STATE OF NEW YORK

7752

2023-2024 Regular Sessions

IN ASSEMBLY

June 6, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to grounds for attachment; to amend the business corporation law, in relation to streamlining procedures where employees may hold shareholders of non-publicly traded corporations personally liable for wage theft; to amend the limited liability company law, in relation to creating a right for victims of wage theft to hold the ten members with the largest ownership interests in a company personally liable for wage theft; and to amend the labor law, in relation to penalties for certain wage violations

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

Section 1. Subdivision 5 of section 6201 of the civil practice law and rules, as amended by chapter 860 of the laws of 1977 and as renumbered by chapter 618 of the laws of 1992, is amended and a new subdivision 6 is added to read as follows:

5. the cause of action is based on a judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or on a judgment which qualifies for recognition under the provisions of article 53[.] **of this chapter; or**

6. the cause of action is based on wage claims. "Wage claims," when used in this chapter, shall include any claims of violations of articles five, six, and nineteen of the labor law, section two hundred fifteen of the labor law, and the related regulations or wage orders promulgated by the commissioner of labor, including but not limited to any claims of unpaid, minimum, overtime, and spread-of-hours pay, unlawfully retained gratuities, unlawful deductions from wages, unpaid commissions, unpaid benefits and wage supplements, and retaliation, and any claims pursuant to 18 U.S.C. § 1595, 29 U.S.C. § 201 et seq., and/or employment contract

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

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as well as the concomitant liquidated damages and penalties authorized pursuant to the labor law, the Fair Labor Standards Act, or any employment contract.

§ 2. Section 6210 of the civil practice law and rules, as added by chapter 860 of the laws of 1977, is amended to read as follows:

§ 6210. Order of attachment on notice; temporary restraining order; contents. Upon a motion on notice for an order of attachment, the court may, without notice to the defendant, grant a temporary restraining order prohibiting the transfer of assets by a garnishee as provided in subdivision (b) of section 6214. When attachment is sought pursuant to subdivision six of section 6201, and if the employer contests the motion, the court shall hold a hearing within ten days of when the employer's response to plaintiffs' motion for attachment is due. The contents of the order of attachment granted pursuant to this section shall be as provided in subdivision (a) of section 6211.

§ 3. Subdivision (b) of section 6211 of the civil practice law and rules, as amended by chapter 566 of the laws of 1985, is amended to read as follows:

(b) Confirmation of order. Except where an order of attachment is granted on the ground specified in subdivision one or six of section 6201, an order of attachment granted without notice shall provide that within a period not to exceed five days after levy, the plaintiff shall move, on such notice as the court shall direct to the defendant, the garnishee, if any, and the sheriff, for an order confirming the order of attachment. Where an order of attachment without notice is granted on the ground specified in subdivision one or six of section 6201, the court shall direct that the statement required by section 6219 be served within five days, that a copy thereof be served upon the plaintiff, and the plaintiff shall move within ten days after levy for an order confirming the order of attachment. If the plaintiff upon such motion shall show that the statement has not been served and that the plaintiff will be unable to satisfy the requirement of subdivision (b) of section 6223 until the statement has been served, the court may grant one extension of the time to move for confirmation for a period not to exceed ten days. If plaintiff fails to make such motion within the required period, the order of attachment and any levy thereunder shall have no further effect and shall be vacated upon motion. Upon the motion to confirm, the provisions of subdivision (b) of section 6223 shall apply. An order of attachment granted without notice may provide that the sheriff refrain from taking any property levied upon into his or her actual custody, pending further order of the court.

§ 4. Subdivisions (b) and (e) of rule 6212 of the civil practice law and rules, subdivision (b) as separately amended by chapters 15 and 860 of the laws of 1977 and subdivision (e) as added by chapter 860 of the laws of 1977, are amended to read as follows:

(b) Undertaking. [~~On~~] 1. Except where an order of attachment is sought on the ground specified in subdivision six of section 6201, on a motion for an order of attachment, the plaintiff shall give an undertaking, in a total amount fixed by the court, but not less than five hundred dollars, a specified part thereof conditioned that the plaintiff shall pay to the defendant all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the attachment if the defendant recovers judgment or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property, and the balance conditioned that the plaintiff shall pay to the sheriff all of his or her allowable fees.

2. On a motion for an attachment pursuant to subdivision six of section 6201, the court shall order that the plaintiff give an accessible undertaking of no more than five hundred dollars, or in the alternative, may waive the undertaking altogether. The attorney for the plaintiff shall not be liable to the sheriff for such fees. The surety on the undertaking shall not be discharged except upon notice to the sheriff.

(e) Damages. [~~The~~] **Except where an order of attachment is sought on the ground specified in subdivision six of section 6201, the** plaintiff shall be liable to the defendant for all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the attachment if the defendant recovers judgment, or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property. Plaintiff's liability shall not be limited by the amount of the undertaking.

§ 5. Paragraph (b) of section 624 of the business corporation law, as amended by chapter 449 of the laws of 1997, is amended to read as follows:

(b) Any person who shall have been a shareholder of record of a corporation**, or who is or shall have been a laborer, servant or employee,** upon at least five days' written demand shall have the right to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its shareholders and record of shareholders and to make extracts therefrom for any purpose reasonably related to such person's interest as a shareholder**, laborer, servant or employee, provided the purpose reasonably related to a person's interest as a laborer, servant or employee shall be to obtain the names, addresses, and value of shareholders' interests in the corporation**. Holders of voting trust certificates representing shares of the corporation shall be regarded as shareholders for the purpose of this section. Any such agent or attorney shall be authorized in a writing that satisfies the requirements of a writing under paragraph (b) of section 609 (Proxies). A corporation requested to provide information pursuant to this paragraph shall make available such information in written form and in any other format in which such information is maintained by the corporation and shall not be required to provide such information in any other format. If a request made pursuant to this paragraph includes a request to furnish information regarding beneficial owners, the corporation shall make available such information in its possession regarding beneficial owners as is provided to the corporation by a registered broker or dealer or a bank, association or other entity that exercises fiduciary powers in connection with the forwarding of information to such owners. The corporation shall not be required to obtain information about beneficial owners not in its possession.

§ 6. Section 630 of the business corporation law, paragraph (a) as amended by chapter 5 of the laws of 2016, paragraph (c) as amended by chapter 746 of the laws of 1963, is amended to read as follows:

§ 630. Liability of shareholders for wages due to laborers, servants or employees.

(a) The ten largest shareholders, as determined by the fair value of their beneficial interest as of the beginning of the period during which the unpaid services referred to in this section are performed, of every domestic corporation or of any foreign corporation, when the unpaid services were performed in the state, no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, shall jointly and severally be personally liable for all

debts, wages or salaries due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. [~~Before such laborer, servant or employee shall charge such shareholder for such services, he shall give notice in writing to such shareholder that he intends to hold him liable under this section. Such notice shall be given within one hundred and eighty days after termination of such services, except that if, within such period, the laborer, servant or employee demands an examination of the record of shareholders under paragraph (b) of section 624 (Books and records; right of inspection, prima facie evidence) of this article, such notice may be given within sixty days after he has been given the opportunity to examine the record of shareholders. An action to enforce such liability shall be commenced within ninety days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for such services.~~] The provisions of this paragraph shall not apply to an investment company registered as such under an act of congress entitled "Investment Company Act of 1940."

(b) For the purposes of this section, wages or salaries shall mean all compensation and benefits payable by an employer to or for the account of the employee for personal services rendered by such employee **including any concomitant liquidated damages, penalties, interest, attorney's fees or costs**. These shall specifically include but not be limited to salaries, overtime, vacation, holiday and severance pay; employer contributions to or payments of insurance or welfare benefits; employer contributions to pension or annuity funds; and any other moneys properly due or payable for services rendered by such employee.

(c) A shareholder who has paid more than his **or her** pro rata share under this section shall be entitled to contribution pro rata from the other shareholders liable under this section with respect to the excess so paid, over and above his **or her** pro rata share, and may sue them jointly or severally or any number of them to recover the amount due from them. Such recovery may be had in a separate action. As used in this paragraph, "pro rata" means in proportion to beneficial share interest. Before a shareholder may claim contribution from other shareholders under this paragraph, he **or she** shall[~~, unless they have been given notice by a laborer, servant or employee under paragraph (a),~~] give them notice in writing that he **or she** intends to hold them so liable to him **or her**. Such notice shall be given by him **or her** within twenty days after the date that [~~notice was given to him by~~] **he or she became aware that** a laborer, servant or employee **may seek to hold him or her liable** under paragraph (a).

§ 7. Subdivision (c) of section 609 of the limited liability company law, as amended by chapter 620 of the laws of 2019, is amended to read as follows:

(c) Notwithstanding the provisions of subdivisions (a) and (b) of this section, the ten members with the largest percentage ownership interest, as determined as of the beginning of the period during which the unpaid services referred to in this section are performed, of every domestic limited liability company, or of any foreign limited liability company, when the unpaid services were performed in the state, shall jointly and severally be personally liable for all debts, wages or salaries due and owing to any of its laborers, servants or employees, for services performed by them for such limited liability company. [~~Before such laborer, servant or employee shall charge such member for such services, he or she shall give notice in writing to such member that he or she intends to hold such member liable under this section. Such notice shall~~

~~be given within one hundred eighty days after termination of such services. An action to enforce such liability shall be commenced within ninety days after the return of an execution unsatisfied against the limited liability company upon a judgment recovered against it for such services.~~] A member who has paid more than his or her pro rata share under this section shall be entitled to contribution pro rata from the other members liable under this section with respect to the excess so paid, over and above his or her pro rata share, and may sue them jointly or severally or any number of them to recover the amount due from them. Such recovery may be had in a separate action. As used in this subdivision, "pro rata" means in proportion to percentage ownership interest. Before a member may claim contribution from other members under this section, he or she shall give them notice in writing that he or she intends to hold them so liable to him or her.

§ 8. Section 1102 of the limited liability company law is amended by adding a new subdivision (e) to read as follows:

(e) Any person who is or shall have been a laborer, servant or employee of a limited liability company, upon at least five days' written demand shall have the right to examine in person or by agent or attorney, during usual business hours, records described in paragraph two of subdivision (a) of this section throughout the period of time during which such laborer, servant or employee provided services to such company. A company requested to provide information pursuant to this subdivision shall make available such records in written form and in any other format in which such information is maintained by the company and shall not be required to provide such information in any other format. Upon refusal by the company or by an officer or agent of the company to permit an inspection of the records described in this subdivision, the person making the demand for inspection may apply to the supreme court in the judicial district where the office of the company is located, upon such notice as the court may direct, for an order directing the company, its members or managers to show cause why an order should not be granted permitting such inspection by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such inspection, the court shall grant an order compelling such inspection and awarding such further relief as to the court may seem just and proper. If the applicant is found to be qualified and entitled to such inspection, the company shall pay all reasonable attorney's fees and costs of said applicant related to the demand for inspection of the records.

§ 9. Subdivision 5 of section 218 of the labor law, as added by chapter 537 of the laws of 2014, is amended to read as follows:

5. An employer similar in operation and ownership to a prior employer which had been found in violation of article six, nineteen or nineteen-A of this chapter, shall be deemed the same employer for the purposes of this section **and articles six, nineteen, and nineteen-A of this chapter** if the employees of the new employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors, or if the subsequent employer has substantially the same production process, produces substantially the same products and has substantially the same body of customers. Such subsequent employer shall continue to be subject to this section and liable for the acts of the prior employer under this section.

§ 10. Subdivision 4 of section 219 of the labor law, as added by chapter 537 of the laws of 2014, is amended to read as follows:

4. An employer similar in operation and ownership to a prior employer found to be in violation of article six, nineteen or nineteen-A of this chapter, shall be deemed the same employer for the purposes of this section **and articles six, nineteen, nineteen-A of this chapter** if the employees of the subsequent employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors, or if the new entity has substantially the same production process, produces substantially the same products and has substantially the same body of customers. Such a subsequent employer will continue to be subject to this section and shall be liable for the acts of the prior employer under this section.

§ 11. This act shall take effect on the thirtieth day after it shall have become a law. The procedures and rights created in this act may be used by employees, laborers or servants in connection with claims for liabilities that arose prior to the effective date of this act.