

# STATE OF NEW YORK

1801--A

2023-2024 Regular Sessions

## IN ASSEMBLY

January 23, 2023

Introduced by M. of A. DINOWITZ, WEPRIN, COLTON, SEAWRIGHT -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the judiciary law and the labor law, in relation to creating additional remedies for unlawful discharge, penalty or discrimination on account of the exercise of a juror's right to be absent from employment for jury duty

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

1 Section 1. Section 519 of the judiciary law, as added by chapter 85  
2 of the laws of 1995, is amended to read as follows:  
3 § 519. Right of juror to be absent from employment. Any person who is  
4 summoned to serve as a juror under the provisions of this article and  
5 who notifies his or her employer to that effect prior to the commence-  
6 ment of a term of service shall not, on account of absence from employ-  
7 ment by reason of such jury service, be subject to discharge [~~or~~],  
8 penalty, or discrimination in any other manner. An employer may, howev-  
9 er, withhold wages of any such employee serving as a juror during the  
10 period of such service; provided that an employer who employs more than  
11 ten employees shall not withhold the first forty dollars of such juror's  
12 daily wages during the first three days of jury service. Withholding of  
13 wages in accordance with this section shall not be deemed a penalty or  
14 discrimination in any other manner. Violation of this section shall  
15 constitute a criminal contempt of court punishable pursuant to section  
16 seven hundred fifty of this chapter and shall also constitute a  
17 violation of section two hundred fifteen of the labor law and be subject  
18 to the civil penalties and civil action provided for thereunder.  
19 § 2. Paragraph 7 of subdivision A of section 750 of the judiciary law,  
20 as amended by chapter 823 of the laws of 1982, is amended to read as  
21 follows:

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

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1 7. Wilful failure to obey any mandate, process, or notice issued  
2 pursuant to [~~articles~~ article sixteen[~~, seventeen, eighteen, eighteen-a~~  
3 ~~or eighteen-b~~] of [~~the judiciary law~~ this chapter, or to rules adopted  
4 pursuant thereto, or to any other statute relating thereto, or refusal  
5 to be sworn as provided therein, or subjection of an employee to  
6 discharge [~~or~~], penalty, or discrimination in any other manner on  
7 account of his or her absence from employment by reason of jury or  
8 subpoenaed witness service in violation of this chapter or section  
9 215.11 of the penal law. Applications to punish the accused for a  
10 contempt specified in this subdivision may be made by notice of motion  
11 or by order to show cause, and shall be made returnable at the term of  
12 the supreme court at which contested motions are heard, or of the county  
13 court if the supreme court is not in session.

14 § 3. Section 215 of the labor law, as amended by chapter 564 of the  
15 laws of 2010, paragraph (a) of subdivision 1 as amended by chapter 604  
16 of the laws of 2022, paragraph (b) of subdivision 1 and paragraph (a) of  
17 subdivision 2 as amended by chapter 537 of the laws of 2014, is amended  
18 to read as follows:

19 § 215. [~~Penalties~~ Civil penalties and civil action; prohibited retal-  
20 iation. 1. (a) No employer or his or her agent, or the officer or agent  
21 of any corporation, partnership, or limited liability company, or any  
22 other person, shall discharge, threaten, penalize, or in any other  
23 manner discriminate or retaliate against any employee (i) because such  
24 employee has made a complaint to his or her employer, or to the commis-  
25 sioner or his or her authorized representative, or to the attorney  
26 general or any other person, that the employer has engaged in conduct  
27 that the employee, reasonably and in good faith, believes violates any  
28 provision of this chapter, or any order issued by the commissioner (ii)  
29 because such employer or person believes that such employee has made a  
30 complaint to his or her employer, or to the commissioner or his or her  
31 authorized representative, or to the attorney general, or to any other  
32 person that the employer has violated any provision of this chapter, or  
33 any order issued by the commissioner (iii) because such employee has  
34 caused to be instituted or is about to institute a proceeding under or  
35 related to this chapter, or (iv) because such employee has provided  
36 information to the commissioner or his or her authorized representative  
37 or the attorney general, or (v) because such employee has testified or  
38 is about to testify in an investigation or proceeding under this chap-  
39 ter, or (vi) because such employee has otherwise exercised rights  
40 protected under this chapter, or (vii) because the employer has received  
41 an adverse determination from the commissioner involving the employee,  
42 or (viii) because such employee has used any legally protected absence  
43 pursuant to federal, local, or state law, including because such employ-  
44 ee has exercised his or her right to be absent from employment  
45 pursuant to section five hundred nineteen of the judiciary law by reason  
46 of jury service.

47 An employee complaint or other communication need not make explicit  
48 reference to any section or provision of this chapter to trigger the  
49 protections of this section.

50 As used in this section, to threaten, penalize, or in any other manner  
51 discriminate or retaliate against any employee includes; threatening to  
52 contact or contacting United States immigration authorities or otherwise  
53 reporting or threatening to report an employee's suspected citizenship  
54 or immigration status or the suspected citizenship or immigration status  
55 of an employee's family or household member, as defined in subdivision  
56 two of section four hundred fifty-nine-a of the social services law, to

1 a federal, state or local agency; or assessing any demerit, occurrence,  
2 any other point, or deductions from an allotted bank of time, which  
3 subjects or could subject an employee to disciplinary action, which may  
4 include but not be limited to failure to receive a promotion or loss of  
5 pay.

6 (b) If after investigation the commissioner finds that an employer or  
7 person has violated any provision of this section, the commissioner may,  
8 by an order which shall describe particularly the nature of the  
9 violation, assess the employer or person a civil penalty of not less  
10 than one thousand nor more than ten thousand dollars provided, however,  
11 that if the commissioner finds that the employer has violated the  
12 provisions of this section in the preceding six years, he or she may  
13 assess a civil penalty of not less than one thousand nor more than twenty  
14 thousand dollars. The commissioner may also order all appropriate  
15 relief including enjoining the conduct of any person or employer; order-  
16 ing payment of liquidated damages to the employee by the person or enti-  
17 ty in violation; and, where the person or entity in violation is an  
18 employer ordering rehiring or reinstatement of the employee to his or  
19 her former position or an equivalent position, and an award of lost  
20 compensation or an award of front pay in lieu of reinstatement and an  
21 award of lost compensation. Liquidated damages shall be calculated as an  
22 amount not more than twenty thousand dollars. The commissioner may  
23 assess liquidated damages on behalf of every employee aggrieved under  
24 this section, in addition to any other remedies permitted by this  
25 section.

26 (c) The provisions of section two hundred thirteen of this article  
27 shall not apply to the violations specified in this section.

28 (d) This section shall not apply to employees of the state or any  
29 municipal subdivisions or departments thereof.

30 2. (a) [~~An~~] In addition to the civil penalties provided for under  
31 subdivision one of this section, an employee may bring a civil action in  
32 a court of competent jurisdiction against any employer or persons  
33 alleged to have violated the provisions of this section. The court shall  
34 have jurisdiction to restrain violations of this section, within two  
35 years after such violation, regardless of the dates of employment of the  
36 employee, and to order all appropriate relief, including enjoining the  
37 conduct of any person or employer; ordering payment of liquidated  
38 damages, costs and reasonable attorneys' fees to the employee by the  
39 person or entity in violation; and, where the person or entity in  
40 violation is an employer, ordering rehiring or reinstatement of the  
41 employee to his or her former position with restoration of seniority or  
42 an award of front pay in lieu of reinstatement, and an award of lost  
43 compensation and damages, costs and reasonable attorneys' fees. Liqui-  
44 dated damages shall be calculated as an amount not more than twenty  
45 thousand dollars. The court shall award liquidated damages to every  
46 employee aggrieved under this section, in addition to any other remedies  
47 permitted by this section. The statute of limitations shall be tolled  
48 from the date an employee files a complaint with the commissioner or the  
49 commissioner commences an investigation, whichever is earlier, until an  
50 order to comply issued by the commissioner becomes final, or where the  
51 commissioner does not issue an order, until the date on which the  
52 commissioner notifies the complainant that the investigation has  
53 concluded. Investigation by the commissioner shall not be a prerequisite  
54 to nor a bar against a person bringing a civil action under this  
55 section.

1 (b) At or before the commencement of any action under this section,  
2 notice thereof shall be served upon the attorney general by the employ-  
3 ee.

4 3. Any employer or his or her agent, or the officer or agent of any  
5 corporation, partnership, or limited liability company, or any other  
6 person who violates subdivision one of this section shall be guilty of a  
7 class B misdemeanor.

8 § 4. This act shall take effect on the thirtieth day after it shall  
9 have become a law.