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

1267

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

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

AN ACT to amend the labor law, in relation to penalties for violations of wage payment provisions and contractor accountability; to amend chapter 537 of the laws of 2014 amending the labor law and other laws relating to increased penalties for violations of wage payment provisions and contractor accountability, in relation to the effective date of certain provisions thereof; and to repeal section 97-pppp of the state finance law relating to the wage theft prevention enforcement account

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

Section 1. Subdivision 1 of section 218 of the labor law, as amended by chapter 537 of the laws of 2014, is amended to read as follows:

1. If the commissioner determines that an employer has violated a provision of article six (payment of wages), article nineteen (minimum wage act), article nineteen-A (minimum wage standards and protective labor practices for farm workers), section two hundred twelve-a, section two hundred twelve-b, section one hundred sixty-one (day of rest) or section one hundred sixty-two (meal periods) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. A copy of such order shall be provided to any employee who has filed a complaint and any authorized representative of him or her. In addition to directing payment of wages, benefits or wage supplements found to be due, and liquidated damages in the amount of one hundred percent of unpaid wages, such order, if issued to an employer who previously has been found in violation of those provisions, rules or regulations, or to an employer whose violation is willful or egregious, shall direct payment to the commissioner of an additional sum as a civil penalty in an amount not to

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

LBD12006-01-5

exceed double the total amount of wages, benefits, or wage supplements found to be due. [Additionally, such order, if issued to an employer who previously has been found in violation of those provisions, rules or regulations, or to an employer whose violation is willful or egregious, shall direct such employer to report, by location, and for such period as the commissioner shall determine, (a) the number of permanent full-time employees, the number of temporary full-time employees, the number of permanent part-time employees, the number of temporary part-time employees, and the number of temporary staffing agency employees performing work for the employer; (b) the hourly rates of such employees reported in the following brackets: the state minimum wage to $9.99; $10.00 to $11.99; $12.00 to $14.99; and $15.00 or more; (c) the number of employees who regularly worked the following number of hours per week during the relevant calendar period: at least sixty; at least fifty but fewer than sixty; at least forty, but fewer than fifty; at least thirty-five but fewer than forty; at least thirty but fewer than thirty-five; at least twenty-five but fewer than thirty; at least twenty but fewer than twenty-five; at least ten but fewer than twenty; at least five but fewer than ten; fewer than five. No individual identifying information of such employees shall be reported or otherwise disclosed to the department. The department shall post the data collected on the department's website. For the purposes of this section, temporary employees shall be those employees who are hired for a period of sixty days or less during the relevant calendar year, full-time employees shall be those regularly working forty hours or more per week during the relevant calendar year, part-time employees shall be those working less than forty hours per week during the relevant calendar year.] In no case shall the order direct payment of an amount less than the total wages, benefits or wage supplements found by the commissioner to be due, plus the liquidated damages in the amount of one hundred percent of unpaid wages, the appropriate civil penalty, and interest at the rate of interest then in effect, as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment. Where the violation is for a reason other than the employer's failure to pay wages, benefits or wage supplements found to be due, the order shall direct payment to the commissioner of a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith basis of the employer to believe that its conduct was in compliance with the law, the gravity of the violation, the history of previous violations and, in the case of wages, benefits or supplements violations, the failure to comply with recordkeeping or other non-wage requirements.

Where there is a violation of section one hundred ninety-eight-b of this chapter, the order shall direct payment back to the employee of the amount of wages, supplements or other thing of value unlawfully received plus liquidated damages in the amount of one hundred percent of unpaid wages, and interest at the rate of interest then in effect, as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the payback, return, donation or contribution to the date of payment, and shall include such other relief as may be appropriate, including rehiring or reinstatement of the employee to his or her former position, back

wages, and restoration of seniority. In addition, the commissioner shall order payment of a civil penalty of at least twenty-five hundred dollars but not more than five thousand dollars per violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith basis of the employer to believe that its conduct was in compliance with the law, the gravity of the violation, AND the history of previous violations.

At the discretion of the commissioner, the commissioner shall have full authority to provide for inclusion of an automatic fifteen percent additional amount of damages to come due and owing upon expiration of ninety days from an order to comply becoming final. The commissioner shall provide written notice to the employer in the order to comply of this additional damage.

S 2. Section 219-c of the labor law is amended by adding a new subdivision 3 to read as follows:

3. WHERE AN ORDER IS ISSUED UNDER SECTION TWO HUNDRED EIGHTEEN OF THIS ARTICLE THAT ASSESSES A CIVIL PENALTY AGAINST AN EMPLOYER FOR A REPEATED, WILLFUL, OR EGREGIOUS VIOLATION, TO DIRECT SUCH EMPLOYER TO REPORT, BY LOCATION, AND TO POST ON THE DEPARTMENT'S WEBSITE, FOR SUCH PERIOD AS THE COMMISSIONER SHALL DETERMINE, (A) THE NUMBER OF PERMANENT FULL-TIME EMPLOYEES, THE NUMBER OF TEMPORARY FULL-TIME EMPLOYEES, THE NUMBER OF PERMANENT PART-TIME EMPLOYEES, THE NUMBER OF TEMPORARY PART-TIME EMPLOYEES, AND THE NUMBER OF TEMPORARY STAFFING AGENCY EMPLOYEES PERFORMING WORK FOR THE EMPLOYER; (B) THE HOURLY RATES OF SUCH EMPLOYEES REPORTED IN THE FOLLOWING BRACKETS: THE STATE MINIMUM WAGE TO $9.99; $10.00 TO $11.99; $12.00 TO $14.99; AND $15.00 OR MORE; (C) THE NUMBER OF EMPLOYEES WHO REGULARLY WORKED THE FOLLOWING NUMBER OF HOURS PER WEEK DURING THE RELEVANT CALENDAR PERIOD: AT LEAST SIXTY; AT LEAST FIFTY BUT FEWER THAN SIXTY; AT LEAST FORTY BUT FEWER THAN FIFTY; AT LEAST THIRTY-FIVE BUT FEWER THAN FORTY; AT LEAST THIRTY BUT FEWER THAN THIRTY-FIVE; AT LEAST TWENTY-FIVE BUT FEWER THAN THIRTY; AT LEAST TWENTY BUT FEWER THAN TWENTY-FIVE; AT LEAST TEN BUT FEWER THAN TWENTY; AT LEAST FIVE BUT FEWER THAN TEN; FEWER THAN FIVE. NO INDIVIDUAL IDENTIFYING INFORMATION OF SUCH EMPLOYEES SHALL BE REPORTED OR OTHERWISE DISCLOSED TO THE DEPARTMENT. FOR THE PURPOSES OF THIS SECTION "TEMPORARY EMPLOYEES" SHALL BE THOSE EMPLOYEES WHO ARE HIRED FOR A PERIOD OF SIXTY DAYS OR LESS DURING THE RELEVANT CALENDAR YEAR, FULL-TIME EMPLOYEES SHALL BE THOSE REGULARLY WORKING FORTY HOURS OR MORE PER WEEK DURING THE RELEVANT CALENDAR YEAR, PART-TIME EMPLOYEES SHALL BE THOSE WORKING LESS THAN FORTY HOURS PER WEEK DURING THE RELEVANT CALENDAR YEAR.

S 3. Subdivision 3 of section 198 of the labor law, as amended by chapter 537 of the laws of 2014, is amended to read as follows:

3. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this section. All employees shall have the right to recover full wages, benefits and wage supplements and liquidated damages accrued during the six years previous to the commencing of such action, whether such action is instituted by the employee or by the commissioner. [The commissioner's investigation

shall cover the entire six-year statute of limitations period unless the commissioner otherwise notifies all affected employees.]

S 4. Subdivision 3 of section 663 of the labor law, as amended by chapter 537 of the laws of 2014, is amended to read as follows:

3. Limitation of time. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. [The commissioner's investigation shall cover the entire six-year statute of limitations period unless the commissioner otherwise notifies all affected employees.] Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this article.

S 5. Subdivision 3 of section 218 of the labor law, as amended by chapter 537 of the laws of 2014, is amended to read as follows:

3. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner, or the decision of the industrial board of appeals containing the amount found to be due including the civil penalty, if any, and at the commissioner's discretion, an additional fifteen percent damages upon any outstanding monies owed. At the request of an employee, the commissioner shall assign, WITHOUT CONSIDERATION OR LIABILITY, that portion of the [money due] FILED ORDER that constitutes wages, wage supplements, interest on wages or wage supplements, or liquidated damages due that employee, to that employee and MAY file an ASSIGNMENT OR order in that amount in the name of that employee with the county clerk of the county where the employer resides or has a place of business. The filing of such ASSIGNMENT, order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The ASSIGNMENT, order or decision may be enforced by and in the name of the commissioner, or by the employee, in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

S 6. Subdivision 3 of section 219 of the labor law, as amended by chapter 537 of the laws of 2014, is amended to read as follows:

3. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount found to be due, including, at the commissioner's discretion, an additional fifteen percent damages upon any outstanding monies owed. At the request of an employee, the commissioner shall assign, WITHOUT CONSIDERATION OR LIABILITY, that portion of the [money due] FILED ORDER that constitutes wages, wage supplements, interest on wages or wage supplements, or liquidated damages due the employee, to that employee and MAY file an ASSIGNMENT OR order in that amount in the name of such employee with the county clerk of the county where the employer resides or has a place of

business. The filing of such ASSIGNMENT, order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The ASSIGNMENT, order or decision may be enforced by and in the name of the commissioner, or by the employee, in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

S 7. Section 97-pppp of the state finance law is REPEALED.

S 8. Section 13 of chapter 537 of the laws of 2014, amending the labor law and other laws relating to increased penalties for violations of wage payment provisions and contractor accountability, is amended to read as follows:

S 13. This act shall take effect on the sixtieth day after it shall have become a law, EXCEPT THAT SECTION ONE OF THIS ACT SHALL TAKE EFFECT IMMEDIATELY.

S 9. This act shall take effect immediately; provided, however, that sections one through seven of this act shall take effect on the same date and in the same manner as chapter 537 of the laws of 2014.