

STATE OF NEW YORK

3191

2019-2020 Regular Sessions

IN SENATE

February 4, 2019

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to reporting of persuasion activities relating to the right to organize and bargain collectively

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 article 21 to read
2 as follows:

ARTICLE 21

EMPLOYEE ORGANIZING PERSUASION DISCLOSURE

Section 750. Reporting of persuasion activities.

751. Receipts and disbursement report.

752. Reporting exemptions.

753. Penalties.

754. Severability.

10 § 750. Reporting of persuasion activities. 1. Every employer who hires
11 or contracts with a person who as a direct or indirect party to any
12 agreement or arrangement with an employer undertakes, pursuant to such
13 agreement or arrangement, any activities where an object thereof is,
14 directly or indirectly, (a) to persuade employees to exercise or not to
15 exercise, or to persuade employees as to the manner of exercising, the
16 right to organize and bargain collectively through representatives of
17 their own choosing; or, (b) to supply an employer with information
18 concerning the activities of employees or a labor organization in
19 connection with a labor dispute involving such employer, except informa-
20 tion for use solely in conjunction with an administrative or arbitral
21 proceeding or a criminal or civil judicial proceeding; shall file a
22 report with the commissioner in a manner prescribed by this article
23 disclosing the nature of such agreement.

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

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1 2. The report required by this section shall be filed within thirty
2 days after entering into an agreement or arrangement of the type
3 described in this section.

4 3. If there is any change in the information reported within subdivi-
5 sion two of this section, an amended report shall be filed by the
6 employer within thirty days of the change.

7 § 751. Receipts and disbursement report. Every person who, as a direct
8 or indirect party to any agreement or arrangement, undertakes any activ-
9 ities of the type described in section seven hundred fifty of this arti-
10 cle pursuant to such agreement or arrangement and who, as a result of
11 such agreement or arrangement made or received any payment during the
12 previous calendar year shall file a report with the commissioner. The
13 report shall be filed within ninety days after the end of the calendar
14 year.

15 § 752. Reporting exemptions. 1. Nothing contained in this article
16 shall be construed to require any person to file a report under this
17 article unless he or she was a direct or indirect party to an agreement
18 or arrangement of the kind described in this article.

19 2. Nothing contained in this article shall be construed to require any
20 person to file a report covering the services of such person, unless
21 directly connected to the activities described in section seven hundred
22 fifty-one of this article, by reason of his or her:

23 (a) giving or agreeing to give advice to an employer; or
24 (b) representing or agreeing to represent an employer before any
25 court, administrative agency, or tribunal of arbitration; or
26 (c) engaging or agreeing to engage in collective bargaining on behalf
27 of an employer with respect to wages, hours, or other terms or condi-
28 tions of employment or the negotiation of an agreement or any question
29 arising thereunder.

30 3. Nothing contained in this article shall be construed to require any
31 regular officer, or employee of an employer to file a report in
32 connection with services rendered as such regular officer, supervisor or
33 employee to such employer; or an attorney who is a member in good stand-
34 ing of the bar of any state, to include in any report required to be
35 filed pursuant to the provisions of this article any information which
36 was lawfully communicated to such attorney by any of his or her clients
37 in the course of a legitimate attorney-client relationship.

38 § 753. Penalties. 1. Any person required under section seven hundred
39 fifty or seven hundred fifty-one of this article who fails to properly
40 disclose information as required and in a manner specified by this arti-
41 cle shall be subject to civil penalties to be enforced by the commis-
42 sioner provided under this section.

43 (a) The civil penalties set forth in this section shall be imposed as
44 follows: five thousand dollars for the first violation; ten thousand
45 dollars for a second violation; and twenty-five thousand dollars for
46 each violation thereafter.

47 (b) A person who willfully violates this article shall be subject to a
48 civil penalty of up to twenty-five thousand dollars for a first
49 violation and fifty-thousand dollars for every violation thereafter. For
50 purposes of this paragraph, the term "willfully violates" shall mean a
51 person knew or should have known that his or her conduct was prohibited
52 by this article.

53 2. Any penalties imposed under this section by the commissioner shall
54 be appealable to the industrial board of appeals in accordance with
55 article three of this chapter.

1 3. Nothing in this section shall limit the availability of other reme-
2 dies at law or in equity for a violation of this article; and the civil
3 penalty provided for in this section shall be in addition to and may be
4 imposed concurrently with any other remedy or penalty provided for in
5 this chapter.

6 4. Any fee or penalty assessed for a violation of this article shall
7 be deposited into the department's fee and penalty account.

8 § 754. Severability. If any word, phrase, clause, sentence, paragraph,
9 section, or part of this article or the application thereof to any
10 person or circumstances shall be adjudged invalid by a court of compe-
11 tent jurisdiction, such order or judgment shall be confined in its oper-
12 ation to the controversy in which it was rendered, and shall not affect
13 or invalidate the remainder of this article, but shall be confined in
14 its operation to the word, phrase, clause, sentence, paragraph, section,
15 or part thereof directly involved in the controversy in which such judg-
16 ment shall have been rendered.

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