STATE OF NEW YORK

3478

2021-2022 Regular Sessions

IN ASSEMBLY

January 27, 2021

Introduced by M. of A. FAHY -- read once and referred to the Committee on Judiciary

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:

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

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

2. Notwithstanding any other provision of law to the contrary, a payroll processing company that intentionally and without good cause prevents the remittance of taxes or payment of wages pursuant to the contract with the employer shall be liable to an employee of the employer that failed to receive an owed payment within one business day of the date such payment was expected for an amount up to three times the owed

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

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payment of wages and applicable taxes. Good cause may include, but shall not be limited to, the failure of an employer to provide sufficient funds by the applicable deadline, reasonable efforts to verify potentially fraudulent activity, failure of an employer to provide the necessary payroll input, observance of relevant state and federal laws or regulations, and other factors outside the control of the payroll processing company; provided a payroll processing company shall not have good cause under this section if such payroll processing company acts or fails to act in violation of applicable state and federal laws and regulations.

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

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

§ 2. This act shall take effect immediately.