STATE OF NEW YORK

9106

IN ASSEMBLY

February 7, 2024

Introduced by M. of A. BURGOS -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the workers' compensation law, in relation to the issuing of stop-work orders

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

Section 1. This act shall be known and may be cited as the "stop workplace abuse today (SWAT) act".

§ 2. Section 21 of the labor law is amended by adding a new subdivision 17 to read as follows:

17. Shall be authorized to issue stop-work orders as a result of a violation of this chapter.

§ 3. The labor law is amended by adding a new section 21-g to read as follows:

§ 21-g. Stop-work orders. 1. In addition to any other penalties, remedies or sanctions as provided by this chapter, an employer who violates article six (payment of wages), article nineteen (minimum wage act), article nineteen-A (minimum wage standards and protective labor practices for farm workers), section two hundred twelve-a, section two hundred twelve-b, section one hundred sixty-one or section one hundred sixty-two of this chapter, or any rule or regulation promulgated thereunder, and such aggregate amount exceeds one thousand dollars shall be subject to a stop-work order by the commissioner. The commissioner shall also be authorized to issue a stop-work order if the department is made aware of any local, city or federal labor violation relating to payment of wages by an employer and the commissioner deems a stop-work order an appropriate action as a result of such violation.

2. A stop-work order against an employer shall apply against any successor firm, corporation, or partnership of the employer in the same manner that it applies to the employer.

3. Within seventy-two hours of finding a violation under subdivision one of this section after investigation, the commissioner shall notify such employer in writing of their intention to issue a stop-work order. Such notice shall: (a) be served in a manner consistent with section

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

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three hundred eight of the civil practice law and rules; (b) notify such employer of their right to a hearing; (c) notify such employer that they shall have seventy-two hours to address the violation or violations before the stop-work order will be issued; and (d) state the factual basis upon which the commissioner has based their decision to issue a stop-work order and how such employer shall come into compliance.

4. After receipt of such notice, the employer shall have seventy-two hours to come into compliance and to notify the commissioner of such compliance. Within seventy-two hours after the employer's opportunity to come into compliance, if the employer has not come into compliance, the commissioner shall issue a stop-work order requiring the cessation of all business operations of the employer at every site at which the violation occurs.

(a) A stop-work order shall take effect when served upon the employer or when served at the worksite.

(b) A stop-work order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty assessed.

5. An employer who is subject to a stop-work order shall have the right to apply to the commissioner, not more than ten days after the order is issued, for a hearing to contest whether the employer committed the violation on which the order was based.

6. Failure or refusal to comply with a stop-work order issued by the commissioner shall, in addition to any other penalties authorized by law, result in the assessment of a penalty of not less than one thousand dollars and not more than five thousand dollars for each day the employer is found not to be in compliance.

7. An employee affected by a stop-work order pursuant to this section shall be paid their regular rate for the period the stop-work order is in place or the first ten days the employee would have been scheduled to work if the stop-work order had not been issued, whichever is less, by the employer that was served the stop-work order.

8. For the purposes of this section, there shall be a rebuttable presumption of unlawful retaliation if an employer in any manner discriminates, retaliates, or takes any adverse action against any employee within ninety days of the employee initiating a complaint pursuant to this article.

§ 4. Section 224-b of the labor law, as added by section 2 of part FFF of chapter 58 of the laws of 2020, is amended to read as follows:

§ 224-b. Stop-work orders. 1. (a) Where a complaint is received pursuant to this article, or where the fiscal officer or the commissioner upon [~~his or her~~] their own investigation, finds cause to believe that any person, in connection with the performance of any contract for public work pursuant to section two hundred twenty of this article or any covered project pursuant to section two hundred twenty-four-a of this article, has substantially and materially failed to comply with or intentionally evaded the provisions of this [~~article~~] chapter, the fiscal officer or the commissioner may notify such person in writing of [~~his or her~~] their intention to issue a stop-work order. Such notice shall (i) be served within seventy-two hours after making such determination that notice is required; (ii) be served in a manner consistent with section three hundred eight of the civil practice law and rules; [~~(ii)~~] (iii) notify such person of [~~his or her~~] their right to a hearing; and [~~(iii)~~] (iv) state the factual basis upon which the fiscal officer or the commissioner has based [~~his or her~~] their decision to issue a stop-work order. Any documents, reports, or information that

form a basis for such decision shall be provided to such person within a reasonable time before the hearing. Such hearing shall be expeditiously conducted.

(b) After receipt of such notice, the employer shall have seventy-two hours to come into compliance and to notify the commissioner of such compliance. Within seventy-two hours after the employer's opportunity to come into compliance, the fiscal officer or the commissioner shall issue a stop-work order requiring the cessation of all business operations of the employer at every site at which the violation occurs.

(c) Following the hearing, if the fiscal officer **or the commissioner** issues a **continuance of such** stop-work order, it shall be served by regular mail, and a second copy may be served by telefacsimile or by electronic mail, with service effective upon receipt of any such order. Such stop-work order shall also be served with regard to a worksite by posting a copy of such order in a conspicuous location at the worksite. The order shall remain in effect until the fiscal officer **or the commissioner** directs that the stop-work order be removed, upon a final determination on the complaint or where such failure to comply or evade has been deemed corrected. If the person against whom such order is issued shall within thirty days after issuance of the stop-work order makes an application in affidavit form for a redetermination review of such order the fiscal officer shall make a decision in writing on the issues raised in such application. The fiscal officer may direct a conditional release from a stop-work order upon a finding that such person has taken meaningful and good faith steps to comply with the provisions of this article.

2. Failure or refusal to comply with a stop-work order issued by the fiscal officer or the commissioner shall, in addition to any other penalties provided by law, result in the assessment of a penalty of not less than one thousand dollars and not more than five thousand dollars for each day the employer is found not to be in compliance.

§ 5. The workers' compensation law is amended by adding a new section 142-a to read as follows:

§ 142-a. Stop-work orders. 1. In addition to any other penalties, remedies or sanctions as provided by this article, an employer who knowingly fails to provide workers' compensation coverage, who knowingly misrepresents one or more employees as independent contractors or who knowingly provides false, incomplete or misleading information concerning the number of employees, shall be subject to a stop-work order by the commissioner of labor or the workers' compensation board.

2. A violation of subdivision one of this section shall be considered to be "knowing" if the employer:

(a) has previously obtained workers' compensation insurance and the insurance has been cancelled or the insurance has not been continued or renewed;

(b) has been advised of the need for workers' compensation insurance by the division of workers' compensation or any other agency of the department of labor; or

(c) has had one or more previous violations of workers' compensation coverage requirements, including, but not limited to, failure to obtain workers' compensation insurance or to qualify as a self-insuring employer, misreporting or misrepresentation of the number of employees and/or misreporting or misrepresentation of employees as independent contractors.

3. A stop-work order against an employer shall apply against any successor firm, corporation, or partnership of the employer in the same manner that it applies to the employer.

4. Within seventy-two hours of finding a violation of subdivision one of this section after investigation, the board shall notify such employer in writing of their intention to issue a stop-work order. Such notice shall: (a) be served in a manner consistent with section three hundred eight of the civil practice law and rules; (b) notify such employer of their right to a hearing; and (c) state the factual basis upon which the board or the commissioner of labor has based their decision to issue a stop-work order.

5. After receipt of such notice, the employer shall have seventy-two hours to come into compliance and to notify the commissioner of such compliance. Within seventy-two hours after the employer's opportunity to come into compliance, the board or the commissioner of labor shall issue a stop-work order requiring the cessation of all business operations of the employer at every site at which the violation occurs.

(a) A stop-work order shall take effect when served upon the employer or when served at the worksite.

(b) A stop-work order shall remain in effect until the board or the commissioner of labor issues an order releasing the stop-work order upon finding that the employer has come into compliance and has paid any penalty assessed.

6. An employer who is subject to a stop-work order shall have the right to apply to the board or the commissioner of labor, not more than ten days after the order is issued, for a hearing to contest whether the employer committed the violation on which the order was based.

7. Failure or refusal to comply with a stop-work order issued by the board or the commissioner of labor shall, in addition to any other penalties provided by law, result in the assessment of a penalty of not less than one thousand dollars and not more than five thousand dollars for each day the employer is found not to be in compliance and shall be directed to the workers' compensation fund or the hazard abatement board.

§ 6. This act shall take effect immediately.