STATE OF NEW YORK

9800

IN ASSEMBLY

April 9, 2024

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

AN ACT to amend the labor law, in relation to liquidated damages for labor law violations

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

Section 1. Short Title. This act shall be known and may be cited as the "labor law enforcement parity act".

§ 2. Legislative Findings. 1. The legislature finds and declares that it has always been its intention that the remedies provided under the labor law be fully and equally enforceable in both state and federal court. However, some state courts have misconstrued the liquidated damages available for violations of the labor law as penalties, despite the fact that the legislature amended the labor law's liquidated damages provision in 2009 and 2010 to bring it in line with the compensatory purposes of the Fair Labor Standards Act's liquidated damages provision. As a result, while employees have been able to recover the full amount of compensatory liquidated damages owed to them in federal court actions, they are not always able to do so in state court actions. Accordingly, the first purpose of this bill is to clarify that all liquidated damages available for violations of the labor law, which are generally an amount equal to the unpaid or underpaid wages, are compensatory in nature and not penalties.

2. The legislature further finds and declares that both federal and state courts have recently misconstrued the purposes of New York Labor Law § 195. Despite allowing claims for violations of the labor law's wage notice and wage statement provisions to proceed for years, and allowing workers to recover the full statutory damages provided under the labor law for these violations, some federal courts have begun dismissing these claims for lack of Article III standing, claiming that these violations do not cause workers any concrete injury. Meanwhile, some state courts have misconstrued the statutory damages available for violations of the wage notice and wage statement provisions as penalties and have thus not allowed workers to recover the statutory damages

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

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provided, even though they have been able to do so in many federal courts. Accordingly, the second purpose of this bill is to clarify that the statutory damages available for violations of the wage notice and statement provisions of the law are not punitive in nature, and are instead designed to compensate workers for their employer's failure to prevent wage theft in the first place, and the harms employees suffer as a result, including being unable to discover, identify, and remedy wage theft promptly and possible loss of valid wage theft claims due to the passage of the statute of limitations, the stress and uncertainty caused by unclear pay details, which can significantly impact their ability to make informed employment choices, effectively manage their finances, and plan for personal, familial, or social commitments.

§ 3. Subdivision 3 of section 198 of the labor law, as amended by chapter 397 of the laws of 2021, 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**, statutory damages,** 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**, including in a class action**. There is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements.

§ 4. Subdivision 1 of section 663 of the labor law, as amended by chapter 564 of the laws of 2010, is amended to read as follows:

1. By employee. If any employee is paid by his or her employer less than the wage to which he or she is entitled under the provisions of this article, he or she shall recover in a civil action the amount of any such underpayments, together with costs all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total of such underpayments found to be due**, including in a class action**. Any agreement between the employee, and the employer to work for less than such wage shall be no defense to such action.

§ 5. This act shall take effect immediately and shall apply to all actions concerning labor law violations that occurred within the six years prior to this act's effective date.