

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 3145

61st Legislature
2010 Regular Session

Passed by the House February 10, 2010
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 4, 2010
Yeas 44 Nays 2

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 3145** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 3145

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By House Commerce & Labor (originally sponsored by Representatives McCoy, Roberts, Simpson, Goodman, Kenney, Conway, and Ormsby)

READ FIRST TIME 02/09/10.

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, clarifying the requirements for
4 the department to extend the time period for wage complaint
5 investigations, revising the department's bond authority, tolling the
6 civil statute of limitations, increasing minimum penalties for
7 violators, creating and affecting waiver of penalties for repeat
8 willful violators, and providing for wage law violation liability for
9 successor businesses; amending RCW 49.48.082, 49.48.083, 49.48.084,
10 49.48.086, and 49.48.060; adding a new section to chapter 49.48 RCW;
11 and prescribing penalties.

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

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

15 The definitions in this section apply throughout this section and
16 RCW 49.48.083 through 49.48.086:

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

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

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

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

5 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for
6 purposes of a wage payment requirement set forth in RCW 49.46.020 or
7 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment
8 requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

9 (6) "Employer" has the meaning provided in RCW 49.46.010 for
10 purposes of a wage payment requirement set forth in RCW 49.46.020,
11 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

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

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

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

19 (10) "Wage payment requirement" means a wage payment requirement
20 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or
21 49.52.060, and any related rules adopted by the department.

22 (11) "Willful" means a knowing and intentional action that is
23 neither accidental nor the result of a bona fide dispute, as evaluated
24 under the standards applicable to wage payment violations under RCW
25 49.52.050(2).

26 (12) "Repeat willful violator" means any employer that has been the
27 subject of a final and binding citation and notice of assessment for a
28 willful violation of a wage payment requirement within three years of
29 the date of issue of the most recent citation and notice of assessment
30 for a willful violation of a wage payment requirement.

31 (13) "Successor" means any person to whom an employer quitting,
32 selling out, exchanging, or disposing of a business sells or otherwise
33 conveys in bulk and not in the ordinary course of the employer's
34 business, more than fifty percent of the property, whether real or
35 personal, tangible or intangible, of the employer's business.

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

1 (1) If an employee files a wage complaint with the department, the
2 department shall investigate the wage complaint. Unless otherwise
3 resolved, the department shall issue either a citation and notice of
4 assessment or a determination of compliance(~~(+—(a))~~) no later than
5 sixty days after the date on which the department received the wage
6 complaint(~~(, unless the department extends this time period for good
7 cause; and (b) no later than three years after the date on which the
8 cause of action accrued, unless a longer period of time applies under
9 law. Such cause of action for wage claims accrues from the date when
10 the wages are due))~~). The department may extend the time period by
11 providing advance written notice to the employee and the employer
12 setting forth good cause for an extension of the time period and
13 specifying the duration of the extension. The department may not
14 investigate any alleged violation of a wage payment requirement that
15 occurred more than three years before the date that the employee filed
16 the wage complaint. The department shall send the citation and notice
17 of assessment or the determination of compliance to both the employer
18 and the employee by service of process or certified mail to their last
19 known addresses.

20 (2) If the department determines that an employer has violated a
21 wage payment requirement and issues to the employer a citation and
22 notice of assessment, the department may order the employer to pay
23 employees all wages owed, including interest of one percent per month
24 on all wages owed, to the employee. The wages and interest owed must
25 be calculated from the first date wages were owed to the employee,
26 except that the department may not order the employer to pay any wages
27 and interest that were owed more than three years before the date the
28 wage complaint was filed with the department.

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

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

1 (b) The department may not assess a civil penalty if the employer
2 reasonably relied on: (i) A rule related to any wage payment
3 requirement; (ii) a written order, ruling, approval, opinion, advice,
4 determination, or interpretation of the director; or (iii) an
5 interpretive or administrative policy issued by the department and
6 filed with the office of the code reviser. In accordance with the
7 department's retention schedule obligations under chapter 40.14 RCW,
8 the department shall maintain a complete and accurate record of all
9 written orders, rulings, approvals, opinions, advice, determinations,
10 and interpretations for purposes of determining whether an employer is
11 immune from civil penalties under (b)(ii) of this subsection.

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

19 (d) The department may waive or reduce at any time a civil penalty
20 assessed under this section(~~(, in whole or in part,)~~) if the director
21 determines that the employer paid all wages and interest owed to an
22 employee.

23 (e) The department shall deposit civil penalties paid under this
24 section in the supplemental pension fund established under RCW
25 51.44.033.

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

1 (5) The applicable statute of limitations for civil actions is
2 tolled during the department's investigation of an employee's wage
3 complaint against an employer. For the purposes of this subsection,
4 the department's investigation begins on the date the employee files
5 the wage complaint with the department and ends when: (a) The wage
6 complaint is finally determined through a final and binding citation
7 and notice of assessment or determination of compliance; (b) the
8 department notifies the employer and the employee in writing that the
9 wage complaint has been otherwise resolved or that the employee has
10 elected to terminate the department's administrative action under RCW
11 49.48.085.

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 or the assessment of civil penalty due
17 to a determination of status as a repeat willful violator may appeal
18 the citation and notice of assessment ~~((or))~~, the determination of
19 compliance, or the assessment of civil penalty to the director by
20 filing a notice of appeal with the director within thirty days of the
21 department's issuance of the citation and notice of assessment ~~((or))~~,
22 the determination of compliance, or the assessment of civil penalty.
23 A citation and notice of assessment ~~((or))~~, a determination of
24 compliance, or an assessment of a civil penalty not appealed within
25 thirty days is final and binding, and not subject to further appeal.

26 (2) A notice of appeal filed with the director under this section
27 shall stay the effectiveness of the citation and notice of assessment
28 ~~((or))~~, the determination of compliance, or the assessment of civil
29 penalty 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, or an

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

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

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

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

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

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

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

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

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

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

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

15 (4) Whenever any employer quits business, sells out, exchanges, or
16 otherwise disposes of the employer's business or stock of goods, any
17 person who becomes a successor to the business becomes liable for the
18 full amount of any outstanding citation and notice of assessment or
19 penalty against the employer's business under this chapter if, at the
20 time of the conveyance of the business, the successor has: (a) Actual
21 knowledge of the fact and amount of the outstanding citation and notice
22 of assessment or (b) a prompt, reasonable, and effective means of
23 accessing and verifying the fact and amount of the outstanding citation
24 and notice of assessment from the department. If the citation and
25 notice of assessment or penalty is not paid in full by the employer
26 within ten days of the date of the sale, exchange, or disposal, the
27 successor is liable for the payment of the full amount of the citation
28 and notice of assessment or penalty, and payment thereof by the
29 successor must, to the extent thereof, be deemed a payment upon the
30 purchase price. If the payment is greater in amount than the purchase
31 price, the amount of the difference becomes a debt due the successor
32 from the employer.

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

35 **Sec. 5.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended to
36 read as follows:

37 (1) If upon investigation by the director, after taking assignments

1 of any wage claim under RCW 49.48.040 or after receiving a wage
2 complaint as defined in RCW 49.48.082 from an employee, it appears to
3 the director that the employer is representing to his employees that he
4 is able to pay wages for their services and that the employees are not
5 being paid for their services, the director may require the employer to
6 give a bond in such sum as the director deems reasonable and adequate
7 in the circumstances, with sufficient surety, conditioned that the
8 employer will for a definite future period not exceeding six months
9 conduct his business and pay his employees in accordance with the laws
10 of the state of Washington.

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

17 (3) If the court finds that there is just cause for requiring such
18 bond and that the same is reasonable, necessary or appropriate to
19 secure the prompt payment of the wages of the employees of such
20 employer and his compliance with (~~RCW 49.48.010 through 49.48.080~~)
21 one or more wage payment requirements as defined in RCW 49.48.082, the
22 court shall enjoin such employer from doing business in this state
23 until the requirement is met, or shall make other, and may make
24 further, orders appropriate to compel compliance with the requirement.

25 (4) Upon being informed of a wage claim against an employer or
26 former employer, the director shall, if such claim appears to be just,
27 immediately notify the employer or former employer, of such claim by
28 mail. If the employer or former employer fails to pay the claim or
29 make satisfactory explanation to the director of his failure to do so,
30 within thirty days thereafter, the employer or former employer shall be
31 liable to a penalty of ten percent of that portion of the claim found
32 to be justly due. The director shall have a cause of action against
33 the employer or former employer for the recovery of such penalty, and
34 the same may be included in any subsequent action by the director on
35 said wage claim, or may be exercised separately after adjustment of
36 such wage claim without court action. This subsection does not apply
37 to wage complaints made under RCW 49.48.083.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.48 RCW
2 to read as follows:

3 (1) The department shall assess a civil penalty against any repeat
4 willful violator in an amount of not less than one thousand dollars or
5 an amount equal to ten percent of the total amount of unpaid wages,
6 whichever is greater. The maximum civil penalty for a repeat willful
7 violator under this section is twenty thousand dollars.

8 (2) The department may waive or reduce a civil penalty assessed
9 under this section if the director determines that the employer has
10 paid all wages and interest owed to the employee.

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