STATE OF NEW YORK

3732

2021-2022 Regular Sessions

IN SENATE

January 30, 2021

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

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:

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

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

Any complaint alleging such an unlawful discriminatory practice must be filed within two years of the commission of such practice. Upon find-

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

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ing that an employer has violated this section, the board shall make an order that any employee so discriminated **or retaliated** against shall be restored to employment or otherwise restored to the position or privileges he or she would have had but for the discrimination **or retaliation** and shall be compensated by his or her employer for any loss of compensation arising out of such discrimination **or retaliation** together with such fees or allowances for services rendered by an attorney or licensed representative as fixed by the board. Any employer who violates this section shall be liable to a penalty of not less than [~~one~~] **five** hundred dollars or more than **two thousand** five hundred dollars, as may be determined by the board. All such penalties shall be paid into the state treasury. All penalties, compensation and fees or allowances shall be paid solely by the employer. The employer alone and not his or her carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

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

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