

2012 -- S 2585

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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 -- WAGES

Introduced By: Senators Nesselbush, P Fogarty, DeVall, Perry, and Miller

Date Introduced: February 28, 2012

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

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

3 **28-12-2. Definitions.** -- As used in this chapter:

4 (1) "Advisory board" means a board created as provided in section 28-12-6;

5 (2) "Commissioner" means the minimum wage commissioner appointed by the director
6 of labor and training as chief of the division of labor standards;

7 (3) "Director" means the director of labor and training or his or her duly authorized
8 representative;

9 (4) "Employ" means to suffer or to permit to work;

10 (5) "Employee" includes any individual ~~employed~~ suffered or permitted to work by an
11 employer, ~~but shall not include:~~ as defined by the Fair Labor Standards Act of 1938, 29 U.S.C.
12 201, et seq.

13 (6) "Employee" shall not include:

14 (i) Any individual employed in domestic service or in or about a private home;

15 (ii) Any individual employed by the United States;

16 (iii) Any individual engaged in the activities of an educational, charitable, religious, or
17 nonprofit organization where the employer-employee relationship does not, in fact, exist, or
18 where the services rendered to the organizations are on a voluntary basis;

19 (iv) Newspaper deliverers on home delivery, shoe shiners in shoe shine establishments,

1 caddies on golf courses, pin persons in bowling alleys, ushers in theatres;

2 (v) Traveling salespersons or outside salespersons;

3 (vi) Service performed by an individual in the employ of his or her son, daughter, or
4 spouse and service performed by a child under the age of twenty-one (21) in the employ of his or
5 her father or mother;

6 (vii) Any individual employed between May 1 and October 1 in a resort establishment
7 which regularly serves meals to the general public and which is open for business not more than
8 six (6) months a year;

9 (viii) Any individual employed by an organized camp which does not operate for more
10 than seven (7) months in any calendar year. However, this exemption does not apply to
11 individuals employed by the camp on an annual, full-time basis. "Organized camp" means any
12 camp, except a trailer camp, having a structured program including, but not limited to, recreation,
13 education, and religious, or any combination of these.

14 (6) "Employer" includes any individual, partnership, association, corporation, business
15 trust, or any person or group of persons acting directly or indirectly in the interest of an employer,
16 in relation to an employee;

17 (7) "Occupation" means any occupation, service, trade, business, industry, or branch or
18 group of industries or employment or class of employment in which individuals are gainfully
19 employed;

20 (8) "Wage" means compensation due to an employee by reason of his or her
21 employment.

22 **28-12-19. Liability to employee for substandard wages. --** Any employer who pays any
23 employee less than the applicable wage rate to which the employee is entitled under or by virtue
24 of this chapter shall be liable to the affected employee for the full amount of the wage rate, less
25 any amount actually paid to the employee by the employer, and for [damages of two \(2\) times the](#)
26 [wages owed](#), costs and the reasonable attorney's fees that may be allowed by the court. Any
27 agreement between the employee and the employer to work for less than the wage rate shall be no
28 defense to the action.

29 SECTION 2. Sections 28-14-1, 28-14-17, 28-14-19 and 28-14-20 of the General Laws in
30 Chapter 28-14 entitled "Payment of Wages" are hereby amended to read as follows:

31 **28-14-1. Definitions. --** Whenever used in this chapter:

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

34 (2) "Employee" means any person suffered or permitted to work by an employer, ~~except~~

1 ~~that independent contractors or subcontractors shall not be considered employees~~ [as defined by](#)
2 [the Fair Labor Standards Act of 1938, 20 U.S.C. section 201 et seq.](#)

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

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

10 **28-14-17. Penalty for violations.** – (a) Any employer who violates or fails to comply
11 with any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction
12 shall be punished by a fine of not less than four hundred dollars (\$400) for each separate offense,
13 or by imprisonment for not less than ten (10) nor more than ninety (90) days, or by both fine and
14 imprisonment. Each day of failure to pay wages due an employee at the time specified in this
15 chapter shall constitute a separate and distinct violation.

16 [\(b\) Any employer found guilty of violations of this chapter who does not pay wages and](#)
17 [fines within thirty \(30\) days of a final decision and after notification by the department of labor](#)
18 [and training, shall have their business license revoked by the state of Rhode Island until they pay](#)
19 [such wages and fines in full. If it is found that the violating employer in this case is illegally](#)
20 [unlicensed and/or unregistered to conduct business in the state of Rhode Island, said employer](#)
21 [shall be charged with larceny for theft of wages and punished accordingly under section 11-41-5.](#)

22 **28-14-19. Enforcement powers and duties of director of labor and training.** -- (a) It
23 shall be the duty of the director to insure compliance with the provisions of this chapter, to
24 investigate any violations of this chapter, to institute or cause to be instituted actions for the
25 collection of wages and to institute action for penalties provided under this chapter. The director
26 or his or her authorized representatives are empowered to hold hearings and he or she shall
27 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) The director is authorized to supervise the payment of amounts due to employees,
30 and the employer may be required to make these payments to the director to be held in a special
31 account in trust for the employees, and paid on order of the director directly to the employee or
32 the employees affected. [Any employer violating the provisions of this chapter in the payment of](#)
33 [wages owed to any employee shall pay the employee three \(3\) times the wages owed to the](#)
34 [employee.](#) The employer shall also pay the director an administrative fee equal to twenty-five

1 percent (25%) of any payment made directly to the employee or employees or made to the
2 director pursuant to this section and chapters 5-23, 25-3 and 28-12 for the first offense. An
3 additional payment in the amount of fifty percent (50%) shall be assessed for each subsequent
4 violation. One-half (1/2) of the administrative fee shall be deposited into a restricted receipt
5 account of the department of labor and training to maintain and increase enforcement capacity,
6 and the remaining one-half (1/2) of the administrative fee shall be deposited in the general fund.
7 ~~The fee shall be deposited in the general fund.~~

8 (c) The director may institute any action to recover unpaid wages or other compensation
9 under this chapter, including the administrative fee contained in subsection (b) of this section,
10 with or without the consent of the employee or employees affected.

11 ~~28-14-20. Filing of claims with director~~ **Filing of claims.** -- (a) ~~All claims for wages~~
12 ~~due must be filed with the director within three (3) years from time of services rendered by an~~
13 ~~employee to his or her employer.~~ All claims for wages may be filed with the director within three
14 (3) years from time of services rendered by an employee to his or her employer.

15 (b) ~~A claim may be filed by a person who is required to be paid wages for his or her~~
16 ~~labor; or if a minor, by his or her parent or guardian; or by the lawful collective bargaining~~
17 ~~representative of the person; or a representative authorized in writing by the employee.~~ A person
18 who alleges a violation of any provision of this chapter may bring a civil action for appropriate
19 injunctive relief or actual damages or both within three (3) years after the occurrence of the
20 alleged violation of this chapter.

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

25 (d) As used in subsection (b) of this section damages includes three (3) times the wages
26 owed to the employee for the first offense.

27 (e) Attorney's fees, including litigation expenses, may be granted to the plaintiff if he or
28 she prevails.

29 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would give employees several enhanced ways to help them collect their wages
- 2 from nonpaying employers.
- 3 This act would take effect upon passage.

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