

# STATE OF NEW YORK

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6727--B

Cal. No. 150

2019-2020 Regular Sessions

## IN SENATE

September 18, 2019

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Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general obligations law, in relation to the liability of payroll processing companies

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

1 Section 1. The general obligations law is amended by adding a new  
2 section 11-108 to read as follows:

3 § 11-108. Liability of payroll processing company. 1. For the  
4 purposes of this section, "payroll processing company" means a person or  
5 business entity under contract to an employer that: (a) calculates,  
6 processes and produces wage payments to the employer's employees under  
7 such employer's federal employer identification number; (b) withholds  
8 and remits applicable taxes to government agencies using the employer's  
9 federal employment identification number; (c) issues federal and state  
10 income tax forms to the employer's employees using such employer's  
11 federal employer identification number; and (d) conditions wage payments  
12 to the employer's employees on the advance receipt of funds from such  
13 employer to fully cover such wage payments. A person acting as an  
14 employer under 26 U.S.C. 3401(d)(1) that otherwise meets the definition  
15 of a payroll processing company shall not be considered a payroll proc-  
16 essing company if the person acting as an employer and the employee are  
17 subject to a collective bargaining agreement and such collective  
18 bargaining agreement expressly provides for the recovery of unpaid, lost  
19 or stolen wages.

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

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1     2. Notwithstanding any other provision of law to the contrary, a  
2 payroll processing company that intentionally and without good cause  
3 prevents the remittance of taxes or payment of wages pursuant to the  
4 contract with the employer shall be liable to an employee of the employ-  
5 er that failed to receive an owed payment within one business day of the  
6 date such payment was expected for an amount up to three times the owed  
7 payment of wages and applicable taxes. Good cause may include, but shall  
8 not be limited to, the failure of an employer to provide sufficient  
9 funds by the applicable deadline, reasonable efforts to verify poten-  
10 tially fraudulent activity, failure of an employer to provide the neces-  
11 sary payroll input, observance of relevant state and federal laws or  
12 regulations, and other factors outside the control of the payroll proc-  
13 essing company; provided a payroll processing company shall not have  
14 good cause under this section if such payroll processing company acts or  
15 fails to act in violation of applicable state and federal laws and regu-  
16 lations.

17     3. Liability under this section is in addition to any other applicable  
18 penalties and causes of action.

19     4. An action to recover damages under this section may be maintained  
20 as a class action, notwithstanding subdivision b of section nine hundred  
21 one of the civil practice law and rules.

22     § 2. This act shall take effect immediately.