

3358

2009-2010 Regular Sessions

I N S E N A T E

March 17, 2009

Introduced by Sens. ONORATO, BRESLIN, SAVINO -- (at request of the Department of Labor) -- 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 strengthening wage and hour protections for working people

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 added
2 by chapter 310 of the laws of 1967, is amended to read as follows:
3 1-a. ON BEHALF OF ANY EMPLOYEE PAID LESS THAN THE WAGE TO WHICH HE OR
4 SHE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER
5 MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRATIVE ACTION,
6 TO COLLECT SUCH CLAIM AND AS PART OF SUCH LEGAL ACTION, IN ADDITION TO
7 ANY OTHER REMEDIES AND PENALTIES OTHERWISE AVAILABLE UNDER THIS ARTICLE,
8 THE COMMISSIONER MAY ASSESS AGAINST THE EMPLOYER AN ADDITIONAL AMOUNT AS
9 LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE TOTAL AMOUNT OF
10 WAGES FOUND TO BE DUE, UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS FOR
11 BELIEVING THAT ITS UNDERPAYMENT OF WAGES WAS IN COMPLIANCE WITH THE LAW.
12 In any action instituted IN THE COURTS upon a wage claim by an employee
13 or the commissioner in which the employee prevails, the court shall
14 allow such employee reasonable attorney's fees and, [upon a finding that
15 the employer's failure to pay the wage required by this article was
16 willful] UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT
17 ITS UNDERPAYMENT OF WAGES WAS IN COMPLIANCE WITH THE LAW, an additional
18 amount as liquidated damages equal to twenty-five percent of the total
19 amount of the wages found to be due.
20 S 2. Subdivision 1 of section 215 of the labor law, as amended by
21 chapter 744 of the laws of 1986, is amended to read as follows:
22 1. (A) No employer or his OR HER agent, or the officer or agent of any
23 corporation, PARTNERSHIP, OR LIMITED LIABILITY COMPANY shall discharge,
24 penalize, or in any other manner discriminate OR RETALIATE against any

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

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1 employee (I) because such employee has made a complaint to his OR HER
2 employer, or to the commissioner or his OR HER authorized represen-
3 tative, that the employer has violated any provision of this chapter, or
4 (II) because such employee has caused to be instituted a proceeding
5 under or related to this chapter, OR (III) BECAUSE SUCH EMPLOYEE HAS
6 PROVIDED INFORMATION TO THE COMMISSIONER OR HIS OR HER AUTHORIZED REPRE-
7 SENTATIVE, or (IV) because such employee has testified or is about to
8 testify in an investigation or proceeding under this chapter, OR (V)
9 BECAUSE SUCH EMPLOYEE HAS OTHERWISE EXERCISED RIGHTS PROTECTED UNDER
10 THIS CHAPTER, OR (VI) BECAUSE THE EMPLOYER HAS RECEIVED AN ADVERSE
11 DETERMINATION FROM THE COMMISSIONER INVOLVING THE EMPLOYEE.

12 (B) If after investigation the commissioner finds that an employer has
13 violated any provision of this section, the commissioner may, by an
14 order which shall describe particularly the nature of the violation,
15 assess the employer a civil penalty of not less than [two hundred] ONE
16 THOUSAND nor more than [two] TEN thousand dollars, AND ORDER THE EMPLOY-
17 ER TO PAY LOST COMPENSATION TO THE EMPLOYEE.

18 (C) Notwithstanding the provisions of section two hundred thirteen of
19 this [chapter] ARTICLE, the penalties set forth in this section shall be
20 the exclusive remedies available for violations of this section.

21 (D) THIS SECTION SHALL NOT APPLY TO EMPLOYEES OF THE STATE OR ANY
22 MUNICIPAL SUBDIVISIONS OR DEPARTMENTS THEREOF.

23 S 3. Subdivisions 1 and 2 of section 663 of the labor law, as amended
24 by chapter 310 of the laws of 1967, are amended to read as follows:

25 1. By employee. If any employee is paid by his OR HER employer less
26 than the wage to which he OR SHE is entitled under the provisions of
27 this article, he OR SHE may recover in a civil action the amount of any
28 such underpayments, together with costs and such reasonable attorney's
29 fees as may be allowed by the court, and [if such underpayment was will-
30 ful] UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS
31 UNDERPAYMENT OF WAGES WAS IN COMPLIANCE WITH THE LAW, an additional
32 amount as liquidated damages equal to twenty-five percent of the total
33 of such underpayments found to be due [him] THE EMPLOYEE and any agree-
34 ment between [him] THE EMPLOYEE, and [his] THE employer to work for less
35 than such wage shall be no defense to such action.

36 2. By commissioner. On behalf of any employee paid less than the wage
37 to which [he] THE EMPLOYEE is entitled under the provisions of this
38 article, the commissioner may bring any legal action necessary, INCLUD-
39 ING ADMINISTRATIVE ACTION, to collect such claim, and the employer shall
40 be required to pay the costs, and [if such underpayment was willful]
41 UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS UNDER-
42 PAYMENT WAS IN COMPLIANCE WITH THE LAW, an additional amount as liqui-
43 dated damages equal to twenty-five percent of the total of such under-
44 payments found to be due [him] THE EMPLOYEE.

45 S 4. This act shall take effect on the ninetieth day after it shall
46 have become a law, and shall apply to offenses committed on or after
47 such effective date.