

2019 -- S 0510

LC001867

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - PAYMENT OF WAGES - VIOLATIONS

Introduced By: Senators Lynch Prata, Ruggerio, McCaffrey, Goodwin, and Ciccone

Date Introduced: February 27, 2019

Referred To: Senate 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 misclassifies workers. Each day of failure to pay wages due
10 misclassification of an employee at the time specified in this chapter shall constitute a separate
11 and distinct violation.

12 (b) Any employer found guilty of violations of this chapter who does not pay wages and
13 fines within thirty (30) days of a final decision and after notification by the department of labor
14 and training, ~~may~~ shall have his, her or its business license revoked by the state of Rhode Island
15 until he, she or it pays such wages and fines in full or enters into a payment agreement with which
16 he, she or it stays in compliance.

17 (c) If any employer is found guilty of violations of this chapter by three (3) separate
18 judgments on three (3) separate dates within a two (2) year period, the department of labor and

1 training shall notify any and all government agencies in which the employer is or should be
2 licensed or registered of the existence of the judgments. Upon receipt of such notice by the
3 department of labor and training, the board or agency(s) responsible for regulating such employer
4 shall immediately suspend all the employer's licenses and registrations that allows them to do
5 business in the state of Rhode Island. The suspension of these licenses or registrations shall
6 continue for at least three (3) years and until all wages, benefits, or other sums owned have been
7 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.

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) days of service of a formal complaint as provided herein. The person, business,
25 corporation, or entity shall have an opportunity to be heard in respect to the matters complained
26 of at the time and place specified in the notice. The hearing shall be conducted by the director or
27 his or her designee. The hearing officer in the hearing shall be deemed to be acting in a judicial
28 capacity, and shall have the right to issue subpoenas, administer oaths, and examine witnesses.
29 The enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil
30 practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the
31 hearing officer shall determine the issues raised thereon and shall make a determination and enter
32 an order within thirty (30) days of the close of the hearing, and forthwith serve a copy of the
33 order, with a notice of the filing thereof, upon the parties to the proceeding, personally or by mail.
34 The order shall dismiss the complaint or direct payment of any wages and/or benefits found to be

1 due and/or award such other appropriate relief or penalties authorized under chapter 28-12 and/or
2 28-14, and the order may direct payment of reasonable attorneys' fees and costs to the
3 complaining party. Interest at the rate of twelve percent (12%) per annum shall be awarded in the
4 order from the date of the nonpayment to the date of payment.

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

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

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

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

21 **28-14-19.1. Misclassification of employees.**

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

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

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

1 violation was an innocent mistake or willful.

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

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

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

9 **28-14-19.2. Private right of action to collect wages or benefits and for equitable**
10 **relief.**

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

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

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

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

33 (e) A civil action filed under this section may be instituted instead of, but not in addition
34 to, the director of labor and training enforcement procedures authorized by the above referenced

1 chapters, provided the civil action is filed prior to the date the director of labor and training issues
2 notice of an administrative hearing.

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

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

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

=====
LC001867
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO LABOR AND LABOR RELATIONS - PAYMENT OF WAGES -
VIOLATIONS

- 1 This act would increase the possible penalties and damages against employers that violate
- 2 certain payment of wage laws.
- 3 This act would take effect upon passage.

=====
LC001867
=====