

5262

2013-2014 Regular Sessions

I N A S S E M B L Y

February 21, 2013

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

AN ACT to amend the labor law, in relation to unjust dismissal

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

1 Section 1. The labor law is amended by adding a new article 17-A to
2 read as follows:

3 ARTICLE 17-A
4 UNJUST DISMISSAL ACT

5 SECTION 480. DEFINITIONS.

6 481. DISMISSAL PROCEDURE.

7 482. FILING OF COMPLAINT.

8 483. APPOINTMENT OF ARBITRATOR.

9 484. HEARING.

10 485. REMEDY.

11 486. NOTICE.

12 S 480. DEFINITIONS. WHEN USED IN THIS ARTICLE:

13 1. THE TERM "EMPLOYEE" MEANS ANY PERSON WHO AT THE TIME OF HIS OR HER
14 DISMISSAL HAS BEEN EMPLOYED FOR NOT LESS THAN FIFTEEN HOURS A WEEK OR
15 TWELVE CONSECUTIVE MONTHS FOR AN EMPLOYER. SUCH TERM SHALL NOT INCLUDE:

16 (A) A MANAGERIAL EMPLOYEE OR A PERSON WHO HAS A WRITTEN EMPLOYMENT
17 CONTRACT FOR NOT LESS THAN TWO YEARS AND WHOSE CONTRACT REQUIRES NOT
18 LESS THAN SIX MONTHS NOTICE OF TERMINATION; OR

19 (B) A MEMBER OF A GROUP OF EMPLOYEES SUBJECT TO A COLLECTIVE BARGAIN-
20 ING AGREEMENT WHICH INCLUDES BINDING ARBITRATION AS PART OF THE CONTRACT
21 GRIEVANCE PROCESS.

22 2. THE TERM "EMPLOYER" MEANS ANY PERSON OR ORGANIZATION THAT EMPLOYS
23 AT LEAST FIFTEEN PERSONS.

24 3. THE TERM "UNJUST DISMISSAL" SHALL MEAN ANY DISMISSAL OF AN EMPLOYEE
25 BY AN EMPLOYER WITHOUT CAUSE, OR IF ANY OF THE FOLLOWING WAS A DETERMIN-
26 ING FACTOR IN SUCH DISMISSAL:

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

LBD00704-01-3

1 (A) THE EMPLOYEE'S AGE, SEX, RACE, RELIGION OR NATIONAL ORIGIN;

2 (B) THE EMPLOYEE'S EXERCISE OF RIGHTS GUARANTEED BY THE FEDERAL
3 CONSTITUTION;

4 (C) THE EMPLOYEE'S REFUSAL TO ACT IN A MANNER THAT WOULD VIOLATE
5 PUBLIC POLICY AS EXPRESSED IN LAW OR ADMINISTRATIVE REGULATIONS;

6 (D) THE EMPLOYEE'S OFF-DUTY CONDUCT WHICH BEARS NO REASONABLE
7 RELATIONSHIP TO THE EMPLOYEE'S JOB PERFORMANCE; OR

8 (E) THE EMPLOYEE'S REFUSAL TO PERFORM ANY TASK WHICH POSES A THREAT OF
9 SERIOUS INJURY OR DEATH.

10 S 481. DISMISSAL PROCEDURE. ANY EMPLOYER WHO DISCHARGES AN EMPLOYEE
11 SHALL GIVE SUCH EMPLOYEE WRITTEN NOTICE WITHIN FIFTEEN DAYS OF DISMISSAL
12 OF ALL REASONS FOR HIS OR HER DISMISSAL AND OF HIS OR HER RIGHT TO
13 REQUEST ARBITRATION PURSUANT TO THIS ARTICLE.

14 S 482. FILING OF COMPLAINT. 1. IF AN EMPLOYER FAILS TO PROVIDE A
15 DISCHARGED EMPLOYEE WITH A WRITTEN NOTICE OF THE REASONS FOR DISMISSAL
16 PURSUANT TO SECTION FOUR HUNDRED EIGHTY-ONE OF THIS ARTICLE, SUCH
17 DISCHARGED EMPLOYEE MAY FILE A WRITTEN COMPLAINT WITH THE EMPLOYMENT
18 RELATIONS BOARD, AS CREATED BY SECTION SEVEN HUNDRED TWO OF THIS CHAP-
19 TER, NOT LESS THAN FORTY-FIVE DAYS NOR MORE THAN ONE HUNDRED DAYS AFTER
20 DISCHARGE OF THE EMPLOYEE.

21 2. ANY EMPLOYEE WHO BELIEVES HE OR SHE WAS UNJUSTLY DISMISSED MAY FILE
22 A WRITTEN COMPLAINT WITH THE STATE MEDIATION BOARD NOT LATER THAN ONE
23 HUNDRED DAYS AFTER THE RECEIPT OF THE WRITTEN NOTICE OF DISMISSAL.

24 THERE SHALL BE A TWENTY-FIVE DOLLAR FILING FEE CHARGED FOR ANY
25 COMPLAINT FILED PURSUANT TO THIS SECTION.

26 S 483. APPOINTMENT OF ARBITRATOR. 1. UPON THE FILING OF A COMPLAINT
27 PURSUANT TO SECTION FOUR HUNDRED EIGHTY-TWO OF THIS ARTICLE THE STATE
28 MEDIATION BOARD SHALL SELECT WITHIN TEN DAYS OF THE RECEIPT OF A
29 COMPLAINT THREE IMPARTIAL, COMPETENT AND REPUTABLE ARBITRATORS TO BE
30 NOMINEES TO ARBITRATE SUCH COMPLAINT. THE NAMES OF THE THREE ARBITRATOR
31 NOMINEES SHALL BE DELIVERED TO BOTH THE EMPLOYER AND THE EMPLOYEE. AFTER
32 RECEIPT OF THE LIST OF NOMINEES, THE EMPLOYER AND EMPLOYEE SHALL HAVE
33 FIVE DAYS DURING WHICH THEY MAY EACH OBJECT TO ONE OF THE NOMINEES
34 SELECTED BY THE STATE MEDIATION BOARD. THE STATE MEDIATION BOARD SHALL
35 SELECT AN ARBITRATOR FROM AMONG THE NOMINEES WHICH HAVE NOT BEEN
36 OBJECTED TO.

37 2. THE ARBITRATOR SHALL SET THE TIME, DATE AND PLACE FOR THE HEARING
38 OF THE FILED COMPLAINT. SUCH HEARING SHALL OCCUR NOT LESS THAN FIFTY
39 DAYS AFTER THE FILING OF THE COMPLAINT AND THE PARTIES SHALL BE NOTIFIED
40 OF THE TIME, DATE AND PLACE OF THE HEARING AT LEAST TWENTY-FIVE DAYS
41 PRIOR TO THE HEARING DATE. FAILURE TO APPEAR AT THE HEARING BY THE
42 EMPLOYEE OR EMPLOYER SHALL RESULT IN DISMISSAL OR DEFAULT, RESPECTIVELY,
43 UNLESS THERE IS A JUSTIFIABLE EXCUSE.

44 S 484. HEARING. 1. THE PROCEEDINGS BEFORE THE ARBITRATOR SHALL BE
45 INFORMAL. THE ARBITRATOR MAY CONDUCT THE HEARING IN WHATEVER MANNER HE
46 OR SHE REASONABLY BELIEVES WILL PERMIT THE FULL AND MOST EXPEDITIOUS
47 PRESENTATION OF THE EVIDENCE AND ARGUMENTS OF THE EMPLOYER AND EMPLOYEE.
48 THE RULES OF EVIDENCE OF PROOF SHALL NOT APPLY.

49 2. THE BURDEN OF PROOF SHALL REST WITH THE EMPLOYER.

50 S 485. REMEDY. 1. IF THE ARBITRATOR DETERMINES THAT THE EMPLOYEE'S
51 DISMISSAL WAS UNJUST, THE ARBITRATOR MAY ORDER REINSTATEMENT AND MAY
52 AWARD THE EMPLOYEE LOST EARNINGS.

53 2. THE RESPECTIVE PARTIES SHALL BEAR ALL EXPENSES ACCRUING FROM
54 OUTSIDE ASSISTANCE. HOWEVER, IF THE EMPLOYEE'S CLAIM IS UPHELD ALL
55 EXPENSES SHALL BE PAID BY THE EMPLOYER.

1 3. IF THE ARBITRATOR FINDS THAT THE EMPLOYEE'S CLAIM IS FRIVOLOUS,
2 VEXATIOUS OR MADE FOR THE PURPOSES OF HARASSMENT, THE EMPLOYEE SHALL BE
3 LIABLE FOR ALL OF THE EMPLOYER'S REASONABLE COSTS.

4 S 486. NOTICE. ALL EMPLOYERS SHALL CONSPICUOUSLY POST A COPY OF THIS
5 ARTICLE OR A SUMMARY THEREOF IN AN AREA ACCESSIBLE TO ALL EMPLOYEES.
6 FAILURE TO POST SUCH NOTICE SHALL CONSTITUTE GROUNDS FOR AN UNJUST
7 DISMISSAL COMPLAINT.

8 S 2. This act shall take effect on the sixtieth day after it shall
9 have become a law provided, however, the commissioner of labor shall
10 immediately promulgate all rules and regulations necessary to carry out
11 the provisions of this act.