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

5055

2011-2012 Regular Sessions

I N A S S E M B L Y

February 11, 2011

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to unjust dismissal

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

Section 1. The labor law is amended by adding a new article 17-A to read as follows:

ARTICLE 17-A
UNJUST DISMISSAL ACT

SECTION 480. DEFINITIONS.
481. DISMISSAL PROCEDURE.
482. FILING OF COMPLAINT.
483. APPOINTMENT OF ARBITRATOR.
484. HEARING.
485. REMEDY.
486. NOTICE.

S 480. DEFINITIONS. WHEN USED IN THIS ARTICLE:

1. THE TERM "EMPLOYEE" MEANS ANY PERSON WHO AT THE TIME OF HIS OR HER DISMISSAL HAS BEEN EMPLOYED FOR NOT LESS THAN FIFTEEN HOURS A WEEK OR TWELVE CONSECUTIVE MONTHS FOR AN EMPLOYER. SUCH TERM SHALL NOT INCLUDE:

(A) A MANAGERIAL EMPLOYEE OR A PERSON WHO HAS A WRITTEN EMPLOYMENT CONTRACT FOR NOT LESS THAN TWO YEARS AND WHOSE CONTRACT REQUIRES NOT LESS THAN SIX MONTHS NOTICE OF TERMINATION; OR

(B) A MEMBER OF A GROUP OF EMPLOYEES SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT WHICH INCLUDES BINDING ARBITRATION AS PART OF THE CONTRACT GRIEVANCE PROCESS.

2. THE TERM "EMPLOYER" MEANS ANY PERSON OR ORGANIZATION THAT EMPLOYS AT LEAST FIFTEEN PERSONS.

3. THE TERM "UNJUST DISMISSAL" SHALL MEAN ANY DISMISSAL OF AN EMPLOYEE BY AN EMPLOYER WITHOUT CAUSE, OR IF ANY OF THE FOLLOWING WAS A DETERMINING FACTOR IN SUCH DISMISSAL:

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

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(A) THE EMPLOYEE'S AGE, SEX, RACE, RELIGION OR NATIONAL ORIGIN;
(B) THE EMPLOYEE'S EXERCISE OF RIGHTS GUARANTEED BY THE FEDERAL CONSTITUTION;
(C) THE EMPLOYEE'S REFUSAL TO ACT IN A MANNER THAT WOULD VIOLATE PUBLIC POLICY AS EXPRESSED IN LAW OR ADMINISTRATIVE REGULATIONS;
(D) THE EMPLOYEE'S OFF-DUTY CONDUCT WHICH BEARS NO REASONABLE RELATIONSHIP TO THE EMPLOYEE'S JOB PERFORMANCE; OR
(E) THE EMPLOYEE'S REFUSAL TO PERFORM ANY TASK WHICH POSES A THREAT OF SERIOUS INJURY OR DEATH.

S 481. DISMISSAL PROCEDURE. ANY EMPLOYER WHO DISCHARGES AN EMPLOYEE SHALL GIVE SUCH EMPLOYEE WRITTEN NOTICE WITHIN FIFTEEN DAYS OF DISMISSAL OF ALL REASONS FOR HIS OR HER DISMISSAL AND OF HIS OR HER RIGHT TO REQUEST ARBITRATION PURSUANT TO THIS ARTICLE.

S 482. FILING OF COMPLAINT. 1. IF AN EMPLOYER FAILS TO PROVIDE A DISCHARGED EMPLOYEE WITH A WRITTEN NOTICE OF THE REASONS FOR DISMISSAL PURSUANT TO SECTION FOUR HUNDRED EIGHTY-ONE OF THIS ARTICLE, SUCH DISCHARGED EMPLOYEE MAY FILE A WRITTEN COMPLAINT WITH THE EMPLOYMENT RELATIONS BOARD, AS CREATED BY SECTION SEVEN HUNDRED TWO OF THIS CHAPTER, NOT LESS THAN FORTY-FIVE DAYS NOR MORE THAN ONE HUNDRED DAYS AFTER DISCHARGE OF THE EMPLOYEE.

2. ANY EMPLOYEE WHO BELIEVES HE OR SHE WAS UNJUSTLY DISMISSED MAY FILE A WRITTEN COMPLAINT WITH THE STATE MEDIATION BOARD NOT LATER THAN ONE HUNDRED DAYS AFTER THE RECEIPT OF THE WRITTEN NOTICE OF DISMISSAL.

THERE SHALL BE A TWENTY-FIVE DOLLAR FILING FEE CHARGED FOR ANY COMPLAINT FILED PURSUANT TO THIS SECTION.

S 483. APPOINTMENT OF ARBITRATOR. 1. UPON THE FILING OF A COMPLAINT PURSUANT TO SECTION FOUR HUNDRED EIGHTY-TWO OF THIS ARTICLE THE STATE MEDIATION BOARD SHALL SELECT WITHIN TEN DAYS OF THE RECEIPT OF A COMPLAINT THREE IMPARTIAL, COMPETENT AND REPUTABLE ARBITRATORS TO BE NOMINEES TO ARBITRATE SUCH COMPLAINT. THE NAMES OF THE THREE ARBITRATOR NOMINEES SHALL BE DELIVERED TO BOTH THE EMPLOYER AND THE EMPLOYEE. AFTER RECEIPT OF THE LIST OF NOMINEES, THE EMPLOYER AND EMPLOYEE SHALL HAVE FIVE DAYS DURING WHICH THEY MAY EACH OBJECT TO ONE OF THE NOMINEES SELECTED BY THE STATE MEDIATION BOARD. THE STATE MEDIATION BOARD SHALL SELECT AN ARBITRATOR FROM AMONG THE NOMINEES WHICH HAVE NOT BEEN OBJECTED TO.

2. THE ARBITRATOR SHALL SET THE TIME, DATE AND PLACE FOR THE HEARING OF THE FILED COMPLAINT. SUCH HEARING SHALL OCCUR NOT LESS THAN FIFTY DAYS AFTER THE FILING OF THE COMPLAINT AND THE PARTIES SHALL BE NOTIFIED OF THE TIME, DATE AND PLACE OF THE HEARING AT LEAST TWENTY-FIVE DAYS PRIOR TO THE HEARING DATE. FAILURE TO APPEAR AT THE HEARING BY THE EMPLOYEE OR EMPLOYER SHALL RESULT IN DISMISSAL OR DEFAULT, RESPECTIVELY, UNLESS THERE IS A JUSTIFIABLE EXCUSE.

S 484. HEARING. 1. THE PROCEEDINGS BEFORE THE ARBITRATOR SHALL BE INFORMAL. THE ARBITRATOR MAY CONDUCT THE HEARING IN WHATEVER MANNER HE OR SHE REASONABLY BELIEVES WILL PERMIT THE FULL AND MOST EXPEDITIOUS PRESENTATION OF THE EVIDENCE AND ARGUMENTS OF THE EMPLOYER AND EMPLOYEE. THE RULES OF EVIDENCE OF PROOF SHALL NOT APPLY.

2. THE BURDEN OF PROOF SHALL REST WITH THE EMPLOYER.

S 485. REMEDY. 1. IF THE ARBITRATOR DETERMINES THAT THE EMPLOYEE'S DISMISSAL WAS UNJUST, THE ARBITRATOR MAY ORDER REINSTATEMENT AND MAY AWARD THE EMPLOYEE LOST EARNINGS.

2. THE RESPECTIVE PARTIES SHALL BEAR ALL EXPENSES ACCRUING FROM OUTSIDE ASSISTANCE. HOWEVER, IF THE EMPLOYEE'S CLAIM IS UPHELD ALL EXPENSES SHALL BE PAID BY THE EMPLOYER.

3. IF THE ARBITRATOR FINDS THAT THE EMPLOYEE'S CLAIM IS FRIVOLOUS, VEXATIOUS OR MADE FOR THE PURPOSES OF HARASSMENT, THE EMPLOYEE SHALL BE LIABLE FOR ALL OF THE EMPLOYER'S REASONABLE COSTS.

S 486. NOTICE. ALL EMPLOYERS SHALL CONSPICUOUSLY POST A COPY OF THIS ARTICLE OR A SUMMARY THEREOF IN AN AREA ACCESSIBLE TO ALL EMPLOYEES. FAILURE TO POST SUCH NOTICE SHALL CONSTITUTE GROUNDS FOR AN UNJUST DISMISSAL COMPLAINT.

S 2. This act shall take effect on the sixtieth day after it shall have become a law provided, however, the commissioner of labor shall immediately promulgate all rules and regulations necessary to carry out the provisions of this act.