

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 75 Session of 2019

INTRODUCED BY TARTAGLIONE, FONTANA, SCHWANK, STREET, HUGHES AND COSTA, JANUARY 23, 2019

REFERRED TO LABOR AND INDUSTRY, JANUARY 23, 2019

AN ACT

1 Amending the act of July 14, 1961 (P.L.637, No.329), entitled
 2 "An act relating to the payment of wages or compensation for
 3 labor or services; providing for regular pay days; conferring
 4 powers and duties upon the Department of Labor and Industry,
 5 including powers and duties with respect to the civil
 6 collection of wages; providing civil and criminal penalties
 7 for violations of the act; providing for their collection and
 8 disposition and providing for additional civil damages,"
 9 further providing for definitions; providing for duty of
 10 department to report; further providing for civil remedies
 11 and penalties, for liquidated damages and for criminal
 12 penalties; providing for employer liability; and establishing
 13 the Wage Enforcement Fund.

14 The General Assembly of the Commonwealth of Pennsylvania
 15 hereby enacts as follows:

16 Section 1. The definition of "employer" in section 2.1 of
 17 the act of July 14, 1961 (P.L.637, No.329), known as the Wage
 18 Payment and Collection Law, is amended and the section is
 19 amended by adding a definition to read:

20 Section 2.1. Definitions.--The following words and phrases
 21 when used in this act shall have, unless the context clearly
 22 indicates otherwise, the meanings given to them in this section:

23 * * *

1 "Employer." Includes the Commonwealth; any of its political
2 subdivisions; any authority created by the General Assembly and
3 any instrumentality or agency of the Commonwealth; every person,
4 firm, partnership, association, corporation, receiver or other
5 officer of a court of this Commonwealth and any agent or officer
6 of any of the above-mentioned classes employing any person in
7 this Commonwealth.

8 * * *

9 "High violation industry." An industry that incurs at least
10 25 violations over a two-year period.

11 * * *

12 Section 2. The act is amended by adding a section to read:

13 Section 8.1. Duty of Department to Report.--(a) The
14 department shall collect on a quarterly basis the following data
15 categorized by industry:

- 16 (1) number of violations;
- 17 (2) amount of fines collected;
- 18 (3) nature of violations;
- 19 (4) number of individual complaints filed;
- 20 (5) number of complaints resolved;
- 21 (6) amount of unpaid wages owed;
- 22 (7) amount of unpaid wages recovered;
- 23 (8) number of pending individual complaints;
- 24 (9) number of workplaces investigated from complaints;
- 25 (10) number of workplaces investigated proactively;
- 26 (11) number of workplaces reinvestigated following
27 violations; and
- 28 (12) number of subsequent violations.

29 On a semiannual basis, the department shall prepare and submit a
30 report of this data to the Chairperson of the Labor and Industry

1 Committee of the Senate and the Chairperson of the Labor and
2 Industry Committee of the House of Representatives and post the
3 report on the department's publicly accessible Internet website.

4 (b) The secretary shall investigate high-violation
5 industries no less than quarterly; train investigators to
6 recognize basic labor, health and safety violations; and engage
7 in cross-agency referrals to protect workers' rights.

8 Section 3. Section 9.1(c) of the act is amended and the
9 section is amended by adding a subsection to read:

10 Section 9.1. Civil Remedies and Penalties.--* * *

11 (c) The employe or group of employes, labor organization or
12 party to whom any type of wages is payable may, in the
13 alternative, inform the secretary of the wage claim against an
14 employer or former employer, and the secretary shall, unless the
15 claim appears to be frivolous, immediately notify the employer
16 or former employer of such claim by certified mail. If the
17 employer or former employer fails to pay the claim or make
18 satisfactory explanation to the secretary of his failure to do
19 so within ten days after receipt of such certified notification,
20 thereafter, the employer or former employer shall be liable for
21 a penalty of [ten percent (10%) of that portion of the claim
22 found to be justly due.] one thousand dollars (\$1,000) per
23 violation of this act or the regulations or equal to twice the
24 underpaid wages in damages to the employe, whichever is greater.
25 Each week in which an employe is paid less than the applicable
26 wage under this act and each employe who is paid less than the
27 prescribed rate shall constitute a separate violation that shall
28 be subject to a separate penalty. A good faith dispute or
29 contest as to the amount of wages due or the good faith
30 assertion of a right of set-off or counter-claim shall be deemed

1 a satisfactory explanation for nonpayment of such amount in
2 dispute or claimed as a set-off or counter-claim. The secretary
3 [shall have a cause of action against the employer or former
4 employer for recovery of such penalty and the same] may issue
5 orders and levy the civil penalty only after affording the
6 accused party the opportunity for a hearing as provided under 2
7 Pa.C.S. (relating to administrative law and procedure). The
8 penalty may be included in any subsequent action by the
9 secretary on said wage claim or may be exercised separately
10 after adjustment of such wage claim without court action. At the
11 request of an employe, the department shall assign that portion
12 of the money due that constitutes wages, wage supplements,
13 interest on wages or wage supplements, and liquidated damages
14 due that employe, to that employe and file an order in that
15 amount in the name of that employe with the county clerk of the
16 county where the employer resides or has a place of business.
17 The filing of the order shall have the full force and effect of
18 a judgment duly docketed in the office of the clerk.

19 * * *

20 (h) The following shall apply:

21 (1) It is unlawful for an employer or the employer's agent,
22 or the officer or agent of a corporation, to discharge or in any
23 other manner discriminate against any employe who:

24 (i) files or submits a complaint under this act;

25 (ii) cooperates with the secretary or the secretary's
26 representative, submits evidence, testifies or is about to
27 testify before the secretary or the secretary's representative
28 in any investigation or proceeding under or related to this act;

29 (iii) the employer believes may take the actions under this
30 paragraph or paragraph (2);

1 (iv) exercises any right under this act or any regulation
2 implementing its provisions;

3 (v) provides assistance or information to another employe
4 about this act.

5 An employer shall, upon conviction thereof, be sentenced to pay
6 a fine of not less than five hundred dollars (\$500) nor more
7 than one thousand dollars (\$1,000), and in default of the
8 payment of the fine and costs, shall be sentenced to
9 imprisonment for not less than 10 days nor more than 90 days.

10 (2) A first offense under this subsection shall be graded as
11 a summary offense. A second or subsequent offense under this
12 subsection, committed within a five-year period of the prior
13 offense, shall be graded as a misdemeanor of the third degree
14 and shall be punishable by a fine of not less than one thousand
15 dollars (\$1,000) nor more than three thousand dollars (\$3,000)
16 or to imprisonment of not less than 10 nor more than 100 days.
17 Each day of the failure to comply with this subsection or its
18 regulations and each employe who is discharged or in any other
19 manner discriminated against shall constitute a separate offense
20 subject to a separate penalty. An employer and the employer's
21 agent, or the officer or agent of any corporation, may also be
22 required to pay the employe an amount set by the court
23 sufficient to compensate the employe and deter future
24 violations.

25 Section 4. Sections 10 and 11.1 of the act are amended to
26 read:

27 Section 10. Liquidated Damages.--Where wages remain unpaid
28 for thirty days beyond the regularly scheduled payday, or, in
29 the case where no regularly scheduled payday is applicable, for
30 sixty days beyond the filing by the employe of a proper claim or

1 for sixty days beyond the date of the agreement, award or other
2 act making wages payable, or where shortages in the wage
3 payments made exceed five percent (5%) of the gross wages
4 payable on any two regularly scheduled paydays in the same
5 calendar quarter, and no good faith contest or dispute of any
6 wage claim including the good faith assertion of a right of set-
7 off or counter-claim exists accounting for such non-payment, the
8 employe shall be entitled to claim, in addition, as liquidated
9 damages an amount equal to [twenty-five percent (25%) of the
10 total amount of wages due, or five hundred dollars (\$500),
11 whichever is greater.] twice the underpaid wages due or one
12 thousand dollars (\$1,000), whichever is greater. Each week in
13 which an employe is paid less than the applicable wage under
14 this act shall constitute a separate violation that shall be
15 subject to a separate penalty.

16 Section 11.1. Criminal Penalties.--(a) The secretary or any
17 employe, group of employes, labor organization or party to whom
18 any type of wages is payable may institute prosecutions under
19 this act.

20 (b) In addition to any other penalty or punishment otherwise
21 prescribed by law, any employer who violates any provisions of
22 this act [shall be guilty of a summary offense and, upon
23 conviction thereof,] shall be punished by a fine of not [more]
24 less than three hundred dollars (\$300) nor more than one
25 thousand dollars (\$1,000), or by imprisonment up to 90 days, or
26 by both[, for each offense]. Each day of the failure to comply
27 with this act, and each employe against whom the employer or
28 officer or agent of any corporation violated any other provision
29 of this act, shall constitute a separate offense that shall be
30 subject to a separate penalty. A first offense under this

1 subsection shall be graded as a summary offense. A second or
2 subsequent offense under this subsection, committed within a
3 five-year period of the prior offense, shall be graded as a
4 misdemeanor of the third degree and shall be punishable by a
5 fine of not less than five hundred dollars (\$500) nor more than
6 one thousand dollars (\$1,000). The good faith contest or dispute
7 by any employer of any wage claim or the good faith assertion of
8 a right of set-off or counter-claim shall not be considered a
9 violation of this act: Provided, That the employer has paid all
10 wages due in excess of the amount in dispute or asserted to be
11 subject to a right of set-off or counter-claim. [Nonpayment of
12 wages to, on account of, or for the benefit of each individual
13 employe shall constitute a separate offense.]

14 (c) Where such employer is a corporation, the president,
15 secretary, treasurer or officers exercising corresponding
16 functions shall each be guilty of such summary offense.

17 (d) [All fines or penalties collected under this act shall
18 be paid into the State Treasury through the Department of
19 Revenue to the credit of the General Fund.] All fines and
20 penalties collected under section 9.1 and this section, as well
21 as section 12 of the act of January 17, 1968 (P.L.11, No.5),
22 known as The Minimum Wage Act of 1968, shall be deposited into
23 the Wage Enforcement Fund established under section 11.3. This
24 subsection shall not apply to penalties and wages paid to
25 employes for violations of this act or The Minimum Wage Act of
26 1968.

27 Section 5. The act is amended by adding sections to read:

28 Section 11.2. Employer Liability.--An employer similar in
29 operation and ownership to another employer found in violation
30 of section 9.1(c) or (h) or 11.1(b) shall be deemed the same

1 employer for the purposes of this section if the employes of the
2 similar employer are engaged in substantially the same work in
3 substantially the same working conditions under substantially
4 the same supervisors, or if the similar employer has
5 substantially the same production process, produces
6 substantially the same products and has the same body of
7 customers as the other employer found in violation of section
8 9.1(c) or (h) or 11.1(b). The similar employer shall continue to
9 be subject to section 9.1(c) or (h) or 11.1(b) and shall be
10 liable for the acts of the other employer under section 9.1(c)
11 or (h) or 11.1(b), as applicable.

12 Section 11.3. Wage Enforcement Fund.--(a) The Wage
13 Enforcement Fund is established in the State Treasury. The money
14 in the Wage Enforcement Fund shall consist of the fines and
15 penalties collected under sections 9.1 and 11.1 and section 12
16 of the act of January 17, 1968 (P.L.11, No.5), known as The
17 Minimum Wage Act of 1968, and deposited into the fund pursuant
18 to section 12 of The Minimum Wage Act of 1968.

19 (b) Money in the Wage Enforcement Fund is hereby
20 appropriated on a continuing basis, upon approval of the
21 Governor, to the department for periodic inspections, for
22 investigations of violations and for the enforcement of this act
23 and The Minimum Wage Act of 1968, including, but not limited to,
24 staffing for inspection, investigation and enforcement under
25 this act and The Minimum Wage Act of 1968.

26 (c) No money may be expended or obligated from the Wage
27 Enforcement Fund to any third party for any other purpose than
28 investigation, training investigators and enforcement under this
29 act and The Minimum Wage Act of 1968.

30 (d) Money in the Wage Enforcement Fund shall not lapse at

1 any time or be transferred to any other fund, except as provided
2 in section 12 of The Minimum Wage Act of 1968.

3 (e) No later than June 30 of each calendar year the
4 department shall provide a report to the Governor and the
5 General Assembly, through the Secretary-Parliamentarian of the
6 Senate and the Chief Clerk of the House of Representatives,
7 regarding the Wage Enforcement Fund. The report shall include an
8 accounting for the fines collected and deposited into the fund,
9 the expenditures and transfers from the fund during the prior
10 year, a description of the purposes for which expenditures from
11 the fund were made in the prior year and a full account of the
12 data collections required of the department under section 7 of
13 The Minimum Wage Act of 1968. This report shall be posted on the
14 department's publicly accessible Internet website no later than
15 July 1 of each calendar year.

16 Section 6. This act shall take effect in 60 days.