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

8348--A

2011-2012 Regular Sessions

I N A S S E M B L Y

June 14, 2011

Introduced by M. of A. MENG -- Multi-Sponsored by -- M. of A. HEVESI -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to retaliatory personnel actions by employers

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

Section 1. This act shall be known and may be cited as the "wage and transparency act."

S 2. The labor law is amended by adding three new sections 742, 743 and 744 to read as follows:

S 742. OTHER PROHIBITED ACTS. IT SHALL BE AN UNLAWFUL EMPLOYMENT PRACTICE IN VIOLATION OF THIS ARTICLE FOR AN EMPLOYER TO DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST, COERCE, INTIMIDATE, THREATEN, OR INTERFERE WITH ANY EMPLOYEE OR ANY OTHER PERSON BECAUSE THE EMPLOYEE INQUIRED ABOUT, DISCLOSED, COMPARED, OR OTHERWISE DISCUSSED THE EMPLOYEE'S WAGES OR THE WAGES OF ANY OTHER EMPLOYEE, OR BECAUSE THE EMPLOYEE EXERCISED, ENJOYED, AIDED, OR ENCOURAGED ANY OTHER PERSON TO EXERCISE OR ENJOY ANY RIGHT GRANTED OR PROTECTED BY THIS ARTICLE.

S 743. REMEDIES AND ENFORCEMENT. (A) (1) IN ANY ACTION IN WHICH A COURT OR JURY FINDS THAT AN EMPLOYER HAS ENGAGED IN ACTS IN VIOLATION OF THIS ARTICLE, THE COURT OR JURY SHALL AWARD TO ANY AFFECTED EMPLOYEE OR EMPLOYEES MONETARY RELIEF, INCLUDING BACK PAY IN AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE EMPLOYEE'S ACTUAL EARNINGS AND WHAT THE EMPLOYEE WOULD HAVE EARNED BUT FOR THE EMPLOYER'S UNLAWFUL PRACTICES, AND AN ADDITIONAL AMOUNT IN COMPENSATORY AND PUNITIVE DAMAGES, AS APPROPRIATE.

(2) IN ANY ACTION IN WHICH A COURT OR JURY FINDS THAT AN EMPLOYER HAS ENGAGED IN ACTS IN VIOLATION OF THIS ARTICLE, THE COURT SHALL ENJOIN THE EMPLOYER FROM CONTINUING TO DISCRIMINATE AGAINST AFFECTED EMPLOYEES AND SHALL DIRECT THE EMPLOYER TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE;

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

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AND MAY ORDER THE EMPLOYER TO TAKE SUCH ADDITIONAL AFFIRMATIVE STEPS AS ARE NECESSARY, INCLUDING REINSTATEMENT OR RECLASSIFICATION OF AFFECTED WORKERS, TO ENSURE AN END TO UNLAWFUL DISCRIMINATION.

(3) IN ANY ACTION IN WHICH AN AFFECTED EMPLOYEE OR EMPLOYEES PREVAIL IN THEIR CLAIMS AGAINST EMPLOYERS, THE COURT SHALL, IN ADDITION TO ANY JUDGMENT AWARDED TO THE PLAINTIFFS, ALLOW A REASONABLE ATTORNEY'S FEE, REASONABLE EXPERT WITNESS FEES, AND OTHER COSTS OF THE ACTION TO BE PAID BY THE EMPLOYER.

(B) (1) AN ACTION TO RECOVER THE DAMAGES OR EQUITABLE RELIEF PRESCRIBED IN SUBDIVISION (A) OF THIS SECTION MAY BE MAINTAINED AGAINST ANY EMPLOYER IN ANY COURT OF COMPETENT JURISDICTION BY ANY ONE OR MORE EMPLOYEES OR THEIR REPRESENTATIVE FOR OR ON BEHALF OF:

(A) THE EMPLOYEES; OR

(B) THE EMPLOYEES AND OTHER EMPLOYEES SIMILARLY SITUATED.

(2) (A) THE DEPARTMENT SHALL RECEIVE, INVESTIGATE, AND ATTEMPT TO RESOLVE COMPLAINTS OF VIOLATIONS OF THIS ARTICLE.

(B) IN THE EVENT THE DEPARTMENT IS UNABLE TO REACH A VOLUNTARY RESOLUTION OF A COMPLAINT FILED UNDER THIS ARTICLE, THE DEPARTMENT MAY BRING AN ACTION IN ANY COURT OF COMPETENT JURISDICTION TO RECOVER THE EQUITABLE AND MONETARY RELIEF DESCRIBED IN SUBDIVISION (A) OF THIS SECTION.

(C) ANY SUMS RECOVERED BY THE DEPARTMENT PURSUANT TO THIS PARAGRAPH SHALL BE PAID DIRECTLY TO EACH EMPLOYEE AFFECTED BY THE EMPLOYER'S UNLAWFUL ACTS.

S 744. REGULATIONS. THE DEPARTMENT SHALL PRESCRIBE SUCH REGULATIONS AS ARE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE NOT LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

S 3. Paragraph (d) of subdivision 4 and subdivision 5 of section 740 of the labor law, paragraph (d) of subdivision 4 as added by chapter 24 of the laws of 2002 and subdivision 5 as added by chapter 660 of the laws of 1984, are amended to read as follows:

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this subdivision, a health care employee who has been the subject of a retaliatory action by a health care employer in violation of section seven hundred forty-one of this article may institute a civil action in a court of competent jurisdiction for relief as set forth in [subdivision five of this] section SEVEN HUNDRED FORTY-THREE OF THIS ARTICLE within two years after the alleged retaliatory personnel action was taken. In addition to the relief set forth in that subdivision, the court, in its discretion, based upon a finding that the employer acted in bad faith in the retaliatory action, may assess the employer a civil penalty of an amount not to exceed ten thousand dollars, to be paid to the improving quality of patient care fund, established pursuant to section ninety-seven-aaaa of the state finance law.

[5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:

(a) an injunction to restrain continued violation of this section;

(b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration; and

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees.]

S 4. Nothing in this act shall be interpreted or applied so as to create any power or duty in conflict with federal law.

S 5. If any provision of this act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the act, which can be given effect without the invalid provision, or application, and to this end the provisions of this act are declared severable.

S 6. This act shall take effect on the ninetieth day after it shall have become a law; provided that the commissioner of labor shall promulgate rules and regulations necessary to effectuate the provisions of this act prior to such effective date.