

# STATE OF NEW YORK

5772

2021-2022 Regular Sessions

## IN ASSEMBLY

February 24, 2021

Introduced by M. of A. GLICK, DINOWITZ, COLTON, MAGNARELLI, SIMON --  
read once and referred to the Committee on Labor

AN ACT to amend the labor law and the workers' compensation law, in  
relation to the employee status of an individual

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

1 Section 1. Paragraphs (a) and (b) of subdivision 1 of section 511 of  
2 the labor law, as amended by chapter 607 of the laws of 1971, subpara-  
3 graph 1-a of paragraph (b) as added by chapter 903 of the laws of 1986,  
4 subparagraph 1-b of paragraph (b) as added by chapter 418 of the laws of  
5 2010, subparagraph 1-c of paragraph (b) as added by chapter 558 of the  
6 laws of 2013, and subparagraph 3 of paragraph (b) as added by chapter  
7 668 of the laws of 1992, are amended to read as follows:

8 (a) any service under any contract of employment for hire, express or  
9 implied, written, or oral; and

10 (b) (1) any service by a person providing labor or services for remun-  
11 eration unless the hiring entity demonstrates that all of the following  
12 conditions are satisfied:

13 (i) the person is free from the control and direction of the hiring  
14 entity in connection with the performance of the work, both under the  
15 contract for the performance of the work and in fact; and

16 (ii) the person performs work that is outside the usual course of the  
17 hiring entity's business; and

18 (iii) the person is customarily engaged in an independently estab-  
19 lished trade, occupation, or business of the same nature as that  
20 involved in the work performed.

21 (2) for the purposes of this section, any person providing labor or  
22 services for remuneration pursuant to subparagraph one of this paragraph  
23 shall be considered an employee rather than an independent contractor;  
24 and

25 (c) any service by a person for an employer;

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

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1 (1) as an agent-driver or commission-driver engaged in distributing  
2 meat, vegetable, fruit, or bakery products; beverages other than milk;  
3 or laundry or dry-cleaning services; or

4 (1-a) as a professional musician or a person otherwise engaged in the  
5 performing arts, and performing services as such for a television or  
6 radio station or network, a film production, a theatre, hotel, restau-  
7 rant, night club or similar establishment unless, by written contract,  
8 such musician or person is stipulated to be an employee of another  
9 employer covered by this chapter. "Engaged in the performing arts" shall  
10 mean performing services in connection with the production of or  
11 performance in any artistic endeavor which requires artistic or techni-  
12 cal skill or expertise; or

13 (1-b) as an employee in the construction industry unless the presump-  
14 tion of employment can be overcome, as provided under section eight  
15 hundred sixty-one-c of this chapter; or

16 (1-c) as an employee in the commercial goods transportation industry  
17 unless the presumption of employment can be overcome, as provided under  
18 section eight hundred sixty-two-b of this chapter; or

19 (2) as a traveling or city salesman engaged on a full-time basis in  
20 soliciting orders for merchandise for resale or supplies for use in the  
21 purchaser's business operations if the contract of service contemplates  
22 that substantially all of such services are to be performed personally  
23 by such person; such person does not have a substantial investment in  
24 facilities used in connection with the performance of such services,  
25 excepting facilities for transportation; and the services are not in the  
26 nature of a single transaction which is not part of a continuing  
27 relationship with the employer.

28 (3) as a professional model, where:

29 (i) the professional model performs modeling services for; or

30 (ii) consents in writing to the transfer of his or her exclusive legal  
31 right to the use of his or her name, portrait, picture or image, for  
32 advertising purposes or for the purposes of trade, directly to a retail  
33 store, a manufacturer, an advertising agency, a photographer, a publish-  
34 ing company or any other such person or entity, which dictates such  
35 professional model's assignments, hours of work or performance locations  
36 and which compensates such professional model in return for a waiver of  
37 his or her privacy rights enumerated above, unless such services are  
38 performed pursuant to a written contract wherein it is stated that the  
39 professional model is the employee of another employer covered by this  
40 chapter. For purposes of this subparagraph, the term "professional  
41 model" means a person who, in the course of his or her trade, occupation  
42 or profession, performs modeling services. For purposes of this subpara-  
43 graph, the term "modeling services" means the appearance by a profes-  
44 sional model in photographic sessions or the engagement of such model in  
45 live, filmed or taped modeling performances for remuneration.

46 § 2. Subdivision 3 of section 160 of the labor law, the opening para-  
47 graph of such subdivision as amended by chapter 481 of the laws of 2010,  
48 is amended to read as follows:

49 3. a. For all other employees, except those engaged in farm work and  
50 those affected by subdivision four of section two hundred twenty of this  
51 chapter, eight hours.

52 b. For the purposes of this subdivision, an individual providing labor  
53 or services for remuneration has the status of an employee rather than  
54 an independent contractor unless the hiring entity demonstrates all of  
55 the following conditions:

1 (i) The individual is free from the control and direction of the  
2 hiring entity in connection with the performance of the work, both under  
3 the contract for the performance of the work and in fact.

4 (ii) The individual performs work that is outside the usual course of  
5 the hiring entity's business.

6 (iii) The individual is customarily engaged in an independently estab-  
7 lished trade, occupation, or business of the same nature as that  
8 involved in the work performed.

9 c. This subdivision shall not prevent an agreement for overwork at an  
10 increased compensation, except upon work by or for the state or a munic-  
11 ipal corporation, or by contractors or subcontractors therewith, and  
12 except as otherwise provided in this chapter.

13 § 3. Subdivision 5 of section 651 of the labor law is amended by  
14 adding a new closing paragraph to read as follows:

15 Unless otherwise excluded by the provisions of this subdivision or by  
16 regulations promulgated by the commissioner, an individual providing  
17 labor or services for remuneration has the status of an employee rather  
18 than an independent contractor unless the hiring entity demonstrates all  
19 of the following conditions:

20 (a) The individual is free from the control and direction of the  
21 hiring entity in connection with the performance of the work, both under  
22 the contract for the performance of the work and in fact.

23 (b) The individual performs work that is outside the usual course of  
24 the hiring entity's business.

25 (c) The individual is customarily engaged in an independently estab-  
26 lished trade, occupation, or business of the same nature as that  
27 involved in the work performed.

28 § 4. Subdivision 6 of section 201 of the workers' compensation law is  
29 amended by adding a new paragraph E to read as follows:

30 E. (A) The term "employment" includes, unless specifically excluded by  
31 a provision of this subdivision, any service by a person providing labor  
32 or services for remuneration unless the hiring entity demonstrates that  
33 all of the following conditions are satisfied:

34 (i) the person is free from the control and direction of the hiring  
35 entity in connection with the performance of the work, both under the  
36 contract for the performance of the work and in fact; and

37 (ii) the person performs work that is outside the usual course of the  
38 hiring entity's business; and

39 (iii) the person is customarily engaged in an independently estab-  
40 lished trade, occupation, or business of the same nature as that  
41 involved in the work performed.

42 (B) For the purposes of this section, any person providing labor or  
43 services for remuneration pursuant to subparagraph (A) of this paragraph  
44 shall be considered an employee rather than an independent contractor.

45 § 5. This act shall take effect immediately.