

STATE OF NEW YORK

DEPARTMENT OF LABOR

Article 12-A

Special Task Force for
THE APPAREL INDUSTRY

LS 12 (01-12)

NY CLS Labor Article 12-A Note (2011)

§ 340. Special task force for the apparel industry

Definitions. As used in this article, the following terms shall have the following meanings:

- (a) "Commissioner" shall mean the commissioner of labor;
- (b) "Department" shall mean the department of labor;
- (c) "Apparel industry" shall mean the making, cutting, sewing, finishing, assembling, pressing or otherwise producing, by any of the foregoing apparel industry services, any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which is to be sold or offered for sale, provided, however, that the apparel industry shall not include cleaning or tailoring after the apparel has been sold at retail;
- (d) "Manufacturer" shall mean any person who (i) in fulfillment or anticipation of a wholesale purchase contract, contracts with a contractor to perform in New York state the cutting, sewing, finishing, assembling, pressing or otherwise producing any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which, pursuant to such contract, is to be sold or offered for sale to a retailer or other entity, or (ii) cuts, sews, finishes, assembles, presses or otherwise produces in New York state any men's, women's, children's or infants' apparel, or a section or component, designed or intended to be worn by any individual which is to be sold or offered for sale; provided, however, that "manufacturer" shall not mean a production employee employed for wages who does not employ others;
- (e) "Contractor" shall mean any person who, in fulfillment of a contract with a manufacturer, performs in New York state the cutting, sewing, finishing, assembling, pressing or otherwise producing any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which is to be sold or offered for sale. "Contractor" shall include, but not be limited to, a subcontractor, jobber, or wholesaler, but shall not include a production employee who is employed for wages but does not employ others;
- (f) "Production employees" shall mean persons who are employed by a contractor or a manufacturer directly to perform the cutting, sewing, finishing, assembling, pressing or otherwise producing of any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which is to be sold or offered for sale;
- (g) "Special task force" shall mean the special task force on the apparel industry within the department; and
- (h) "Labor law" shall mean the labor law of New York state.
- (i) "Retailer" shall mean any mercantile enterprise which sells to consumers or offers to sell to consumers any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual consumer.

§ 341. Registration

1. No manufacturer or contractor shall engage in the apparel industry unless he or she registers with the commissioner, in writing, on a form provided by the commissioner, which shall contain the following information: whether it is a sole proprietorship, partnership or corporation, its name, address and number of production employees, the name, home address and social security number of each owner or partner, or if the registrant is a corporation, no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, of each officer and of each of the ten largest shareholders thereof, how long it has been in business, its tax identification number, whether it is a manufacturer or contractor, the name and address of each person with a financial interest in the manufacturer's or contractor's business and the amount

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of that interest, except that if the manufacturer or contractor is a publicly-traded corporation, only the names and addresses of the corporation officers shall be required, whether it is in contractual relations with a labor organization and, if so, the name and address of such labor organization, a statement as to whether the registrant or any owner of or partner in, or if the registrant is a corporation, no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, any officer or any of the ten largest shareholders thereof has, within the last three years, been found by any court or administrative body to have violated this chapter and, if so, the nature and date of such violation and, if the registrant is a contractor, whether that contractor subcontracts the cutting or sewing of apparel or sections or components thereof. Such registration form shall also require that each owner or partner, or if the registrant is a corporation, then each officer, submit photographic proof of identity. Divisions, subsidiary corporations or related companies may, at the option of the manufacturer or contractor, be named and included under one omnibus registration. Such registration shall be filed on or before January fifteenth of each year. The commissioner shall issue a certificate of registration, which shall be effective for a period of twelve months, upon receipt of a completed registration form accompanied by the requisite photographic proof of identity and documentation that such manufacturer or contractor has paid any surety bond required pursuant to subdivision eight of section three hundred forty-five of this article and that a workers' compensation insurance policy is in effect for the registrant's production employees working in New York state. The initial registration fee shall be two hundred dollars and each subsequent annual renewal registration fee shall be one hundred fifty dollars. With respect to new employers, such registration shall be filed upon the commencement of manufacturing or contracting in the apparel industry and shall be effective until the following January fifteenth. The commissioner may pro rate the initial annual registration fee in such instances.

2. Proof of registration shall be by an official department registration certificate which shall be posted where it may be read by employees during the workday.

§ 341-a. Unlawfully manufactured apparel

The commissioner shall have the power to affix to any article of apparel or component thereof, in the manufacture or assembly of which any employee was employed in violation of article six or nineteen of this chapter, a tag of no more than six inches in length bearing the words "unlawfully manufactured." Any person other than the commissioner, the commissioner's duly authorized representative or consumer of such article of apparel or component thereof who removes, alters, defaces or otherwise interferes with such a tag shall be guilty of a misdemeanor.

§ 342. Establishment of a special task force

The commissioner is authorized to establish a special task force for the purpose of concentrating enforcement of the labor law affecting production employees in the apparel industry in New York state and otherwise exercising the duties and powers set forth in sections three hundred forty-three and three hundred forty-four of this article. Such special task force shall be empowered to investigate and conduct inspections at locations where an apparel industry contractor is operating.

The commissioner is further authorized to publish on the internet listings of those persons and entities investigated by the department or the special task force on the apparel industry and found not to be in compliance with the law. The listing shall include all relevant information concerning the violators included in the registration process in accordance with section three hundred forty-one of this article. The listing shall be updated regularly, not less than monthly, amended to be adjusted for new instances of non-compliance. Any retailer or manufacturer or contractor requesting verification of the registration status of a manufacturer or contractor shall be provided with a reference to this internet web site listing.

§ 343. Duties

The special task force is charged with the following duties:

1. To inspect manufacturers and contractors, with respect to their respective production employees, for compliance with the registration requirements of section three hundred forty-one of this article;

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2. To inspect manufacturers and contractors, with respect to their respective production employees, for compliance with the labor law;

3. To insure, with respect to their respective production employees, compliance by manufacturers and contractors with the orders of, and assessments of civil penalties by, the commissioner pursuant to this article ; and

4. To submit annual reports to the governor, the temporary president of the senate, the speaker of the assembly, and the chairpersons of the senate and assembly labor committees detailing:

(a) the number of complaints, investigations and dispositions by the task force including any resulting fines, restitution, referrals to the attorney general and criminal prosecutions;

(b) the number of investigators and other filled staff positions on the task force including the total number of authorized positions and whether any investigators are bilingual and, if so, in what language;

(c) the amount of money allocated annually by the department and the amount actually spent; and

(d) any recommendations for improving enforcement efforts against apparel manufacturers and contractors which violate the law.

§ 344. Powers

Notwithstanding any other state or local law or regulation to the contrary, the special task force shall have the following powers:

1. To inspect books, records and premises of manufacturers and contractors, with respect to their respective production employees, to determine compliance with this chapter, including but not limited to, minimum wage, overtime compensation, unemployment insurance coverage, child labor and industrial homework and, if the special task force determines that a manufacturer or contractor has violated any provision of this chapter with respect to its production employees, to assess and collect, on behalf of the commissioner, an administrative penalty. If the violation is of a provision of this chapter for which the assessment and collection of an administrative penalty is not otherwise authorized, the special task force may assess and collect a penalty of up to two hundred fifty dollars for a first violation and up to five hundred dollars for each subsequent violation. No penalty shall be levied pursuant to this subdivision unless the commissioner shall provide the violator with notification of such violation and of the amount of such administrative penalty by certified mail and with an opportunity to request a hearing within fifteen days following the receipt of such notice. If a hearing is requested, the commissioner may issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, such notice shall become a final order upon the expiration of the fifteen-day period. Payment of such administrative penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this subdivision may be recovered with costs upon an appeal to the appellate division of the supreme court pursuant to article seventy-eight of the civil practice law and rules and upon a final determination that the finding by the commissioner was in error. Any penalty paid pursuant to this subdivision shall be applied to enforcement and administrative costs of the special task force;

2. When in the course of inspections pursuant to subdivision one above:

(a) To inspect books and records of manufacturers and contractors, with respect to their respective production employees, concerning the deduction and remittance to the proper authorities of all federal, state and local payroll taxes and to refer to the appropriate authorities any instance in which there is reasonable cause to believe that the payment of federal, state and local payroll taxes is being evaded; and

(b) To inspect premises of manufacturers and contractors, with respect to their respective production employees, to determine compliance with concerning state or local building codes, state or local fire codes, laws or regulations and state or local health codes, laws or regulations and to refer to the appropriate authorities any instance in which there is reasonable cause to believe that a violation of such codes, laws or regulations exists; and to immediately evacuate and close any premises deemed by a special task force investigator trained in accordance with section three hundred forty-six of this article to recognize fire code violations, to be a serious violation of the applicable fire code; and to refer such violation immediately to the appropriate local authorities; and

(c) To take action authorized by this article necessary to implement its provisions.

§ 345. Violations, penalties, procedures

1. Any manufacturer or contractor in the apparel industry who has failed to comply with the registration requirements of section three hundred forty-one of this article shall be deemed to have violated this article.

2. Any manufacturer or contractor in the apparel industry who has failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of section three hundred forty-one of this article shall be deemed to have violated this article.

3. Any manufacturer or contractor in the apparel industry who contracts for the performance of any apparel industry service, as defined in section three hundred forty of this article, with any other manufacturer or contractor who is required to register, but whom the manufacturer or contractor knows has failed to register, failed to renew its registration or has had its registration revoked by the commissioner shall be deemed to have violated this article.

4. (a) The commissioner may impose a civil penalty upon a manufacturer or contractor of up to one thousand five hundred dollars for the initial violation of subdivision one, two or three of this section and up to three thousand dollars for the second or subsequent violation of subdivision one, two or three of this section. Instead of, or in addition to, such civil penalty, the commissioner may assess and collect an administrative penalty of not more than two hundred fifty dollars for the first violation and of not more than five hundred dollars for each subsequent violation. No administrative penalty shall be levied pursuant to this paragraph unless the commissioner provides the violator with notification of the violation and of the penalty by certified mail and with an opportunity to request a hearing within fifteen days following receipt of such notice. If a hearing is requested, the commissioner may issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, such notice shall become a final order upon the expiration of such fifteen-day period. Payment of such administrative penalty is due when a final order is issued or when the notice becomes a final order. Any administrative penalty imposed pursuant to this paragraph may be recovered with costs upon an appeal to the appellate division of the supreme court pursuant to article seventy-eight of the civil practice law and rules and upon a final determination that the finding of the commissioner was in error. Any civil or administrative penalty paid pursuant to this subdivision shall be applied to enforcement and administrative costs of the special task force. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the manufacturer's or contractor's business, its good faith, the gravity of the violation, the history of previous violations of this article and the manufacturer's or contractor's compliance with the recordkeeping or other provisions of this chapter.

(b) The order imposing such civil penalty may be served personally or by certified mail. Such order shall be in writing and shall describe the nature of the violation, including reference to the provisions of subdivision one, two or three of this section alleged to have been violated.

5. (a) An order issued under this section shall be final and not subject to review by any court or agency unless review is had pursuant to section one hundred one of this chapter.

(b) Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

6. If any manufacturer or contractor shall have failed to comply within twenty days of an order by the commissioner to register or renew registration, the commissioner may seek to enjoin such unlawful activity, pursuant to the civil practice law and rules.

7. (a) No manufacturer or contractor shall perform services or hold itself out as being able to perform services as a registered manufacturer unless such manufacturer or contractor holds a valid registration pursuant to this article. The intentional failure of an apparel manufacturer or contractor to comply with the registration requirements of section three hundred forty-one of this article shall be a class B misdemeanor. The officers and agents of any corporation who knowingly permit such corporation to violate the registration requirements of section three hundred forty-one of this article shall be guilty of a class B misdemeanor.

(b) A manufacturer or contractor which knowingly violates paragraph (a) of this subdivision within three years of having been found guilty of violating this subdivision shall be guilty of a class A misdemeanor, as defined in the penal law.

8. (a) The commissioner may, after a hearing thereon, require, as a condition of continued registration, the payment of a surety bond or may revoke the registration of any manufacturer or contractor for any period ranging from thirty days to one year upon being found guilty of a second violation of the same provision of this article within any two-year period. In assessing whether to require a surety bond or revoke such registration, the commissioner shall give due consideration to the size of the manufacturer's or contractor's business, its good faith, the gravity of the violation, the history of previous violations and the manufacturer's or contractor's compliance with the recordkeeping or other provisions of this chapter.

(b) Such surety bond shall be payable to the state and shall be for the benefit of production employees damaged by any failure of a manufacturer or contractor to pay wages or benefits or otherwise comply with the provisions of this chapter. Such surety bond shall be in the sum and form that the commissioner shall deem to be necessary to protect such production employees but shall in no case exceed twenty-five hundred dollars per production employee.

9. Any manufacturer or contractor who contracts, for the second time within any three year period, for the performance of any apparel industry service, as defined in section three hundred forty of this article, with any other manufacturer or contractor whom the manufacturer or contractor knows has failed to comply with the registration requirements of section three hundred forty-one of this article shall, if such other manufacturer or contractor has failed to pay any civil penalty assessed under subdivision one of section three hundred forty-five of this article, be liable to pay a civil penalty equal to the civil penalty that such other manufacturer or contractor has been assessed. Nothing herein shall affect the right of any manufacturer to possess or repossess any apparel, or sections or components of apparel, that are located at any contractor with whom it has contracted.

10. (a) Any manufacturer or contractor in the apparel industry who ships, delivers or sells any apparel or sections of apparel; who knew or should have known that such goods were produced in violation of article six or nineteen of this chapter, shall be deemed to have violated this article;

(b) Any retailer who sells any apparel or sections of apparel, who knew or should have known that such goods were produced in violation of article six or nineteen of this chapter, shall be deemed to have violated this article. Except that no violation of this article shall be deemed to have occurred if the retailer acquired the apparel or sections of apparel without notice from the commissioner of any violations of article six or nineteen of this chapter and with the written or electronically transmitted assurance of such manufacturer or contractor, given before or after production, whether as part of the retailer's vendor approval process, purchase contract requirements, electronically transmitted purchase order acknowledgments or invoices, or otherwise, that such goods would be, or were, produced in compliance with this article or, generally, all applicable laws; and

(c) Subject to the exceptions in paragraph (b) of this subdivision, the supreme court of the state shall have jurisdiction, upon petition of the attorney general, to restrain the shipping, delivery, sale or purchase by any manufacturer, contractor or retailer of apparel or sections of apparel upon a showing that such apparel or sections of apparel were, during the previous one hundred eighty days, produced in violation of article six or nineteen of this chapter or sold in violation of paragraph (a) or (b) of this subdivision. Such proceeding shall be brought in the county in which the violation is alleged to have taken place. In any such proceeding the court may make allowances to the attorney general provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules. In connection with such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 345-a. Liability of manufacturers and contractors

1. A manufacturer or contractor who contracts or subcontracts with another manufacturer or contractor for the performance of any apparel industry service within the meaning of subdivision (c) of section three hundred forty of this article and who knew or should have known with the exercise of reasonable care or diligence of such other manufacturer's or contractor's failure to comply with article six or nineteen of this chapter in the performance of such service shall be liable for such failure.

2. For the purposes of this section, the exercise of reasonable care or diligence by a manufacturer or contractor shall be presumed if, prior to the execution of such contract or subcontract, and annually thereafter, such manufacturer or con-

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tractor receives from the department written assurance of compliance with section three hundred forty-one of this article. The department may charge a reasonable fee for providing such assurance to a manufacturer or contractor.

§ 345-b. Confiscation of goods

1. The commissioner may, in addition to seeking civil, administrative or criminal penalties pursuant to this article, order the special task force to confiscate any partially or completely assembled articles of apparel and any equipment used in the assembly of apparel from any manufacturer or contractor who is violating any provision of this article and who has previously been found liable for a civil or administrative penalty for two or more separate violations of the provisions of this article during the immediately preceding three-year period. Such order of confiscation shall require that such articles of apparel and equipment shall be held in the premises at which such confiscation occurs and that such articles and equipment shall be secured by any means, including the use of a padlock, to render such articles and equipment inaccessible; provided, however, that the commissioner shall not secure any dwelling unit or other space lawfully used for residential purposes.

2. Such order of confiscation shall be posted upon the secured premises and shall give notice that removal of secured property is prohibited by law. Removal of such posted order while it remains in force shall be punishable by a fine of five hundred dollars. Any attempt to remove secured articles and equipment while such order remains in force shall be punishable by a fine not to exceed one thousand dollars or by imprisonment not to exceed six months or both. The special task force shall deliver the keys to the fee owner, lessor or lessee of such premises if such owner, lessor or lessee is not the manufacturer or contractor who is in violation of the provisions of this article.

3. Such articles and equipment shall remain secured pursuant to subdivision one of this section until such order of confiscation becomes final or until a final determination of any appeal pursuant to subdivision four or five of this section of such order is rendered.

4. Within five days of confiscation pursuant to subdivision one of this section, the commissioner shall provide the manufacturer or contractor who is in violation of any provision of this article and whose articles of apparel and equipment have been confiscated with notification of such violation and confiscation by certified mail, return receipt requested, and with an opportunity to request from the commissioner by certified mail, return receipt requested, a hearing within fifteen days following receipt of such notice. If a hearing is requested, it shall be held within ten days following receipt of such request, and the commissioner may issue a final confiscation order upon such hearing and a finding that a violation has occurred. If a hearing is not requested, the commissioner shall issue a final confiscation order upon the expiration of such fifteen-day period. The manufacturer or contractor may appeal the final confiscation order to the appellate division of the supreme court within thirty days following the issuance of such final confiscation order.

5. Upon issuance of a final confiscation order or, if such order is appealed, upon a final resolution upholding such order, title to the confiscated articles and equipment shall vest in the state, and such items shall be sold at auction within sixty days from the vesting of title. Proceeds of the auction shall be applied to enforcement and administrative costs of the special task force. Any remaining items shall be disposed of pursuant to regulations issued by the commissioner.

§ 346. Special task force training; assistance of agencies

1. The special task force shall receive training to be provided by the state in each of the areas of the labor law, state or local building codes, state or local fire codes, laws or regulations and state or local health codes, laws or regulations in which potential violations exist and such other training as is necessary to carry out the duties and powers of the special task force, as defined in sections three hundred forty-three and three hundred forty-four of this article.

2. The special task force may request from any department, division, board, bureau, commission or other agency of the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality of the state, such assistance as will enable it to properly carry out its powers and duties hereunder.

§ 347. Report

Two years after the date on which this article takes effect, and on or before the thirty-first of January of each year thereafter, the special task force shall issue a report on its activities and on the apparel industry in New York state. This report shall be delivered to the labor committees and ways and means and finance committees of the legislature. The special task force shall report on a regular basis to the apparel industry advisory committee of the department, or its successor.

§ 348. Powers of commissioner; surety bond; civil and criminal penalties

1. If an order has been issued by the commissioner pursuant to section two hundred eighteen or two hundred nineteen of this chapter within the previous five years to any person engaged as an employer in the apparel industry directing compliance with any provision of article six or nineteen of this chapter and such order has not been revoked or annulled on review and the time for review has expired, or if it shall appear to the commissioner that any person engaged as an employer or as an agent or officer of a corporate employer in the apparel industry has within the previous five years been convicted of a violation of any provision of article six or nineteen of this chapter, or if it shall appear that any person engaged as an employer in the apparel industry has within the previous five years failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of this article, the commissioner may demand that such employer deposit with him a surety bond either in a sum equal to his annual payroll, as determined by the commissioner or in the discretion of the commissioner, in the sum of fifty thousand dollars. Such bond shall be payable to the commissioner and shall be conditioned that the employer and the officers thereof will, for a period of five years, maintain full compliance with this article and articles six and nineteen of this chapter, and shall be further conditioned upon the payment by the employer of all judgments which may be recovered against him pursuant to the provisions of this chapter. If within ten days after demand for such bond, which demand shall be either personally served or made by certified mail directed to the residence or last known business address of the employer, such employer shall fail to deposit the same, the employer shall be thereafter liable for a civil penalty of one thousand dollars per day until the furnishing of the bond or cessation of business by the employer, which civil penalty shall be payable to the commissioner. The commissioner may bring an action in any court of appropriate jurisdiction to compel the employer and the officers thereof to furnish such a bond and to recover all civil penalties accrued.

2. Every person engaged as an employer, or any officer or agent of any corporation in the apparel industry who knowingly fails to comply with an order issued under subdivision one of this section shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than one hundred nor more than ten thousand dollars or imprisoned for not more than one year or punished by both such a fine and imprisonment for each such offense.

§ 349. [Repealed]

§ 349-a. Annual reports

The commissioner shall publish, on or before February first, two thousand five and quarterly thereafter, a report setting forth the names of all registered apparel industry manufacturers and contractors, and all of such manufacturers and contractors who were found to be in violation of this article within the past year. Such report shall be delivered to the governor, the speaker of the assembly, the temporary president of the senate, the chairs of the assembly labor committee and the senate labor committee, and in cities with a population of one million or more, to every community board where any such registered apparel industry manufacturer or contractor does business, and to every certified and authorized labor union representing employees working in the apparel industry. Such report shall include instructions on registration requirements and information on how to report unregistered apparel industry manufacturers or contractors to the special task force for the garment industry.