

STATE OF NEW YORK

858

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. GOUNARDES, BIAGGI, GAUGHRAN, JACKSON, KRUEGER, MYRIE, SEPULVEDA, SKOUFIS -- 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 wage theft

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

1 Section 1. Legislative findings. Article 6 of the labor law, and
2 sections 193 and 198(3) in particular, reflects New York's longstanding
3 policy against the forfeiture of earned but undistributed wages. The
4 purpose of this remedial amendment is to clarify that: (a) the unauthor-
5 ized failure to pay wages, benefits and wage supplements has always been
6 encompassed by the prohibitions of section 193, see, e.g., *Ryan v*
7 *Kellogg Partners Inst. Servs.*, 19 N.Y. 3d 1, 16 (2012) (correctly hold-
8 ing that employer's neglect to pay sum that constitutes a "wage"
9 violated section 193); and (b) consistent with established principles of
10 statutory construction, section 193 should be harmonized with section
11 198(3)'s guarantee that "All employees shall have the right to recover
12 full wages, benefits and wage supplements and liquidated damages." A
13 wage is either owed or it is not. Employers have a statutory duty to
14 provide employees with enough information to know how their employment
15 compensation is calculated. The legislature thus finds that it has a
16 responsibility to harmonize these two sections of the labor law to clar-
17 ify for the courts once and for all that wage theft remains completely
18 and without exception in violation of statute and all employees are
19 entitled to full wages, benefits and wage supplements earned.

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

22 § 3. Section 193 of the labor law is amended by adding a new subdivi-
23 sion 5 to read as follows:

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

LBD01120-01-1

1 5. There is no exception to liability under this section for the unau-
2 thorized failure to pay wages, benefits or wage supplements.

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

5 3. Notwithstanding any other provision of law, an action to recover
6 upon a liability imposed by this article must be commenced within six
7 years. The statute of limitations shall be tolled from the date an
8 employee files a complaint with the commissioner or the commissioner
9 commences an investigation, whichever is earlier, until an order to
10 comply issued by the commissioner becomes final, or where the commis-
11 sioner does not issue an order, until the date on which the commissioner
12 notifies the complainant that the investigation has concluded. Investi-
13 gation by the commissioner shall not be a prerequisite to nor a bar
14 against a person bringing a civil action under this section. All employ-
15 ees shall have the right to recover full wages, benefits and wage
16 supplements and liquidated damages accrued during the six years previous
17 to the commencing of such action, whether such action is instituted by
18 the employee or by the commissioner. There is no exception to liability
19 under this section for the unauthorized failure to pay wages, benefits
20 or wage supplements.

21 § 5. This act shall take effect immediately.