

# STATE OF NEW YORK

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6131

2019-2020 Regular Sessions

## IN ASSEMBLY

February 28, 2019

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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.