

2023 -- H 5902 SUBSTITUTE A

LC001272/SUB A/4

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- PAYMENT OF WAGES

Introduced By: Representatives Craven, Caldwell, Bennett, and Morales

Date Introduced: March 01, 2023

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

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

3 **28-14-1. Definitions.**

4 Whenever used in this chapter, except where the context clearly indicates otherwise:

5 (1) "Construction industry" means the business of constructing, reconstructing, altering,
6 maintaining, moving, rehabilitating, repairing, renovating, or demolition of any building, structure,
7 or improvement to the excavation of or other development or improvement to land, highways, or
8 other real property.

9 (2) "Department" means the department of labor and training.

10 (3) "Director" means the director of the department of labor and training or his or her
11 duly authorized representative.

12 (4) "Employee" means any person suffered or permitted to work by an employer, except
13 that independent contractors or subcontractors shall not be considered employees.

14 (5) "Employer" means any individual, firm, partnership, association, joint stock
15 company, trust, corporation, receiver, or other like officer appointed by a court of this state, and
16 any agent or officer of any of the previously mentioned classes, employing any person in this state.

17 (6) "Wages" means all amounts at which the labor or service rendered is recompensed,
18 whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other method
19 of calculating the amount.

1 **28-14-17. Penalty for violations.**

2 (a) Except as otherwise provided for in this chapter, any ~~Any~~ employer who or that violates
3 or fails to comply with any of the provisions of this chapter shall be guilty of a misdemeanor, and
4 upon conviction of the misdemeanor, the employer shall be punished by a fine of not less than four
5 hundred dollars (\$400) for each separate offense, or by imprisonment of up to one year, or by both
6 fine and imprisonment. Each ~~day~~ pay period of failure to pay wages due an employee at the time
7 specified in this chapter shall constitute a separate and distinct civil violation, separate and apart
8 from any criminal violation provided for in subsection (b) of this section ~~violation.~~

9 (b) Any employer who knowingly and willfully violates §§ 28-14-2, 28-14-4, or 28-14-6
10 of this chapter shall be guilty of a felony if the actual value of the wages due to an employee exceeds
11 one thousand five hundred dollars (\$1,500), and upon a plea or conviction thereof, shall be deemed
12 to have committed a felony and shall be imprisoned by a term not exceeding three (3) years, or by
13 a fine not exceeding five thousand dollars (\$5,000), or both. In calculating the value of wages due
14 to an employee, the total amount of all wages due the employee, in U.S. dollars, shall be included
15 in the calculation.

16 ~~(b)~~(c) Any employer found guilty of violations of this chapter who or that does not pay
17 wages and fines within thirty (30) days of a final decision and after notification by the department
18 of labor and training, may have the employer's business license revoked by the state of Rhode
19 Island until the employer pays such wages and fines in full or enters into a payment agreement with
20 which the employer stays in compliance.

21 **28-14-19. Enforcement powers and duties of director of labor and training.**

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

29 (b) Upon receipt of a complaint or conducting an inspection under applicable law, the
30 director, or his or her appropriate departmental designee, is authorized to investigate to determine
31 compliance with this chapter and chapter 12 of this title. The director or designee shall forward all
32 complaints to the investigatory team within the department of labor and training who shall conduct
33 the initial screening, investigation, and field audits, as set forth in § 28-14-19.1.

34 (c) With respect to all complaints deemed just and valid by the investigatory team, the

1 director, or his or her designee, shall order a hearing thereon at a time and place to be specified,
2 and shall give notice thereof, together with a copy of the complaint or the purpose thereof, or a
3 statement of the facts disclosed upon investigation, which notice shall be served personally or by
4 mail on any person, business, corporation, or entity of any kind affected thereby. The hearing shall
5 be scheduled within thirty (30) days of service of a formal complaint as provided herein. The
6 person, business, corporation, or entity shall have an opportunity to be heard in respect to the
7 matters complained of at the time and place specified in the notice. The hearing shall be conducted
8 by the director or his or her designee. The hearing officer in the hearing shall be deemed to be
9 acting in a judicial capacity, and shall have the right to issue subpoenas, administer oaths, and
10 examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by
11 Rhode Island civil practice law and rules. The hearing shall be expeditiously conducted and upon
12 such hearing the hearing officer shall determine the issues raised thereon and shall make a
13 determination and enter an order within thirty (30) days of the close of the hearing, and forthwith
14 serve a copy of the order, with a notice of the filing thereof, upon the parties to the proceeding,
15 personally or by mail. The order shall dismiss the complaint or direct payment of any wages and/or
16 benefits found to be due and/or award such other appropriate relief or penalties authorized under
17 this chapter and chapter 12 of this title, and the order may direct payment of reasonable attorney's
18 fees and costs to the complaining party. Interest at the rate of twelve percent (12%) per annum shall
19 be awarded in the order from the date of the nonpayment to the date of payment.

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

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

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

32 (g) The director shall notify the contractors' registration board of any order issued or any
33 determination hereunder that an employer has violated this chapter, chapter 12 of this title, or
34 chapter 13 of title 37. The director shall notify the tax administrator of any determination hereunder

1 that may affect liability for an employer's payment of wages and/or payroll taxes.

2 **28-14-19.1. Misclassification of employees.**

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

6 ~~(b) In addition to any other relief to which any department or an aggrieved party may be
7 entitled for such a violation, the employer shall be liable for a civil penalty in an amount not less
8 than one thousand five hundred dollars (\$1,500) and not greater than three thousand dollars
9 (\$3,000) for each misclassified employee for a first offense and up to five thousand dollars (\$5,000)
10 for each misclassified employee for any subsequent offense, which shall be shared equally between
11 the department and the aggrieved party.~~

12 (b) Upon receipt by the department of a complaint alleging misclassification of a worker
13 pursuant this section, the department shall undertake an investigation using the factors consistent
14 with federal regulations found in the Fair Labor Standards Act.

15 (1) The department shall assign an investigatory team within the department to investigate
16 and screen all complaints for general analysis and validity.

17 (2) As part of their investigation, the department's investigatory team may conduct field
18 audits of businesses to ascertain validity of complaints. In conducting these audits, the department's
19 investigatory team may investigate exclusively or with the assistance of the task force as established
20 pursuant to chapter 156 of title 42.

21 (3)(i) The investigatory team shall make a determination as to whether it finds the
22 complaint to be just and valid, or not, and shall report those findings to the director or his/her
23 designee. In instances where the department's investigatory team deems a complaint is just and
24 valid, and so reports, the alleged civil violation shall be adjudicated pursuant to the provisions of §
25 28-14-19 and this section.

26 (ii) In addition, in the event the investigatory team determines that an employer has
27 misclassified an employee, the investigatory team shall report the matter to the director or designee
28 with a recommendation that the matter be referred to the department of the attorney general for
29 criminal prosecution. The investigatory team may include any specific, documented extenuating
30 circumstances that the investigatory team believes would mitigate against a criminal prosecution.
31 The director or designee shall review the investigatory team's findings and consider its
32 recommendations. The director or designee shall forward the matter to the department of the
33 attorney general along with the director's or designee's recommendations as to whether to prosecute
34 the matter criminally or not, along with any specific, documented extenuating circumstances that

1 the director or designee believes would mitigate against a criminal prosecution.

2 (iii) (A) If the director or designee receives information indicating that any person has
3 violated this chapter, the director or designee may investigate the matter and issue an order to show
4 cause why the person should not be found in violation of this chapter.

5 (B) A person served with an order to show cause shall have a period of twenty (20) days
6 from the date the order is served to file an answer in writing.

7 (C) If the person fails to file a timely and adequate answer to the order to show cause, the
8 director or designee may, following notice and hearing, do any of the following:

9 (I) Petition a court of competent jurisdiction to issue a stop-work order as provided in this
10 section; or

11 (II) Immediately assess penalties as provided for in this section.

12 (D) If, subsequent to issuing an order to show cause under this section, the director or
13 designee finds probable cause that an employer has committed a criminal violation of this chapter,
14 the director or designee shall refer the matter to the department of the attorney general for
15 investigation or impose administrative penalties provided for under this section.

16 (E) A party that does not meet the definition of an "employer" in § 28-14-1, but which
17 party intentionally contracts with an employer knowing the employer intends to misclassify
18 employees in violation of this chapter, shall be subject to the same penalties, remedies or other
19 actions as the employer found to be in violation of this chapter.

20 (iv) Provided, the decision whether to prosecute a violation of this section as a criminal
21 matter shall be made by the attorney general. In making this decision, the attorney general shall
22 review and consider all recommendations and materials forwarded by the director or designee
23 pursuant to this section.

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

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

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

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

1 (g) In addition to any other relief to which the department or an aggrieved party may be
2 entitled for such a violation, the employer shall be liable for a civil penalty in an amount not less
3 than one thousand five hundred dollars (\$1,500) and not greater than three thousand dollars
4 (\$3,000) for each misclassified employee for a first offense and up to five thousand dollars (\$5,000)
5 for each misclassified employee for any subsequent offense, which shall be shared equally between
6 the department and the aggrieved party.

7 (h) Any employer who knowingly and willfully violates this section regarding
8 misclassification of an employee in the construction industry shall be subject to the following
9 penalties:

10 (1) Where the value does not exceed one thousand five hundred dollars (\$1,500), upon a
11 plea or a conviction, shall be guilty of a misdemeanor and be subject to imprisonment for a term
12 not exceeding one year, or a fine of up to one thousand dollars (\$1,000), or both;

13 (2)(i) Any employer who knowingly and willfully violates this section after having been
14 previously adjudicated for a violation either by plea or conviction of this section and where the
15 value exceeds one thousand five hundred dollars (\$1,500) shall be guilty of a felony and sentenced
16 to a term of imprisonment not to exceed three (3) years, or a fine of not more than five thousand
17 dollars (\$5,000) or both.

18 (i)(1) The director of the department of labor and training shall, on or before December 31,
19 2024, and annually thereafter on or before December 31, file a report (the "report") with the
20 governor, the speaker of the house, and the president of the senate. This report shall provide
21 information on the status, progress, and recommendations, if any, as well as the information and
22 data set forth in § 28-14-19.1(i)(2), regarding the legislative initiatives set forth in this chapter.

23 (2) The data included in the report required by this subsection of this section shall include,
24 but not be limited to, the following for the time period covered by the report:

25 (i) Number of complaints filed with the department for wage theft and misclassification of
26 employees ("complaints");

27 (ii) Number of complaints found by the department to be actionable;

28 (iii) Number of complaints referred by the department to the department of the attorney
29 general;

30 (iv) Number of complaints that are handled administratively or civilly by the department
31 of labor and training, both the aggregate number and also disaggregated by the resolution or
32 outcome of those complaints, including those settled, dismissed for finding no violation,
33 adjudicated, and, if appealed, the results of those appeals, as well as the number of pending matters;
34 and

1 (v) Of the complaints referred to the department of the attorney general, a disaggregation
2 of the complaints by resolution or outcome of those complaints, including those settled, dismissed
3 for finding no violation, adjudicated, and, if appealed, the results of those appeals, as well as the
4 number of pending matters. The department of the attorney general shall assist the department of
5 labor and training in obtaining this data.

6 (j)(3) The attorney general shall, on or before December 31, 2024, and annually thereafter
7 on or before December 31, file a report (the "attorney general report") with the governor, the
8 speaker of the house, and the president of the senate. The data included in the attorney general
9 report required by this subsection of this section shall include, but not be limited to, the following
10 for the time period covered by the attorney general report:

11 (i) The number of complaints referred to the attorney general for wage theft and
12 misclassification of employees ("wage theft complaints");

13 (ii) The number of civil and criminal wage theft complaints filed by the attorney general
14 for and arising out of wage theft and misclassification of employees;

15 (iii) A disaggregation of the wage theft complaints by resolution or outcome of those wage
16 theft complaints, including those handled by plea agreement, by conviction, by a finding of not
17 guilty, or other disposition;

18 (iv) The number of such cases that are appealed, and the results of those appeals which
19 have reached disposition;

20 (v) The number of cases pending both before the trial court and on appeal; and

21 (vi) Such other information, findings, and recommendations as the attorney general
22 determines to be appropriate to address the legislative initiatives set forth in this chapter.

23 SECTION 2. Section 42-156-4 of the General Laws in Chapter 42-156 entitled
24 "Underground Economy and Employee Misclassification Act" is hereby amended to read as
25 follows:

26 **42-156-4. Duties and responsibilities.**

27 (a) The Task Force shall coordinate joint efforts to combat the underground economy and
28 employee misclassification. The Task Force shall:

29 (a)(1) Foster voluntary compliance with the law by educating business owners and
30 employees about applicable requirements;

31 (b)(2) Protect the health, safety and benefit rights of workers; and

32 (c)(3) Restore competitive equality for law-abiding businesses; and

33 (4) Identify industries and geographic areas where evidence shows workers are most likely
34 to be mistakenly or deliberately misclassified or are victims of wage theft and engage in proactive

1 and particular efforts, including but not limited to pro-active enforcement strategies, to reach those
2 sectors where workers are least likely to report such violations.

3 (b) In addition to the duties and responsibilities set forth in subsection (a) of this section,
4 the task force, working with the department of labor and training, shall institute an information
5 campaign to educate the public, including but not limited to business owners, employers, and
6 employees, regarding the changes in state law regarding payment of wages and in particular the
7 new and enhanced civil and criminal penalties established in §§ 28-14-17, 28-14-19, and 28-14-
8 19.1, which changes are set to be in effect January 1, 2024.

9 SECTION 3. Section 1 of this act shall take effect on January 1, 2024. The remaining
10 sections of this act shall take effect upon passage.

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LC001272/SUB A/4
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- PAYMENT OF WAGES

1 This act would provide for misdemeanor and felony penalties as it relates to wage theft.
2 This act would also require the Department of Labor and Training to use the Fair Labor and
3 Standards Act as it relates to a determination of misclassification of employees. It would provide
4 for a stop work order as it relates to misclassification and would require annual reporting by the
5 Department of Attorney General and the Department of Labor and Training. As it relates to the
6 construction industry, it provides for enhanced criminal penalties and provides for a felony where
7 an employer has misclassified an employee.

8 Section 1 of this act would take effect on January 1, 2024. The remaining sections of this
9 act would take effect upon passage.

10 This act would take effect upon passage.

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