STATE OF NEW YORK

1139

2017-2018 Regular Sessions

IN ASSEMBLY

January 10, 2017

Introduced by M. of A. DINOWITZ, FAHY, BLAKE, GOTTFRIED, ROSENTHAL -- Multi-Sponsored by -- M. of A. GLICK, HOOPER, JENNE, SIMON -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to prohibiting employers from requiring low-wage employees to enter into covenants not to compete and requiring employers to notify potential employees of any requirement to enter into a covenant not to compete

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 "New York State mobility and opportunity for vulnerable employees act" or the "NY MOVE act".

§ 2. The labor law is amended by adding a new article 33 to read as follows:

ARTICLE 33

NEW YORK STATE MOBILITY AND OPPORTUNITY FOR VULNERABLE EMPLOYEES ACT

Section 950. Definitions.
951. Prohibiting covenants not to compete for low-wage employees.
952. Disclosure requirement for covenants not to compete.
953. Enforcement.

§ 950. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Commerce" has the meaning given such term in section three of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

2. "Covenant not to compete" means an agreement:

(a) between an employee and employer that restricts such employee from performing:

(i) any work for another employer for a specified period of time;

(ii) any work in a specified geographical area; or

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

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(iii) work for another employer that is similar to such employee's work for the employer included as a party to the agreement; and

(b) that is entered into after the effective date of this article.

3. "Employee", "employer", "enterprise", "enterprise engaged in commerce or in the production of goods for commerce", and "goods" have the meanings given such terms in section three of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

4. "Livable hourly rate" means:

(a) for the fiscal year of the effective date of this article, the greater of:

(i) fifteen dollars per hour; or

(ii) the hourly rate equal to the minimum wage required by the applicable state or local minimum wage law; and

(b) for each succeeding fiscal year, the greater of:

(i) the adjusted amount described in subdivision three of section nine hundred fifty-one of this article; or

(ii) the hourly rate equal to the minimum wage required by the applicable state or local minimum wage law.

5. "Low-wage employee":

(a) means an employee who, excluding any overtime compensation required under section seven of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) or under an applicable state law, receives from the applicable employer:

(i) an hourly compensation that is less than the liveable hourly rate; or

(ii) an annual compensation that is equal to or less than:

(A) for the fiscal year of the effective date of this article, thirty-one thousand two hundred dollars per year; and

(B) for each succeeding fiscal year, the adjusted amount described in subdivision three of section nine hundred fifty-one of this article; and

(b) does not include any salaried employee who receives from the applicable employer compensation that, for two consecutive months, is greater than:

(i) for the fiscal year of the effective date of this article, five thousand dollars; and

(ii) for each succeeding fiscal year, the adjusted amount described in subdivision three of section nine hundred fifty-one of this article.

§ 951. Prohibiting covenants not to compete for low-wage employees. 1. No employer shall enter into a covenant not to compete with any low-wage employee of such employer, who in any work week is engaged in commerce or in the production of goods for commerce (or is employed in an enterprise engaged in commerce or in the production of goods for commerce).

2. An employer who employs any low-wage employee, who in any work week is engaged in commerce or in the production of goods for commerce (or is employed in an enterprise engaged in commerce or in the production of goods for commerce), shall post notice of the provisions of this article in a conspicuous place on the premises of such employer.

3. (a) For each fiscal year after the fiscal year of the effective date of this article, the commissioner shall adjust each amount in effect under subparagraph (i) of paragraph (b) of subdivision four of section nine hundred fifty of this article, clause (B) of subparagraph (ii) of paragraph (a) of subdivision five of section nine hundred fifty of this article, or subparagraph (i) of paragraph (b) of subdivision five of section nine hundred fifty of this article for inflation by increasing each such amount, as in effect for the preceding fiscal year, by the annual percentage increase in the Consumer Price Index for Urban

Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics.

(b) The amounts adjusted under paragraph (a) of this subdivision shall be rounded to the nearest multiple of $0.05.

§ 952. Disclosure requirement for covenants not to compete. In order for an employer to require an employee, who in any work week is engaged in commerce or in the production of goods for commerce (or is employed in an enterprise engaged in commerce or in the production of goods for commerce) and is not a low-wage employee, to enter into a covenant not to compete, the employer shall, prior to the employment of such employee and at the beginning of the process for hiring such employee, have disclosed to such employee the requirement for entering into such covenant.

§ 953. Enforcement. 1. The commissioner shall have the power to receive, investigate, attempt to resolve, and enforce a complaint of a violation of sections nine hundred fifty-one and nine hundred fifty-two of this article, subject to subdivision two of this section.

2. (a) The commissioner shall impose a civil fine:

(i) with respect to any employer who violates subdivision one of section nine hundred fifty-one or section nine hundred fifty-two of this article, an amount not to exceed five thousand dollars for each employee who was the subject of such violation; and

(ii) with respect to any employer who violates subdivision two of section nine hundred fifty-one of this article, an amount not to exceed five thousand dollars.

(b) In determining the amount of any civil fine under this section, the commissioner shall consider the appropriateness of the fine to the size of the employer subject to such fine and the gravity of the applicable violation.

§ 3. This act shall take effect immediately and shall apply to employees hired on and after such date.