

2012 -- S 2422 SUBSTITUTE A

LC01278/SUB A/3

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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. Section 28-14-19 of the General Laws in Chapter 28-14 entitled "Payment
12 of Wages" is hereby amended to read as follows:

13 ~~**28-14-19. Enforcement powers and duties of director of labor and training. --**~~ (a) It
14 shall be the duty of the director to insure compliance with the provisions of this chapter 28-14 and
15 28-12, ~~to~~ The director or his or her designee may investigate any violations ~~of this chapter,~~
16 thereof, ~~to~~ institute or cause to be instituted actions for the collection of wages, and ~~to~~ institute
17 action for penalties ~~provided under this chapter.~~ or other relief as provided for within and
18 pursuant to those chapters. The director or his or her authorized representatives are empowered to
19 hold hearings and he or she shall cooperate with any employee in the enforcement of a claim

1 against his or her employer in any case whenever, in his or her opinion, the claim is just and
2 valid.

3 ~~(b) The director is authorized to supervise the payment of amounts due to employees,~~
4 ~~and the employer may be required to make these payments to the director to be held in a special~~
5 ~~account in trust for the employees, and paid on order of the director directly to the employee or~~
6 ~~the employees affected. The employer shall also pay the director an administrative fee equal to~~
7 ~~twenty five percent (25%) of any payment made directly to the employee or employees or made~~
8 ~~to the director pursuant to this section and chapters 5-23, 25-3 and 28-12 for the first offense. An~~
9 ~~additional payment in the amount of fifty percent (50%) shall be assessed for each subsequent~~
10 ~~violation. The fee shall be deposited in the general fund. Upon receipt of a complaint or~~
11 ~~conducting an inspection under applicable law, the director or his or her appropriate departmental~~
12 ~~designee is authorized to investigate to determine compliance with the chapters 28-12 and/or 28-~~
13 ~~14.~~

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

1 the rate of twelve percent (12%) per annum shall be awarded in the order from the date of the
2 nonpayment to the date of payment.

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

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

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

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

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

21 ~~**28-14-18. Protection.** --- An employer shall not discharge, threaten, or otherwise~~
22 ~~discriminate against an employee regarding the employee's compensation, terms, conditions,~~
23 ~~location or privileges of employment because:~~

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

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

30 ~~**28-14-18.1. Relief and damages.** --- (a) A person who alleges a violation of this chapter~~
31 ~~may bring a civil action for appropriate injunctive relief or actual damages or both within one~~
32 ~~year after the occurrence of the alleged violation of this chapter.~~

33 ~~(b) An action commenced pursuant to subsection (a) of this section may be brought in~~
34 ~~the superior court for the county where the alleged violation occurred, the county where the~~

1 ~~complainant resides, or the county where the person against who the civil complaint is filed~~
2 ~~resides or has his or her principal place of business.~~

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

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

9 ~~**28-14-18.2. Reinstatement.** --- A court, in rendering a judgment in an action brought~~
10 ~~under this chapter, shall order, as the court considers appropriate, reinstatement of the employee,~~
11 ~~the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual~~
12 ~~damages, or any combination of these remedies. A court may also award the complainant all or a~~
13 ~~portion of the costs of litigation, if the court determines that the award is appropriate.~~

14 SECTION 4. Chapter 28-14 of the General Laws entitled "Payment of Wages" is hereby
15 amended by adding thereto the following sections:

16 **28-14-19.1. Misclassification of employees.** – (a) The misclassification of a worker
17 whether performing work as a natural person, business, corporation or entity of any kind, as an
18 independent contractor when the worker should be considered and paid as an employee shall be
19 considered a violation of this chapter.

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

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

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

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

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

3 **28-14-19.2. Private right of action to collect wages or benefits and for equitable**
4 **relief.** – (a) Any employee or former employee, or any organization representing such an
5 employee or former employee aggrieved by the failure to pay wages and/or benefits or
6 misclassification in violation of chapters 28-12 and/or 28-14 may file a civil action in any court of
7 competent jurisdiction to obtain relief. An aggrieved party shall be entitled to recover any unpaid
8 wages and/or benefits, compensatory damages, and liquidated damages in an amount up to two
9 (2) times the amount of unpaid wages and/or benefits owed, as well as an award of appropriate
10 equitable relief, including reinstatement of employment, fringe benefits and seniority rights, and
11 reasonable attorneys' fees and costs, and/or such other appropriate relief or penalties authorized
12 under chapters 28-12 and/or 28-14. In determining the amount of any penalty imposed under this
13 section, consideration shall be given to 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. Any unpaid fringe benefit contributions owed
16 pursuant to this section in any form shall be paid to the appropriate benefit fund; however, in the
17 absence of an appropriate fund, the benefit shall be paid directly to the aggrieved employee.

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

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

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

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

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

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

1 **28-14-19.3. Protection from retaliation.** – No employer, or any person acting on behalf
2 of the employer, shall discharge, threaten, or otherwise discriminate or retaliate against an
3 employee or any other person for asserting, supporting, reporting, or participating in or being
4 asked to participate in the investigation or determination of claim violation or actionable under
5 chapters 28-12 and/or 28-14.

6 Any person aggrieved by a violation of this section shall be entitled to relief as provided
7 under chapter 28-50 (“The Rhode Island Whistleblowers’ Protection Act”), provided, that such
8 action must be commenced within one year after the cause of action accrued or shall be thereafter
9 barred.

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

12 **28-50-4. Relief and damages.** -- (a) A person who alleges a violation of this act may
13 bring a civil action for appropriate injunctive relief, or actual damages, or both within three (3)
14 years after the occurrence of the alleged violation of this chapter.

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

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

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

25 SECTION 6. 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

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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