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

8106

2013-2014 Regular Sessions

I N A S S E M B L Y

June 19, 2013

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

AN ACT to amend the labor law, in relation to increased penalties for violations of wage payment provisions

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

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

(a) provide his or her employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring[, and on or before February first of each subsequent year of the employee's employment with the employer], a notice containing the following information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary. Each time the employer provides such notice to an employee, the employer shall obtain from the employee a signed and dated written acknowledgement, in English and in the primary language of the employee, of receipt of this notice, which the employer shall preserve and maintain for six years. Such acknowledgement shall include an affirmation by the employee that the employee accurately identified his or her primary language to the employer, and that the notice provided by the employer to such employee pursuant to this subdivision was in the language so identified

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

LBD11592-01-3

or otherwise complied with paragraph (c) of this subdivision, and shall conform to any additional requirements established by the commissioner with regard to content and form. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the notice must state the regular hourly rate and overtime rate of pay;

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] TWELVE thousand 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 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] TWO hundred FIFTY dollars for each work week that the violations occurred or continue to occur, but not to exceed a total of [twenty-five] TWELVE THOUSAND 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] TWO hundred 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 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 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 of section one hundred ninety-five of this article.

S 3. Section 218 of the labor law is amended by adding a new subdivision 5 to read as follows:

5. AN EMPLOYER SIMILAR IN OPERATION OR OWNERSHIP TO A PRIOR EMPLOYER WHICH HAD BEEN FOUND IN VIOLATION OF ARTICLE SIX, NINETEEN OR NINETEEN-A OF THIS CHAPTER, SHALL BE DEEMED THE SAME EMPLOYER FOR THE PURPOSES OF THIS SECTION IF THE EMPLOYEES OF THE NEW EMPLOYER ARE ENGAGED IN SUBSTANTIALLY THE SAME WORK IN SUBSTANTIALLY THE SAME WORKING CONDITIONS UNDER SUBSTANTIALLY THE SAME SUPERVISORS, OR IF THE SUBSEQUENT EMPLOYER HAS SUBSTANTIALLY THE SAME PRODUCTION PROCESS, PRODUCES SUBSTANTIALLY THE SAME PRODUCTS AND HAS SUBSTANTIALLY THE SAME BODY OF CUSTOMERS. SUCH SUBSEQUENT EMPLOYER SHALL CONTINUE TO BE SUBJECT TO THIS SECTION AND LIABLE FOR THE ACTS OF THE PRIOR EMPLOYER UNDER THIS SECTION.

S 4. Section 219 of the labor law is amended by adding a new subdivision 4 to read as follows:

4. AN EMPLOYER SIMILAR IN OPERATION AND OWNERSHIP TO A PRIOR EMPLOYER FOUND TO BE IN VIOLATION OF ARTICLE SIX, NINETEEN OR NINETEEN-A OF THIS CHAPTER, SHALL BE DEEMED THE SAME EMPLOYER FOR THE PURPOSES OF THIS SECTION IF THE EMPLOYEES OF THE SUBSEQUENT EMPLOYER ARE ENGAGED IN SUBSTANTIALLY THE SAME WORK IN SUBSTANTIALLY THE SAME WORKING CONDITIONS UNDER SUBSTANTIALLY THE SAME SUPERVISORS, OR IF THE NEW ENTITY HAS SUBSTANTIALLY THE SAME PRODUCTION PROCESS, PRODUCES SUBSTANTIALLY THE SAME PRODUCTS AND HAS SUBSTANTIALLY THE SAME BODY OF CUSTOMERS. SUCH A SUBSEQUENT EMPLOYER WILL CONTINUE TO BE SUBJECT TO THIS SECTION AND SHALL BE LIABLE FOR THE ACTS OF THE PRIOR EMPLOYER UNDER THIS SECTION.

S 5. This act shall take effect on the sixtieth day after it shall have become a law.