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

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:

Section 1. Subdivision 1-a of section 198 of the labor law, as added by chapter 310 of the laws of 1967, is amended to read as follows:

1-a. ON BEHALF OF ANY EMPLOYEE PAID LESS THAN THE WAGE TO WHICH HE OR SHE IS ENTITLED UNDER THE PROVISIONS OF THIS ARTICLE, THE COMMISSIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRATIVE ACTION, TO COLLECT SUCH CLAIM AND AS PART OF SUCH LEGAL ACTION, IN ADDITION TO ANY OTHER REMEDIES AND PENALTIES OTHERWISE AVAILABLE UNDER THIS ARTICLE, THE COMMISSIONER MAY ASSESS AGAINST THE EMPLOYER AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE TOTAL AMOUNT OF WAGES FOUND TO BE DUE, UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS FOR BELIEVING THAT ITS UNDERPAYMENT OF WAGES WAS IN COMPLIANCE WITH THE LAW. In any action instituted IN THE COURTS upon a wage claim 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] UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS UNDERPAYMENT OF WAGES WAS IN COMPLIANCE WITH THE LAW, an additional amount as liquidated damages equal to twenty-five percent of the total amount of the wages found to be due.

S 2. Subdivision 1 of section 215 of the labor law, as amended by chapter 744 of the laws of 1986, is amended to read as follows:

1. (A) No employer or his OR HER agent, or the officer or agent of any corporation, PARTNERSHIP, OR LIMITED LIABILITY COMPANY shall discharge, 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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employee (I) because such employee has made a complaint to his OR HER employer, or to the commissioner or his OR HER authorized representative, that the employer has violated any provision of this chapter, or (II) because such employee has caused to be instituted a proceeding under or related to this chapter, OR (III) BECAUSE SUCH EMPLOYEE HAS PROVIDED INFORMATION TO THE COMMISSIONER OR HIS OR HER AUTHORIZED REPRESENTATIVE, or (IV) because such employee has testified or is about to testify in an investigation or proceeding under this chapter, OR (V) BECAUSE SUCH EMPLOYEE HAS OTHERWISE EXERCISED RIGHTS PROTECTED UNDER THIS CHAPTER, OR (VI) BECAUSE THE EMPLOYER HAS RECEIVED AN ADVERSE DETERMINATION FROM THE COMMISSIONER INVOLVING THE EMPLOYEE.

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

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

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

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

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

2. By commissioner. On behalf of any employee paid less than the wage to which [he] THE EMPLOYEE is entitled under the provisions of this article, the commissioner may bring any legal action necessary, INCLUDING ADMINISTRATIVE ACTION, to collect such claim, and the employer shall be required to pay the costs, and [if such underpayment was willful] UNLESS THE EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS UNDERPAYMENT WAS IN COMPLIANCE WITH THE LAW, an additional amount as liquidated damages equal to twenty-five percent of the total of such underpayments found to be due [him] THE EMPLOYEE.

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