

HOUSE BILL REPORT

SHB 3145

As Passed Legislature

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, clarifying the requirements for the department to extend the time period for wage complaint investigations, revising the department's bond authority, tolling the civil statute of limitations, increasing minimum penalties for violators, creating and affecting waiver of penalties for repeat willful violators, and providing for wage law violation liability for successor businesses.

Brief Description: Improving administration of wage complaints.

Sponsors: House Committee on Commerce & Labor (originally sponsored by Representatives McCoy, Roberts, Simpson, Goodman, Kenney, Conway and Ormsby).

Brief History:

Committee Activity:

Commerce & Labor: 2/2/10 [DPS].

Floor Activity:

Passed House: 2/10/10, 96-0.

Passed Senate: 3/4/10, 44-2.

Passed Legislature.

Brief Summary of Substitute Bill

- Establishes a civil penalty for repeat willful violators of the wage payment laws.
- Modifies the wage payment provisions with respect to tolling the statute of limitations, successor business liability, minimum penalty amounts, and the bonding authority of the Department of Labor and Industries.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Crouse, Green, Moeller and Williams.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Alison Hellberg (786-7152).

Background:

Legislation passed in 2006 authorizes the Department of Labor and Industries (Department) to order the payment of wages owed, including interest and, for willful violations of wage payment requirements, civil penalties.

If an employee files a wage complaint for a violation of a wage payment requirement, the Department must investigate the complaint. 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.

The Department must issue either a citation and notice of assessment (citation) or a determination of compliance no later than 60 days after receiving the complaint and within three years after the date when the wages were due. The Department may order the employer to pay employees all wages owed, including interest. If the violation is willful, the Department may also order the employer to pay a civil penalty.

Civil penalties for willful violations of wage payment requirements must be the greater of \$500 or 10 percent of unpaid wages, but not more than \$20,000.

The Department must waive civil penalties if the employer pays the wages owed, including interest, within 10 business days of receiving the citation. The Department may waive civil penalties if the employer pays the wages owed.

An employee who has filed a wage complaint may elect to terminate the Department's administrative action, and preserve a private right of action by providing written notice to the Department within 10 business days of the issuance of a citation. If the employee elects to terminate the Department's administrative action, the Department must discontinue its action against the employer and vacate a citation already issued.

There are also procedures for collection of unpaid wages and civil penalties.

The Department has authority to take assignments of wage claims. After taking assignments of any wage claim, the Department may require the employer to give a bond. The Department may require the bond in situations where an employer is representing to employees that he or she is able to pay wages and that the employees are not being paid. If after 10 days the employer does not obtain the bond, the Department may commence a suit to compel the employer to obtain the bond or cease doing business.

Summary of Substitute Bill:

The Department is not required to waive civil penalties for repeat willful violators of the wage payment laws. A "repeat willful violator" is defined as an employer that has been the subject of a final and binding citation and notice of assessment for a willful violation of a wage payment requirement within three years of the date of issue of the most recent citation and notice of assessment for a willful violation of a wage payment requirement.

The minimum civil penalty for willful violations is raised to \$1,000 from \$500 and a new civil penalty is established.

The Department must assess a civil penalty against any repeat willful violator in an amount of not less than \$1,000, or 10 percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a repeat violator is \$20,000. The Department may, however, waive or reduce a civil penalty if the employer pays all wages and interest owed to the employee.

The Department may extend the 60-day time period for investigating the complaint by providing advance written notice setting forth good cause for an extension and specifying the duration of the extension.

The wages and interest owed must be calculated from the first date wages were owed, except that the Department may not order the employer to pay any wages and interest that were owed more than three years before the date the complaint was filed.

The statute of limitations for civil actions is tolled during the investigation of a wage complaint. The investigation begins on the date the employee files the wage complaint and ends when:

- the wage complaint is finally determined through a final and binding notice of assessment or determination of compliance; or
- the Department notifies the employer and the employee that the wage complaint has been otherwise resolved or the employee has elected to terminate the action.

A successor to an employer's business becomes liable for any outstanding citation or penalty against the employer's business, if the successor has:

- actual knowledge of the outstanding citation and notice of assessment; or
- a prompt, reasonable, and effective means of verifying an outstanding citation from the Department.

A "successor" means any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer's business, more than 50 percent of the property, whether real or personal, tangible or intangible, of the employer's business.

The bonding authority of the Department is expanded so an employer may be required to obtain a bond after the Department receives a wage complaint against the employer.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill makes several needed changes to the administration of wage complaints by the Department. This bill should protect employees and upstanding employers. Requiring that repeat violations are willful and shortening time limit ensures that this bill targets the right people. Stakeholders worked together on this bill and the negotiations on this bill were unusually collegial. The Department also contributed some creative solutions to some of the issues with the original bill.

(Opposed) None.

Persons Testifying: Andrea Schmitt, Columbia Legal Services; Kris Tefft, Association of Washington Business; Gary Smith, Independent Business Association; and Carolyn Logue, Washington Food Industry.

Persons Signed In To Testify But Not Testifying: None.