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

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:

Section 1. Section 519 of the judiciary law, as added by chapter 85 of the laws of 1995, is amended to read as follows:

S 519. Right of juror to be absent from employment. Any person who is summoned to serve as a juror under the provisions of this article and who notifies his or her employer to that effect prior to the commencement of a term of service shall not, on account of absence from employment by reason of such jury service, be subject to discharge [or], penalty, OR DISCRIMINATION IN ANY OTHER MANNER. An employer may, however, withhold wages of any such employee serving as a juror during the period of such service; provided that an employer who employs more than ten employees shall not withhold the first forty dollars of such juror's daily wages during the first three days of jury service. Withholding of wages in accordance with this section shall not be deemed a penalty OR DISCRIMINATION IN ANY OTHER MANNER. Violation of this section shall constitute a criminal contempt of court punishable pursuant to section seven hundred fifty of this chapter AND SHALL ALSO CONSTITUTE A VIOLATION OF SECTION TWO HUNDRED FIFTEEN OF THE LABOR LAW AND BE SUBJECT 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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S 2. Paragraph 7 of subdivision A of section 750 of the judiciary law, as amended by chapter 823 of the laws of 1982, is amended to read as follows:

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

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

S 215. [Penalties] CIVIL PENALTIES and civil action; prohibited retaliation. 1. (a) No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee (i) because such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general or any other person, that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter, or any order issued by the commissioner (ii) because such employer or person believes that such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general, or to any other person that the employer has violated any provision of this chapter, or any order issued by the commissioner (iii) because such employee has caused to be instituted or is about to institute a proceeding under or related to this chapter, or (iv) because such employee has provided information to the commissioner or his or her authorized representative or the attorney general, or (v) because such employee has testified or is about to testify in an investigation or proceeding under this chapter, or (vi) because such employee has otherwise exercised rights protected under this chapter, or (vii) because the employer has received an adverse determination from the commissioner involving the employee, OR (VIII) BECAUSE SUCH EMPLOYEE HAS EXERCISED HIS OR HER RIGHT TO BE ABSENT FROM EMPLOYMENT PURSUANT TO SECTION FIVE HUNDRED NINETEEN OF THE JUDICIARY LAW BY REASON OF JURY SERVICE.

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

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

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

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

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

2. (a) [An] IN ADDITION TO THE CIVIL PENALTIES PROVIDED FOR UNDER SUBDIVISION ONE OF THIS SECTION, AN employee may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated the provisions of this section. The court shall have jurisdiction to restrain violations of this section, within two years after such violation, regardless of the dates of employment of the employee, and to order all appropriate relief, including enjoining the conduct of any person or employer; ordering payment of liquidated damages, costs and reasonable attorneys' fees to the employee by the person or entity in violation; and, where the person or entity in violation is an employer, ordering rehiring or reinstatement of the employee to his or her former position with restoration of seniority or an award of front pay in lieu of reinstatement, and an award of lost compensation and damages, costs and reasonable attorneys' fees. Liquidated damages shall be calculated as an amount not more than ten thousand dollars. The court shall award liquidated damages to every employee aggrieved under this section, in addition to any other remedies permitted by this section. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this section.

(b) At or before the commencement of any action under this section, notice thereof shall be served upon the attorney general by the employee.

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

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