

CHAPTER 372

AN ACT to amend the labor law, in relation to strengthening wage and hour protections for working people

Became a law August 26, 2009, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. Subdivision 1-a of section 198 of the labor law, as added by chapter 310 of the laws of 1967, is amended to read as follows:

1-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 may assess against the employer an additional amount as liquidated damages equal to twenty-five percent of the total amount of wages found to be due, unless the employer proves a good faith basis for believing that its underpayment of wages was in compliance with the law.**

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 reasonable attorney's fees and, ~~[upon a finding that the employer's failure to pay the wage required by this article was willful]~~ **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 twenty-five percent of the total amount of the wages found to be due.

§ 2. Subdivision 1 of section 215 of the labor law, as amended by chapter 744 of the laws of 1986, is amended to read as follows:

1. **(a)** No employer or his **or her** agent, or the officer or agent of any corporation, **partnership, or limited liability company** shall discharge, penalize, or in any other manner discriminate **or retaliate** against any employee **(i)** because such employee has made a complaint to his **or her** employer, or to the commissioner or his **or her** authorized representative, that the employer has violated any provision of this chapter, or **(ii)** because such employee has caused to be instituted a proceeding under or related to this chapter, **or (iii) because such employee has provided information to the commissioner or his or her authorized representative,** or **(iv)** because such employee has testified or is about to testify in an investigation or proceeding under this chapter, **or (v) because such employee has otherwise exercised rights protected under this chapter, or (vi) because the employer has received an adverse determination from the commissioner involving the employee.**

(b) If after investigation the commissioner finds that an employer has violated any provision of this section, the commissioner may, by an order which shall describe particularly the nature of the violation, assess the employer a civil penalty of not less than ~~[two hundred]~~ **one**

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

thousand nor more than [~~two~~] ten thousand dollars, and order the employer to pay lost compensation to the employee.

(c) Notwithstanding the provisions of section two hundred thirteen of this [~~chapter~~] article, the penalties set forth in this section shall be the exclusive remedies available for violations of this section.

(d) This section shall not apply to employees of the state or any municipal subdivisions or departments thereof.

§ 3. Subdivisions 1 and 2 of section 663 of the labor law, as amended by chapter 310 of the laws of 1967, are amended to read as follows:

1. By employee. If any employee is paid by his or her employer less than the wage to which he or she is entitled under the provisions of this article, he or she may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees as may be allowed by the court, and [~~if such underpayment was willful~~] 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 twenty-five percent of the total of such underpayments found to be due [~~him~~] the employee and any agreement between [~~him~~] the employee, and [~~his~~] the employer to work for less than such wage shall be no defense to such action.

2. By commissioner. On behalf of any employee paid less than the wage to which [~~he~~] the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the costs, and [~~if such underpayment was willful~~] unless the employer proves a good faith basis to believe that its underpayment was in compliance with the law, an additional amount as liquidated damages equal to twenty-five percent of the total of such underpayments found to be due [~~him~~] the employee.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law, and shall apply to offenses committed on or after such effective date.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly