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

3090

2013-2014 Regular Sessions

I N A S S E M B L Y

January 23, 2013

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

AN ACT to amend the labor law, in relation to annual reporting of wage information

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

Section 1. Paragraph (e) of subdivision 1 of section 195 of the labor law, as added by chapter 564 of the laws of 2010, is amended and a new paragraph (f) is added to read as follows:

(e) The commissioner shall have discretion to waive or alter requirements of paragraph (a) of this subdivision for temporary help firms as defined in section nine hundred sixteen of this chapter[.];

(F) THE COMMISSIONER SHALL HAVE DISCRETION TO WAIVE THE REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION TO PROVIDE EMPLOYEES WITH ANNUAL NOTICES ON OR BEFORE FEBRUARY FIRST OF EACH SUBSEQUENT YEAR OF EMPLOYMENT. SUCH WAIVERS SHALL BE LIMITED TO EMPLOYERS OR CLASSIFICATIONS OF EMPLOYERS DEEMED BY THE COMMISSIONER TO POSE A LESSER RISK OF UNDERPAYMENT OF WAGES, AND SHALL INCLUDE AS A CONDITION A REQUIREMENT THAT ANY EMPLOYEE WHO SUBMITS A WRITTEN REQUEST SHALL BE PROVIDED WITH ONE COPY OF A NOTICE AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION APPLICABLE TO SUCH SUBSEQUENT YEAR OF EMPLOYMENT.

S 2. Subdivisions 1-b and 1-d of section 198 of the labor law, as added by chapter 564 of the laws of 2010, are amended to read as follows:

1-b. If any employee is not provided within ten business days of his or her first day of employment a notice as required by subdivision one of section one hundred ninety-five of this article, he or she may recover in a civil action damages of fifty dollars for each work week that the violations occurred or continue to occur, but not to exceed a total of two thousand five hundred dollars, together with costs and reasonable attorney's fees. The court may also award other relief,

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

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including injunctive and declaratory relief, that the court in its discretion deems necessary or appropriate.

On behalf of any employee not provided a notice as required by subdivision one of section one hundred ninety-five of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and as part of such legal action, in addition to any other remedies and penalties otherwise available under this article, the commissioner may assess against the employer damages of fifty dollars for each work week that the violations occurred or continue to occur. In any action or administrative proceeding to recover damages for violation of [paragraph (d) of] subdivision one of section one hundred ninety-five of this article, it shall be an affirmative defense that (i) the employer made complete and timely payment of all wages due pursuant to this article or article nineteen or article nineteen-A of this chapter to the employee who was not provided notice as required by subdivision one of section one hundred ninety-five of this article or (ii) the employer reasonably believed in good faith that it was not required to provide the employee with notice pursuant to subdivision one of section one hundred ninety-five of this article.

1-d. If any employee is not provided a statement or statements as required by subdivision three of section one hundred ninety-five of this article, he or she shall recover in a civil action damages of one hundred dollars for each work week that the violations occurred or continue to occur, but not to exceed a total of twenty-five hundred dollars, together with costs and reasonable attorney's fees. The court may also award other relief, including injunctive and declaratory relief, that the court in its discretion deems necessary or appropriate.

On behalf of any employee not provided a statement as required by subdivision three of section one hundred ninety-five of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and as part of such legal action, in addition to any other remedies and penalties otherwise available under this article, the commissioner may assess against the employer damages of one hundred dollars for each work week that the violations occurred or continue to occur. In any action or administrative proceeding to recover damages for violation of subdivision three of section one hundred ninety-five of this article, it shall be an affirmative defense that (i) the employer made complete and timely payment of all wages due pursuant to this article or [articles] ARTICLE nineteen or nineteen-A of this chapter to the employee who was not provided statements as required by subdivision three of section one hundred ninety-five of this article or (ii) the employer reasonably believed in good faith that it was not required to provide the employee with statements pursuant to [paragraph (e) of] subdivision [one] THREE of section one hundred ninety-five of this article.

S 3. This act shall take effect immediately.