

# STATE OF NEW YORK

7539

2023-2024 Regular Sessions

## IN SENATE

June 5, 2023

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

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

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

10 6. the cause of action is based on wage claims. "Wage claims," when  
11 used in this chapter, shall include any claims of violations of articles  
12 five, six, and nineteen of the labor law, section two hundred fifteen of  
13 the labor law, and the related regulations or wage orders promulgated by  
14 the commissioner of labor, including but not limited to any claims of  
15 unpaid, minimum, overtime, and spread-of-hours pay, unlawfully retained  
16 gratuities, unlawful deductions from wages, unpaid commissions, unpaid  
17 benefits and wage supplements, and retaliation, and any claims pursuant  
18 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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1 as well as the concomitant liquidated damages and penalties authorized  
2 pursuant to the labor law, the Fair Labor Standards Act, or any employ-  
3 ment contract.

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

6 § 6210. Order of attachment on notice; temporary restraining order;  
7 contents. Upon a motion on notice for an order of attachment, the court  
8 may, without notice to the defendant, grant a temporary restraining  
9 order prohibiting the transfer of assets by a garnishee as provided in  
10 subdivision (b) of section 6214. When attachment is sought pursuant to  
11 subdivision six of section 6201, and if the employer contests the  
12 motion, the court shall hold a hearing within ten days of when the  
13 employer's response to plaintiffs' motion for attachment is due. The  
14 contents of the order of attachment granted pursuant to this section  
15 shall be as provided in subdivision (a) of section 6211.

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

19 (b) Confirmation of order. Except where an order of attachment is  
20 granted on the ground specified in subdivision one or six of section  
21 6201, an order of attachment granted without notice shall provide that  
22 within a period not to exceed five days after levy, the plaintiff shall  
23 move, on such notice as the court shall direct to the defendant, the  
24 garnishee, if any, and the sheriff, for an order confirming the order of  
25 attachment. Where an order of attachment without notice is granted on  
26 the ground specified in subdivision one or six of section 6201, the  
27 court shall direct that the statement required by section 6219 be served  
28 within five days, that a copy thereof be served upon the plaintiff, and  
29 the plaintiff shall move within ten days after levy for an order  
30 confirming the order of attachment. If the plaintiff upon such motion  
31 shall show that the statement has not been served and that the plaintiff  
32 will be unable to satisfy the requirement of subdivision (b) of section  
33 6223 until the statement has been served, the court may grant one exten-  
34 sion of the time to move for confirmation for a period not to exceed ten  
35 days. If plaintiff fails to make such motion within the required period,  
36 the order of attachment and any levy thereunder shall have no further  
37 effect and shall be vacated upon motion. Upon the motion to confirm, the  
38 provisions of subdivision (b) of section 6223 shall apply. An order of  
39 attachment granted without notice may provide that the sheriff refrain  
40 from taking any property levied upon into his or her actual custody,  
41 pending further order of the court.

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

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

1 2. On a motion for an attachment pursuant to subdivision six of  
2 section 6201, the court shall order that the plaintiff give an accessi-  
3 ble undertaking of no more than five hundred dollars, or in the alterna-  
4 tive, may waive the undertaking altogether. The attorney for the plain-  
5 tiff shall not be liable to the sheriff for such fees. The surety on the  
6 undertaking shall not be discharged except upon notice to the sheriff.

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

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

18 (b) Any person who shall have been a shareholder of record of a corpo-  
19 ration, or who is or shall have been a laborer, servant or employee,  
20 upon at least five days' written demand shall have the right to examine  
21 in person or by agent or attorney, during usual business hours, its  
22 minutes of the proceedings of its shareholders and record of sharehold-  
23 ers and to make extracts therefrom for any purpose reasonably related to  
24 such person's interest as a shareholder, laborer, servant or employee,  
25 provided the purpose reasonably related to a person's interest as a  
26 laborer, servant or employee shall be to obtain the names, addresses,  
27 and value of shareholders' interests in the corporation. Holders of  
28 voting trust certificates representing shares of the corporation shall  
29 be regarded as shareholders for the purpose of this section. Any such  
30 agent or attorney shall be authorized in a writing that satisfies the  
31 requirements of a writing under paragraph (b) of section 609 (Proxies).  
32 A corporation requested to provide information pursuant to this para-  
33 graph shall make available such information in written form and in any  
34 other format in which such information is maintained by the corporation  
35 and shall not be required to provide such information in any other  
36 format. If a request made pursuant to this paragraph includes a request  
37 to furnish information regarding beneficial owners, the corporation  
38 shall make available such information in its possession regarding bene-  
39 ficial owners as is provided to the corporation by a registered broker  
40 or dealer or a bank, association or other entity that exercises fiduci-  
41 ary powers in connection with the forwarding of information to such  
42 owners. The corporation shall not be required to obtain information  
43 about beneficial owners not in its possession.

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

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

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

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

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

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

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

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

~~1 be given within one hundred eighty days after termination of such  
2 services. An action to enforce such liability shall be commenced within  
3 ninety days after the return of an execution unsatisfied against the  
4 limited liability company upon a judgment recovered against it for such  
5 services.]~~ A member who has paid more than his or her pro rata share  
6 under this section shall be entitled to contribution pro rata from the  
7 other members liable under this section with respect to the excess so  
8 paid, over and above his or her pro rata share, and may sue them jointly  
9 or severally or any number of them to recover the amount due from them.  
10 Such recovery may be had in a separate action. As used in this subdivi-  
11 sion, "pro rata" means in proportion to percentage ownership interest.  
12 Before a member may claim contribution from other members under this  
13 section, he or she shall give them notice in writing that he or she  
14 intends to hold them so liable to him or her.

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

17 (e) Any person who is or shall have been a laborer, servant or employ-  
18 ee of a limited liability company, upon at least five days' written  
19 demand shall have the right to examine in person or by agent or attor-  
20 ney, during usual business hours, records described in paragraph two of  
21 subdivision (a) of this section throughout the period of time during  
22 which such laborer, servant or employee provided services to such compa-  
23 ny. A company requested to provide information pursuant to this subdivi-  
24 sion shall make available such records in written form and in any other  
25 format in which such information is maintained by the company and shall  
26 not be required to provide such information in any other format. Upon  
27 refusal by the company or by an officer or agent of the company to  
28 permit an inspection of the records described in this subdivision, the  
29 person making the demand for inspection may apply to the supreme court  
30 in the judicial district where the office of the company is located,  
31 upon such notice as the court may direct, for an order directing the  
32 company, its members or managers to show cause why an order should not  
33 be granted permitting such inspection by the applicant. Upon the return  
34 day of the order to show cause, the court shall hear the parties summar-  
35 ily, by affidavit or otherwise, and if it appears that the applicant is  
36 qualified and entitled to such inspection, the court shall grant an  
37 order compelling such inspection and awarding such further relief as to  
38 the court may seem just and proper. If the applicant is found to be  
39 qualified and entitled to such inspection, the company shall pay all  
40 reasonable attorney's fees and costs of said applicant related to the  
41 demand for inspection of the records.

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

44 5. An employer similar in operation and ownership to a prior employer  
45 which had been found in violation of article six, nineteen or nineteen-A  
46 of this chapter, shall be deemed the same employer for the purposes of  
47 this section and articles six, nineteen, and nineteen-A of this chapter  
48 if the employees of the new employer are engaged in substantially the  
49 same work in substantially the same working conditions under substan-  
50 tially the same supervisors, or if the subsequent employer has substan-  
51 tially the same production process, produces substantially the same  
52 products and has substantially the same body of customers. Such subse-  
53 quent employer shall continue to be subject to this section and liable  
54 for the acts of the prior employer under this section.

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

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

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