



National Employment  
Law Project

Delivering Economic Opportunity

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## SUPPORT

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The National Employment Law Project (NELP) is a non-profit organization based in New York City that has advocated for low-wage workers for over thirty years. NELP's attorneys and researchers help community coalitions and policymakers around the country design policies to raise wage standards and strengthen the enforcement of labor standards at the federal, state, and local levels. NELP supports this legislation.

Numerous reports – including one released by NELP researchers in 2007 – have shown that New York's workers are increasingly facing violations of their most basic rights to a minimum wage and overtime. Across the state, wage-and-hour violations are becoming standard practice in many low-wage industries – ranging from construction, agriculture, and industrial laundries to home health care, restaurants, grocery stores, and building services.

In response, the New York State Department of Labor (DOL) is pursuing important new strategies to protect workers who are not paid the money that they are owed. But many state laws protecting these workers are outdated, lagging behind analogous provisions of federal law, not to mention other states which have begun providing stronger protections than federal law. This bill includes three modest proposals to begin modernizing state law and helping the DOL's enforcement:

- (1) This proposal would take a first step toward making New York state law more consistent with federal law in awarding damages for minimum wage and overtime violations. At present, workers must prove that an employer's failure to pay the minimum wage was *willful* in order to collect the 25% liquidated damages provided by state law. This proposal would instead entitle workers to 25% damages unless the employer proves a "good-faith basis" for underpaying – the same standard as federal law and other states.

But it would still leave New York's protections far weaker than those provided under federal law and in the vast majority of other states. The federal Fair Labor Standards Act and the minimum wage laws of 31 other states provide 100% liquidated damages for workers who are not paid the wages that they are owed – for a total of twice unpaid wages or "double damages." Moreover, the trend in recent years has been to provide *treble damages or more* – unpaid wages plus *at least* 200% liquidated damages. Eleven states now provide for at least treble damages, including four states that have adopted this standard in the last decade: Arizona (2006); Idaho (1999); Massachusetts (2008); and Ohio (2006). In addition, just last Friday, New Mexico's legislature passed – and Governor Richardson is expected to sign – a bill that will provide treble damages in that state as well. NELP therefore recommends that, at a bare minimum, these bills should be amended to increase the authorized damages to unpaid wages plus 200% liquidated damages, as more states are now doing. New York's 25% standard is an archaic outlier that leaves state wage protections far weaker than those elsewhere.

- (2) The proposal also makes clear that workers who cooperate with the DOL should not face retaliation or discrimination for their cooperation. This provision will help the DOL conduct its investigations by reassuring workers that they will not be terminated for participating in the DOL's investigations.
- (3) Finally, the proposal increases to \$10,000 the civil penalty for employers who retaliate against workers who assert their rights under state labor laws. As adjusted, this penalty is consistent with the federal minimum wage law, which also provides a \$10,000 maximum penalty.

For these reasons, NELP urges you to support this legislation.

For more information, please contact:

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