

STATE OF NEW YORK

2039

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

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

AN ACT to amend the labor law, in relation to reporting of gratuities

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

1 Section 1. The opening paragraph of paragraph (a) of subdivision 1 of
2 section 215 of the labor law, as amended by chapter 564 of the laws of
3 2010, is amended to read as follows:

4 No employer or his or her agent, or the officer or agent of any corpo-
5 ration, partnership, or limited liability company, or any other person,
6 shall discharge, threaten, penalize, or in any other manner discriminate
7 or retaliate against any employee (i) because such employee has made a
8 complaint to his or her employer, or to the commissioner or his or her
9 authorized representative, or to the attorney general or any other
10 person, that the employer has engaged in conduct that the employee,
11 reasonably and in good faith, believes violates any provision of this
12 chapter, or any order issued by the commissioner (ii) because such
13 employer or person believes that such employee has made a complaint to
14 his or her employer, or to the commissioner or his or her authorized
15 representative, or to the attorney general, or to any other person that
16 the employer has violated any provision of this chapter, or any order
17 issued by the commissioner (iii) because such employee has caused to be
18 instituted or is about to institute a proceeding under or related to
19 this chapter, or (iv) because such employee has provided information to
20 the commissioner or his or her authorized representative or the attorney
21 general, or (v) because such employee has testified or is about to
22 testify in an investigation or proceeding under this chapter, or (vi)
23 because such employee has otherwise exercised rights protected under
24 this chapter, or (vii) because the employer has received an adverse
25 determination from the commissioner involving the employee, or (viii)
26 because such employee refuses to misreport gratuities received, or (ix)

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

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1 because such employee in good faith reports actual gratuities received
2 which are insufficient to permit the employer to claim allowances for
3 gratuities.

4 § 2. Subdivision 2 of section 662 of the labor law, as amended by
5 chapter 564 of the laws of 2010, is amended to read as follows:

6 2. Failure to keep records. Any employer or his or her agent, or the
7 officer or agent of any corporation, partnership, or limited liability
8 company, who fails to keep the records required under this article or to
9 furnish such records or any information required to be furnished under
10 this article to the commissioner or his or her authorized representative
11 upon request, or who hinders or delays the commissioner or his or her
12 authorized representative in the performance of his or her duties in the
13 enforcement of this article, or refuses to admit the commissioner or his
14 or her authorized representative to any place of employment, or falsi-
15 fies any such records, or instructs an employee to falsify records
16 including records of gratuities received, or threatens to retaliate or
17 retaliates against an employee if he or she refuses to falsify records
18 of gratuities received or he or she does not in good faith report suffi-
19 cient gratuities to permit the employer to claim allowances for gratui-
20 ties, or refuses to make such records accessible to the commissioner or
21 his or her authorized representative, or refuses to furnish a sworn
22 statement of such records or any other information required for the
23 proper enforcement of this article to the commissioner or his or her
24 authorized representative, shall be guilty of a misdemeanor and upon
25 conviction therefor shall be fined not less than five hundred nor more
26 than five thousand dollars or imprisoned for not more than one year,
27 and, in the event that any second or subsequent offense occurs within
28 six years of the date of conviction for a prior offense, shall be guilty
29 of a felony for the second or subsequent offense, and upon conviction
30 therefor, shall be fined not less than five hundred nor more than twenty
31 thousand dollars or imprisoned for not more than one year plus one day,
32 or punished by both such fine and imprisonment, for each such offense.
33 Each day's failure to keep the records requested under this article or
34 to furnish such records or information to the commissioner or his or her
35 authorized representative shall constitute a separate offense.

36 § 3. This act shall take effect immediately.