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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - PAYMENT OF WAGES

Introduced By: Senators Miller, Lanzi, and Goodwin

Date Introduced: February 15, 2012

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-12-19 of the General Laws in Chapter 28-12 entitled "Minimum
2 Wages" is hereby amended to read as follows:

3 **28-12-19. ~~Liability to employee for substandard wages. Actions for relief. -- Any~~**
4 ~~employer who pays any employee less than the applicable wage rate to which the employee is~~
5 ~~entitled under or by virtue of this chapter shall be liable to the affected employee for the full~~
6 ~~amount of the wage rate, less any amount actually paid to the employee by the employer, and for~~
7 ~~costs and the reasonable attorney's fees that may be allowed by the court. Any agreement between~~
8 ~~the employee and the employer to work for less than the wage rate shall be no defense to the~~
9 ~~action.~~ Any person aggrieved by a violation of this chapter shall be entitled to relief as provided
10 in chapter 28-14 ("Payment of Wages").

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

13 **28-14-1. Definitions. --** Whenever used in this chapter:

14 (1) "Director" means the director of the department of labor and training or his or her
15 duly authorized representative.

16 (2) "Employee" means any person ~~suffered or permitted to work~~ employed by an
17 employer, except that independent contractors or subcontractors shall not be considered
18 employees. The foregoing definition shall be interpreted consistent with the definition of
19 "employee" under 29 U.S.C. 203(e) of the fair labor standards act, including any exceptions or

1 [exemptions thereto under said act applicable to employment in this state.](#)

2 (3) "Employer" means any individual, firm, partnership, association, joint stock
3 company, trust, corporation, receiver, or other like officer appointed by a court of this state, and
4 any agent or officer of any of the previously mentioned classes, employing any person in this
5 state. [The foregoing definition shall be interpreted consistent with subdivision \(2\) above and the](#)
6 [definition of "employer" under 29 U.S.C. 203\(d\) of the fair labor standards act, including any](#)
7 [exemptions or exceptions thereto under said act applicable to employment in this state.](#)

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

11 [\(5\) "Employ" means to suffer or permit to work. The foregoing definition shall be](#)
12 [interpreted consistent with the definition of "employ" under 29 U.S.C. 203 \(g\) of the fair labor](#)
13 [standards act, including any exemptions or exceptions thereto under said act applicable to](#)
14 [employment in this state](#)

15 **28-14-19. Enforcement powers and duties of director of labor and training.** -- (a) It

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

24 ~~(b) The director is authorized to supervise the payment of amounts due to employees,~~
25 ~~and the employer may be required to make these payments to the director to be held in a special~~
26 ~~account in trust for the employees, and paid on order of the director directly to the employee or~~
27 ~~the employees affected. The employer shall also pay the director an administrative fee equal to~~
28 ~~twenty five percent (25%) of any payment made directly to the employee or employees or made~~
29 ~~to the director pursuant to this section and chapters 5-23, 25-3 and 28-12 for the first offense. An~~
30 ~~additional payment in the amount of fifty percent (50%) shall be assessed for each subsequent~~
31 ~~violation. The fee shall be deposited in the general fund.~~ [Upon receipt of a complaint or](#)
32 [conducting an inspection under applicable law, the director or his or her appropriate departmental](#)
33 [designee is authorized to investigate to determine with the chapters 28-12 and/or 28-14.](#)

34 ~~(c) The director may institute any action to recover unpaid wages or other compensation~~

1 ~~under this chapter, including the administrative fee contained in subsection (b) of this section,~~
2 ~~with or without the consent of the employee or employees affected.~~ With respect to all complaints
3 deemed just and valid, the director or his or her designee shall order a hearing thereon at a time
4 and place to be specified, and shall give notice thereof, together with a copy of the complaint or
5 the purpose thereof, or a statement of the facts disclosed upon investigation, which notice shall be
6 served personally or by mail on any person, business, corporation, or entity of any kind affected
7 thereby. The hearing shall be scheduled within thirty (30) days of service of a formal complaint
8 as provided herein. The person, business, corporation, or entity shall have an opportunity to be
9 heard in respect to the matters complained of at the time and place specified in the notice. The
10 hearing shall be conducted by the director or his or her designee. The hearing officer in the
11 hearing shall be deemed to be acting in a judicial capacity, and shall have the right to issue
12 subpoenas, administer oaths, and examine witnesses. The enforcement of a subpoena issued
13 under this section shall be regulated by Rhode Island civil practice law and rules. The hearing
14 shall be expeditiously conducted and upon such hearing the hearing officer shall determine the
15 issues raised thereon and shall make a determination and enter an order within thirty (30) days of
16 the close of the hearing, and forthwith serve a copy of the order, with a notice of the filing
17 thereof, upon the parties to the proceeding, personally or by mail. The order shall dismiss the
18 complaint or direct payment of any wages and/or benefits found to be due and/or award such
19 other appropriate relief or penalties authorized under chapter 28-12 and/or 28-14, and the order
20 may direct payment of reasonable attorneys' fees and costs to the complaining party. Interest at
21 the rate of twelve percent (12%) per annum shall be awarded in the order from the date of the
22 nonpayment to the date of payment.

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

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

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

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

5 SECTION 3. Sections 28-14-18, 28-14-18.1 and 28-14-18.2 of the General Laws in
6 Chapter 28-14 entitled "Payment of Wages" are hereby repealed.

7 ~~**28-14-18. Protection.** --- An employer shall not discharge, threaten, or otherwise~~
8 ~~discriminate against an employee regarding the employee's compensation, terms, conditions,~~
9 ~~location or privileges of employment because:~~

10 ~~(1) The employee, or a person acting on behalf of the employee, reports or is about to~~
11 ~~report to the department verbally or in writing, a violation which the employee knows or~~
12 ~~reasonably believes has occurred or is about to occur of a law or regulation or rule promulgated~~
13 ~~by the department unless the employee knows or has reason to know that the report is false; or~~

14 ~~(2) An employee is requested by the department to participate in an investigation,~~
15 ~~hearing, or inquiry held by the department or a court action.~~

16 ~~**28-14-18.1. Relief and damages.** --- (a) A person who alleges a violation of this chapter~~
17 ~~may bring a civil action for appropriate injunctive relief or actual damages or both within one~~
18 ~~year after the occurrence of the alleged violation of this chapter.~~

19 ~~(b) An action commenced pursuant to subsection (a) of this section may be brought in~~
20 ~~the superior court for the county where the alleged violation occurred, the county where the~~
21 ~~complainant resides, or the county where the person against who the civil complaint is filed~~
22 ~~resides or has his or her principal place of business.~~

23 ~~(c) As used in subsection (a) of this section, "damages" means damages for injury or loss~~
24 ~~caused by each violation of this chapter.~~

25 ~~(d) An employee shall show by clear and convincing evidence that he or she or a person~~
26 ~~acting on his or her behalf was about to report to the department verbally or in writing a violation~~
27 ~~which the employee knew or reasonably believed had occurred or was about to occur of a law or~~
28 ~~regulation of the department.~~

29 ~~**28-14-18.2. Reinstatement.** --- A court, in rendering a judgment in an action brought~~
30 ~~under this chapter, shall order, as the court considers appropriate, reinstatement of the employee,~~
31 ~~the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual~~
32 ~~damages, or any combination of these remedies. A court may also award the complainant all or a~~
33 ~~portion of the costs of litigation, if the court determines that the award is appropriate.~~

34 SECTION 4. Chapter 28-14 of the General Laws entitled "Payment of Wages" is hereby

1 amended by adding thereto the following sections:

2 **28-14-19.1. Misclassification of employees.** – (a) The misclassification of a worker
3 whether performing work as a natural person, business, corporation or entity of any kind, as an
4 independent contractor when the worker should be considered and paid as an employee shall be
5 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 five hundred dollars (\$500) and not greater than three thousand (\$3,000) dollars for each
9 misclassified employee for a first offense and up to five thousand dollars (\$5,000) for each
10 misclassified employee for any subsequent offense, which shall be shared equally between the
11 department and the aggrieved party.

12 (c) In determining the amount of any penalty imposed under this section, the director or
13 his or her designee shall consider the size of the employer’s business, the good faith of the
14 employer, the gravity of the violation, the history of previous violations, and whether or not the
15 violation was an innocent mistake or willful.

16 (d) A violation of this section may be adjudicated under section 28-14-19 and
17 consolidated with any labor standards violation or under sections 37-13-14.1 and 15 and
18 consolidated with any prevailing wage violation.

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

21 (f) The department shall notify the contractor’s registration board and the tax
22 administrator of any violation of this section.

23 **28-14-19.2. Private right of action to collect wages or benefits and for equitable**
24 **relief.** – (a) Any employee or former employee, or any organization representing such an
25 employee or former employee aggrieved by the failure to pay wages and/or benefits or
26 misclassification in violation of chapters 28-12 and/or 28-14 may file a civil action in any court of
27 competent jurisdiction to obtain relief. An aggrieved party shall be entitled to recover any unpaid
28 wages and/or benefits, compensatory damages, and liquidated damages in an amount up to two
29 (2) times the amount of unpaid wages and/or benefits owed, as well as an award of appropriate
30 equitable relief, including reinstatement of employment, fringe benefits and seniority rights, and
31 reasonable attorneys’ fees and costs, and/or such other appropriate relief or penalties authorized
32 under chapters 28-12 and/or 28-14. In determining the amount of any penalty imposed under this
33 section, consideration shall be given to the size of the employer’s business, the good faith of the
34 employer, the gravity of the violation, the history previous violations, and whether or not the

1 violation was an innocent mistake or willful. Any unpaid fringe benefit contributions owed
2 pursuant to this section in any form shall be paid to the appropriate benefit fund; however, in the
3 absence of an appropriate fund, the benefit shall be paid directly to the aggrieved employee.

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

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

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

12 (e) A civil action filed under this section may be instituted instead of, but not in addition
13 to, the director of labor and training enforcement procedures authorized by the above referenced
14 chapters, provided the civil action is filed prior to the date the director of labor and training issues
15 notice of an administrative hearing.

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

19 (g) Any claim hereunder shall be forever barred unless commenced within two (2) years
20 after the cause of action accrued, except that a cause of action arising out of a willful violation
21 may be commenced within three (3) years after the cause of action accrued.

22 **28-14-19.3. Protection from retaliation.** -- No employer, or any person acting on behalf
23 of the employer, shall discharge, threaten, or otherwise discriminate or retaliate against an
24 employee or any other person for asserting, supporting, reporting, or participating in or being
25 asked to participate in the investigation or determination of claim violation or actionable under
26 sections 28-12 and/or 28-14.

27 Any person aggrieved by a violation of this section shall be entitled to relief as provided
28 under chapter 28-50 ("The Rhode Island Whistleblowers' Protection Act"), provided, that such
29 action must be commenced within one year after the cause of action accrued or shall be thereafter
30 barred.

31 SECTION 5. Section 28-50-4 of the General Laws in Chapter 28-50 entitled "The Rhode
32 Island Whistleblowers' Protection Act" is hereby amended to read as follows:

33 **28-50-4. Relief and damages.** -- (a) A person who alleges a violation of this act may
34 bring a civil action for appropriate injunctive relief, or actual damages, or both within three (3)

1 years after the occurrence of the alleged violation of this chapter.

2 (b) An action commenced pursuant to subsection (a) of this section may be brought in
3 the superior court for the county where the alleged violation occurred, the county where the
4 complainant resides, or the county where the person against whom the civil complaint is filed
5 resides or has their principal place of business.

6 (c) As used in subsection (a) of this section, "damages" means damages for injury or loss
7 caused by each violation of this chapter.

8 ~~(d) An employee shall show by clear and convincing evidence that he or she or a person
9 acting on his or her behalf was about to report to a public body, verbally or in writing, a violation,
10 which the employee knew or reasonably believed had occurred or was about to occur, of a law of
11 this state, a political subdivision of this state, or the United States.~~

12 SECTION 6. This act shall take effect upon passage.

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LC01278
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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 amend several provisions of the general laws pertaining to the payment of
2 wages. The act would set forth a hearing procedure for alleged violations of chapters 28-12 and
3 28-14, and would also provide a private right of action to an aggrieved employee in order to
4 pursue wages, benefits, and other equitable relief.

5 This act would take effect upon passage.

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