

8518

I N S E N A T E

November 24, 2010

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

AN ACT to amend the labor law, in relation to establishing the wage theft prevention act

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

1 Section 1. This act shall be known and may be cited as the "wage theft
2 prevention act".
3 S 2. Section 2 of the labor law is amended by adding a new subdivision
4 17 to read as follows:
5 17. ALL REFERENCES TO LABOR LAW, CHAPTER, ARTICLE OR SECTION SHALL BE
6 DEEMED TO INCLUDE ANY RULE, REGULATION OR ORDER PROMULGATED THEREUNDER.
7 S 3. Subdivisions 1, 2, 3 and 4 of section 195 of the labor law, as
8 added by chapter 548 of the laws of 1966 and subdivision 1 as amended by
9 chapter 270 of the laws of 2009, are amended and a new subdivision 4-a
10 is added to read as follows:
11 1. (A) [notify] PROVIDE his or her employees, in writing IN ENGLISH
12 AND IN THE LANGUAGE IDENTIFIED BY EACH EMPLOYEE AS THE PRIMARY LANGUAGE
13 OF SUCH EMPLOYEE, at the time of hiring [of], AND ON OR BEFORE FEBRUARY
14 FIRST OF EACH SUBSEQUENT YEAR OF THE EMPLOYEE'S EMPLOYMENT WITH THE
15 EMPLOYER, A NOTICE CONTAINING THE FOLLOWING INFORMATION: the rate OR
16 RATES of pay and [of] BASIS THEREOF, WHETHER PAID BY THE HOUR, SHIFT,
17 DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER; ALLOWANCES, IF ANY,
18 CLAIMED AS PART OF THE MINIMUM WAGE, INCLUDING TIP, MEAL, OR LODGING
19 ALLOWANCES; the regular pay day designated by the employer in accordance
20 with section one hundred ninety-one of this article[, and]; THE NAME OF
21 THE EMPLOYER; ANY "DOING BUSINESS AS" NAMES USED BY THE EMPLOYER; THE
22 PHYSICAL ADDRESS OF THE EMPLOYER'S MAIN OFFICE OR PRINCIPAL PLACE OF
23 BUSINESS, AND A MAILING ADDRESS IF DIFFERENT; THE TELEPHONE NUMBER OF
24 THE EMPLOYER; PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER DEEMS
25 MATERIAL AND NECESSARY. EACH TIME THE EMPLOYER PROVIDES SUCH NOTICE TO
26 AN EMPLOYEE, THE EMPLOYER SHALL obtain FROM THE EMPLOYEE a SIGNED AND
27 DATED written acknowledgement [from each employee], IN ENGLISH AND IN
28 THE PRIMARY LANGUAGE OF THE EMPLOYEE, of receipt of this notice, WHICH

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

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1 THE EMPLOYER SHALL PRESERVE AND MAINTAIN FOR SIX YEARS. Such acknowl-
2 edgement shall INCLUDE AN AFFIRMATION BY THE EMPLOYEE THAT THE EMPLOYEE
3 ACCURATELY IDENTIFIED HIS OR HER PRIMARY LANGUAGE TO THE EMPLOYER, AND
4 THAT THE NOTICE PROVIDED BY THE EMPLOYER TO SUCH EMPLOYEE PURSUANT TO
5 THIS SUBDIVISION WAS IN THE LANGUAGE SO IDENTIFIED OR OTHERWISE COMPLIED
6 WITH PARAGRAPH (C) OF THIS SUBDIVISION, AND SHALL conform to any ADDI-
7 TIONAL requirements established by the commissioner with regard to
8 content and form. For all employees who are [eligible for] NOT EXEMPT
9 FROM overtime compensation as established in the commissioner's minimum
10 wage orders or otherwise provided by NEW YORK STATE law or regulation,
11 the notice must state the regular hourly rate and overtime rate of pay;

12 (B) THE COMMISSIONER SHALL PREPARE TEMPLATES THAT COMPLY WITH THE
13 REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION. EACH SUCH TEMPLATE
14 SHALL BE DUAL-LANGUAGE, INCLUDING ENGLISH AND ONE ADDITIONAL LANGUAGE.
15 THE COMMISSIONER SHALL DETERMINE, IN HIS OR HER DISCRETION, WHICH
16 LANGUAGES TO PROVIDE IN ADDITION TO ENGLISH, BASED ON THE SIZE OF THE
17 NEW YORK STATE POPULATION THAT SPEAKS EACH LANGUAGE AND ANY OTHER FACTOR
18 THAT THE COMMISSIONER SHALL DEEM RELEVANT. ALL SUCH TEMPLATES SHALL BE
19 MADE AVAILABLE TO EMPLOYERS IN SUCH MANNER AS DETERMINED BY THE COMMIS-
20 SIONER;

21 (C) WHEN AN EMPLOYEE IDENTIFIES AS HIS OR HER PRIMARY LANGUAGE A
22 LANGUAGE FOR WHICH A TEMPLATE IS NOT AVAILABLE FROM THE COMMISSIONER,
23 THE EMPLOYER SHALL COMPLY WITH THIS SUBDIVISION BY PROVIDING THAT
24 EMPLOYEE AN ENGLISH-LANGUAGE NOTICE OR ACKNOWLEDGMENT;

25 (D) AN EMPLOYER SHALL NOT BE PENALIZED FOR ERRORS OR OMISSIONS IN THE
26 NON-ENGLISH PORTIONS OF ANY NOTICE PROVIDED BY THE COMMISSIONER;

27 (E) THE COMMISSIONER SHALL HAVE DISCRETION TO WAIVE OR ALTER REQUIRE-
28 MENTS OF PARAGRAPH (A) OF THIS SUBDIVISION FOR TEMPORARY HELP FIRMS AS
29 DEFINED IN SECTION NINE HUNDRED SIXTEEN OF THIS CHAPTER.

30 2. notify his OR HER employees IN WRITING of any changes TO THE INFOR-
31 MATION SET FORTH in [the pay] SUBDIVISION ONE OF THIS SECTION, AT LEAST
32 SEVEN CALENDAR days prior to the time of such changes, UNLESS SUCH
33 CHANGES ARE REFLECTED ON THE WAGE STATEMENT FURNISHED IN ACCORDANCE WITH
34 SUBDIVISION THREE OF THIS SECTION;

35 3. furnish each employee with a statement with every payment of wages,
36 listing THE FOLLOWING: THE DATES OF WORK COVERED BY THAT PAYMENT OF
37 WAGES; NAME OF EMPLOYEE; NAME OF EMPLOYER; ADDRESS AND PHONE NUMBER OF
38 EMPLOYER; RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER PAID BY THE
39 HOUR, SHIFT, DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER; gross
40 wages[,]; deductions; ALLOWANCES, IF ANY, CLAIMED AS PART OF THE MINIMUM
41 WAGE; and net wages[, and upon]. FOR ALL EMPLOYEES WHO ARE NOT EXEMPT
42 FROM OVERTIME COMPENSATION AS ESTABLISHED IN THE COMMISSIONER'S MINIMUM
43 WAGE ORDERS OR OTHERWISE PROVIDED BY NEW YORK STATE LAW OR REGULATION,
44 THE STATEMENT SHALL INCLUDE THE REGULAR HOURLY RATE OR RATES OF PAY; THE
45 OVERTIME RATE OR RATES OF PAY; THE NUMBER OF REGULAR HOURS WORKED, AND
46 THE NUMBER OF OVERTIME HOURS WORKED. FOR ALL EMPLOYEES PAID A PIECE
47 RATE, THE STATEMENT SHALL INCLUDE THE APPLICABLE PIECE RATE OR RATES OF
48 PAY AND NUMBER OF PIECES COMPLETED AT EACH PIECE RATE. FOR ALL EMPLOY-
49 EES PAID BY COMMISSION THE STATEMENT SHALL INCLUDE THE BASIS ON WHICH
50 THE COMMISSION IS CALCULATED. UPON the request of an employee, AN
51 EMPLOYER SHALL furnish an explanation IN WRITING of how such wages were
52 computed;

53 4. establish, maintain and preserve for not less than [three] SIX
54 years CONTEMPORANEOUS, TRUE, AND ACCURATE payroll records showing FOR
55 EACH WEEK WORKED the hours worked[,]; THE RATE OR RATES OF PAY AND BASIS
56 THEREOF, WHETHER PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY, PIECE,

1 COMMISSION, OR OTHER; gross wages[,]; deductions; ALLOWANCES, IF ANY,
2 CLAIMED AS PART OF THE MINIMUM WAGE; and net wages for each employee.
3 FOR ALL EMPLOYEES WHO ARE NOT EXEMPT FROM OVERTIME COMPENSATION AS
4 ESTABLISHED IN THE COMMISSIONER'S MINIMUM WAGE ORDERS OR OTHERWISE
5 PROVIDED BY NEW YORK STATE LAW OR REGULATION, THE PAYROLL RECORDS SHALL
6 INCLUDE THE REGULAR HOURLY RATE OR RATES OF PAY, THE OVERTIME RATE OR
7 RATES OF PAY, THE NUMBER OF REGULAR HOURS WORKED, AND THE NUMBER OF
8 OVERTIME HOURS WORKED. FOR ALL EMPLOYEES PAID A PIECE RATE, THE PAYROLL
9 RECORDS SHALL INCLUDE THE APPLICABLE PIECE RATE OR RATES OF PAY AND
10 NUMBER OF PIECES COMPLETED AT EACH PIECE RATE. FOR ALL EMPLOYEES PAID BY
11 COMMISSION THE STATEMENT SHALL INCLUDE THE BASIS ON WHICH THE COMMISSION
12 IS CALCULATED;

13 4-A. AFFORD CURRENT AND FORMER EMPLOYEES THE RIGHT TO INSPECT OR COPY
14 THE PAYROLL RECORDS PERTAINING TO THAT CURRENT OR FORMER EMPLOYEE, UPON
15 REASONABLE REQUEST TO THE EMPLOYER. THE EMPLOYER SHALL TAKE REASONABLE
16 STEPS TO INSURE THE IDENTITY OF A CURRENT OR FORMER EMPLOYEE. IF THE
17 EMPLOYER PROVIDES COPIES OF THE RECORDS, THE ACTUAL COST OF REPRODUCTION
18 MAY BE CHARGED TO THE CURRENT OR FORMER EMPLOYEE. AN EMPLOYER WHO
19 RECEIVES A WRITTEN OR ORAL REQUEST TO INSPECT OR COPY RECORDS PURSUANT
20 TO THIS SUBDIVISION PERTAINING TO A CURRENT OR FORMER EMPLOYEE, SHALL
21 COMPLY WITH THE REQUEST AS SOON AS PRACTICABLE, BUT NO LATER THAN THIRTY
22 BUSINESS DAYS FROM THE DATE OF THE REQUEST. AN EMPLOYER SHALL DESIGNATE
23 THE PERSON TO WHOM A REQUEST UNDER THIS SUBDIVISION SHALL BE MADE;

24 S 4. Section 196 of the labor law, as added by chapter 548 of the laws
25 of 1966, paragraph b of subdivision 1 as amended by chapter 328 of the
26 laws of 1972 and paragraph e of subdivision 1 as added by chapter 336 of
27 the laws of 1985, is amended to read as follows:

28 S 196. Powers of commissioner. 1. In addition to the powers of the
29 commissioner specified in other sections of this chapter, the commis-
30 sioner shall have the following duties, powers and authority:

31 a. He OR SHE shall investigate and attempt to adjust equitably contro-
32 versies between employers and employees relating to THIS ARTICLE, OR
33 ARTICLE FIVE, SEVEN, NINETEEN OR NINETEEN-A OF this [article] CHAPTER.

34 b. He OR SHE may take assignments of claims for wages [as defined in]
35 UNDER this [article] CHAPTER from employees or third parties in trust
36 for such employees or for the benefit of various funds for such employ-
37 ees. All such assignments shall run to the commissioner and his OR HER
38 successor in office. The commissioner may sue employers on wage claims
39 thus assigned, with the benefits and subject to the provisions of exist-
40 ing law applying to actions by employees for collection of wages. He OR
41 SHE may join in a single action any number of wage claims against the
42 same employer.

43 c. He OR SHE may institute proceedings on account of any criminal
44 violation of any provision of THIS ARTICLE, OR ARTICLE FIVE, SEVEN,
45 NINETEEN OR NINETEEN-A OF this [article] CHAPTER.

46 d. If it shall appear to him OR HER that any employer has been
47 convicted of a violation of any provision of this article OR ARTICLE
48 NINETEEN OR NINETEEN-A OF THIS CHAPTER or that any [judgement] ORDER TO
49 COMPLY ISSUED against an employer [for non-payment of wages] UNDER THIS
50 ARTICLE OR ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER remains unsat-
51 isfied for a period of ten days after the time to appeal therefrom has
52 expired, and that no appeal therefrom is then pending, the commissioner
53 may require such employer to deposit with him OR HER a bond in such sum
54 as he OR SHE may deem sufficient and adequate in the circumstances,
55 together with two or more sureties or a duly authorized surety company,
56 to be approved by the commissioner. The bond shall be payable to the

1 commissioner and shall be conditioned that the employer will, for a
2 definite future period, not exceeding two years, pay his OR HER employ-
3 ees in accordance with the provisions of this article OR ARTICLE NINE-
4 TEEN OR NINETEEN-A OF THIS CHAPTER, and shall be further conditioned
5 upon the payment by the employer of any AMOUNTS DUE PURSUANT TO AN ORDER
6 TO COMPLY OR judgment [which may be recovered] against such employer
7 pursuant to the provisions of this article OR ARTICLE NINETEEN OR NINE-
8 TEEN-A OF THIS CHAPTER.

9 If within ten days after demand for such bond, which demand may be
10 made by certified or registered mail, such employer shall fail to depos-
11 it the same, the commissioner may bring an action in the name and on
12 behalf of the people of the state of New York against such employer in
13 the supreme court to compel such employer to furnish such a bond or to
14 cease doing business until he OR SHE has done so. The employer shall
15 have the burden of proving that either such a bond is unnecessary or
16 that the amount demanded is excessive. If the court finds that there is
17 just cause for requiring the bond and that same is reasonably necessary
18 or proper to secure prompt payment of the wages of the employees of such
19 employer and his OR HER compliance with the provisions of this article
20 OR ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER, the court may enjoin
21 such employer and such other person or persons as may have been or may
22 be concerned with or in any way participating in the failure to pay the
23 wages resulting in the conviction [or in the judgment] OR ORDER TO
24 COMPLY as aforesaid, from doing business until the requirement is met
25 and make other and further orders appropriate to compel compliance with
26 the requirement.

27 IF ANY ORDER TO COMPLY ISSUED AGAINST AN EMPLOYER UNDER THIS ARTICLE
28 OR ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER REMAINS UNSATISFIED
29 FOR A PERIOD OF TEN DAYS AFTER THE TIME TO APPEAL THEREFROM HAS EXPIRED,
30 AND THAT NO APPEAL THEREFROM IS THEN PENDING, THE COMMISSIONER MAY
31 REQUIRE THE EMPLOYER TO PROVIDE AN ACCOUNTING OF ASSETS OF THE EMPLOYER,
32 INCLUDING BUT NOT LIMITED TO, A LIST OF ALL BANK ACCOUNTS, ACCOUNTS
33 RECEIVABLE, PERSONAL PROPERTY, REAL PROPERTY, AUTOMOBILES OR OTHER VEHI-
34 CLES, AND ANY OTHER ASSETS, IN A FORM AND MANNER AS PRESCRIBED BY THE
35 COMMISSIONER. AN EMPLOYER SHALL PROVIDE AN AMENDED ACCOUNTING OF SUCH
36 ASSETS AS THE COMMISSIONER SHALL ORDER. IF WITHIN TEN DAYS AFTER DEMAND
37 FOR SUCH AN ACCOUNTING OF ASSETS, WHICH DEMAND MAY BE MADE BY CERTIFIED
38 MAIL, SUCH EMPLOYER SHALL FAIL TO PROVIDE SAME, OR IF THE EMPLOYER FAILS
39 TO PROVIDE AN AMENDED ACCOUNTING AS REQUIRED UNDER THIS SECTION, THE
40 COMMISSIONER MAY ASSESS A CIVIL PENALTY OF NO MORE THAN FIVE THOUSAND
41 DOLLARS AND MAY BRING AN ACTION IN THE NAME AND ON BEHALF OF THE PEOPLE
42 OF THE STATE OF NEW YORK AGAINST SUCH EMPLOYER IN A COURT OF COMPETENT
43 JURISDICTION TO COMPEL SUCH EMPLOYER TO FURNISH THE ACCOUNTING.

44 e. He OR SHE is hereby authorized and empowered to enter into recipro-
45 cal agreements with the labor department or corresponding agency of any
46 other state or with the person, board, officer, or commission authorized
47 to act on behalf of such department or agency, for the collection in
48 such other states of claims and judgments for wages based upon claims
49 assigned to the commissioner.

50 The commissioner may, to the extent provided for by any reciprocal
51 agreement entered into by law or with any agency of another state as
52 herein provided, maintain actions in the courts of such other state for
53 the collection of claims and judgments for wages and may assign such
54 claims and judgments to the labor department or agency of such other
55 state for collection to the extent that such an assignment may be

1 permitted or provided for by the law of such state or by reciprocal
2 agreement.

3 The commissioner may, upon the written consent of the labor department
4 or other corresponding agency of any other state or of any person,
5 board, officer or commission of such state authorized to act on behalf
6 of such labor department or corresponding agency, maintain actions in
7 the courts of this state upon assigned claims and judgments for wages
8 arising in such other state in the same manner and to the same extent
9 that such actions by the commissioner are authorized when arising in
10 this state. However, such actions may be maintained only in cases where
11 such other state by law or reciprocal agreement extends a like comity to
12 cases arising in this state.

13 2. Nothing in this section shall be construed as requiring the commis-
14 sioner in every instance to investigate and attempt to adjust controver-
15 sies, or to take assignments of wage claims, or to institute criminal
16 prosecutions for any violation under this article OR ARTICLE FIVE,
17 SEVEN, NINETEEN OR NINETEEN-A OF THIS CHAPTER, but he OR SHE shall be
18 deemed vested with discretion in such matters.

19 S 5. Section 196-a of the labor law, as amended by chapter 417 of the
20 laws of 2009, is amended to read as follows:

21 S 196-a. Complaints by employees to commissioner. (a) Any employee[,];
22 PERSON OR ORGANIZATION ACTING ON THE EMPLOYEE'S BEHALF; or the recog-
23 nized and certified collective bargaining agent acting on the employee's
24 behalf, may file with the commissioner a complaint regarding a violation
25 of this article, article FIVE, SEVEN, nineteen, or [article] nineteen-A
26 of this chapter for an investigation of such complaint and statement
27 setting the appropriate remedy, if any. THE COMMISSIONER SHALL KEEP THE
28 NAMES OF EMPLOYEES THAT ARE THE SUBJECT OF AN INVESTIGATION CONFIDENTIAL
29 UNTIL SUCH TIME THAT DISCLOSURE IS NECESSARY FOR RESOLUTION OF AN INVES-
30 TIGATION OR A COMPLAINT. Failure of an employer to keep adequate records
31 OR PROVIDE STATEMENTS OF WAGES TO EMPLOYEES AS REQUIRED UNDER THIS CHAP-
32 TER, in addition to exposing such employer to penalties authorized under
33 subdivision one of section two hundred eighteen of this chapter, shall
34 not operate as a bar to filing of a complaint by an employee. In such a
35 case the employer in violation shall bear the burden of proving that the
36 complaining employee was paid wages, benefits and wage supplements.

37 WHERE AN EMPLOYER FAILS TO MAINTAIN CONTEMPORANEOUS RECORDS OF ALLOW-
38 ANCES CLAIMED, AS REQUIRED PURSUANT TO SUBDIVISION FOUR OF SECTION ONE
39 HUNDRED NINETY-FIVE OF THIS ARTICLE OR ARTICLE NINETEEN OR NINETEEN-A OF
40 THIS CHAPTER, OR PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE REFLECTING
41 ALLOWANCES CLAIMED, AS REQUIRED PURSUANT TO SUBDIVISION THREE OF SECTION
42 ONE HUNDRED NINETY-FIVE OF THIS ARTICLE OR ARTICLE NINETEEN OR NINE-
43 TEEN-A OF THIS CHAPTER, SUCH EMPLOYER SHALL BE BARRED FROM TAKING SUCH
44 ALLOWANCES.

45 WHERE AN EMPLOYER FAILS TO PROVIDE NOTICE TO AN EMPLOYEE OF HIS OR HER
46 REGULAR OR OVERTIME RATE OR RATES OF PAY; MAINTAIN CONTEMPORANEOUS
47 RECORDS OF AN EMPLOYEE'S REGULAR OR OVERTIME RATE OR RATES OF PAY; OR
48 PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE OF HIS OR HER REGULAR OR
49 OVERTIME RATE OR RATES OF PAY, AS REQUIRED PURSUANT TO THIS ARTICLE OR
50 ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER, SUCH EMPLOYEE'S REGULAR
51 HOURLY RATE OF PAY SHALL BE CALCULATED BY DIVIDING SUCH EMPLOYEE'S TOTAL
52 WEEKLY WAGES BY THE LESSER OF FORTY HOURS OR THE ACTUAL NUMBER OF HOURS
53 WORKED BY SUCH EMPLOYEE DURING THE WORK WEEK.

54 (b) Any employee, or the recognized and certified collective bargain-
55 ing agent acting on the employee's behalf, contractor, or the recognized
56 and certified labor organization with which the contractor has executed

1 a collective bargaining agreement covering wages, benefits and supple-
2 ments, may file with the commissioner a complaint regarding an alleged
3 violation of this article or article nineteen of this chapter occasioned
4 by another person, corporation, employer or entities in violation of
5 article thirty-five-E of the general business law for an investigation
6 of such complaint and statement setting the appropriate remedy, if any.

7 S 6. Section 197 of the labor law, as amended by chapter 427 of the
8 laws of 2002, is amended to read as follows:

9 S 197. Civil penalty. Any employer who fails to pay the wages of his
10 OR HER employees or shall differentiate in rate of pay because of sex,
11 as provided in this article, shall forfeit to the people of the state
12 the sum of five hundred dollars for each such failure, to be recovered
13 by the commissioner in ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRA-
14 TIVE ACTION OR a civil action.

15 S 7. Section 198 of the labor law, as added by chapter 548 of the laws
16 of 1966, subdivision 1-a as amended by chapter 372 of the laws of 2009
17 and subdivision 3 as amended by chapter 605 of the laws of 1997, is
18 amended to read as follows:

19 S 198. Costs, remedies. 1. In any action instituted upon a wage claim
20 by an employee or the commissioner in which the employee prevails, the
21 court may allow such employee in addition to ordinary costs, a reason-
22 able sum, not exceeding fifty dollars for expenses which may be taxed as
23 costs. No assignee of a wage claim, except the commissioner, shall be
24 benefited by this provision.

25 1-a. On behalf of any employee paid less than the wage to which he or
26 she is entitled under the provisions of this article, the commissioner
27 may bring any legal action necessary, including administrative action,
28 to collect such claim and as part of such legal action, in addition to
29 any other remedies and penalties otherwise available under this article,
30 the commissioner [may] SHALL assess against the employer THE FULL AMOUNT
31 OF ANY SUCH UNDERPAYMENT, AND an additional amount as liquidated damages
32 [equal to twenty-five percent of the total amount of wages found to be
33 due], unless the employer proves a good faith basis for believing that
34 its underpayment of wages was in compliance with the law. LIQUIDATED
35 DAMAGES SHALL BE CALCULATED BY THE COMMISSIONER AS NO LESS THAN FIFTY
36 PERCENT AND NO MORE THAN TWO HUNDRED PERCENT OF THE TOTAL AMOUNT OF
37 WAGES FOUND TO BE DUE. In any action instituted in the courts upon a
38 wage claim by an employee or the commissioner in which the employee
39 prevails, the court shall allow such employee TO RECOVER THE FULL AMOUNT
40 OF ANY UNDERPAYMENT, ALL reasonable attorney's fees, PREJUDGMENT INTER-
41 EST AS PERMITTED UNDER THE CIVIL PRACTICE LAW AND RULES, and, unless the
42 employer proves a good faith basis to believe that its underpayment of
43 wages was in compliance with the law, an additional amount as liquidated
44 damages equal to [twenty-five] TWO HUNDRED percent of the total amount
45 of the wages found to be due.

46 WHERE AN EMPLOYER FAILS TO MAINTAIN CONTEMPORANEOUS RECORDS OF ALLOW-
47 ANCES CLAIMED, AS REQUIRED PURSUANT TO SUBDIVISION FOUR OF SECTION ONE
48 HUNDRED NINETY-FIVE OF THIS ARTICLE OR ARTICLE NINETEEN OR NINETEEN-A OF
49 THIS CHAPTER, OR PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE REFLECTING
50 ALLOWANCES CLAIMED, AS REQUIRED PURSUANT TO SUBDIVISION THREE OF SECTION
51 ONE HUNDRED NINETY-FIVE OF THIS ARTICLE OR ARTICLE NINETEEN OR NINE-
52 TEEN-A OF THIS CHAPTER, SUCH EMPLOYER SHALL BE BARRED FROM TAKING SUCH
53 ALLOWANCES.

54 WHERE AN EMPLOYER FAILS TO PROVIDE NOTICE TO AN EMPLOYEE OF HIS OR HER
55 REGULAR OR OVERTIME RATE OR RATES OF PAY; MAINTAIN CONTEMPORANEOUS
56 RECORDS OF AN EMPLOYEE'S REGULAR OR OVERTIME RATE OR RATES OF PAY; OR

1 PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE OF HIS OR HER REGULAR OR
2 OVERTIME RATE OR RATES OF PAY, AS REQUIRED PURSUANT TO THIS ARTICLE OR
3 ARTICLE NINETEEN OR NINETEEN-A OF THIS CHAPTER, SUCH EMPLOYEE'S REGULAR
4 HOURLY RATE OF PAY SHALL BE CALCULATED BY DIVIDING SUCH EMPLOYEE'S TOTAL
5 WEEKLY WAGES BY THE LESSER OF FORTY HOURS OR THE ACTUAL NUMBER OF HOURS
6 WORKED BY SUCH EMPLOYEE DURING THE WORK WEEK.

7 1-B. IF ANY EMPLOYEE IS NOT PROVIDED A NOTICE AS REQUIRED BY SUBDIVI-
8 SION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE, HE OR SHE
9 MAY BRING A CIVIL ACTION TO RECOVER DAMAGES OF FIFTY DOLLARS FOR EACH
10 WORK WEEK THAT THE VIOLATION OCCURS OR CONTINUES TO OCCUR, BUT NOT TO
11 EXCEED A TOTAL OF TWO THOUSAND FIVE HUNDRED DOLLARS, TOGETHER WITH COSTS
12 AND REASONABLE ATTORNEY'S FEES. THE COURT MAY ALSO AWARD OTHER RELIEF,
13 INCLUDING INJUNCTIVE AND DECLARATORY RELIEF, THAT THE COURT IN ITS
14 DISCRETION DEEMS NECESSARY OR APPROPRIATE. EMPLOYERS WHO CAN SHOW GOOD
15 CAUSE FOR FAILURE TO COMPLY WITH THE NOTICE REQUIREMENTS UNDER SUBDIVI-
16 SION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE SHALL NOT BE
17 PENALIZED.

18 ON BEHALF OF ANY EMPLOYEE NOT PROVIDED A NOTICE AS REQUIRED BY SUBDI-
19 VISION ONE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE, THE
20 COMMISSIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMINISTRA-
21 TIVE ACTION, TO COLLECT SUCH CLAIM, AND AS PART OF SUCH LEGAL ACTION, IN
22 ADDITION TO ANY OTHER REMEDIES AND PENALTIES OTHERWISE AVAILABLE UNDER
23 THIS ARTICLE, THE COMMISSIONER SHALL ASSESS AGAINST THE EMPLOYER DAMAGES
24 OF FIFTY DOLLARS FOR EACH WORK WEEK THAT THE VIOLATION OCCURS OR CONTIN-
25 UES TO OCCUR BUT NOT TO EXCEED A TOTAL OF TWO THOUSAND FIVE HUNDRED
26 DOLLARS.

27 1-C. IF ANY EMPLOYEE IS NOT PROVIDED A STATEMENT OR STATEMENTS AS
28 REQUIRED BY SUBDIVISION THREE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS
29 ARTICLE, HE OR SHE MAY BRING A CIVIL ACTION TO RECOVER DAMAGES OF ONE
30 HUNDRED DOLLARS FOR EACH WORK WEEK THAT THE VIOLATION OCCURS OR CONTIN-
31 UES TO OCCUR, BUT NOT TO EXCEED A TOTAL OF TWO THOUSAND FIVE HUNDRED
32 DOLLARS, AND MAY RECOVER COSTS AND REASONABLE ATTORNEY'S FEES AS DETER-
33 MINED BY THE COURT. THE COURT MAY ALSO AWARD OTHER RELIEF, INCLUDING
34 INJUNCTIVE AND DECLARATORY RELIEF, THAT THE COURT IN ITS DISCRETION
35 DEEMS NECESSARY OR APPROPRIATE.

36 ON BEHALF OF ANY EMPLOYEE NOT PROVIDED A STATEMENT AS REQUIRED BY
37 SUBDIVISION THREE OF SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE,
38 THE COMMISSIONER MAY BRING ANY LEGAL ACTION NECESSARY, INCLUDING ADMIN-
39 ISTRACTIVE ACTION, TO COLLECT SUCH CLAIM, AND AS PART OF SUCH LEGAL
40 ACTION, IN ADDITION TO ANY OTHER REMEDIES AND PENALTIES OTHERWISE AVAIL-
41 ABLE UNDER THIS ARTICLE, THE COMMISSIONER MAY ASSESS AGAINST THE EMPLOY-
42 ER DAMAGES OF ONE HUNDRED DOLLARS FOR EACH WORK WEEK THAT THE VIOLATION
43 OCCURS OR CONTINUES TO OCCUR BUT NOT TO EXCEED A TOTAL OF TWO THOUSAND
44 FIVE HUNDRED DOLLARS.

45 THE COMMISSIONER SHALL BRING ANY LEGAL ACTION NECESSARY, INCLUDING
46 ADMINISTRATIVE ACTION, ON BEHALF OF ANY EMPLOYEE NOT AFFORDED THE RIGHT
47 TO INSPECT OR COPY PAYROLL RECORDS AS REQUIRED BY SUBDIVISION FOUR-A OF
48 SECTION ONE HUNDRED NINETY-FIVE OF THIS ARTICLE, TO ENFORCE SUCH RIGHT,
49 AND AS A PART OF SUCH ACTION, IN ADDITION TO SEEKING THE PAYMENT OF
50 LIQUIDATED DAMAGES AS AUTHORIZED IN THIS SECTION, MAY SEEK ALL OTHER
51 REMEDIES AND PENALTIES OTHERWISE AVAILABLE UNDER THIS ARTICLE. THE
52 COMMISSIONER MAY ASSESS AGAINST THE EMPLOYER LIQUIDATED DAMAGES OF ONE
53 HUNDRED DOLLARS FOR EACH DAY THAT THE VIOLATION CONTINUES, BUT NOT TO
54 EXCEED A TOTAL OF FIVE THOUSAND DOLLARS.

55 2. WAGES RECOVERABLE PURSUANT TO THIS SECTION MAY BE RECOVERED IN AN
56 ACTION THAT A COURT ORDERS TO BE BROUGHT AS A CLASS ACTION.

1 3. NO RIGHTS OR REMEDIES AVAILABLE UNDER THIS ARTICLE MAY BE WAIVED OR
2 RELEASED EXCEPT UPON A FINDING BY A COURT THAT SUCH WAIVER OR RELEASE
3 REPRESENTS A FAIR AND EQUITABLE SETTLEMENT OF A BONA FIDE DISPUTE.

4 [2] 4. The remedies provided by this article may be enforced simul-
5 taneously or consecutively so far as not inconsistent with each other.

6 [3] 5. Notwithstanding any other provision of law, an action to
7 recover upon a liability imposed by this article must be commenced with-
8 in six years. THE STATUTE OF LIMITATIONS SHALL BE TOLLED FROM THE DATE
9 AN EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE DATE ON WHICH
10 AN EMPLOYER IS NOTIFIED THAT THE COMMISSIONER HAS COMMENCED AN INVESTI-
11 GATION, WHICHEVER IS EARLIER, UNTIL AN ORDER TO COMPLY ISSUED BY THE
12 COMMISSIONER BECOMES FINAL, OR WHERE THE COMMISSIONER DOES NOT ISSUE AN
13 ORDER, UNTIL THE DATE ON WHICH THE COMMISSIONER NOTIFIES THE COMPLAINANT
14 THAT THE INVESTIGATION HAS CONCLUDED. INVESTIGATION BY THE COMMISSIONER
15 SHALL NOT BE A PREREQUISITE TO, NOR A BAR AGAINST, A PERSON BRINGING A
16 CIVIL ACTION UNDER THIS SECTION. All employees shall have the right to
17 recover full wages, benefits and wage supplements AND LIQUIDATED DAMAGES
18 accrued during the six years previous to the commencing of such action,
19 whether such action is instituted by the employee or by the commission-
20 er.

21 6. IN ANY CIVIL ACTION COMMENCED BY AN EMPLOYEE OR BY THE COMMISSION-
22 ER, A COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN
23 ENFORCING SUCH COURT'S JUDGMENT. ANY JUDGMENT OR COURT ORDER PURSUANT
24 TO THIS SECTION SHALL PROVIDE THAT IF ANY AMOUNTS REMAIN UNPAID UPON THE
25 EXPIRATION OF NINETY DAYS FOLLOWING ISSUANCE OF SUCH JUDGMENT, OR NINETY
26 DAYS AFTER EXPIRATION OF THE TIME TO APPEAL AND NO APPEAL IS THEN PEND-
27 ING, WHICHEVER IS LATER, THE TOTAL AMOUNT OF JUDGMENT SHALL AUTOMAT-
28 ICALLY INCREASE BY FIFTEEN PERCENT.

29 7. A COURT WITH COMPETENT JURISDICTION OVER A CIVIL ACTION BROUGHT
30 UNDER THIS SECTION SHALL HAVE THE POWER, UPON MOTION OF THE PLAINTIFF,
31 TO REQUIRE THE EMPLOYER TO GIVE AN ACCOUNTING OF ITS ASSETS TO THE
32 COURT.

33 S 8. Section 198-a of the labor law, as amended by chapter 241 of the
34 laws of 2002, is amended to read as follows:

35 S 198-a. Criminal penalties. 1. Every employer who does not pay the
36 wages of all of his employees in accordance with the provisions of this
37 chapter, and the officers and agents of any corporation, PARTNERSHIP, OR
38 LIMITED LIABILITY COMPANY who knowingly permit the corporation, PARTNER-
39 SHIP, OR LIMITED LIABILITY COMPANY to violate this chapter by failing to
40 pay the wages of any of its employees in accordance with the provisions
41 thereof, shall be guilty of a misdemeanor for the first offense and upon
42 conviction therefor shall be fined [not less than five hundred nor more
43 than twenty thousand dollars] TWO THOUSAND FIVE HUNDRED DOLLARS OR TWICE
44 THE AMOUNT OF UNDERPAYMENT, WHICHEVER IS GREATER, or imprisoned for not
45 more than one year, and, in the event that any second or subsequent
46 offense occurs within six years of the date of conviction for a prior
47 offense, shall be guilty of a CLASS E felony for the second or subse-
48 quent offense, and upon conviction therefor, shall be fined [not less
49 than] five [hundred nor more than twenty thousand dollars or imprisoned
50 for not more than one year plus one day] THOUSAND DOLLARS OR TRIPLE THE
51 AMOUNT OF THE UNDERPAYMENT, WHICHEVER IS GREATER, OR SENTENCED TO A TERM
52 OF IMPRISONMENT AS PROVIDED FOR SUCH A FELONY IN SECTION 70.00 OF THE
53 PENAL LAW, or punished by both such fine and imprisonment, for each such
54 offense. An indictment of a person or corporation operating a steam
55 surface railroad for an offense specified in this section may be found

1 and tried in any county within the state in which such railroad ran at
2 the time of such offense.

3 2. Every employer who violates or fails to comply with the require-
4 ments of subdivision four of section one hundred ninety-five of this
5 article, and the officers and agents of any corporation, PARTNERSHIP, OR
6 LIMITED LIABILITY COMPANY who knowingly permit the corporation, PARTNER-
7 SHIP, OR LIMITED LIABILITY COMPANY to violate or fail to comply there-
8 with, shall be guilty of a misdemeanor and upon conviction therefor
9 shall be fined not less than five hundred nor more than five thousand
10 dollars or imprisoned for not more than one year.

11 3. Every employer who knowingly violates or fails to comply with the
12 requirements of subdivision four of section one hundred ninety-five of
13 this article, and the officers and agents of any corporation, PARTNER-
14 SHIP, OR LIMITED LIABILITY COMPANY who knowingly permit the corporation,
15 PARTNERSHIP, OR LIMITED LIABILITY COMPANY to violate or fail to comply
16 therewith, shall be guilty of a felony where such employer, officer or
17 agent has been convicted of a violation of such subdivision within the
18 previous six years, and upon conviction therefor shall be fined not less
19 than five hundred nor more than twenty thousand dollars or imprisoned
20 for not more than one year plus one day, or punished by both such fine
21 and imprisonment, for each such offense. In determining the penalty, the
22 court shall consider the severity of the violation, the size of the
23 employer, and the employer's good faith effort to comply with the
24 requirements of subdivision four of section one hundred ninety-five of
25 this article.

26 S 9. Section 199-a of the labor law, as added by chapter 605 of the
27 laws of 1997, is amended to read as follows:

28 S 199-a. Notification of process. 1. Each employee who files a
29 complaint regarding a violation of a provision of THIS article [six]
30 (payment of wages), article nineteen (minimum wage act), or article
31 nineteen-A (MINIMUM WAGE STANDARDS AND PROTECTIVE LABOR PRACTICES FOR
32 FARM WORKERS), SECTION ONE HUNDRED SIXTY-ONE, section two hundred
33 twelve-a [or], section two hundred twelve-b, OR SECTION TWO HUNDRED
34 FIFTEEN of this chapter, or a rule or regulation promulgated thereunder,
35 shall be provided with a written description of the anticipated process-
36 ing of the complaint, including investigation, case conference, poten-
37 tial civil and criminal penalties, and collection procedures.

38 2. Each employee and his or her AUTHORIZED representative shall be
39 notified in writing of any case conference before it is held and given
40 the opportunity to attend.

41 3. Each employee and his or her AUTHORIZED representative shall be
42 notified in writing of any award and collection of back wages and civil
43 penalties, and of any intent to seek criminal penalties. In the event
44 that criminal penalties are sought the employee and his or her AUTHOR-
45 IZED representative shall be notified of the outcome of prosecution.

46 S 10. Section 215 of the labor law, as amended by chapter 744 of the
47 laws of 1986 and subdivision 1 as amended by chapter 372 of the laws of
48 2009, is amended to read as follows:

49 S 215. Penalties and civil action; [employer who penalizes employees
50 because of complaints of employer violations] PROHIBITED RETALIATION. 1.
51 (a) No employer or his or her agent, or the officer or agent of any
52 corporation, partnership, or limited liability company shall discharge,
53 THREATEN, penalize, or in any other manner discriminate or retaliate
54 against any employee (i) because such employee has made a complaint to
55 his or her employer, or to the commissioner or his or her authorized
56 representative, OR TO THE ATTORNEY GENERAL OR ANY OTHER PERSON, that the

1 employer has [violated any provision of] ENGAGED IN CONDUCT THAT THE
2 EMPLOYEE, REASONABLY AND IN GOOD FAITH, BELIEVES VIOLATES ANY PROVISION
3 OF this chapter, or ANY ORDER ISSUED BY THE COMMISSIONER (ii) BECAUSE
4 SUCH EMPLOYER OR PERSON BELIEVES THAT SUCH EMPLOYEE HAS MADE A COMPLAINT
5 TO HIS OR HER EMPLOYER, OR TO THE COMMISSIONER OR HIS OR HER AUTHORIZED
6 REPRESENTATIVE, OR TO THE ATTORNEY GENERAL, OR TO ANY OTHER PERSON THAT
7 THE EMPLOYER HAS VIOLATED ANY PROVISION OF THIS CHAPTER, OR ANY ORDER
8 ISSUED BY THE COMMISSIONER (III) because such employee has caused to be
9 instituted OR IS ABOUT TO INSTITUTE a proceeding under or related to
10 this chapter, or [(iii)] (IV) because such employee has provided infor-
11 mation to the commissioner or his or her authorized representative OR
12 THE ATTORNEY GENERAL, or [(iv)] (V) because such employee has testified
13 or is about to testify in an investigation or proceeding under this
14 chapter, or [(v)] (VI) because such employee has otherwise exercised
15 rights protected under this chapter, or [(vi)] (VII) because the employ-
16 er has received an adverse determination from the commissioner involving
17 the employee.

18 AN EMPLOYEE COMPLAINT OR OTHER COMMUNICATION NEED NOT MAKE EXPLICIT
19 REFERENCE TO ANY SECTION OR PROVISION OF THIS CHAPTER TO TRIGGER THE
20 PROTECTIONS OF THIS SECTION. CONDUCT MADE UNLAWFUL UNDER THIS SECTION
21 INCLUDES, WITHOUT LIMITATION, CONDUCT THAT RESULTS IN AN ADVERSE CHANGE
22 IN THE TERMS AND CONDITIONS OF EMPLOYMENT.

23 (b) If after investigation the commissioner finds that an employer has
24 violated any provision of this section, the commissioner may, by an
25 order which shall describe particularly the nature of the violation,
26 assess the employer a civil penalty of not less than one thousand nor
27 more than ten thousand dollars[, and]. THE COMMISSIONER MAY ALSO order
28 [the employer to pay] ANY OTHER APPROPRIATE RELIEF INCLUDING ENJOINING
29 THE CONDUCT; ORDERING PAYMENT OF lost compensation [to the employee],
30 DAMAGES, AND LIQUIDATED DAMAGES; ORDERING REHIRING OR REINSTATEMENT OF
31 THE EMPLOYEE TO HIS OR HER FORMER POSITION WITH RESTORATION OF SENIOR-
32 ITY, OR AN AWARD OF FRONT PAY IN LIEU OF REINSTATEMENT WHERE APPROPRI-
33 ATE. LIQUIDATED DAMAGES SHALL BE CALCULATED AS AN AMOUNT NOT MORE THAN
34 TEN THOUSAND DOLLARS. THE COMMISSIONER SHALL AWARD LIQUIDATED DAMAGES
35 TO EVERY EMPLOYEE AGGRIEVED UNDER THIS SECTION, IN ADDITION TO ANY OTHER
36 REMEDIES PERMITTED BY THIS SECTION, TO DETER FUTURE VIOLATIONS.

37 (c) [Notwithstanding the provisions of section two hundred thirteen of
38 this article, the penalties set forth in this section shall be the
39 exclusive remedies available for violations of this section.

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

42 2. (A) An employee may bring a civil action in a court of competent
43 jurisdiction against any employer or persons alleged to have violated
44 the provisions of this section. The court shall have jurisdiction to
45 restrain violations of this section, within two years after such
46 violation, REGARDLESS OF THE DATES OF EMPLOYMENT OF THE EMPLOYEE, and to
47 order all appropriate relief, including rehiring or reinstatement of the
48 employee to his OR HER former position with restoration of seniority OR
49 AN AWARD OF FRONT PAY IN LIEU OF REINSTATEMENT WHERE APPROPRIATE,
50 [payment] AND AN AWARD of lost compensation[,] AND damages, COSTS and
51 reasonable attorneys' fees. LIQUIDATED DAMAGES SHALL BE CALCULATED AS
52 AN AMOUNT NOT MORE THAN TEN THOUSAND DOLLARS. THE COURT SHALL AWARD
53 LIQUIDATED DAMAGES TO EVERY EMPLOYEE AGGRIEVED UNDER THIS SECTION, IN
54 ADDITION TO ANY OTHER REMEDIES PERMITTED BY THIS SECTION. THE STATUTE OF
55 LIMITATIONS SHALL BE TOLLED FROM THE DATE AN EMPLOYEE FILES A COMPLAINT
56 WITH THE COMMISSIONER OR THE DATE ON WHICH THE EMPLOYEE IS NOTIFIED THAT

THE COMMISSIONER HAS COMMENCED AN INVESTIGATION UNTIL AN ORDER TO COMPLY ISSUED BY THE COMMISSIONER BECOMES FINAL, OR WHERE THE COMMISSIONER DOES NOT ISSUE AN ORDER, UNTIL THE DATE ON WHICH THE COMMISSIONER NOTIFIES THE COMPLAINANT THAT THE INVESTIGATION HAS CONCLUDED. INVESTIGATION BY THE COMMISSIONER SHALL NOT BE A PREREQUISITE TO NOR A BAR AGAINST A PERSON BRINGING A CIVIL ACTION UNDER THIS SECTION.

(B) At or before the commencement of any action under this section, notice thereof shall be served upon the attorney general by the employee.

3. ANY COURT WITH COMPETENT JURISDICTION OVER A CIVIL ACTION BROUGHT UNDER THIS SECTION, SHALL HAVE THE POWER, UPON MOTION OF THE PLAINTIFF, TO REQUIRE THE EMPLOYER TO GIVE AN ACCOUNTING OF ITS ASSETS TO THE COURT.

4. ANY EMPLOYER OR HIS OR HER AGENT, OR THE OFFICER OR AGENT OF ANY CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY WHO VIOLATES SUBDIVISION ONE OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND UPON CONVICTION THEREFOR SHALL BE FINED NOT LESS THAN FIVE HUNDRED NOR MORE THAN TEN THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR. WHERE ANY PERSON HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THIS SUBDIVISION WITHIN THE PREVIOUS SIX YEARS, UPON CONVICTION FOR A SECOND OR SUBSEQUENT OFFENSE SUCH PERSON SHALL BE GUILTY OF A FELONY AND FINED NOT LESS THAN FIVE HUNDRED NOR MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE THAN ONE YEAR PLUS ONE DAY.

S 11. Subdivisions 1 and 3 of section 218 of the labor law, subdivision 1 as amended by chapter 190 of the laws of 1990, the opening paragraph of subdivision 1 as amended by chapter 304 of the laws of 2007 and subdivision 3 as added by chapter 697 of the laws of 1980, are amended to read as follows:

1. If the commissioner determines that an employer has violated a provision of article six (payment of wages), article nineteen (minimum wage act), article nineteen-A (MINIMUM WAGE STANDARDS AND PROTECTIVE LABOR PRACTICES FOR FARM WORKERS), section two hundred twelve-a, section two hundred twelve-b, section one hundred sixty-one (day of rest) or section one hundred sixty-two (meal periods) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. A COPY OF SUCH ORDER SHALL BE PROVIDED TO ANY EMPLOYEE WHO HAS FILED A COMPLAINT AND ANY AUTHORIZED REPRESENTATIVE OF HIM OR HER. In addition to directing payment of wages, benefits or wage supplements found to be due, AND THE LIQUIDATED DAMAGES PURSUANT TO THIS CHAPTER, such order, if issued to an employer who previously has been found in violation of those provisions, rules or regulations, or to an employer whose violation is willful or egregious, shall direct payment to the commissioner of an additional sum as a civil penalty in an amount [equal to] NOT TO EXCEED double the total amount OF WAGES, BENEFITS, OR WAGE SUPPLEMENTS found to be due. In no case shall the order direct payment of an amount less than the total wages, benefits or wage supplements found by the commissioner to be due, plus the LIQUIDATED DAMAGES PURSUANT TO THIS CHAPTER, THE appropriate civil penalty, AND INTEREST AT THE RATE OF INTEREST THEN IN EFFECT, AS PRESCRIBED BY THE SUPERINTENDENT OF BANKS PURSUANT TO SECTION FOURTEEN-A OF THE BANKING LAW PER ANNUM FROM THE DATE OF THE UNDERPAYMENT TO THE DATE OF THE PAYMENT. Where the violation is for a reason other than the employer's failure to pay wages, benefits or wage supplements found to be due, the order shall direct payment to the commissioner of a civil penalty in an amount not to exceed one thousand dollars

1 for a first violation, two thousand dollars for a second violation or
2 three thousand dollars for a third or subsequent violation. In assessing
3 the amount of the penalty, the commissioner shall give due consideration
4 to the size of the employer's business, the good faith BASIS of the
5 employer TO BELIEVE THAT ITS CONDUCT WAS IN COMPLIANCE WITH THE LAW, the
6 gravity of the violation, the history of previous violations and, in the
7 case of wages, benefits or supplements violations, the failure to comply
8 with recordkeeping or other non-wage requirements.

9 Where there is a violation of section one hundred ninety-eight-b of
10 this chapter, the order shall direct payment back to the employee of the
11 amount of wages, supplements or other thing of value unlawfully received
12 plus THE LIQUIDATED DAMAGES PURSUANT TO THIS CHAPTER AND interest at the
13 rate of interest then in effect, as prescribed by the superintendent of
14 banks pursuant to section fourteen-a of the banking law per annum from
15 the date of the payback, return, donation or contribution to the date of
16 payment, and shall include such other relief as may be appropriate,
17 including rehiring or reinstatement of the employee to his or her former
18 position, back wages, and restoration of seniority. In addition, the
19 commissioner shall order payment of a civil penalty of at least twenty-
20 five hundred dollars but not more than five thousand dollars per
21 violation. In assessing the amount of the penalty, the commissioner
22 shall give due consideration to the size of the employer's business, the
23 good faith BASIS of the employer TO BELIEVE THAT ITS CONDUCT WAS IN
24 COMPLIANCE WITH THE LAW, the gravity of the violation, the history of
25 previous violations.

26 AT THE DISCRETION OF THE COMMISSIONER, THE COMMISSIONER SHALL HAVE
27 FULL AUTHORITY TO PROVIDE FOR INCLUSION OF AN AUTOMATIC FIFTEEN PERCENT
28 ADDITIONAL AMOUNT OF DAMAGES TO COME DUE AND OWING UPON EXPIRATION OF
29 NINETY DAYS FROM AN ORDER TO COMPLY BECOMING FINAL. THE COMMISSIONER
30 SHALL PROVIDE WRITTEN NOTICE TO THE EMPLOYER IN THE ORDER TO COMPLY OF
31 THIS ADDITIONAL DAMAGE.

32 3. Provided that no proceeding for administrative or judicial review
33 as provided in this chapter shall then be pending and the time for
34 initiation of such proceeding shall have expired, the commissioner may
35 file with the county clerk of the county where the employer resides or
36 has a place of business the order of the commissioner, or the decision
37 of the industrial board of appeals containing the amount found to be due
38 including the civil penalty, if any, AND AT THE COMMISSIONER'S
39 DISCRETION, AN ADDITIONAL FIFTEEN PERCENT DAMAGES UPON ANY OUTSTANDING
40 MONIES OWED. AT THE REQUEST OF AN EMPLOYEE, AND AT THE DISCRETION OF THE
41 COMMISSIONER, THE COMMISSIONER MAY ASSIGN THAT PORTION OF THE MONEY DUE
42 THAT CONSTITUTES WAGES, WAGE SUPPLEMENTS, INTEREST ON WAGES OR WAGE
43 SUPPLEMENTS, OR LIQUIDATED DAMAGES DUE THAT EMPLOYEE, TO THAT EMPLOYEE
44 AND FILE AN ORDER IN THAT AMOUNT IN THE NAME OF THAT EMPLOYEE WITH THE
45 COUNTY CLERK OF THE COUNTY WHERE THE EMPLOYER RESIDES OR HAS A PLACE OF
46 BUSINESS. The filing of such order or decision shall have the full
47 force and effect of a judgment duly docketed in the office of such
48 clerk. The order or decision may be enforced by and in the name of the
49 commissioner in the same manner, and with like effect, as that
50 prescribed by the civil practice law and rules for the enforcement of a
51 money judgment.

52 S 12. Section 219 of the labor law, as added by chapter 697 of the
53 laws of 1980 and subdivision 1 as amended by chapter 417 of the laws of
54 1987, is amended to read as follows:

55 S 219. Violations of certain wage payment provisions; interest, filing
56 of order as judgment. 1. If the commissioner determines that an employ-

1 er has failed to pay wages, benefits or wage supplements required pursu-
2 ant to article six (payment of wages), article nineteen (minimum wage
3 act) or article [nineteen-a] NINETEEN-A (MINIMUM WAGE STANDARDS AND
4 PROTECTIVE LABOR PRACTICES FOR FARM WORKERS) of this chapter, or a rule
5 or regulation promulgated thereunder, the commissioner shall issue to
6 the employer an order directing compliance therewith, which shall
7 describe particularly the nature of the alleged violation. A COPY OF
8 SUCH ORDER SHALL BE PROVIDED TO ANY EMPLOYEE WHO HAS FILED A COMPLAINT
9 AND TO HIS OR HER AUTHORIZED REPRESENTATIVE. Such order shall direct
10 payment of wages or supplements found to be due, [including] THE LIQUI-
11 DATED DAMAGES AVAILABLE UNDER THIS CHAPTER, AND interest at the rate of
12 interest then in effect as prescribed by the superintendent of banks
13 pursuant to section fourteen-a of the banking law per annum from the
14 date of the underpayment to the date of the payment.

15 AT THE DISCRETION OF THE COMMISSIONER, THE COMMISSIONER SHALL HAVE
16 FULL AUTHORITY TO PROVIDE FOR INCLUSION OF AN AUTOMATIC FIFTEEN PERCENT
17 ADDITIONAL AMOUNT OF DAMAGES TO COME DUE AND OWING UPON EXPIRATION OF
18 NINETY DAYS FROM AN ORDER TO COMPLY BECOMING FINAL. THE COMMISSIONER
19 SHALL PROVIDE WRITTEN NOTICE TO THE EMPLOYER IN THE ORDER TO COMPLY OF
20 THIS ADDITIONAL DAMAGE.

21 2. An order issued under subdivision one of this section shall be
22 final and not subject to review by any court or agency unless review is
23 had pursuant to section one hundred one of this chapter.

24 3. Provided that no proceeding for administrative or judicial review
25 as provided in this chapter shall then be pending and the time for
26 initiation of such proceeding shall have expired, the commissioner may
27 file with the county clerk of the county where the employer resides or
28 has a place of business the order of the commissioner or the decision of
29 the industrial board of appeals containing the amount found to be due,
30 INCLUDING, AT THE COMMISSIONER'S DISCRETION, AN ADDITIONAL FIFTEEN
31 PERCENT DAMAGES UPON ANY OUTSTANDING MONIES OWED. AT THE REQUEST OF AN
32 EMPLOYEE, AND AT THE DISCRETION OF THE COMMISSIONER, THE COMMISSIONER
33 MAY ASSIGN THAT PORTION OF THE MONEY DUE THAT CONSTITUTES WAGES, WAGE
34 SUPPLEMENTS, INTEREST ON WAGES OR WAGE SUPPLEMENTS, OR LIQUIDATED
35 DAMAGES DUE THE EMPLOYEE, TO THAT EMPLOYEE AND FILE AN ORDER IN THAT
36 AMOUNT IN THE NAME OF SUCH EMPLOYEE WITH THE COUNTY CLERK OF THE COUNTY
37 WHERE THE EMPLOYER RESIDES OR HAS A PLACE OF BUSINESS. The filing of
38 such order or decision shall have the full force and effect of a judg-
39 ment duly docketed in the office of such clerk. The order or decision
40 may be enforced by and in the name of the commissioner in the same
41 manner, and with like effect, as that prescribed by the civil practice
42 law and rules for the enforcement of a money judgment.

43 S 13. The labor law is amended by adding a new section 219-b to read
44 as follows:

45 S 219-B. ARBITRATION FAIRNESS ACT. 1. FOR THE PURPOSES OF THIS
46 SECTION, "PREDISPUTE ARBITRATION AGREEMENT" MEANS ANY AGREEMENT TO ARBI-
47 TRATE DISPUTES THAT HAVE NOT ARISEN AT THE TIME OF THE MAKING OF THE
48 AGREEMENT.

49 2. NO PREDISPUTE ARBITRATION AGREEMENT SHALL BE VALID OR ENFORCEABLE
50 IF IT REQUIRES ARBITRATION OF AN EMPLOYMENT DISPUTE ARISING UNDER ARTI-
51 CLE FIVE, SIX, NINETEEN OR NINETEEN-A, OR SECTION TWO HUNDRED FIFTEEN OF
52 THIS ARTICLE.

53 3. THE VALIDITY OR ENFORCEABILITY OF AN AGREEMENT TO ARBITRATE SHALL
54 BE DETERMINED BY THE COURT, RATHER THAN THE ARBITRATOR, IRRESPECTIVE OF
55 WHETHER THE PARTY RESISTING ARBITRATION CHALLENGES THE ARBITRATION

1 AGREEMENT SPECIFICALLY OR IN CONJUNCTION WITH OTHER TERMS OF THE
2 CONTRACT CONTAINING SUCH AGREEMENT.

3 4. NOTHING IN THIS SECTION SHALL APPLY TO ANY ARBITRATION PROVISION IN
4 A COLLECTIVE BARGAINING AGREEMENT.

5 5. THIS SECTION SHALL APPLY TO ANY PREDISPUTE ARBITRATION AGREEMENT IN
6 EFFECT ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

7 S 14. Section 661 of the labor law, as added by chapter 619 of the
8 laws of 1960, is amended to read as follows:

9 S 661. Records of employers. [Every] FOR ALL EMPLOYEES COVERED BY
10 THIS ARTICLE, EVERY employer shall [keep] ESTABLISH, MAINTAIN, AND
11 PRESERVE FOR NOT LESS THAN SIX YEARS CONTEMPORANEOUS, true, and accurate
12 PAYROLL records [of] SHOWING FOR EACH WEEK WORKED THE hours worked [by
13 each employee covered by an hourly minimum wage rate], the [wages paid
14 to all employees, and] RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER
15 PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER
16 BASIS; GROSS WAGES; DEDUCTIONS; ALLOWANCES, IF ANY, CLAIMED AS PART OF
17 THE MINIMUM WAGE; AND NET WAGES FOR EACH EMPLOYEE, PLUS such other
18 information as the commissioner deems material and necessary[, and
19 shall, on]. FOR ALL EMPLOYEES WHO ARE NOT EXEMPT FROM OVERTIME COMPEN-
20 SATION AS ESTABLISHED IN THE COMMISSIONER'S MINIMUM WAGE ORDERS OR
21 OTHERWISE PROVIDED BY NEW YORK STATE LAW OR REGULATION, THE PAYROLL
22 RECORDS MUST INCLUDE THE REGULAR HOURLY RATE OR RATES OF PAY, THE OVER-
23 TIME RATE OR RATES OF PAY, THE NUMBER OF REGULAR HOURS WORKED, AND THE
24 NUMBER OF OVERTIME HOURS WORKED. FOR ALL EMPLOYEES PAID A PIECE RATE,
25 THE PAYROLL RECORDS SHALL INCLUDE THE APPLICABLE PIECE RATE OR RATES OF
26 PAY AND NUMBER OF PIECES COMPLETED AT EACH PIECE RATE. FOR ALL EMPLOY-
27 EES PAID BY COMMISSION, THE PAYROLL RECORDS SHALL INCLUDE THE BASIS ON
28 WHICH THE COMMISSION IS CALCULATED. ON demand, THE EMPLOYER SHALL
29 furnish to the commissioner or his duly authorized representative a
30 sworn statement of the [same] HOURS WORKED, RATE OR RATES OF PAY AND
31 BASIS THEREOF, WHETHER PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY,
32 PIECE, COMMISSION, OR OTHER BASIS; GROSS WAGES; DEDUCTIONS; AND ALLOW-
33 ANCES, IF ANY, CLAIMED AS PART OF THE MINIMUM WAGE, FOR EACH EMPLOYEE,
34 PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER DEEMS MATERIAL AND
35 NECESSARY. Every employer shall keep such records open to inspection by
36 the commissioner or his duly authorized representative at any reasonable
37 time. Every employer of an employee shall keep a digest and summary of
38 this article or applicable wage order, which shall be prepared by the
39 commissioner, posted in a conspicuous place in his establishment and
40 shall also keep posted such additional copies of said digest and summary
41 as the commissioner prescribes. Employers shall, on request, be
42 furnished with copies of this article and of orders, and of digests and
43 summaries thereof, without charge. Employers shall permit the commis-
44 sioner or his duly authorized representative to question WITHOUT INTER-
45 FERENCE any employee of such employer in A PRIVATE LOCATION AT the place
46 of employment and during working hours in respect to the wages paid to
47 and the hours worked by such employee or other employees.

48 S 15. Section 662 of the labor law, as amended by chapter 587 of the
49 laws of 1983 and subdivision 4 as added by chapter 776 of the laws of
50 1983, is amended to read as follows:

51 S 662. Penalties. 1. [Discrimination against employee. Any employer
52 or his agent, or the officer or agent of any corporation, who discharges
53 or in any other manner discriminates against any employee because such
54 employee has made a complaint to his employer, or to the commissioner or
55 his authorized representative, that he has not been paid in accordance
56 with the provisions of this article, or because such employee has caused

1 to be instituted a proceeding under or related to this article, or
2 because such employee has testified or is about to testify in an inves-
3 tigation or proceeding under this article, shall be guilty of a class B
4 misdemeanor.

5 2. Payment of less than minimum wage. Any employer or his agent, or
6 the officer or agent of any corporation, who pays or agrees to pay to
7 any employee less than the wage applicable under this article shall be
8 guilty of a class B misdemeanor and each payment to any employee in any
9 week of less than the wage applicable under this article shall consti-
10 tute a separate offense] FAILURE TO PAY MINIMUM WAGE OR OVERTIME COMPEN-
11 SATION. EVERY EMPLOYER OR HIS OR HER AGENTS WHO DOES NOT PAY THE WAGES
12 OF ALL OF SUCH EMPLOYER'S EMPLOYEES IN ACCORDANCE WITH THE PROVISIONS OF
13 THIS CHAPTER, AND THE OFFICERS AND AGENTS OF ANY CORPORATION, PARTNER-
14 SHIP OR LIMITED LIABILITY COMPANY WHO KNOWINGLY PERMIT THE CORPORATION,
15 PARTNERSHIP OR LIMITED LIABILITY COMPANY TO VIOLATE THIS CHAPTER BY
16 FAILING TO PAY THE WAGES OF ANY OF ITS EMPLOYEES IN ACCORDANCE WITH THE
17 PROVISIONS THEREOF, SHALL BE GUILTY OF A MISDEMEANOR FOR THE FIRST
18 OFFENSE AND UPON CONVICTION THEREFOR SHALL BE FINED TWO THOUSAND FIVE
19 HUNDRED DOLLARS OR TWICE THE AMOUNT OF UNDERPAYMENT, WHICHEVER IS GREAT-
20 ER, OR IMPRISONED FOR NOT MORE THAN ONE YEAR, AND, IN THE EVENT THAT ANY
21 SECOND OR SUBSEQUENT OFFENSE OCCURS WITHIN SIX YEARS OF THE DATE OF
22 CONVICTION FOR A PRIOR OFFENSE, AND UPON CONVICTION THEREFOR, SHALL BE
23 FINED FIVE THOUSAND DOLLARS OR TRIPLE THE AMOUNT OF UNDERPAYMENT, WHICH-
24 EVER IS GREATER, OR SENTENCED TO A TERM OF IMPRISONMENT AS PROVIDED FOR
25 SUCH A FELONY BY SECTION 70.00 OF THE PENAL LAW, OR PUNISHED BY BOTH
26 SUCH FINE AND IMPRISONMENT, FOR EACH SUCH OFFENSE.

27 [3.] 2. Failure to keep records. Any employer or his OR HER agent, or
28 the officer or agent of any corporation, PARTNERSHIP, OR LIMITED LIABIL-
29 ITY COMPANY, who fails to keep the records required under this article
30 or to furnish such records or any information required to be furnished
31 under this article to the commissioner or his OR HER authorized repre-
32 sentative upon request, or who hinders or delays the commissioner or his
33 OR HER authorized representative in the performance of his OR HER duties
34 in the enforcement of this article, or refuses to admit the commissioner
35 or his OR HER authorized representative to any place of employment, or
36 falsifies any such records or refuses to make such records accessible to
37 the commissioner or his OR HER authorized representative, or refuses to
38 furnish a sworn statement of such records or any other information
39 required for the proper enforcement of this article to the commissioner
40 or his OR HER authorized representative, shall be guilty of a [class B]
41 misdemeanor and [each] UPON CONVICTION THEREFOR SHALL BE FINED NOT LESS
42 THAN FIVE HUNDRED NOR MORE THAN FIVE THOUSAND DOLLARS OR IMPRISONED FOR
43 NOT MORE THAN ONE YEAR, AND, IN THE EVENT THAT ANY SECOND OR SUBSEQUENT
44 OFFENSE OCCURS WITHIN SIX YEARS OF THE DATE OF CONVICTION FOR A PRIOR
45 OFFENSE, SHALL BE GUILTY OF A FELONY FOR THE SECOND OR SUBSEQUENT
46 OFFENSE, AND UPON CONVICTION THEREFOR, SHALL BE FINED NOT LESS THAN FIVE
47 HUNDRED NOR MORE THAN TWENTY THOUSAND DOLLARS OR IMPRISONED FOR NOT MORE
48 THAN ONE YEAR PLUS ONE DAY, OR PUNISHED BY BOTH SUCH FINE AND IMPRISON-
49 MENT, FOR EACH SUCH OFFENSE. EACH day's failure to keep the records
50 requested under this article or to furnish such records or information
51 to the commissioner or his OR HER authorized representative shall
52 constitute a separate offense.

53 [4. Where any person has previously been convicted of a violation of
54 this section within the preceding five years, upon conviction for a
55 second or subsequent violation such person may be fined up to ten thou-
56 sand dollars in addition to any other penalties including fines other-

1 wise provided by law; provided, however, that the total additional fine
2 that may be imposed pursuant to this subdivision for separate offenses
3 committed in any consecutive twelve month period may not exceed ten
4 thousand dollars.]

5 S 16. Section 663 of the labor law, as added by chapter 619 of the
6 laws of 1960, subdivisions 1 and 2 as amended by chapter 372 of the laws
7 of 2009 and subdivision 3 as added by chapter 497 of the laws of 1966,
8 is amended to read as follows:

9 S 663. Civil action. 1. By employee. If any employee is paid by his or
10 her employer less than the wage to which he or she is entitled under the
11 provisions of this article, he or she [may] SHALL recover in a civil
12 action the amount of any such underpayments, together with costs and
13 such reasonable attorney's fees as may be allowed by the court, PREJUDG-
14 MENT INTEREST AS REQUIRED UNDER THE CIVIL PRACTICE LAW AND RULES, and
15 unless the employer proves a good faith basis to believe that its under-
16 payment of wages was in compliance with the law, an additional amount as
17 liquidated damages equal to [twenty-five] TWO HUNDRED percent of the
18 total of such underpayments found to be due [the employee and any]. ANY
19 agreement between the employee, and the employer to work for less than
20 such wage shall be no defense to such action.

21 2. By commissioner. On behalf of any employee paid less than the wage
22 to which the employee is entitled under the provisions of this article,
23 the commissioner may bring any legal action necessary, including admin-
24 istrative action, to collect such claim, and the employer shall be
25 required to pay the FULL AMOUNT OF THE UNDERPAYMENT, PLUS costs, and
26 unless the employer proves a good faith basis to believe that its under-
27 payment was in compliance with the law, an additional amount as liqui-
28 dated damages [equal to twenty-five percent of the total of such under-
29 payments found to be due the employee]. LIQUIDATED DAMAGES SHALL BE
30 CALCULATED BY THE COMMISSIONER AS NO LESS THAN FIFTY PERCENT AND NO MORE
31 THAN TWO HUNDRED PERCENT OF THE TOTAL AMOUNT OF UNDERPAYMENTS FOUND TO
32 BE DUE THE EMPLOYEE. IN ANY ACTION BROUGHT BY THE COMMISSIONER IN A
33 COURT OF COMPETENT JURISDICTION, LIQUIDATED DAMAGES SHALL BE CALCULATED
34 AS AN AMOUNT EQUAL TO TWO HUNDRED PERCENT OF UNDERPAYMENTS FOUND TO BE
35 DUE THE EMPLOYEE.

36 3. Limitation of time. Notwithstanding any other provision of law, an
37 action to recover upon a liability imposed by this article must be
38 commenced within six years. THE STATUTE OF LIMITATIONS SHALL BE TOLLED
39 FROM THE DATE AN EMPLOYEE FILES A COMPLAINT WITH THE COMMISSIONER OR THE
40 DATE ON WHICH THE EMPLOYER IS NOTIFIED THAT THE COMMISSION HAS COMMENCED
41 AN INVESTIGATION UNTIL AN ORDER TO COMPLY ISSUED BY THE COMMISSIONER
42 BECOMES FINAL, OR WHERE THE COMMISSIONER DOES NOT ISSUE AN ORDER, UNTIL
43 THE DATE ON WHICH THE COMMISSIONER NOTIFIES THE COMPLAINANT THAT THE
44 INVESTIGATION HAS CONCLUDED. INVESTIGATION BY THE COMMISSIONER SHALL NOT
45 BE A PREREQUISITE TO NOR A BAR AGAINST A PERSON BRINGING A CIVIL ACTION
46 UNDER THIS ARTICLE.

47 4. CLASS ACTION. WAGES RECOVERABLE PURSUANT TO THIS SECTION MAY BE
48 RECOVERED IN AN ACTION A COURT ORDERS TO BE BROUGHT AS A CLASS ACTION.

49 5. NO WAIVER. NO RIGHTS OR REMEDIES UNDER THIS ARTICLE MAY BE WAIVED
50 OR RELEASED EXCEPT UPON A FINDING BY A COURT THAT SUCH WAIVER OR RELEASE
51 REPRESENTS A FAIR AND EQUITABLE SETTLEMENT OF A BONA FIDE DISPUTE.

52 6. FAILURE TO PROVIDE NOTICE. WHERE AN EMPLOYER FAILS TO PROVIDE
53 NOTICE TO AN EMPLOYEE OF ALLOWANCES, IF ANY, TO BE CLAIMED AS PART OF
54 THE MINIMUM WAGE; MAINTAIN CONTEMPORANEOUS RECORDS OF ALLOWANCES CLAIMED
55 AS PART OF THE MINIMUM WAGE; OR PROVIDE STATEMENTS OF WAGES TO AN
56 EMPLOYEE REFLECTING ALLOWANCES CLAIMED AS PART OF THE MINIMUM WAGE, AS

1 REQUIRED PURSUANT TO THIS ARTICLE OR ARTICLE SIX OF THIS CHAPTER, SUCH
2 EMPLOYER SHALL BE BARRED FROM TAKING ANY ALLOWANCES OTHERWISE PERMITTED
3 BY THIS CHAPTER, INCLUDING TIP, MEAL, OR LODGING ALLOWANCES.

4 WHERE AN EMPLOYER FAILS TO PROVIDE NOTICE TO AN EMPLOYEE OF HIS OR HER
5 REGULAR OR OVERTIME RATE OR RATES OF PAY; MAINTAIN CONTEMPORANEOUS
6 RECORDS OF AN EMPLOYEE'S REGULAR OR OVERTIME RATE OR RATES OF PAY; OR
7 PROVIDE STATEMENTS OF WAGES TO AN EMPLOYEE OF HIS OR HER REGULAR OR
8 OVERTIME RATE OR RATES OF PAY, AS REQUIRED PURSUANT TO THIS ARTICLE OR
9 ARTICLE SIX OF THIS CHAPTER, SUCH EMPLOYEE'S REGULAR HOURLY RATE OF PAY
10 SHALL BE CALCULATED BY DIVIDING THE EMPLOYEE'S TOTAL WEEKLY WAGES BY THE
11 LESSER OF FORTY HOURS OR THE ACTUAL NUMBER OF HOURS WORKED BY SUCH
12 EMPLOYEE DURING THE WORK WEEK.

13 7. COURT AUTHORITY. ANY COURT WITH COMPETENT JURISDICTION OVER A CIVIL
14 ACTION BROUGHT UNDER THIS SECTION SHALL HAVE THE POWER, UPON MOTION OF
15 THE PLAINTIFF, TO REQUIRE THE EMPLOYER TO GIVE AN ACCOUNTING OF ITS
16 ASSETS TO THE COURT.

17 8. ATTORNEYS' FEE. IN ANY CIVIL ACTION COMMENCED BY AN EMPLOYEE OR BY
18 THE COMMISSIONER, A COURT MAY AWARD REASONABLE ATTORNEYS' FEES OR COSTS
19 INCURRED IN ENFORCING SUCH COURT'S JUDGMENT. ANY JUDGMENT OR COURT ORDER
20 AWARDING REMEDIES UNDER THIS SECTION SHALL PROVIDE THAT IF ANY AMOUNTS
21 REMAIN UNPAID UPON THE EXPIRATION OF NINETY DAYS FOLLOWING THE ISSUANCE
22 OF JUDGMENT, OR NINETY DAYS AFTER EXPIRATION OF THE TIME TO FILE AN
23 APPEAL AND NO APPEAL THEREFROM IS THEN PENDING, WHICHEVER IS LATER, THE
24 TOTAL AMOUNT OF JUDGMENT SHALL AUTOMATICALLY INCREASE BY FIFTEEN
25 PERCENT.

26 S 17. This act shall take effect on the ninetieth day after it shall
27 have become a law.