§ 219. Violations of certain wage payment provisions; interest, filing of order as judgment. 1. If the commissioner determines that an employer has failed to pay wages, benefits or wage supplements required pursuant to article six (payment of wages), article nineteen (minimum wage act) or article nineteen-A (minimum wage standards and protective labor practices for farm workers) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. A copy of such order shall be provided to any employee who has filed a complaint and to his or her authorized representative. Such order shall direct payment of wages or supplements found to be due, liquidated damages in the amount of one hundred percent of unpaid wages, and interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment.

At the discretion of the commissioner, the commissioner shall have full authority to provide for inclusion of an automatic fifteen percent additional amount of damages to come due and owing upon expiration of ninety days from an order to comply becoming final. The commissioner shall provide written notice to the employer in the order to comply of this additional damage.

2. An order issued under subdivision one of this section shall be final and not subject to review by any court or agency unless review is had pursuant to section one hundred one of this chapter.

3. (a) Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount found to be due, including, at the commissioner's discretion, an additional fifteen percent damages upon any outstanding monies owed. Notwithstanding any provision to the contrary, in execution of any order or decision filed

by the commissioner pursuant to this section, the commissioner shall have all the powers conferred upon sheriffs by article twenty-five of the civil practice law and rules, but the commissioner shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Additionally, at the request of an employee, the commissioner shall assign, without consideration or liability, that portion of the filed order that constitutes wages, wage supplements, interest on wages or wage supplements, or liquidated damages due the employee, to that employee and may file an assignment or order in that amount in the name of such employee with the county clerk of the county where the employer resides or has a place of business. The filing of such assignment, order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The assignment may be enforced by the employee in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

(b) In addition and as an alternative to any other remedy provided by this section and provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may issue a warrant under the official seal of the commissioner, directed to the sheriff of any county, commanding the sheriff to levy upon and sell the real and personal property that may be found within the sheriff's county of an employer who has defaulted in the payment of any sum determined to be due from such employer for the payment of such sum together with interest, penalties, and the cost of executing the warrant, and to return such warrant to the commissioner and to pay into the fund the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall, within five days after the receipt of the warrant, file with the clerk of the county a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the employer mentioned in the warrant and the amount of the contribution, interest, and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property and chattels of the employer against whom the warrant is issued in the same manner as a judgment duly docketed in

the office of such clerk. The sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and the sheriff shall be entitled to the same fees, which they may collect in the same manner, for the sheriff's services in executing the warrant.

(c) In the discretion of the commissioner, a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the department of labor who may file a copy of such warrant with the clerk of any county in the state, and thereupon each such clerk shall docket it and it shall become a lien in the same manner and with the same force and effect as hereinbefore provided with respect to a warrant issued and directed to and filed by a sheriff; and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but they shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner shall have the same remedies to enforce the amount thereof as if the commissioner had recovered judgment for the same.

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 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.