

HOUSE BILL REPORT

HB 1311

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to authorizing the director of labor and industries to issue and enforce civil penalties for violations of the minimum wage act and chapter 49.48 RCW.

Brief Description: Authorizing penalties for wage payment violations.

Sponsors: Representatives McCoy, Conway, Hudgins, Wood, Simpson, Moeller, Chase and Ormsby; by request of Department of Labor & Industries.

Brief History:

Committee Activity:

Commerce & Labor: 1/24/05, 3/2/05 [DPS].

Brief Summary of Substitute Bill

- Requires employers that violate wage payment laws to pay workers unpaid wages and interest on such wages.
- Establishes civil penalties for violations of minimum wage and wage payment laws.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; and Crouse.

Staff: Jill Reinmuth (786-7134).

Background:

The state Minimum Wage Act and other laws establish standards for the payment of wages. These standards are enforced by the Department of Labor and Industries (Department), which has authority to investigate wage violations, order the payment of wages owed to workers, and bring civil actions to collect wages. Employees are also permitted to bring civil actions to collect unpaid wages. Criminal penalties apply to certain violations.

An employer who pays an employee less than the amount to which the employee is entitled is liable in a civil action to the employee, even if the employee agreed to work for less. If the employee is successful in obtaining a judgment for wages owed, attorneys' fees are assessed against the employer, unless the recovery is equal to or less than the amount the employer admitted to be owing.

An employer is also liable in a civil action to the employee or employee's assignee for collecting a rebate from employees' wages and for paying a lower wage than obligated by law or contract when the paying of lower wages is willful and is done with intent to deprive. In this case, the employer is subject to exemplary damages of twice the amount of wages withheld.

The Department may investigate wage violations, order employers to pay, and institute actions to collect after a determination that sums are owed. The Department also may take assignments of wage claims and prosecute actions for employees who are financially unable to employ counsel.

A three-year statute of limitation applies to a number of causes, including an action on an unwritten contract (six years for written contract). The statute of limitations is two years for any action with no other limit specified.

Summary of Substitute Bill:

An employer that violates wage payment laws must pay wages due, including interest of up to 1 percent per month on unpaid wages, to the worker. An employer may be assessed civil penalties for wage payment violations and record keeping violations of not less than \$100 and not more than \$1,000 per violation per employee.

The employer may be assessed civil penalties only:

- If the Director of Labor and Industries determines that the violation was a repeat violation, a willful violation, or due to the employer not acting in good faith.
- If the employer fails, within 30 days of the Department of Labor and Industries' (Department's) issuance of a citation or notice of assessment, to either pay the wages and interest owed or appeal the citation or notice of assessment.

The Director of the Department is authorized to waive collection of penalties in favor of payment of wages. Certain factors that the director may consider when determining the amount of penalties are specified. Civil penalties are paid to the Director of the Department, and are deposited in the supplemental pension fund.

The director is also authorized to order payment of wages determined to be unpaid, including interest on unpaid wages. The Department need not take an assignment of a wage claim before bringing a civil action to collect unpaid wages. Procedures are established for

administrative review of citations or notices of assessment, and collection of unpaid wages and civil penalties.

An employment law advisory committee (committee) is created. The advisory committee is chaired by the Department and composed of four members representing employees and four members representing employers. The committee must comment on Department rulemaking, policies, and other initiatives related to wage and hour laws. During the 2005-07 biennium, the committee must review wage payment and record keeping requirements in state and federal law, and make findings and recommendations as to appropriate legislative action and/or rule making activities.

Substitute Bill Compared to Original Bill:

A provision is modified to specify that penalties for wage payment violations are not less than \$100 and not more than \$1,000 per violation per employee (rather than 10 times the amount owed).

A provision is added to specify that penalties may be assessed only if the wage payment or record keeping violation was a repeat violation, a willful violation, or due to the employer not acting in good faith, or if the employer failed to respond to the citation or notice of assessment (either by paying the wages owed or appealing the citation).

A provision is added to establish an employment law advisory committee.

Provisions are deleted that make legislative findings related to the state Minimum Wage Act and wage claim laws, that explicitly preserve private rights of action, and that establish a statute of limitation.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is needed to curb the underground economy, especially with regard to migrant and other transient workers.

It gives the Department the tools necessary to address one-third of the 5,000 wage and hour claims received each year. Right now, if the employer does not respond, the Department's only option is to convince the local prosecuting attorney to take the case. The prosecuting attorneys are often reluctant to take on these cases.

It focuses on making sure low-wage workers get paid. It addresses those situations where employers fail to pay regular and overtime wages, when they make unlawful deductions, and where they maintain no records or false records.

It gives the Department authority to issue penalties. Current remedies are insufficient, and workers are just out of luck. It also establishes an administrative process to resolve wage payment violations.

Prompt payment of final wages would go a long way towards achieving justice for workers, and should be added to the bill.

Testimony Against: This bill is too broad. Do not give the Department this authority without clarity, consistency, and responsibility.

Under federal law, once the Secretary of Labor steps in, private litigation is on hold. This bill does not do that. Moreover, it allows for penalties equal to 12 times the wages owed.

Employers can rely on what the federal Department of Labor told them to do, but not what the state Department tells them. There are times when state law is silent, and federal law is the only available law to rely on. Small businesses are especially vulnerable because the laws are extremely complex.

There have been circumstances in which the the Department changed its position without warning and without changing the date on its guidelines. The Department should adopt rules, not guidelines.

There are instances in which the Department policy conflicts with state statutes and rules, such as Department policies on packers. Also, the right of entry provisions in current law are believed to be unconstitutional.

Persons Testifying: (In support) Representative McCoy, prime sponsor; Patrick Woods, Rich Ervin, and Janice Kerns, Department of Labor and Industries; Jeff Johnson, Washington State Labor Council; Bruce Neas, Columbia Legal Services.

(Opposed) Kris Tefft, Association of Washington Business; Doug Smith, Lane Powell Spears Lubersky; Dan Fazio, Washington State Farm Bureau; Carolyn Logue, National Federation of Independent Business; Gary Smith, Independent Business Association; and Mark Johnson, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: None.