
Commerce & Labor Committee

HB 2646

Brief Description: Improving administration of wage complaints.

Sponsors: Representatives McCoy, Conway, Green, Hasegawa, Ormsby, Chase, Simpson, Kenney and Roberts.

Brief Summary of Bill

- Restricts the Department of Labor and Industries' authority to waive civil penalties for repeat violators of the wage laws and for employers that have a business practice of disregard for wage laws.
- Tolls the statute of limitations during a wage complaint investigation.
- Provides for successor business liability.
- Establishes civil penalties for repeat violators of the wage laws and for employers that have a business practice of disregard for wage laws.

Hearing Date: 1/19/10

Staff: Alison Hellberg (786-7152).

Background:

Legislation passed in 2006 authorizes the Department of Labor and Industries (Department) to order the payment of wages owed, including interest and, for willful violations of wage payment requirements, civil penalties.

If an employee files a wage complaint for a violation of a wage payment requirement, the Department must investigate the complaint. A "wage payment requirement" includes the requirements to pay minimum wages, overtime compensation, and final wages, and the requirement to withhold only lawful deductions from wages.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department must issue either a citation and notice of assessment (citation) or a determination of compliance no later than 60 days after receiving the complaint and within three years after the date when the wages were due. The Department may order the employer to pay employees all wages owed, including interest of 1 percent per month. If the violation is willful, the Department may also order the employer to pay a civil penalty.

Civil penalties for willful violations of wage payment requirements must be the greater of \$500 or 10 percent of unpaid wages, but not more than \$20,000.

The Department must waive civil penalties if the employer paid the wages owed, including interest, within 10 business days of receiving the citation. The Department may waive civil penalties if the employer paid the wages owed.

An employee who has filed a wage complaint may elect to terminate the Department's administrative action, and preserve a private right of action by providing written notice to the Department within 10 business days of the issuance of a citation. If the employee elects to terminate the Department's administrative action, the Department must discontinue its action against the employer and vacate a citation already issued.

There are also procedures for collection of unpaid wages and civil penalties.

Summary of Bill:

The Department may not waive civil penalties for repeat violators of the wage payment laws. A "repeat violator" is an employer that has been the subject of a final and binding citation and notice of assessment within five years of the date of issue of the most recent citation and notice of assessment.

The Department has discretion to waive civil penalties for employers that have a business practice of disregard for wage laws. A "business practice of disregard for wage law" means that an employer has willfully contravened wage payment requirements at least twice, including actions pertaining to an employee's current complaint, in the five years preceding the date of filing of the employee's complaint.

The minimum civil penalty for willful violations is raised to \$1,000 from \$500. Two new civil penalties are also established.

The Department must assess a civil penalty against any repeat violator in an amount of not less than \$1,000 or 10 percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a repeat violator is \$20,000.

The Department may assess a civil penalty of not less than \$1,000 and not more than \$20,000 where the Department determines by a preponderance of the evidence that an employer shows a business practice of disregard for wage law. The penalty amount must be consistent with the severity of the violation. The Department should use the following factors in determining the severity of the violation:

- the number of wage complaints against the employer in the previous five years;
- the credibility of the complaints;

- the similarity of the complaints;
- the number of separate alleged violations within the complaints;
- evidence that the employer willfully violated the wage payment provisions;
- evidence that the employer remedies violations only when the Department becomes involved; and
- evidence that the employer attempts to discourage employees from filing wage complaints.

The statute of limitations for civil actions is tolled during any wage complaint investigation by the Department of an employee's wage complaint against an employer. The Department's investigation begins on the date the employee files the wage complaint and ends when the Department notifies the employer and the employee in writing that the claim has been otherwise resolved or that the employee has elected to terminate the Department's administrative action.

A successor to an employer's business becomes liable for any outstanding citation or penalty against the employer's business. A "successor" is a person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, a major part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the employer's business.

Appropriation: None.

Fiscal Note: Requested on January 12, 2010.

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