

SENATE BILL REPORT

SB 6456

As of February 1, 2010

Title: An act relating to improving administration of wage complaints by defining the limitations period for administrative wage claims through the department of labor and industries, tolling the civil statute of limitations, increasing minimum penalties for violators, creating and affecting waiver of penalties for repeat violators and those with a business practice of disregard for wage law, and providing for wage law violation liability for successor businesses.

Brief Description: Improving administration of wage complaints.

Sponsors: Senators Kline, Keiser, Regala, Kohl-Welles, Franklin and McDermott.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/19/10, 1/21/10.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Mac Nicholson (786-7445)

Background: The state Minimum Wage Act and other laws establish standards for the payment of wages. These standards are enforced by the Department of Labor and Industries (L&I), which has authority to investigate wage violations, order the payment of wages owed to workers, and bring civil actions to collect wages. Employees are also permitted to bring civil actions to collect unpaid wages. Criminal penalties apply to certain violations.

When an employee files a wage complaint with L&I, L&I must investigate the complaint. A wage complaint is a complaint from an employee to L&I that an employer has violated one or more wage payment requirements. A wage payment requirement includes the requirements to pay minimum wages, overtime compensation, final wages, and the requirement to withhold only lawful deductions from wages. Within 60 days of receiving the complaint, L&I must issue either a citation and notice of assessment or a determination of compliance. Additionally, the citation or determination must be made no later than three years after the date upon which the wages were due.

If L&I determines the employer willfully violated a wage payment requirement, L&I can issue a civil penalty of at least \$500 or 10 percent of the amount of unpaid wages, whichever is greater. L&I must waive any civil penalty if the director determines the employer paid all

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wages and interest owed the employee within ten days of receipt of the citation and notice of assessment. L&I has the discretion to waive a civil penalty if the director determines the employer paid all wages owed an employee.

An employee who has filed a wage complaint may elect to terminate L&I's administrative action, and preserve a private right of action by providing written notice to L&I within ten business days of L&I's issuance of a citation. If the employee elects to terminate L&I's administrative action, L&I must discontinue its action against the employer and vacate any citations already issued. The citation, related findings of fact or conclusions of law, and payments or offers of payment are not admissible in other proceedings. The statute of limitations on private rights of action under state minimum wage laws is three years.

Summary of Bill: When investigating a wage complaint, L&I is no longer required to issue a citation or determination of compliance within three years of the date when wages were due. Rather, L&I is prohibited from investigating a wage payment claim unless it is filed within three years of the date when the last wages were owed.

The minimum civil penalty for a willful violation of a wage payment requirement is changed from \$500 to \$1,000.

The mandatory civil penalty waiver for employers who pay all wages and interest due within ten days of receipt of the complaint does not apply to repeat violators or to employers that have a business practice of disregard for wage law. A repeat violator is any employer that has received a final and binding citation and notice of assessment within the past five years. A business practice of disregard for wage law means the employer has willfully contravened wage payment requirements at least twice in the preceding five years. Discretionary civil penalty waivers may not be applied to repeat violators. Employers can appeal an assessment of civil penalty for being a repeat violator or having a business practice of disregard for wage law.

The applicable statute of limitations is tolled during L&I's investigation of any wage complaint. The investigation begins on the date an employee files a wage complaint with L&I, and ends when L&I notifies the employer and employee that the claim has been otherwise resolved or that the employee has elected to terminate L&I's administrative action.

A successor becomes liable for the full amount of any outstanding citation and notice of assessment or penalty against the business. If the citation or penalty is not paid in full within ten days of the sale, the successor is liable for full payment and any payment made by the successor must be deemed a payment upon the purchase price. If the payment on the citation or penalty is greater than the purchase price, the amount of difference becomes a debt due the successor from the employer. Successor is any person to whom an employer quitting, selling out, or disposing of a business sells or conveys a major part of the materials, supplies, inventory, fixtures, or equipment of the employer's business.

L&I must assess a civil penalty of at least \$1,000 against any repeat violator, and may assess a civil penalty of at least \$1,000 against any employer with a business practice of disregard for wage law, as determined by L&I. The penalty for employers with such a business practice must be consistent with the severity of the violation, as determined by reference to

factors including the number, credibility, and similarity of the complaints; the number of alleged violations within the complaints; evidence that the employer willfully violated provisions of wage payment requirements; evidence that the employer remedies violations only upon L&I involvement; and evidence that the employer attempts to discourage the filing of wage complaints.

Appropriation: None.

Fiscal Note: Requested on January 15, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Wage theft is a growing problem. The problem is exacerbated by limited enforcement resources. There are millions of dollars of wages owed that are not being collected by L&I. The Wage Payment Act was enacted in 2006, and the bill provides solutions to problems that have arisen since its implementation. Wage theft is a particular problem for low wage workers. Employers are evading wage liability by trading ownership of businesses. This bill plugs holes in the Wage Payment Act. Businesses aren't deterred by L&I citations and don't face a significant monetary penalty. Some businesses make a practice of not paying and face no consequence if they pay immediately when contacted by L&I.

OTHER: L&I currently averages about 60 days to resolve a complaint. In 2008 L&I had about 1,400 otherwise resolved cases where money was collected. L&I does have some difficulty collecting on notices of assessment. This bill makes stronger enforcement provisions, but it raises some concerns. Discussions are on-going with this legislation and concerns can likely be resolved. The bill should get after bad actors, but not drag in good actors who made an inadvertent mistake.

Persons Testifying: PRO: Jeff Johnson, Washington State Labor Council; Rebecca Smith, National Employment Law Project; Andrea Schmitt, Columbia Legal Services; Arielle Rosenberg, Carlos Rojas, Casa Latina.

OTHER: Steve McLain, Suchi Sharma, L&I; Kris Tefft, Association of Washington Business; Mark Johnson, Washington Retail Association.