

STATE OF NEW YORK

9106--A

IN ASSEMBLY

February 7, 2024

Introduced by M. of A. BURGOS -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the workers' compensation law, in relation to the issuing of stop-work orders

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 "stop work-
2 place abuse today (SWAT) act".

3 § 2. Section 21 of the labor law is amended by adding a new subdivi-
4 sion 17 to read as follows:

5 17. Shall be authorized to issue stop-work orders as a result of a
6 violation of this chapter.

7 § 3. The labor law is amended by adding a new section 21-g to read as
8 follows:

9 § 21-g. Stop-work orders. 1. In addition to any other penalties, reme-
10 dies or sanctions as provided by this chapter, an employer who violates
11 article six (payment of wages), article nineteen (minimum wage act),
12 article nineteen-A (minimum wage standards and protective labor prac-
13 tices for farm workers), section two hundred twelve-a, section two
14 hundred twelve-b, section one hundred sixty-one or section one hundred
15 sixty-two of this chapter, or any rule or regulation promulgated there-
16 under, and such aggregate amount exceeds one thousand dollars shall be
17 subject to a stop-work order by the commissioner. The commissioner
18 shall also be authorized to issue a stop-work order if the department is
19 made aware of any local, city or federal labor violation relating to
20 payment of wages by an employer and the commissioner deems a stop-work
21 order an appropriate action as a result of such violation.

22 2. A stop-work order against an employer shall apply against any
23 successor firm, corporation, or partnership of the employer in the same
24 manner that it applies to the employer.

25 3. Within seventy-two hours of finding a violation under subdivision
26 one of this section after investigation, the commissioner shall notify
27 such employer in writing of their intention to issue a stop-work order.

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

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1 Such notice shall: (a) be served in a manner consistent with section
2 three hundred eight of the civil practice law and rules; (b) notify such
3 employer of their right to a hearing; (c) notify such employer that they
4 shall have seventy-two hours to address the violation or violations
5 before the stop-work order will be issued; and (d) state the factual
6 basis upon which the commissioner has based their decision to issue a
7 stop-work order and how such employer shall come into compliance.

8 4. After receipt of such notice, the employer shall have seventy-two
9 hours to come into compliance and to notify the commissioner of such
10 compliance. Within seventy-two hours after the employer's opportunity to
11 come into compliance, if the employer has not come into compliance, the
12 commissioner shall issue a stop-work order requiring the cessation of
13 all business operations of the employer at every site at which the
14 violation occurs.

15 (a) A stop-work order shall take effect when served upon the employer
16 or when served at the worksite.

17 (b) A stop-work order shall remain in effect until the commissioner
18 issues an order releasing the stop-work order upon finding that the
19 employer has come into compliance and has paid any penalty assessed.

20 5. An employer who is subject to a stop-work order shall have the
21 right to apply to the commissioner, not more than ten days after the
22 order is issued, for a hearing to contest whether the employer committed
23 the violation on which the order was based.

24 6. Failure or refusal to comply with a stop-work order issued by the
25 commissioner shall, in addition to any other penalties authorized by
26 law, result in the assessment of a penalty of not less than one thousand
27 dollars and not more than five thousand dollars for each day the employ-
28 er is found not to be in compliance.

29 7. An employee affected by a stop-work order pursuant to this section
30 shall be paid their regular rate for the period the stop-work order is
31 in place or the first ten days the employee would have been scheduled to
32 work if the stop-work order had not been issued, whichever is less, by
33 the employer that was served the stop-work order.

34 8. For the purposes of this section, there shall be a rebuttable
35 presumption of unlawful retaliation if an employer in any manner
36 discriminates, retaliates, or takes any adverse action against any
37 employee within ninety days of the employee initiating a complaint
38 pursuant to this article.

39 § 4. Section 224-b of the labor law, as added by section 2 of part FFF
40 of chapter 58 of the laws of 2020, is amended to read as follows:

41 § 224-b. Stop-work orders. 1. (a) Where a complaint is received pursu-
42 ant to this article, or where the fiscal officer or the commissioner
43 upon [~~his or her~~] their own investigation, finds cause to believe that
44 any person, in connection with the performance of any contract for
45 public work pursuant to section two hundred twenty of this article or
46 any covered project pursuant to section two hundred twenty-four-a of
47 this article, has substantially and materially failed to comply with or
48 intentionally evaded the provisions of this [~~article~~] chapter, the
49 fiscal officer or the commissioner may notify such person in writing of
50 [~~his or her~~] their intention to issue a stop-work order. Such notice
51 shall (i) be served within seventy-two hours after making such determi-
52 nation that notice is required; (ii) be served in a manner consistent
53 with section three hundred eight of the civil practice law and rules;
54 [~~(ii)~~] (iii) notify such person of [~~his or her~~] their right to a hear-
55 ing; and [~~(iii)~~] (iv) state the factual basis upon which the fiscal
56 officer or the commissioner has based [~~his or her~~] their decision to

1 issue a stop-work order. Any documents, reports, or information that
2 form a basis for such decision shall be provided to such person within a
3 reasonable time before the hearing. Such hearing shall be expeditiously
4 conducted.

5 (b) After receipt of such notice, the employer shall have seventy-two
6 hours to come into compliance and to notify the commissioner of such
7 compliance. Within seventy-two hours after the employer's opportunity
8 to come into compliance, the fiscal officer or the commissioner shall
9 issue a stop-work order requiring the cessation of all business oper-
10 ations of the employer at every site at which the violation occurs.

11 (c) Following the hearing, if the fiscal officer or the commissioner
12 issues a continuance of such stop-work order, it shall be served by
13 regular mail, and a second copy may be served by telefacsimile or by
14 electronic mail, with service effective upon receipt of any such order.
15 Such stop-work order shall also be served with regard to a worksite by
16 posting a copy of such order in a conspicuous location at the worksite.
17 The order shall remain in effect until the fiscal officer or the commis-
18 sioner directs that the stop-work order be removed, upon a final deter-
19 mination on the complaint or where such failure to comply or evade has
20 been deemed corrected. If the person against whom such order is issued
21 shall within thirty days after issuance of the stop-work order makes an
22 application in affidavit form for a redetermination review of such order
23 the fiscal officer shall make a decision in writing on the issues raised
24 in such application. The fiscal officer may direct a conditional release
25 from a stop-work order upon a finding that such person has taken mean-
26 ingful and good faith steps to comply with the provisions of this arti-
27 cle.

28 2. Failure or refusal to comply with a stop-work order issued by the
29 fiscal officer or the commissioner shall, in addition to any other
30 penalties provided by law, result in the assessment of a penalty of not
31 less than one thousand dollars and not more than five thousand dollars
32 for each day the employer is found not to be in compliance.

33 § 5. The workers' compensation law is amended by adding a new section
34 142-a to read as follows:

35 § 142-a. Stop-work orders. 1. In addition to any other penalties,
36 remedies or sanctions as provided by this article, an employer who know-
37 ingly fails to provide workers' compensation coverage shall be subject
38 to a stop-work order by the commissioner of labor or the workers'
39 compensation board.

40 2. A violation of subdivision one of this section shall be considered
41 to be "knowing" if the employer:

42 (a) has previously obtained workers' compensation insurance and the
43 insurance has been cancelled or the insurance has not been continued or
44 renewed;

45 (b) has been advised of the need for workers' compensation insurance
46 by the division of workers' compensation or any other agency of the
47 department of labor; or

48 (c) has had one or more previous violations of workers' compensation
49 coverage requirements, including, but not limited to, failure to obtain
50 workers' compensation insurance or to qualify as a self-insuring employ-
51 er.

52 3. A stop-work order against an employer shall apply against any
53 successor firm, corporation, or partnership of the employer in the same
54 manner that it applies to the employer.

55 4. Within seventy-two hours of finding a violation of subdivision one
56 of this section after investigation, the board shall notify such employ-

1 er in writing of their intention to issue a stop-work order. Such notice
2 shall: (a) be served in a manner consistent with section three hundred
3 eight of the civil practice law and rules; (b) notify such employer of
4 their right to a hearing; and (c) state the factual basis upon which the
5 board or the commissioner of labor has based their decision to issue a
6 stop-work order.

7 5. After receipt of such notice, the employer shall have seventy-two
8 hours to come into compliance and to notify the commissioner of such
9 compliance. Within seventy-two hours after the employer's opportunity
10 to come into compliance, the board or the commissioner of labor shall
11 issue a stop-work order requiring the cessation of all business oper-
12 ations of the employer at every site at which the violation occurs.

13 (a) A stop-work order shall take effect when served upon the employer
14 or when served at the worksite.

15 (b) A stop-work order shall remain in effect until the board or the
16 commissioner of labor issues an order releasing the stop-work order upon
17 finding that the employer has come into compliance and has paid any
18 penalty assessed.

19 6. An employer who is subject to a stop-work order shall have the
20 right to apply to the board or the commissioner of labor, not more than
21 ten days after the order is issued, for a hearing to contest whether the
22 employer committed the violation on which the order was based.

23 7. Failure or refusal to comply with a stop-work order issued by the
24 board or the commissioner of labor shall, in addition to any other
25 penalties provided by law, result in the assessment of a penalty of not
26 less than one thousand dollars and not more than five thousand dollars
27 for each day the employer is found not to be in compliance and shall be
28 directed to the workers' compensation fund or the hazard abatement
29 board.

30 § 6. This act shall take effect immediately.