STATE OF NEW YORK

4394

2021-2022 Regular Sessions

IN SENATE

February 4, 2021

Introduced by Sens. RAMOS, BIAGGI, GOUNARDES, JACKSON, KAMINSKY, LIU -- 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 retaliatory personnel actions by employers

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

Section 1. Paragraph (a) of subdivision 1 of section 740 of the labor law, as added by chapter 660 of the laws of 1984, is amended to read as follows:

(a) "Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration **or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers**.

§ 2. The opening paragraph and paragraph (a) of subdivision 2 of section 740 of the labor law, the opening paragraph as added by chapter 660 of the laws of 1984 and paragraph (a) as amended by chapter 442 of the laws of 2006, is amended to read as follows:

An employer shall not take any retaliatory personnel action against an employee**, whether or not within the scope of the employee's job duties,** because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer [~~that~~] **which the employee reasonably believes** is in violation of law, rule or regulation [~~which violation creates and presents~~] **or which the employee reasonably believes poses** a substantial and specific danger to the public health or safety, or which constitutes health care fraud;

§ 3. Paragraph (c) of subdivision 4 of section 740 of the labor law, as added by chapter 660 of the laws of 1984, is amended to read as follows:

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

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(c) It shall be a defense to any action brought pursuant to this section that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section. [~~It shall also be a defense that the individual was an independent contractor.~~]

§ 4. Paragraphs (b), (d) and (e) of subdivision 5 of section 740 of the labor law, as added by chapter 660 of the laws of 1984, are amended to read as follows:

(b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position**, or front pay in lieu thereof**;

(d) the compensation for lost wages, benefits and other remuneration; [~~and~~]

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees**; and**

(f) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

§ 5. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made by the commissioner of labor of the state of New York on or before such effective date.