

609

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DINOWITZ, KAVANAGH -- Multi-Sponsored by -- M. of
A. GOTTFRIED, JOHN, LIFTON, MCENENY, PHEFFER -- read once and referred
to the Committee on Judiciary

AN ACT to amend the judiciary law and the labor law, in relation to
creating additional remedies for unlawful discharge, penalty or
discrimination on account of the exercise of a juror's right to be
absent from employment for jury duty

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

1 Section 1. Section 519 of the judiciary law, as added by chapter 85
2 of the laws of 1995, is amended to read as follows:
3 S 519. Right of juror to be absent from employment. Any person who is
4 summoned to serve as a juror under the provisions of this article and
5 who notifies his or her employer to that effect prior to the commence-
6 ment of a term of service shall not, on account of absence from employ-
7 ment by reason of such jury service, be subject to discharge [or],
8 penalty, OR DISCRIMINATION IN ANY OTHER MANNER. An employer may, howev-
9 er, withhold wages of any such employee serving as a juror during the
10 period of such service; provided that an employer who employs more than
11 ten employees shall not withhold the first forty dollars of such juror's
12 daily wages during the first three days of jury service. Withholding of
13 wages in accordance with this section shall not be deemed a penalty OR
14 DISCRIMINATION IN ANY OTHER MANNER. Violation of this section shall
15 constitute a criminal contempt of court punishable pursuant to section
16 seven hundred fifty of this chapter AND SHALL ALSO CONSTITUTE A
17 VIOLATION OF SECTION TWO HUNDRED FIFTEEN OF THE LABOR LAW AND BE SUBJECT
18 TO THE CIVIL PENALTIES AND CIVIL ACTION PROVIDED FOR THEREUNDER.
19 S 2. Paragraph 7 of subdivision A of section 750 of the judiciary law,
20 as amended by chapter 823 of the laws of 1982, is amended to read as
21 follows:

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

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1 7. Wilful failure to obey any mandate, process, or notice issued
2 pursuant to [articles] ARTICLE sixteen[, seventeen, eighteen, eighteen-a
3 or eighteen-b] of [the judiciary law] THIS CHAPTER, or to rules adopted
4 pursuant thereto, or to any other statute relating thereto, or refusal
5 to be sworn as provided therein, or subjection of an employee to
6 discharge [or], penalty, OR DISCRIMINATION IN ANY OTHER MANNER on
7 account of his OR HER absence from employment by reason of jury or
8 subpoenaed witness service in violation of this chapter or section
9 215.11 of the penal law. Applications to punish the accused for a
10 contempt specified in this subdivision may be made by notice of motion
11 or by order to show cause, and shall be made returnable at the term of
12 the supreme court at which contested motions are heard, or of the county
13 court if the supreme court is not in session.

14 S 3. Section 215 of the labor law, as amended by chapter 744 of the
15 laws of 1986, is amended to read as follows:

16 S 215. [Penalties] CIVIL PENALTIES and civil action; employer who
17 penalizes employees because of complaints of employer violations OR
18 BECAUSE OF EXERCISE OF THE RIGHT TO BE ABSENT FROM EMPLOYMENT FOR JURY
19 DUTY. 1. No employer or his OR HER agent, or the officer or agent of
20 any corporation, shall discharge, penalize, or in any other manner
21 discriminate against any employee because such employee has made a
22 complaint to his OR HER employer, or to the commissioner or his OR HER
23 authorized representative, that the employer has violated any provision
24 of this chapter, or because such employee has caused to be instituted a
25 proceeding under or related to this chapter, or because such employee
26 has testified or is about to testify in an investigation or proceeding
27 under this chapter, OR BECAUSE SUCH EMPLOYEE HAS EXERCISED HIS OR HER
28 RIGHT TO BE ABSENT FROM EMPLOYMENT PURSUANT TO SECTION FIVE HUNDRED
29 NINETEEN OF THE JUDICIARY LAW BY REASON OF JURY SERVICE. If after
30 investigation the commissioner finds that an employer has violated any
31 provision of this section, the commissioner may, by an order which shall
32 describe particularly the nature of the violation, assess the employer a
33 civil penalty of not less than two hundred nor more than two thousand
34 dollars. EACH ACT TAKEN IN CONTRAVENTION OF A PROHIBITION CONTAINED IN
35 THIS SECTION SHALL CONSTITUTE A SEPARATE AND DISTINCT VIOLATION OF THIS
36 SECTION, AND IN ASSESSING ANY SUCH CIVIL PENALTY THE COMMISSIONER SHALL
37 CONSIDER, IN ADDITION TO THE NATURE OF THE VIOLATION, ALL PRIOR FINDINGS
38 OF VIOLATIONS OF THE PROVISIONS OF THIS SECTION BY THE EMPLOYER.
39 [Notwithstanding the] THE provisions of section two hundred thirteen of
40 this [chapter, the penalties set forth in this section] ARTICLE shall
41 [be the exclusive remedies available for] NOT APPLY TO THE violations
42 [of] SPECIFIED IN this section.

43 2. [An] IN ADDITION TO THE CIVIL PENALTIES PROVIDED FOR UNDER SUBDIVI-
44 SION ONE OF THIS SECTION, AN employee may bring a civil action in a
45 court of competent jurisdiction against any employer or persons alleged
46 to have violated the provisions of this section. The court shall have
47 jurisdiction to restrain violations of this section, within two years
48 after such violation, and to order all appropriate relief, including
49 rehiring or reinstatement of the employee to his OR HER former position
50 with restoration of seniority, payment of lost compensation, damages,
51 and reasonable attorneys' fees. At or before the commencement of any
52 action under this section, notice thereof shall be served upon the
53 attorney general by the employee.

54 S 4. This act shall take effect on the thirtieth day after it shall
55 have become a law.