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

6885

2009-2010 Regular Sessions

I N A S S E M B L Y

March 13, 2009

Introduced by M. of A. JOHN, SCHROEDER -- Multi-Sponsored by -- M. of A. ALFANO -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the payment of wages; to amend the state finance law, in relation to establishing a wage compliance fund; and to make an appropriation therefor

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

Section 1. Subdivision 1 of section 196 of the labor law is amended by adding a new paragraph f to read as follows:

F. ON OR BEFORE FEBRUARY FIFTEENTH, TWO THOUSAND TEN, AND BI-ANNUALLY THEREAFTER, THE COMMISSIONER SHALL PREPARE AND SUBMIT A REPORT TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, AND THE CHAIRS OF THE SENATE AND ASSEMBLY LABOR COMMITTEES CONSISTING OF THE NUMBER OF COMPLAINTS REPORTED TO THE DEPARTMENT REGARDING THE VIOLATION OF ARTICLES SIX, NINETEEN AND NINETEEN-A OF THIS CHAPTER:

(I) RECEIVED DURING THE PRECEDING TWO YEAR PERIOD;

(II) RESOLVED BY THE DEPARTMENT, INCLUDING THE TOTAL AMOUNT OF BACK WAGES, BENEFITS AND WAGE SUPPLEMENT FINES AND CIVIL PENALTIES ASSESSED AND COLLECTED;

(III) REFERRED FOR CRIMINAL PROSECUTION AND STATUS;

(IV) INCLUDING THE NUMBER OF REPEAT OFFENDERS; AND

(V) INCLUDING SUCH OTHER INFORMATION DEEMED NECESSARY BY THE COMMISSIONER.

S 2. Subdivisions 1 and 1-a of section 198 of the labor law, subdivision 1 as added by chapter 548 of the laws of 1966 and subdivision 1-a as added by chapter 310 of the laws of 1967, are amended to read as follows:

1. In any action instituted upon a [wage] claim FOR WAGES, BENEFITS OR WAGE SUPPLEMENTS by an employee or the commissioner in which the employee prevails, the court may allow such employee in addition to ordinary costs, a reasonable sum, not exceeding fifty dollars for expenses which

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

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may be taxed as costs. No assignee of a [wage] claim FOR WAGES, BENEFITS OR WAGE SUPPLEMENTS, except the commissioner, shall be benefited by this provision.

1-a. In any action instituted upon a [wage] claim FOR WAGES, BENEFITS OR WAGE SUPPLEMENTS by an employee or the commissioner in which the employee prevails, the court shall allow such employee reasonable attorney's fees and, upon a finding that the employer's failure to pay the wage required by this article was willful, an additional amount as liquidated damages equal to twenty-five percent of the total amount of the wages, BENEFITS OR WAGE SUPPLEMENTS found to be due.

S 3. The section heading and subdivision 1 of section 198-c of the labor law, as amended by chapter 328 of the laws of 1972, are amended to read as follows:

Benefits or wage supplements; VIOLATIONS AND CRIMINAL PENALTIES. 1. In addition to any other penalty or punishment otherwise prescribed by law, any employer who AGREES TO PAY OR is A party to an agreement to pay or provide benefits or wage supplements to employees or to a third party or fund for the benefit of employees and who fails, neglects or refuses to pay the amount or amounts necessary to provide such benefits or furnish such supplements within thirty days after such payments are required to be made, shall be guilty of a misdemeanor[, and upon conviction shall be punished as provided in section one hundred ninety-eight-a of this article] FOR THE FIRST OFFENSE AND UPON CONVICTION SHALL BE FINED NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR, OR PUNISHED BY BOTH FINE AND IMPRISONMENT, AND, IN THE EVENT THAT ANY SECOND OR SUBSEQUENT OFFENSE OCCURS WITHIN SIX YEARS OF THE DATE OF CONVICTION FOR A PRIOR OFFENSE, SHALL BE GUILTY OF A FELONY FOR THE SECOND OR SUBSEQUENT OFFENSE, AND UPON CONVICTION, SHALL BE FINED NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR PLUS ONE DAY, OR PUNISHED BY BOTH FINE AND IMPRISONMENT, FOR EACH SUCH OFFENSE. Where such employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of a misdemeanor FOR THE FIRST OFFENSE AND UPON CONVICTION THEREFOR SHALL BE FINED NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR, OR PUNISHED BY BOTH FINE AND IMPRISONMENT, AND, IN THE EVENT ANY SECOND OR SUBSEQUENT OFFENSE OCCURS WITHIN SIX YEARS OF THE DATE OF THE CONVICTION FOR A PRIOR OFFENSE, SHALL BE GUILTY OF A FELONY FOR THE SECOND OR SUBSEQUENT OFFENSE, AND UPON CONVICTION THEREFOR, SHALL BE FINED NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR PLUS ONE DAY, OR PUNISHED BY BOTH FINE AND IMPRISONMENT, FOR EACH SUCH OFFENSE.

S 4. Section 199-a of the labor law, as added by chapter 605 of the laws of 1997, is amended to read as follows:

S 199-a. Notification of process. 1. Each employee who files a complaint regarding a violation of a provision of article six (payment of wages), article nineteen (minimum wage act), or article nineteen-A, section two hundred twelve-a or section two hundred twelve-b of this chapter, or a rule or regulation promulgated thereunder, shall be provided, WITHIN THIRTY DAYS OF FILING THE COMPLAINT, with a written description of the anticipated processing of the complaint, including investigation, case conference, potential civil and criminal penalties, and collection procedures.

2. Each employee and his or her representative shall be notified in writing of any case conference, CIVIL OR CRIMINAL PROCEEDING AT LEAST

TWENTY-ONE DAYS before it is held and given the opportunity WHERE IT IS PRACTICAL to attend.

3. Each employee and his or her representative shall be notified in writing WITHIN TWENTY-ONE DAYS of any award and collection of back wages and civil penalties, and of any intent to seek criminal penalties. In the event that criminal penalties are sought the employee and his or her representative shall be notified of the outcome of prosecution.

S 5. The state finance law is amended by adding a new section 92-ff to read as follows:

S 92-FF. WAGE COMPLIANCE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF THE DEPARTMENT OF LABOR A SPECIAL FUND TO BE KNOWN AS THE "WAGE COMPLIANCE FUND".

2. THE WAGE COMPLIANCE FUND SHALL CONSIST OF ALL FINES, PENALTIES, COSTS AND OTHER ASSESSMENTS COLLECTED, BOTH CRIMINAL AND CIVIL, UNDER ARTICLES SIX, NINETEEN AND NINETEEN-A OF THE LABOR LAW WHICH DO NOT INURE TO THE BENEFIT OF THE COMPLAINING EMPLOYEES.

3. ALL MONIES TRANSFERRED TO AND ACCUMULATED IN THIS FUND SHALL BE DEDICATED TO ENFORCEMENT OF ARTICLES SIX, NINETEEN AND NINETEEN-A OF THE LABOR LAW. DEDICATED FUNDS SHALL BE USED FOR TRAINING, LABOR, AND RELATED COSTS FOR INVESTIGATORS, HEARING OFFICERS AND ADMINISTRATIVE STAFF TO ENSURE THAT STAFFING LEVELS FOR SUCH PERSONNEL ARE MAINTAINED AT AN APPROPRIATE LEVEL.

S 6. The sum of one million five hundred thousand dollars ($1,500,000), or so much thereof as may be accumulated, is hereby appropriated to the department of labor from any moneys credited to the wage compliance fund created pursuant to section 92-ff of the state finance law for the purposes of carrying out the provisions of this act. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of labor, or his or her duly designated representative in the manner provided by law. No expenditure shall be made from this appropriation until a certificate of approval of availability shall have been issued by the director of the budget and filed with the state comptroller and a copy filed with the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the state comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

S 7. This act shall take effect immediately.