



2013 ASSEMBLY BILL 578

December 18, 2013 – Introduced by Representatives GENRICH, OHNSTAD, BERCEAU, CLARK, GOYKE, HEBL, HINTZ, HULSEY, JOHNSON, KAHL, KOLSTE, MASON, MILROY, PASCH, POPE, SARGENT, SHANKLAND, SINICKI, C. TAYLOR, WACHS, WRIGHT, YOUNG and ZAMARRIPA, cosponsored by Senators HANSEN, LEHMAN, HARRIS and LASSA. Referred to Committee on Labor.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 66.0903 (10) (d), 103.005 (12) (a), 103.02, 103.85 (5), 104.04,
2 105.15, 106.01 (9), 109.11 (1) (a), 109.11 (1) (b), 109.11 (2) (a), 109.11 (2) (b) and
3 111.395; and **to create** 103.005 (12) (am) of the statutes; **relating to:**
4 administrative and civil penalties for failure to pay the minimum wage and
5 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Workforce Development (DWD) must investigate and attempt to adjust any claim by an employee that his or her employer has not paid the employee any wages that are owed to the employee (wage claim). Currently, DWD may settle a wage claim for an amount that is agreed upon between DWD, the employer, and the employee. If an employer does not agree to settle a wage claim, DWD may refer the wage claim to the district attorney for commencement of an action in circuit court to collect the wages due. If the circuit court finds that wages are due, the court may order the employer to pay to the employee, in addition to the amount of wages due, increased wages of up to 100 percent of the amount of wages due and to pay a forfeiture of not less than \$10 nor more than \$100 for each offense.

This bill permits DWD to require an employer that pays a wage that is less than the state minimum wage to pay to the employee, in addition to the amount of wages due, increased wages of up to 100 percent of the amount of wages due. The bill also increases the amount of the forfeiture that a circuit court may order the employer to

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pay from not less than \$10 nor more than \$100 for each offense to not less than \$25 nor more than \$250 for each offense.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0903 (10) (d) of the statutes is amended to read:

2 66.0903 **(10)** (d) Section 103.005 (5) (f), (11), (12) (a) and (b), and (13) applies
3 to this section, except that s. 103.005 (12) (a) does not apply to any person who fails
4 to provide any information to the department to assist the department in
5 determining prevailing wage rates under sub. (3) (am) or (ar). Section 111.322 (2m)
6 applies to discharge and other discriminatory acts arising in connection with any
7 proceeding under this section, including proceedings under sub. (11) (a).

8 **SECTION 2.** 103.005 (12) (a) of the statutes is amended to read:

9 103.005 **(12)** (a) If any employer, employee, owner, or other person violates ~~chs.~~
10 ~~103 to 106~~ ch. 103, 105, or 106, or fails or refuses to perform any duty required under
11 ~~chs. 103 to 106~~ ch. 103, 105, or 106, within the time prescribed by the department,
12 for which no penalty has been specifically provided, or fails, neglects, or refuses to
13 obey any lawful order given or made by the department or any judgment or decree
14 made by any court in connection with ~~chs. 103 to 106~~ ch. 103, 105, or 106, for each
15 such violation, failure, or refusal, the employer, employee, owner, or other person
16 shall forfeit not less than \$10 nor more than \$100 for each offense. This paragraph
17 does not apply to any person who fails to provide any information to the department
18 to assist the department in determining prevailing wage rates or prevailing hours
19 of labor under s. 66.0903 (3) (am) or (ar), 103.49 (3) (a) or (am), or 103.50 (3) or (4).

20 **SECTION 3.** 103.005 (12) (am) of the statutes is created to read:

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1 103.005 (12) (am) If any employer, employee, owner, or other person violates
2 ch. 104, or fails or refuses to perform any duty required under ch. 104, within the time
3 prescribed by the department, for which no penalty has been specifically provided,
4 or fails, neglects, or refuses to obey any lawful order given or made by the department
5 or any judgment or decree made by any court in connection with ch. 104, for each such
6 violation, failure, or refusal, the employer, employee, owner, or other person shall
7 forfeit not less than \$25 nor more than \$250 for each offense.

8 **SECTION 4.** 103.02 of the statutes is amended to read:

9 **103.02 Hours of labor.** No person may be employed or be permitted to work
10 in any place of employment or at any employment for such period of time during any
11 day, night, or week, as is dangerous or prejudicial to the person's life, health, safety,
12 or welfare. The department shall investigate, ascertain, determine, and fix such
13 reasonable ~~classification~~ classifications, and promulgate rules fixing a period of
14 time, or hours of beginning and ending work during any day, night, or week, ~~which~~
15 shall be as necessary to protect the life, health, safety, or welfare of any person, or
16 to carry out the purposes of ss. 103.01 to 103.03. The department shall, by rule,
17 classify such periods of time into periods to be paid for at regular rates and periods
18 to be paid for at the rate of at least one and one-half times the regular rates. Such
19 investigations, classifications, and orders shall be made as provided in s. 103.005 and
20 the penalties under s. 103.005 (12) (a) shall apply to and be imposed for any violation
21 of ss. 103.01 to 103.03. Such orders shall be subject to review in the manner provided
22 in ch. 227. Section 111.322 (2m) applies to discharge or other discriminatory acts
23 arising in connection with any proceeding under this section.

24 **SECTION 5.** 103.85 (5) of the statutes is amended to read:

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1 103.85 (5) Every employer who violates this section shall be punished as
2 provided in s. 103.005 (11) and (12) (a).

3 **SECTION 6.** 104.04 of the statutes is amended to read:

4 **104.04 Classifications; department's authority.** The department shall
5 investigate, ascertain, determine, and fix such reasonable classifications, and shall
6 impose general or special orders, determining the living wage, and shall carry out
7 the purposes of this chapter. Such investigations, classifications, and orders shall
8 be made as provided under s. 103.005, and the penalties specified in s. 103.005 (12)
9 (am) shall apply to and be imposed for any violation of this chapter. In determining
10 the living wage, the department may consider the effect that an increase in the living
11 wage might have on the economy of the state, including the effect of a living wage
12 increase on job creation, retention, and expansion, on the availability of entry-level
13 jobs, and on regional economic conditions within the state. The department may not
14 establish a different minimum wage for men and women. Said orders shall be subject
15 to review in the manner provided in ch. 227.

16 **SECTION 7.** 105.15 of the statutes is amended to read:

17 **105.15 General powers of department applicable; penalties.** Such
18 investigations, classifications, and orders shall be made as provided in s. 103.005 and
19 the penalties specified in s. 103.005 (12) (a) shall apply to and be imposed for any
20 violation of ss. 105.01 to 105.115 or 105.13 to 105.15. The department may also order
21 a person who operates an employment agency in violation of s. 105.05 (1) to make
22 refunds as provided under s. 105.16 (2). Orders issued under this section are subject
23 to review in the manner provided in ch. 227.

24 **SECTION 8.** 106.01 (9) of the statutes is amended to read:

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1 106.01 (9) AUTHORITY OF DEPARTMENT. The department may investigate,
2 ascertain, determine, and fix such reasonable classifications, issue rules and general
3 or special orders, and, hold hearings, make findings, and render orders upon its
4 findings as necessary to carry out the intent and purposes of this section. The
5 investigations, classifications, hearings, findings, and orders shall be made as
6 provided in s. 103.005. Except as provided in sub. (8), the penalties specified in s.
7 103.005 (12) (a) apply to violations of this section. Orders issued under this
8 subsection are subject to review under ch. 227.

9 **SECTION 9.** 109.11 (1) (a) of the statutes is amended to read:

10 109.11 (1) (a) In adjusting a controversy between an employer and an employee
11 as to an alleged wage claim filed with the department under s. 109.09 (1), the
12 department may compromise and settle that wage claim for such sum as may be
13 agreed upon between the department, the employee, and the employer. If the wage
14 claim arose out of the employer paying a wage that is less than a living-wage in
15 violation of ch. 104, the department may require the employer to pay, in addition to
16 the amount of wages due and unpaid, increased wages in the amount of 100 percent
17 of the amount of wages due and unpaid.

18 **SECTION 10.** 109.11 (1) (b) of the statutes is amended to read:

19 109.11 (1) (b) If the department finds that a wage claim is valid, the department
20 may instruct the employer against whom the wage claim is filed to audit his or her
21 payroll records to determine whether the employer may be liable for any other wage
22 claims of the same type as the wage claim that prompted the audit instruction. If
23 after the requested completion date of the audit the department receives a wage
24 claim against the employer of the same type as the wage claim that prompted the
25 audit instruction and if the department determines that the subsequent wage claim

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1 is valid, the department may audit the employer's payroll records to determine
2 whether the employer may be liable for any other wage claims of the same type as
3 the wage claim that prompted the audit instruction. For any valid wage claim that
4 is filed against an employer after the department has instructed the employer to
5 audit his or her payroll records under this paragraph and that is of the same type as
6 the wage claim that prompted the audit instruction and for any valid wage claim that
7 is discovered as a result of the department's audit under this paragraph and that is
8 of the same type as the wage claim that prompted the audit instruction, the
9 department shall require the employer to pay, in addition to the amount of wages due
10 and unpaid, increased wages of not more than ~~50%~~ 50 percent of the amount of wages
11 due and unpaid, unless the employer shows the department that payment of the
12 increased wages would cause extreme hardship.

13 **SECTION 11.** 109.11 (2) (a) of the statutes is amended to read:

14 109.11 (2) (a) In a wage claim action that is commenced by an employee before
15 the department has completed its investigation under s. 109.09 (1) and its attempts
16 to compromise and settle the wage claim under sub. (1), a circuit court may order the
17 employer to pay to the employee, in addition to the amount of wages due and unpaid
18 and in addition to or in lieu of the criminal penalties specified in sub. (3), increased
19 wages of not more than ~~50%~~ 50 percent of the amount of wages due and unpaid.

20 **SECTION 12.** 109.11 (2) (b) of the statutes is amended to read:

21 109.11 (2) (b) In a wage claim action that is commenced after the department
22 has completed its investigation under s. 109.09 (1) and its attempts to settle and
23 compromise the wage claim under sub. (1), a circuit court may order the employer
24 to pay to the employee, in addition to the amount of wages due and unpaid ~~to an~~
25 ~~employee~~ and in addition to or in lieu of the criminal penalties specified in sub. (3),

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1 increased wages of not more than ~~100%~~ 100 percent of the amount of ~~these~~ wages due
2 and unpaid.

3 **SECTION 13.** 111.395 of the statutes is amended to read:

4 **111.395 Judicial review.** Findings and orders of the commission under this
5 subchapter are subject to review under ch. 227. Orders of the commission shall have
6 the same force as orders of the department under chs. 103 to 106 and may be enforced
7 as provided in s. 103.005 (11) and (12) (a) and (b) or specifically by a suit in equity.
8 In any enforcement action the merits of any order of the commission are not subject
9 to judicial review. Upon such review, or in any enforcement action, the department
10 of justice shall represent the commission.

11 **SECTION 14. Initial applicability.**

12 (1) PENALTIES FOR FAILURE TO PAY THE MINIMUM WAGE. This act first applies to
13 wages earned on the effective date of this subsection.

14 (END)