
HOUSE BILL 2646

State of Washington 61st Legislature 2010 Regular Session

By Representatives McCoy, Conway, Green, Hasegawa, Ormsby, Chase, Simpson, Kenney, and Roberts

Prefiled 01/08/10. Read first time 01/11/10. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to improving administration of wage complaints by
2 defining the limitations period for administrative wage claims through
3 the department of labor and industries, tolling the civil statute of
4 limitations, increasing minimum penalties for violators, creating and
5 affecting waiver of penalties for repeat violators and those with a
6 business practice of disregard for wage law, and providing for wage law
7 violation liability for successor businesses; amending RCW 49.48.082,
8 49.48.083, 49.48.084, and 49.48.086; adding a new section to chapter
9 49.48 RCW; and prescribing penalties.

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

11 **Sec. 1.** RCW 49.48.082 and 2006 c 89 s 1 are each amended to read
12 as follows:

13 The definitions in this section apply throughout this section and
14 RCW 49.48.083 through 49.48.086:

15 (1) "Citation" means a written determination by the department that
16 a wage payment requirement has been violated.

17 (2) "Department" means the department of labor and industries.

18 (3) "Determination of compliance" means a written determination by
19 the department that wage payment requirements have not been violated.

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

3 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
4 purposes of a wage payment requirement set forth in RCW 49.46.020 or
5 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment
6 requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

7 (6) "Employer" has the meaning provided in RCW 49.46.010 for
8 purposes of a wage payment requirement set forth in RCW 49.46.020,
9 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

10 (7) "Notice of assessment" means a written notice by the department
11 that, based on a citation, the employer shall pay the amounts assessed
12 under RCW 49.48.083.

13 (8) "Wage" has the meaning provided in RCW 49.46.010.

14 (9) "Wage complaint" means a complaint from an employee to the
15 department that asserts that an employer has violated one or more wage
16 payment requirements and that is reduced to writing.

17 (10) "Wage payment requirement" means a wage payment requirement
18 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or
19 49.52.060, and any related rules adopted by the department.

20 (11) "Willful" means a knowing and intentional action that is
21 neither accidental nor the result of a bona fide dispute, as evaluated
22 under the standards applicable to wage payment violations under RCW
23 49.52.050(2).

24 (12) "Business practice of disregard for wage law" means that an
25 employer has willfully contravened wage payment requirements at least
26 twice, including actions pertaining to an employee's current complaint,
27 in the five years preceding the date of filing of the employee's
28 complaint.

29 (13) "Repeat violator" means any employer that has been the subject
30 of a final and binding citation and notice of assessment within five
31 years of the date of issue of the most recent citation and notice of
32 assessment.

33 (14) "Successor" means any person to whom an employer quitting,
34 selling out, exchanging, or disposing of a business sells or otherwise
35 conveys in bulk and not in the ordinary course of the employer's
36 business, a major part of the materials, supplies, merchandise,
37 inventory, fixtures, or equipment of the employer's business.

1 **Sec. 2.** RCW 49.48.083 and 2006 c 89 s 2 are each amended to read
2 as follows:

3 (1) If an employee files a wage complaint with the department, the
4 department shall investigate the wage complaint. Unless otherwise
5 resolved, the department shall issue either a citation and notice of
6 assessment or a determination of compliance(~~((a))~~) no later than
7 sixty days after the date on which the department received the wage
8 complaint, unless the department extends this time period for good
9 cause(~~(; and (b) no later than three years after the date on which the~~
10 cause of action accrued, unless a longer period of time applies under
11 law. Such cause of action for wage claims accrues from the date when
12 the wages are due)). The department may not investigate a claim unless
13 it is filed within three years of the date when the last wages were
14 owed. The department shall send the citation and notice of assessment
15 or the determination of compliance to both the employer and the
16 employee by service of process or certified mail to their last known
17 addresses. The wages and interest owed must be calculated from the
18 first date wages were owed to the employee, except that the department
19 may not order the employer to pay any wages and interest that were owed
20 more than three years before the date the claim was filed with the
21 department.

22 (2) If the department determines that an employer has violated a
23 wage payment requirement and issues to the employer a citation and
24 notice of assessment, the department may order the employer to pay
25 employees all wages owed, including interest of one percent per month
26 on all wages owed, to the employee.

27 (3) If the department determines that the violation of the wage
28 payment requirement was a willful violation, the department also may
29 order the employer to pay the department a civil penalty as specified
30 in (a) of this subsection.

31 (a) A civil penalty for a willful violation of a wage payment
32 requirement shall be not less than (~~(five hundred))~~ one thousand
33 dollars or an amount equal to ten percent of the total amount of unpaid
34 wages, whichever is greater. The maximum civil penalty for a willful
35 violation of a wage payment requirement shall be twenty thousand
36 dollars.

37 (b) The department may not assess a civil penalty if the employer
38 reasonably relied on: (i) A rule related to any wage payment

1 requirement; (ii) a written order, ruling, approval, opinion, advice,
2 determination, or interpretation of the director; or (iii) an
3 interpretive or administrative policy issued by the department and
4 filed with the office of the code reviser. In accordance with the
5 department's retention schedule obligations under chapter 40.14 RCW,
6 the department shall maintain a complete and accurate record of all
7 written orders, rulings, approvals, opinions, advice, determinations,
8 and interpretations for purposes of determining whether an employer is
9 immune from civil penalties under (b)(ii) of this subsection.

10 (c) The department shall waive any civil penalty assessed against
11 an employer under this section if the director determines that the
12 employer has provided payment to the employee of all wages that the
13 department determined that the employer owed to the employee, including
14 interest, within ten business days of the employer's receipt of the
15 citation and notice of assessment from the department. However, the
16 department may not waive a civil penalty assessed under this section
17 against a repeat violator, and the department may, but is not required
18 to, waive a civil penalty assessed against an employer under this
19 section if the department determines that an employer has a business
20 practice of disregard for wage laws.

21 (d) The department may waive at any time a civil penalty assessed
22 under this section, in whole or in part, if the director determines
23 that the employer paid all wages owed to an employee. However, the
24 department may not waive a civil penalty assessed under this section
25 against a repeat violator.

26 (e) The department shall deposit civil penalties paid under this
27 section in the supplemental pension fund established under RCW
28 51.44.033.

29 (4) Upon payment by an employer, and acceptance by an employee, of
30 all wages and interest assessed by the department in a citation and
31 notice of assessment issued to the employer, the fact of such payment
32 by the employer, and of such acceptance by the employee, shall: (a)
33 Constitute a full and complete satisfaction by the employer of all
34 specific wage payment requirements addressed in the citation and notice
35 of assessment; and (b) bar the employee from initiating or pursuing any
36 court action or other judicial or administrative proceeding based on
37 the specific wage payment requirements addressed in the citation and

1 notice of assessment. The citation and notice of assessment shall
2 include a notification and summary of the specific requirements of this
3 subsection.

4 (5) The applicable statute of limitations for civil actions is
5 tolled during any wage complaint investigation by the department of an
6 employee's wage complaint against an employer. For the purposes of
7 this subsection, the department's investigation begins on the date the
8 employee files the wage complaint with the department and ends when the
9 department notifies the employer and the employee in writing that the
10 claim has been otherwise resolved or that the employee has elected to
11 terminate the department's administrative action.

12 **Sec. 3.** RCW 49.48.084 and 2006 c 89 s 3 are each amended to read
13 as follows:

14 (1) A person, firm, or corporation aggrieved by a citation and
15 notice of assessment or a determination of compliance issued by the
16 department under RCW 49.48.083 may appeal the citation and notice of
17 assessment ~~((or))~~, the determination of compliance, or the assessment
18 of civil penalty for repeat violations or business practice of
19 disregard for wage law to the director by filing a notice of appeal
20 with the director within thirty days of the department's issuance of
21 the citation and notice of assessment or the determination of
22 compliance. A citation and notice of assessment or a determination of
23 compliance not appealed within thirty days is final and binding, and
24 not subject to further appeal.

25 (2) A notice of appeal filed with the director under this section
26 shall stay the effectiveness of the citation and notice of assessment
27 ~~((or))~~, the determination of compliance, or the assessment of civil
28 penalty for repeat violations or business practice of disregard for
29 wage law pending final review of the appeal by the director as provided
30 for in chapter 34.05 RCW.

31 (3) Upon receipt of a notice of appeal, the director shall assign
32 the hearing to an administrative law judge of the office of
33 administrative hearings to conduct the hearing and issue an initial
34 order. The hearing and review procedures shall be conducted in
35 accordance with chapter 34.05 RCW, and the standard of review by the
36 administrative law judge of an appealed citation and notice of
37 assessment or an appealed determination of compliance shall be de novo.

1 Any party who seeks to challenge an initial order shall file a petition
2 for administrative review with the director within thirty days after
3 service of the initial order. The director shall conduct
4 administrative review in accordance with chapter 34.05 RCW.

5 (4) The director shall issue all final orders after appeal of the
6 initial order. The final order of the director is subject to judicial
7 review in accordance with chapter 34.05 RCW.

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

11 (6) An employer who fails to allow adequate inspection of records
12 in an investigation by the department under this chapter within a
13 reasonable time period may not use such records in any appeal under
14 this section to challenge the correctness of any determination by the
15 department of wages owed or penalty assessed.

16 **Sec. 4.** RCW 49.48.086 and 2006 c 89 s 5 are each amended to read
17 as follows:

18 (1) After a final order is issued under RCW 49.48.084, if an
19 employer defaults in the payment of: (a) Any wages determined by the
20 department to be owed to an employee, including interest; or (b) any
21 civil penalty ordered by the department under RCW 49.48.083, the
22 director may file with the clerk of any county within the state a
23 warrant in the amount of the payment plus any filing fees. The clerk
24 of the county in which the warrant is filed shall immediately designate
25 a superior court cause number for the warrant, and the clerk shall
26 cause to be entered in the judgment docket under the superior court
27 cause number assigned to the warrant, the name of the employer
28 mentioned in the warrant, the amount of payment due on it plus any
29 filing fees, and the date when the warrant was filed. The aggregate
30 amount of the warrant as docketed becomes a lien upon the title to, and
31 interest in, all real and personal property of the employer against
32 whom the warrant is issued, the same as a judgment in a civil case
33 docketed in the office of the clerk. The sheriff shall proceed upon
34 the warrant in all respects and with like effect as prescribed by law
35 with respect to execution or other process issued against rights or
36 property upon judgment in a court of competent jurisdiction. The
37 warrant so docketed is sufficient to support the issuance of writs of

1 garnishment in favor of the state in a manner provided by law in case
2 of judgment, wholly or partially unsatisfied. The clerk of the court
3 is entitled to a filing fee which will be added to the amount of the
4 warrant. A copy of the warrant shall be mailed to the employer within
5 three days of filing with the clerk.

6 (2)(a) The director may issue to any person, firm, corporation,
7 other entity, municipal corporation, political subdivision of the
8 state, a public corporation, or any agency of the state, a notice and
9 order to withhold and deliver property of any kind when he or she has
10 reason to believe that there is in the possession of the person, firm,
11 corporation, other entity, municipal corporation, political subdivision
12 of the state, public corporation, or agency of the state, property that
13 is or will become due, owing, or belonging to an employer upon whom a
14 notice of assessment has been served by the department for payments or
15 civil penalties due to the department. The effect of a notice and
16 order is continuous from the date the notice and order is first made
17 until the liability out of which the notice and order arose is
18 satisfied or becomes unenforceable because of lapse of time. The
19 department shall release the notice and order when the liability out of
20 which the notice and order arose is satisfied or becomes unenforceable
21 by reason of lapse of time and shall notify the person against whom the
22 notice and order was made that the notice and order has been released.

23 (b) The notice and order to withhold and deliver must be served by
24 the sheriff of the county or by the sheriff's deputy, by certified
25 mail, return receipt requested, or by the director. A person, firm,
26 corporation, other entity, municipal corporation, political subdivision
27 of the state, public corporation, or agency of the state upon whom
28 service has been made shall answer the notice within twenty days
29 exclusive of the day of service, under oath and in writing, and shall
30 make true answers to the matters inquired of in the notice and order.
31 Upon service of the notice and order, if the party served possesses any
32 property that may be subject to the claim of the department, the party
33 shall promptly deliver the property to the director. The director
34 shall hold the property in trust for application on the employer's
35 indebtedness to the department, or for return without interest, in
36 accordance with a final determination of a petition for review. In the
37 alternative, the party shall furnish a good and sufficient surety bond
38 satisfactory to the director conditioned upon final determination of

1 liability. If a party served and named in the notice fails to answer
2 the notice within the time prescribed in this section, the court may
3 render judgment by default against the party for the full amount
4 claimed by the director in the notice, together with costs. If a
5 notice is served upon an employer and the property subject to it is
6 wages, the employer may assert in the answer all exemptions provided
7 for by chapter 6.27 RCW to which the wage earner is entitled.

8 (3) In addition to the procedure for collection of wages owed,
9 including interest, and civil penalties as set forth in this section,
10 the department may recover wages owed, including interest, and civil
11 penalties assessed under RCW 49.48.083 in a civil action brought in a
12 court of competent jurisdiction of the county where the violation is
13 alleged to have occurred.

14 (4) Whenever any employer quits business, sells out, exchanges, or
15 otherwise disposes of the employer's business or stock of goods, any
16 person who becomes a successor to the business becomes liable for the
17 full amount of any outstanding citation and notice of assessment or
18 penalty against the employer's business under this chapter. If the
19 citation and notice of assessment or penalty is not paid in full by the
20 employer within ten days of the date of the sale, exchange, or
21 disposal, the successor is liable for the payment of the full amount of
22 the citation and notice of assessment or penalty, and payment thereof
23 by the successor must, to the extent thereof, be deemed a payment upon
24 the purchase price. If the payment is greater in amount than the
25 purchase price, the amount of the difference becomes a debt due the
26 successor from the employer.

27 (5) This section does not affect other collection remedies that are
28 otherwise provided by law.

29 NEW SECTION. Sec. 5. A new section is added to chapter 49.48 RCW
30 to read as follows:

31 (1) The department shall assess a civil penalty against any repeat
32 violator in an amount of not less than one thousand dollars or an
33 amount equal to ten percent of the total amount of unpaid wages,
34 whichever is greater. The maximum civil penalty for a repeat violator
35 is twenty thousand dollars.

36 (2) The department may assess a civil penalty of not less than one
37 thousand dollars and not more than twenty thousand dollars where the

1 department determines by a preponderance of the evidence that an
2 employer shows a business practice of disregard for wage law. The
3 penalty amount must be consistent with the severity of the violation,
4 as determined by reference to factors not limited to:

5 (a) The number of complaints against the employer under this
6 chapter in the previous five years;

7 (b) The credibility of the complaints;

8 (c) The similarity of the complaints;

9 (d) The number of separate alleged violations within the
10 complaints;

11 (e) Evidence that the employer willfully violated the provisions of
12 this chapter;

13 (f) Evidence that the employer remedies violations only when the
14 department becomes involved; and

15 (g) Evidence that the employer attempts to discourage employees
16 from filing wage complaints with the department.

--- END ---