STATE OF NEW YORK

5371

2017-2018 Regular Sessions

IN SENATE

March 23, 2017

Introduced by Sen. ALCANTARA -- (at request of the Workers Compensation Board) -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to increasing penalties against employers who retaliate against employees who file workers' compensation claims

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 120 of the workers' compensation law, as amended by chapter 61 of the laws of 1989, the section heading and opening paragraph as amended by section 31 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

§ 120. Discrimination against employees. **1.** It shall be unlawful for any employer or his or her duly authorized agent to discharge or fail to reinstate pursuant to section two hundred three-b of this chapter, or in any other manner discriminate against an employee as to his or her employment because such employee has claimed or attempted to claim compensation from such employer, or claimed or attempted to claim any benefits provided under this chapter or because he or she has testified or is about to testify in a proceeding under this chapter and no other valid reason is shown to exist for such action by the employer.

2. Any complaint alleging such an unlawful discriminatory practice must be filed within two years of the commission of such practice. Upon finding that an employer has violated this section, the board shall make an order that any employee so discriminated against shall be restored to employment or otherwise restored to the position or privileges he or she would have had but for the discrimination and shall be compensated by his or her employer for any loss of compensation arising out of such discrimination together with such fees or allowances for services rendered by an attorney or licensed representative as fixed by the board. Any employer who violates this section shall be liable to a

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

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penalty of not less than [~~one~~] five hundred dollars or more than five [~~hundred~~] thousand dollars, as may be determined by the board[~~. All such penalties shall be paid~~], to be paid into the state treasury. In the interests of justice, the board may determine an employer who violates this section is also liable to the claimant for a penalty of not less than five hundred dollars or more than five thousand dollars. All penalties, compensation and fees or allowances shall be paid solely by the employer. The employer alone and not his or her carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

3. An employer found to be in violation of this section and the aggrieved employee must report to the board as to the manner of the employer's compliance within thirty days of receipt of a final determination. In case of failure to report on compliance, or failure to comply with an order or penalty of the board within thirty days after the order or notice of penalty is served, except where timely application to the board for a modification, rescission or review of such order or penalty has been filed under section twenty-three of this chapter, the chair in any such case or, on the chair's consent, any party may enforce the order or penalty in a like manner as an award of compensation.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.