Article 19-D of the New York State Labor Law

MINIMUM WAGE RATES FOR COVERED AIRPORT WORKERS

Sections

§ 696-a. Definitions.

As used in this article:

1. "Covered airport location" means John F. Kennedy International Airport and LaGuardia Airport or any location used to perform work related to the preparation or delivery of food for consumption on airplanes departing from John F. Kennedy International Airport or LaGuardia Airport.

2. (a) "Covered airport worker" means any person employed to perform work at a covered airport location.

(b) "Covered airport worker" shall include any person employed to perform work at a covered airport location, provided at least half of the employee's time during any workweek is performed at a covered airport location.

(c) "Covered airport worker" shall not include persons employed in an executive, administrative, or professional capacity as defined in subparagraph one of paragraph (a) of section thirteen of the Fair Labor Standards Act of 1938 (29 U.S.C. s.213 et seq.), or persons employed by the Port Authority of New York and New Jersey or any other governmental agency.

3. "Successor airport employer" means any employer that employs covered airport workers who provide services at a covered airport location that are substantially similar to those that were provided by covered airport workers previously employed by another employer at such covered airport location.

4. "Employer" means any person, corporation, limited liability company, or association employing any individual in an occupation, industry, trade, business or service. The term "employer" shall not include a governmental agency or employers with ten or fewer employees.

5. The "applicable standard rate" means the wage and benefit rates designated by the commissioner based on the determinations made by the General Services Administration pursuant to the federal McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 6701 et seq.), for the appropriate localities and classifications of building service employees; provided, however, that in no event shall the prevailing wage rate applicable to a covered airport worker on and after January first, two thousand twenty-five and every year thereafter be less than the following:

(a) any otherwise applicable minimum wage rate established through a regulation of the Port Authority of New York and New Jersey; and

(b) an amount of supplemental wages or a supplemental healthcare contribution equal to the rate for health and welfare for all occupations, designated by the commissioner based on the determinations made by the federal department of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 6701 et seq.) for the geographic region in which the covered airport location is situated and in effect on the date of the designation by the commissioner; and

(c) paid leave equal to the paid leave requirements designated by the commissioner the immediately preceding January first, based on the determinations made by the General Services Administration pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 6701 et seq.).

6. "Commissioner" means the commissioner of labor of the state of New York.

§ 696-b. Minimum wage rate for covered airport workers.

All employers at a covered airport location shall ensure that every covered airport worker is compensated at a rate that is no less than the applicable standard rate. Nothing in this article shall alter or limit any employer's obligation to pay any otherwise applicable prevailing wage under article eight or nine of this chapter.

§ 696-c. Commissioner's powers of investigation.

The commissioner or such commissioner's authorized representative shall have the power to:

1. investigate the compensation of covered airport workers in the state;

2. enter the place of business or employment of any employer for the purpose of

(a) examining and inspecting any and all books, registers, payrolls, and other records that in any way relate to or have a bearing upon the compensation provided to, or the hours worked by any employees, and

(b) ascertaining whether the provisions of this article and the rules and regulations promulgated hereunder are being complied with; and

3. require from any employer full and correct statements and reports in writing, at such times as the commissioner may deem necessary, of the compensation provided to and the hours by such employer's employees.

§ 696-d. Records of employers.

For every employee covered by this article, every employer shall establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the compensation provided, plus such other information as the commissioner deems material and necessary. For all covered airport workers who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by law, rule, or regulation, the payroll records shall include the compensation provided and the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, the number of overtime hours worked and the cost of benefits and/or benefit supplements. On demand, the employer shall furnish to the commissioner or such commissioner's duly authorized representative a sworn statement of the hours worked, rate or rates of compensation, for each covered airport worker, plus such other information as the commissioner deems material and necessary. Every employer shall keep such records open to inspection by the commissioner or such commissioner's duly authorized representative at any reasonable time. Every employer of a covered airport worker shall keep a digest and summary of this article which shall be prepared by the commissioner, posted in a conspicuous place in their establishment and shall also keep posted such additional copies of said digest and summary as the commissioner prescribes. Employers shall, on request, be furnished with copies of this article and of orders, and of digests and summaries thereof, without charge. Employers shall permit the commissioner or such commissioner's duly authorized representative to question without interference any employee of such employer in a private location at the place of employment and during working hours in respect to the wages paid to and the hours worked by such employee or other employees.

§ 696-e. Penalties.

1. If the commissioner finds that any employer has violated any provision of this article or of a rule or regulation promulgated thereunder, the commissioner may, after an opportunity for a hearing, and by an order which shall describe particularly the nature of the violation, assess the

employer a civil penalty of not more than ten thousand dollars for the first such violation within six years, not more than twenty thousand dollars for a second violation within six years and not more than fifty thousand dollars for a third or subsequent violation within six years. Such penalty shall be paid to the commissioner for deposit in the treasury of the state. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith basis of the employer to believe that its conduct was in compliance with the law, the gravity of the violation, the history of previous violations and the failure to comply with record-keeping or other requirements.

2. Any order issued under subdivision one of this section shall be deemed a final order of the commissioner and not subject to review by any court or agency unless the employer files a petition with the industrial board of appeals for a review of the order, pursuant to section one hundred one of this chapter.

3. The civil penalty provided for in this section shall be in addition to and may be imposed concurrently with any other remedy or penalty provided for in this chapter.

4. Upon a showing by an employee organization, the commissioner may investigate by examining payroll records whether an employer withheld hours of work to employees for the purpose of reducing the employer's obligations under this article. If, after the opportunity for a hearing, the commissioner determines that an employer withheld hours of work to employees for the purpose of reducing the employer's obligations under this article, the commissioner may, in addition to any other penalty available, also require that the employer pay the applicable standard rate to all of the employer's employees, regardless of the number of hours worked by the employees.

§ 696-f. Civil action.

1.On behalf of any employee paid less than the applicable standard rate to which the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the full amount of the underpayment, plus costs, and unless the employer proves a good faith basis to believe that its underpayment was in compliance with the law, an additional amount as liquidated damages. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amount of underpayments found to be due the employee. In any action brought by the commissioner in a court of competent jurisdiction, liquidated damages shall be calculated as an amount equal to one hundred percent of underpayments found to be due the employee.

2. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences

an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded.

3. In any civil action by the commissioner, the commissioner shall have the right to collect attorneys' fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal therefrom is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

§ 696-g. Regulations.

The commissioner may promulgate such regulations as such commissioner deems appropriate to carry out the purposes of this article and to safeguard minimum compensation standards.

§ 696-h. Savings clause.

1. If any provision of this article or the application thereof to any person, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.

2. If any clause, sentence, paragraph, subdivision, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this article would have been enacted even if such invalid provisions had not been included herein.