

2014 -- S 2289

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - PAYMENT OF WAGES

Introduced By: Senators Lombardi, Jabour, Miller, Lynch, and Archambault

Date Introduced: February 04, 2014

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-14-17 of the General Laws in Chapter 28-14 entitled "Payment
2 of Wages" is hereby amended to read as follows:

3 **28-14-17. Penalty for violations.** -- Any employer who violates or fails to comply with
4 any of the provisions of this chapter, upon a conviction by a court of competent jurisdiction or
5 upon a plea of guilty or nolo contendere, shall be guilty of a misdemeanor. ~~and~~ All alleged
6 violations of this section shall be referred to and be prosecuted by the office of the attorney
7 general. ~~upon~~ Upon conviction of the misdemeanor, the employer shall be punished by a fine of
8 not less than four hundred dollars (\$400) for each separate offense, or by imprisonment for not
9 less than ten (10) nor more than ninety (90) days, or by both fine and imprisonment. Each day of
10 failure to pay wages due an employee at the time specified in this chapter shall constitute a
11 separate and distinct violation.

12 SECTION 2. Section 37-13-14.1 of the General Laws in Chapter 37-13 entitled "Labor
13 and Payment of Debts by Contractors" is hereby amended to read as follows:

14 **37-13-14.1. Enforcement -- Hearings.** -- (a) Before issuing an order or determination,
15 the director of labor and training shall order a hearing thereon at a time and place to be specified,
16 and shall give notice thereof, together with a copy of the complaint or the purpose thereof, or a
17 statement of the facts disclosed upon investigation, which notice shall be served personally or by
18 mail on any person, firm, or corporation affected thereby. The person, firm, or corporation shall
19 have an opportunity to be heard in respect to the matters complained of at the time and place

1 specified in the notice, which time shall be not less than five (5) days from the service of the
2 notice personally or by mail. The hearing shall be held within ten (10) days from the order of
3 hearing. The hearing shall be conducted by the director of labor and training or his or her
4 designee. The hearing officer in the hearing shall be deemed to be acting in a judicial capacity,
5 and shall have the right to issue subpoenas, administer oaths, and examine witnesses. The
6 enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil
7 practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the
8 hearing officer shall determine the issues raised thereon and shall make a determination and enter
9 an order within ten (10) days of the close of the hearing, and forthwith serve a copy of the order,
10 with a notice of the filing thereof, upon the parties to the proceeding, personally or by mail. The
11 order shall dismiss the charges or direct payment of wages or supplements found to be due,
12 including interest at the rate of twelve percentum (12%) per annum from the date of the
13 underpayment to the date of payment, and may direct payment of reasonable attorney's fees and
14 costs to the complaining party.

15 (b) In addition to directing payment of wages or supplements including interest found to
16 be due, the order shall also require payment of a further sum as a civil penalty in an amount up to
17 three times the total amount found to be due. Further, if the amount of salary owed to an
18 employee pursuant to this chapter but not paid to the employee in violation of thereof exceeds
19 five thousand dollars (\$5,000), it shall constitute a misdemeanor and shall be referred to the office
20 of the attorney general. The misdemeanor shall be punishable for a period of not more than one
21 year in prison and/or fined not more than one thousand dollars (\$1,000). In assessing the amount
22 of the penalty, due consideration shall be given to the size of the employer's business, the good
23 faith of the employer, the gravity of the violation, the history of previous violations and the
24 failure to comply with recordkeeping or other nonwage requirements. The surety of the person,
25 firm, or corporation found to be in violation of the provisions of this chapter shall be bound to
26 pay any penalties assessed on such person, firm, or corporation. The penalty shall be paid to the
27 department of labor and training for deposit in the state treasury; provided, however, it is hereby
28 provided that the general treasurer shall establish a dedicated "prevailing wages enforcement
29 fund" for the purpose of depositing the penalties paid as provided herein. There is hereby
30 appropriated to the annual budget of the department of labor and training the amount of the fund
31 collected annually under this section, to be used at the direction of the director of labor and
32 training for the sole purpose of enforcing prevailing wage rates as provided in this chapter.

33 (c) For the purposes of this chapter, each day or part thereof of violation of any provision
34 of this chapter by a person, firm, or corporation, whether the violation is continuous or

1 intermittent, shall constitute a separate and succeeding violation.

2 (d) In addition to the above, any person, firm, or corporation found in violation of any of
3 the provisions of this chapter by the director of labor and training, an awarding authority, or the
4 hearing officer, shall be ineligible to bid on or be awarded work by an awarding authority or
5 perform any such work for a period of no less than eighteen (18) months and no more than thirty-
6 six (36) months from the date of the order entered by the hearing officer. Once a person, firm, or
7 corporation is found to be in violation of this chapter, all pending bids with any awarding
8 authority shall be revoked, and any bid awarded by an awarding authority prior to the
9 commencement of the work shall also be revoked.

10 (e) In addition to the above, any person, firm, or corporation found to have committed
11 two (2) or more willful violations in any period of eighteen (18) months of any of the provisions
12 of this chapter by the hearing officer, which violations are not arising from the same incident,
13 shall be ineligible to bid on or be awarded work by an awarding authority or perform any work
14 for a period of sixty (60) months from the date of the second violation.

15 (f) The order of the hearing officer shall remain in full force and effect unless stayed by
16 order of the superior court.

17 (g) The director of labor and training, awarding authority, or hearing officer shall notify
18 the bonding company of any person, firm, or corporation suspected of violating any section of
19 this chapter. The notice shall be mailed certified mail, and shall enumerate the alleged violations
20 being investigated.

21 (h) In addition to the above, any person, firm, or corporation found to have willfully
22 made a false or fraudulent representation on certified payroll records shall be referred to the
23 office of the attorney general. ~~The false or fraudulent representation~~ A first violation of this
24 section shall be considered a misdemeanor, and shall be punishable for a period of not more than
25 one year in prison and/or fined one thousand dollars (\$1,000). A second or subsequent violation
26 of this section shall be considered a felony and shall be punishable for a period of not more than
27 three (3) years imprisonment, or a fine of three thousand dollars (\$3,000), or both. Further, any
28 person, firm, or corporation found to have willfully made a false or fraudulent representation on
29 certified payroll records shall be required to pay a civil penalty to the department of labor and
30 training in an amount of no less than two thousand dollars (\$2,000) and not greater than fifteen
31 thousand dollars (\$15,000) per representation.

32 SECTION 3. 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 certain provisions of the general laws relative to the payment of
2 wages by employers, and would provide for penalties for failure to comply therewith.

3 This act would take effect upon passage.

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