
SUBSTITUTE HOUSE BILL 1311

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives McCoy, Conway, Hudgins, Wood, Simpson, Moeller, Chase and Ormsby; by request of Department of Labor & Industries)

READ FIRST TIME 03/07/05.

1 AN ACT Relating to authorizing the director of labor and industries
2 to issue and enforce civil penalties for violations of the minimum wage
3 act and chapter 49.48 RCW; amending RCW 49.48.010, 49.48.040,
4 49.48.060, and 49.48.070; adding new sections to chapter 49.48 RCW;
5 adding a new section to chapter 49.46 RCW; creating a new section; and
6 prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.48 RCW
9 to read as follows:

10 DEFINITIONS. For purposes of this chapter:

11 (1) "Department" means the department of labor and industries.

12 (2) "Director" means the director of the department of labor and
13 industries, or the director's authorized representative.

14 (3) "Recordkeeping requirement" means a recordkeeping requirement
15 set forth in RCW 49.12.041, 49.12.050, 49.12.105, 49.46.040, 49.46.070,
16 or 49.52.050, and any related rules adopted by the department.

17 (4) "Wage payment requirement" means a wage payment requirement set
18 forth in chapter 49.12, 49.30, 49.46, or 49.52 RCW or this chapter, and
19 any related rules adopted by the department.

1 **Sec. 2.** RCW 49.48.010 and 1971 ex.s. c 55 s 1 are each amended to
2 read as follows:

3 PAYMENT OF WAGES; PROMPT PAYMENT OF FINAL WAGES. (1) Except as
4 provided in subsection (2) of this section, an employer shall pay each
5 employee all wages due on an established payday for each pay period.

6 (2) When any employee shall cease to work for an employer, whether
7 by discharge or by voluntary withdrawal, the employer shall pay the
8 employee all wages due (~~((him on account of his employment shall be paid~~
9 ~~to him))~~) at the end of the established pay period(~~(:—PROVIDED,~~
10 ~~HOWEVER, That this paragraph)~~).

11 (3) Subsection (2) of this section shall not apply:

12 (a) When (~~((workers))~~) employees are engaged in an employment that
13 normally involves working for several employers in the same industry
14 interchangeably, and the several employers or some of them cooperate to
15 establish a plan for the weekly payment of wages at a central place or
16 places and in accordance with a unified schedule of paydays providing
17 for at least one payday each week; but this subsection shall not apply
18 to any such plan until ten business days after notice of their
19 intention to set up such a plan shall have been given to the director
20 (~~((of labor and industries))~~) by the employers who cooperate to establish
21 the plan; and having once been established, no such plan can be
22 abandoned except after notice of their intention to abandon such plan
23 has been given to the director (~~((of labor and industries))~~) by the
24 employers intending to abandon the plan(~~(:—PROVIDED FURTHER, That the~~
25 ~~duty to pay an employee forthwith shall not apply))~~); or

26 (b) If the labor-management agreement under which the employee has
27 been employed provides otherwise.

28 (4)(a) It shall be unlawful for any employer to withhold or divert
29 any portion of an employee's final wages unless the deduction is
30 openly, clearly, and in due course recorded in the employer's books and
31 records and is:

32 ~~((1))~~ (i) Required by state or federal law; or

33 ~~((2))~~ (ii) Specifically agreed upon orally or in writing by the
34 employee and employer; or

35 ~~((3))~~ (iii) For medical, surgical or hospital care or service,
36 pursuant to any rule or regulation(~~(:—PROVIDED, HOWEVER, That the~~
37 ~~deduction is openly, clearly and in due course recorded in the~~
38 ~~employer's books and records)~~).

1 ~~((Paragraph three of this section))~~ (b) This subsection shall not
2 be construed to affect the right of any employer or former employer to
3 sue upon or collect any debt owed to ~~((said))~~ the employer or former
4 employer by ~~((his))~~ any employee~~((s))~~ or former employee~~((s))~~.

5 **Sec. 3.** RCW 49.48.040 and 1987 c 172 s 1 are each amended to read
6 as follows:

7 ENFORCEMENT OF WAGE CLAIMS. (1) The department ~~((of labor and~~
8 ~~industries))~~ may:

9 (a) Conduct investigations to enforce and ensure compliance with
10 this chapter and chapters 39.12, 49.12, 49.30, 49.46, and 49.52 RCW,
11 upon obtaining information indicating an employer may be committing a
12 violation under these chapters ~~((39.12, 49.46, and 49.48 RCW, conduct~~
13 ~~investigations to ensure compliance with chapters 39.12, 49.46, and~~
14 ~~49.48 RCW))~~;

15 (b) ~~((Order the payment of))~~ Issue a citation or notice of
16 assessment ordering an employer to pay all wages owed the ~~((workers))~~
17 employees, including interest of up to one percent per month on the
18 unpaid wages to the employee, and any penalties assessed under section
19 6 of this act; and

20 (c) Institute actions necessary ~~((for the collection of the sums~~
21 ~~determined owed; and~~

22 ~~((c) Take assignments of wage claims and prosecute actions for the~~
23 ~~collection of wages of persons who are financially unable to employ~~
24 ~~counsel when in the judgment of the director of the department the~~
25 ~~claims are valid and enforceable in the courts))~~ to recover wages
26 determined to be owed to employees in any superior court or other court
27 of competent jurisdiction of the county where the violation is alleged
28 to have occurred, or the department may use the procedures for recovery
29 of wages in a court action set forth in this chapter and chapter 49.52
30 RCW.

31 (2) The director ~~((of the department or any authorized~~
32 ~~representative))~~ may, for the purpose of carrying out RCW 49.48.010 and
33 49.48.040 through 49.48.080: (a) Issue subpoenas to compel the
34 attendance of witnesses or parties and the production of books, papers,
35 or records; (b) administer oaths and examine witnesses under oath; (c)
36 take the verification of proof of instruments of writing; and (d) take

1 depositions and affidavits. If assignments for wage claims are taken,
2 court costs shall not be payable by the department for prosecuting such
3 suits.

4 (3) The director shall have a seal inscribed "Department of Labor
5 and Industries--State of Washington" and all courts shall take judicial
6 notice of such seal. Obedience to subpoenas issued by the director
7 (~~or authorized representative~~) shall be enforced by the courts in any
8 county.

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

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

20 WAGE BONDS. (1) If upon investigation by the director, (~~after~~
21 ~~taking assignments of any wage claim under RCW 49.48.040,~~) it appears
22 to the director that the employer is representing to his or her
23 employees that he or she is able to pay wages for their services and
24 that the employees are not being paid for their services, the director
25 may require the employer to give a bond in such sum as the director
26 deems reasonable and adequate in the circumstances, with sufficient
27 surety, conditioned that the employer will for a definite future period
28 not exceeding six months conduct his or her business and pay his or her
29 employees in accordance with the laws of the state of Washington.

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

36 (3) If the court finds that there is just cause for requiring such
37 bond and that the same is reasonable, necessary or appropriate to

1 secure the prompt payment of the wages of the employees of such
2 employer and his or her compliance with RCW 49.48.010 through
3 49.48.080, the court shall enjoin such employer from doing business in
4 this state until the requirement is met, or shall make other, and may
5 make further, orders appropriate to compel compliance with the
6 requirement.

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

19 **Sec. 5.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to read
20 as follows:

21 ENFORCEMENT. It shall be the duty of the director (~~(of labor and
22 industries))~~ to inquire diligently for any violations of RCW 49.48.010
23 and 49.48.040 through 49.48.080, and to institute the actions for
24 penalties herein provided, and to enforce generally the provisions of
25 RCW 49.48.010 and 49.48.040 through 49.48.080.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.48 RCW
27 to read as follows:

28 CITATIONS AND ASSESSMENTS OF CIVIL PENALTIES. (1) An employer
29 found to have violated a wage payment requirement in a citation or
30 notice of assessment issued by the director shall pay the wages due,
31 including interest of up to one percent per month on the unpaid wages,
32 to the employee, and may be assessed a civil penalty of not less than
33 one hundred dollars and not more than one thousand dollars for each
34 violation per employee. Each day a violation occurs is a separate
35 violation. The director may also claim the remedies in RCW 49.52.070.

1 If the employer pays all wages due to the employee, the director may
2 waive collection of a penalty assessed under this subsection in whole
3 or in part.

4 (2) An employer found to have violated a recordkeeping requirement
5 may be assessed a civil penalty of not less than one hundred dollars
6 and not more than one thousand dollars for each violation per employee,
7 and may be assessed a civil penalty of not more than one thousand
8 dollars for each subsequent violation found in the citation or notice
9 of assessment. Each day a violation occurs is a separate violation.

10 (3) Civil penalties under this section may be assessed only if:

11 (a) The director determines that the violation was a repeat
12 violation. For purposes of this subsection, a repeat violation means
13 a second or additional alleged violation of the wage payment or
14 recordkeeping requirements of this act where the department has
15 previously provided notice to the employer that the employer was
16 allegedly in violation of the wage payment or recordkeeping
17 requirements of this act or where a previous finding of violation has
18 been issued under this act;

19 (b) The director determines that the violation was a willful
20 violation;

21 (c) The director determines that the violation was due to the
22 employer not acting in good faith. For purposes of this subsection and
23 subsection (4) of this section, "good faith" includes whether the
24 employer reasonably relied upon an interpretive or administrative
25 policy issued by the department and published with the office of the
26 code reviser pursuant to chapter 34.05 RCW; or

27 (d) The employer fails, within thirty days of the department's
28 issuance of a citation or notice of assessment, to either pay the wages
29 and interest owed or appeal the citation or notice of assessment as
30 provided in section 7 of this act.

31 (4) When considering the amount of penalties for violations found
32 in a citation and notice of assessment, the director shall consider the
33 good faith of the employer, the appropriateness of the penalty with
34 respect to the number of affected employees of the employer being
35 charged for each violation, the gravity of the violations, the duration
36 of the violations, the size of the employer's business, the history of
37 previous violations, and other relevant factors.

1 (5) Civil penalties collected under this section shall be paid to
2 the director for deposit in the supplemental pension fund established
3 under RCW 51.44.033.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.48 RCW
5 to read as follows:

6 ADMINISTRATIVE APPEALS. (1) A person, firm, or corporation
7 aggrieved by a citation or notice of assessment issued by the
8 department under this chapter may appeal the action or decision to the
9 director by filing notice of the appeal with the director within thirty
10 days of the department's issuance of a citation or notice of
11 assessment. A citation or notice of assessment not appealed within the
12 thirty-day period is final and binding, and not subject to further
13 appeal.

14 (2) Upon receipt of an appeal, the director shall assign the
15 hearing to an administrative law judge of the office of administrative
16 hearings to conduct the hearing and issue an initial order. The
17 hearing and review procedures shall be conducted in accordance with
18 chapter 34.05 RCW. A party aggrieved by the initial order may file a
19 petition for administrative review of the initial order with the
20 director within thirty days of the administrative law judge's issuance
21 of the initial order.

22 (3) The director shall issue all final orders after the initial
23 order. The final order of the director is subject to appeal in
24 accordance with chapter 34.05 RCW.

25 (4) A notice of appeal filed with the director under this section
26 shall stay the effectiveness of a citation or notice of assessment of
27 a penalty pending final review of the appeal by the director as
28 provided for in chapter 34.05 RCW.

29 (5) Orders that are not appealed within the time period specified
30 in this section and chapter 34.05 RCW are final and binding, and not
31 subject to further appeal.

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.48 RCW
33 to read as follows:

34 COLLECTION PROCEDURES. (1) If an employer defaults in a payment of
35 wages and civil penalties payable to the department after a final order
36 is issued under this chapter, the director may file with the clerk of

1 any county within the state, a warrant in the amount of the notice of
2 assessment, plus interest, penalties, and any filing fees. The clerk
3 of the county in which the warrant is filed shall immediately designate
4 a superior court cause number for the warrant, and the clerk shall
5 cause to be entered in the judgment docket under the superior court
6 cause number assigned to the warrant, the name of the employer
7 mentioned in the warrant, the amount of payment, penalty, fine due on
8 it, or filing fee, and the date when the warrant was filed. The
9 aggregate amount of the warrant as docketed becomes a lien upon the
10 title to, and interest in, all real and personal property of the
11 employer against whom the warrant is issued, the same as a judgment in
12 a civil case docketed in the office of the clerk. The sheriff shall
13 proceed upon the warrant in all respects and with like effect as
14 prescribed by law with respect to execution or other process issued
15 against rights or property upon judgment in a court of competent
16 jurisdiction. The warrant so docketed is sufficient to support the
17 issuance of writs of garnishment in favor of the state in a manner
18 provided by law in case of judgment, wholly or partially unsatisfied.
19 The clerk of the court is entitled to a filing fee which will be added
20 to the amount of the warrant. A copy of the warrant shall be mailed to
21 the employer within three days of filing with the clerk.

22 (2)(a) The director may issue to any person, firm, corporation,
23 other entity, municipal corporation, political subdivision of the
24 state, a public corporation, or any agency of the state, a notice and
25 order to withhold and deliver property of any kind when he or she has
26 reason to believe that there is in the possession of the person, firm,
27 corporation, other entity, municipal corporation, political subdivision
28 of the state, public corporation, or agency of the state, property that
29 is or will become due, owing, or belonging to an employer upon whom a
30 notice of assessment has been served by the department for payments or
31 civil penalties due to the department. The effect of a notice and
32 order is continuous from the date the notice and order is first made
33 until the liability out of which the notice and order arose is
34 satisfied or becomes unenforceable because of lapse of time. The
35 department shall release the notice and order when the liability out of
36 which the notice and order arose is satisfied or becomes unenforceable
37 by reason of lapse of time and shall notify the person against whom the
38 notice and order was made that the notice and order has been released.

1 (b) The notice and order to withhold and deliver must be served by
2 the sheriff of the county or by the sheriff's deputy, by certified
3 mail, return receipt requested, or by the director. A person, firm,
4 corporation, other entity, municipal corporation, political subdivision
5 of the state, public corporation, or agency of the state upon whom
6 service has been made shall answer the notice within twenty days
7 exclusive of the day of service, under oath and in writing, and shall
8 make true answers to the matters inquired of in the notice and order.
9 Upon service of the notice and order, if the party served possesses any
10 property that may be subject to the claim of the department, the party
11 shall promptly deliver the property to the director. The director
12 shall hold the property in trust for application on the employer's
13 indebtedness to the department, or for return without interest, in
14 accordance with a final determination of a petition for review. In the
15 alternative, the party shall furnish a good and sufficient surety bond
16 satisfactory to the director conditioned upon final determination of
17 liability. If a party served and named in the notice fails to answer
18 the notice within the time prescribed in this section, the court may
19 render judgment by default against the party for the full amount
20 claimed by the director in the notice, together with costs. If a
21 notice is served upon an employer and the property subject to it is
22 wages, the employer may assert in the answer all exemptions provided
23 for by chapter 6.27 RCW to which the wage earner is entitled.

24 (3) In addition to the procedure for collection of a payment,
25 penalty, or fine due to the department as set forth in this section,
26 the department may recover civil penalties or wages imposed under this
27 chapter in a civil action brought in a court of competent jurisdiction
28 of the county where the violation is alleged to have occurred.

29 (4) This section does not affect other collection remedies that are
30 otherwise provided by law.

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.48 RCW
32 to read as follows:

33 EMPLOYMENT LAW ADVISORY COMMITTEE. (1) The director shall appoint
34 an employment law advisory committee composed of nine members: Four
35 members representing employees, each of whom shall be appointed from a
36 list of at least three names submitted by a recognized statewide
37 organization of employees, representing a majority of employees; four

1 members representing employers, each of whom shall be appointed from a
2 list of at least three names submitted by a recognized statewide
3 organization of employers, representing a majority of employers; and
4 one ex officio member representing the department. The member
5 representing the department shall be chairperson.

6 (2) The members of the committee shall be appointed for a term of
7 three years commencing on July 1, 2005, and the terms of the members
8 representing the employees and employers shall be staggered so that the
9 director shall designate one member from each group initially appointed
10 whose term shall expire on June 30, 2006, and one member from each
11 group whose term shall expire on June 30, 2007.

12 (3)(a) The committee shall provide comment on department rule
13 making, policies, and other initiatives related to wage and hour laws.
14 The committee may also conduct a continuing study of any aspect of wage
15 and hour law the committee determines to require their consideration.
16 The committee shall report its findings to the department for action as
17 deemed appropriate.

18 (b) During the 2005-07 biennium, the committee shall review wage
19 payment and recordkeeping requirements as defined in this chapter, and
20 comparable requirements in 29 U.S.C. Secs. 202 through 262 and related
21 regulations adopted by the United States department of labor, and make
22 findings and recommendations as to appropriate legislative action
23 and/or rule-making activities.

24 (4) The members shall serve without compensation, but are entitled
25 to travel expenses as provided in RCW 43.03.050 and 43.03.060. The
26 committee may hire such experts, if any, as it requires to discharge
27 its duties and may utilize such personnel and facilities of the
28 department as it needs, without charge. All expenses of the committee
29 must be paid by the department.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 49.48 RCW
31 to read as follows:

32 RULE-MAKING AUTHORITY. The director may adopt rules to carry out
33 the purposes of this chapter.

34 NEW SECTION. **Sec. 11.** A new section is added to chapter 49.46 RCW
35 to read as follows:

1 RULE-MAKING AUTHORITY. The director may adopt rules to carry out
2 the purposes of this chapter.

3 NEW SECTION. **Sec. 12.** CAPTIONS. Captions used in this act are
4 not any part of the law.

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