

# NEW YORK STATE ASSEMBLY

# ANNUAL REPORT

# 2020



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LABOR

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**2020 ANNUAL REPORT  
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## ▪ INTRODUCTION ▪

Each legislative session, the Assembly Standing Committee on Labor (“the Committee”) is tasked with examining legislation that affects the well-being and livelihood of New York State’s workforce. To that end, the Committee is responsible for advancing legislation that helps protect the fundamental rights and benefits of all workers, such as minimum wage, fair pay, workplace safety, unemployment insurance, protections against discrimination and retaliation, and the right to organize.

The Committee reviews bills from a number of sources including advocates and stakeholders, constituents, and Members of the Assembly. The Committee also considers bills from the Governor of New York State and various departments of the executive branch, including the Department of Labor, the Workers’ Compensation Board, the Office of the Attorney General, and the Office of the State Comptroller. Many of these types of bills seek to improve the enforcement of current laws in order to strengthen protections for workers, while others propose remedies for administrative concerns which would allow these departments to run their programs more efficiently. A representative sample of the legislative proposals acted upon this year includes a bill that would establish wage and benefit requirements for certain airport workers, legislation that repeals restrictions against the employment of female employees after child birth, and legislation that provides sick leave for employees subject to a mandatory or precautionary order of quarantine or isolation due to the novel coronavirus, COVID-19.

Each year, the Committee also hosts roundtables and public hearings on issues which directly impact the workforce in New York State. These forums offer valuable opportunities for workers, businesses, professionals, academics, and other constituents to provide formal testimony to the Committee and engage in meaningful discussions with Members as well as each other. This year, in response to the unprecedented conditions caused by the COVID-19 pandemic, the Committee conducted two hearings in conjunction with the New York State Senate – one which focused on exploring solutions to the disproportionate impact of COVID-19 on minority communities, and another which investigated the impact of COVID-19 on the workforce.

▪ **2020 LEGISLATIVE ACTION** ▪

**A. Prevailing Wage**

Article 1, Section 17 of the New York State Constitution provides that the performance of labor is not a commodity and ensures that no laborer on a public work project shall be paid less than the rate of wages prevailing for the same trade or occupation in the locality where such work is being performed. These principles are embodied in Articles 8 and 9 of the New York State Labor Law, which set forth such prevailing wage requirements for construction projects and building service work, respectively. However, as additional public resources have and will continue to become available for private contracts, the Committee remains dedicated to advancing fair and balanced legislation that works to restore the original intent of the State Constitution by ensuring that workers on publicly subsidized contracts receive their lawful wages and supplements. On top of backing major legislation contained in the State Fiscal Year 2020-21 Enacted Budget, which will be discussed later in this report, the Committee reported several bills in 2020 to expand prevailing wage requirements.

**1. Healthy Terminals Act**

**A.8142-E (Hyndman) / S.6266-D (Biaggi) – Chapter 387 of the Laws of 2020**

This legislation enacts the Healthy Terminals Act to ensure that covered airport workers employed at certain airports operated by the Port Authority of New York and New Jersey have access to affordable health care. As passed, the bill would require such workers to receive the prevailing rate of wages for their class, trade, or occupation, which could not be less than: (i) any other applicable minimum wage rate established through the Port Authority of New York and New Jersey; or (ii) the equivalent rate for health and welfare benefits for service employees pursuant to the federal McNamara-O’Hara Service Contract of 1965. However, changes to such legislation were subsequently agreed to pursuant to Approval Memorandum No. 76.

**2. Additional Information Provided to Laborers on Public Work Contracts**

**A.9000 (Woerner) / S.7307 (Savino) – Chapter 86 of the Laws of 2020**

This law amends Chapter 744 of the Laws of 2019 to require employers to provide notification to their employees regarding any supplements claimed as part of prevailing wage requirements on public work projects, including the hourly rate claimed and the type of supplement provided, at the time of hire and with every payment of wages.

**3. Prevailing Wage in the Case of Certain Utility Facilities**

**A.9787 (Niou) / S.7734 (Gianaris) – Advanced to Third Reading**

This bill would amend Chapter 758 of the Laws of 2019 to require building service employees that are employed at an active major electric or steam generating facility to be paid prevailing wage pursuant to Article 9 of the Labor Law. Prevailing wage requirements would also apply to building service employees that are employed at a transmission or distribution facility considered critical infrastructure as determined by

the New York State Division of Homeland Security and Emergency Services in consultation with the New York State Department of Public Service. The provisions of this bill were ultimately included in the State Fiscal Year 2020-21 Enacted Budget as Subpart Y of Part XX of Chapter 55 of the Laws of 2020.

**4. Prevailing Wage in the Case of Certain Nuclear Power Plants  
A.10338 (Galef) / S.7846 (Harckham) – Chapter 384 of the Laws of 2020**

This law requires any entity involved in the purchase, transfer, sale, or decommissioning of the Indian Point Nuclear Power Plant to pay laborers and building service employees at such facilities the prevailing wage. As passed, the bill would also prohibit the Public Service Commission from approving the transfer, lease, or sale of the Indian Point Nuclear Power Plant unless the transferring, leasing, or purchasing entity demonstrates that it shall: (i) maintain the existing workforce through the conclusion of such transfer, lease, sale, or decommissioning; (ii) hire from the pool of existing employees; (iii) enter into a labor peace agreement; and (iv) comply with applicable labor laws, including the notification requirements of the New York State Worker Adjustment and Retraining Notification (WARN) Act. Changes to such legislation were subsequently agreed to pursuant to Approval Memorandum No. 73.

**5. Aggregate Supply Construction Materials  
A.10626-A (Bronson) / S.8334-A (Mayer) – Ordered to Third Reading**

This bill would require any work involving the delivery and hauling of aggregate supply construction materials to and from public work projects, as well as any return hauls, whether empty or loaded, and any time spent loading/unloading, to be subject to prevailing wage requirements.

**B. Employee Rights and Protections**

Despite New York State’s aggressive laws and regulations designed to protect the rights of workers and prohibit discrimination and retaliation against employees, many individuals continue to find their rights violated in the workplace. Further, many workers also face significant obstacles in seeking justice from their employers when such violations do occur. As a result, the Committee strives to protect the rights of all workers and ensure that workplaces across the state are free of discrimination, retaliation, and other harmful employment practices. This year, the Committee sought to advance these goals by strengthening protections for whistleblowers, enhancing employee notification requirements, requiring public employers to establish operation plans for future public health emergencies, and providing sick leave for COVID-19.

**1. Prohibiting Access to Employees’ Personal Accounts  
A.2479-A (Dinowitz) / S.5544-A (Ramos) – Passed Assembly**

This bill would prohibit employers from requiring an employee or job applicant to disclose a username, password, or other identifying information for accessing a personal

account through an electronic communications device. Employers would also be prohibited from requiring such individuals to access such accounts in their presence or reproduce any information contained in such accounts.

**2. Whistleblower Protections for Illegal or Dangerous Business Activities  
A.7384-A (Benedetto) / S.3683-A (Hoylman) – Reported to Rules Committee**

This bill would amend the New York State Labor Law and the Civil Service Law to provide greater anti-retaliation protections for employees who disclose information about illegal or dangerous business activities conducted by their employers which they, in good faith, reasonably believe has occurred or will occur. This bill would also extend such protections to former employees and extend the statute of limitations for whistleblowers filing a civil action for retaliation under the Labor Law from one to two years.

**3. Reproductive Health Decision Making  
A.8981 (Jaffee) / S.7197 (Metzger) – Chapter 85 of the Laws of 2020**

This legislation amends Chapter 457 of the Laws of 2019, which prohibits employers from discriminating or retaliating against employees on account of their or their dependents' reproductive health decisions, in order to establish a severability clause.

**4. Employment of Females After Child Birth  
A.9694 (Arroyo) / S.6391 (Salazar) – Chapter 235 of the Laws of 2020**

This law repeals section 206-b of the New York State Labor Law, which prohibited factory or mercantile owners from knowingly employing a female within four weeks after giving birth without a written statement from the employee and a written opinion of a qualified physician that she is physically and mentally capable of discharging the duties of her employment.

**5. Sick Leave During COVID-19 Quarantine or Isolation  
A.10153 (Nolan) / S.8091 (Ramos) – Chapter 25 of the Laws of 2020**

This legislation provides both private and public sector employees with sick leave and wage replacement benefits when they are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. Employees are also guaranteed anti-retaliation and job protections during such leave.

Under this law, employees who work for small sized employers (10 or fewer employees) which have a net income of less than one million dollars are entitled to unpaid sick leave and immediate eligibility for Paid Family Leave and Temporary Disability Insurance (TDI) benefits for the duration of the quarantine or isolation period. Employees who work for small employers with a net income of one million dollars or more, or for medium sized employers (between 11 and 99 employees), are eligible to receive at least five days of paid sick leave from their employer, followed by eligibility for Paid Family Leave and



TDI benefits. Finally, employees who work for large sized employers (100 or more employees), and all public employees, are granted 14 days of paid sick leave during such period of quarantine or isolation.

For purposes of COVID-19 only, the legislation also expands the existing Paid Family Leave program to allow employees to take leave when they or their dependent child are subject to a mandatory or precautionary order of quarantine or isolation. It also allows employees to receive increased TDI benefits, in conjunction with the Paid Family Leave benefits, in order to make their weekly wages whole. The law waives the current waiting periods for these benefits, as well as unemployment insurance benefits, in order to provide immediate access to such programs for reasons related to COVID-19.

Finally, this law also establishes a risk adjustment pool to help stabilize the Paid Family Leave and TDI markets in order to protect insurers from disproportionate adverse risks. The Superintendent of the New York State Department of Financial Services is authorized to make determinations of need so that insurance carriers may access the funds necessary to keep solvent and ensure their ability to pay claims.

**6. Enhancing Whistleblower Protections for Health Care Workers  
A.10326-A (Reyes) / S.8397-A (Savino) – Chapter 117 of the Laws of 2020**

This legislation prohibits retaliation against any health care worker who discloses or threatens to disclose an activity, policy, or practice of an employer that they, in good faith, reasonably believe constitutes improper quality of workplace safety. “Improper quality of workplace safety” includes any violation related to matters which may present an unsafe work environment, risk of employee safety, or significant threat to the health of a specific employee. In addition, this law provides whistleblower protections to health care workers who disclose or threaten to disclose violations to a news media outlet or to a social media forum available to the public at large.

**7. Notification of Hazardous Environmental and Health Risks in the Workplace  
A.10349 (Frontus) / S.8774 (Comrie) – Passed Assembly**

This bill would require employers to notify employees and contract workers of any known hazardous environmental and health risks that they may encounter during the course of their employment and to mitigate such risks, including providing appropriate protective equipment. The bill would also require farm hand workers, farm field workers, and farm food processing workers to be provided with field sanitation procedures and materials to prevent the spread of infectious diseases, including, but not limited to, the novel coronavirus, COVID-19.

**8. Notification of Exposure to Infectious Diseases in the Workplace  
A.10353-A (Aubry) / S.8239-A (Ramos) – Passed Assembly**

This bill would require employers with more than 10 employees to notify each employee when they have had direct contact with a co-worker that has been diagnosed in relation

to a disease outbreak causing a public health emergency. Employers would be required to notify each employee, in writing, within 24 hours of having reasonable knowledge of such diagnosis. Such notification would be required to be provided in English and in the employee's primary language.

## **9. Including Localities in WARN Notice Requirements**

### **A.10674-A Rules (Otis) / S.8748 (Mayer) – Chapter 265 of the Laws of 2020**

This bill would amend the New York State Worker Adjustment and Retraining (WARN) Act to require employers to give advance written notice of a mass layoff, relocation, or employment loss to: (i) the chief elected official of the unit or units of local government and the school district or districts in which the mass layoff, relocation or employment loss will occur; and (ii) each locality which provides police, firefighting, emergency medical or ambulance services or other emergency services to the site of employment subject to the mass layoff, relocation, or employment loss, as applicable. Changes to such legislation were subsequently agreed to pursuant to Approval Memorandum No. 14.

## **10. Duty of Public Employers in the Event of Public Health Emergencies**

### **A.10832 (Abbate) / S.8617-B (Gounardes) – Chapter 168 of the Laws of 2020**

This legislation requires each public employer in New York State, including public school districts, to prepare a plan for the continuation of operations in the event of a public health emergency involving a communicable disease. Such plans must include guidelines and protocols for: determining employee positions and titles considered essential; enabling non-essential employees to telecommute; staggering work shifts; procuring necessary personal protective equipment; preventing the spread or contraction of disease in the workplace; documenting hours and work locations; and working with the locality to provide emergency housing for essential employees.

The law also allows employee representatives the opportunity to review such plans and make additional recommendations. Finally, the New York State Department of Labor is required to create a dedicated webpage and hotline through which public employees may report alleged or believed violations of occupational health and safety involving a communicable disease, including, but not limited to the novel coronavirus, COVID-19. Changes to such legislation were subsequently agreed to pursuant to Approval Memorandum No. 7.

## **C. Unemployment Insurance**

Since 1935, the New York State Unemployment Insurance (UI) program has served as a financial safety net for people who find themselves out of work through no fault of their own. To collect weekly benefits, an individual must be ready, willing, and able to work, and must be actively looking for work during each week in which they are claiming benefits. This program ensures that individuals are able to meet their basic financial needs in order to support themselves and their families while searching for new employment opportunities.

In 2020, this safeguard became more important than ever as businesses, schools, and other employers across the country began reducing their in-person workforces in response to the COVID-19 pandemic. As a result, millions of workers experienced lay-offs, furloughs, and reduced work hours, with no sense of when they might be able to return to work, if at all. To address these concerns, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 greatly enhanced unemployment insurance benefits for workers impacted by COVID-19 by providing up to 13 weeks of extended benefits, an additional \$600 per week in pandemic unemployment compensation, and Pandemic Unemployment Assistance (PUA) for individuals ineligible for UI, such as gig workers and independent contractors. However, despite these efforts, unemployment continues to have a devastating impact on working families across New York State. As of July 2020, the statewide unemployment rate had reached a historic peak of 15.9%, with over 1,527,800 individuals unemployed. The Committee remains steadfast in its commitment to help ensure quick and proper access to unemployment insurance benefits during this difficult time.

**1. Calculation of Partial Unemployment Insurance Benefits**

**A.446 (Stirpe) / S.5754 (Ramos) – Passed Assembly**

Under current law, a claimant’s unemployment insurance (UI) benefits are reduced by 25% for each day worked per week, regardless of how many hours they worked on any such day or how much money they earned. This bill would revise the calculation of such benefits by establishing a “partial benefit credit” based on the claimant’s weekly benefit rate for total unemployment, which would then be applied against the claimant’s actual weekly earnings, resulting in a more reasonable computation of partial UI benefits that would be proportionate to the claimant’s wages.

**2. Including Childcare as a Compelling Family Reason**

**A.1072 (Jaffee) / S.6120 (Montgomery) – Advanced to Third Reading**

This bill would include childcare as a “compelling family reason” for voluntary separation from employment under the law, provided that an individual has made reasonable efforts to secure alternative childcare. This would help ensure that unemployed workers are not denied unemployment insurance due to childcare obligations.

**3. Considering Childcare in Work Search Requirements**

**A.3033 (Solages) / S.2231 (Sanders) – Chapter 252 of the Laws of 2020**

This bill would require the regulations promulgated by the Commissioner of Labor regarding work search requirements for unemployment insurance benefits to take into account a claimant’s need to provide childcare for their children. This would help ensure that unemployed workers are able to satisfy the standards for proof of work search efforts. Changes to such legislation were subsequently agreed to pursuant to Approval Memorandum No. 10.

**4. Unemployment Insurance Benefits for Striking Workers  
A.9136 (Ryan) / S.7310 (Kennedy) – Chapter 20 of the Laws of 2020**

This law amends Chapter 755 of the Laws of 2019 to extend the period of time, from one week to two weeks, during which the accumulation of unemployment benefits is suspended for a claimant who lost their employment due to a strike or other industrial controversy. Additionally, the law reinstates the requirement that such suspension period run consecutively to, rather than concurrently with, the one-week waiting period applicable to all unemployment insurance claimants. Prior to these changes, workers on strike were subject to a seven-week suspension period before becoming eligible for unemployment benefits, which placed an undue financial hardship on workers exercising their legally guaranteed rights to organize, bargain collectively, and strike.

**5. Suspension of Forfeit Day Penalties  
A.10348-A (Rosenthal L) / S.8275-A (Martinez) – Chapter 97 of the Laws of 2020**

On May 14, 2020, the forfeiture of unemployment insurance (UI) benefit days was suspended by Executive Order to provide claimants with temporary relief from serving forfeit day penalties through June 13, 2020. This law codifies the suspension of the applicability of forfeit day penalties throughout the duration of the COVID-19 state disaster emergency declared by Executive Order No. 202 in order to allow claimants who have had such penalties assessed against them due to past claims to collect unemployment benefits during this unprecedented crisis.

**E. Workers' Compensation, Paid Family Leave, and Temporary Disability Insurance**

Workers' compensation insurance provides weekly cash benefits and medical care, including rehabilitation, to workers who become partially or totally disabled as a result of a disease or injury caused by their employment. If a worker dies from a compensable injury or illness, workers' compensation also guarantees payments to qualified dependents. In addition, New York State requires employers to obtain coverage for Temporary Disability Insurance (TDI) benefits in order to provide weekly cash benefits to replace, in part, wages lost due to injuries or illnesses that do not arise out of the course of employment. Finally, Paid Family Leave, which took effect on January 1, 2018, ensures that hard-working New Yorkers can afford to take paid time off to bond with a new child, take care of a family member who has fallen ill, or relieve family pressures when a family member is called to active military service abroad, without the risk of losing their job or income. Each year, the Committee considers bills that would facilitate access to these benefits, improve the processing of claims, and ensure that injured workers are able to access the quality care and treatment options that meet their needs.

**1. Temporary Disability Insurance Benefits for Domestic Workers  
A.1326 (Crespo) / S.3961 (Salazar) – Passed Assembly**

This bill would establish that an employer of one or more domestic employees in a private home, working a minimum of 20 hours per week for such employer on at least 30 days

in any calendar year, would be required to provide Temporary Disability Insurance coverage to such workers.

**2. Notice to Withdraw from the New York State Insurance Fund  
A.4350-A (Zebrowski) / S.3516-A (Breslin) – Passed Assembly**

Under current law, any employer may withdraw from the New York State Insurance Fund (NYSIF) by turning in their insurance contract for cancellation, provided such employer has given written notice of their intention to withdraw not less than 30 days before the effective date of such cancellation. This bill would waive the 30 days' notice requirement when such written notice includes the effective date of cancellation and proof that the employer has secured a new insurance policy with another carrier. The effective date of cancellation of such employer's contract with NYSIF would be the date that the new insurance contract takes effect.

**3. Paid Family Leave for Construction Workers  
A.2277 (Pichardo) / S.8776 (Comrie) – Passed Assembly**

This bill would extend Paid Family Leave benefits to construction workers who perform work for multiple employers pursuant to a collective bargaining agreement once they have been employed for at least 26 of the last 39 weeks. These workers would remain eligible for Paid Family Leave if they return to work after an agreed unpaid leave of absence, or after they are laid off and receive unemployment benefits, provided that they have met the abovementioned eligibility requirements.

**4. Coverage for Care and Treatment Rendered by a Massage Therapist  
A.7498-A (Woerner) / S.5421-A (Ramos) – Veto Memo. 67 of 2020**

This bill would add licensed massage therapists to the list of providers who are authorized to render care and treatment to injured workers under the workers' compensation system upon the prescription or referral of an authorized physician, physician assistant, podiatrist, or nurse practitioner.

**5. Direct Deposit for Workers' Compensation Benefits  
A.7579 (Reyes) / S.7210 (Savino) – Chapter 253 of the Laws of 2020**

Current law only allows for the direct deposit of workers' compensation benefits if the insurance carrier or self-insured employer has elected to permit such method of payment. This law requires insurance carriers and self-insured employers to offer direct deposit as an option for workers' compensation and death benefits. Insurance carriers and self-insured employers will be required to notify eligible claimants of such option and provide the forms necessary to enroll. This law also allows for the deposit of such payments to be split between multiple accounts. Changes to such legislation were subsequently agreed to pursuant to Approval Memorandum No. 11.

**6. Prohibiting Discrimination and Retaliation Based on Immigration Status  
A.8147-A (Pichardo) / S.8775 (Comrie) – Passed Assembly**

This bill would amend existing anti-discrimination provisions of the New York State Workers' Compensation Law to prohibit an employer from discriminating or retaliating against any employee who has claimed or attempted to claim compensation or benefits, requested a claim form for injuries, or testified in any proceeding by: (i) contacting or threatening to contact United States immigration authorities; (ii) reporting or threatening to report an employee's suspected citizenship or immigration status to a federal, state, or local agency; or (iii) reporting or threatening to report the suspected citizenship or immigration status of an employee's family or household member to a federal, state, or local agency. This would apply to benefits for workers' compensation, Paid Family Leave, and Temporary Disability Insurance.

**7. Additional Health Benefits for Black Car Operators  
A.8984 (Rodriguez) / S.6239 (Savino) – Chapter 64 of the Laws of 2020**

This law amends Chapter 730 of the Laws of 2019 to authorize the New York Black Car Operators' Injury Compensation Fund, Inc. to assess a surcharge amount of up to one-half of one percent (.05%) to provide additional health benefits, consistent with its plan of operation. It also establishes that such provisions shall expire and be deemed repealed three years after enactment, on December 20, 2022.

**F. Other Significant Legislation**

**1. Registry of Workplace Fatalities in the Construction Industry  
A.5965-A (De La Rosa) / S.8828 (Ramos) – Chapter 375 of the Laws of 2020**

This law requires the New York State Department of Labor ("the Department") to create and maintain a registry of workplace fatalities in the construction industry which shall include information regarding all incidents under which an employee performing construction work suffers a work-related fatal injury in the workplace. The Department will be required to establish and maintain an online database to make available all information reported to such registry. Such data shall be provided in the aggregate, electronically accessible, and searchable to the public, with no personal identifying information included.

In each instance of a death in the construction industry, the county coroner, medical examiner, or other authorized official is required to make a determination as to whether such death was the result of a work-related fatal injury in the workplace and, if so, report such death and related information to the Department within 72 hours of such determination. Employers shall be required to report additional information regarding such workplace fatality to the Department within 90 days, upon notification by the Department that the death of the employee was determined by the coroner, medical examiner, or other authorized official to be work-related. Changes to such legislation were subsequently agreed to pursuant to Approval Memorandum No. 68.

**2. Report on Summer Youth Employment Programs  
A.6393 (Williams) / S.1079 (Persaud) – Chapter 297 of the Laws of 2020**

This law requires the New York State Department of Labor, in consultation with the State Education Department, the Office of Temporary and Disability Assistance, and the Office of Children and Families, to produce a report regarding summer youth employment programs (SYEPs) funded by state, federal, and local appropriations in order to determine the total number of jobs made available for youth under these programs and evaluate how current funding streams could be used to provide additional opportunities. Changes to such legislation were subsequently agreed to pursuant to Approval Memorandum No. 18.

**3. Regulating the Purchase, Use, and Storage of Certain Explosive Materials  
A.8982 (Buchwald) / S.7308 (Sanders) – Reported to Ways and Means Committee**

This bill would amend Chapter 734 of the Laws of 2019 to expand the definition of “explosives” under the New York State Labor Law to include two or more components that are advertised and sold together with instructions on how to combine the components to create any device designed or specially adapted to facilitate a detonation or combustion. The provisions of this bill were ultimately included in the State Fiscal Year 2020-21 Enacted Budget as Subpart F of Part XX of Chapter 55 of the Laws of 2020.

**4. Licensing for Individuals Performing Work on Elevators  
A.9063 (Crespo) / S.7306 (Savino) – Reported to Ways and Means Committee**

This bill would amend Chapter 750 of the Laws of 2019 to require statewide licensing and training for businesses and persons that engage in the construction, installation, inspection, testing, maintenance, service, and repair of elevators and other automated people moving conveyances. Licensees would be required to receive continuing education on new and existing national, state, and local conveyances codes and standards, technology and technical education, and workplace safety as a condition of license renewal.

This bill would also authorize the New York State Elevator Safety and Standards Advisory Board to administer, oversee, and approve examinations for the purposes of qualifying applicants for an elevator mechanic’s license. The provisions of this bill were ultimately included in the State Fiscal Year 2020-21 Enacted Budget as Subpart O of Part XX of Chapter 55 of the Laws of 2020.

**5. New York Call Center Jobs Act  
A.9126 (Rosenthal L) / S.7311 (Kennedy) – Reported to Ways and Means Committee**

This bill would amend Chapter 752 of the Laws of 2019 to require a call center employer that intends to relocate more than 30% of its employees to a foreign country to notify the Commissioner of Labor 90 days before such relocation. It would also specify the types of tax credits employers would be ineligible to receive after such relocation. The

provisions of this bill were ultimately included in the State Fiscal Year 2020-21 Enacted Budget as Subpart R of Part XX of Chapter 55 of the Laws of 2020.

**6. Study on Income Eligibility Limits for Public Benefits  
A.9921 (Lentol) / S.7743 (Gounardes) – Passed Assembly**

This bill would require the Commissioner of Labor, in consultation with the Office of Temporary and Disability Assistance, the Department of Health, the Office of Children and Family Services, and the Department of Taxation and Finance, to prepare a study and report on income eligibility limits for public assistance benefits and the impact of rising wages on such eligibility.



## ▪ STATE FISCAL YEAR 2020-21 ENACTED BUDGET ▪

Each year during budget negotiations, the Committee strongly advocates for proposals that would support working families and strengthen existing labor programs. The Committee also works closely with the Assembly Standing Committee on Ways and Means to secure funding for various programs and initiatives that help to improve the security and well-being of New York State's workers and job seekers. This year, the State Fiscal Year (SFY) 2020-21 Enacted Budget included legislation to extend for two years the provisions of law that allow employers to make deductions from employees' wages for services including, but not limited to, gym memberships, cafeteria purchases, parking, school tuition, and day care. It also included groundbreaking new laws to expand prevailing wage requirements for construction projects, guarantee access to sick leave for private sector employees, and advance the implementation of the Farm Laborers Fair Labor Practices Act.

### **A. Prevailing Wage on Publicly Funded Construction Projects**

Over the last several years, the Assembly Standing Committee on Labor has strongly supported the expansion of prevailing wage requirements in order to preserve the original intent of the New York State Constitution, which requires that laborers on public work projects receive the prevailing wage for their trade or occupation, based on the locality where the work is being performed. As a result, the SFY 2020-21 Enacted Budget included significant legislation to require the payment of prevailing wage for construction work that is paid for in whole or in part out of public funds, where the amount of such public funds is at least 30% of total construction costs, and where such project costs are over \$5 million.

The law also includes important provisions to help examine and implement these expanded prevailing wage requirements, including:

- Requiring each public entity that provides public funds to an owner, developer, contractor, or subcontractor to identify the nature and value of such funds and whether they are excluded from the provisions of the bill;
- Requiring the owner or developer of a project to certify to the fiscal officer (the Commissioner of Labor) whether such work is subject to prevailing wage requirements as a "covered project";
- Requiring owners and developers to retain original payroll records for a period of six years from the conclusion of the project;
- Establishing a Public Subsidy Board ("the Board") to examine and make recommendations regarding:
  - The minimum threshold percentage for public funds, but no lower than 30%;
  - The minimum dollar threshold applicable to projects, but no lower than \$5 million;

- Construction work excluded as affordable or supportive housing;
  - The definition of “construction”; and
  - Whether particular benefits, monies, or credits should be considered “public funds.”
- Requiring the Board to conduct public hearings prior to making any recommendations in order to hear testimony from interested stakeholders;
  - Authorizing the Board to issue determinations to public entities, owners, and developers as to any matter related to any individual existing or potentially covered project;
  - Authorizing the Board to temporarily delay the implementation of the legislation, either statewide or on a regional basis, due to significant negative economic impacts;
  - Authorizing the Commissioner of Labor to issue a stop-work order for a substantial and material failure to comply with or intentionally evading prevailing wage requirements;
  - Requiring owners and developers to comply with objectives and goals of minority- and women-owned business enterprises (MWBEs) and service-disabled veteran-owned business enterprises;
  - Requiring the Commissioner of Labor to report annually on the participation of MWBEs in relation to public work and covered projects that are paid for in whole or in part out of public funds in addition to the diversity of the workforce employed on such contracts; and
  - Requiring apprenticeship programs to report annually to the New York State Department of Labor on the participation of apprentices enrolled in such programs.

## **B. Paid Sick Leave**

The SFY 2020-21 Enacted Budget also included major legislation to establish guaranteed sick leave for all private sector employees in New York State. Effective January 1, 2021, this law requires employers to provide all employees with job-protected sick leave on an annual basis as follows:

- Employees who work for small sized employers (four or fewer employees) with a net income of less than one million dollars shall receive up to 40 hours of unpaid sick leave per calendar year;

- Employees who work for small sized employers with a net income of greater than one million dollars, or for medium sized employers (between five and 99 employees), shall receive up to 40 hours of paid sick leave per calendar year; and
- Employees who work for large sized employers (100 or more employees) shall receive up to 56 hours of paid sick leave per calendar year.

This legislation allows employees to accrue sick leave at a rate of one hour for every 30 hours worked, but does not prohibit or prevent any employer from offering additional sick leave benefits, paid or unpaid, in excess of such minimum requirements. It also allows employees to carryover any unused sick leave to the following calendar year and provides important anti-retaliation protections for any employee who exercises his or her right to request or use sick leave.

Further, the law allows employees to use their accrued sick leave for any mental or physical illness, injury, or health condition of the employee or their family member, or for the diagnosis, care, or treatment of any mental or physical illness, injury, or health condition of the employee or their family member, as well as to seek services related to domestic violence, a sexual offense, stalking, or human trafficking when the employee has been a victim of any such offense.

### **C. Farm Workers**

Lastly, the SFY 2020-21 Enacted Budget also included legislation to clarify certain provisions of the Farm Laborers Fair Labor Practices Act, which was enacted during the previous year as Chapter 105 of the Laws of 2019, including technical changes to ensure that the Minimum Wage Order for Farm Workers may be modified under either Article 19 (Minimum Wage Act) or Article 19-A (Minimum Wage Standards for Farm Workers) of the New York State Labor Law and defines “farm laborer” as any individual who works on a farm and who is considered an employee under Article 19. These changes allow the New York State Department of Labor to exempt salaried administrative, executive and professional employees from the requirements for overtime and a day of rest, consistent with other non-agricultural industries. It also authorizes the Public Employment Relations Board (PERB) to determine whether any supervisory employee shall be excluded from any negotiating unit that includes rank-and-file farm laborers.

This law also clarifies that members of an employer’s immediate family who are related to the third degree of consanguinity or affinity shall not be considered employed on a farm if they perform such work out of familial obligations and are not paid based on their hours or days of work. As a result, such family members may also be excluded from the requirements for overtime, a day of rest, and collective bargaining rights for farm laborers, which is also consistent with other non-agricultural industries.

## ▪ PUBLIC HEARINGS AND ROUNDTABLES ▪

### **A. The Disproportionate Impact of COVID-19 on Minority Communities**

On May 18, 2020, the New York State Legislature held a virtual public hearing to explore solutions to the disproportionate impact of COVID-19 on minority communities. The hearing was conducted jointly by: the New York State Assembly Standing Committees on Labor, Cities, Health, and Local Governments; the Assembly Black, Puerto Rican, Hispanic, and Asian Caucus; the Assembly Task Force on Asian Pacific Americans; the Assembly Task Force on Puerto Rican/Hispanic Americans; the Assembly Task Force on Women's Issues; and the New York State Senate Standing Committees on Cities, Health, Labor, Local Governments, and Women's Issues.

Data concerning the rates of infection, hospitalization, and fatalities due to COVID-19 has demonstrated the grossly disproportionate impact of the virus on minority communities throughout New York State. This hearing sought recommendations on how to approach and mitigate such systemic inequalities through enhanced federal funding and appropriate policy initiatives. The Committees heard testimony via online video from groups including 32BJ SEIU, the NAACP New York State Conference, the Hispanic Federation, the Asian American Federation, the New York State Nurses Association, the New York State Women's Chamber of Commerce, and many other advocates and stakeholders representing minority communities, workers, businesses, social services programs, and health care providers from across the state.

### **B. The Impact of COVID-19 on the Workforce**

On August 13, 2020, the New York State Assembly Standing Committees on Labor, Banks, and Oversight, Analysis, and Investigation, in conjunction with the New York State Senate Standing Committees on Labor, Banks, and Investigations and Government Operations, conducted a virtual public hearing to investigate the widespread impact of COVID-19 on the workforce, including access to unemployment benefits, workplace safety standards, and the effectiveness of federal stimulus programs, such as the Payroll Protection Program, in retaining employees during the pandemic.

The Committees heard vital testimony from the New York State Department of Labor regarding the unprecedented number of unemployment benefit claims filed in 2020, along with measures the agency has taken to improve the filing and certification processes for these benefits. In addition, the Department outlined its proactive efforts to help educate employers about their responsibilities surrounding health and safety in the workplace. The Labor Bureau of the New York State Office of the Attorney General also highlighted the employment issues most affecting workers during the pandemic, including stay-at-home orders, essential work designations, telecommuting, access to paid sick leave, workplace health and safety, and protections against retaliation.

Further, the Committees heard testimony via online video from numerous workers and union groups such as the New York State AFL-CIO, the New York State Public Employees

Federation, the New York State Nurses Association, 1199SEIU United Healthcare Workers East, the New York State Laborers' Union, and the United Food and Commercial Workers Union. Other stakeholders, including the National Employment Law Project, the Legal Aid Society, Make the Road New York, the New York Committee for Occupational Safety and Health, and the Business Council of New York State, Inc., provided invaluable insight into the challenges confronted by places of work during the COVID-19 pandemic and solutions for addressing such challenges going forward.

## ▪ OUTLOOK FOR 2021 ▪

In the upcoming 2021 Legislative Session, the Assembly Standing Committee on Labor will remain steadfast in its commitment to advancing legislation that aims to strengthen and protect the health, safety, and viability of New York State's workforce. Given the ongoing challenges presented by the COVID-19 pandemic, the Committee will remain dedicated to enhancing rights and benefits for all workers in the State and to exploring solutions for reducing unemployment and increasing job opportunities for New Yorkers.

In 2021, the Committee will continue to advocate for the rights of low-income workers and fight to ensure that unscrupulous employers are held accountable for abuses of the New York State Labor Law, including instances of retaliation, discrimination, and other harmful employment practices. In the upcoming legislative session, the Committee will also remain dedicated to enhancing whistleblower protections and combatting wage theft across all industries in order to prevent the further erosion of these basic labor protections.

Additionally, the Committee will continue to examine the growth of the gig economy and its impact on the state's workforce, including the broader issue of employee misclassification. As demonstrated by the impact of the COVID-19 pandemic, many workers continue to experience low and unstable earnings, lack important worker protections and benefits, and often face dangerous health and safety hazards on the job, including in non-traditional employment settings. For these reasons, the Committee will remain dedicated to curbing labor abuses across the board in order to protect the diverse workforce in New York State.

Along these same lines, in 2021, the Committee will remain committed to efforts to improve the unemployment insurance system and enhance benefits for partially unemployed workers. Now, more than ever, as we strive to restore the economy and get New Yorkers back to work, the current benefit structure needs to be reformed so as not to unfairly penalize individuals that find part-time work while receiving unemployment benefits. The Committee will also continue to monitor the State's workers' compensation system in order to ensure that all injured workers receive timely and appropriate medical care and continue to have access to the rights and benefits promised to them.

As evidenced by this report, the 2020 Legislative Session held many triumphs as well as many challenges for workers throughout New York State. The Committee is prepared to confront these challenges in the 2021 Legislative Session and we look forward to continuing to serve the hard-working people of the great State of New York.

**APPENDIX A**

**2020 SUMMARY SHEET**

**Summary of Action on All Bills Referred to the  
New York State Assembly Standing Committee on Labor**

**Total Number of Committee Meetings Held: 5**

	<b>Assembly Bills</b>	<b>Senate Bills</b>	<b>Total Bills</b>
<b>Bills Reported Favorable To:</b>			
Codes	10	0	10
Judiciary	0	0	0
Ways and Means	4	0	4
Rules	8	0	8
Floor	5	0	5
<b>TOTAL</b>	<b>27</b>	<b>0</b>	<b>27</b>
<b>Committee Action</b>			
Held for Consideration	28	0	28
Defeated	0	0	0
Enacting Clause Stricken	15	0	15
<b>Remaining in Committee</b>	<b>259</b>	<b>10</b>	<b>269</b>
<b>Bills Reference Changed To:</b>			
Codes	3	0	3
Ways and Means	1	0	1
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>4</b>

**APPENDIX B**

**CHAPTER LAWS OF 2020**

<b>CHAPTER NUMBER</b>	<b>ASSEMBLY BILL (SPONSOR)</b>	<b>SENATE BILL (SPONSOR)</b>	<b>DESCRIPTION</b>
20	A.9136 (Ryan)	S.7310 (Kennedy)	Amends Chapter 755 of the Laws of 2019 to adjust the length of the suspension period for workers on strike that claim unemployment benefits.
25	A.10153 (Nolan)	S.8091 (Ramos)	Provides sick leave to private and public sector employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19.
64	A.8984 (Rodriguez)	S.6239-A (Savino)	Amends Chapter 730 of the Laws of 2019 to authorize the New York Black Car Operators' Injury Compensation Fund to provide additional health benefits to black car operators.
85	A.8981 (Jaffee)	S.7197 (Metzger)	Amends Chapter 457 of the Laws of 2019 to establish a severability clause for the "Boss Bill."
86	A.9000 (Woerner)	S.7307 (Savino)	Amends Chapter 744 of the Laws of 2019 to require employers to provide additional information regarding supplemental benefits to laborers receiving prevailing wage on public work projects.
97	A.10348-A (Rosenthal L)	S.8275-A (Martinez)	Codifies the suspension of forfeit day penalties for unemployment benefits throughout the duration of the COVID-19 state disaster emergency.
117	A.10326-A (Reyes)	S.8397-A (Savino)	Enhances whistleblower protections for health care workers that disclose violations that constitute improper quality of workplace safety or that publicly disclose violations to the news media or social media.
168	A.10832 (Abbate)	S.8617-A (Gounardes)	Requires each public employer in New York State to prepare a plan for the continuation of operations in the event of a public health emergency involving a communicable disease.



<b>CHAPTER NUMBER</b>	<b>ASSEMBLY BILL (SPONSOR)</b>	<b>SENATE BILL (SPONSOR)</b>	<b>DESCRIPTION</b>
235	A.9694 (Arroyo)	S.6391 (Salazar)	Repeals section 206-b of the Labor Law which restricts the employment of females after child birth.
252	A.3033 (Solages)	S.2231 (Sanders)	Requires unemployment insurance regulations for work search requirements to take into consideration a claimant's need for childcare.
253	A.7579 (Reyes)	S.7210 (Savino)	Requires workers' compensation insurance carriers to offer direct deposit as a method of payment for benefits.
265	A.10674-A (Otis)	S.8748 (Mayer)	Amends the New York State WARN Act to require employers to give advance written notice of a mass layoff, relocated, or employment loss to local governments and school districts.
297	A.6393 (Williams)	S.1079 (Persaud)	Requires the New York State Department of Labor to produce a report regarding the Summer Youth Employment Program.
375	A.5965-A (De La Rosa)	S.8828 (Ramos)	Requires the New York State Department of Labor to create and maintain a registry of workplace fatalities in the construction industry.
384	A.10338 (Galef)	S.7846 (Harckham)	Requires any entity involved in the purchase, transfer, sale, or decommissioning of the Indian Point Nuclear Power Plant to pay prevailing wage to employees.
387	A.8142-E (Hyndman)	S.6266-A (Biaggi)	Enacts the Healthy Terminals Act to ensure that workers employed at certain airports in New York State operated by the Port Authority of New York and New Jersey have access to affordable health care.

**APPENDIX C**

**BILLS VETOED IN 2020**

<b>VETO MEMO</b>	<b>ASSEMBLY BILL (SPONSOR)</b>	<b>SENATE BILL (SPONSOR)</b>	<b>DESCRIPTION</b>
67	A.7498-A (Woerner)	S.5421-A (Ramos)	Would add licensed massage therapists to the list of providers authorized to provide care and treatment under the workers' compensation system.

**APPENDIX D**

**PASSED ASSEMBLY IN 2020**

<b>ASSEMBLY BILL</b>	<b>SPONSOR</b>	<b>DESCRIPTION</b>
A.446	Stirpe	Would revise the calculation of partial unemployment benefits by establishing a “partial benefit credit” based on the claimant’s weekly benefit rate for total unemployment and applied against such claimant’s actual weekly earnings.
A.1326	Crespo	Would ensure that domestic workers have access to Temporary Disability Insurance benefits.
A.2277	Pichardo	Would extend Paid Family Leave benefits to construction workers that perform work for multiple employers pursuant to a collective bargaining agreement.
A.2479-A	Dinowitz	Would prohibit employers from requiring an employee or job applicant to disclose the username, password, or other identifying information for accessing a personal account through an electronic communications device.
A.4350-A	Zebrowski	Would allow an employer to waive the 30 days’ notice requirement of their intention to withdraw from the New York State Insurance Fund under certain circumstances.
A.8147-A	Pichardo	Would prohibit employers from discriminating or retaliating against immigrant employees under the Workers’ Compensation Law.
A.9921	Lentol	Would require the Commissioner of Labor to prepare a study and report on the impact of income eligibility limits for public assistance benefits.
A.10349	Frontus	Would require employers to notify employees and contract workers of any known hazardous environmental health risks they may encounter in the course of their employment and to mitigate such risks.
A.10353-A	Aubry	Would require employers to notify each employee when they have had direct contact with another employee that has been diagnosed in relation to a disease outbreak causing a public health emergency.