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:

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

The commissioner may authorize an employer [~~which has in the three years preceding the application employed an average of one thousand or more persons in this state or has for one year preceding the application employed an average of one thousand or more persons in this state and has for three years preceding the application employed an average of three thousand or more persons outside the state~~] to pay less frequently than weekly but not less frequently than semi-monthly if the employer furnishes satisfactory proof to the commissioner of its continuing ability to meet its payroll responsibilities. In making this determination the commissioner shall consider the following:

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

1-a. _a._ On behalf of any employee paid less than the wage to which he or she is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim and as part of such legal action, in addition to any other remedies and penalties otherwise available under this article, the commissioner shall assess against the employer the full amount of any such underpayment, and an additional amount as liquidated damages, unless the employer proves a good faith basis for believing that its underpayment of wages was in compliance with the law. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amount of wages found to be due, except such liquidated damages may be up to three hundred percent of the total 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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one hundred ninety-four of this article. Notwithstanding the provisions of this subdivision, liquidated damages shall not be applicable to violations of paragraph a of subdivision one of section one hundred ninety-one of this article where the employer paid the employee wages on a regular payday, no less frequently than semi-monthly. Such violations shall be subject to damages as follows:

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

(ii) three hundred percent of the lost interest found to be due for the delayed payment of wages calculated using a daily interest rate for each day payment is late based on the annual rate of interest then in effect, as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law for any employer subject to a previous order issued under section two hundred nineteen of this chapter for violation of paragraph a of subdivision one of section one hundred ninety-one of this article for which no proceeding for administrative or judicial review as provided in this chapter is pending and the time for initiation of such proceeding shall have expired and relating to employees performing the same work; or

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

b. For purposes of this subdivision, an order under section two hundred nineteen of this chapter shall constitute a single order regardless of the number of employees or the time period that was subject to such order.

c. In any action instituted in the courts upon a wage claim by an employee or the commissioner in which the employee prevails, the court shall allow such employee to recover the full amount of any underpayment, 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 amount of the wages found to be due, except such liquidated damages may be up to three hundred percent of the total amount of the wages found to be due for a willful violation of section one hundred ninety-four of this article.

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