

2019 -- H 5848

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LC002130
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

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:

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

3 **28-14-17. Penalty for violations.**

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

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

19 (c) If any employer is found guilty of violations of this chapter by three (3) separate

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

8 **28-14-19. Enforcement powers and duties of director of labor and training.**

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

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

19 (c) With respect to all complaints deemed just and valid, the director or his or her
20 designee shall order a hearing thereon at a time and place to be specified, and shall give notice
21 thereof, together with a copy of the complaint or the purpose thereof, or a statement of the facts
22 disclosed upon investigation, which notice shall be served personally or by mail on any person,
23 business, corporation, or entity of any kind affected thereby. The hearing shall be scheduled
24 within ~~thirty (30)~~ one hundred twenty (120) days of ~~service of a formal complaint as provided~~
25 ~~herein~~ a departmental determination that the complaint is just and valid. The person, business,
26 corporation, or entity shall have an opportunity to be heard in respect to the matters complained
27 of at the time and place specified in the notice. The hearing shall be conducted by the director or
28 his or her designee. The hearing officer in the hearing shall be deemed to be acting in a judicial
29 capacity, and shall have the right to issue subpoenas, administer oaths, and examine witnesses.
30 The enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil
31 practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the
32 hearing officer shall determine the issues raised thereon and shall make a determination and enter
33 a decision and an order within ~~thirty (30)~~ one hundred twenty (120) days of the close of the
34 hearing, and forthwith serve a copy of the order, with a notice of the filing thereof, upon the

1 parties to the proceeding, personally or by mail. The order shall dismiss the complaint or direct
2 payment of any wages and/or benefits found to be due and/or award such other appropriate relief
3 or penalties authorized under ~~chapter 28-12 and/or 28-14~~, [titles 25 or 28 or both](#) and the order
4 may direct payment of reasonable attorneys' fees and costs to the complaining party. Interest at
5 the rate of twelve percent (12%) per annum shall be awarded in the order from the date of the
6 nonpayment to the date of payment.

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

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

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

19 (g) The director shall notify the contractors' registration board of any order issued or any
20 determination hereunder that an employer has violated chapters 28-12, 28-14 and/or 37-13. The
21 director shall notify the tax administrator of any determination hereunder that may affect liability
22 for an employer's payment of wages and/or payroll taxes.

23 **28-14-19.1. Misclassification of employees.**

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

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

34 (c) In determining the amount of any penalty imposed under this section, the director or

1 his or her designee shall consider the size of the employer's business; the good faith of the
2 employer; the gravity of the violation; the history of previous violations; and whether or not the
3 violation was an innocent mistake or willful.

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

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

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

11 **28-14-19.2. Private right of action to collect wages or benefits and for equitable**
12 **relief.**

13 (a) Any employee or former employee, or any organization representing such an
14 employee or former employee aggrieved by the failure to pay wages and/or benefits or
15 misclassification in violation of ~~chapters 28-12 and/or 28-14~~ [titles 25 or 28 or both](#) may file a
16 civil action in any court of competent jurisdiction to obtain relief. [If a complaint has been filed](#)
17 [with the department, any civil action related to that case must be filed prior to the issuance of a](#)
18 [case number or docket number by the department.](#) An aggrieved party shall be entitled to recover
19 any unpaid wages and/or benefits, compensatory damages, and liquidated damages in an amount
20 up to ~~two (2)~~ [four \(4\)](#) times the amount of unpaid wages and/or benefits owed, as well as an
21 award of appropriate equitable relief, including reinstatement of employment, fringe benefits and
22 seniority rights, and reasonable attorneys' fees and costs, and/or such other appropriate relief or
23 penalties authorized under chapters 28-12 and/or 28-14. In determining the amount of any penalty
24 imposed under this section, consideration shall be given to the size of the employer's business, the
25 good faith of the employer, the gravity of the violation, the history of previous violations, and
26 whether or not the violation was an innocent mistake or willful. Any unpaid fringe benefit
27 contributions owed pursuant to this section in any form shall be paid to the appropriate benefit
28 fund: however, in the absence of an appropriate fund, the benefit shall be paid directly to the
29 aggrieved employee.

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

33 (c) No agreement between the employee and employer to work for less than the
34 applicable wage and/or benefit rate or to otherwise work under terms and/or conditions in

1 violation of applicable law is a defense to an action brought pursuant to this section.

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

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

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

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

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO LABOR AND LABOR RELATIONS - PAYMENT OF WAGES

- 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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