

2419

2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

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

AN ACT to amend the labor law, in relation to enacting the "public employee safety enforcement 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 "public  
2 employee safety enforcement act".  
3 S 2. Paragraphs a, c and d of subdivision 6 of section 27-a of the  
4 labor law, paragraph a as amended by chapter 190 of the laws of 1990,  
5 paragraph c as added by chapter 729 of the laws of 1980 and paragraph d  
6 as amended by chapter 145 of the laws of 1993, are amended to read as  
7 follows:  
8 a. If the commissioner determines that an employer has violated a  
9 provision of this section, or a safety or health standard or regulation  
10 promulgated under this section, he or she shall with reasonable prompt-  
11 ness issue to the employer an order to comply which shall describe  
12 particularly the nature of the violation including a reference to the  
13 provision of this section, standard, regulation or order alleged to have  
14 been violated, shall fix a reasonable time for compliance and may estab-  
15 lish the penalty to be assessed for failure to correct the violation by  
16 the time fixed for compliance. An employer who fails to correct a non-  
17 serious violation by the time fixed for compliance may be assessed a  
18 civil penalty of up to fifty dollars per day until the violation is  
19 corrected. An employer who fails to correct a serious violation by the  
20 time fixed for compliance may be assessed a civil penalty of up to two  
21 hundred dollars per day until the violation is corrected. CIVIL PENAL-  
22 TIES FOR AN EMPLOYER FOUND TO BE A WILLFUL OR REPEAT VIOLATOR MAY BE  
23 ASSESSED FOR FAILURE TO CORRECT THE VIOLATION BY THE TIME FIXED FOR  
24 COMPLIANCE IN AN AMOUNT UP TO THREE HUNDRED DOLLARS PER DAY, UNTIL THE  
25 VIOLATION IS CORRECTED. ANY CIVIL PENALTIES ASSESSED PURSUANT TO THIS  
26 SUBDIVISION SHALL BE PAID AND DEPOSITED INTO THE STATE SCHOOL  
27 CONSTRUCTION FUND. Pursuant to section 18(k) of the United States Occu-  
28 pational Safety and Health Act of 1970 (Public Law[, ] 91-596), a serious

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

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1 violation shall be deemed to exist in a place of employment if there is  
2 a substantial probability that death or serious physical harm could  
3 result from a condition which exists, or from one or more practices,  
4 means, methods, operations, or processes which have been adopted or are  
5 in use, in such place of employment unless the employer did not, and  
6 could not with the exercise of reasonable diligence, know of the pres-  
7 ence of the violation. A non-serious violation shall be defined as any  
8 violation that does not fall under the definition of serious violation.  
9 FOR PURPOSES OF THIS ARTICLE, AN EMPLOYER SHALL HAVE COMMITTED A "WILL-  
10 FUL" VIOLATION IF:

11 (I) THE EMPLOYER WAS AWARE OF THE REQUIREMENTS OF THIS ARTICLE OR THE  
12 EXISTENCE OF THE APPLICABLE STANDARD OR REGULATION, AND WAS ALSO AWARE  
13 OF A CONDITION OR PRACTICE IN VIOLATION OF THAT REQUIREMENT; OR

14 (II) AT THE TIME THE EMPLOYER COMMITTED THE VIOLATION, THE EMPLOYER  
15 WAS NOT AWARE OF ANY LEGAL REQUIREMENT BUT WAS AWARE THAT A CONDITION OR  
16 PRACTICE WAS HAZARDOUS TO THE SAFETY OR HEALTH OF EMPLOYEES.

17 AN EMPLOYER SHALL HAVE COMMITTED A "REPEAT" VIOLATION IF THE EMPLOYER  
18 HAD BEEN ISSUED AN ORDER TO COMPLY PREVIOUSLY FOR A SUBSTANTIALLY SIMI-  
19 LAR VIOLATION AT THE SAME SITE AND NO APPEAL OR OTHER PROCEEDING FOR  
20 REVIEW PROVIDED FOR IN THIS ARTICLE SHALL THEN BE PENDING AND THE TIME  
21 FOR TAKING THEREOF SHALL HAVE EXPIRED.

22 The commissioner shall not assess a penalty against an employer for  
23 failure to correct a violation of a standard which is the subject of an  
24 application for a PERMANENT OR temporary order granting a variance, or a  
25 violation OF A STANDARD which is the subject of a petition [to modify an  
26 order to comply] FOR MODIFICATION OF THE ABATEMENT DATE, provided howev-  
27 er, that upon issuance by the commissioner of a determination denying  
28 such variance or petition to modify, or upon expiration of a temporary  
29 variance or modified compliance period, the time fixed for compliance  
30 shall recommence and the employer become liable for the penalties  
31 provided herein.

32 c. Any employer, or other party affected by a determination of the  
33 [industrial] commissioner issued pursuant to this section may petition  
34 the industrial board of appeals for review of such determination in  
35 accordance with section one hundred one of this chapter. Judicial review  
36 of the decision of the industrial board of appeals may be obtained by  
37 any party affected by such decision by commencing a proceeding pursuant  
38 to article seventy-eight of the civil practice law and rules within  
39 sixty days after such decision is issued.

40 d. If the time for compliance with an order of the commissioner issued  
41 pursuant to this section has elapsed, and the employer has not complied  
42 with the provisions of the order, the commissioner shall seek judicial  
43 enforcement of such order by commencing a proceeding pursuant to article  
44 seventy-eight of the civil practice law and rules. Where an employer has  
45 complied with an order in all respects other than the payment of a  
46 penalty imposed pursuant to this subdivision, the commissioner may file  
47 with the county clerk of the county where the employer has its place of  
48 business the order of the commissioner [continuing] CONTAINING the  
49 amount of civil penalty found to be due. The filing of such order shall  
50 have the full force and effect of a judgment duly docketed in the office  
51 of such clerk. The order or decision may be enforced by and in the same  
52 manner, and with like effect, as that prescribed by the civil practice  
53 law and rules for the enforcement of a money judgment.

54 S 3. This act shall take effect immediately and shall apply to all  
55 violations which occur on or after such date.