AN ACT
RELATING TO LABOR AND LABOR RELATIONS - PAYMENT OF WAGES

Introduced By: Representatives Jackson, McNamara, Bennett, Corvese, and Noret

Date Introduced: March 14, 2019

Referred To: House Labor

It is enacted by the General Assembly as follows:

SECTION 1. Sections 28-14-17, 28-14-19, 28-14-19.1 and 28-14-19.2 of the General Laws in Chapter 28-14 entitled "Payment of Wages" are hereby amended to read as follows:

28-14-17. Penalty for violations.
(a) Any employer who violates or fails to comply with any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction of the misdemeanor, the employer shall be punished by a fine of not less than four hundred dollars ($400) for each separate wage and hour offense, or by imprisonment of up to one year, or by both fine and imprisonment. A fine of not less than two thousand dollars ($2,000) for each separate offense shall be imposed on any employer or entity that has been found to have misclassified workers. Each day of failure to pay wages due or of misclassifying an employee at the time specified in this chapter shall constitute a separate and distinct violation.

(b) Any employer found guilty of violations to have violated any provision of this chapter titles 25 or 28 who does not pay wages and fines within thirty (30) days of a final decision in a manner that is consistent with a formal decision issued by the director or designee, or with the terms of any settlement agreement entered into by the parties and after notification by the department of labor and training, may shall have his, her or its business license revoked by the state of Rhode Island until he, she or it pays such wages and fines in full or enters into a payment agreement with which he, she or it stays in compliance.

(c) If any employer is found guilty of violations of this chapter by three (3) separate
administrative hearing decisions or settlement agreements or any combination thereof, within a two (2) year period, the department of labor and training shall notify any and all government agencies in which the employer is or should be licensed or registered. Upon receipt of such notice by the department of labor and training, the boards and agencies responsible for regulating such employer shall immediately suspend all the employer’s licenses and registrations that allows them to do business in the state. The suspension of these licenses and registrations shall continue for at least three (3) years and until all wages, benefits, or other sums owed have been paid.

28-14-19. Enforcement powers and duties of director of labor and training.

(a) It shall be the duty of the director to insure compliance with the provisions of this chapter 28-14 and 28-12. The director or his or her designee may investigate any violations thereof, institute or cause to be instituted actions for the collection of wages and institute action for penalties or other relief as provided for within and pursuant to those chapters. The director or his or her authorized representatives are empowered to hold hearings and he or she shall cooperate with any employee in the enforcement of a claim against his or her employer in any case whenever, in his or her opinion, the claim is just and valid.

(b) Upon receipt of a complaint or conducting an inspection under applicable law, the director or his or her appropriate departmental designee is authorized to investigate to determine compliance with the chapters 28-12 and/or 28-14 titles 25 or 28 or both.

(c) With respect to all complaints deemed just and valid, the director or his or her designee shall order a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a copy of the complaint or the purpose thereof, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person, business, corporation, or entity of any kind affected thereby. The hearing shall be scheduled within thirty (30) one hundred twenty (120) days of service of a formal complaint as provided herein a departmental determination that the complaint is just and valid. The person, business, corporation, or entity shall have an opportunity to be heard in respect to the matters complained of at the time and place specified in the notice. The hearing shall be conducted by the director or his or her designee. The hearing officer in the hearing shall be deemed to be acting in a judicial capacity, and shall have the right to issue subpoenas, administer oaths, and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the hearing officer shall determine the issues raised thereon and shall make a determination and enter a decision and an order within thirty (30) one hundred twenty (120) days of the close of the hearing, and forthwith serve a copy of the order, with a notice of the filing thereof, upon the
parties to the proceeding, personally or by mail. The order shall dismiss the complaint or direct
payment of any wages and/or benefits found to be due and/or award such other appropriate relief
or penalties authorized under chapter 28-12 and/or 28-14, titles 25 or 28 or both and the order
may direct payment of reasonable attorneys' fees and costs to the complaining party. Interest at
the rate of twelve percent (12%) per annum shall be awarded in the order from the date of the
nonpayment to the date of payment.

(d) The order shall also require payment of a further sum as a civil penalty in an amount
up to two (2) four (4) times the total wages and/or benefits found to be due, exclusive of interest,
which shall be shared equally between the department and the aggrieved party. In determining the
amount of any penalty to impose, the director or his or her designee shall consider the size of the
employer's business, the good faith of the employer, the gravity of the violation, the previous
violations and whether or not the violation was an innocent mistake or willful.

(e) The director may institute any action to recover unpaid wages or other compensation
or obtain relief as provided under this section with or without the consent of the employee or
employees affected.

(f) No agreement between the employee and employer to work for less than the
applicable wage and/or benefit rate or to otherwise work under and/or conditions in violation of
applicable law is a defense to an action brought pursuant to this section.

(g) The director shall notify the contractors' registration board of any order issued or any
determination hereunder that an employer


(a) The misclassification of a worker whether performing work as a natural person,
business, corporation, or entity of any kind, as an independent contractor when the worker should
be considered and paid as an employee shall be considered a violation of this chapter.

(b) In addition to any other relief to which any department or an aggrieved party may be
entitled for such a violation, the employer shall be liable for a civil penalty in an amount not less
than one thousand five hundred dollars ($1,500) four hundred dollars ($400) and not greater than
three thousand dollars ($3,000) for each misclassified employee for a first offense and up to five
thousand dollars ($5,000) not less than ten thousand dollars ($10,000) for each misclassified
employee for any subsequent offense, which shall be shared equally between the department and
the aggrieved party.

(c) In determining the amount of any penalty imposed under this section, the director or
his or her designee shall consider the size of the employer's business; the good faith of the
employer; the gravity of the violation; the history of previous violations; and whether or not the
violation was an innocent mistake or willful.

(d) A violation of this section may be adjudicated under § 28-14-19 and consolidated
with any labor standards violation or under §§ 37-13-14.1 and 37-13-15 and consolidated with
any prevailing wage violation.

(e) A violation of this section may be brought or adjudicated by any division of the
department of labor and training.

(f) The department shall notify the contractor's registration board and the tax
administrator of any violation of this section.

28-14-19.2. Private right of action to collect wages or benefits and for equitable
relief.

(a) Any employee or former employee, or any organization representing such an
employee or former employee aggrieved by the failure to pay wages and/or benefits or
misclassification in violation of chapters 28-12 and/or 28-14.2 may file a
civil action in any court of competent jurisdiction to obtain relief. If a complaint has been filed
with the department, any civil action related to that case must be filed prior to the issuance of a
case number or docket number by the department. An aggrieved party shall be entitled to recover
any unpaid wages and/or benefits, compensatory damages, and liquidated damages in an amount
up to two (2) four (4) times the amount of unpaid wages and/or benefits owed, as well as an
award of appropriate equitable relief, including reinstatement of employment, fringe benefits and
seniority rights, and reasonable attorneys' fees and costs, and/or such other appropriate relief or
penalties authorized under chapters 28-12 and/or 28-14. In determining the amount of any penalty
imposed under this section, consideration shall be given to the size of the employer's business, the
good faith of the employer, the gravity of the violation, the history of previous violations, and
whether or not the violation was an innocent mistake or willful. Any unpaid fringe benefit
contributions owed pursuant to this section in any form shall be paid to the appropriate benefit
fund: however, in the absence of an appropriate fund, the benefit shall be paid directly to the
aggrieved employee.

(b) An action instituted pursuant to this section may be brought by one or more
employees or former employees individually and/or on behalf of other employees similarly
situated.

(c) No agreement between the employee and employer to work for less than the
applicable wage and/or benefit rate or to otherwise work under terms and/or conditions in
violation of applicable law is a defense to an action brought pursuant to this section.

(d) An employer's responsibility and liability hereunder is solely to the employer's own employees.

(e) A civil action filed under this section may be instituted instead of, but not in addition to, the director of labor and training enforcement procedures authorized by the above referenced chapters, provided the civil action is filed prior to the date the director of labor and training issues notice of an administrative hearing. Accepts a formal complaint and assigns a case number or docket number to the matter.

(f) The filing of a civil action under this section shall not preclude the director of labor and training from investigating the matter and/or referring the matter to the attorney general, contractors' registration board and/or the tax administrator.

(g) Any claim hereunder shall be forever barred unless commenced within three (3) years after the cause of action accrued.

SECTION 2. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
AN ACT
RELATING TO LABOR AND LABOR RELATIONS - PAYMENT OF WAGES

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1 This act would increase penalties for violations of certain wage and hour laws.
2 This act would take effect upon passage.

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