

5489

2011-2012 Regular Sessions

I N A S S E M B L Y

February 22, 2011

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

AN ACT to amend the labor law, in relation to increasing the amount of liquidated damages for failure to pay wages as legally required

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
2 amended by chapter 564 of the laws of 2010, is amended and a new subdi-
3 vision 5 is added to read as follows:
4 1-a. On behalf of any employee paid less than the wage to which he or
5 she is entitled under the provisions of this article, the commissioner
6 may bring any legal action necessary, including administrative action,
7 to collect such claim and as part of such legal action, in addition to
8 any other remedies and penalties otherwise available under this article,
9 the commissioner shall assess against the employer the full amount of
10 any such underpayment, and an additional amount as liquidated damages,
11 unless the employer proves a good faith basis for believing that its
12 underpayment of wages was in compliance with the law. Liquidated damages
13 shall be calculated by the commissioner as no more than one hundred
14 percent of the total amount of wages found to be due; HOWEVER, IF SUCH
15 UNDERPAYMENT OF WAGES PERSISTED FOR MORE THAN THIRTY DAYS OR INVOLVED A
16 FAILURE TO PAY THE WAGES OF TEN OR MORE EMPLOYEES, THE COMMISSIONER MAY
17 ASSESS AGAINST THE EMPLOYER AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES
18 EQUAL TO TWICE THE TOTAL AMOUNT OF WAGES FOUND TO BE DUE. In any action
19 instituted in the courts upon a wage claim by an employee or the commis-
20 sioner in which the employee prevails, the court shall allow such
21 employee to recover the full amount of any underpayment, all reasonable
22 attorney's fees, prejudgment interest as required under the civil prac-
23 tice law and rules, and, unless the employer proves a good faith basis
24 to believe that its underpayment of wages was in compliance with the
25 law, an additional amount as liquidated damages equal to one hundred

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

LBD00275-02-1

1 percent of the total amount of the wages found to be due; HOWEVER, IF
2 SUCH UNDERPAYMENT OF WAGES PERSISTED FOR MORE THAN THIRTY DAYS OR
3 INVOLVED A FAILURE TO PAY THE WAGES OF TEN OR MORE EMPLOYEES, THE COURT
4 SHALL ALLOW SUCH ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWICE
5 THE TOTAL AMOUNT OF THE WAGES FOUND TO BE DUE.

6 5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER
7 UPON A LIABILITY IMPOSED BY THIS ARTICLE MAY BE BROUGHT AS A CLASS
8 ACTION.

9 S 2. This act shall take effect on the ninetieth day after it shall
10 have become a law; provided, however, that if chapter 564 of the laws of
11 2010 shall not have taken effect on or before such date then section one
12 of this act shall take effect on the same date and in the same manner as
13 such chapter of the laws of 2010 takes effect.