STATE OF NEW YORK

3294

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sens. HOYLMAN, KRUEGER, STAVISKY -- 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 contract provisions waiving certain substantive and procedural rights

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

Section 1. The labor law is amended by adding a new section 211-b to read as follows:

§ 211-b. Contracts; certain provisions prohibited. 1. A provision in any contract waiving any substantive or procedural right or remedy relating to a claim of discrimination, non-payment of wages or benefits, retaliation, harassment or violation of public policy in employment shall be deemed unconscionable, void and unenforceable, with respect to any such claim arising after the waiver is made. No right or remedy arising under this section, this chapter, common law, any other provision of law or rule of procedure or the constitution shall be prospectively waived. This section shall not render void or unenforceable the remainder of the contract or agreement. The provisions of this subdivision shall not apply to the terms of any collective bargaining agreement between an employer and the bona fide collective bargaining representative of that employer's employees.

2. A provision in any contract or agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, non-payment of wages or benefits, retaliation, harassment or violation of public policy in employment, including claims that are submitted to arbitration, shall be deemed unconscionable, void and unenforceable. The provisions of this subdivision shall not apply to the terms and conditions of an award issued by an arbitrator pursuant to article seventy-five of the civil practice law and rules or the amount of any monetary consideration provided in a settlement.

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

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3. Whoever enforces or attempts to enforce a waiver deemed unconscionable, void or unenforceable under this section shall be liable for reasonable attorney's fees and costs.

4. No person or employer shall take any retaliatory action, including, but not limited to, failure to hire, discharge, suspension, demotion, discrimination in the terms, conditions or privileges of employment, or other adverse action, against a person, because the person does not enter into an agreement or contract that contains a waiver deemed unconscionable, void or unenforceable under this section.

5. A person aggrieved of a violation of this section may, within three years after the violation, institute and prosecute in such person's own name and on such person's own behalf a civil action for torts remedies, injunctive relief, and the costs of litigation and reasonable attorney's fees. The rights and remedies contained in this section shall not be exclusive and shall not preempt other procedures and remedies available under other applicable laws.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately and shall apply to all contracts entered into, renewed, modified or amended on or after such date.