

STATE OF NEW YORK

6236

2023-2024 Regular Sessions

IN ASSEMBLY

April 3, 2023

Introduced by M. of A. BROOK-KRASNY, NOVAKHOV -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the definition of "employee" for the purpose of the minimum wage act

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

1 Section 1. Subdivision 5 of section 651 of the labor law, as amended
2 by chapter 481 of the laws of 2010, the opening paragraph as amended by
3 chapter 105 of the laws of 2019, is amended to read as follows:

4 5. "Employee" includes any individual employed or permitted to work by
5 an employer in any occupation, but shall not include any individual who
6 is employed or permitted to work: (a) on a casual basis in service as a
7 part time baby sitter in the home of the employer; (b) in a bona fide
8 executive, administrative, or professional capacity; (c) as an outside
9 [~~salesman~~] salesperson if such individual is not contractually bound to
10 any person, firm, corporation or other entity as a captive salesperson,
11 solicitor, agent, vendor, or other representative; (d) as a driver
12 engaged in operating a taxicab; (e) as a volunteer, learner or appren-
13 tice by a corporation, unincorporated association, community chest, fund
14 or foundation organized and operated exclusively for religious, charita-
15 ble or educational purposes, no part of the net earnings of which inures
16 to the benefit of any private shareholder or individual; (f) as a member
17 of a religious order, or as a duly ordained, commissioned or licensed
18 minister, priest or rabbi, or as a sexton, or as a christian science
19 reader; (g) in or for such a religious or charitable institution, which
20 work is incidental to or in return for charitable aid conferred upon
21 such individual and not under any express contract of hire; (h) in or
22 for such a religious, educational or charitable institution if such
23 individual is a student; (i) in or for such a religious, educational or
24 charitable institution if the earning capacity of such individual is
25 impaired by age or by physical or mental deficiency or injury; (j) in or

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

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1 for a summer camp or conference of such a religious, educational or
2 charitable institution for not more than three months annually; (k) as a
3 staff counselor in a children's camp; (l) in or for a college or univer-
4 sity fraternity, sorority, student association or faculty association,
5 no part of the net earnings of which inures to the benefit of any
6 private shareholder or individual, and which is recognized by such
7 college or university, if such individual is a student; (m) by a feder-
8 al, state or municipal government or political subdivision thereof; (n)
9 as a volunteer at a recreational or amusement event run by a business
10 that operates such events, provided that no single such event lasts
11 longer than eight consecutive days and no more than one such event
12 concerning substantially the same subject matter occurs in any calendar
13 year, where (1) any such volunteer shall be at least eighteen years of
14 age, (2) a business seeking coverage under this paragraph shall notify
15 every volunteer in writing, in language acceptable to the commissioner,
16 that by volunteering his or her services, such volunteer is waiving his
17 or her right to receive the minimum wage pursuant to this article, and
18 (3) such notice shall be signed and dated by a representative of the
19 business and the volunteer and kept on file by the business for thirty-
20 six months; or (o) in the delivery of newspapers or shopping news to the
21 consumer by a person who is not performing commercial goods transporta-
22 tion services for a commercial goods transportation contractor within
23 the meaning of article twenty-five-C of this chapter. The exclusions
24 from the term "employee" contained in this subdivision shall be as
25 defined by regulations of the commissioner.

26 "Employee" also includes any individual employed or permitted to work
27 in any non-teaching capacity by a school district or board of cooper-
28 ative educational services except that the provisions of sections six
29 hundred fifty-three through six hundred fifty-nine of this article shall
30 not be applicable in any such case.

31 § 2. This act shall take effect on the first of January next succeed-
32 ing the date on which it shall have become a law.