

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:

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

3 § 211-b. Contracts; certain provisions prohibited. 1. A provision in
4 any contract waiving any substantive or procedural right or remedy
5 relating to a claim of discrimination, non-payment of wages or benefits,
6 retaliation, harassment or violation of public policy in employment
7 shall be deemed unconscionable, void and unenforceable, with respect to
8 any such claim arising after the waiver is made. No right or remedy
9 arising under this section, this chapter, common law, any other
10 provision of law or rule of procedure or the constitution shall be pros-
11 pectively waived. This section shall not render void or unenforceable
12 the remainder of the contract or agreement. The provisions of this
13 subdivision shall not apply to the terms of any collective bargaining
14 agreement between an employer and the bona fide collective bargaining
15 representative of that employer's employees.

16 2. A provision in any contract or agreement which has the purpose or
17 effect of concealing the details relating to a claim of discrimination,
18 non-payment of wages or benefits, retaliation, harassment or violation
19 of public policy in employment, including claims that are submitted to
20 arbitration, shall be deemed unconscionable, void and unenforceable. The
21 provisions of this subdivision shall not apply to the terms and condi-
22 tions of an award issued by an arbitrator pursuant to article seventy-
23 five of the civil practice law and rules or the amount of any monetary
24 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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1 3. Whoever enforces or attempts to enforce a waiver deemed unconscion-
2 able, void or unenforceable under this section shall be liable for
3 reasonable attorney's fees and costs.

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

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

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

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