

609--A

Cal. No. 50

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 -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 ASSEMBLY, 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.

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

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1 S 2. Paragraph 7 of subdivision A of section 750 of the judiciary law,
2 as amended by chapter 823 of the laws of 1982, is amended to read as
3 follows:

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

17 S 3. Section 215 of the labor law, as amended by chapter 744 of the
18 laws of 1986, subdivision 1 as amended by chapter 372 of the laws of
19 2009, is amended to read as follows:

20 S 215. [Penalties] CIVIL PENALTIES and civil action; employer who
21 penalizes employees because of complaints of employer violations OR
22 BECAUSE OF EXERCISE OF THE RIGHT TO BE ABSENT FROM EMPLOYMENT FOR JURY
23 DUTY. 1. (a) No employer or his or her agent, or the officer or agent
24 of any corporation, partnership, or limited liability company shall
25 discharge, penalize, or in any other manner discriminate or retaliate
26 against any employee (i) because such employee has made a complaint to
27 his or her employer, or to the commissioner or his or her authorized
28 representative, that the employer has violated any provision of this
29 chapter, or (ii) because such employee has caused to be instituted a
30 proceeding under or related to this chapter, or (iii) because such
31 employee has provided information to the commissioner or his or her
32 authorized representative, or (iv) because such employee has testified
33 or is about to testify in an investigation or proceeding under this
34 chapter, or (v) because such employee has otherwise exercised rights
35 protected under this chapter, or (vi) because the employer has received
36 an adverse determination from the commissioner involving the employee,
37 OR (VII) BECAUSE SUCH EMPLOYEE HAS EXERCISED HIS OR HER RIGHT TO BE
38 ABSENT FROM EMPLOYMENT PURSUANT TO SECTION FIVE HUNDRED NINETEEN OF THE
39 JUDICIARY LAW BY REASON OF JURY SERVICE.

40 (b) If after investigation the commissioner finds that an employer has
41 violated any provision of this section, the commissioner may, by an
42 order which shall describe particularly the nature of the violation,
43 assess the employer a civil penalty of not less than one thousand nor
44 more than ten thousand dollars, and order the employer to pay lost
45 compensation to the employee. EACH ACT TAKEN IN CONTRAVENTION OF A
46 PROHIBITION CONTAINED IN THIS SECTION SHALL CONSTITUTE A SEPARATE AND
47 DISTINCT VIOLATION OF THIS SECTION, AND IN ASSESSING ANY SUCH CIVIL
48 PENALTY THE COMMISSIONER SHALL CONSIDER, IN ADDITION TO THE NATURE OF
49 THE VIOLATION, ALL PRIOR FINDINGS OF VIOLATIONS OF THE PROVISIONS OF
50 THIS SECTION BY THE EMPLOYER.

51 (c) [Notwithstanding the] THE provisions of section two hundred thir-
52 teen of this article[, the penalties set forth in this section] shall
53 [be the exclusive remedies available for] NOT APPLY TO THE violations
54 [of] SPECIFIED IN this section.

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

1 2. [An] IN ADDITION TO THE CIVIL PENALTIES PROVIDED FOR UNDER SUBDIVI-
2 SION ONE OF THIS SECTION, AN employee may bring a civil action in a
3 court of competent jurisdiction against any employer or persons alleged
4 to have violated the provisions of this section. The court shall have
5 jurisdiction to restrain violations of this section, within two years
6 after such violation, and to order all appropriate relief, including
7 rehiring or reinstatement of the employee to his former position with
8 restoration of seniority, payment of lost compensation, damages, and
9 reasonable attorneys' fees. At or before the commencement of any action
10 under this section, notice thereof shall be served upon the attorney
11 general by the employee.
12 S 4. This act shall take effect on the thirtieth day after it shall
13 have become a law.