

STATE OF NEW YORK

9811

IN SENATE

May 31, 2024

Introduced by Sen. COONEY -- 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 payments, costs and damages

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

1 Section 1. Subparagraph (ii) of paragraph a of subdivision 1 of
2 section 191 of the labor law, as amended by chapter 38 of the laws of
3 1989 and the opening paragraph as amended by chapter 168 of the laws of
4 1993, is amended to read as follows:

5 (ii) The commissioner may authorize an employer [~~which has in the
6 three years preceding the application employed an average of one thou-
7 sand or more persons in this state or has for one year preceding the
8 application employed an average of one thousand or more persons in this
9 state and has for three years preceding the application employed an
10 average of three thousand or more persons outside the state~~] to pay less
11 frequently than weekly but not less frequently than semi-monthly if the
12 employer furnishes satisfactory proof to the commissioner of its contin-
13 uing ability to meet its payroll responsibilities. In making this deter-
14 mination the commissioner shall consider the following: (A) the employ-
15 er's history meeting its payroll responsibilities in New York state or
16 if no such history in New York state is available, other financial
17 information, as requested by the commissioner, which will assist the
18 commissioner in determining the likelihood of the employer's continuing
19 ability to meet payroll responsibilities; (B) proof of the employer's
20 coverage for workers' compensation and disability; (C) proof that there
21 are no outstanding warrants of the department of taxation and finance or
22 the department of labor against the employer for failure to remit state
23 personal income tax withholdings or unemployment insurance contrib-
24 utions; and (D) proof that the employer has a computerized record keep-
25 ing system for payroll which, at a minimum, specifies hours worked, rate
26 of pay, gross wages, deductions and date of pay for each employee. If
27 the employers' manual workers are represented by a labor organization,
28 the commissioner shall not grant an employer's application for authori-

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

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1 zation under this subparagraph unless that labor organization consents
2 thereto.

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

5 1-a. On behalf of any employee paid less than the wage to which [~~he or~~
6 ~~she~~] such employee is entitled under the provisions of this article, the
7 commissioner may bring any legal action necessary, including administra-
8 tive action, to collect such claim and as part of such legal action, in
9 addition to any other remedies and penalties otherwise available under
10 this article, the commissioner shall assess against the employer the
11 full amount of any such underpayment, and an additional amount as liqui-
12 dated damages, unless the employer proves a good faith basis for believ-
13 ing that its underpayment of wages was in compliance with the law.
14 Liquidated damages shall be calculated by the commissioner as no more
15 than one hundred percent of the total amount of wages found to be due,
16 except such liquidated damages may be up to three hundred percent of the
17 total amount of the wages found to be due for a willful violation of
18 section one hundred ninety-four of this article. Notwithstanding the
19 provisions of this subdivision, liquidated damages shall not be applica-
20 ble to violations of paragraph a of subdivision one of section one
21 hundred ninety-one of this article where the employer paid the employee
22 wages on a regular payday, no less frequently than semi-monthly. Such
23 violations shall be subject to damages as follows:

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

30 (ii) three hundred percent of the lost interest found to be due for
31 the delayed payment of wages calculated using a daily interest rate for
32 each day payment is late based on the annual rate of interest then in
33 effect, as prescribed by the superintendent of financial services pursu-
34 ant to section fourteen-a of the banking law for any employer subject to
35 a previous order issued under section two hundred nineteen of this chap-
36 ter for violations of paragraph a of subdivision one of section one
37 hundred ninety-one of this article for which no proceeding for adminis-
38 trative or judicial review as provided in this chapter is pending and
39 the time for initiation of such proceeding shall have expired and relat-
40 ing to employees performing the same work; or

41 (iii) for a violation occurring after the effective date of the chap-
42 ter of the laws of two thousand twenty-four that amended this subdivi-
43 sion, liquidated damages equal to twenty-five percent of the total
44 amount of the wages found to be paid in violation of paragraph a of
45 subdivision one of section one hundred ninety-one of this article if the
46 employer, after the effective date of the chapter of the laws of two
47 thousand twenty-four that amended this subdivision, has been issued two
48 or more separate orders under section two hundred nineteen of this chap-
49 ter for violations of paragraph a of subdivision one of section one
50 hundred ninety-one of this article for which no proceeding for adminis-
51 trative or judicial review as provided in this chapter is pending and
52 the time for initiation of such proceeding shall have expired and relat-
53 ing to employees performing the same work.

54 For purposes of this section, an order under section two hundred nine-
55 teen of this chapter shall constitute a single order regardless of the
56 number of employees or the time period that was subject to such order.

1 In any action instituted in the courts upon a wage claim by an employee
2 or the commissioner in which the employee prevails, the court shall
3 allow such employee to recover the full amount of any underpayment, all
4 reasonable attorney's fees, prejudgment interest as required under the
5 civil practice law and rules, and, unless the employer proves a good
6 faith basis to believe that its underpayment of wages was in compliance
7 with the law, an additional amount as liquidated damages equal to one
8 hundred percent of the total amount of the wages found to be due, except
9 such liquidated damages may be up to three hundred percent of the total
10 amount of the wages found to be due for a willful violation of section
11 one hundred ninety-four of this article.

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