

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

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

AN ACT to amend the labor law, in relation to public employee safety and health

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

1 Section 1. Paragraphs a, c and d of subdivision 6 of section 27-a of
2 the labor law, paragraph a as amended by chapter 190 of the laws of
3 1990, paragraph c as added by chapter 729 of the laws of 1980 and para-
4 graph d as amended by chapter 145 of the laws of 1993, are amended to
5 read as follows:
6 a. If the commissioner determines that an employer has violated a
7 provision of this section, or a safety or health standard or regulation
8 promulgated under this section, he or she shall with reasonable prompt-
9 ness issue to the employer an order to comply which shall describe
10 particularly the nature of the violation including a reference to the
11 provision of this section, standard, regulation or order alleged to have
12 been violated, shall fix a reasonable time for compliance and may estab-
13 lish the penalty to be assessed for failure to correct the violation by
14 the time fixed for compliance. An employer who fails to correct a non-
15 serious violation by the time fixed for compliance may be assessed a
16 civil penalty of up to fifty dollars per day until the violation is
17 corrected. An employer who fails to correct a serious violation by the
18 time fixed for compliance may be assessed a civil penalty of up to two
19 hundred dollars per day until the violation is corrected. CIVIL PENAL-
20 TIES FOR AN EMPLOYER FOUND TO BE A WILLFUL OR REPEAT VIOLATOR MAY BE
21 ASSESSED FOR FAILURE TO CORRECT THE VIOLATION BY THE TIME FIXED FOR
22 COMPLIANCE IN AN AMOUNT UP TO THREE HUNDRED DOLLARS PER DAY, UNTIL THE
23 VIOLATION IS CORRECTED. ANY CIVIL PENALTIES ASSESSED PURSUANT TO THIS
24 SUBDIVISION SHALL BE PAID AND DEPOSITED INTO THE STATE SCHOOL
25 CONSTRUCTION FUND. Pursuant to section 18(k) of the United States Occu-
26 pational Safety and Health Act of 1970 (Public Law[,] 91-596), a serious
27 violation shall be deemed to exist in a place of employment if there is

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

1 a substantial probability that death or serious physical harm could
2 result from a condition which exists, or from one or more practices,
3 means, methods, operations, or processes which have been adopted or are
4 in use, in such place of employment unless the employer did not, and
5 could not with the exercise of reasonable diligence, know of the pres-
6 ence of the violation. A non-serious violation shall be defined as any
7 violation that does not fall under the definition of serious violation.
8 FOR PURPOSES OF THIS ARTICLE, AN EMPLOYER SHALL HAVE COMMITTED A "WILL-
9 FUL" VIOLATION IF:

10 (I) THE EMPLOYER WAS AWARE OF THE REQUIREMENTS OF THIS ARTICLE OR THE
11 EXISTENCE OF THE APPLICABLE STANDARD OR REGULATION, AND WAS ALSO AWARE
12 OF A CONDITION OR PRACTICE IN VIOLATION OF THAT REQUIREMENT OR;

13 (II) AT THE TIME THE EMPLOYER COMMITTED THE VIOLATION, THE EMPLOYER
14 WAS NOT AWARE OF ANY LEGAL REQUIREMENT BUT WAS AWARE THAT A CONDITION OR
15 PRACTICE WAS HAZARDOUS TO THE SAFETY OR HEALTH OF EMPLOYEES.

16 AN EMPLOYER SHALL HAVE COMMITTED A "REPEAT" VIOLATION IF THE EMPLOYER
17 HAD BEEN ISSUED AN ORDER TO COMPLY PREVIOUSLY FOR A SUBSTANTIALLY SIMI-
18 LAR VIOLATION AT THE SAME SITE AND NO APPEAL OR OTHER PROCEEDING FOR
19 REVIEW PROVIDED FOR IN THIS ARTICLE SHALL THEN BE PENDING AND THE TIME
20 FOR TAKING THEREOF SHALL HAVE EXPIRED.

21 The commissioner shall not assess a penalty against an employer for
22 failure to correct a violation of a standard which is the subject of an
23 application for a PERMANENT OR temporary order granting a variance, or a
24 violation OF A STANDARD which is the subject of a petition [to modify an
25 order to comply] FOR MODIFICATION OF THE ABATEMENT DATE, provided howev-
26 er, that upon issuance by the commissioner of a determination denying
27 such variance or petition to modify, or upon expiration of a temporary
28 variance or modified compliance period, the time fixed for compliance
29 shall recommence and the employer become liable for the penalties
30 provided herein.

31 c. Any employer, or other party affected by a determination of the
32 [industrial] commissioner issued pursuant to this section may petition
33 the industrial board of appeals for review of such determination in
34 accordance with section one hundred one of this chapter. Judicial review
35 of the decision of the industrial board of appeals may be obtained by
36 any party affected by such decision by commencing a proceeding pursuant
37 to article seventy-eight of the civil practice law and rules within
38 sixty days after such decision is issued.

39 d. If the time for compliance with an order of the commissioner issued
40 pursuant to this section has elapsed, and the employer has not complied
41 with the provisions of the order, the commissioner shall seek judicial
42 enforcement of such order by commencing a proceeding pursuant to article
43 seventy-eight of the civil practice law and rules. Where an employer has
44 complied with an order in all respects other than the payment of a
45 penalty imposed pursuant to this subdivision, the commissioner may file
46 with the county clerk of the county where the employer has its place of
47 business the order of the commissioner [continuing] CONTAINING the
48 amount of civil penalty found to be due. The filing of such order shall
49 have the full force and effect of a judgment duly docketed in the office
50 of such clerk. The order or decision may be enforced by and in the same
51 manner, and with like effect, as that prescribed by the civil practice
52 law and rules for the enforcement of a money judgment.

53 S 2. This act shall take effect immediately and shall apply to all
54 violations which occur on or after such date.