

4388--A

Cal. No. 427

2015-2016 Regular Sessions

I N S E N A T E

March 18, 2015

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the labor law, in relation to contract provisions waiving certain substantive and procedural rights

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 section 211-b to  
2 read as follows:  
3 S 211-B. CONTRACTS; CERTAIN PROVISIONS PROHIBITED. 1. A PROVISION IN  
4 ANY CONTRACT WAIVING ANY SUBSTANTIVE OR PROCEDURAL RIGHT OR REMEDY  
5 RELATING TO A CLAIM OF DISCRIMINATION, NON-PAYMENT OF WAGES OR BENEFITS,  
6 RETALIATION, HARASSMENT OR VIOLATION OF PUBLIC POLICY IN EMPLOYMENT  
7 SHALL BE DEEMED UNCONSCIONABLE, VOID AND UNENFORCEABLE, WITH RESPECT TO  
8 ANY SUCH CLAIM ARISING AFTER THE WAIVER IS MADE. NO RIGHT OR REMEDY  
9 ARISING UNDER THIS SECTION, THIS CHAPTER, COMMON LAW, ANY OTHER  
10 PROVISION OF LAW OR RULE OF PROCEDURE OR THE CONSTITUTION SHALL BE PROS-  
11 PECTIVELY WAIVED. THIS SECTION SHALL NOT RENDER VOID OR UNENFORCEABLE  
12 THE REMAINDER OF THE CONTRACT OR AGREEMENT. THE PROVISIONS OF THIS  
13 SUBDIVISION SHALL NOT APPLY TO THE TERMS OF ANY COLLECTIVE BARGAINING  
14 AGREEMENT BETWEEN AN EMPLOYER AND THE BONA FIDE COLLECTIVE BARGAINING  
15 REPRESENTATIVE OF THAT EMPLOYER'S EMPLOYEES.  
16 2. WHOEVER ENFORCES OR ATTEMPTS TO ENFORCE A WAIVER DEEMED UNCONSCION-  
17 ABLE, VOID OR UNENFORCEABLE UNDER THIS SECTION SHALL BE LIABLE FOR  
18 REASONABLE ATTORNEY'S FEES AND COSTS.  
19 3. NO PERSON OR EMPLOYER SHALL TAKE ANY RETALIATORY ACTION, INCLUDING,  
20 BUT NOT LIMITED TO, FAILURE TO HIRE, DISCHARGE, SUSPENSION, DEMOTION,  
21 DISCRIMINATION IN THE TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT, OR  
22 OTHER ADVERSE ACTION, AGAINST A PERSON, BECAUSE THE PERSON DOES NOT

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

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1 ENTER INTO AN AGREEMENT OR CONTRACT THAT CONTAINS A WAIVER DEEMED UNCON-  
2 SCIONABLE, VOID OR UNENFORCEABLE UNDER THIS SECTION.

3 4. A PERSON AGGRIEVED OF A VIOLATION OF THIS SECTION MAY, WITHIN THREE  
4 YEARS AFTER THE VIOLATION, INSTITUTE AND PROSECUTE IN SUCH PERSON'S OWN  
5 NAME AND ON SUCH PERSON'S OWN BEHALF A CIVIL ACTION FOR TORTS REMEDIES,  
6 INJUNCTIVE RELIEF, AND THE COSTS OF LITIGATION AND REASONABLE ATTORNEY'S  
7 FEES. THE RIGHTS AND REMEDIES CONTAINED IN THIS SECTION SHALL NOT BE  
8 EXCLUSIVE AND SHALL NOT PREEMPT OTHER PROCEDURES AND REMEDIES AVAILABLE  
9 UNDER OTHER APPLICABLE LAWS.

10 S 2. This act shall take effect immediately and shall apply to all  
11 contracts entered into, renewed, modified or amended on or after such  
12 date.