

4065

2011-2012 Regular Sessions

I N S E N A T E

March 16, 2011

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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.
19 S 2. Paragraph 7 of subdivision A of section 750 of the judiciary law,
20 as amended by chapter 823 of the laws of 1982, is amended to read as
21 follows:
22 7. Wilful failure to obey any mandate, process, or notice issued
23 pursuant to [articles] ARTICLE sixteen[, seventeen, eighteen, eighteen-a

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

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

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

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

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

43 (b) If after investigation the commissioner finds that an employer or
44 person has violated any provision of this section, the commissioner may,
45 by an order which shall describe particularly the nature of the
46 violation, assess the employer or person a civil penalty of not less
47 than one thousand nor more than ten thousand dollars. EACH ACT TAKEN IN
48 CONTRAVENTION OF A PROHIBITION CONTAINED IN THIS SECTION SHALL CONSTI-
49 TUTE A SEPARATE AND DISTINCT VIOLATION OF THIS SECTION, AND IN ASSESSING
50 ANY SUCH CIVIL PENALTY THE COMMISSIONER SHALL CONSIDER, IN ADDITION TO
51 THE NATURE OF THE VIOLATION, ALL PRIOR FINDINGS OF VIOLATIONS OF THE
52 PROVISIONS OF THIS SECTION BY THE EMPLOYER. The commissioner may also
53 order all appropriate relief including enjoining the conduct of any
54 person or employer; ordering payment of liquidated damages to the
55 employee by the person or entity in violation; and, where the person or
56 entity in violation is an employer ordering rehiring or reinstatement of

1 the employee to his or her former position or an equivalent position,
2 and an award of lost compensation or an award of front pay in lieu of
3 reinstatement and an award of lost compensation. Liquidated damages
4 shall be calculated as an amount not more than ten thousand dollars. The
5 commissioner may assess liquidated damages on behalf of every employee
6 aggrieved under this section, in addition to any other remedies permit-
7 ted by this section.

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

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

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

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

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

44 S 4. This act shall take effect on the thirtieth day after it shall
45 have become a law; provided, however, that if chapter 564 of the laws of
46 2010 shall not have taken effect on or before such date, section three
47 of this act shall take effect on the same date and in the same manner as
48 such chapter of the laws of 2010 takes effect.