

2020 -- S 2832

LC003731

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

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

Introduced By: Senator Erin Lynch Prata

Date Introduced: March 12, 2020

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 offense,
7 or by imprisonment of up to one year, or by both fine and imprisonment. Each day of failure to
8 pay wages due and/or misclassify an employee at the time specified in this chapter shall
9 constitute a separate and distinct violation.

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

1 two (2) year period, the department of labor and training shall notify any and all government
2 agencies in which the employer is or should be licensed and/or registered. Upon receipt of such
3 notice by the department of labor and training, the board and/or agency(s) responsible for
4 regulating such employer shall immediately suspend all the employer's licenses and registrations
5 that allow them to do business in the state of Rhode Island. The suspension of these licenses
6 and/or registrations shall continue for at least three (3) years and until all wages, benefits, or other
7 sums owed have been paid. For the purposes of this subsection, each administrative hearing
8 decision shall include all of the individuals found to be misclassified at the time the decision is
9 rendered or any appeal process is complete. Each settlement agreement shall include all
10 individuals found to be misclassified at the time the agreement is executed by both parties.

11 **28-14-19. Enforcement powers and duties of director of labor and training.**

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

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

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

1 hearing officer shall determine the issues raised thereon and shall make a determination and enter
2 [a decision and/or](#) an order within ~~thirty (30)~~ [one hundred twenty \(120\)](#) days of the close of the
3 hearing, and forthwith serve a copy of the order, with a notice of the filing thereof, upon the
4 parties to the proceeding, personally or by mail. The order shall dismiss the complaint or direct
5 payment of any wages and/or benefits found to be due and/or award such other appropriate relief
6 or penalties authorized under ~~chapter 28-12 and/or 28-14~~ [titles 25 or 28](#), and the order may direct
7 payment of reasonable attorneys' fees and costs to the complaining party. Interest at the rate of
8 twelve percent (12%) per annum shall be awarded in the order from the date of the nonpayment
9 to the date of payment.

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

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

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

22 (g) The director shall notify the contractors' registration board of any order issued or any
23 determination hereunder that an employer has violated ~~chapters 28-12, 28-14 and/or 37-13~~
24 [chapters 12 and/or 14 of title 28, and/or chapter 13 of title 37](#). The director shall notify the tax
25 administrator of any determination hereunder that may affect liability for an employer's payment
26 of wages and/or payroll taxes.

27 **28-14-19.1. Misclassification of employees.**

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

31 (b) In addition to any other relief to which any department or an aggrieved party may be
32 entitled for such a violation, the employer shall be liable for a civil penalty in an amount not less
33 than one thousand five hundred dollars (\$1,500) and not greater than three thousand dollars
34 (\$3,000) for each misclassified employee for a first offense and ~~up to five thousand dollars~~

1 ~~(\$5,000)~~ not less than ten thousand dollars (\$10,000) for each misclassified employee for any
2 subsequent offense, which shall be shared equally between the department and the aggrieved
3 party.

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

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

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

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

15 **28-14-19.2. Private right of action to collect wages or benefits and for equitable**
16 **relief.**

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

34 (b) An action instituted pursuant to this section may be brought by one or more

1 employees or former employees individually and/or on behalf of other employees similarly
2 situated.

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

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

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

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

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

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

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

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