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I N   A S S E M B L Y

May 4, 2010

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

AN ACT to amend the labor law, in relation to increasing the amount of liquidated damages for failure to pay wages as legally required

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

1     Section 1.     Subdivision 1-a of section 198 of the labor law, as  
2 amended by chapter 372 of the laws of 2009, is amended and a new subdi-  
3 vision 4 is added to read as follows:  
4     1-a. On behalf of any employee paid less than the wage to which he or  
5 she is entitled under the provisions of this article, the commissioner  
6 may bring any legal action necessary, including administrative action,  
7 to collect such claim and as part of such legal action, in addition to  
8 any other remedies and penalties otherwise available under this article,  
9 the commissioner may assess against the employer an additional amount as  
10 liquidated damages equal to twenty-five percent of the total amount of  
11 wages found to be due, unless the employer proves a good faith basis for  
12 believing that its underpayment of wages was in compliance with the law;  
13 HOWEVER, IF SUCH UNDERPAYMENT OF WAGES PERSISTED FOR MORE THAN THIRTY  
14 DAYS OR INVOLVED A FAILURE TO PAY THE WAGES OF TEN OR MORE EMPLOYEES,  
15 THE COMMISSIONER MAY ASSESS AGAINST THE EMPLOYER AN ADDITIONAL AMOUNT AS  
16 LIQUIDATED DAMAGES EQUAL TO TWICE THE TOTAL AMOUNT OF WAGES FOUND TO BE  
17 DUE.     In any action instituted in the courts upon a wage claim by an  
18 employee or the commissioner in which the employee prevails, the court  
19 shall allow such employee reasonable attorney's fees and, unless the  
20 employer proves a good faith basis to believe that its underpayment of  
21 wages was in compliance with the law, an additional amount as liquidated  
22 damages equal to twenty-five percent of the total amount of the wages  
23 found to be due; HOWEVER, IF SUCH UNDERPAYMENT OF WAGES PERSISTED FOR  
24 MORE THAN THIRTY DAYS OR INVOLVED A FAILURE TO PAY THE WAGES OF TEN OR  
25 MORE EMPLOYEES, THE COURT SHALL ALLOW SUCH ADDITIONAL AMOUNT AS LIQUI-  
26 DATED DAMAGES EQUAL TO TWICE THE TOTAL AMOUNT OF THE WAGES FOUND TO BE  
27 DUE.

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

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1       4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER  
2 UPON A LIABILITY IMPOSED BY THIS ARTICLE MAY BE BROUGHT AS A CLASS  
3 ACTION.  
4       S 2. This act shall take effect on the ninetieth day after it shall  
5 have become a law.