

5489

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 22, 2011

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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.

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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.