
SENATE BILL 5685

State of Washington

56th Legislature

1999 Regular Session

By Senators Prentice, Goings and Fraser

Read first time 02/03/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to payment of wages; amending RCW 49.46.100,
2 49.48.020, 49.48.040, 49.48.060, and 49.48.070; adding a new section to
3 chapter 49.48 RCW; creating a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that over twenty-five
6 thousand state residents per year file cases and complaints with the
7 department of labor and industries alleging they have been denied
8 payment for work they performed. Each month an average of over one
9 million dollars in back wages is sought by workers.

10 The legislature further finds that the Washington state minimum
11 wage law and wage claim laws do not require payment of interest on back
12 wages owed and do not authorize adequate penalties against violators.
13 To improve compliance, the department of labor and industries should be
14 allowed to assess interest on back wages and impose civil penalties
15 against employers who are found to be not in compliance with chapters
16 49.46 and 49.48 RCW.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.48 RCW
18 to read as follows:

1 An employer shall pay all wages due to each worker within six
2 calendar days of the last day of the established pay period unless the
3 worker is covered by a collective bargaining agreement that establishes
4 a different payment requirement and the employer complies with the
5 payment requirement of the collective bargaining agreement. Wage
6 payments that are received by electronic deposit, company mail, or any
7 other mail service must be received by the worker within the time
8 period established under this section.

9 **Sec. 3.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to read
10 as follows:

11 (1) Any employer who hinders or delays the director or ~~((his))~~ the
12 director's authorized representatives in the performance of ~~((his))~~ the
13 director's duties in the enforcement of this chapter, or refuses to
14 admit the director or ~~((his))~~ the director's authorized representatives
15 to any place of employment, or fails to make, keep, and preserve any
16 records as required under the provisions of this chapter, or falsifies
17 any such record, or refuses to make any record accessible to the
18 director or ~~((his))~~ the director's authorized representatives upon
19 demand, or refuses to furnish a sworn statement of such record or any
20 other information required for the proper enforcement of this chapter
21 to the director or ~~((his))~~ the director's authorized representatives
22 upon demand ~~((, or pays or agrees to pay wages at a rate less than the~~
23 ~~rate applicable under this chapter, or otherwise violates any provision~~
24 ~~of this chapter or of any regulation issued under this chapter))~~ shall
25 be deemed in violation of this chapter and shall ~~((, upon conviction~~
26 ~~therefor, be guilty of a gross misdemeanor))~~ be assessed a civil
27 penalty of not more than one thousand dollars depending on the size of
28 the business and the gravity of the violation.

29 (2) ~~((Any))~~ (a) An employer who pays or agrees to pay wages at a
30 rate less than the rate applicable under this chapter or any rule or
31 order adopted under this chapter may be assessed civil penalties of an
32 amount equal to twenty percent of the wage violation.

33 (b) An employer who willfully or repeatedly pays or agrees to pay
34 wages at a rate less than the rate applicable under this chapter or a
35 rule or order adopted under this chapter is in violation of this
36 chapter, and shall, upon conviction, be guilty of a gross misdemeanor.

37 (c) An employer who fails to pay wages due as required by this
38 chapter may be assessed civil penalties of:

1 (i) Fifty dollars for each failure to pay each worker; and
2 (ii) For each subsequent violation, or any willful or intentional
3 violation, one hundred dollars for each failure to pay each worker,
4 plus twenty-five percent of the amount of wages unlawfully withheld.

5 (d) An employer who does not pay all wages owed within seventy-two
6 hours of an order issued by the department under RCW 49.48.040(1)(b)
7 shall, in addition to any other applicable penalty, be assessed a civil
8 penalty equal to three times the amount of wages due and not paid.

9 (3) Upon a finding by the director that an employer who discharges
10 or in any other manner discriminates against any employee because such
11 employee has made any complaint to his or her employer, to the
12 director, or his or her authorized representatives that he or she has
13 not been paid wages in accordance with the provisions of this chapter,
14 or that the employer has violated any provision of this chapter, or
15 because such employee has caused to be instituted or is about to cause
16 to be instituted any proceeding under or related to this chapter, or
17 because such employee has testified or is about to testify in any such
18 proceeding ((shall be deemed in violation of this chapter and shall,
19 upon conviction therefor, be guilty of a gross misdemeanor)), the
20 director may require an employer who has discharged or discriminated
21 against an employee in violation of this chapter to reinstate the
22 employee to the same position with back pay and interest up to one
23 percent per month.

24 (4) Civil penalties imposed under this chapter shall be paid to the
25 director for deposit in the general fund. Civil penalties may be
26 recovered and other civil remedies authorized by this chapter may be
27 enforced in a civil action in the name of the department brought in the
28 superior court of the county where the violation is alleged to have
29 occurred, or the department may use the procedures for collection of
30 wages set forth in chapter 49.48 RCW.

31 **Sec. 4.** RCW 49.48.020 and 1971 ex.s. c 55 s 2 are each amended to
32 read as follows:

33 Any person, firm, or corporation which violates any of the
34 provisions of RCW 49.48.010 through 49.48.030 ((and)), 49.48.060, and
35 section 2 of this act shall be guilty of a misdemeanor.

36 **Sec. 5.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read
37 as follows:

1 (1) The department of labor and industries may:

2 (a) Conduct investigations to ensure compliance with this chapter
3 and chapters 39.12 and 49.46 RCW, upon obtaining information indicating
4 an employer may be committing a violation under this chapter and
5 chapters 39.12((7)) and 49.46((7 and 49.48 RCW, conduct investigations
6 to ensure compliance with chapters 39.12, 49.46, and 49.48)) RCW;

7 (b) Order the payment of all wages owed the workers, including
8 interest of up to one percent per month on back wages owed, and
9 institute actions necessary for the collection of the sums determined
10 owed; and

11 (c) Take assignments of wage claims and prosecute actions for the
12 collection of wages and interest of up to one percent per month on back
13 wages owed of persons who are financially unable to employ counsel when
14 in the judgment of the director of the department the claims are valid
15 and enforceable in the courts.

16 (2) Upon being informed of a wage claim against an employer or
17 former employer, the director shall, if such claim appears to be just,
18 immediately notify the employer or former employer, of such claim by
19 mail. If the employer or former employer fails to pay the claim or
20 make satisfactory explanation to the director of the failure to do so,
21 within thirty days, the employer or former employer is liable to a
22 penalty of twenty percent of that portion of the claim found to be
23 justly due. The director shall have a cause of action against the
24 employer or former employer for the recovery of such penalty, and the
25 same may be included in any subsequent action by the director on the
26 wage claim, or may be exercised separately after adjustment of such
27 wage claim without court action.

28 (3) The director of the department or any authorized representative
29 may, for the purpose of carrying out RCW 49.48.040 through 49.48.080:

30 (a) Issue subpoenas to compel the attendance of witnesses or parties
31 and the production of books, papers, or records; (b) administer oaths
32 and examine witnesses under oath; (c) take the verification of proof of
33 instruments of writing; and (d) take depositions and affidavits. If
34 assignments for wage claims are taken, court costs shall not be payable
35 by the department for prosecuting such suits.

36 ((+3+)) (4) The director shall have a seal inscribed "Department of
37 Labor and Industries--State of Washington" and all courts shall take
38 judicial notice of such seal. Obedience to subpoenas issued by the

1 director or authorized representative shall be enforced by the courts
2 in any county.

3 ~~((4))~~ (5) The director or authorized representative shall have
4 free access to all places and works of labor. Any employer or any
5 agent or employee of such employer who refuses the director or
6 authorized representative admission therein, or who, when requested by
7 the director or authorized representative, willfully neglects or
8 refuses to furnish the director or authorized representative any
9 statistics or information pertaining to his or her lawful duties, which
10 statistics or information may be in his or her possession or under the
11 control of the employer or agent, shall be guilty of a misdemeanor.

12 (6) An action for relief under this section shall be commenced
13 within three years after the cause of action accrues, unless a longer
14 period of time applies under law.

15 **Sec. 6.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to
16 read as follows:

17 (1) If upon investigation by the director, after taking assignments
18 of any wage claim under RCW 49.48.040, it appears to the director that
19 the employer is representing to ~~((his))~~ employees that ~~((he))~~ the
20 employer is able to pay wages for their services and that the employees
21 are not being paid for their services or if the director determines an
22 employer has repeatedly violated the provisions of this chapter or
23 chapter 39.12 or 49.46 RCW requiring payment of wages, the director may
24 require the employer to give a bond in such sum as the director deems
25 reasonable and adequate in the circumstances, with sufficient surety,
26 conditioned that the employer will for a definite future period not
27 exceeding six months conduct ~~((his))~~ business and pay ~~((his))~~ employees
28 in accordance with the laws of the state of Washington.

29 (2) If within ten days after demand for such bond the employer
30 fails to provide the same, the director may commence a suit against the
31 employer in the superior court of appropriate jurisdiction to compel
32 ~~((him))~~ the employer to furnish such bond or cease doing business until
33 ~~((he))~~ the employer has done so. The employer shall have the burden of
34 proving the amount thereof to be excessive.

35 (3) If the court finds that there is just cause for requiring such
36 bond and that the same is reasonable, necessary or appropriate to
37 secure the prompt payment of the wages of the employees of such
38 employer and his compliance with RCW 49.48.010 through 49.48.080, the

1 court shall enjoin such employer from doing business in this state
2 until the requirement is met, or shall make other, and may make
3 further, orders appropriate to compel compliance with the requirement.

4 ~~((Upon being informed of a wage claim against an employer or former
5 employer, the director shall, if such claim appears to be just,
6 immediately notify the employer or former employer, of such claim by
7 mail. If the employer or former employer fails to pay the claim or
8 make satisfactory explanation to the director of his failure to do so,
9 within thirty days thereafter, the employer or former employer shall be
10 liable to a penalty of ten percent of that portion of the claim found
11 to be justly due. The director shall have a cause of action against
12 the employer or former employer for the recovery of such penalty, and
13 the same may be included in any subsequent action by the director on
14 said wage claim, or may be exercised separately after adjustment of
15 such wage claim without court action.))~~

16 **Sec. 7.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to read
17 as follows:

18 It shall be the duty of the director of labor and industries to
19 inquire diligently for any violations of RCW 49.48.040 through
20 49.48.080 and section 2 of this act, and to institute the actions for
21 penalties herein provided, and to enforce generally the provisions of
22 RCW 49.48.040 through 49.48.080 and section 2 of this act.

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