
HOUSE BILL 3185

State of Washington

59th Legislature

2006 Regular Session

By Representative McCoy

Read first time 01/24/2006. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to violations of wage payment requirements; adding
2 new sections to chapter 49.48 RCW; creating a new section; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
6 section apply throughout this section and sections 2 through 6 of this
7 act:

8 (1) "Citation" means a written determination from the department to
9 an employer that a wage payment requirement has been violated.

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

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

13 (4) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
14 purposes of a wage payment requirement set forth in RCW 49.46.020 or
15 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment
16 requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

17 (5) "Employer" has the meaning provided in RCW 49.46.010 for
18 purposes of a wage payment requirement set forth in RCW 49.46.020,
19 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

1 (6) "Notice of assessment" means a written notice from the
2 department to an employer that, based on a citation, the employer shall
3 pay the amounts assessed under section 2 of this act.

4 (7) "Wage" has the meaning provided in RCW 49.46.010.

5 (8) "Wage payment requirement" means a wage payment requirement set
6 forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060,
7 and any related rules adopted by the department.

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

12 NEW SECTION. **Sec. 2.** CITATIONS AND NOTICES OF ASSESSMENT--CIVIL
13 PENALTIES. (1) The department may issue to an employer a citation and
14 notice of assessment for a violation of a wage payment requirement.
15 The department may order the employer to pay employees all wages owed,
16 including interest of one percent per month on all wages owed, to the
17 employee. If the department determines that the violation of the wage
18 payment requirement was a willful violation, the department also may
19 order the employer to pay the department a civil penalty as specified
20 in subsection (2) of this section.

21 (2) A civil penalty for a willful violation of a wage payment
22 requirement shall be not less than five hundred dollars or an amount
23 equal to ten percent of the total amount of unpaid wages, whichever is
24 greater. The maximum civil penalty for a willful violation of a wage
25 payment requirement shall be twenty thousand dollars.

26 (3) The department may not assess a civil penalty if the employer
27 reasonably relied on: (a) A rule related to any wage payment
28 requirement; (b) a written order, ruling, approval, opinion, advice,
29 determination, or interpretation of the director; or (c) an
30 interpretive or administrative policy issued by the department and
31 filed with the office of the code reviser. The department shall
32 maintain a complete and accurate record of all written orders, rulings,
33 approvals, opinions, advice, determinations, and interpretations to
34 determine whether an employer is immune from civil penalties under (b)
35 of this subsection.

36 (4) The department shall waive any civil penalty assessed under
37 this section if the director determines that the employer paid all

1 wages owed to an employee, including interest, within five business
2 days of receiving the citation and notice of assessment from the
3 department. The department shall send the citation and notice of
4 assessment to the employer by certified mail to the employer's last
5 known address.

6 (5) The department may waive at any time a civil penalty assessed
7 under this section, in whole or in part, if the director determines
8 that the employer paid all wages owed to an employee.

9 (6) The department shall issue a citation and notice of assessment
10 under this section within three years after the cause of action
11 accrues, unless a longer period of time applies under law. Such cause
12 of action for wage claims shall accrue from the date when the wages are
13 due.

14 (7) The department shall deposit civil penalties paid under this
15 section in the supplemental pension fund established under RCW
16 51.44.033.

17 NEW SECTION. **Sec. 3.** ADMINISTRATIVE APPEALS. (1) A person, firm,
18 or corporation aggrieved by a citation and notice of assessment issued
19 by the department under section 2 of this act may appeal the
20 determination or the assessment to the director by filing a notice of
21 appeal with the director within thirty days of the department's
22 issuance of the citation and notice of assessment. A citation and
23 notice of assessment not appealed within thirty days is final and
24 binding, and 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 pending final review of the appeal by the director as provided for in
28 chapter 34.05 RCW.

29 (3) Upon receipt of a notice of appeal, the director shall assign
30 the hearing to an administrative law judge of the office of
31 administrative hearings to conduct the hearing and issue an initial
32 order. The hearing and review procedures shall be conducted in
33 accordance with chapter 34.05 RCW, and the standard of review by the
34 administrative law judge of an appealed citation and notice of
35 assessment shall be de novo. Any party who seeks to challenge an
36 initial order shall file a petition for administrative review with the

1 director within thirty days after service of the initial order. The
2 director shall conduct administrative review in accordance with chapter
3 34.05 RCW.

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

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

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

15 NEW SECTION. **Sec. 4.** ELECTION OF REMEDY. (1) An employee who has
16 filed a written wage complaint may elect to terminate the department's
17 administrative action, thereby preserving any private right of action,
18 by providing written notice to the department within five business days
19 of the department's issuance of a citation and notice of assessment.

20 (2) If the employee elects to terminate the department's
21 administrative action, the department shall immediately discontinue its
22 action against the employer. If the department has already issued a
23 citation and notice of assessment against the employer, the department
24 shall vacate the citation and notice of assessment. The citation and
25 notice of assessment, and any related findings of fact or conclusions
26 of law by the department, are not admissible in a private right of
27 action.

28 (3) Nothing in this section affects the following: Actions where
29 additional workers were identified as a result of a wage complaint; and
30 actions conducted absent a wage complaint.

31 NEW SECTION. **Sec. 5.** COLLECTION PROCEDURES. (1) If an employer
32 defaults in a payment of wages owed, including interest, or of a civil
33 penalty after a final order is issued under section 3 of this act, the
34 director may file with the clerk of any county within the state a
35 warrant in the amount of the payment plus any filing fees. The clerk
36 of the county in which the warrant is filed shall immediately designate

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

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

36 (b) The notice and order to withhold and deliver must be served by
37 the sheriff of the county or by the sheriff's deputy, by certified
38 mail, return receipt requested, or by the director. A person, firm,

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

21 (3) In addition to the procedure for collection of wages owed,
22 including interest, and civil penalties as set forth in this section,
23 the department may recover wages owed, including interest, and civil
24 penalties assessed under section 2 of this act in a civil action
25 brought in a court of competent jurisdiction of the county where the
26 violation is alleged to have occurred.

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

29 NEW SECTION. **Sec. 6.** RULE-MAKING AUTHORITY. The director may
30 adopt rules to carry out the purposes of sections 1 through 5 of this
31 act.

32 NEW SECTION. **Sec. 7.** CODIFICATION. Sections 1 through 6 of this
33 act are each added to chapter 49.48 RCW.

1 NEW SECTION. **Sec. 8.** CAPTIONS. Captions used in this act are not
2 any part of the law.

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