

STATE OF NEW YORK

8147

2019-2020 Regular Sessions

IN ASSEMBLY

June 4, 2019

Introduced by M. of A. PICHARDO -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to discrimination and retaliation against employees

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

1 Section 1. Section 120 of the workers' compensation law, as amended by
2 chapter 61 of the laws of 1989, the section heading and the opening
3 paragraph as amended by section 31 of part SS of chapter 54 of the laws
4 of 2016, is amended to read as follows:

5 § 120. Discrimination and retaliation against employees. It shall be
6 unlawful for any employer or his or her duly authorized agent to
7 discharge or fail to reinstate pursuant to section two hundred three-b
8 of this chapter, or in any other manner discriminate against an employee
9 as to his or her employment or retaliate against an employee because
10 such employee has claimed or attempted to claim compensation from such
11 employer, or claimed or attempted to claim any benefits provided under
12 this chapter or because he or she has testified or is about to testify
13 in a proceeding under this chapter and no other valid reason is shown to
14 exist for such action by the employer. As used in this section, to
15 discriminate or retaliate against an employee includes threatening to
16 contact or contacting United States immigration authorities or otherwise
17 reporting or threatening to report an employee's suspected citizenship
18 or immigration status or the suspected citizenship or immigration status
19 of an employee's family or household member, as defined in subdivision
20 two of section four hundred fifty-nine-a of the social services law, to
21 a federal, state or local agency.

22 Any complaint alleging such an unlawful discriminatory practice must
23 be filed within two years of the commission of such practice. Upon find-
24 ing that an employer has violated this section, the board shall make an
25 order that any employee so discriminated or retaliated against shall be

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

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1 restored to employment or otherwise restored to the position or privi-
2 leges he or she would have had but for the discrimination or retaliation
3 and shall be compensated by his or her employer for any loss of compen-
4 sation arising out of such discrimination or retaliation together with
5 such fees or allowances for services rendered by an attorney or licensed
6 representative as fixed by the board. Any employer who violates this
7 section shall be liable to a penalty of not less than [~~one~~] five hundred
8 dollars or more than two thousand five hundred dollars, as may be deter-
9 mined by the board. All such penalties shall be paid into the state
10 treasury. All penalties, compensation and fees or allowances shall be
11 paid solely by the employer. The employer alone and not his or her
12 carrier shall be liable for such penalties and payments. Any provision
13 in an insurance policy undertaking to relieve the employer from liabil-
14 ity for such penalties and payments shall be void.

15 An employer found to be in violation of this section and the aggrieved
16 employee must report to the board as to the manner of the employer's
17 compliance within thirty days of receipt of a final determination. In
18 case of failure to report on compliance, or failure to comply with an
19 order or penalty of the board within thirty days after the order or
20 notice of penalty is served, except where timely application to the
21 board for a modification, rescission or review of such order or penalty
22 has been filed under section twenty-three of this chapter, the chair in
23 any such case or, on the chair's consent, any party may enforce the
24 order or penalty in a like manner as an award of compensation.

25 § 2. This act shall take effect on the ninetieth day after it shall
26 have become a law.