

11726

I N A S S E M B L Y

November 24, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Heastie) --
read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing the wage
theft prevention act

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

1 Section 1. This act shall be known and may be cited as the "wage theft
2 prevention act".
3 S 2. Section 2 of the labor law is amended by adding a new subdivision
4 16 to read as follows:
5 16. ALL REFERENCES TO LABOR LAW, CHAPTER, ARTICLE OR SECTION SHALL BE
6 DEEMED TO INCLUDE ANY RULE, REGULATION OR ORDER PROMULGATED THEREUNDER
7 OR RELATED THERETO.
8 S 3. Subdivisions 1, 2, 3 and 4 of section 195 of the labor law, as
9 added by chapter 548 of the laws of 1966 and subdivision 1 as amended by
10 chapter 270 of the laws of 2009, are amended to read as follows:
11 1. (A) [notify] PROVIDE his or her employees, in writing IN ENGLISH
12 AND IN THE LANGUAGE IDENTIFIED BY EACH EMPLOYEE AS THE PRIMARY LANGUAGE
13 OF SUCH EMPLOYEE, at the time of hiring [of], AND ON OR BEFORE FEBRUARY
14 FIRST OF EACH SUBSEQUENT YEAR OF THE EMPLOYEE'S EMPLOYMENT WITH THE
15 EMPLOYER, A NOTICE CONTAINING THE FOLLOWING INFORMATION: the rate OR
16 RATES of pay and [of] BASIS THEREOF, WHETHER PAID BY THE HOUR, SHIFT,
17 DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER; ALLOWANCES, IF ANY,
18 CLAIMED AS PART OF THE MINIMUM WAGE, INCLUDING TIP, MEAL, OR LODGING
19 ALLOWANCES; the regular pay day designated by the employer in accordance
20 with section one hundred ninety-one of this article[, and]; THE NAME OF
21 THE EMPLOYER; ANY "DOING BUSINESS AS" NAMES USED BY THE EMPLOYER; THE
22 PHYSICAL ADDRESS OF THE EMPLOYER'S MAIN OFFICE OR PRINCIPAL PLACE OF
23 BUSINESS, AND A MAILING ADDRESS IF DIFFERENT; THE TELEPHONE NUMBER OF
24 THE EMPLOYER; PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER DEEMS
25 MATERIAL AND NECESSARY. EACH TIME THE EMPLOYER PROVIDES SUCH NOTICE TO
26 AN EMPLOYEE, THE EMPLOYER SHALL obtain FROM THE EMPLOYEE a SIGNED AND
27 DATED written acknowledgement [from each employee], IN ENGLISH AND IN
28 THE PRIMARY LANGUAGE OF THE EMPLOYEE, of receipt of this notice, WHICH

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

1 THE EMPLOYER SHALL PRESERVE AND MAINTAIN FOR SIX YEARS. Such acknowl-
2 edgement shall INCLUDE AN AFFIRMATION BY THE EMPLOYEE THAT THE EMPLOYEE
3 ACCURATELY IDENTIFIED HIS OR HER PRIMARY LANGUAGE TO THE EMPLOYER, AND
4 THAT THE NOTICE PROVIDED BY THE EMPLOYER TO SUCH EMPLOYEE PURSUANT TO
5 THIS SUBDIVISION WAS IN THE LANGUAGE SO IDENTIFIED OR OTHERWISE COMPLIED
6 WITH PARAGRAPH (C) OF THIS SUBDIVISION, AND SHALL conform to any ADDI-
7 TIONAL requirements established by the commissioner with regard to
8 content and form. For all employees who are [eligible for] NOT EXEMPT
9 FROM overtime compensation as established in the commissioner's minimum
10 wage orders or otherwise provided by NEW YORK STATE law or regulation,
11 the notice must state the regular hourly rate and overtime rate of pay;

12 (B) THE COMMISSIONER SHALL PREPARE TEMPLATES THAT COMPLY WITH THE
13 REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION. EACH SUCH TEMPLATE
14 SHALL BE DUAL-LANGUAGE, INCLUDING ENGLISH AND ONE ADDITIONAL LANGUAGE.
15 THE COMMISSIONER SHALL DETERMINE, IN HIS OR HER DISCRETION, WHICH
16 LANGUAGES TO PROVIDE IN ADDITION TO ENGLISH, BASED ON THE SIZE OF THE
17 NEW YORK STATE POPULATION THAT SPEAKS EACH LANGUAGE AND ANY OTHER FACTOR
18 THAT THE COMMISSIONER SHALL DEEM RELEVANT. ALL SUCH TEMPLATES SHALL BE
19 MADE AVAILABLE TO EMPLOYERS IN SUCH MANNER AS DETERMINED BY THE COMMIS-
20 SIONER;

21 (C) WHEN AN EMPLOYEE IDENTIFIES AS HIS OR HER PRIMARY LANGUAGE A
22 LANGUAGE FOR WHICH A TEMPLATE IS NOT AVAILABLE FROM THE COMMISSIONER,
23 THE EMPLOYER SHALL COMPLY WITH THIS SUBDIVISION BY PROVIDING THAT
24 EMPLOYEE AN ENGLISH-LANGUAGE NOTICE OR ACKNOWLEDGMENT;

25 (D) AN EMPLOYER SHALL NOT BE PENALIZED FOR ERRORS OR OMISSIONS IN THE
26 NON-ENGLISH PORTIONS OF ANY NOTICE PROVIDED BY THE COMMISSIONER;

27 (E) THE COMMISSIONER SHALL HAVE DISCRETION TO WAIVE OR ALTER REQUIRE-
28 MENTS OF PARAGRAPH (A) OF THIS SUBDIVISION FOR TEMPORARY HELP FIRMS AS
29 DEFINED IN SECTION NINE HUNDRED SIXTEEN OF THIS CHAPTER.

30 2. notify his OR HER employees IN WRITING of any changes TO THE INFOR-
31 MATION SET FORTH in [the pay] SUBDIVISION ONE OF THIS SECTION, AT LEAST
32 SEVEN CALENDAR days prior to the time of such changes, UNLESS SUCH
33 CHANGES ARE REFLECTED ON THE WAGE STATEMENT FURNISHED IN ACCORDANCE WITH
34 SUBDIVISION THREE OF THIS SECTION;

35 3. furnish each employee with a statement with every payment of wages,
36 listing THE FOLLOWING: THE DATES OF WORK COVERED BY THAT PAYMENT OF
37 WAGES; NAME OF EMPLOYEE; NAME OF EMPLOYER; ADDRESS AND PHONE NUMBER OF
38 EMPLOYER; RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER PAID BY THE
39 HOUR, SHIFT, DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER; gross
40 wages[,]; deductions; ALLOWANCES, IF ANY, CLAIMED AS PART OF THE MINIMUM
41 WAGE; and net wages[, and upon]. FOR ALL EMPLOYEES WHO ARE NOT EXEMPT
42 FROM OVERTIME COMPENSATION AS ESTABLISHED IN THE COMMISSIONER'S MINIMUM
43 WAGE ORDERS OR OTHERWISE PROVIDED BY NEW YORK STATE LAW OR REGULATION,
44 THE STATEMENT SHALL INCLUDE THE REGULAR HOURLY RATE OR RATES OF PAY; THE
45 OVERTIME RATE OR RATES OF PAY; THE NUMBER OF REGULAR HOURS WORKED, AND
46 THE NUMBER OF OVERTIME HOURS WORKED. FOR ALL EMPLOYEES PAID A PIECE
47 RATE, THE STATEMENT SHALL INCLUDE THE APPLICABLE PIECE RATE OR RATES OF
48 PAY AND NUMBER OF PIECES COMPLETED AT EACH PIECE RATE. UPON the request
49 of an employee, AN EMPLOYER SHALL furnish an explanation IN WRITING of
50 how such wages were computed;

51 4. establish, maintain and preserve for not less than [three] SIX
52 years CONTEMPORANEOUS, TRUE, AND ACCURATE payroll records showing FOR
53 EACH WEEK WORKED the hours worked[,]; THE RATE OR RATES OF PAY AND BASIS
54 THEREOF, WHETHER PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY, PIECE,
55 COMMISSION, OR OTHER; gross wages[,]; deductions; ALLOWANCES, IF ANY,
56 CLAIMED AS PART OF THE MINIMUM WAGE; and net wages for each employee.

1 FOR ALL EMPLOYEES WHO ARE NOT EXEMPT FROM OVERTIME COMPENSATION AS
2 ESTABLISHED IN THE COMMISSIONER'S MINIMUM WAGE ORDERS OR OTHERWISE
3 PROVIDED BY NEW YORK STATE LAW OR REGULATION, THE PAYROLL RECORDS SHALL
4 INCLUDE THE REGULAR HOURLY RATE OR RATES OF PAY, THE OVERTIME RATE OR
5 RATES OF PAY, THE NUMBER OF REGULAR HOURS WORKED, AND THE NUMBER OF
6 OVERTIME HOURS WORKED. FOR ALL EMPLOYEES PAID A PIECE RATE, THE PAYROLL
7 RECORDS SHALL INCLUDE THE APPLICABLE PIECE RATE OR RATES OF PAY AND
8 NUMBER OF PIECES COMPLETED AT EACH PIECE RATE;

9 S 4. Section 196 of the labor law, as added by chapter 548 of the laws
10 of 1966, paragraph b of subdivision 1 as amended by chapter 328 of the
11 laws of 1972 and paragraph e of subdivision 1 as added by chapter 336 of
12 the laws of 1985, is amended to read as follows:

13 S 196. Powers of commissioner. 1. In addition to the powers of the
14 commissioner specified in other sections of this chapter, the commis-
15 sioner shall have the following duties, powers and authority:

16 a. He OR SHE shall investigate and attempt to adjust equitably contro-
17 versies between employers and employees relating to THIS ARTICLE, OR
18 ARTICLE FIVE, SEVEN, NINETEEN OR NINETEEN-A OF this [article] CHAPTER.

19 b. He OR SHE may take assignments of claims for wages [as defined in]
20 UNDER this [article] CHAPTER from employees or third parties in trust
21 for such employees or for the benefit of various funds for such employ-
22 ees. All such assignments shall run to the commissioner and his OR HER
23 successor in office. The commissioner may sue employers on wage claims
24 thus assigned, with the benefits and subject to the provisions of exist-
25 ing law applying to actions by employees for collection of wages. He OR
26 SHE may join in a single action any number of wage claims against the
27 same employer.

28 c. He OR SHE may institute proceedings on account of any criminal
29 violation of any provision of THIS ARTICLE, OR ARTICLE FIVE, SEVEN,
30 NINETEEN OR NINETEEN-A OF this [article] CHAPTER.

31 d. If it shall appear to him OR HER that any employer has been
32 convicted of a violation of any provision of this article OR ARTICLE
33 NINETEEN OR NINETEEN-A OF THIS CHAPTER or that any [judgment] ORDER TO
34 COMPLY ISSUED against an employer [for non-payment of wages] UNDER THIS
35 CHAPTER remains unsatisfied for a period of ten days after the time to
36 appeal therefrom has expired, and that no appeal therefrom is then pend-
37 ing, the commissioner may require such employer to deposit with him OR
38 HER a bond in such sum as he OR SHE may deem sufficient and adequate in
39 the circumstances, together with two or more sureties or a duly author-
40 ized surety company, to be approved by the commissioner. The bond shall
41 be payable to the commissioner and shall be conditioned that the employ-
42 er will, for a definite future period, not exceeding two years, pay his
43 OR HER employees in accordance with the provisions of this article OR
44 ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER, and shall be further
45 conditioned upon the payment by the employer of any AMOUNTS DUE PURSUANT
46 TO AN ORDER TO COMPLY OR judgment [which may be recovered] against such
47 employer pursuant to the provisions of this article OR ARTICLE NINETEEN
48 OR NINETEEN-A OF THIS CHAPTER.

49 If within ten days after demand for such bond, which demand may be
50 made by certified or registered mail, such employer shall fail to depos-
51 it the same, the commissioner may bring an action in the name and on
52 behalf of the people of the state of New York against such employer in
53 the supreme court to compel such employer to furnish such a bond or to
54 cease doing business until he OR SHE has done so. The employer shall
55 have the burden of proving that either such a bond is unnecessary or
56 that the amount demanded is excessive. If the court finds that there is

1 just cause for requiring the bond and that same is reasonably necessary
2 or proper to secure prompt payment of the wages of the employees of such
3 employer and his OR HER compliance with the provisions of this article
4 OR ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER, the court may enjoin
5 such employer and such other person or persons as may have been or may
6 be concerned with or in any way participating in the failure to pay the
7 wages resulting in the conviction [or in the judgment] OR ORDER TO
8 COMPLY as aforesaid, from doing business until the requirement is met
9 and make other and further orders appropriate to compel compliance with
10 the requirement.

11 IF ANY ORDER TO COMPLY ISSUED AGAINST AN EMPLOYER UNDER THIS ARTICLE
12 OR ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER REMAINS UNSATISFIED
13 FOR A PERIOD OF TEN DAYS AFTER THE TIME TO APPEAL THEREFROM HAS EXPIRED,
14 AND THAT NO APPEAL THEREFROM IS THEN PENDING, THE COMMISSIONER MAY
15 REQUIRE THE EMPLOYER TO PROVIDE AN ACCOUNTING OF ASSETS OF THE EMPLOYER,
16 INCLUDING BUT NOT LIMITED TO, A LIST OF ALL BANK ACCOUNTS, ACCOUNTS
17 RECEIVABLE, PERSONAL PROPERTY, REAL PROPERTY, AUTOMOBILES OR OTHER VEHI-
18 CLES, AND ANY OTHER ASSETS, IN A FORM AND MANNER AS PRESCRIBED BY THE
19 COMMISSIONER. AN EMPLOYER SHALL PROVIDE SUCH AMENDED ACCOUNTINGS OF
20 ASSETS AS THE COMMISSIONER SHALL ORDER. IF WITHIN TEN DAYS AFTER DEMAND
21 FOR SUCH AN ACCOUNTING OF ASSETS, WHICH DEMAND MAY BE MADE BY CERTIFIED
22 OR REGISTERED MAIL, SUCH EMPLOYER SHALL FAIL TO PROVIDE SAME, OR IF THE
23 EMPLOYER FAILS TO PROVIDE AN AMENDED ACCOUNTING AS REQUIRED UNDER THIS
24 SECTION, THE COMMISSIONER MAY BRING AN ACTION IN THE NAME AND ON BEHALF
25 OF THE PEOPLE OF THE STATE OF NEW YORK AGAINST SUCH EMPLOYER IN THE
26 SUPREME COURT TO COMPEL SUCH EMPLOYER TO FURNISH THE ACCOUNTING AND PAY
27 A CIVIL PENALTY OF NO MORE THAN TEN THOUSAND DOLLARS.

28 e. He OR SHE is hereby authorized and empowered to enter into recipro-
29 cal agreements with the labor department or corresponding agency of any
30 other state or with the person, board, officer, or commission authorized
31 to act on behalf of such department or agency, for the collection in
32 such other states of claims and judgments for wages based upon claims
33 assigned to the commissioner.

34 The commissioner may, to the extent provided for by any reciprocal
35 agreement entered into by law or with any agency of another state as
36 herein provided, maintain actions in the courts of such other state for
37 the collection of claims and judgments for wages and may assign such
38 claims and judgments to the labor department or agency of such other
39 state for collection to the extent that such an assignment may be
40 permitted or provided for by the law of such state or by reciprocal
41 agreement.

42 The commissioner may, upon the written consent of the labor department
43 or other corresponding agency of any other state or of any person,
44 board, officer or commission of such state authorized to act on behalf
45 of such labor department or corresponding agency, maintain actions in
46 the courts of this state upon assigned claims and judgments for wages
47 arising in such other state in the same manner and to the same extent
48 that such actions by the commissioner are authorized when arising in
49 this state. However, such actions may be maintained only in cases where
50 such other state by law or reciprocal agreement extends a like comity to
51 cases arising in this state.

52 2. Nothing in this section shall be construed as requiring the commis-
53 sioner in every instance to investigate and attempt to adjust controver-
54 sies, or to take assignments of wage claims, or to institute criminal
55 prosecutions for any violation under this article OR ARTICLE FIVE,

1 SEVEN, NINETEEN OR NINETEEN-A OF THIS CHAPTER, but he OR SHE shall be
2 deemed vested with discretion in such matters.

3 S 5. Section 196-a of the labor law, as amended by chapter 417 of the
4 laws of 2009, is amended to read as follows:

5 S 196-a. Complaints by employees to commissioner. (a) Any employee[,];
6 PERSON OR ORGANIZATION ACTING ON THE EMPLOYEE'S BEHALF; or the recog-
7 nized and certified collective bargaining agent acting on the employee's
8 behalf, may file with the commissioner a complaint regarding a violation
9 of this article, article FIVE, SEVEN, nineteen, or [article] nineteen-A
10 of this chapter for an investigation of such complaint and statement
11 setting the appropriate remedy, if any. THE COMMISSIONER SHALL KEEP THE
12 NAMES OF EMPLOYEES THAT ARE THE SUBJECT OF AN INVESTIGATION CONFIDENTIAL
13 UNTIL SUCH TIME THAT DISCLOSURE IS NECESSARY FOR RESOLUTION OF AN INVES-
14 TIGATION OR A COMPLAINT. Failure of an employer to keep adequate records
15 OR PROVIDE STATEMENTS OF WAGES TO EMPLOYEES AS REQUIRED UNDER THIS CHAP-
16 TER, in addition to exposing such employer to penalties authorized under
17 subdivision one of section two hundred eighteen of this chapter, shall
18 not operate as a bar to filing of a complaint by an employee. In such a
19 case the employer in violation shall bear the burden of proving that the
20 complaining employee was paid wages, benefits and wage supplements.

21 (b) Any employee, or the recognized and certified collective bargain-
22 ing agent acting on the employee's behalf, contractor, or the recognized
23 and certified labor organization with which the contractor has executed
24 a collective bargaining agreement covering wages, benefits and supple-
25 ments, may file with the commissioner a complaint regarding an alleged
26 violation of this article or article nineteen of this chapter occasioned
27 by another person, corporation, employer or entities in violation of
28 article thirty-five-E of the general business law for an investigation
29 of such complaint and statement setting the appropriate remedy, if any.

30 S 6. Section 197 of the labor law, as amended by chapter 427 of the
31 laws of 2002, is amended to read as follows:

32 S 197. Civil penalty. Any employer who fails to pay the wages of his
33 employees or shall differentiate in rate of pay because of sex, as
34 provided in this article, shall forfeit to the people of the state the
35 sum of five hundred dollars for each such failure, to be recovered by
36 the commissioner in ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRATIVE
37 ACTION OR a civil action.

38 S 7. Section 198 of the labor law, as added by chapter 548 of the laws
39 of 1966, subdivision 1-a as amended by chapter 372 of the laws of 2009
40 and subdivision 3 as amended by chapter 605 of the laws of 1997, is
41 amended to read as follows:

42 S 198. Costs, remedies. 1. In any action instituted upon a wage claim
43 by an employee or the commissioner in which the employee prevails, the
44 court may allow such employee in addition to ordinary costs, a reason-
45 able sum, not exceeding fifty dollars for expenses which may be taxed as
46 costs. No assignee of a wage claim, except the commissioner, shall be
47 benefited by this provision.

48 1-a. On behalf of any employee paid less than the wage to which he or
49 she is entitled under the provisions of this article, the commissioner
50 may bring any legal action necessary, including administrative action,
51 to collect such claim and as part of such legal action, in addition to
52 any other remedies and penalties otherwise available under this article,
53 the commissioner [may] SHALL assess against the employer THE FULL AMOUNT
54 OF ANY SUCH UNDERPAYMENT, AND an additional amount as liquidated damages
55 [equal to twenty-five percent of the total amount of wages found to be
56 due], unless the employer proves a good faith basis for believing that

1 its underpayment of wages was in compliance with the law. LIQUIDATED
2 DAMAGES SHALL BE CALCULATED BY THE COMMISSIONER AS NO MORE THAN ONE
3 HUNDRED PERCENT OF THE TOTAL AMOUNT OF WAGES FOUND TO BE DUE. In any
4 action instituted in the courts upon a wage claim by an employee or the
5 commissioner in which the employee prevails, the court shall allow such
6 employee TO RECOVER THE FULL AMOUNT OF ANY UNDERPAYMENT, ALL reasonable
7 attorney's fees, PREJUDGMENT INTEREST AS REQUIRED UNDER THE CIVIL PRAC-
8 TICE LAW AND RULES, and, unless the employer proves a good faith basis
9 to believe that its underpayment of wages was in compliance with the
10 law, an additional amount as liquidated damages equal to [twenty-five]
11 ONE HUNDRED percent of the total amount of the wages found to be due.

12 1-B. IF ANY EMPLOYEE IS NOT PROVIDED WITHIN TEN BUSINESS DAYS OF HIS
13 OR HER FIRST DAY OF EMPLOYMENT A NOTICE AS REQUIRED BY SUBDIVISION ONE
14 OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE, HE OR SHE MAY
15 RECOVER IN A CIVIL ACTION DAMAGES OF FIFTY DOLLARS FOR EACH WORK WEEK
16 THAT THE VIOLATIONS OCCURRED OR CONTINUE TO OCCUR, BUT NOT TO EXCEED A
17 TOTAL OF TWO THOUSAND FIVE HUNDRED DOLLARS, TOGETHER WITH COSTS AND
18 REASONABLE ATTORNEY'S FEES. THE COURT MAY ALSO AWARD OTHER RELIEF,
19 INCLUDING INJUNCTIVE AND DECLARATORY RELIEF, THAT THE COURT IN ITS
20 DISCRETION DEEMS NECESSARY OR APPROPRIATE.

21 ON BEHALF OF ANY EMPLOYEE NOT PROVIDED A NOTICE AS REQUIRED BY SUBDI-
22 VISION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE, THE
23 COMMISSIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRA-
24 TIVE ACTION, TO COLLECT SUCH CLAIM, AND AS PART OF SUCH LEGAL ACTION, IN
25 ADDITION TO ANY OTHER REMEDIES AND PENALTIES OTHERWISE AVAILABLE UNDER
26 THIS ARTICLE, THE COMMISSIONER MAY ASSESS AGAINST THE EMPLOYER DAMAGES
27 OF FIFTY DOLLARS FOR EACH WORK WEEK THAT THE VIOLATIONS OCCURRED OR
28 CONTINUE TO OCCUR. IN ANY ACTION OR ADMINISTRATIVE PROCEEDING TO RECOVER
29 DAMAGES FOR VIOLATION OF PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION ONE
30 HUNDRED NINETY-FIVE OF THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE
31 THAT (I) THE EMPLOYER MADE COMPLETE AND TIMELY PAYMENT OF ALL WAGES DUE
32 PURSUANT TO THIS ARTICLE OR ARTICLE NINETEEN OR ARTICLE NINETEEN-A OF
33 THIS CHAPTER TO THE EMPLOYEE WHO WAS NOT PROVIDED NOTICE AS REQUIRED BY
34 SUBDIVISION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE OR
35 (II) THE EMPLOYER REASONABLY BELIEVED IN GOOD FAITH THAT IT WAS NOT
36 REQUIRED TO PROVIDE THE EMPLOYEE WITH NOTICE PURSUANT TO SUBDIVISION ONE
37 OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE.

38 1-D. IF ANY EMPLOYEE IS NOT PROVIDED A STATEMENT OR STATEMENTS AS
39 REQUIRED BY SUBDIVISION THREE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS
40 ARTICLE, HE OR SHE SHALL RECOVER IN A CIVIL ACTION DAMAGES OF ONE
41 HUNDRED DOLLARS FOR EACH WORK WEEK THAT THE VIOLATIONS OCCURRED OR
42 CONTINUE TO OCCUR, BUT NOT TO EXCEED A TOTAL OF TWENTY-FIVE HUNDRED
43 DOLLARS, TOGETHER WITH COSTS AND REASONABLE ATTORNEY'S FEES. THE COURT
44 MAY ALSO AWARD OTHER RELIEF, INCLUDING INJUNCTIVE AND DECLARATORY
45 RELIEF, THAT THE COURT IN ITS DISCRETION DEEMS NECESSARY OR APPROPRIATE.

46 ON BEHALF OF ANY EMPLOYEE NOT PROVIDED A STATEMENT AS REQUIRED BY
47 SUBDIVISION THREE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE,
48 THE COMMISSIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMIN-
49 ISTRATIVE ACTION, TO COLLECT SUCH CLAIM, AND AS PART OF SUCH LEGAL
50 ACTION, IN ADDITION TO ANY OTHER REMEDIES AND PENALTIES OTHERWISE AVAIL-
51 ABLE UNDER THIS ARTICLE, THE COMMISSIONER MAY ASSESS AGAINST THE EMPLOY-
52 ER DAMAGES OF ONE HUNDRED DOLLARS FOR EACH WORK WEEK THAT THE VIOLATIONS
53 OCCURRED OR CONTINUE TO OCCUR. IN ANY ACTION OR ADMINISTRATIVE PROCEED-
54 ING TO RECOVER DAMAGES FOR VIOLATION OF SUBDIVISION THREE OF SECTION ONE
55 HUNDRED NINETY-FIVE OF THIS ARTICLE, IT SHALL BE AN AFFIRMATIVE DEFENSE
56 THAT (I) THE EMPLOYER MADE COMPLETE AND TIMELY PAYMENT OF ALL WAGES DUE

1 PURSUANT TO THIS ARTICLE OR ARTICLES NINETEEN OR NINETEEN-A OF THIS
2 CHAPTER TO THE EMPLOYEE WHO WAS NOT PROVIDED STATEMENTS AS REQUIRED BY
3 SUBDIVISION THREE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE OR
4 (II) THE EMPLOYER REASONABLY BELIEVED IN GOOD FAITH THAT IT WAS NOT
5 REQUIRED TO PROVIDE THE EMPLOYEE WITH STATEMENTS PURSUANT TO PARAGRAPH
6 (E) OF SUBDIVISION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTI-
7 CLE.

8 2. The remedies provided by this article may be enforced simultane-
9 ously or consecutively so far as not inconsistent with each other.

10 3. Notwithstanding any other provision of law, an action to recover
11 upon a liability imposed by this article must be commenced within six
12 years. THE STATUTE OF LIMITATIONS SHALL BE TOLLED FROM THE DATE AN
13 EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE COMMISSIONER
14 COMMENCES AN INVESTIGATION, WHICHEVER IS EARLIER, UNTIL AN ORDER TO
15 COMPLY ISSUED BY THE COMMISSIONER BECOMES FINAL, OR WHERE THE COMMIS-
16 SIONER DOES NOT ISSUE AN ORDER, UNTIL THE DATE ON WHICH THE COMMISSIONER
17 NOTIFIES THE COMPLAINANT THAT THE INVESTIGATION HAS CONCLUDED. INVESTI-
18 GATION BY THE COMMISSIONER SHALL NOT BE A PREREQUISITE TO NOR A BAR
19 AGAINST A PERSON BRINGING A CIVIL ACTION UNDER THIS SECTION. All employ-
20 ees shall have the right to recover full wages, benefits and wage
21 supplements AND LIQUIDATED DAMAGES accrued during the six years previous
22 to the commencing of such action, whether such action is instituted by
23 the employee or by the commissioner.

24 4. IN ANY CIVIL ACTION BY AN EMPLOYEE OR BY THE COMMISSIONER, THE
25 EMPLOYEE OR COMMISSIONER SHALL HAVE THE RIGHT TO COLLECT ATTORNEY'S FEES
26 AND COSTS INCURRED IN ENFORCING ANY COURT JUDGMENT. ANY JUDGMENT OR
27 COURT ORDER AWARDING REMEDIES UNDER THIS SECTION SHALL PROVIDE THAT IF
28 ANY AMOUNTS REMAIN UNPAID UPON THE EXPIRATION OF NINETY DAYS FOLLOWING
29 ISSUANCE OF JUDGMENT, OR NINETY DAYS AFTER EXPIRATION OF THE TIME TO
30 APPEAL AND NO APPEAL IS THEN PENDING, WHICHEVER IS LATER, THE TOTAL
31 AMOUNT OF JUDGMENT SHALL AUTOMATICALLY INCREASE BY FIFTEEN PERCENT.

32 S 8. Section 198-a of the labor law, as amended by chapter 241 of the
33 laws of 2002, is amended to read as follows:

34 S 198-a. Criminal penalties. 1. Every employer who does not pay the
35 wages of all of his employees in accordance with the provisions of this
36 chapter, and the officers and agents of any corporation, PARTNERSHIP, OR
37 LIMITED LIABILITY COMPANY who knowingly permit the corporation, PARTNER-
38 SHIP, OR LIMITED LIABILITY COMPANY to violate this chapter by failing to
39 pay the wages of any of its employees in accordance with the provisions
40 thereof, shall be guilty of a misdemeanor for the first offense and upon
41 conviction therefor shall be fined not less than five hundred nor more
42 than twenty thousand dollars or imprisoned for not more than one year,
43 and, in the event that any second or subsequent offense occurs within
44 six years of the date of conviction for a prior offense, shall be guilty
45 of a felony for the second or subsequent offense, and upon conviction
46 therefor, shall be fined not less than five hundred nor more than twenty
47 thousand dollars or imprisoned for not more than one year plus one day,
48 or punished by both such fine and imprisonment, for each such offense.
49 An indictment of a person or corporation operating a steam surface rail-
50 road for an offense specified in this section may be found and tried in
51 any county within the state in which such railroad ran at the time of
52 such offense.

53 2. Every employer who violates or fails to comply with the require-
54 ments of subdivision four of section one hundred ninety-five of this
55 article, and the officers and agents of any corporation, PARTNERSHIP, OR
56 LIMITED LIABILITY COMPANY who knowingly permit the corporation, PARTNER-

1 SHIP, OR LIMITED LIABILITY COMPANY to violate or fail to comply there-
2 with, shall be guilty of a misdemeanor and upon conviction therefor
3 shall be fined not less than five hundred nor more than five thousand
4 dollars or imprisoned for not more than one year.

5 3. Every employer who knowingly violates or fails to comply with the
6 requirements of subdivision four of section one hundred ninety-five of
7 this article, and the officers and agents of any corporation, PARTNER-
8 SHIP, OR LIMITED LIABILITY COMPANY who knowingly permit the corporation,
9 PARTNERSHIP, OR LIMITED LIABILITY COMPANY to violate or fail to comply
10 therewith, shall be guilty of a felony where such employer, officer or
11 agent has been convicted of a violation of such subdivision within the
12 previous six years, and upon conviction therefor shall be fined not less
13 than five hundred nor more than twenty thousand dollars or imprisoned
14 for not more than one year plus one day, or punished by both such fine
15 and imprisonment, for each such offense. In determining the penalty, the
16 court shall consider the severity of the violation, the size of the
17 employer, and the employer's good faith effort to comply with the
18 requirements of subdivision four of section one hundred ninety-five of
19 this article.

20 S 9. Section 199-a of the labor law, as added by chapter 605 of the
21 laws of 1997, is amended to read as follows:

22 S 199-a. Notification of process. 1. Each employee who files a
23 complaint regarding a violation of a provision of THIS article [six]
24 (payment of wages), article nineteen (minimum wage act), or article
25 nineteen-A (MINIMUM WAGE STANDARDS AND PROTECTIVE LABOR PRACTICES FOR
26 FARM WORKERS), SECTION ONE HUNDRED SIXTY-ONE, SECTION ONE HUNDRED
27 SIXTY-TWO, section two hundred twelve-a [or], section two hundred
28 twelve-b, OR SECTION TWO HUNDRED FIFTEEN of this chapter, or a rule or
29 regulation promulgated thereunder, shall be provided with a written
30 description of the anticipated processing of the complaint, including
31 investigation, case conference, potential civil and criminal penalties,
32 and collection procedures.

33 2. Each employee and his or her AUTHORIZED representative shall be
34 notified in writing of any case conference before it is held and given
35 the opportunity to attend.

36 3. Each employee and his or her AUTHORIZED representative shall be
37 notified in writing of any award and collection of back wages and civil
38 penalties, and of any intent to seek criminal penalties. In the event
39 that criminal penalties are sought the employee and his or her AUTHOR-
40 IZED representative shall be notified of the outcome of prosecution.

41 S 10. Section 215 of the labor law, as amended by chapter 744 of the
42 laws of 1986, subdivision 1 as amended by chapter 372 of the laws of
43 2009, is amended to read as follows:

44 S 215. Penalties and civil action; [employer who penalizes employees
45 because of complaints of employer violations] PROHIBITED RETALIATION. 1.
46 (a) No employer or his or her agent, or the officer or agent of any
47 corporation, partnership, or limited liability company, OR ANY OTHER
48 PERSON, shall discharge, THREATEN, penalize, or in any other manner
49 discriminate or retaliate against any employee (i) because such employee
50 has made a complaint to his or her employer, or to the commissioner or
51 his or her authorized representative, OR TO THE ATTORNEY GENERAL OR ANY
52 OTHER PERSON, that the employer has [violated any provision of] ENGAGED
53 IN CONDUCT THAT THE EMPLOYEE, REASONABLY AND IN GOOD FAITH, BELIEVES
54 VIOLATES ANY PROVISION OF this chapter, or ANY ORDER ISSUED BY THE
55 COMMISSIONER (ii) BECAUSE SUCH EMPLOYER OR PERSON BELIEVES THAT SUCH
56 EMPLOYEE HAS MADE A COMPLAINT TO HIS OR HER EMPLOYER, OR TO THE COMMIS-

1 SIONER OR HIS OR HER AUTHORIZED REPRESENTATIVE, OR TO THE ATTORNEY
2 GENERAL, OR TO ANY OTHER PERSON THAT THE EMPLOYER HAS VIOLATED ANY
3 PROVISION OF THIS CHAPTER, OR ANY ORDER ISSUED BY THE COMMISSIONER (III)
4 because such employee has caused to be instituted OR IS ABOUT TO INSTI-
5 TUTE a proceeding under or related to this chapter, or [(iii)] (IV)
6 because such employee has provided information to the commissioner or
7 his or her authorized representative OR THE ATTORNEY GENERAL, or [(iv)]
8 (V) because such employee has testified or is about to testify in an
9 investigation or proceeding under this chapter, or [(v)] (VI) because
10 such employee has otherwise exercised rights protected under this chap-
11 ter, or [(vi)] (VII) because the employer has received an adverse deter-
12 mination from the commissioner involving the employee.

13 AN EMPLOYEE COMPLAINT OR OTHER COMMUNICATION NEED NOT MAKE EXPLICIT
14 REFERENCE TO ANY SECTION OR PROVISION OF THIS CHAPTER TO TRIGGER THE
15 PROTECTIONS OF THIS SECTION.

16 (b) If after investigation the commissioner finds that an employer OR
17 PERSON has violated any provision of this section, the commissioner may,
18 by an order which shall describe particularly the nature of the
19 violation, assess the employer OR PERSON a civil penalty of not less
20 than one thousand nor more than ten thousand dollars[, and]. THE COMMIS-
21 SIONER MAY ALSO order [the employer to pay lost compensation] ALL APPRO-
22 PRIATE RELIEF INCLUDING ENJOINING THE CONDUCT OF ANY PERSON OR EMPLOYER;
23 ORDERING PAYMENT OF LIQUIDATED DAMAGES to the employee BY THE PERSON OR
24 ENTITY IN VIOLATION; AND, WHERE THE PERSON OR ENTITY IN VIOLATION IS AN
25 EMPLOYER ORDERING REHIRING OR REINSTATEMENT OF THE EMPLOYEE TO HIS OR
26 HER FORMER POSITION OR AN EQUIVALENT POSITION, AND AN AWARD OF LOST
27 COMPENSATION OR AN AWARD OF FRONT PAY IN LIEU OF REINSTATEMENT AND AN
28 AWARD OF LOST COMPENSATION. LIQUIDATED DAMAGES SHALL BE CALCULATED AS
29 AN AMOUNT NOT MORE THAN TEN THOUSAND DOLLARS. THE COMMISSIONER MAY
30 ASSESS LIQUIDATED DAMAGES ON BEHALF OF EVERY EMPLOYEE AGGRIEVED UNDER
31 THIS SECTION, IN ADDITION TO ANY OTHER REMEDIES PERMITTED BY THIS
32 SECTION.

33 (c) [Notwithstanding the provisions of section two hundred thirteen of
34 this article, the penalties set forth in this section shall be the
35 exclusive remedies available for violations of this section.

36 (d)] This section shall not apply to employees of the state or any
37 municipal subdivisions or departments thereof.

38 2. (A) An employee may bring a civil action in a court of competent
39 jurisdiction against any employer or persons alleged to have violated
40 the provisions of this section. The court shall have jurisdiction to
41 restrain violations of this section, within two years after such
42 violation, REGARDLESS OF THE DATES OF EMPLOYMENT OF THE EMPLOYEE, and to
43 order all appropriate relief, including ENJOINING THE CONDUCT OF ANY
44 PERSON OR EMPLOYER; ORDERING PAYMENT OF LIQUIDATED DAMAGES, COSTS AND
45 REASONABLE ATTORNEYS' FEES TO THE EMPLOYEE BY THE PERSON OR ENTITY IN
46 VIOLATION; AND, WHERE THE PERSON OR ENTITY IN VIOLATION IS AN EMPLOYER,
47 ORDERING rehiring or reinstatement of the employee to his OR HER former
48 position with restoration of seniority OR AN AWARD OF FRONT PAY IN LIEU
49 OF REINSTATEMENT, [payment] AND AN AWARD of lost compensation[,] AND
50 damages, COSTS and reasonable attorneys' fees. LIQUIDATED DAMAGES SHALL
51 BE CALCULATED AS AN AMOUNT NOT MORE THAN TEN THOUSAND DOLLARS. THE
52 COURT SHALL AWARD LIQUIDATED DAMAGES TO EVERY EMPLOYEE AGGRIEVED UNDER
53 THIS SECTION, IN ADDITION TO ANY OTHER REMEDIES PERMITTED BY THIS
54 SECTION. THE STATUTE OF LIMITATIONS SHALL BE TOLLED FROM THE DATE AN
55 EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE COMMISSIONER
56 COMMENCES AN INVESTIGATION, WHICHEVER IS EARLIER, UNTIL AN ORDER TO

1 COMPLY ISSUED BY THE COMMISSIONER BECOMES FINAL, OR WHERE THE COMMIS-
2 SIONER DOES NOT ISSUE AN ORDER, UNTIL THE DATE ON WHICH THE COMMISSIONER
3 NOTIFIES THE COMPLAINANT THAT THE INVESTIGATION HAS CONCLUDED. INVESTI-
4 GATION BY THE COMMISSIONER SHALL NOT BE A PREREQUISITE TO NOR A BAR
5 AGAINST A PERSON BRINGING A CIVIL ACTION UNDER THIS SECTION.

6 (B) At or before the commencement of any action under this section,
7 notice thereof shall be served upon the attorney general by the employ-
8 ee.

9 3. ANY EMPLOYER OR HIS OR HER AGENT, OR THE OFFICER OR AGENT OF ANY
10 CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY, OR ANY OTHER
11 PERSON WHO VIOLATES SUBDIVISION ONE OF THIS SECTION SHALL BE GUILTY OF A
12 CLASS B MISDEMEANOR.

13 S 11. Subdivisions 1 and 3 of section 218 of the labor law, subdivi-
14 sion 1 as amended by chapter 190 of the laws of 1990, the opening para-
15 graph of subdivision 1 as amended by chapter 304 of the laws of 2007 and
16 subdivision 3 as added by chapter 697 of the laws of 1980, are amended
17 to read as follows:

18 1. If the commissioner determines that an employer has violated a
19 provision of article six (payment of wages), article nineteen (minimum
20 wage act), article nineteen-A (MINIMUM WAGE STANDARDS AND PROTECTIVE
21 LABOR PRACTICES FOR FARM WORKERS), section two hundred twelve-a, section
22 two hundred twelve-b, section one hundred sixty-one (day of rest) or
23 section one hundred sixty-two (meal periods) of this chapter, or a rule
24 or regulation promulgated thereunder, the commissioner shall issue to
25 the employer an order directing compliance therewith, which shall
26 describe particularly the nature of the alleged violation. A COPY OF
27 SUCH ORDER SHALL BE PROVIDED TO ANY EMPLOYEE WHO HAS FILED A COMPLAINT
28 AND ANY AUTHORIZED REPRESENTATIVE OF HIM OR HER. In addition to direct-
29 ing payment of wages, benefits or wage supplements found to be due, AND
30 LIQUIDATED DAMAGES IN THE AMOUNT OF ONE HUNDRED PERCENT OF UNPAID WAGES,
31 such order, if issued to an employer who previously has been found in
32 violation of those provisions, rules or regulations, or to an employer
33 whose violation is willful or egregious, shall direct payment to the
34 commissioner of an additional sum as a civil penalty in an amount [equal
35 to] NOT TO EXCEED double the total amount OF WAGES, BENEFITS, OR WAGE
36 SUPPLEMENTS found to be due. In no case shall the order direct payment
37 of an amount less than the total wages, benefits or wage supplements
38 found by the commissioner to be due, plus the LIQUIDATED DAMAGES IN THE
39 AMOUNT OF ONE HUNDRED PERCENT OF UNPAID WAGES, THE appropriate civil
40 penalty, AND INTEREST AT THE RATE OF INTEREST THEN IN EFFECT, AS
41 PRESCRIBED BY THE SUPERINTENDENT OF BANKS PURSUANT TO SECTION FOURTEEN-A
42 OF THE BANKING LAW PER ANNUM FROM THE DATE OF THE UNDERPAYMENT TO THE
43 DATE OF THE PAYMENT. Where the violation is for a reason other than the
44 employer's failure to pay wages, benefits or wage supplements found to
45 be due, the order shall direct payment to the commissioner of a civil
46 penalty in an amount not to exceed one thousand dollars for a first
47 violation, two thousand dollars for a second violation or three thousand
48 dollars for a third or subsequent violation. In assessing the amount of
49 the penalty, the commissioner shall give due consideration to the size
50 of the employer's business, the good faith BASIS of the employer TO
51 BELIEVE THAT ITS CONDUCT WAS IN COMPLIANCE WITH THE LAW, the gravity of
52 the violation, the history of previous violations and, in the case of
53 wages, benefits or supplements violations, the failure to comply with
54 recordkeeping or other non-wage requirements.

55 Where there is a violation of section one hundred ninety-eight-b of
56 this chapter, the order shall direct payment back to the employee of the

1 amount of wages, supplements or other thing of value unlawfully received
2 plus LIQUIDATED DAMAGES IN THE AMOUNT OF ONE HUNDRED PERCENT OF UNPAID
3 WAGES, AND interest at the rate of interest then in effect, as
4 prescribed by the superintendent of banks pursuant to section fourteen-a
5 of the banking law per annum from the date of the payback, return,
6 donation or contribution to the date of payment, and shall include such
7 other relief as may be appropriate, including rehiring or reinstatement
8 of the employee to his or her former position, back wages, and restora-
9 tion of seniority. In addition, the commissioner shall order payment of
10 a civil penalty of at least twenty-five hundred dollars but not more
11 than five thousand dollars per violation. In assessing the amount of the
12 penalty, the commissioner shall give due consideration to the size of
13 the employer's business, the good faith BASIS of the employer TO BELIEVE
14 THAT ITS CONDUCT WAS IN COMPLIANCE WITH THE LAW, the gravity of the
15 violation, the history of previous violations.

16 AT THE DISCRETION OF THE COMMISSIONER, THE COMMISSIONER SHALL HAVE
17 FULL AUTHORITY TO PROVIDE FOR INCLUSION OF AN AUTOMATIC FIFTEEN PERCENT
18 ADDITIONAL AMOUNT OF DAMAGES TO COME DUE AND OWING UPON EXPIRATION OF
19 NINETY DAYS FROM AN ORDER TO COMPLY BECOMING FINAL. THE COMMISSIONER
20 SHALL PROVIDE WRITTEN NOTICE TO THE EMPLOYER IN THE ORDER TO COMPLY OF
21 THIS ADDITIONAL DAMAGE.

22 3. Provided that no proceeding for administrative or judicial review
23 as provided in this chapter shall then be pending and the time for
24 initiation of such proceeding shall have expired, the commissioner may
25 file with the county clerk of the county where the employer resides or
26 has a place of business the order of the commissioner, or the decision
27 of the industrial board of appeals containing the amount found to be due
28 including the civil penalty, if any, AND AT THE COMMISSIONER'S
29 DISCRETION, AN ADDITIONAL FIFTEEN PERCENT DAMAGES UPON ANY OUTSTANDING
30 MONIES OWED. AT THE REQUEST OF AN EMPLOYEE, AND AT THE DISCRETION OF THE
31 COMMISSIONER, THE COMMISSIONER MAY ASSIGN THAT PORTION OF THE MONEY DUE
32 THAT CONSTITUTES WAGES, WAGE SUPPLEMENTS, INTEREST ON WAGES OR WAGE
33 SUPPLEMENTS, OR LIQUIDATED DAMAGES DUE THAT EMPLOYEE, TO THAT EMPLOYEE
34 AND FILE AN ORDER IN THAT AMOUNT IN THE NAME OF THAT EMPLOYEE WITH THE
35 COUNTY CLERK OF THE COUNTY WHERE THE EMPLOYER RESIDES OR HAS A PLACE OF
36 BUSINESS. The filing of such order or decision shall have the full
37 force and effect of a judgment duly docketed in the office of such
38 clerk. The order or decision may be enforced by and in the name of the
39 commissioner in the same manner, and with like effect, as that
40 prescribed by the civil practice law and rules for the enforcement of a
41 money judgment.

42 S 12. Section 219 of the labor law, as added by chapter 697 of the
43 laws of 1980 and subdivision 1 as amended by chapter 417 of the laws of
44 1987, is amended to read as follows:

45 S 219. Violations of certain wage payment provisions; interest, filing
46 of order as judgment. 1. If the commissioner determines that an employ-
47 er has failed to pay wages, benefits or wage supplements required pursu-
48 ant to article six (payment of wages), article nineteen (minimum wage
49 act) or article [nineteen-a] NINETEEN-A (MINIMUM WAGE STANDARDS AND
50 PROTECTIVE LABOR PRACTICES FOR FARM WORKERS) of this chapter, or a rule
51 or regulation promulgated thereunder, the commissioner shall issue to
52 the employer an order directing compliance therewith, which shall
53 describe particularly the nature of the alleged violation. A COPY OF
54 SUCH ORDER SHALL BE PROVIDED TO ANY EMPLOYEE WHO HAS FILED A COMPLAINT
55 AND TO HIS OR HER AUTHORIZED REPRESENTATIVE. Such order shall direct
56 payment of wages or supplements found to be due, [including] LIQUIDATED

1 DAMAGES IN THE AMOUNT OF ONE HUNDRED PERCENT OF UNPAID WAGES, AND inter-
2 est at the rate of interest then in effect as prescribed by the super-
3 intendent of banks pursuant to section fourteen-a of the banking law per
4 annum from the date of the underpayment to the date of the payment.

5 AT THE DISCRETION OF THE COMMISSIONER, THE COMMISSIONER SHALL HAVE
6 FULL AUTHORITY TO PROVIDE FOR INCLUSION OF AN AUTOMATIC FIFTEEN PERCENT
7 ADDITIONAL AMOUNT OF DAMAGES TO COME DUE AND OWING UPON EXPIRATION OF
8 NINETY DAYS FROM AN ORDER TO COMPLY BECOMING FINAL. THE COMMISSIONER
9 SHALL PROVIDE WRITTEN NOTICE TO THE EMPLOYER IN THE ORDER TO COMPLY OF
10 THIS ADDITIONAL DAMAGE.

11 2. An order issued under subdivision one of this section shall be
12 final and not subject to review by any court or agency unless review is
13 had pursuant to section one hundred one of this chapter.

14 3. Provided that no proceeding for administrative or judicial review
15 as provided in this chapter shall then be pending and the time for
16 initiation of such proceeding shall have expired, the commissioner may
17 file with the county clerk of the county where the employer resides or
18 has a place of business the order of the commissioner or the decision of
19 the industrial board of appeals containing the amount found to be due,
20 INCLUDING, AT THE COMMISSIONER'S DISCRETION, AN ADDITIONAL FIFTEEN
21 PERCENT DAMAGES UPON ANY OUTSTANDING MONIES OWED. AT THE REQUEST OF AN
22 EMPLOYEE, AND AT THE DISCRETION OF THE COMMISSIONER, THE COMMISSIONER
23 MAY ASSIGN THAT PORTION OF THE MONEY DUE THAT CONSTITUTES WAGES, WAGE
24 SUPPLEMENTS, INTEREST ON WAGES OR WAGE SUPPLEMENTS, OR LIQUIDATED
25 DAMAGES DUE THE EMPLOYEE, TO THAT EMPLOYEE AND FILE AN ORDER IN THAT
26 AMOUNT IN THE NAME OF SUCH EMPLOYEE WITH THE COUNTY CLERK OF THE COUNTY
27 WHERE THE EMPLOYER RESIDES OR HAS A PLACE OF BUSINESS. The filing of
28 such order or decision shall have the full force and effect of a judg-
29 ment duly docketed in the office of such clerk. The order or decision
30 may be enforced by and in the name of the commissioner in the same
31 manner, and with like effect, as that prescribed by the civil practice
32 law and rules for the enforcement of a money judgment.

33 S 13. The labor law is amended by adding a new section 219-c to read
34 as follows:

35 S 219-C. PUBLIC NOTICE OF EMPLOYER VIOLATIONS. THE COMMISSIONER SHALL
36 HAVE THE FOLLOWING POWERS:

37 1. WHERE AN EMPLOYER IS FOUND IN VIOLATION OF ARTICLE SIX, NINETEEN OR
38 NINETEEN-A OF THIS CHAPTER, TO POST AND/OR AFFIX FOR A PERIOD NOT TO
39 EXCEED ONE YEAR A NOTICE OF NO LESS THAN EIGHT AND ONE-HALF BY ELEVEN
40 INCHES IN AN AREA VISIBLE TO EMPLOYEES SUMMARIZING THE VIOLATIONS FOUND
41 AND OTHER INFORMATION DEEMED PERTINENT BY THE COMMISSIONER, ACCORDING TO
42 SUCH FORM AND MANNER ORDERED BY THE COMMISSIONER; AND

43 2. WHERE THE VIOLATION IS FOR A WILLFUL FAILURE TO PAY ALL WAGES AS
44 REQUIRED BY ARTICLE SIX, NINETEEN, OR NINETEEN-A OF THIS CHAPTER, TO
45 POST AND/OR AFFIX FOR A PERIOD NOT TO EXCEED NINETY DAYS IN AN AREA
46 VISIBLE TO THE GENERAL PUBLIC, AS ORDERED BY THE COMMISSIONER, A NOTICE
47 OF NO LESS THAN EIGHT AND ONE-HALF BY ELEVEN INCHES AS TO THE VIOLATIONS
48 FOUND, ACCORDING TO SUCH FORM AND MANNER ORDERED BY THE COMMISSIONER.
49 ANY PERSON OTHER THAN THE COMMISSIONER OR THE COMMISSIONER'S DULY
50 AUTHORIZED REPRESENTATIVE WHO REMOVES, ALTERS, DEFACES OR OTHERWISE
51 INTERFERES WITH A NOTICE POSTED AND/OR AFFIXED UNDER THIS SECTION SHALL
52 BE GUILTY OF A MISDEMEANOR.

53 S 14. Section 661 of the labor law, as added by chapter 619 of the
54 laws of 1960, is amended to read as follows:

55 S 661. Records of employers. [Every] FOR ALL EMPLOYEES COVERED BY
56 THIS ARTICLE, EVERY employer shall [keep] ESTABLISH, MAINTAIN, AND

1 PRESERVE FOR NOT LESS THAN SIX YEARS CONTEMPORANEOUS, true, and accurate
2 PAYROLL records [of] SHOWING FOR EACH WEEK WORKED THE hours worked [by
3 each employee covered by an hourly minimum wage rate], the [wages paid
4 to all employees, and] RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER
5 PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER
6 BASIS; GROSS WAGES; DEDUCTIONS; ALLOWANCES, IF ANY, CLAIMED AS PART OF
7 THE MINIMUM WAGE; AND NET WAGES FOR EACH EMPLOYEE, PLUS such other
8 information as the commissioner deems material and necessary[, and
9 shall, on]. FOR ALL EMPLOYEES WHO ARE NOT EXEMPT FROM OVERTIME COMPEN-
10 SATION AS ESTABLISHED IN THE COMMISSIONER'S MINIMUM WAGE ORDERS OR
11 OTHERWISE PROVIDED BY NEW YORK STATE LAW OR REGULATION, THE PAYROLL
12 RECORDS MUST INCLUDE THE REGULAR HOURLY RATE OR RATES OF PAY, THE OVER-
13 TIME RATE OR RATES OF PAY, THE NUMBER OF REGULAR HOURS WORKED, AND THE
14 NUMBER OF OVERTIME HOURS WORKED. FOR ALL EMPLOYEES PAID A PIECE RATE,
15 THE PAYROLL RECORDS SHALL INCLUDE THE APPLICABLE PIECE RATE OR RATES OF
16 PAY AND NUMBER OF PIECES COMPLETED AT EACH PIECE RATE. ON demand, THE
17 EMPLOYER SHALL furnish to the commissioner or his duly authorized repre-
18 sentative a sworn statement of the [same] HOURS WORKED, RATE OR RATES OF
19 PAY AND BASIS THEREOF, WHETHER PAID BY THE HOUR, SHIFT, DAY, WEEK, SALA-
20 RY, PIECE, COMMISSION, OR OTHER BASIS; GROSS WAGES; DEDUCTIONS; AND
21 ALLOWANCES, IF ANY, CLAIMED AS PART OF THE MINIMUM WAGE, FOR EACH
22 EMPLOYEE, PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER DEEMS MATERIAL
23 AND NECESSARY. Every employer shall keep such records open to inspection
24 by the commissioner or his duly authorized representative at any reason-
25 able time. Every employer of an employee shall keep a digest and summary
26 of this article or applicable wage order, which shall be prepared by the
27 commissioner, posted in a conspicuous place in his establishment and
28 shall also keep posted such additional copies of said digest and summary
29 as the commissioner prescribes. Employers shall, on request, be
30 furnished with copies of this article and of orders, and of digests and
31 summaries thereof, without charge. Employers shall permit the commis-
32 sioner or his duly authorized representative to question WITHOUT INTER-
33 FERENCE any employee of such employer in A PRIVATE LOCATION AT the place
34 of employment and during working hours in respect to the wages paid to
35 and the hours worked by such employee or other employees.

36 S 15. Section 662 of the labor law, as amended by chapter 587 of the
37 laws of 1983 and subdivision 4 as added by chapter 776 of the laws of
38 1983, is amended to read as follows:

39 S 662. Penalties. 1. [Discrimination against employee. Any employer
40 or his agent, or the officer or agent of any corporation, who discharges
41 or in any other manner discriminates against any employee because such
42 employee has made a complaint to his employer, or to the commissioner or
43 his authorized representative, that he has not been paid in accordance
44 with the provisions of this article, or because such employee has caused
45 to be instituted a proceeding under or related to this article, or
46 because such employee has testified or is about to testify in an inves-
47 tigation or proceeding under this article, shall be guilty of a class B
48 misdemeanor.

49 2. Payment of less than minimum wage] FAILURE TO PAY MINIMUM WAGE OR
50 OVERTIME COMPENSATION. Any employer or his OR HER agent, or the officer
51 or agent of any corporation, PARTNERSHIP, OR LIMITED LIABILITY COMPANY,
52 who pays or agrees to pay to any employee less than the wage applicable
53 under this article shall be guilty of a [class B] misdemeanor and [each]
54 UPON CONVICTION THEREFOR SHALL BE FINED NOT LESS THAN FIVE HUNDRED NOR
55 MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE
56 YEAR, AND, IN THE EVENT THAT ANY SECOND OR SUBSEQUENT OFFENSE OCCURS

1 WITHIN SIX YEARS OF THE DATE OF CONVICTION FOR A PRIOR OFFENSE, SHALL BE
2 GUILTY OF A FELONY FOR THE SECOND OR SUBSEQUENT OFFENSE, AND UPON
3 CONVICTION THEREFOR, SHALL BE FINED NOT LESS THAN FIVE HUNDRED NOR MORE
4 THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR
5 PLUS ONE DAY, OR PUNISHED BY BOTH SUCH FINE AND IMPRISONMENT, FOR EACH
6 SUCH OFFENSE. EACH payment to any employee in any week of less than the
7 wage applicable under this article shall constitute a separate offense.

8 [3.] 2. Failure to keep records. Any employer or his OR HER agent, or
9 the officer or agent of any corporation, PARTNERSHIP, OR LIMITED LIABIL-
10 ITY COMPANY, who fails to keep the records required under this article
11 or to furnish such records or any information required to be furnished
12 under this article to the commissioner or his OR HER authorized repre-
13 sentative upon request, or who hinders or delays the commissioner or his
14 OR HER authorized representative in the performance of his OR HER duties
15 in the enforcement of this article, or refuses to admit the commissioner
16 or his OR HER authorized representative to any place of employment, or
17 falsifies any such records or refuses to make such records accessible to
18 the commissioner or his OR HER authorized representative, or refuses to
19 furnish a sworn statement of such records or any other information
20 required for the proper enforcement of this article to the commissioner
21 or his OR HER authorized representative, shall be guilty of a [class B]
22 misdemeanor and [each] UPON CONVICTION THEREFOR SHALL BE FINED NOT LESS
23 THAN FIVE HUNDRED NOR MORE THAN FIVE THOUSAND DOLLARS OR IMPRISONED FOR
24 NOT MORE THAN ONE YEAR, AND, IN THE EVENT THAT ANY SECOND OR SUBSEQUENT
25 OFFENSE OCCURS WITHIN SIX YEARS OF THE DATE OF CONVICTION FOR A PRIOR
26 OFFENSE, SHALL BE GUILTY OF A FELONY FOR THE SECOND OR SUBSEQUENT
27 OFFENSE, AND UPON CONVICTION THEREFOR, SHALL BE FINED NOT LESS THAN FIVE
28 HUNDRED NOR MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE
29 THAN ONE YEAR PLUS ONE DAY, OR PUNISHED BY BOTH SUCH FINE AND IMPRISON-
30 MENT, FOR EACH SUCH OFFENSE. EACH day's failure to keep the records
31 requested under this article or to furnish such records or information
32 to the commissioner or his OR HER authorized representative shall
33 constitute a separate offense.

34 [4. Where any person has previously been convicted of a violation of
35 this section within the preceding five years, upon conviction for a
36 second or subsequent violation such person may be fined up to ten thou-
37 sand dollars in addition to any other penalties including fines other-
38 wise provided by law; provided, however, that the total additional fine
39 that may be imposed pursuant to this subdivision for separate offenses
40 committed in any consecutive twelve month period may not exceed ten
41 thousand dollars.]

42 S 16. Section 663 of the labor law, as added by chapter 619 of the
43 laws of 1960, subdivisions 1 and 2 as amended by chapter 372 of the laws
44 of 2009 and subdivision 3 as added by chapter 497 of the laws of 1966,
45 is amended to read as follows:

46 S 663. Civil action. 1. By employee. If any employee is paid by his or
47 her employer less than the wage to which he or she is entitled under the
48 provisions of this article, he or she [may] SHALL recover in a civil
49 action the amount of any such underpayments, together with costs [and
50 such] ALL reasonable attorney's fees [as may be allowed by the court],
51 PREJUDGMENT INTEREST AS REQUIRED UNDER THE CIVIL PRACTICE LAW AND RULES,
52 and unless the employer proves a good faith basis to believe that its
53 underpayment of wages was in compliance with the law, an additional
54 amount as liquidated damages equal to [twenty-five] ONE HUNDRED percent
55 of the total of such underpayments found to be due [the employee and

1 any]. ANY agreement between the employee, and the employer to work for
2 less than such wage shall be no defense to such action.

3 2. By commissioner. On behalf of any employee paid less than the wage
4 to which the employee is entitled under the provisions of this article,
5 the commissioner may bring any legal action necessary, including admin-
6 istrative action, to collect such claim, and the employer shall be
7 required to pay the FULL AMOUNT OF THE UNDERPAYMENT, PLUS costs, and
8 unless the employer proves a good faith basis to believe that its under-
9 payment was in compliance with the law, an additional amount as liqui-
10 dated damages [equal to twenty-five percent of the total of such under-
11 payments found to be due the employee]. LIQUIDATED DAMAGES SHALL BE
12 CALCULATED BY THE COMMISSIONER AS NO MORE THAN ONE HUNDRED PERCENT OF
13 THE TOTAL AMOUNT OF UNDERPAYMENTS FOUND TO BE DUE THE EMPLOYEE. IN ANY
14 ACTION BROUGHT BY THE COMMISSIONER IN A COURT OF COMPETENT JURISDICTION,
15 LIQUIDATED DAMAGES SHALL BE CALCULATED AS AN AMOUNT EQUAL TO ONE HUNDRED
16 PERCENT OF UNDERPAYMENTS FOUND TO BE DUE THE EMPLOYEE.

17 3. Limitation of time. Notwithstanding any other provision of law, an
18 action to recover upon a liability imposed by this article must be
19 commenced within six years. THE STATUTE OF LIMITATIONS SHALL BE TOLLED
20 FROM THE DATE AN EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE
21 COMMISSIONER COMMENCES AN INVESTIGATION, WHICHEVER IS EARLIER, UNTIL AN
22 ORDER TO COMPLY ISSUED BY THE COMMISSIONER BECOMES FINAL, OR WHERE THE
23 COMMISSIONER DOES NOT ISSUE AN ORDER, UNTIL THE DATE ON WHICH THE
24 COMMISSIONER NOTIFIES THE COMPLAINANT THAT THE INVESTIGATION HAS
25 CONCLUDED. INVESTIGATION BY THE COMMISSIONER SHALL NOT BE A PREREQUISITE
26 TO NOR A BAR AGAINST A PERSON BRINGING A CIVIL ACTION UNDER THIS ARTI-
27 CLE.

28 4. ATTORNEYS' FEES. IN ANY CIVIL ACTION BY AN EMPLOYEE OR BY THE
29 COMMISSIONER, THE EMPLOYEE OR COMMISSIONER SHALL HAVE THE RIGHT TO
30 COLLECT ATTORNEYS' FEES AND COSTS INCURRED IN ENFORCING ANY COURT JUDG-
31 MENT. ANY JUDGMENT OR COURT ORDER AWARDING REMEDIES UNDER THIS SECTION
32 SHALL PROVIDE THAT IF ANY AMOUNTS REMAIN UNPAID UPON THE EXPIRATION OF
33 NINETY DAYS FOLLOWING ISSUANCE OF JUDGMENT, OR NINETY DAYS AFTER EXPIRA-
34 TION OF THE TIME TO APPEAL AND NO APPEAL THEREFROM IS THEN PENDING,
35 WHICHEVER IS LATER, THE TOTAL AMOUNT OF JUDGMENT SHALL AUTOMATICALLY
36 INCREASE BY FIFTEEN PERCENT.

37 S 17. This act shall take effect on the one hundred twentieth day
38 after it shall have become a law.