

# STATE OF NEW YORK

10610

## IN ASSEMBLY

June 20, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Zebrowski)  
-- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to penalties for frequency of pay violations

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

1 Section 1. The opening paragraph of subparagraph (ii) of paragraph a  
2 of subdivision 1 of section 191 of the labor law, as amended by chapter  
3 168 of the laws of 1993, is amended to read as follows:

4 The commissioner may authorize an employer [~~which has in the three~~  
5 ~~years preceding the application employed an average of one thousand or~~  
6 ~~more persons in this state or has for one year preceding the application~~  
7 ~~employed an average of one thousand or more persons in this state and~~  
8 ~~has for three years preceding the application employed an average of~~  
9 ~~three thousand or more persons outside the state]~~ to pay less frequently

10 than weekly but not less frequently than semi-monthly if the employer  
11 furnishes satisfactory proof to the commissioner of its continuing abil-  
12 ity to meet its payroll responsibilities. In making this determination  
13 the commissioner shall consider the following:

14 § 2. Subdivision 1-a of section 198 of the labor law, as amended by  
15 chapter 362 of the laws of 2015, is amended to read as follows:

16 1-a. a. On behalf of any employee paid less than the wage to which he  
17 or she is entitled under the provisions of this article, the commission-  
18 er may bring any legal action necessary, including administrative  
19 action, to collect such claim and as part of such legal action, in addi-  
20 tion to any other remedies and penalties otherwise available under this  
21 article, the commissioner shall assess against the employer the full  
22 amount of any such underpayment, and an additional amount as liquidated  
23 damages, unless the employer proves a good faith basis for believing  
24 that its underpayment of wages was in compliance with the law. Liqui-  
25 dated damages shall be calculated by the commissioner as no more than  
26 one hundred percent of the total amount of wages found to be due, except  
27 such liquidated damages may be up to three hundred percent of the total  
28 amount of the wages found to be due for a willful violation of section

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

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1 one hundred ninety-four of this article. Notwithstanding the provisions  
2 of this subdivision, liquidated damages shall not be applicable to  
3 violations of paragraph a of subdivision one of section one hundred  
4 ninety-one of this article where the employer paid the employee wages on  
5 a regular payday, no less frequently than semi-monthly. Such violations  
6 shall be subject to damages as follows:

7 (i) no more than one hundred percent of the lost interest found to be  
8 due for the delayed payment of wages calculated using a daily interest  
9 rate for each day payment is late based on the annual rate of interest  
10 then in effect, as prescribed by the superintendent of financial  
11 services pursuant to section fourteen-a of the banking law for the  
12 employer's first violation; or

13 (ii) three hundred percent of the lost interest found to be due for  
14 the delayed payment of wages calculated using a daily interest rate for  
15 each day payment is late based on the annual rate of interest then in  
16 effect, as prescribed by the superintendent of financial services pursu-  
17 ant to section fourteen-a of the banking law for any employer subject to  
18 a previous order issued under section two hundred nineteen of this chap-  
19 ter for violation of paragraph a of subdivision one of section one  
20 hundred ninety-one of this article for which no proceeding for adminis-  
21 trative or judicial review as provided in this chapter is pending and  
22 the time for initiation of such proceeding shall have expired and relat-  
23 ing to employees performing the same work; or

24 (iii) for a violation occurring after the effective date, liquidated  
25 damages equal to twenty-five percent of the total amount of the wages  
26 found to be paid in violation of paragraph a of subdivision one of  
27 section one hundred ninety-one of this article if the employer, after  
28 the effective date, has been issued two or more separate orders under  
29 section two hundred nineteen of article seven for violations of para-  
30 graph a of subdivision one of section one hundred ninety-one of this  
31 article for which no proceeding for administrative or judicial review as  
32 provided in this chapter is pending and the time for initiation of such  
33 proceeding shall have expired and relating to employees performing the  
34 same work.

35 b. For purposes of this subdivision, an order under section two  
36 hundred nineteen of this chapter shall constitute a single order regard-  
37 less of the number of employees or the time period that was subject to  
38 such order.

39 c. In any action instituted in the courts upon a wage claim by an  
40 employee or the commissioner in which the employee prevails, the court  
41 shall allow such employee to recover the full amount of any underpay-  
42 ment, all reasonable attorney's fees, prejudgment interest as required  
43 under the civil practice law and rules, and, unless the employer proves  
44 a good faith basis to believe that its underpayment of wages was in  
45 compliance with the law, an additional amount as liquidated damages  
46 equal to one hundred percent of the total amount of the wages found to  
47 be due, except such liquidated damages may be up to three hundred  
48 percent of the total amount of the wages found to be due for a willful  
49 violation of section one hundred ninety-four of this article.

50 § 3. This act shall take effect immediately and shall apply to causes  
51 of action pending or commenced on or after such effective date.