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

6818

2013-2014 Regular Sessions

I N A S S E M B L Y

April 19, 2013

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

AN ACT to amend the labor law, in relation to enacting the "public employee safety and health reform act"

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

Section 1. This act shall be known and may be cited as the "public employee safety and health reform act."

S 2. Subdivision 5 of section 27-a of the labor law, as added by chapter 729 of the laws of 1980 and paragraph e as amended by chapter 86 of the laws of 1984, is amended to read as follows:

5. Inspections. a. Any employee or representative of employees who believes that a violation of a safety or health standard exists, or that an imminent danger exists, may request an inspection by giving notice to the commissioner of such violation or danger. Such notice and request shall be in writing, shall set forth with reasonable particularity the grounds for the notice, shall be signed by such employee or representative of employees, and a copy shall be provided by the commissioner to the employer or the person in charge no later than the time of inspection, except that on the request of the person giving such notice, his name and the names of individual employees or representatives of employees shall be withheld. Such inspections shall be made forthwith.

b. A representative of the employer and an authorized employee representative shall be given the opportunity to accompany the commissioner during an inspection for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

c. AN AUTHORIZED EMPLOYEE REPRESENTATIVE SHALL BE GIVEN THE OPPORTUNITY TO PARTICIPATE IN AN INTERVIEW OF AN EMPLOYEE BY THE COMMISSIONER UPON THE REQUEST OF THE EMPLOYEE WHO IS THE SUBJECT OF SUCH INTERVIEW.

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

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WHERE THERE IS NO AUTHORIZED EMPLOYEE REPRESENTATIVE, THE EMPLOYEE WHO IS THE SUBJECT OF THE INTERVIEW MAY DESIGNATE ANOTHER EMPLOYEE TO PARTICIPATE IN THE INTERVIEW.

D. The authority of the commissioner to inspect a premises pursuant to such an employee complaint shall not be limited to the alleged violation contained in such complaint. The commissioner may inspect any other area of the premises in which he has reason to believe that a violation of this section exists.

[d.] E. No employee who accompanies the commissioner on an inspection OR PARTICIPATES IN AN INTERVIEW BY THE COMMISSIONER shall suffer any reduction in wages.

[e.] F. The commissioner may, upon his own initiative, conduct an inspection of any premises occupied by a public employer if he has reason to believe that a violation of this section has occurred or if he has a general administrative plan for the enforcement of this section, including general schedule inspections, which provide a rational administrative basis for such inspecting. Within ninety days of enactment of this paragraph the commissioner shall publish the general administrative plan and shall adopt regulations on the conduct of inspections in locker rooms and other areas involving the personal property and privacy rights of public employees.

[f.] G. Any information obtained by the commissioner under this section shall be obtained with a minimum burden upon the employers.

S 3. Paragraph a of subdivision 6 of section 27-a of the labor law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

a. If the commissioner determines that an employer has violated a provision of this section, or a safety or health standard or regulation promulgated under this section, he or she shall [with reasonable promptness] WITHIN THIRTY DAYS OF THE DATE OF INSPECTION issue to the employer an order to comply which shall describe particularly the nature of the violation including a reference to the provision of this section, standard, regulation or order alleged to have been violated, shall fix a reasonable time for compliance and may establish the penalty OR PENALTIES to be assessed for failure to correct the violation by the time fixed for compliance.

(1) An employer who fails to correct a non-serious violation by the time fixed for compliance may be assessed a civil penalty of up to fifty dollars per day until the violation is corrected. An employer who fails to correct a serious violation by the time fixed for compliance may be assessed a civil penalty of up to two hundred dollars per day until the violation is corrected. [Pursuant to section 18(k) of the United States Occupational Safety and Health Act of 1970 (Public Law, 91-596), a] A serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. A non-serious violation shall be defined as any violation that does not fall under the definition of serious violation. The commissioner shall not assess a penalty against an employer for failure to correct a violation of a standard which is the subject of an application for a temporary order granting a variance or a violation which is the subject of a petition to modify THE ABATEMENT DATE SET FORTH IN an order to comply, provided however, that upon issu-

ance by the commissioner of a determination denying such variance or petition to modify, or upon expiration of a temporary variance or modified compliance period, the time fixed for compliance shall recommence and the employer become liable for the penalties provided herein.

(2) IN ADDITION TO ANY OTHER PENALTY TO BE ASSESSED IN ACCORDANCE WITH PARAGRAPHS ONE, THREE OR FOUR OF THIS SUBDIVISION, AN EMPLOYER WHO COMMITS A WILLFUL VIOLATION SHALL BE ASSESSED A CIVIL PENALTY OF UP TO SEVENTY THOUSAND DOLLARS, BUT NOT LESS THAN FIVE THOUSAND DOLLARS, FOR EACH SUCH VIOLATION UPON ISSUANCE OF THE VIOLATION. A PENALTY ISSUED PURSUANT TO THIS PARAGRAPH SHALL APPLY INSTANTLY AND SHALL NOT BE CONTINGENT ON THE EMPLOYER'S FAILURE TO ABATE THE VIOLATION. FOR PURPOSES OF THIS SECTION, A WILLFUL VIOLATION SHALL BE DEEMED TO EXIST IN A PLACE OF EMPLOYMENT WHEN AN EMPLOYER KNOWINGLY COMMITS A VIOLATION OR COMMITS WITH PLAIN INDIFFERENCE TO THE LAW. THE EMPLOYER KNOWS THAT WHAT HE OR SHE IS DOING CONSTITUTES A VIOLATION, IS AWARE THAT A HAZARDOUS CONDITION EXISTED, AND MADE NO REASONABLE EFFORT TO ELIMINATE IT.

(3) IN ADDITION TO ANY OTHER PENALTY TO BE ASSESSED IN ACCORDANCE WITH PARAGRAPHS ONE, TWO OR FOUR OF THIS SUBDIVISION, AN EMPLOYER WHO COMMITS A REPEAT VIOLATION SHALL BE ASSESSED A CIVIL PENALTY OF UP TO SEVENTY THOUSAND DOLLARS, BUT NOT LESS THAN FIVE THOUSAND DOLLARS, FOR EACH SUCH VIOLATION UPON ISSUANCE OF THE VIOLATION. A PENALTY ISSUED PURSUANT TO THIS PARAGRAPH SHALL APPLY INSTANTLY AND SHALL NOT BE CONTINGENT ON THE EMPLOYER'S FAILURE TO ABATE THE VIOLATION. A REPEAT VIOLATION IS A VIOLATION OF ANY STANDARD, REGULATION, OR RULE, OR ORDER WHERE, UPON REINSPECTION, A SUBSTANTIALLY SIMILAR VIOLATION EXISTS. TO BE THE BASIS OF A REPEAT VIOLATION, THE ORIGINAL CITATION MUST BE FINAL; A CITATION UNDER CONTEST MAY NOT SERVE AS THE BASIS FOR SUBSEQUENT REPEATED CITATION.

(4) IN ADDITION TO ANY OTHER PENALTY TO BE ASSESSED IN ACCORDANCE WITH PARAGRAPHS ONE, TWO OR THREE OF THIS SUBDIVISION, AN EMPLOYER WHO COMMITS A VIOLATION THAT IS THE PROXIMATE CAUSE OF A FATALITY SHALL BE ASSESSED A CIVIL PENALTY OF UP TO SEVENTY THOUSAND DOLLARS, BUT NOT LESS THAN FIVE THOUSAND DOLLARS, FOR EACH FATALITY RESULTING FROM THE VIOLATION. A PENALTY ISSUED PURSUANT TO THIS PARAGRAPH SHALL APPLY INSTANTLY AND SHALL NOT BE CONTINGENT ON THE EMPLOYER'S FAILURE TO ABATE THE VIOLATION.

S 4. Paragraph b of subdivision 10 of section 27-a of the labor law, as added by section 729 of the laws of 1980, is amended to read as follows:

b. Any employee who believes that he has been discharged, disciplined, or otherwise discriminated against by any person in violation of this subdivision may, within [thirty] ONE HUNDRED EIGHTY days after such violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as he deems appropriate, and shall, if requested withhold the name of the complainant from the employer. If upon such investigation, the commissioner determines that the provisions of this subdivision have been violated, he shall request the attorney general to bring an action in the supreme court against the person or persons alleged to have violated the provisions of this subdivision. In any such action the supreme court shall have jurisdiction, for cause shown, to restrain violations of this subdivision and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with all back pay.

S 5. Subdivision 12 of section 27-a of the labor law, as added by chapter 706 of the laws of 1990, is amended to read as follows:

12. The commissioner may initiate voluntary compliance programs, including, but not limited to, a public employee consultation program to provide on-site consultation to public employers desiring such services as an adjunct to the commissioner's inspections pursuant to this section. AN AUTHORIZED EMPLOYEE REPRESENTATIVE SHALL BE GIVEN THE OPPORTUNITY TO PARTICIPATE IN SUCH VOLUNTARY COMPLIANCE PROGRAMS. WHERE THERE IS NO AUTHORIZED EMPLOYEE REPRESENTATIVE, AN EMPLOYEE TAKING PART IN SUCH PROGRAM MAY DESIGNATE ANOTHER EMPLOYEE TO PARTICIPATE IN THE PROGRAM. Whenever an on-site consultation is performed under this subdivision, a report shall be issued of any findings of noncompliance with the regulations promulgated under this section and the report shall be made public.

S 6. This act shall take effect immediately and shall apply to all violations which occur on or after such date.