STATE OF NEW YORK

4001

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

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

AN ACT to amend the labor law in relation to removing certain provisions relating to covered airport workers; and in relation to minimum wage rates for covered airport workers; to repeal certain provisions of the labor law relating thereto; and to repeal section 14 of a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E relating thereto

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

Section 1. Legislative findings and intent. The legislature finds that the airports of John F. Kennedy International Airport and LaGuardia Airport operating under the jurisdiction of the Port Authority of New York and New Jersey are some of the most heavily trafficked transportation centers in the world, and are vital not just to the economic health of the state but to the world. The legislature further determines that there is a unique public interest in the operation of the airline industry with the critical role of airport workers during the COVID-19 pandemic, where airport workers have been placed into contact with members of the public in an often uncontrolled manner. Due to such findings, the legislature hereby declares that the access to health care provided in this bill is intended to provide a health care benefit that ensures the health and safety of workers employed at John F. Kennedy International Airport and LaGuardia Airport is protected.

§ 2. The article heading of article 9 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, is amended to read as follows:

PREVAILING WAGE FOR BUILDING SERVICE EMPLOYEES [~~AND COVERED AIRPORT WORKERS~~]

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

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§ 3. Subdivisions 1, 4 and 8 of section 230 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are amended to read as follows:

1. "Building service employee" or "[~~service~~] employee" means any person performing work in connection with the care or maintenance of an existing building, or in connection with the transportation of office furniture or equipment to or from such building, or in connection with the transportation and delivery of fossil fuel to such building, for a contractor under a contract with a public agency which is in excess of one thousand five hundred dollars and the principal purpose of which is to furnish services through the use of building service employees.

"Building service employee" or "[~~service~~] employee" includes, but is not limited, to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.

"Building service employee" or "[~~service~~] employee" also does not include any employee to whom the provisions of articles eight and eight-a of this chapter are applicable.

4. "Contractor" means any employer who employs employees to perform building service work under a contract with a public agency and shall include any of the contractor's subcontractors. [~~"Contractor" shall also include any covered airport employer as such term is defined in this section.~~]

8. "Fiscal officer" means the industrial commissioner, except for building service work performed by or on behalf of a city, [~~or work involving the employment of covered airport workers at a covered airport location located in a city with a population of one million or more,~~] in which case "fiscal officer" means the comptroller or other analogous officer of such city.

§ 4. Subdivisions 1-a, 15, 16 and 17 of section 230 of the labor law as added by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are REPEALED.

§ 5. Section 231-a of the labor law as added by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S. 6266-D and A.8142-E, is REPEALED.

§ 6. The section heading of section 231 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, is amended to read as follows:

Prevailing wage [~~for building service employees~~].

§ 7. Subdivisions 1 and 2 of section 233 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are amended to read as follows:

1. In all cases where service work is being performed pursuant to a contract therefor[~~, or where work is being performed pursuant to a contract involving the employment of covered airport workers,~~] the contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by him as true, under penalties of perjury,

showing the hours and days worked by each employee, the craft, trade or occupation at which he was employed, and the wages paid.

2. Where the wages paid include sums which are not paid directly to the [~~employees~~] **workmen** weekly and which are expended for supplements, the records required to be maintained shall include a record of such hourly payment on behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom such payment has been made. In all such cases, the contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made.

§ 8. Paragraphs (a) and (c) of subdivision 1 of section 234 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are amended to read as follows:

(a) to cause an investigation to be made to determine the wages prevailing in any locality in all crafts, trades and occupations involved in service work [~~or work involving the employment of covered airport workers~~]; in making such investigation, the fiscal officer may utilize wage and fringe benefit data from various sources including, but not limited to, data and determinations of federal, state or other governmental agencies;

(c) to examine the books, documents and records pertaining to the wages paid to, and the hours of work performed by, **service** employees;

§ 9. Paragraph (e-1) of subdivision 1 of section 234 of the labor law as added by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.5266-D and A.8142-E is REPEALED.

§ 10. Subdivisions 1 and 3 of section 235 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are amended to read as follows:

1. Whenever the fiscal officer has reason to believe that [~~an~~] **a service** employee has been paid less than the wages stipulated in the contract, or if such contract has no wage schedule attached thereto and the fiscal officer has reason to believe that [~~an~~] **a service** employee has been paid less than the wages prevailing for his craft, trade or occupation, the fiscal officer may, and upon receipt of a written complaint from an employee employed thereon, shall conduct a special investigation to determine the facts relating thereto.

3. If, despite the requirements of law, the contract for the service work [~~or work involving the employment of covered airport workers~~] has been awarded without the annexation thereto of the schedule of wages provided for in this article, the fiscal officer shall determine in the proceeding before him the wages prevailing at the time the work was performed for the crafts, trades or occupations of the employees involved.

§ 11. Section 236 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, is amended to read as follows:

§ 236. Failure to protest underpayments. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, [~~an~~] **a service** employee shall not be barred from his right to recover the difference

between the amount actually paid to him and the amount which should have been paid to him pursuant to an order entered under the provisions of this article because of the prior receipt by him without protest of wages paid or on account of his failure to state orally or in writing upon any payroll or receipt which he is required to sign that the wages received by him are received under protest, or on account of his failure to indicate his protest against the amount, or that the amount so paid does not constitute payment in full of wages due him for the period covered by such payment.

§ 12. Subdivisions 1 and 4 of section 237 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, are amended to read as follows:

1. Subcontractors engaged for service work[~~, or for work involving the employment of covered airport workers,~~] by a contractor or its subcontractor shall, upon receipt from the contractor or its subcontractor of the schedule of wages and supplements specified in the contract, provide to the contractor or its subcontractor a verified statement attesting that the subcontractor has received and reviewed such schedule of wages and supplements, and agrees that it will pay the applicable prevailing wages and will pay or provide the supplements specified therein. Such verified statement shall be filed in the manner described in subdivision three of this section[~~, provided, however, that in the case of contracts for work involving the employment of covered airport workers, such verified statement shall be subject to inspection upon request of the fiscal officer~~]. It shall be a violation of this article for any contractor or its subcontractor to fail to provide for its subcontractor a copy of the schedule of wages and supplements specified in the contract.

4. If any interested person shall have previously filed a protest in writing objecting to the payment to any contractor or subcontractor to the extent of the amount or amounts due or to become due to him for daily or weekly wages for labor performed on the work for which such contract was entered into, or if for any other reason it may be deemed advisable, the comptroller of the state or the financial officer of the public agency or other officer or person charged with the custody and disbursement of the state or corporate funds applicable to the contract for such work, may deduct from the whole amount of any payment on account thereof the sum or sums admitted by any contractor or subcontractor in such statement or statements as filed to be due and owing by him or her on account of labor performed on such work before making payment of the amount certified for payment in any estimate or voucher, and may withhold the amount so deducted for the benefit of the **service** employees whose wages are unpaid as shown by the verified statements filed by any contractor or subcontractor, and may pay directly to any person the amount or amounts shown by the statements filed as hereinbefore required to be due to him or her or his or her duly authorized collective bargaining labor organization receiving such payment to the extent of the amount thereof.

§ 13. Subdivision 2 of section 238 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, is amended to read as follows:

2. When a contract for service work [~~or work involving the employment of covered airport workers~~] contains as part thereof a schedule of wages as provided for in this article, any contractor who, after entering into such contract, and any subcontractor of such contractor who fails to pay

to any **service** employee the wages stipulated in such wage schedule is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days or by both fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such contractor shall be entitled to receive any sum, nor shall any officer, agent or employee of the contracting public agency pay any such sum or authorize its payment from the funds under his charge or control to such contractor for work done upon the contract on which the contractor has been convicted of a second offense. If the contractor or subcontractor is a corporation, any officer of such corporation who knowingly permits the corporation to fail to make such payment shall also be guilty of a misdemeanor and the criminal and civil penalties herein shall attach to such officer upon conviction.

§ 14. Section 239 of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, is amended to read as follows:

§ 239. Provisions in contracts prohibiting discrimination on account of race, creed, color, national origin, age or sex. Every contract for service work [~~or work involving the employment of covered airport workers~~] shall contain provisions by which the contractor agrees:

(1) that in the hiring of employees for the performance of work under the contract or any subcontract thereunder within the territorial limits of this state, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, national origin, age, sex or disability, discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

(2) that no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, national origin, age, sex or disability;

(3) that there may be deducted from the amount payable to the contractor by the public agency under the contract [~~for service work~~] a penalty of fifty dollars for each person for each day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(4) that the contract [~~for service work~~] may be cancelled or terminated by the public agency, and all moneys due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract.

§ 15. Section 239-a of the labor law, as amended by a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, is amended to read as follows:

§ 239-a. Enforcement of article. [~~1.~~] If the fiscal officer, as defined herein, finds that any contractor on service work fails to comply with or evades the provisions of this article, he shall present evidence of such noncompliance or evasion to the public agency having charge of such work for enforcement. Where such evidence indicates a noncompliance or evasion on the part of a subcontractor, the contractor shall be responsible for such noncompliance or evasion. It shall be the duty of the public agency in charge of such service work to enforce the provisions of this article.

[~~2. If the fiscal officer, as defined herein, finds that any contractor on work involving the employment of covered airport workers fails to comply with or evades the provisions of this article, it shall be the duty of the fiscal officer to enforce the provisions of this article.~~]

§ 16. The labor law is amended by adding a new article 19-D to read as follows:

ARTICLE 19-D

MINIMUM WAGE RATES FOR COVERED AIRPORT WORKERS

Section 696-a. Definitions.
696-b. Certification to the commissioner.
696-c. Minimum wage rate for covered airport workers.
696-d. Commissioner's powers of investigation.
696-e. Records of employers.
696-f. Penalties.
696-g. Civil action.
696-h. Regulations.
696-i. Savings clause.

§ 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 airline catering work as such work is described in subparagraph (iv) of paragraph (a) of subdivision two of this section.

2. (a) "Covered airport worker" means any person employed to perform work at a covered airport location provided at least one-half of the employee's time during any workweek is performed at a covered airport location and who works in one of the following covered categories:

(i) Cleaning and related services, which shall mean:

(1) building cleaning, including warehouse, kitchen, and terminal cleaning, including common areas, gateways, gates, lounges, clubs, concession areas, terminal entryways from ramp and where planes park at the gate, and other nearby facilities used for the preparation, packaging, and storage of inflight meals and supplies; and

(2) aircraft and cabin cleaning, including lavatory and water disposal and replenishment, lift truck driving and helping, dispatching, cleaning crew driving, and sorting and packing of inflight materials, such as blankets, pillows, and magazines;

(ii) Security related services, including catering security, escorting, escort security, passenger aircraft security, fire guarding, terminal security, baggage security, traffic security, cargo screening, including guarding, warehouse security, concessions and airport lounge security, security dispatch, and security at nearby facilities used for the preparation, packaging, and storage of inflight meals; or

(iii) In terminal and passenger handling services, including baggage handling, sky cap services, wheelchair attending, wheelchair dispatching, customer and passenger services, line queue, identification checking, porter services for baggage, and passenger and employee shuttle driving.

(iv) Airline catering, including work related to the preparation or delivery of food or beverage for consumption on airplanes departing from a covered airport location or related location; or

(v) Airport lounge services, including food and retail services.

(b) "Covered airport worker" shall not include anyone who works in one of the following non-covered categories:

(i) Non-cleaning and security related cargo and ramp services, including ramp baggage and cargo handling, load control and ramp communication, aircraft mechanics and fueling of aircraft, provision of cool-

ing, heating, and power, passenger aircraft servicing, cabin equipment maintenance, guiding aircraft in and out of gates, and gate side aircraft maintenance;

(ii) Ramp and tarmac maintenance services, including operation of snow plows, ramp cleaning vehicles, and tarmac sweepers;

(iii) Concession services, including food service, which includes food and beverage service, wait service, and cashiers, and retail service, which includes news, and gifts, and duty-free;

(c) "Covered airport worker" shall not include direct employees of the Port Authority of New York and New Jersey, or any workers hired by companies contracted by the Port Authority of New York and New Jersey, that are performing work under such contract.

(d) Covered airport worker shall include only:

(i) Employees employed at a covered airport location on December thirtieth, two thousand twenty and who are working an average of at least thirty hours per week; and

(ii) Employees employed at a covered airport location on or after January first, two thousand twenty-three and who are working for an average of thirty hours per week.

(e) "Covered airport worker" shall also 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.

3. "Successor airport employer" means any person who furnishes cleaning and related services, security related services, in terminal and passenger handling services, airline catering, or airport lounge 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.

5. The "standard wage rate" means the greater of:

(a) any minimum wage rate that would be otherwise applicable to covered airport workers established by article nineteen of this chapter; or

(b) any otherwise applicable minimum wage rate established through a policy of the Port Authority of New York and New Jersey.

6. The "standard benefits supplement rate" means an hourly supplement of four dollars and fifty-four cents furnished to an employee by providing at least four dollars and fifty-four cents per hour toward the cost of minimum essential coverage under an eligible employer-sponsored plan as defined in treasury regulation section 1.5000A-2(c)(1) beginning on July first, two thousand twenty-one. The standard benefits supplement rate shall apply only to the first forty hours worked by each covered airport worker in each week and shall not apply to any overtime hours worked by any covered airport worker. The standard benefits supplement rate shall apply to any paid leave taken by a covered airport worker that does not exceed forty hours in a week.

7. The "applicable standard rate" shall mean a combination of (a) the standard wage rate; and (b) the standard benefits supplemental rate.

§ 696-b. Certification to the commissioner. 1. No later than March thirty-first, two thousand twenty-one, each employer of a covered airport worker shall submit to the commissioner a sworn statement certifying the total number of workers employed by such employer at a covered

airport location to perform cleaning and related services, security related services, in terminal and passenger handling services, airline catering, or airport lounge services, at a covered airport location on December thirtieth, two thousand twenty, and identifying the number that is equal to eighty percent of such total number of employees, which shall be the December thirtieth, two thousand twenty benchmark for the purposes of this section. Such statement shall further include an affirmation that such employer will ensure that the number of covered airport workers it employs at a covered airport location between July first, two thousand twenty-one and December thirty-first, two thousand twenty-two is no less than the December thirtieth, two thousand twenty benchmark. Such sworn statement shall be provided by the commissioner upon request by any airport worker performing cleaning and related services, security related services, in terminal and passenger handling services, airline catering, or airport lounge services, at a covered airport location or any representative of such airport workers. Prior to employing any airport workers to perform cleaning and related services, security related services, in terminal and passenger handling services, airline catering, or airport lounge services, at a covered airport location, any successor airport employer shall obtain the applicable December thirtieth, two thousand twenty benchmark from the commissioner and submit to the commissioner an affirmation that such employer will ensure that the number of covered airport workers it employs at a covered airport location between July first, two thousand twenty-one and December thirty-first, two thousand twenty-two is no less than the December thirtieth, two thousand twenty benchmark.

2. Each employer of any covered airport worker employed at a covered airport location on or after January first, two thousand twenty-three shall submit to the commissioner, in a form and manner proscribed by the commissioner, a sworn statement affirming that such employer will ensure, where applicable, that the proportion of covered airport workers in each classification it employs to work an average of at least thirty hours per week at a covered airport location is the same as such proportion was compared to all workers in the same classification working at such covered airport location in the calendar year two thousand nineteen workforce. The commissioner shall publish a list of all covered classifications with the corresponding proportions of all workers employed to work an average of at least thirty hours a week compared to all workers in the same classification employed to work at each covered airport location in the calendar year two thousand nineteen. The commissioner shall be empowered to promulgate rules or regulations to determine the method and accounting for such information and to verify its accuracy, including the ability to establish a presumed proportion where records are missing or unavailable and provided further that such full-time levels shall be no less than such December thirtieth, two thousand twenty benchmark. If such proportion is not maintained, consistent with such rules or regulations promulgated by the commissioner, then the hours worked by such part time workers, which are outside of such proportion, shall be subject to the provisions of this section as if they worked an average of at least thirty hours per week at a covered airport location and were otherwise a covered airport worker.

3. Each employer of a covered airport worker employed at a covered airport location on December thirtieth, two thousand twenty and who is working an average of at least thirty hours per week shall provide such covered airport worker the ability to begin or change enrollment in an eligible employer-sponsored plan as defined in treasury regulation

section 1.5000A-2(c)(1) for coverage beginning on July first, two thousand twenty-one.

4. Each employer of any other covered airport worker at a covered airport location shall provide such covered airport worker the ability to begin or change enrollment in an eligible employer-sponsored plan as defined in treasury regulation section 1.5000A-2(c)(1) for coverage beginning no later than thirty days after becoming a covered airport worker.

§ 696-c. Minimum wage rate for covered airport workers. All covered employers 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-d. Commissioner's powers of investigation. The commissioner or his or her 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-e. 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 his or her 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 his or her 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 his or her 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 his or her 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-f. 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 of the employer, 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 standard benefits supplement rate to all of the employer's employees, regardless of the number of hours worked by the employees.

§ 696-g. 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-h. Regulations. 1. The commissioner may promulgate such regulations as he or she deems appropriate to carry out the purposes of this article and to safeguard minimum compensation standards.

§ 696-i. 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.

3. If section six hundred ninety-six-a, section six hundred ninety-six-b, or section six hundred ninety-six-c of this article or any portion thereof shall be adjudged, whether by final judgment, a temporary restraining order, or a preliminary injunction, by any court of competent jurisdiction to be preempted by federal law, then the "standard benefits supplement rate" defined in subdivision six of section six hundred ninety-six-a of this article shall immediately mean the following:

(a) An hourly supplement of four dollars and fifty-four cents furnished to an employee by providing at least four dollars and fifty-four cents per hour beginning on July first, two thousand twenty-one in one of the following ways: (i) in the form of health and/or other benefits, not including paid leave, that cost the employer the entire required hourly supplemental amount; (ii) by providing a portion of the required hourly supplement in the form of health and/or other benefits, not including paid leave, and the balance in cash; or (iii) by providing the entire supplement in cash.

(b) The value of such supplement shall be no less than four dollars and fifty-four cents per hour.

(c) The standard benefits supplement rate shall apply only to the first forty hours worked by each covered airport worker in each week and shall not apply to any overtime hours worked by any covered airport worker.

(d) The standard benefits supplement rate shall apply to any paid leave taken by a covered airport worker that does not exceed forty hours in a week.

4. If section six hundred ninety-six-a, section six hundred ninety-six-b, or section six hundred ninety-six-c of this article or any portion thereof shall be adjudged by any preliminary relief, including a temporary restraining order or a preliminary injunction, by any court of competent jurisdiction to be preempted by federal law but is later adjudged by the same court not to be preempted by federal law in a final judgment, then the definition of "standard benefits supplement rate"

shall immediately revert to the definition stated in subdivision six of section six hundred ninety-six-a of this article.

§ 17. Section 14 of a chapter of the laws of 2020 relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S. 6266-D and A. 8142-E is REPEALED.

§ 18. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the labor law relating to enacting the "healthy terminals act", as proposed in legislative bills numbers S.6266-D and A.8142-E, takes effect; provided, however that the commissioner of labor shall begin no investigation of compliance with this act before July 1, 2021 and no order issued pursuant to this act shall include any time period before July 1, 2021. Effective immediately, the commissioner of labor may request documents or the preservation of documents relative to payroll and employee health plans for purposes of determining appropriate standards for full-time or part-time work.