STATE OF NEW YORK

519

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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

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:

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

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

(a) "essential worker" means any employee of an employer providing essential services or functions during any state disaster emergency declared pursuant to article two-B of the executive law and designated as an essential worker pursuant to any law, rule, regulation or executive order including but not limited to essential health care operations including research and laboratory services; essential infrastructure including utilities, telecommunication, airports and transportation infrastructure; essential retail including grocery stores and pharmacies; essential services including trash collection, mail, and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public;

(b) "employer" means a formula retail store, large employer, transportation business, or franchisee or subcontractor, and includes any individual, partnership, association, corporation, limited liability compa-

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

LBD03223-01-1

ny, business trust, legal representative, or any organized group of persons acting as such an employer;

(c) "formula retail store" means any employer that operates a retail sales or restaurant establishment either directly or through franchisees and that, along with eleven or more other retail sales or restaurant establishments located in the United States, maintains two or more of the following features: (i) a standardized array of merchandise, a standardized facade, a standardized decor and color scheme, a uniform apparel, standardized signage, a trademark; or (ii) a servicemark;

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

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

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

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

(h) "franchisee or subcontractor" means any employer that operates under a franchise agreement with a formula retail store or large employer, or that provides services, including but not limited to janitorial, maintenance, security, staffing, passenger services, food services, or temporary services to a formula retail store, large employer, or transportation business.

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

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

§ 2. This act shall take effect immediately.