

# STATE OF NEW YORK

8775

## IN SENATE

July 15, 2020

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

AN ACT to amend the workers' compensation law, in relation to discrimination and retaliation against employees

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

1 Section 1. Section 120 of the workers' compensation law, as amended by  
2 chapter 61 of the laws of 1989, the section heading as amended by  
3 section 31 of part SS of chapter 54 of the laws of 2016 and the opening  
4 paragraph as amended by chapter 105 of the laws of 2019, is amended to  
5 read as follows:

6 § 120. Discrimination and retaliation against employees. It shall be  
7 unlawful for any employer or his or her duly authorized agent to  
8 discharge or fail to reinstate pursuant to section two hundred three-b  
9 of this chapter, or in any other manner discriminate against an employee  
10 as to his or her employment or retaliate against an employee because  
11 such employee has claimed or attempted to claim compensation from such  
12 employer, requested a claim form for injuries received in the course of  
13 employment, or claimed or attempted to claim any benefits provided under  
14 this chapter or because he or she has testified or is about to testify  
15 in a proceeding under this chapter and no other valid reason is shown to  
16 exist for such action by the employer. As used in this section, to  
17 discriminate or retaliate against an employee includes threatening to  
18 contact or contacting United States immigration authorities or otherwise  
19 reporting or threatening to report an employee's suspected citizenship  
20 or immigration status or the suspected citizenship or immigration status  
21 of an employee's family or household member, as defined in subdivision  
22 two of section four hundred fifty-nine-a of the social services law, to  
23 a federal, state or local agency.

24 Any complaint alleging such an unlawful discriminatory practice must  
25 be filed within two years of the commission of such practice. Upon find-  
26 ing that an employer has violated this section, the board shall make an  
27 order that any employee so discriminated or retaliated against shall be  
28 restored to employment or otherwise restored to the position or privi-

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

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1 leges he or she would have had but for the discrimination or retaliation  
2 and shall be compensated by his or her employer for any loss of compen-  
3 sation arising out of such discrimination or retaliation together with  
4 such fees or allowances for services rendered by an attorney or licensed  
5 representative as fixed by the board. Any employer who violates this  
6 section shall be liable to a penalty of not less than [~~one~~] five hundred  
7 dollars or more than two thousand five hundred dollars, as may be deter-  
8 mined by the board. All such penalties shall be paid into the state  
9 treasury. All penalties, compensation and fees or allowances shall be  
10 paid solely by the employer. The employer alone and not his or her  
11 carrier shall be liable for such penalties and payments. Any provision  
12 in an insurance policy undertaking to relieve the employer from liabil-  
13 ity for such penalties and payments shall be void.

14 An employer found to be in violation of this section and the aggrieved  
15 employee must report to the board as to the manner of the employer's  
16 compliance within thirty days of receipt of a final determination. In  
17 case of failure to report on compliance, or failure to comply with an  
18 order or penalty of the board within thirty days after the order or  
19 notice of penalty is served, except where timely application to the  
20 board for a modification, rescission or review of such order or penalty  
21 has been filed under section twenty-three of this chapter, the chair in  
22 any such case or, on the chair's consent, any party may enforce the  
23 order or penalty in a like manner as an award of compensation.

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