STATE OF NEW YORK

1893

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. SIMON, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. BARRON, BRONSON, COOK, CRUZ, DE LA ROSA, DICKENS, FRONTUS, GALEF, GLICK, GOTTFRIED, NIOU, PICHARDO, QUART, REYES, SAYEGH, WILLIAMS, ZEBROWSKI -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to wage theft

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

Section 1. Legislative findings. Article 6 of the labor law, and sections 193 and 198(3) in particular, reflects New York's longstanding policy against the forfeiture of earned but undistributed wages. The purpose of this remedial amendment is to clarify that: (a) the unauthorized failure to pay wages, benefits and wage supplements has always been encompassed by the prohibitions of section 193, see, e.g., Ryan v Kellogg Partners Inst. Servs., 19 N.Y. 3d 1, 16 (2012) (correctly holding that employer's neglect to pay sum that constitutes a "wage" violated section 193); and (b) consistent with established principles of statutory construction, section 193 should be harmonized with section 198(3)'s guarantee that "All employees shall have the right to recover full wages, benefits and wage supplements and liquidated damages." A wage is either owed or it is not. Employers have a statutory duty to provide employees with enough information to know how their employment compensation is calculated. The legislature thus finds that it has a responsibility to harmonize these two sections of the labor law to clarify for the courts once and for all that wage theft remains completely and without exception in violation of statute and all employees are entitled to full wages, benefits and wage supplements earned.

§ 2. This act shall be known and may be cited as the "No wage theft loophole act".

§ 3. Section 193 of the labor law is amended by adding a new subdivision 5 to read as follows:

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

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5. There is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements.

§ 4. Subdivision 3 of section 198 of the labor law, as amended by chapter 2 of the laws of 2015, is amended to read as follows:

3. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this section. All employees shall have the right to recover full wages, benefits and wage supplements and liquidated damages accrued during the six years previous to the commencing of such action, whether such action is instituted by the employee or by the commissioner. **There is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements.**

§ 5. This act shall take effect immediately.