STATE OF NEW YORK

2685

2021-2022 Regular Sessions

IN ASSEMBLY

January 20, 2021

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

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:

Section 1. Short title. This act shall be known and may be cited as the "dependent worker act".

§ 2. Legislative findings and intent. 1. It is hereby declared to be the public policy of the state to ensure that laborers and other workers who depend for their livelihood on working for others, offering their time, labor and personal services in exchange for hourly wages or other compensation, are timely and fully paid and informed regarding their earnings, without the uncertainty, delay and denial that may result when their employment status is disputed by claims that they are independent contractors rather than employees.

2. It is further declared to be the public policy of the state to ensure that such dependent workers shall have the right to organize and bargain collectively through representatives of their own choosing based on the state's constitutional recognition that the labor of human beings is not a commodity or an article of commerce and shall never be so considered or construed.

3. The legislature finds that the ability of such dependent workers to find opportunities for work has been transformed by technology to expand day work to digital work, allowing workers to establish their availability by the minute and hour, rather than simply by the day. In light of this shift, the legislature finds that further examination is warranted to determine the extent to which various employment benefits and substantive protections that were historic bargains struck with input from labor and management, through bargaining, legislation, and administrative rate setting and rulemaking, should be extended to such digital 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.

LBD08737-01-1

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

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

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

§ 3. Section 2 of the labor law, is amended by adding a new subdivision 19 to read as follows:

19. "Dependent worker" means an individual who provides personal services to a consumer of such personal services through a private sector third-party that: establishes the gross amounts earned by the individual; establishes the amounts charged to the consumer; collects payment from the consumer; pays the individual; or any combination of the preceding. The term "dependent worker" applies without regard to whether the individual provides such services in the name of the individual or in the name of a business or as a separate business entity, and without regard to whether the consumer of such personal services is an individual, business, other entity, or any combination thereof. No governmental entity shall be considered a third-party for purposes of the definition of the term "dependent worker". Whenever the term employee is defined by law to include a dependent worker for certain purposes, then for such statute and purposes a dependent worker shall be deemed to be employed by the third-party referenced above, who shall be deemed to be an employer engaged in an employment relationship with a dependent worker, unless otherwise excluded from such statute or purposes. Workers classified as employees by other means or who satisfy any other legal test for employment, including those already or prospectively determined by a court or administrative agency to be employees, shall not have any rights or protections diminished by application of this subdivision.

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

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

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

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

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

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

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

§ 8. The commissioner of labor shall make a report of his or her findings to the governor, the temporary president of the senate, and the speaker of the assembly, within one year of the first public meeting. Such report shall include recommendations for further action and legislation.

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

a. social safety net employment laws, including:

i. compensation for the unemployed, under the unemployment insurance law, under article 18 of the labor law;

ii. compensation and medical benefits for workplace injuries and illnesses under articles 1-8 of the workers' compensation law;

iii. compensation for non-workplace disability and family leave benefits under the disability benefits law and the paid family leave benefits law under article 9 of the workers' compensation law;

iv. notices and compensation for workers laid off due to plant closings under the New York state worker adjustment and retraining notification (WARN) act, under article 25-A of the labor law; and

v. notification of continuation of coverage for health insurance following termination under section 217 of the labor law.

b. anti-discrimination, opportunity and privacy protections, including:

i. equal opportunity and anti-discrimination employment protections under the human rights law under article 15 of the executive law;

ii. licensure and employment of persons previously convicted of one or more criminal offenses under article 23-A of the correction law;

iii. related posting and sexual harassment training requirements under sections 201-f and 201-g of the labor law;

iv. prohibition on use of lie detectors and other psychological stress evaluators in employment under article 20-B of the labor law;

v. prohibition on finger printing under section 201-a of the labor law;

vi. employee privacy in connection with changing rooms, personal identifying information, physical examinations and nursing mothers under sections 203-c, 203-d, 206-a and 206-c of the labor law;

vii. various prohibitions on discrimination based on child-care for adoptive parents, lawful outside activities, for failure to meet ticket

quotas and displaying the American flag under sections 201-c, 201-d, 215-a and 215-c of the labor law; and

viii. anti-retaliation and anti-discrimination protections in connection with workers' compensation and labor laws under sections 210-a and 215 of the labor law.

c. laws regarding payment of wages, including:

i. payment of wages and related protections under article 6 of the labor law;

ii. minimum wages and related protections under the minimum wage act under article 19 of the labor law; and

iii. payment of fees for medical exams required for employment under section 201-b of the labor law.

d. laws regulating hours of work, including:

i. employment of minors hours and permitting under article 4 of the labor law;

ii. child performers hours, education and trust requirements under article 4-A of the labor law;

iii. hours of labor and day of rest requirements under article 5 of the labor law; and

iv. leave of absences for volunteer emergency first responders and following child-birth under sections 202-l and 206-b of the labor law.

e. laws regulating safety and health, including:

i. right to know protections under the toxic substances provisions of article 28 of the labor law; and

ii. protections in connection with window cleaning, bridges and tunnels, hotels and motels, eating in certain workrooms, factories, high-voltage lines, mercantile establishments, mines, explosives and places of public assembly under sections 202, 202-e, 202-f, 202-h, 205 and articles 11, 14, 15, 16 and 17 of the labor law.

§ 10. This act shall take effect on the sixtieth day after it shall have become a law.