

4472

2013-2014 Regular Sessions

I N S E N A T E

April 3, 2013

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

AN ACT to amend the labor law, in relation to enacting the "public employee safety and health reform act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "public
2 employee safety and health reform act."

3 S 2. Subdivision 5 of section 27-a of the labor law, as added by chap-
4 ter 729 of the laws of 1980 and paragraph e as amended by chapter 86 of
5 the laws of 1984, is amended to read as follows:

6 5. Inspections. a. Any employee or representative of employees who
7 believes that a violation of a safety or health standard exists, or that
8 an imminent danger exists, may request an inspection by giving notice to
9 the commissioner of such violation or danger. Such notice and request
10 shall be in writing, shall set forth with reasonable particularity the
11 grounds for the notice, shall be signed by such employee or represen-
12 tative of employees, and a copy shall be provided by the commissioner to
13 the employer or the person in charge no later than the time of
14 inspection, except that on the request of the person giving such notice,
15 his name and the names of individual employees or representatives of
16 employees shall be withheld. Such inspections shall be made forthwith.

17 b. A representative of the employer and an authorized employee repre-
18 sentative shall be given the opportunity to accompany the commissioner
19 during an inspection for the purpose of aiding such inspection. Where
20 there is no authorized employee representative, the commissioner shall
21 consult with a reasonable number of employees concerning matters of
22 safety and health in the workplace.

23 c. AN AUTHORIZED EMPLOYEE REPRESENTATIVE SHALL BE GIVEN THE OPPORTU-
24 NITY TO PARTICIPATE IN AN INTERVIEW OF AN EMPLOYEE BY THE COMMISSIONER
25 UPON THE REQUEST OF THE EMPLOYEE WHO IS THE SUBJECT OF SUCH INTERVIEW.

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

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1 WHERE THERE IS NO AUTHORIZED EMPLOYEE REPRESENTATIVE, THE EMPLOYEE WHO
2 IS THE SUBJECT OF THE INTERVIEW MAY DESIGNATE ANOTHER EMPLOYEE TO
3 PARTICIPATE IN THE INTERVIEW.

4 D. The authority of the commissioner to inspect a premises pursuant to
5 such an employee complaint shall not be limited to the alleged violation
6 contained in such complaint. The commissioner may inspect any other area
7 of the premises in which he has reason to believe that a violation of
8 this section exists.

9 [d.] E. No employee who accompanies the commissioner on an inspection
10 OR PARTICIPATES IN AN INTERVIEW BY THE COMMISSIONER shall suffer any
11 reduction in wages.

12 [e.] F. The commissioner may, upon his own initiative, conduct an
13 inspection of any premises occupied by a public employer if he has
14 reason to believe that a violation of this section has occurred or if he
15 has a general administrative plan for the enforcement of this section,
16 including general schedule inspections, which provide a rational admin-
17 istrative basis for such inspecting. Within ninety days of enactment of
18 this paragraph the commissioner shall publish the general administrative
19 plan and shall adopt regulations on the conduct of inspections in locker
20 rooms and other areas involving the personal property and privacy rights
21 of public employees.

22 [f.] G. Any information obtained by the commissioner under this
23 section shall be obtained with a minimum burden upon the employers.

24 S 3. Paragraph a of subdivision 6 of section 27-a of the labor law, as
25 amended by chapter 190 of the laws of 1990, is amended to read as
26 follows:

27 a. If the commissioner determines that an employer has violated a
28 provision of this section, or a safety or health standard or regulation
29 promulgated under this section, he or she shall [with reasonable prompt-
30 ness] WITHIN THIRTY DAYS OF THE DATE OF INSPECTION issue to the employer
31 an order to comply which shall describe particularly the nature of the
32 violation including a reference to the provision of this section, stand-
33 ard, regulation or order alleged to have been violated, shall fix a
34 reasonable time for compliance and may establish the penalty OR PENAL-
35 TIES to be assessed for failure to correct the violation by the time
36 fixed for compliance.

37 (1) An employer who fails to correct a non-serious violation by the
38 time fixed for compliance may be assessed a civil penalty of up to fifty
39 dollars per day until the violation is corrected. An employer who fails
40 to correct a serious violation by the time fixed for compliance may be
41 assessed a civil penalty of up to two hundred dollars per day until the
42 violation is corrected. [Pursuant to section 18(k) of the United States
43 Occupational Safety and Health Act of 1970 (Public Law, 91-596), a] A
44 serious violation shall be deemed to exist in a place of employment if
45 there is a substantial probability that death or serious physical harm
46 could result from a condition which exists, or from one or more prac-
47 tices, means, methods, operations, or processes which have been adopted
48 or are in use, in such place of employment unless the employer did not,
49 and could not with the exercise of reasonable diligence, know of the
50 presence of the violation. A non-serious violation shall be defined as
51 any violation that does not fall under the definition of serious
52 violation. The commissioner shall not assess a penalty against an
53 employer for failure to correct a violation of a standard which is the
54 subject of an application for a temporary order granting a variance or a
55 violation which is the subject of a petition to modify THE ABATEMENT
56 DATE SET FORTH IN an order to comply, provided however, that upon issu-

1 ance by the commissioner of a determination denying such variance or
2 petition to modify, or upon expiration of a temporary variance or modi-
3 fied compliance period, the time fixed for compliance shall recommence
4 and the employer become liable for the penalties provided herein.

5 (2) IN ADDITION TO ANY OTHER PENALTY TO BE ASSESSED IN ACCORDANCE WITH
6 PARAGRAPHS ONE, THREE OR FOUR OF THIS SUBDIVISION, AN EMPLOYER WHO
7 COMMITTS A WILLFUL VIOLATION SHALL BE ASSESSED A CIVIL PENALTY OF UP TO
8 SEVENTY THOUSAND DOLLARS, BUT NOT LESS THAN FIVE THOUSAND DOLLARS, FOR
9 EACH SUCH VIOLATION UPON ISSUANCE OF THE VIOLATION. A PENALTY ISSUED
10 PURSUANT TO THIS PARAGRAPH SHALL APPLY INSTANTLY AND SHALL NOT BE
11 CONTINGENT ON THE EMPLOYER'S FAILURE TO ABATE THE VIOLATION. FOR
12 PURPOSES OF THIS SECTION, A WILLFUL VIOLATION SHALL BE DEEMED TO EXIST
13 IN A PLACE OF EMPLOYMENT WHEN AN EMPLOYER KNOWINGLY COMMITTS A VIOLATION
14 OR COMMITTS WITH PLAIN INDIFFERENCE TO THE LAW. THE EMPLOYER KNOWS THAT
15 WHAT HE OR SHE IS DOING CONSTITUTES A VIOLATION, IS AWARE THAT A HAZARD-
16 OUS CONDITION EXISTED, AND MADE NO REASONABLE EFFORT TO ELIMINATE IT.

17 (3) IN ADDITION TO ANY OTHER PENALTY TO BE ASSESSED IN ACCORDANCE WITH
18 PARAGRAPHS ONE, TWO OR FOUR OF THIS SUBDIVISION, AN EMPLOYER WHO COMMITTS
19 A REPEAT VIOLATION SHALL BE ASSESSED A CIVIL PENALTY OF UP TO SEVENTY
20 THOUSAND DOLLARS, BUT NOT LESS THAN FIVE THOUSAND DOLLARS, FOR EACH SUCH
21 VIOLATION UPON ISSUANCE OF THE VIOLATION. A PENALTY ISSUED PURSUANT TO
22 THIS PARAGRAPH SHALL APPLY INSTANTLY AND SHALL NOT BE CONTINGENT ON THE
23 EMPLOYER'S FAILURE TO ABATE THE VIOLATION. A REPEAT VIOLATION IS A
24 VIOLATION OF ANY STANDARD, REGULATION, OR RULE, OR ORDER WHERE, UPON
25 REINSPECTION, A SUBSTANTIALLY SIMILAR VIOLATION EXISTS. TO BE THE BASIS
26 OF A REPEAT VIOLATION, THE ORIGINAL CITATION MUST BE FINAL; A CITATION
27 UNDER CONTEST MAY NOT SERVE AS THE BASIS FOR SUBSEQUENT REPEATED CITA-
28 TION.

29 (4) IN ADDITION TO ANY OTHER PENALTY TO BE ASSESSED IN ACCORDANCE WITH
30 PARAGRAPHS ONE, TWO OR THREE OF THIS SUBDIVISION, AN EMPLOYER WHO
31 COMMITTS A VIOLATION THAT IS THE PROXIMATE CAUSE OF A FATALITY SHALL BE
32 ASSESSED A CIVIL PENALTY OF UP TO SEVENTY THOUSAND DOLLARS, BUT NOT LESS
33 THAN FIVE THOUSAND DOLLARS, FOR EACH FATALITY RESULTING FROM THE
34 VIOLATION. A PENALTY ISSUED PURSUANT TO THIS PARAGRAPH SHALL APPLY
35 INSTANTLY AND SHALL NOT BE CONTINGENT ON THE EMPLOYER'S FAILURE TO ABATE
36 THE VIOLATION.

37 S 4. Paragraph b of subdivision 10 of section 27-a of the labor law,
38 as added by section 729 of the laws of 1980, is amended to read as
39 follows:

40 b. Any employee who believes that he has been discharged, disciplined,
41 or otherwise discriminated against by any person in violation of this
42 subdivision may, within [thirty] ONE HUNDRED EIGHTY days after such
43 violation occurs, file a complaint with the commissioner alleging such
44 discrimination. Upon receipt of such complaint, the commissioner shall
45 cause such investigation to be made as he deems appropriate, and shall,
46 if requested withhold the name of the complainant from the employer. If
47 upon such investigation, the commissioner determines that the provisions
48 of this subdivision have been violated, he shall request the attorney
49 general to bring an action in the supreme court against the person or
50 persons alleged to have violated the provisions of this subdivision. In
51 any such action the supreme court shall have jurisdiction, for cause
52 shown, to restrain violations of this subdivision and order all appro-
53 priate relief, including rehiring or reinstatement of the employee to
54 his former position with all back pay.

55 S 5. Subdivision 12 of section 27-a of the labor law, as added by
56 chapter 706 of the laws of 1990, is amended to read as follows:

1 12. The commissioner may initiate voluntary compliance programs,
2 including, but not limited to, a public employee consultation program to
3 provide on-site consultation to public employers desiring such services
4 as an adjunct to the commissioner's inspections pursuant to this
5 section. AN AUTHORIZED EMPLOYEE REPRESENTATIVE SHALL BE GIVEN THE
6 OPPORTUNITY TO PARTICIPATE IN SUCH VOLUNTARY COMPLIANCE PROGRAMS. WHERE
7 THERE IS NO AUTHORIZED EMPLOYEE REPRESENTATIVE, AN EMPLOYEE TAKING PART
8 IN SUCH PROGRAM MAY DESIGNATE ANOTHER EMPLOYEE TO PARTICIPATE IN THE
9 PROGRAM. Whenever an on-site consultation is performed under this subdi-
10 vision, a report shall be issued of any findings of noncompliance with
11 the regulations promulgated under this section and the report shall be
12 made public.

13 S 6. This act shall take effect immediately and shall apply to all
14 violations which occur on or after such date.