

**SENATE BILL 5155**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senators A. Smith, Moore, Murray, Skratek and Conner; by request of Department of Labor & Industries.

Read first time January 22, 1991. Referred to Committee on Commerce & Labor.

1       AN ACT Relating to penalties for violations of wage payment laws;  
2 amending RCW 49.46.100, 49.48.040, and 49.48.060; creating a new  
3 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

1 against employers who are found to be not in compliance with chapters  
2 49.46 and 49.48 RCW.

3 **Sec. 2.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to read  
4 as follows:

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

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

27 (b) An employer who willfully or repeatedly pays or agrees to pay  
28 wages at a rate less than the rate applicable under this chapter or a

1 rule or order adopted under this chapter is in violation of this  
2 chapter, and shall, upon conviction, be guilty of a gross misdemeanor.

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

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

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

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

28 (a) Conduct investigations to ensure compliance with chapters  
29 39.12, 49.46, and 49.48 RCW, upon obtaining information indicating an

1 employer may be committing a violation under chapters 39.12, 49.46, and  
2 49.48 RCW(~~(, conduct investigations to ensure compliance with chapters~~  
3 ~~39.12, 49.46, and 49.48 RCW))~~);

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

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

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

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

27 (a) Issue subpoenas to compel the attendance of witnesses or parties  
28 and the production of books, papers, or records; (b) administer oaths  
29 and examine witnesses under oath; (c) take the verification of proof of  
30 instruments of writing; and (d) take depositions and affidavits. If

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

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

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

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

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

22 (1) If upon investigation by the director, after taking assignments  
23 of any wage claim under RCW 49.48.040, it appears to the director that  
24 the employer is representing to ~~((his))~~ employees that ~~((he))~~ the  
25 employer is able to pay wages for their services and that the employees  
26 are not being paid for their services or if the director determines an  
27 employer has repeatedly violated the provisions of chapter 39.12, 49.46  
28 or 49.48 RCW requiring payment of wages, the director may require the  
29 employer to give a bond in such sum as the director deems reasonable

1 and adequate in the circumstances, with sufficient surety, conditioned  
2 that the employer will for a definite future period not exceeding six  
3 months conduct ((his)) business and pay ((his)) employees in accordance  
4 with the laws of the state of Washington.

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

11 (3) If the court finds that there is just cause for requiring such  
12 bond and that the same is reasonable, necessary or appropriate to  
13 secure the prompt payment of the wages of the employees of such  
14 employer and his compliance with RCW 49.48.010 through 49.48.080, the  
15 court shall enjoin such employer from doing business in this state  
16 until the requirement is met, or shall make other, and may make  
17 further, orders appropriate to compel compliance with the requirement.

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