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I N   S E N A T E

November 24, 2010

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Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 ASSEMBLY, 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     17 to read as follows:  
5     17. ALL REFERENCES TO LABOR LAW, CHAPTER, ARTICLE OR SECTION SHALL BE  
6     DEEMED TO INCLUDE ANY RULE, REGULATION OR ORDER PROMULGATED THEREUNDER.  
7     S 3. Subdivisions 1, 2, 3 and 4 of section 195 of the labor law, as  
8     added by chapter 548 of the laws of 1966 and subdivision 1 as amended by  
9     chapter 270 of the laws of 2009, are amended and a new subdivision 4-a  
10    is added 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.

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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. FOR ALL EMPLOY-  
49 EES PAID BY COMMISSION THE STATEMENT SHALL INCLUDE THE BASIS ON WHICH  
50 THE COMMISSION IS CALCULATED. UPON the request of an employee, AN  
51 EMPLOYER SHALL furnish an explanation IN WRITING of how such wages were  
52 computed;

53 4. establish, maintain and preserve for not less than [three] SIX  
54 years CONTEMPORANEOUS, TRUE, AND ACCURATE payroll records showing FOR  
55 EACH WEEK WORKED the hours worked[,]; THE RATE OR RATES OF PAY AND BASIS  
56 THEREOF, WHETHER PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY, PIECE,

1 COMMISSION, OR OTHER; gross wages[,]; deductions; ALLOWANCES, IF ANY,  
2 CLAIMED AS PART OF THE MINIMUM WAGE; and net wages for each employee.  
3 FOR ALL EMPLOYEES WHO ARE NOT EXEMPT FROM OVERTIME COMPENSATION AS  
4 ESTABLISHED IN THE COMMISSIONER'S MINIMUM WAGE ORDERS OR OTHERWISE  
5 PROVIDED BY NEW YORK STATE LAW OR REGULATION, THE PAYROLL RECORDS SHALL  
6 INCLUDE THE REGULAR HOURLY RATE OR RATES OF PAY, THE OVERTIME RATE OR  
7 RATES OF PAY, THE NUMBER OF REGULAR HOURS WORKED, AND THE NUMBER OF  
8 OVERTIME HOURS WORKED. FOR ALL EMPLOYEES PAID A PIECE RATE, THE PAYROLL  
9 RECORDS SHALL INCLUDE THE APPLICABLE PIECE RATE OR RATES OF PAY AND  
10 NUMBER OF PIECES COMPLETED AT EACH PIECE RATE. FOR ALL EMPLOYEES PAID BY  
11 COMMISSION THE STATEMENT SHALL INCLUDE THE BASIS ON WHICH THE COMMISSION  
12 IS CALCULATED;

13 4-A. AFFORD CURRENT AND FORMER EMPLOYEES THE RIGHT TO INSPECT OR COPY  
14 THE PAYROLL RECORDS PERTAINING TO THAT CURRENT OR FORMER EMPLOYEE, UPON  
15 REASONABLE REQUEST TO THE EMPLOYER. THE EMPLOYER SHALL TAKE REASONABLE  
16 STEPS TO INSURE THE IDENTITY OF A CURRENT OR FORMER EMPLOYEE. IF THE  
17 EMPLOYER PROVIDES COPIES OF THE RECORDS, THE ACTUAL COST OF REPRODUCTION  
18 MAY BE CHARGED TO THE CURRENT OR FORMER EMPLOYEE. AN EMPLOYER WHO  
19 RECEIVES A WRITTEN OR ORAL REQUEST TO INSPECT OR COPY RECORDS PURSUANT  
20 TO THIS SUBDIVISION PERTAINING TO A CURRENT OR FORMER EMPLOYEE, SHALL  
21 COMPLY WITH THE REQUEST AS SOON AS PRACTICABLE, BUT NO LATER THAN THIRTY  
22 BUSINESS DAYS FROM THE DATE OF THE REQUEST. AN EMPLOYER SHALL DESIGNATE  
23 THE PERSON TO WHOM A REQUEST UNDER THIS SUBDIVISION SHALL BE MADE;

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

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

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

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

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

46 d. If it shall appear to him OR HER that any employer has been  
47 convicted of a violation of any provision of this article OR ARTICLE  
48 NINETEEN OR NINETEEN-A OF THIS CHAPTER or that any [judgement] ORDER TO  
49 COMPLY ISSUED against an employer [for non-payment of wages] UNDER THIS  
50 ARTICLE OR ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER remains unsat-  
51 isfied for a period of ten days after the time to appeal therefrom has  
52 expired, and that no appeal therefrom is then pending, the commissioner  
53 may require such employer to deposit with him OR HER a bond in such sum  
54 as he OR SHE may deem sufficient and adequate in the circumstances,  
55 together with two or more sureties or a duly authorized surety company,  
56 to be approved by the commissioner. The bond shall be payable to the

1 commissioner and shall be conditioned that the employer will, for a  
2 definite future period, not exceeding two years, pay his OR HER employ-  
3 ees in accordance with the provisions of this article OR ARTICLE NINE-  
4 TEEN OR NINETEEN-A OF THIS CHAPTER, and shall be further conditioned  
5 upon the payment by the employer of any AMOUNTS DUE PURSUANT TO AN ORDER  
6 TO COMPLY OR judgment [which may be recovered] against such employer  
7 pursuant to the provisions of this article OR ARTICLE NINETEEN OR NINE-  
8 TEEN-A OF THIS CHAPTER.

9 If within ten days after demand for such bond, which demand may be  
10 made by certified or registered mail, such employer shall fail to depos-  
11 it the same, the commissioner may bring an action in the name and on  
12 behalf of the people of the state of New York against such employer in  
13 the supreme court to compel such employer to furnish such a bond or to  
14 cease doing business until he OR SHE has done so. The employer shall  
15 have the burden of proving that either such a bond is unnecessary or  
16 that the amount demanded is excessive. If the court finds that there is  
17 just cause for requiring the bond and that same is reasonably necessary  
18 or proper to secure prompt payment of the wages of the employees of such  
19 employer and his OR HER compliance with the provisions of this article  
20 OR ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER, the court may enjoin  
21 such employer and such other person or persons as may have been or may  
22 be concerned with or in any way participating in the failure to pay the  
23 wages resulting in the conviction [or in the judgment] OR ORDER TO  
24 COMPLY as aforesaid, from doing business until the requirement is met  
25 and make other and further orders appropriate to compel compliance with  
26 the requirement.

27 IF ANY ORDER TO COMPLY ISSUED AGAINST AN EMPLOYER UNDER THIS ARTICLE  
28 OR ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER REMAINS UNSATISFIED  
29 FOR A PERIOD OF TEN DAYS AFTER THE TIME TO APPEAL THEREFROM HAS EXPIRED,  
30 AND THAT NO APPEAL THEREFROM IS THEN PENDING, THE COMMISSIONER MAY  
31 REQUIRE THE EMPLOYER TO PROVIDE AN ACCOUNTING OF ASSETS OF THE EMPLOYER,  
32 INCLUDING BUT NOT LIMITED TO, A LIST OF ALL BANK ACCOUNTS, ACCOUNTS  
33 RECEIVABLE, PERSONAL PROPERTY, REAL PROPERTY, AUTOMOBILES OR OTHER VEHI-  
34 CLES, AND ANY OTHER ASSETS, IN A FORM AND MANNER AS PRESCRIBED BY THE  
35 COMMISSIONER. AN EMPLOYER SHALL PROVIDE AN AMENDED ACCOUNTING OF SUCH  
36 ASSETS AS THE COMMISSIONER SHALL ORDER. IF WITHIN TEN DAYS AFTER DEMAND  
37 FOR SUCH AN ACCOUNTING OF ASSETS, WHICH DEMAND MAY BE MADE BY CERTIFIED  
38 MAIL, SUCH EMPLOYER SHALL FAIL TO PROVIDE SAME, OR IF THE EMPLOYER FAILS  
39 TO PROVIDE AN AMENDED ACCOUNTING AS REQUIRED UNDER THIS SECTION, THE  
40 COMMISSIONER MAY ASSESS A CIVIL PENALTY OF NO MORE THAN FIVE THOUSAND  
41 DOLLARS AND MAY BRING AN ACTION IN THE NAME AND ON BEHALF OF THE PEOPLE  
42 OF THE STATE OF NEW YORK AGAINST SUCH EMPLOYER IN A COURT OF COMPETENT  
43 JURISDICTION TO COMPEL SUCH EMPLOYER TO FURNISH THE ACCOUNTING.

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

50 The commissioner may, to the extent provided for by any reciprocal  
51 agreement entered into by law or with any agency of another state as  
52 herein provided, maintain actions in the courts of such other state for  
53 the collection of claims and judgments for wages and may assign such  
54 claims and judgments to the labor department or agency of such other  
55 state for collection to the extent that such an assignment may be

1 permitted or provided for by the law of such state or by reciprocal  
2 agreement.

3 The commissioner may, upon the written consent of the labor department  
4 or other corresponding agency of any other state or of any person,  
5 board, officer or commission of such state authorized to act on behalf  
6 of such labor department or corresponding agency, maintain actions in  
7 the courts of this state upon assigned claims and judgments for wages  
8 arising in such other state in the same manner and to the same extent  
9 that such actions by the commissioner are authorized when arising in  
10 this state. However, such actions may be maintained only in cases where  
11 such other state by law or reciprocal agreement extends a like comity to  
12 cases arising in this state.

13 2. Nothing in this section shall be construed as requiring the commis-  
14 sioner in every instance to investigate and attempt to adjust controver-  
15 sies, or to take assignments of wage claims, or to institute criminal  
16 prosecutions for any violation under this article OR ARTICLE FIVE,  
17 SEVEN, NINETEEN OR NINETEEN-A OF THIS CHAPTER, but he OR SHE shall be  
18 deemed vested with discretion in such matters.

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

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

37 WHERE AN EMPLOYER FAILS TO MAINTAIN CONTEMPORANEOUS RECORDS OF ALLOW-  
38 ANCES CLAIMED, AS REQUIRED PURSUANT TO SUBDIVISION FOUR OF SECTION ONE  
39 HUNDRED NINETY-FIVE OF THIS ARTICLE OR ARTICLE NINETEEN OR NINETEEN-A OF  
40 THIS CHAPTER, OR PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE REFLECTING  
41 ALLOWANCES CLAIMED, AS REQUIRED PURSUANT TO SUBDIVISION THREE OF SECTION  
42 ONE HUNDRED NINETY-FIVE OF THIS ARTICLE OR ARTICLE NINETEEN OR NINE-  
43 TEEN-A OF THIS CHAPTER, SUCH EMPLOYER SHALL BE BARRED FROM TAKING SUCH  
44 ALLOWANCES.

45 WHERE AN EMPLOYER FAILS TO PROVIDE NOTICE TO AN EMPLOYEE OF HIS OR HER  
46 REGULAR OR OVERTIME RATE OR RATES OF PAY; MAINTAIN CONTEMPORANEOUS  
47 RECORDS OF AN EMPLOYEE'S REGULAR OR OVERTIME RATE OR RATES OF PAY; OR  
48 PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE OF HIS OR HER REGULAR OR  
49 OVERTIME RATE OR RATES OF PAY, AS REQUIRED PURSUANT TO THIS ARTICLE OR  
50 ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER, SUCH EMPLOYEE'S REGULAR  
51 HOURLY RATE OF PAY SHALL BE CALCULATED BY DIVIDING SUCH EMPLOYEE'S TOTAL  
52 WEEKLY WAGES BY THE LESSER OF FORTY HOURS OR THE ACTUAL NUMBER OF HOURS  
53 WORKED BY SUCH EMPLOYEE DURING THE WORK WEEK.

54 (b) Any employee, or the recognized and certified collective bargain-  
55 ing agent acting on the employee's behalf, contractor, or the recognized  
56 and certified labor organization with which the contractor has executed

1 a collective bargaining agreement covering wages, benefits and supple-  
2 ments, may file with the commissioner a complaint regarding an alleged  
3 violation of this article or article nineteen of this chapter occasioned  
4 by another person, corporation, employer or entities in violation of  
5 article thirty-five-E of the general business law for an investigation  
6 of such complaint and statement setting the appropriate remedy, if any.

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

9 S 197. Civil penalty. Any employer who fails to pay the wages of his  
10 OR HER employees or shall differentiate in rate of pay because of sex,  
11 as provided in this article, shall forfeit to the people of the state  
12 the sum of five hundred dollars for each such failure, to be recovered  
13 by the commissioner in ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRA-  
14 TIVE ACTION OR a civil action.

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

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

25 1-a. On behalf of any employee paid less than the wage to which he or  
26 she is entitled under the provisions of this article, the commissioner  
27 may bring any legal action necessary, including administrative action,  
28 to collect such claim and as part of such legal action, in addition to  
29 any other remedies and penalties otherwise available under this article,  
30 the commissioner [may] SHALL assess against the employer THE FULL AMOUNT  
31 OF ANY SUCH UNDERPAYMENT, AND an additional amount as liquidated damages  
32 [equal to twenty-five percent of the total amount of wages found to be  
33 due], unless the employer proves a good faith basis for believing that  
34 its underpayment of wages was in compliance with the law. LIQUIDATED  
35 DAMAGES SHALL BE CALCULATED BY THE COMMISSIONER AS NO LESS THAN FIFTY  
36 PERCENT AND NO MORE THAN TWO HUNDRED PERCENT OF THE TOTAL AMOUNT OF  
37 WAGES FOUND TO BE DUE. In any action instituted in the courts upon a  
38 wage claim by an employee or the commissioner in which the employee  
39 prevails, the court shall allow such employee TO RECOVER THE FULL AMOUNT  
40 OF ANY UNDERPAYMENT, ALL reasonable attorney's fees, PREJUDGMENT INTER-  
41 EST AS PERMITTED UNDER THE CIVIL PRACTICE LAW AND RULES, and, unless the  
42 employer proves a good faith basis to believe that its underpayment of  
43 wages was in compliance with the law, an additional amount as liquidated  
44 damages equal to [twenty-five] TWO HUNDRED percent of the total amount  
45 of the wages found to be due.

46 WHERE AN EMPLOYER FAILS TO MAINTAIN CONTEMPORANEOUS RECORDS OF ALLOW-  
47 ANCES CLAIMED, AS REQUIRED PURSUANT TO SUBDIVISION FOUR OF SECTION ONE  
48 HUNDRED NINETY-FIVE OF THIS ARTICLE OR ARTICLE NINETEEN OR NINETEEN-A OF  
49 THIS CHAPTER, OR PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE REFLECTING  
50 ALLOWANCES CLAIMED, AS REQUIRED PURSUANT TO SUBDIVISION THREE OF SECTION  
51 ONE HUNDRED NINETY-FIVE OF THIS ARTICLE OR ARTICLE NINETEEN OR NINE-  
52 TEEN-A OF THIS CHAPTER, SUCH EMPLOYER SHALL BE BARRED FROM TAKING SUCH  
53 ALLOWANCES.

54 WHERE AN EMPLOYER FAILS TO PROVIDE NOTICE TO AN EMPLOYEE OF HIS OR HER  
55 REGULAR OR OVERTIME RATE OR RATES OF PAY; MAINTAIN CONTEMPORANEOUS  
56 RECORDS OF AN EMPLOYEE'S REGULAR OR OVERTIME RATE OR RATES OF PAY; OR

1 PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE OF HIS OR HER REGULAR OR  
2 OVERTIME RATE OR RATES OF PAY, AS REQUIRED PURSUANT TO THIS ARTICLE OR  
3 ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER, SUCH EMPLOYEE'S REGULAR  
4 HOURLY RATE OF PAY SHALL BE CALCULATED BY DIVIDING SUCH EMPLOYEE'S TOTAL  
5 WEEKLY WAGES BY THE LESSER OF FORTY HOURS OR THE ACTUAL NUMBER OF HOURS  
6 WORKED BY SUCH EMPLOYEE DURING THE WORK WEEK.

7 1-B. IF ANY EMPLOYEE IS NOT PROVIDED A NOTICE AS REQUIRED BY SUBDIVI-  
8 SION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE, HE OR SHE  
9 MAY BRING A CIVIL ACTION TO RECOVER DAMAGES OF FIFTY DOLLARS FOR EACH  
10 WORK WEEK THAT THE VIOLATION OCCURS OR CONTINUES TO OCCUR, BUT NOT TO  
11 EXCEED A TOTAL OF TWO THOUSAND FIVE HUNDRED DOLLARS, TOGETHER WITH COSTS  
12 AND REASONABLE ATTORNEY'S FEES. THE COURT MAY ALSO AWARD OTHER RELIEF,  
13 INCLUDING INJUNCTIVE AND DECLARATORY RELIEF, THAT THE COURT IN ITS  
14 DISCRETION DEEMS NECESSARY OR APPROPRIATE. EMPLOYERS WHO CAN SHOW GOOD  
15 CAUSE FOR FAILURE TO COMPLY WITH THE NOTICE REQUIREMENTS UNDER SUBDIVI-  
16 SION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE SHALL NOT BE  
17 PENALIZED.

18 ON BEHALF OF ANY EMPLOYEE NOT PROVIDED A NOTICE AS REQUIRED BY SUBDI-  
19 VISION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE, THE  
20 COMMISSIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRA-  
21 TIVE ACTION, TO COLLECT SUCH CLAIM, AND AS PART OF SUCH LEGAL ACTION, IN  
22 ADDITION TO ANY OTHER REMEDIES AND PENALTIES OTHERWISE AVAILABLE UNDER  
23 THIS ARTICLE, THE COMMISSIONER SHALL ASSESS AGAINST THE EMPLOYER DAMAGES  
24 OF FIFTY DOLLARS FOR EACH WORK WEEK THAT THE VIOLATION OCCURS OR CONTIN-  
25 UES TO OCCUR BUT NOT TO EXCEED A TOTAL OF TWO THOUSAND FIVE HUNDRED  
26 DOLLARS.

27 1-C. IF ANY EMPLOYEE IS NOT PROVIDED A STATEMENT OR STATEMENTS AS  
28 REQUIRED BY SUBDIVISION THREE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS  
29 ARTICLE, HE OR SHE MAY BRING A CIVIL ACTION TO RECOVER DAMAGES OF ONE  
30 HUNDRED DOLLARS FOR EACH WORK WEEK THAT THE VIOLATION OCCURS OR CONTIN-  
31 UES TO OCCUR, BUT NOT TO EXCEED A TOTAL OF TWO THOUSAND FIVE HUNDRED  
32 DOLLARS, AND MAY RECOVER COSTS AND REASONABLE ATTORNEY'S FEES AS DETER-  
33 MINED BY THE COURT. THE COURT MAY ALSO AWARD OTHER RELIEF, INCLUDING  
34 INJUNCTIVE AND DECLARATORY RELIEF, THAT THE COURT IN ITS DISCRETION  
35 DEEMS NECESSARY OR APPROPRIATE.

36 ON BEHALF OF ANY EMPLOYEE NOT PROVIDED A STATEMENT AS REQUIRED BY  
37 SUBDIVISION THREE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE,  
38 THE COMMISSIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMIN-  
39 ISTRACTIVE ACTION, TO COLLECT SUCH CLAIM, AND AS PART OF SUCH LEGAL  
40 ACTION, IN ADDITION TO ANY OTHER REMEDIES AND PENALTIES OTHERWISE AVAIL-  
41 ABLE UNDER THIS ARTICLE, THE COMMISSIONER MAY ASSESS AGAINST THE EMPLOY-  
42 ER DAMAGES OF ONE HUNDRED DOLLARS FOR EACH WORK WEEK THAT THE VIOLATION  
43 OCCURS OR CONTINUES TO OCCUR BUT NOT TO EXCEED A TOTAL OF TWO THOUSAND  
44 FIVE HUNDRED DOLLARS.

45 THE COMMISSIONER SHALL BRING ANY LEGAL ACTION NECESSARY, INCLUDING  
46 ADMINISTRATIVE ACTION, ON BEHALF OF ANY EMPLOYEE NOT AFFORDED THE RIGHT  
47 TO INSPECT OR COPY PAYROLL RECORDS AS REQUIRED BY SUBDIVISION FOUR-A OF  
48 SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE, TO ENFORCE SUCH RIGHT,  
49 AND AS A PART OF SUCH ACTION, IN ADDITION TO SEEKING THE PAYMENT OF  
50 LIQUIDATED DAMAGES AS AUTHORIZED IN THIS SECTION, MAY SEEK ALL OTHER  
51 REMEDIES AND PENALTIES OTHERWISE AVAILABLE UNDER THIS ARTICLE. THE  
52 COMMISSIONER MAY ASSESS AGAINST THE EMPLOYER LIQUIDATED DAMAGES OF ONE  
53 HUNDRED DOLLARS FOR EACH DAY THAT THE VIOLATION CONTINUES, BUT NOT TO  
54 EXCEED A TOTAL OF FIVE THOUSAND DOLLARS.

55 2. WAGES RECOVERABLE PURSUANT TO THIS SECTION MAY BE RECOVERED IN AN  
56 ACTION THAT A COURT ORDERS TO BE BROUGHT AS A CLASS ACTION.

1 3. NO RIGHTS OR REMEDIES AVAILABLE UNDER THIS ARTICLE MAY BE WAIVED OR  
2 RELEASED EXCEPT UPON A FINDING BY A COURT THAT SUCH WAIVER OR RELEASE  
3 REPRESENTS A FAIR AND EQUITABLE SETTLEMENT OF A BONA FIDE DISPUTE.

4 [2] 4. The remedies provided by this article may be enforced simul-  
5 taneously or consecutively so far as not inconsistent with each other.

6 [3] 5. Notwithstanding any other provision of law, an action to  
7 recover upon a liability imposed by this article must be commenced with-  
8 in six years. THE STATUTE OF LIMITATIONS SHALL BE TOLLED FROM THE DATE  
9 AN EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE DATE ON WHICH  
10 AN EMPLOYER IS NOTIFIED THAT THE COMMISSIONER HAS COMMENCED AN INVESTI-  
11 GATION, WHICHEVER IS EARLIER, UNTIL AN ORDER TO COMPLY ISSUED BY THE  
12 COMMISSIONER BECOMES FINAL, OR WHERE THE COMMISSIONER DOES NOT ISSUE AN  
13 ORDER, UNTIL THE DATE ON WHICH THE COMMISSIONER NOTIFIES THE COMPLAINANT  
14 THAT THE INVESTIGATION HAS CONCLUDED. INVESTIGATION BY THE COMMISSIONER  
15 SHALL NOT BE A PREREQUISITE TO, NOR A BAR AGAINST, A PERSON BRINGING A  
16 CIVIL ACTION UNDER THIS SECTION. All employees shall have the right to  
17 recover full wages, benefits and wage supplements AND LIQUIDATED DAMAGES  
18 accrued during the six years previous to the commencing of such action,  
19 whether such action is instituted by the employee or by the commission-  
20 er.

21 6. IN ANY CIVIL ACTION COMMENCED BY AN EMPLOYEE OR BY THE COMMISSION-  
22 ER, A COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN  
23 ENFORCING SUCH COURT'S JUDGMENT. ANY JUDGMENT OR COURT ORDER PURSUANT  
24 TO THIS SECTION SHALL PROVIDE THAT IF ANY AMOUNTS REMAIN UNPAID UPON THE  
25 EXPIRATION OF NINETY DAYS FOLLOWING ISSUANCE OF SUCH JUDGMENT, OR NINETY  
26 DAYS AFTER EXPIRATION OF THE TIME TO APPEAL AND NO APPEAL IS THEN PEND-  
27 ING, WHICHEVER IS LATER, THE TOTAL AMOUNT OF JUDGMENT SHALL AUTOMAT-  
28 ICALLY INCREASE BY FIFTEEN PERCENT.

29 7. A COURT WITH COMPETENT JURISDICTION OVER A CIVIL ACTION BROUGHT  
30 UNDER THIS SECTION SHALL HAVE THE POWER, UPON MOTION OF THE PLAINTIFF,  
31 TO REQUIRE THE EMPLOYER TO GIVE AN ACCOUNTING OF ITS ASSETS TO THE  
32 COURT.

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

35 S 198-a. Criminal penalties. 1. Every employer who does not pay the  
36 wages of all of his employees in accordance with the provisions of this  
37 chapter, and the officers and agents of any corporation, PARTNERSHIP, OR  
38 LIMITED LIABILITY COMPANY who knowingly permit the corporation, PARTNER-  
39 SHIP, OR LIMITED LIABILITY COMPANY to violate this chapter by failing to  
40 pay the wages of any of its employees in accordance with the provisions  
41 thereof, shall be guilty of a misdemeanor for the first offense and upon  
42 conviction therefor shall be fined [not less than five hundred nor more  
43 than twenty thousand dollars] TWO THOUSAND FIVE HUNDRED DOLLARS OR TWICE  
44 THE AMOUNT OF UNDERPAYMENT, WHICHEVER IS GREATER, or imprisoned for not  
45 more than one year, and, in the event that any second or subsequent  
46 offense occurs within six years of the date of conviction for a prior  
47 offense, shall be guilty of a CLASS E felony for the second or subse-  
48 quent offense, and upon conviction therefor, shall be fined [not less  
49 than] five [hundred nor more than twenty thousand dollars or imprisoned  
50 for not more than one year plus one day] THOUSAND DOLLARS OR TRIPLE THE  
51 AMOUNT OF THE UNDERPAYMENT, WHICHEVER IS GREATER, OR SENTENCED TO A TERM  
52 OF IMPRISONMENT AS PROVIDED FOR SUCH A FELONY IN SECTION 70.00 OF THE  
53 PENAL LAW, or punished by both such fine and imprisonment, for each such  
54 offense. An indictment of a person or corporation operating a steam  
55 surface railroad for an offense specified in this section may be found



1 and tried in any county within the state in which such railroad ran at  
2 the time of such offense.

3 2. Every employer who violates or fails to comply with the require-  
4 ments of subdivision four of section one hundred ninety-five of this  
5 article, and the officers and agents of any corporation, PARTNERSHIP, OR  
6 LIMITED LIABILITY COMPANY who knowingly permit the corporation, PARTNER-  
7 SHIP, OR LIMITED LIABILITY COMPANY to violate or fail to comply there-  
8 with, shall be guilty of a misdemeanor and upon conviction therefor  
9 shall be fined not less than five hundred nor more than five thousand  
10 dollars or imprisoned for not more than one year.

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

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

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

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

41 3. Each employee and his or her AUTHORIZED representative shall be  
42 notified in writing of any award and collection of back wages and civil  
43 penalties, and of any intent to seek criminal penalties. In the event  
44 that criminal penalties are sought the employee and his or her AUTHOR-  
45 IZED representative shall be notified of the outcome of prosecution.

46 S 10. Section 215 of the labor law, as amended by chapter 744 of the  
47 laws of 1986 and subdivision 1 as amended by chapter 372 of the laws of  
48 2009, is amended to read as follows:

49 S 215. Penalties and civil action; [employer who penalizes employees  
50 because of complaints of employer violations] PROHIBITED RETALIATION. 1.  
51 (a) No employer or his or her agent, or the officer or agent of any  
52 corporation, partnership, or limited liability company shall discharge,  
53 THREATEN, penalize, or in any other manner discriminate or retaliate  
54 against any employee (i) because such employee has made a complaint to  
55 his or her employer, or to the commissioner or his or her authorized  
56 representative, OR TO THE ATTORNEY GENERAL OR ANY OTHER PERSON, that the

1 employer has [violated any provision of] ENGAGED IN CONDUCT THAT THE  
2 EMPLOYEE, REASONABLY AND IN GOOD FAITH, BELIEVES VIOLATES ANY PROVISION  
3 OF this chapter, or ANY ORDER ISSUED BY THE COMMISSIONER (ii) BECAUSE  
4 SUCH EMPLOYER OR PERSON BELIEVES THAT SUCH EMPLOYEE HAS MADE A COMPLAINT  
5 TO HIS OR HER EMPLOYER, OR TO THE COMMISSIONER OR HIS OR HER AUTHORIZED  
6 REPRESENTATIVE, OR TO THE ATTORNEY GENERAL, OR TO ANY OTHER PERSON THAT  
7 THE EMPLOYER HAS VIOLATED ANY PROVISION OF THIS CHAPTER, OR ANY ORDER  
8 ISSUED BY THE COMMISSIONER (III) because such employee has caused to be  
9 instituted OR IS ABOUT TO INSTITUTE a proceeding under or related to  
10 this chapter, or [(iii)] (IV) because such employee has provided infor-  
11 mation to the commissioner or his or her authorized representative OR  
12 THE ATTORNEY GENERAL, or [(iv)] (V) because such employee has testified  
13 or is about to testify in an investigation or proceeding under this  
14 chapter, or [(v)] (VI) because such employee has otherwise exercised  
15 rights protected under this chapter, or [(vi)] (VII) because the employ-  
16 er has received an adverse determination from the commissioner involving  
17 the employee.

18 AN EMPLOYEE COMPLAINT OR OTHER COMMUNICATION NEED NOT MAKE EXPLICIT  
19 REFERENCE TO ANY SECTION OR PROVISION OF THIS CHAPTER TO TRIGGER THE  
20 PROTECTIONS OF THIS SECTION. CONDUCT MADE UNLAWFUL UNDER THIS SECTION  
21 INCLUDES, WITHOUT LIMITATION, CONDUCT THAT RESULTS IN AN ADVERSE CHANGE  
22 IN THE TERMS AND CONDITIONS OF EMPLOYMENT.

23 (b) If after investigation the commissioner finds that an employer has  
24 violated any provision of this section, the commissioner may, by an  
25 order which shall describe particularly the nature of the violation,  
26 assess the employer a civil penalty of not less than one thousand nor  
27 more than ten thousand dollars[, and]. THE COMMISSIONER MAY ALSO order  
28 [the employer to pay] ANY OTHER APPROPRIATE RELIEF INCLUDING ENJOINING  
29 THE CONDUCT; ORDERING PAYMENT OF lost compensation [to the employee],  
30 DAMAGES, AND LIQUIDATED DAMAGES; ORDERING REHIRING OR REINSTATEMENT OF  
31 THE EMPLOYEE TO HIS OR HER FORMER POSITION WITH RESTORATION OF SENIOR-  
32 ITY, OR AN AWARD OF FRONT PAY IN LIEU OF REINSTATEMENT WHERE APPROPRI-  
33 ATE. LIQUIDATED DAMAGES SHALL BE CALCULATED AS AN AMOUNT NOT MORE THAN  
34 TEN THOUSAND DOLLARS. THE COMMISSIONER SHALL AWARD LIQUIDATED DAMAGES  
35 TO EVERY EMPLOYEE AGGRIEVED UNDER THIS SECTION, IN ADDITION TO ANY OTHER  
36 REMEDIES PERMITTED BY THIS SECTION, TO DETER FUTURE VIOLATIONS.

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

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

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

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

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

10 3. ANY COURT WITH COMPETENT JURISDICTION OVER A CIVIL ACTION BROUGHT  
11 UNDER THIS SECTION, SHALL HAVE THE POWER, UPON MOTION OF THE PLAINTIFF,  
12 TO REQUIRE THE EMPLOYER TO GIVE AN ACCOUNTING OF ITS ASSETS TO THE  
13 COURT.

14 4. ANY EMPLOYER OR HIS OR HER AGENT, OR THE OFFICER OR AGENT OF ANY  
15 CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY WHO VIOLATES  
16 SUBDIVISION ONE OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND  
17 UPON CONVICTION THEREFOR SHALL BE FINED NOT LESS THAN FIVE HUNDRED NOR  
18 MORE THAN TEN THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR.  
19 WHERE ANY PERSON HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THIS  
20 SUBDIVISION WITHIN THE PREVIOUS SIX YEARS, UPON CONVICTION FOR A SECOND  
21 OR SUBSEQUENT OFFENSE SUCH PERSON SHALL BE GUILTY OF A FELONY AND FINED  
22 NOT LESS THAN FIVE HUNDRED NOR MORE THAN TWENTY THOUSAND DOLLARS OR  
23 IMPRISONED FOR NOT MORE THAN ONE YEAR PLUS ONE DAY.

24 S 11. Subdivisions 1 and 3 of section 218 of the labor law, subdivi-  
25 sion 1 as amended by chapter 190 of the laws of 1990, the opening para-  
26 graph of subdivision 1 as amended by chapter 304 of the laws of 2007 and  
27 subdivision 3 as added by chapter 697 of the laws of 1980, are amended  
28 to read as follows:

29 1. If the commissioner determines that an employer has violated a  
30 provision of article six (payment of wages), article nineteen (minimum  
31 wage act), article nineteen-A (MINIMUM WAGE STANDARDS AND PROTECTIVE  
32 LABOR PRACTICES FOR FARM WORKERS), section two hundred twelve-a, section  
33 two hundred twelve-b, section one hundred sixty-one (day of rest) or  
34 section one hundred sixty-two (meal periods) of this chapter, or a rule  
35 or regulation promulgated thereunder, the commissioner shall issue to  
36 the employer an order directing compliance therewith, which shall  
37 describe particularly the nature of the alleged violation. A COPY OF  
38 SUCH ORDER SHALL BE PROVIDED TO ANY EMPLOYEE WHO HAS FILED A COMPLAINT  
39 AND ANY AUTHORIZED REPRESENTATIVE OF HIM OR HER. In addition to direct-  
40 ing payment of wages, benefits or wage supplements found to be due, AND  
41 THE LIQUIDATED DAMAGES PURSUANT TO THIS CHAPTER, such order, if issued  
42 to an employer who previously has been found in violation of those  
43 provisions, rules or regulations, or to an employer whose violation is  
44 willful or egregious, shall direct payment to the commissioner of an  
45 additional sum as a civil penalty in an amount [equal to] NOT TO EXCEED  
46 double the total amount OF WAGES, BENEFITS, OR WAGE SUPPLEMENTS found to  
47 be due. In no case shall the order direct payment of an amount less than  
48 the total wages, benefits or wage supplements found by the commissioner  
49 to be due, plus the LIQUIDATED DAMAGES PURSUANT TO THIS CHAPTER, THE  
50 appropriate civil penalty, AND INTEREST AT THE RATE OF INTEREST THEN IN  
51 EFFECT, AS PRESCRIBED BY THE SUPERINTENDENT OF BANKS PURSUANT TO SECTION  
52 FOURTEEN-A OF THE BANKING LAW PER ANNUM FROM THE DATE OF THE UNDERPAY-  
53 MENT TO THE DATE OF THE PAYMENT. Where the violation is for a reason  
54 other than the employer's failure to pay wages, benefits or wage supple-  
55 ments found to be due, the order shall direct payment to the commission-  
56 er of a civil penalty in an amount not to exceed one thousand dollars

1 for a first violation, two thousand dollars for a second violation or  
2 three thousand dollars for a third or subsequent violation. In assessing  
3 the amount of the penalty, the commissioner shall give due consideration  
4 to the size of the employer's business, the good faith BASIS of the  
5 employer TO BELIEVE THAT ITS CONDUCT WAS IN COMPLIANCE WITH THE LAW, the  
6 gravity of the violation, the history of previous violations and, in the  
7 case of wages, benefits or supplements violations, the failure to comply  
8 with recordkeeping or other non-wage requirements.

9 Where there is a violation of section one hundred ninety-eight-b of  
10 this chapter, the order shall direct payment back to the employee of the  
11 amount of wages, supplements or other thing of value unlawfully received  
12 plus THE LIQUIDATED DAMAGES PURSUANT TO THIS CHAPTER AND interest at the  
13 rate of interest then in effect, as prescribed by the superintendent of  
14 banks pursuant to section fourteen-a of the banking law per annum from  
15 the date of the payback, return, donation or contribution to the date of  
16 payment, and shall include such other relief as may be appropriate,  
17 including rehiring or reinstatement of the employee to his or her former  
18 position, back wages, and restoration of seniority. In addition, the  
19 commissioner shall order payment of a civil penalty of at least twenty-  
20 five hundred dollars but not more than five thousand dollars per  
21 violation. In assessing the amount of the penalty, the commissioner  
22 shall give due consideration to the size of the employer's business, the  
23 good faith BASIS of the employer TO BELIEVE THAT ITS CONDUCT WAS IN  
24 COMPLIANCE WITH THE LAW, the gravity of the violation, the history of  
25 previous violations.

26 AT THE DISCRETION OF THE COMMISSIONER, THE COMMISSIONER SHALL HAVE  
27 FULL AUTHORITY TO PROVIDE FOR INCLUSION OF AN AUTOMATIC FIFTEEN PERCENT  
28 ADDITIONAL AMOUNT OF DAMAGES TO COME DUE AND OWING UPON EXPIRATION OF  
29 NINETY DAYS FROM AN ORDER TO COMPLY BECOMING FINAL. THE COMMISSIONER  
30 SHALL PROVIDE WRITTEN NOTICE TO THE EMPLOYER IN THE ORDER TO COMPLY OF  
31 THIS ADDITIONAL DAMAGE.

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

52 S 12. Section 219 of the labor law, as added by chapter 697 of the  
53 laws of 1980 and subdivision 1 as amended by chapter 417 of the laws of  
54 1987, is amended to read as follows:

55 S 219. Violations of certain wage payment provisions; interest, filing  
56 of order as judgment. 1. If the commissioner determines that an employ-

1 er has failed to pay wages, benefits or wage supplements required pursu-  
2 ant to article six (payment of wages), article nineteen (minimum wage  
3 act) or article [nineteen-a] NINETEEN-A (MINIMUM WAGE STANDARDS AND  
4 PROTECTIVE LABOR PRACTICES FOR FARM WORKERS) of this chapter, or a rule  
5 or regulation promulgated thereunder, the commissioner shall issue to  
6 the employer an order directing compliance therewith, which shall  
7 describe particularly the nature of the alleged violation. A COPY OF  
8 SUCH ORDER SHALL BE PROVIDED TO ANY EMPLOYEE WHO HAS FILED A COMPLAINT  
9 AND TO HIS OR HER AUTHORIZED REPRESENTATIVE. Such order shall direct  
10 payment of wages or supplements found to be due, [including] THE LIQUI-  
11 DATED DAMAGES AVAILABLE UNDER THIS CHAPTER, AND interest at the rate of  
12 interest then in effect as prescribed by the superintendent of banks  
13 pursuant to section fourteen-a of the banking law per annum from the  
14 date of the underpayment to the date of the payment.

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

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

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

43 S 13. The labor law is amended by adding a new section 219-b to read  
44 as follows:

45 S 219-B. ARBITRATION FAIRNESS ACT. 1. FOR THE PURPOSES OF THIS  
46 SECTION, "PREDISPUTE ARBITRATION AGREEMENT" MEANS ANY AGREEMENT TO ARBI-  
47 TRATE DISPUTES THAT HAVE NOT ARISEN AT THE TIME OF THE MAKING OF THE  
48 AGREEMENT.

49 2. NO PREDISPUTE ARBITRATION AGREEMENT SHALL BE VALID OR ENFORCEABLE  
50 IF IT REQUIRES ARBITRATION OF AN EMPLOYMENT DISPUTE ARISING UNDER ARTI-  
51 CLE FIVE, SIX, NINETEEN OR NINETEEN-A, OR SECTION TWO HUNDRED FIFTEEN OF  
52 THIS ARTICLE.

53 3. THE VALIDITY OR ENFORCEABILITY OF AN AGREEMENT TO ARBITRATE SHALL  
54 BE DETERMINED BY THE COURT, RATHER THAN THE ARBITRATOR, IRRESPECTIVE OF  
55 WHETHER THE PARTY RESISTING ARBITRATION CHALLENGES THE ARBITRATION

1 AGREEMENT SPECIFICALLY OR IN CONJUNCTION WITH OTHER TERMS OF THE  
2 CONTRACT CONTAINING SUCH AGREEMENT.

3 4. NOTHING IN THIS SECTION SHALL APPLY TO ANY ARBITRATION PROVISION IN  
4 A COLLECTIVE BARGAINING AGREEMENT.

5 5. THIS SECTION SHALL APPLY TO ANY PREDISPUTE ARBITRATION AGREEMENT IN  
6 EFFECT ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

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

9 S 661. Records of employers. [Every] FOR ALL EMPLOYEES COVERED BY  
10 THIS ARTICLE, EVERY employer shall [keep] ESTABLISH, MAINTAIN, AND  
11 PRESERVE FOR NOT LESS THAN SIX YEARS CONTEMPORANEOUS, true, and accurate  
12 PAYROLL records [of] SHOWING FOR EACH WEEK WORKED THE hours worked [by  
13 each employee covered by an hourly minimum wage rate], the [wages paid  
14 to all employees, and] RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER  
15 PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER  
16 BASIS; GROSS WAGES; DEDUCTIONS; ALLOWANCES, IF ANY, CLAIMED AS PART OF  
17 THE MINIMUM WAGE; AND NET WAGES FOR EACH EMPLOYEE, PLUS such other  
18 information as the commissioner deems material and necessary[, and  
19 shall, on]. FOR ALL EMPLOYEES WHO ARE NOT EXEMPT FROM OVERTIME COMPEN-  
20 SATION AS ESTABLISHED IN THE COMMISSIONER'S MINIMUM WAGE ORDERS OR  
21 OTHERWISE PROVIDED BY NEW YORK STATE LAW OR REGULATION, THE PAYROLL  
22 RECORDS MUST INCLUDE THE REGULAR HOURLY RATE OR RATES OF PAY, THE OVER-  
23 TIME RATE OR RATES OF PAY, THE NUMBER OF REGULAR HOURS WORKED, AND THE  
24 NUMBER OF OVERTIME HOURS WORKED. FOR ALL EMPLOYEES PAID A PIECE RATE,  
25 THE PAYROLL RECORDS SHALL INCLUDE THE APPLICABLE PIECE RATE OR RATES OF  
26 PAY AND NUMBER OF PIECES COMPLETED AT EACH PIECE RATE. FOR ALL EMPLOY-  
27 EES PAID BY COMMISSION, THE PAYROLL RECORDS SHALL INCLUDE THE BASIS ON  
28 WHICH THE COMMISSION IS CALCULATED. ON demand, THE EMPLOYER SHALL  
29 furnish to the commissioner or his duly authorized representative a  
30 sworn statement of the [same] HOURS WORKED, RATE OR RATES OF PAY AND  
31 BASIS THEREOF, WHETHER PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY,  
32 PIECE, COMMISSION, OR OTHER BASIS; GROSS WAGES; DEDUCTIONS; AND ALLOW-  
33 ANCES, IF ANY, CLAIMED AS PART OF THE MINIMUM WAGE, FOR EACH EMPLOYEE,  
34 PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER DEEMS MATERIAL AND  
35 NECESSARY. Every employer shall keep such records open to inspection by  
36 the commissioner or his duly authorized representative at any reasonable  
37 time. Every employer of an employee shall keep a digest and summary of  
38 this article or applicable wage order, which shall be prepared by the  
39 commissioner, posted in a conspicuous place in his establishment and  
40 shall also keep posted such additional copies of said digest and summary  
41 as the commissioner prescribes. Employers shall, on request, be  
42 furnished with copies of this article and of orders, and of digests and  
43 summaries thereof, without charge. Employers shall permit the commis-  
44 sioner or his duly authorized representative to question WITHOUT INTER-  
45 FERENCE any employee of such employer in A PRIVATE LOCATION AT the place  
46 of employment and during working hours in respect to the wages paid to  
47 and the hours worked by such employee or other employees.

48 S 15. Section 662 of the labor law, as amended by chapter 587 of the  
49 laws of 1983 and subdivision 4 as added by chapter 776 of the laws of  
50 1983, is amended to read as follows:

51 S 662. Penalties. 1. [Discrimination against employee. Any employer  
52 or his agent, or the officer or agent of any corporation, who discharges  
53 or in any other manner discriminates against any employee because such  
54 employee has made a complaint to his employer, or to the commissioner or  
55 his authorized representative, that he has not been paid in accordance  
56 with the provisions of this article, or because such employee has caused

1 to be instituted a proceeding under or related to this article, or  
2 because such employee has testified or is about to testify in an inves-  
3 tigation or proceeding under this article, shall be guilty of a class B  
4 misdemeanor.

5 2. Payment of less than minimum wage. Any employer or his agent, or  
6 the officer or agent of any corporation, who pays or agrees to pay to  
7 any employee less than the wage applicable under this article shall be  
8 guilty of a class B misdemeanor and each payment to any employee in any  
9 week of less than the wage applicable under this article shall consti-  
10 tute a separate offense] FAILURE TO PAY MINIMUM WAGE OR OVERTIME COMPEN-  
11 SATION. EVERY EMPLOYER OR HIS OR HER AGENTS WHO DOES NOT PAY THE WAGES  
12 OF ALL OF SUCH EMPLOYER'S EMPLOYEES IN ACCORDANCE WITH THE PROVISIONS OF  
13 THIS CHAPTER, AND THE OFFICERS AND AGENTS OF ANY CORPORATION, PARTNER-  
14 SHIP OR LIMITED LIABILITY COMPANY WHO KNOWINGLY PERMIT THE CORPORATION,  
15 PARTNERSHIP OR LIMITED LIABILITY COMPANY TO VIOLATE THIS CHAPTER BY  
16 FAILING TO PAY THE WAGES OF ANY OF ITS EMPLOYEES IN ACCORDANCE WITH THE  
17 PROVISIONS THEREOF, SHALL BE GUILTY OF A MISDEMEANOR FOR THE FIRST  
18 OFFENSE AND UPON CONVICTION THEREFOR SHALL BE FINED TWO THOUSAND FIVE  
19 HUNDRED DOLLARS OR TWICE THE AMOUNT OF UNDERPAYMENT, WHICHEVER IS GREAT-  
20 ER, OR IMPRISONED FOR NOT MORE THAN ONE YEAR, AND, IN THE EVENT THAT ANY  
21 SECOND OR SUBSEQUENT OFFENSE OCCURS WITHIN SIX YEARS OF THE DATE OF  
22 CONVICTION FOR A PRIOR OFFENSE, AND UPON CONVICTION THEREFOR, SHALL BE  
23 FINED FIVE THOUSAND DOLLARS OR TRIPLE THE AMOUNT OF UNDERPAYMENT, WHICH-  
24 EVER IS GREATER, OR SENTENCED TO A TERM OF IMPRISONMENT AS PROVIDED FOR  
25 SUCH A FELONY BY SECTION 70.00 OF THE PENAL LAW, OR PUNISHED BY BOTH  
26 SUCH FINE AND IMPRISONMENT, FOR EACH SUCH OFFENSE.

27 [3.] 2. Failure to keep records. Any employer or his OR HER agent, or  
28 the officer or agent of any corporation, PARTNERSHIP, OR LIMITED LIABIL-  
29 ITY COMPANY, who fails to keep the records required under this article  
30 or to furnish such records or any information required to be furnished  
31 under this article to the commissioner or his OR HER authorized repre-  
32 sentative upon request, or who hinders or delays the commissioner or his  
33 OR HER authorized representative in the performance of his OR HER duties  
34 in the enforcement of this article, or refuses to admit the commissioner  
35 or his OR HER authorized representative to any place of employment, or  
36 falsifies any such records or refuses to make such records accessible to  
37 the commissioner or his OR HER authorized representative, or refuses to  
38 furnish a sworn statement of such records or any other information  
39 required for the proper enforcement of this article to the commissioner  
40 or his OR HER authorized representative, shall be guilty of a [class B]  
41 misdemeanor and [each] UPON CONVICTION THEREFOR SHALL BE FINED NOT LESS  
42 THAN FIVE HUNDRED NOR MORE THAN FIVE THOUSAND DOLLARS OR IMPRISONED FOR  
43 NOT MORE THAN ONE YEAR, AND, IN THE EVENT THAT ANY SECOND OR SUBSEQUENT  
44 OFFENSE OCCURS WITHIN SIX YEARS OF THE DATE OF CONVICTION FOR A PRIOR  
45 OFFENSE, SHALL BE GUILTY OF A FELONY FOR THE SECOND OR SUBSEQUENT  
46 OFFENSE, AND UPON CONVICTION THEREFOR, SHALL BE FINED NOT LESS THAN FIVE  
47 HUNDRED NOR MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE  
48 THAN ONE YEAR PLUS ONE DAY, OR PUNISHED BY BOTH SUCH FINE AND IMPRISON-  
49 MENT, FOR EACH SUCH OFFENSE. EACH day's failure to keep the records  
50 requested under this article or to furnish such records or information  
51 to the commissioner or his OR HER authorized representative shall  
52 constitute a separate offense.

53 [4. Where any person has previously been convicted of a violation of  
54 this section within the preceding five years, upon conviction for a  
55 second or subsequent violation such person may be fined up to ten thou-  
56 sand dollars in addition to any other penalties including fines other-

1 wise provided by law; provided, however, that the total additional fine  
2 that may be imposed pursuant to this subdivision for separate offenses  
3 committed in any consecutive twelve month period may not exceed ten  
4 thousand dollars.]

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

9 S 663. Civil action. 1. By employee. If any employee is paid by his or  
10 her employer less than the wage to which he or she is entitled under the  
11 provisions of this article, he or she [may] SHALL recover in a civil  
12 action the amount of any such underpayments, together with costs and  
13 such reasonable attorney's fees as may be allowed by the court, PREJUDG-  
14 MENT INTEREST AS REQUIRED UNDER THE CIVIL PRACTICE LAW AND RULES, and  
15 unless the employer proves a good faith basis to believe that its under-  
16 payment of wages was in compliance with the law, an additional amount as  
17 liquidated damages equal to [twenty-five] TWO HUNDRED percent of the  
18 total of such underpayments found to be due [the employee and any]. ANY  
19 agreement between the employee, and the employer to work for less than  
20 such wage shall be no defense to such action.

21 2. By commissioner. On behalf of any employee paid less than the wage  
22 to which the employee is entitled under the provisions of this article,  
23 the commissioner may bring any legal action necessary, including admin-  
24 istrative action, to collect such claim, and the employer shall be  
25 required to pay the FULL AMOUNT OF THE UNDERPAYMENT, PLUS costs, and  
26 unless the employer proves a good faith basis to believe that its under-  
27 payment was in compliance with the law, an additional amount as liqui-  
28 dated damages [equal to twenty-five percent of the total of such under-  
29 payments found to be due the employee]. LIQUIDATED DAMAGES SHALL BE  
30 CALCULATED BY THE COMMISSIONER AS NO LESS THAN FIFTY PERCENT AND NO MORE  
31 THAN TWO HUNDRED PERCENT OF THE TOTAL AMOUNT OF UNDERPAYMENTS FOUND TO  
32 BE DUE THE EMPLOYEE. IN ANY ACTION BROUGHT BY THE COMMISSIONER IN A  
33 COURT OF COMPETENT JURISDICTION, LIQUIDATED DAMAGES SHALL BE CALCULATED  
34 AS AN AMOUNT EQUAL TO TWO HUNDRED PERCENT OF UNDERPAYMENTS FOUND TO BE  
35 DUE THE EMPLOYEE.

36 3. Limitation of time. Notwithstanding any other provision of law, an  
37 action to recover upon a liability imposed by this article must be  
38 commenced within six years. THE STATUTE OF LIMITATIONS SHALL BE TOLLED  
39 FROM THE DATE AN EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE  
40 DATE ON WHICH THE EMPLOYER IS NOTIFIED THAT THE COMMISSION HAS COMMENCED  
41 AN INVESTIGATION UNTIL AN ORDER TO COMPLY ISSUED BY THE COMMISSIONER  
42 BECOMES FINAL, OR WHERE THE COMMISSIONER DOES NOT ISSUE AN ORDER, UNTIL  
43 THE DATE ON WHICH THE COMMISSIONER NOTIFIES THE COMPLAINANT THAT THE  
44 INVESTIGATION HAS CONCLUDED. INVESTIGATION BY THE COMMISSIONER SHALL NOT  
45 BE A PREREQUISITE TO NOR A BAR AGAINST A PERSON BRINGING A CIVIL ACTION  
46 UNDER THIS ARTICLE.

47 4. CLASS ACTION. WAGES RECOVERABLE PURSUANT TO THIS SECTION MAY BE  
48 RECOVERED IN AN ACTION A COURT ORDERS TO BE BROUGHT AS A CLASS ACTION.

49 5. NO WAIVER. NO RIGHTS OR REMEDIES UNDER THIS ARTICLE MAY BE WAIVED  
50 OR RELEASED EXCEPT UPON A FINDING BY A COURT THAT SUCH WAIVER OR RELEASE  
51 REPRESENTS A FAIR AND EQUITABLE SETTLEMENT OF A BONA FIDE DISPUTE.

52 6. FAILURE TO PROVIDE NOTICE. WHERE AN EMPLOYER FAILS TO PROVIDE  
53 NOTICE TO AN EMPLOYEE OF ALLOWANCES, IF ANY, TO BE CLAIMED AS PART OF  
54 THE MINIMUM WAGE; MAINTAIN CONTEMPORANEOUS RECORDS OF ALLOWANCES CLAIMED  
55 AS PART OF THE MINIMUM WAGE; OR PROVIDE STATEMENTS OF WAGES TO AN  
56 EMPLOYEE REFLECTING ALLOWANCES CLAIMED AS PART OF THE MINIMUM WAGE, AS



1 REQUIRED PURSUANT TO THIS ARTICLE OR ARTICLE SIX OF THIS CHAPTER, SUCH  
2 EMPLOYER SHALL BE BARRED FROM TAKING ANY ALLOWANCES OTHERWISE PERMITTED  
3 BY THIS CHAPTER, INCLUDING TIP, MEAL, OR LODGING ALLOWANCES.

4 WHERE AN EMPLOYER FAILS TO PROVIDE NOTICE TO AN EMPLOYEE OF HIS OR HER  
5 REGULAR OR OVERTIME RATE OR RATES OF PAY; MAINTAIN CONTEMPORANEOUS  
6 RECORDS OF AN EMPLOYEE'S REGULAR OR OVERTIME RATE OR RATES OF PAY; OR  
7 PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE OF HIS OR HER REGULAR OR  
8 OVERTIME RATE OR RATES OF PAY, AS REQUIRED PURSUANT TO THIS ARTICLE OR  
9 ARTICLE SIX OF THIS CHAPTER, SUCH EMPLOYEE'S REGULAR HOURLY RATE OF PAY  
10 SHALL BE CALCULATED BY DIVIDING THE EMPLOYEE'S TOTAL WEEKLY WAGES BY THE  
11 LESSER OF FORTY HOURS OR THE ACTUAL NUMBER OF HOURS WORKED BY SUCH  
12 EMPLOYEE DURING THE WORK WEEK.

13 7. COURT AUTHORITY. ANY COURT WITH COMPETENT JURISDICTION OVER A CIVIL  
14 ACTION BROUGHT UNDER THIS SECTION SHALL HAVE THE POWER, UPON MOTION OF  
15 THE PLAINTIFF, TO REQUIRE THE EMPLOYER TO GIVE AN ACCOUNTING OF ITS  
16 ASSETS TO THE COURT.

17 8. ATTORNEYS' FEE. IN ANY CIVIL ACTION COMMENCED BY AN EMPLOYEE OR BY  
18 THE COMMISSIONER, A COURT MAY AWARD REASONABLE ATTORNEYS' FEES OR COSTS  
19 INCURRED IN ENFORCING SUCH COURT'S JUDGMENT. ANY JUDGMENT OR COURT ORDER  
20 AWARDED REMEDIES UNDER THIS SECTION SHALL PROVIDE THAT IF ANY AMOUNTS  
21 REMAIN UNPAID UPON THE EXPIRATION OF NINETY DAYS FOLLOWING THE ISSUANCE  
22 OF JUDGMENT, OR NINETY DAYS AFTER EXPIRATION OF THE TIME TO FILE AN  
23 APPEAL AND NO APPEAL THEREFROM IS THEN PENDING, WHICHEVER IS LATER, THE  
24 TOTAL AMOUNT OF JUDGMENT SHALL AUTOMATICALLY INCREASE BY FIFTEEN  
25 PERCENT.

26 S 17. This act shall take effect on the ninetieth day after it shall  
27 have become a law.