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

4349

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

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

AN ACT to amend the labor law, in relation to employees' rights to receive copies of compensation and deduction information

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

Section 1. The labor law is amended by adding a new section 193-a to read as follows:

S 193-A. EMPLOYEES' RIGHTS TO COMPENSATION AND DEDUCTION INFORMATION. 1. EVERY EMPLOYER SHALL, SEMIMONTHLY OR AT THE TIME OF EACH PAYMENT OF WAGES, FURNISH EACH OF HIS OR HER EMPLOYEES, EITHER AS A DETACHABLE PART OF THE CHECK, DRAFT, OR VOUCHER PAYING THE EMPLOYEE'S WAGES, OR SEPARATELY WHEN WAGES ARE PAID BY PERSONAL CHECK OR CASH, AN ITEMIZED STATEMENT IN WRITING SHOWING: (A) GROSS WAGES EARNED, (B) TOTAL HOURS WORKED BY THE EMPLOYEE, EXCEPT FOR ANY EMPLOYEE WHOSE COMPENSATION IS SOLELY BASED ON A SALARY AND WHO IS EXEMPT FROM PAYMENT OF OVERTIME, (C) ALL DEDUCTIONS, PROVIDED, THAT ALL DEDUCTIONS MADE ON WRITTEN ORDERS OF THE EMPLOYEE MAY BE AGGREGATED AND SHOWN AS ON ITEM, (D) NET WAGES EARNED, (E) THE INCLUSIVE DATES OF THE PERIOD FOR WHICH THE EMPLOYEE IS PAID, (F) THE NAME OF THE EMPLOYEE AND THE LAST FOUR DIGITS OF HIS OR HER SOCIAL SECURITY NUMBER OR AN EMPLOYEE IDENTIFICATION NUMBER OTHER THAN A SOCIAL SECURITY NUMBER, (G) THE NAME AND ADDRESS OF THE LEGAL ENTITY THAT IS THE EMPLOYER, AND (H) ALL APPLICABLE HOURLY RATES IN EFFECT DURING THE PAY PERIOD AND THE CORRESPONDING NUMBER OF HOURS WORKED AT EACH HOURLY RATE BY THE EMPLOYEE. THE DEDUCTIONS MADE FROM PAYMENTS OF WAGES SHALL BE RECORDED IN INK OR OTHER INDELIBLE FORM, PROPERLY DATED, SHOWING THE MONTH, DAY, AND YEAR, AND A COPY OF THE STATEMENT OR A RECORD OF THE DEDUCTIONS SHALL BE KEPT ON FILE BY THE EMPLOYER FOR AT LEAST THREE YEARS AT THE PLACE OF EMPLOYMENT OR AT A CENTRAL LOCATION WITHIN THE STATE OF NEW YORK.

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

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2. AN EMPLOYER THAT IS REQUIRED BY THE PROVISIONS OF THIS SECTION OR ANY OTHER LAW OR REGULATION TO KEEP THE INFORMATION REQUIRED BY SUBDIVISION ONE OF THIS SECTION SHALL AFFORD CURRENT AND FORMER EMPLOYEES THE RIGHT TO INSPECT OR COPY THE RECORDS PERTAINING TO THAT CURRENT OR FORMER EMPLOYEE, UPON REASONABLE REQUEST TO THE EMPLOYER. THE EMPLOYER MAY TAKE REASONABLE STEPS TO ASSURE THE IDENTITY OF A CURRENT OR FORMER EMPLOYEE. IF THE EMPLOYER PROVIDES COPIES OF THE RECORDS, THE ACTUAL COST OF REPRODUCTION MAY BE CHARGED TO THE CURRENT OR FORMER EMPLOYEE.

3. AN EMPLOYER WHO RECEIVES A WRITTEN OR ORAL REQUEST TO INSPECT OR COPY RECORDS PURSUANT TO SUBDIVISION TWO OF THIS SECTION PERTAINING TO A CURRENT OR FORMER EMPLOYEE SHALL COMPLY WITH THE REQUEST AS SOON AS PRACTICABLE, BUT NO LATER THAN TWENTY-ONE CALENDAR DAYS FROM THE DATE OF THE REQUEST. A VIOLATION OF THIS SUBDIVISION IS AN INFRACTION. IMPOSSIBILITY OF PERFORMANCE, NOT CAUSED BY OR A RESULT OF A VIOLATION OF LAW, SHALL BE AN AFFIRMATIVE DEFENSE FOR AN EMPLOYER IN ANY ACTION ALLEGING A VIOLATION OF THIS SUBDIVISION. AN EMPLOYER MAY DESIGNATE THE PERSON TO WHOM A REQUEST UNDER THIS SUBDIVISION SHALL BE MADE.

4. AN EMPLOYEE SUFFERING INJURY AS A RESULT OF A KNOWING AND INTENTIONAL FAILURE BY AN EMPLOYER TO COMPLY WITH SUBDIVISION ONE OF THIS SECTION IS ENTITLED TO RECOVER THE GREATER OF ALL ACTUAL DAMAGES OR FIFTY DOLLARS FOR THE INITIAL PAY PERIOD IN WHICH A VIOLATION OCCURS AND ONE HUNDRED DOLLARS PER EMPLOYEE FOR EACH VIOLATION IN A SUBSEQUENT PAY PERIOD, NOT EXCEEDING AN AGGREGATE PENALTY OF FOUR THOUSAND DOLLARS, AND IS ENTITLED TO AN AWARD OF COSTS AND REASONABLE ATTORNEY'S FEES.

5. A FAILURE BY AN EMPLOYER TO PERMIT A CURRENT OR FORMER EMPLOYEE TO INSPECT OR COPY RECORDS WITHIN THE TIME SET FORTH IN SUBDIVISION THREE OF THIS SECTION ENTITLES THE CURRENT OR FORMER EMPLOYEE OR THE DEPARTMENT TO RECOVER A SEVEN HUNDRED FIFTY DOLLAR PENALTY FROM THE EMPLOYER.

6. AN EMPLOYEE MAY ALSO BRING AN ACTION FOR INJUNCTIVE RELIEF TO ENSURE COMPLIANCE WITH THIS SECTION, AND IS ENTITLED TO AN AWARD OF COSTS AND REASONABLE ATTORNEY'S FEES.

7. THIS SECTION DOES NOT APPLY TO THE STATE, OR ANY CITY, COUNTY, CITY AND COUNTY, DISTRICT, OR ANY OTHER GOVERNMENTAL ENTITY.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.