

718--A

Cal. No. 65

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. DINOWITZ, KAVANAGH, LAVINE -- Multi-Sponsored by -- M. of A. GOTTFRIED, LIFTON, McENENY, PHEFFER -- read once and referred to the Committee on Judiciary -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the judiciary law and the labor law, in relation to creating additional remedies for unlawful discharge, penalty or discrimination on account of the exercise of a juror's right to be absent from employment for jury duty

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

1 Section 1. Section 519 of the judiciary law, as added by chapter 85
2 of the laws of 1995, is amended to read as follows:
3 S 519. Right of juror to be absent from employment. Any person who is
4 summoned to serve as a juror under the provisions of this article and
5 who notifies his or her employer to that effect prior to the commence-
6 ment of a term of service shall not, on account of absence from employ-
7 ment by reason of such jury service, be subject to discharge [or],
8 penalty, OR DISCRIMINATION IN ANY OTHER MANNER. An employer may, howev-
9 er, withhold wages of any such employee serving as a juror during the
10 period of such service; provided that an employer who employs more than
11 ten employees shall not withhold the first forty dollars of such juror's
12 daily wages during the first three days of jury service. Withholding of
13 wages in accordance with this section shall not be deemed a penalty OR
14 DISCRIMINATION IN ANY OTHER MANNER. Violation of this section shall
15 constitute a criminal contempt of court punishable pursuant to section
16 seven hundred fifty of this chapter AND SHALL ALSO CONSTITUTE A
17 VIOLATION OF SECTION TWO HUNDRED FIFTEEN OF THE LABOR LAW AND BE SUBJECT
18 TO THE CIVIL PENALTIES AND CIVIL ACTION PROVIDED FOR THEREUNDER.

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

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1 S 2. Paragraph 7 of subdivision A of section 750 of the judiciary law,
2 as amended by chapter 823 of the laws of 1982, is amended to read as
3 follows:

4 7. Wilful failure to obey any mandate, process, or notice issued
5 pursuant to [articles] ARTICLE sixteen[, seventeen, eighteen, eighteen-a
6 or eighteen-b] of [the judiciary law] THIS CHAPTER, or to rules adopted
7 pursuant thereto, or to any other statute relating thereto, or refusal
8 to be sworn as provided therein, or subjection of an employee to
9 discharge [or], penalty, OR DISCRIMINATION IN ANY OTHER MANNER on
10 account of his OR HER absence from employment by reason of jury or
11 subpoenaed witness service in violation of this chapter or section
12 215.11 of the penal law. Applications to punish the accused for a
13 contempt specified in this subdivision may be made by notice of motion
14 or by order to show cause, and shall be made returnable at the term of
15 the supreme court at which contested motions are heard, or of the county
16 court if the supreme court is not in session.

17 S 3. Section 215 of the labor law, as amended by chapter 564 of the
18 laws of 2010, is amended to read as follows:

19 S 215. [Penalties] CIVIL PENALTIES and civil action; prohibited retal-
20 iation. 1. (a) No employer or his or her agent, or the officer or agent
21 of any corporation, partnership, or limited liability company, or any
22 other person, shall discharge, threaten, penalize, or in any other
23 manner discriminate or retaliate against any employee (i) because such
24 employee has made a complaint to his or her employer, or to the commis-
25 sioner or his or her authorized representative, or to the attorney
26 general or any other person, that the employer has engaged in conduct
27 that the employee, reasonably and in good faith, believes violates any
28 provision of this chapter, or any order issued by the commissioner (ii)
29 because such employer or person believes that such employee has made a
30 complaint to his or her employer, or to the commissioner or his or her
31 authorized representative, or to the attorney general, or to any other
32 person that the employer has violated any provision of this chapter, or
33 any order issued by the commissioner (iii) because such employee has
34 caused to be instituted or is about to institute a proceeding under or
35 related to this chapter, or (iv) because such employee has provided
36 information to the commissioner or his or her authorized representative
37 or the attorney general, or (v) because such employee has testified or
38 is about to testify in an investigation or proceeding under this chap-
39 ter, or (vi) because such employee has otherwise exercised rights
40 protected under this chapter, or (vii) because the employer has received
41 an adverse determination from the commissioner involving the employee,
42 OR (VIII) BECAUSE SUCH EMPLOYEE HAS EXERCISED HIS OR HER RIGHT TO BE
43 ABSENT FROM EMPLOYMENT PURSUANT TO SECTION FIVE HUNDRED NINETEEN OF THE
44 JUDICIARY LAW BY REASON OF JURY SERVICE.

45 An employee complaint or other communication need not make explicit
46 reference to any section or provision of this chapter to trigger the
47 protections of this section.

48 (b) If after investigation the commissioner finds that an employer or
49 person has violated any provision of this section, the commissioner may,
50 by an order which shall describe particularly the nature of the
51 violation, assess the employer or person a civil penalty of not less
52 than one thousand nor more than ten thousand dollars. EACH ACT TAKEN IN
53 CONTRAVENTION OF A PROHIBITION CONTAINED IN THIS SECTION SHALL CONSTI-
54 TUTE A SEPARATE AND DISTINCT VIOLATION OF THIS SECTION, AND IN ASSESSING
55 ANY SUCH CIVIL PENALTY THE COMMISSIONER SHALL CONSIDER, IN ADDITION TO
56 THE NATURE OF THE VIOLATION, ALL PRIOR FINDINGS OF VIOLATIONS OF THE

1 PROVISIONS OF THIS SECTION BY THE EMPLOYER. The commissioner may also
2 order all appropriate relief including enjoining the conduct of any
3 person or employer; ordering payment of liquidated damages to the
4 employee by the person or entity in violation; and, where the person or
5 entity in violation is an employer ordering rehiring or reinstatement of
6 the employee to his or her former position or an equivalent position,
7 and an award of lost compensation or an award of front pay in lieu of
8 reinstatement and an award of lost compensation. Liquidated damages
9 shall be calculated as an amount not more than ten thousand dollars. The
10 commissioner may assess liquidated damages on behalf of every employee
11 aggrieved under this section, in addition to any other remedies permit-
12 ted by this section.

13 (c) THE PROVISIONS OF SECTION TWO HUNDRED THIRTEEN OF THIS ARTICLE
14 SHALL NOT APPLY TO THE VIOLATIONS SPECIFIED IN THIS SECTION.

15 (D) This section shall not apply to employees of the state or any
16 municipal subdivisions or departments thereof.

17 2. (a) [An] IN ADDITION TO THE CIVIL PENALTIES PROVIDED FOR UNDER
18 SUBDIVISION ONE OF THIS SECTION, AN employee may bring a civil action in
19 a court of competent jurisdiction against any employer or persons
20 alleged to have violated the provisions of this section. The court shall
21 have jurisdiction to restrain violations of this section, within two
22 years after such violation, regardless of the dates of employment of the
23 employee, and to order all appropriate relief, including enjoining the
24 conduct of any person or employer; ordering payment of liquidated
25 damages, costs and reasonable attorneys' fees to the employee by the
26 person or entity in violation; and, where the person or entity in
27 violation is an employer, ordering rehiring or reinstatement of the
28 employee to his or her former position with restoration of seniority or
29 an award of front pay in lieu of reinstatement, and an award of lost
30 compensation and damages, costs and reasonable attorneys' fees. Liqui-
31 dated damages shall be calculated as an amount not more than ten thou-
32 sand dollars. The court shall award liquidated damages to every employee
33 aggrieved under this section, in addition to any other remedies permit-
34 ted by this section. The statute of limitations shall be tolled from the
35 date an employee files a complaint with the commissioner or the commis-
36 sioner commences an investigation, whichever is earlier, until an order
37 to comply issued by the commissioner becomes final, or where the commis-
38 sioner does not issue an order, until the date on which the commissioner
39 notifies the complainant that the investigation has concluded. Investi-
40 gation by the commissioner shall not be a prerequisite to nor a bar
41 against a person bringing a civil action under this section.

42 (b) At or before the commencement of any action under this section,
43 notice thereof shall be served upon the attorney general by the employ-
44 ee.

45 3. Any employer or his or her agent, or the officer or agent of any
46 corporation, partnership, or limited liability company, or any other
47 person who violates subdivision one of this section shall be guilty of a
48 class B misdemeanor.

49 S 4. This act shall take effect on the thirtieth day after it shall
50 have become a law; provided, however, that if chapter 564 of the laws of
51 2010 shall not have taken effect on or before such date, section three
52 of this act shall take effect on the same date and in the same manner as
53 such chapter of the laws of 2010 takes effect.