
SUBSTITUTE SENATE BILL 5951

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions
(originally sponsored by Senators Prentice, Fraser, Franklin, Costa and Kline)

READ FIRST TIME 02/28/2001.

1 AN ACT Relating to payment of wages; amending RCW 49.46.100,
2 49.48.020, 49.48.040, 49.48.060, and 49.48.070; adding a new section to
3 chapter 49.48 RCW; creating a new 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 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
15 against employers who are found to be not in compliance with chapters
16 49.46 and 49.48 RCW.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.48 RCW
18 to read as follows:

1 (1) An employer shall pay each worker all wages due on an
2 established payday for each payroll period.

3 (2) An employer who fails to pay wages due as required by this
4 section may be assessed civil penalties of:

5 (a) Fifty dollars for each failure to pay each worker; and

6 (b) For each subsequent violation, or any willful or intentional
7 violation, one hundred dollars for each failure to pay each worker,
8 plus twenty-five percent of the amount of wages unlawfully withheld.

9 (3) An employer who does not pay all wages owed within seventy-two
10 hours of an order issued by the department under RCW 49.48.040(1)(b)
11 shall, in addition to any other applicable penalty, be assessed a civil
12 penalty equal to three times the amount of wages due and not paid.

13 (4) Upon a finding by the director that an employer who discharges
14 or in any other manner discriminates against any employee because such
15 employee has made any complaint to his or her employer, to the
16 director, or his or her authorized representatives that he or she has
17 not been paid wages in accordance with this section, or that the
18 employer has violated this section, or because such employee has caused
19 to be instituted or is about to cause to be instituted any proceeding
20 under or related to this section, or because such employee has
21 testified or is about to testify in any such proceeding, the director
22 may require an employer who has discharged or discriminated against an
23 employee in violation of this section to reinstate the employee to the
24 same position with back pay and interest up to one percent per month.

25 (5) The director, or the director's authorized representative, has
26 authority to assess all civil penalties provided in this section,
27 giving due consideration to the appropriateness of the penalty with
28 respect to the number of affected employees of the employer being
29 charged, the gravity of the violation, the size of the employer's
30 business, the good faith of the employer, and the history of previous
31 violations.

32 (6) Civil penalties imposed under this chapter shall be paid to the
33 director for deposit in the general fund. Civil penalties may be
34 recovered and other civil remedies authorized by this chapter may be
35 enforced in a civil action in the name of the department brought in the
36 superior court of the county where the violation is alleged to have
37 occurred, or the department may use the procedures for collection of
38 wages set forth in this chapter.

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

3 (1) Any employer who hinders or delays the director or ~~((his))~~ the
4 director's authorized representatives in the performance of ~~((his))~~ the
5 director's duties in the enforcement of this chapter, or refuses to
6 admit the director or ~~((his))~~ the director's authorized representatives
7 to any place of employment, or fails to make, keep, and preserve any
8 records as required under the provisions of this chapter, or falsifies
9 any such record, or refuses to make any record accessible to the
10 director or ~~((his))~~ the director's authorized representatives upon
11 demand, or refuses to furnish a sworn statement of such record or any
12 other information required for the proper enforcement of this chapter
13 to the director or ~~((his))~~ the director's authorized representatives
14 upon demand(~~(, or pays or agrees to pay wages at a rate less than the~~
15 ~~rate applicable under this chapter, or otherwise violates any provision~~
16 ~~of this chapter or of any regulation issued under this chapter)) shall~~
17 be deemed in violation of this chapter and shall(~~(, upon conviction~~
18 ~~therefor, be guilty of a gross misdemeanor)) be assessed a civil
19 penalty of not more than one thousand dollars depending on the size of
20 the business and the gravity of the violation, provided that, before
21 entering a business or any other establishment to commence an
22 investigation under this section, the director or the director's
23 authorized representative shall notify the owner, manager, operator, or
24 person in charge. If access is refused, the director or the director's
25 authorized representative may obtain an administrative search warrant
26 from a court of competent jurisdiction.~~

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

31 (b) An employer who willfully or repeatedly pays or agrees to pay
32 wages at a rate less than the rate applicable under this chapter or a
33 rule or order adopted under this chapter is in violation of this
34 chapter and shall, upon conviction, be guilty of a gross misdemeanor.

35 (c) An employer who fails to pay wages due as required by this
36 chapter may be assessed civil penalties of:

37 (i) Fifty dollars for each failure to pay each worker; and

1 (ii) For each subsequent violation, or any willful or intentional
2 violation, one hundred dollars for each failure to pay each worker,
3 plus twenty-five percent of the amount of wages unlawfully withheld.

4 (d) An employer who does not pay all wages owed within seventy-two
5 hours of an order issued by the department under RCW 49.48.040(1)(b)
6 shall, in addition to any other applicable penalty, be assessed a civil
7 penalty equal to three times the amount of wages due and not paid.

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

23 (4) The director, or the director's authorized representative, has
24 authority to assess all civil penalties provided in this section,
25 giving due consideration to the appropriateness of the penalty with
26 respect to the number of affected employees of the employer being
27 charged, the gravity of the violation, the size of the employer's
28 business, the good faith of the employer, and the history of previous
29 violations.

30 (5) Civil penalties imposed under this chapter shall be paid to the
31 director for deposit in the general fund. Civil penalties may be
32 recovered and other civil remedies authorized by this chapter may be
33 enforced in a civil action in the name of the department brought in the
34 superior court of the county where the violation is alleged to have
35 occurred, or the department may use the procedures for collection of
36 wages set forth in chapter 49.48 RCW.

37 **Sec. 4.** RCW 49.48.020 and 1971 ex.s. c 55 s 2 are each amended to
38 read as follows:

1 Any person, firm, or corporation which violates any of the
2 provisions of RCW 49.48.010 through 49.48.030 (~~and~~), 49.48.060, and
3 section 2 of this act shall be guilty of a misdemeanor.

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

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

7 (a) Conduct investigations to ensure compliance with this chapter
8 and chapters 39.12 and 49.46 RCW, upon obtaining information indicating
9 an employer may be committing a violation under this chapter and
10 chapters 39.12(~~(7)~~) and 49.46(~~(7 and 49.48~~ RCW, conduct investigations
11 to ensure compliance with chapters 39.12, 49.46, and 49.48)) RCW;

12 (b) Order the payment of all wages owed the workers, including
13 interest of up to one percent per month on back wages owed, and
14 institute actions necessary for the collection of the sums determined
15 owed; and

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

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

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

35 (a) Issue subpoenas to compel the attendance of witnesses or parties
36 and the production of books, papers, or records; (b) administer oaths
37 and examine witnesses under oath; (c) take the verification of proof of
38 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. 6.** 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 this chapter or
28 chapter 39.12 or 49.46 RCW requiring payment of wages, the director may
29 require the employer to give a bond in such sum as the director deems
30 reasonable and adequate in the circumstances, with sufficient surety,
31 conditioned that the employer will for a definite future period not
32 exceeding six months conduct ~~((his))~~ business and pay ~~((his))~~ employees
33 in accordance with the laws of the state of Washington.

34 (2) If within ten days after demand for such bond the employer
35 fails to provide the same, the director may commence a suit against the
36 employer in the superior court of appropriate jurisdiction to compel
37 ~~((him))~~ the employer to furnish such bond or cease doing business until

1 ((he)) the employer has done so. The employer shall have the burden of
2 proving the amount thereof to be excessive.

3 (3) If the court finds that there is just cause for requiring such
4 bond and that the same is reasonable, necessary, or appropriate to
5 secure the prompt payment of the wages of the employees of such
6 employer and ((his)) the employer's compliance with RCW 49.48.010
7 through 49.48.080, the court shall enjoin such employer from doing
8 business in this state until the requirement is met, or shall make
9 other, and may make further, orders appropriate to compel compliance
10 with the requirement.

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

23 **Sec. 7.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to read
24 as follows:

25 It shall be the duty of the director of labor and industries to
26 inquire diligently for any violations of RCW 49.48.040 through
27 49.48.080 and section 2 of this act, and to institute the actions for
28 penalties herein provided, and to enforce generally the provisions of
29 RCW 49.48.040 through 49.48.080 and section 2 of this act.

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