall not be deemed
8 employment under this article: services performed for the state, a
9 municipal corporation, local governmental agency, other political subdivi-
10 sion or public authority; employment subject to the federal railroad
11 unemployment insurance act; service performed on or as an officer or
12 member of the crew of a vessel on the navigable water of the United
13 States or outside the United States; casual employment and the first
14 forty-five days of extra employment of employees not regularly in
15 employment as otherwise defined herein; service as golf caddies; service
16 as a farm laborer where such service is an internship granting college
17 course credit; and service during all or any part of the school year or
18 regular vacation periods as a part-time worker of any person actually in
19 regular attendance during the day time as a student in an elementary or
20 secondary school. The term "employment" shall include domestic or
21 personal work in a private home. The term "employment" shall not include
22 the services of a licensed real estate broker or sales associate if it
23 be proven that (a) substantially all of the remuneration (whether or not
24 paid in cash) for the services performed by such broker or sales associ-
25 ate is directly related to sales or other output (including the perform-
26 ance of services) rather than to the number of hours worked; (b) the
27 services performed by the broker or sales associate are performed pursu-
28 ant to a written contract executed between such broker or sales associ-
29 ate and the person for whom the services are performed within the past
30 twelve to fifteen months; and (c) the written contract provided for in
31 subparagraph (b) of this paragraph was not executed under duress and
32 contains the following provisions:

33 § 3. This act shall take effect on the first of January next succeed-
34 ing the date on which it shall have become a law.