S T A T E O F N E W Y O R K

2118

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

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

AN ACT to amend the labor law, in relation to public employee safety and health

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

Section 1. Paragraphs a, c and d of subdivision 6 of section 27-a of the labor law, paragraph a as amended by chapter 190 of the laws of 1990, paragraph c as added by chapter 729 of the laws of 1980 and paragraph d as amended by chapter 145 of the laws of 1993, are amended to read as follows:

a. If the commissioner determines that an employer has violated a provision of this section, or a safety or health standard or regulation promulgated under this section, he or she shall with reasonable promptness issue to the employer an order to comply which shall describe particularly the nature of the violation including a reference to the provision of this section, standard, regulation or order alleged to have been violated, shall fix a reasonable time for compliance and may establish the penalty to be assessed for failure to correct the violation by the time fixed for compliance. An employer who fails to correct a non-serious violation by the time fixed for compliance may be assessed a civil penalty of up to fifty dollars per day until the violation is corrected. An employer who fails to correct a serious violation by the time fixed for compliance may be assessed a civil penalty of up to two hundred dollars per day until the violation is corrected. CIVIL PENALTIES FOR AN EMPLOYER FOUND TO BE A WILLFUL OR REPEAT VIOLATOR MAY BE ASSESSED FOR FAILURE TO CORRECT THE VIOLATION BY THE TIME FIXED FOR COMPLIANCE IN AN AMOUNT UP TO THREE HUNDRED DOLLARS PER DAY, UNTIL THE VIOLATION IS CORRECTED. ANY CIVIL PENALTIES ASSESSED PURSUANT TO THIS SUBDIVISION SHALL BE PAID AND DEPOSITED INTO THE STATE SCHOOL CONSTRUCTION FUND. Pursuant to section 18(k) of the United States Occu-

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

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pational Safety and Health Act of 1970 (Public Law[,] 91-596), a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. A non-serious violation shall be defined as any violation that does not fall under the definition of serious violation. FOR PURPOSES OF THIS ARTICLE, AN EMPLOYER SHALL HAVE COMMITTED A "WILLFUL" VIOLATION IF:

(I) THE EMPLOYER WAS AWARE OF THE REQUIREMENTS OF THIS ARTICLE OR THE EXISTENCE OF THE APPLICABLE STANDARD OR REGULATION, AND WAS ALSO AWARE OF A CONDITION OR PRACTICE IN VIOLATION OF THAT REQUIREMENT OR;

(II) AT THE TIME THE EMPLOYER COMMITTED THE VIOLATION, THE EMPLOYER WAS NOT AWARE OF ANY LEGAL REQUIREMENT BUT WAS AWARE THAT A CONDITION OR PRACTICE WAS HAZARDOUS TO THE SAFETY OR HEALTH OF EMPLOYEES.

AN EMPLOYER SHALL HAVE COMMITTED A "REPEAT" VIOLATION IF THE EMPLOYER HAD BEEN ISSUED AN ORDER TO COMPLY PREVIOUSLY FOR A SUBSTANTIALLY SIMILAR VIOLATION AT THE SAME SITE AND NO APPEAL OR OTHER PROCEEDING FOR REVIEW PROVIDED FOR IN THIS ARTICLE SHALL THEN BE PENDING AND THE TIME FOR TAKING THEREOF SHALL HAVE EXPIRED.

The commissioner shall not assess a penalty against an employer for failure to correct a violation of a standard which is the subject of an application for a PERMANENT OR temporary order granting a variance, or a violation OF A STANDARD which is the subject of a petition [to modify an order to comply] FOR MODIFICATION OF THE ABATEMENT DATE, provided however, that upon issuance by the commissioner of a determination denying such variance or petition to modify, or upon expiration of a temporary variance or modified compliance period, the time fixed for compliance shall recommence and the employer become liable for the penalties provided herein.

c. Any employer, or other party affected by a determination of the [industrial] commissioner issued pursuant to this section may petition the industrial board of appeals for review of such determination in accordance with section one hundred one of this chapter. Judicial review of the decision of the industrial board of appeals may be obtained by any party affected by such decision by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules within sixty days after such decision is issued.

d. If the time for compliance with an order of the commissioner issued pursuant to this section has elapsed, and the employer has not complied with the provisions of the order, the commissioner shall seek judicial enforcement of such order by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules. Where an employer has complied with an order in all respects other than the payment of a penalty imposed pursuant to this subdivision, the commissioner may file with the county clerk of the county where the employer has its place of business the order of the commissioner [continuing] CONTAINING the amount of civil penalty found to be due. The filing of such order 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 same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

S 2. This act shall take effect immediately and shall apply to all violations which occur on or after such date.