

CHAPTER 109

WAGE PAYMENTS, CLAIMS AND COLLECTIONS

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NOTE: Ch. 380, laws of 1975, which created this chapter, contains explanatory notes. These notes also are in statutes prior to the 1983-84 edition.

109.01 Definitions. As used in this chapter:

(1) "Department" means the department of industry, labor and human relations.

(2) "Employer" means any person engaged in any activity, enterprise or business employing one or more persons within the state, including the state and its political subdivisions and charitable, nonprofit or tax-exempt organizations and institutions.

(3) "Wage" or "wages" mean remuneration payable to an employe for personal services, including salaries, commissions, holiday and vacation pay, overtime pay, severance pay or dismissal pay, supplemental unemployment compensation benefits when required under a binding collective bargaining agreement, bonuses and any other similar advantages agreed upon between the employer and the employe or provided by the employer to the employes as an established policy.

(4) "Wage deficiency" means the difference between the amount required by law to be paid and the amount actually paid to an employe.

History: 1975 c. 380, 421.

"Wages" does not include salary owed under fixed term contract to discharged employe for period from discharge to end of contract. *DILHR v. Coatings, Inc.* 126 W (2d) 338, 375 NW (2d) 834 (1985).

109.03 When wages payable; pay orders. (1) REQUIRED FREQUENCY OF PAYMENTS. Every employer shall as often as monthly pay to every employe engaged in the employer's business, except those employes engaged in logging operations and farm labor, all wages earned by such employe to a day not more than 31 days prior to the date of such payment. Employes engaged in logging operations and farm labor shall be paid all earned wages no less often than at regular quarterly intervals. Any employe who is absent at the time fixed for payment or who for any other reason is not paid at that time shall be paid thereafter at any time upon 6 days' demand. The required frequency of wage payments provided in this subsection does not apply to:

(a) Employes covered under a valid collective bargaining agreement establishing a different frequency for such payments, including deferred payments exercised at the option of employes; or

(b) School district employes who voluntarily request payment over a 12-month period for personal services performed during the school year, unless such school district employes are covered under a valid collective bargaining agreement which precludes this method of payment.

(c) Unclassified employes of the university of Wisconsin system.

(2) PAYMENT TO DISCHARGED OR RESIGNED EMPLOYES. Any employe, except a sales agent employed on a commission basis, not having a written contract for a definite period, who quits employment shall be paid in full within 15 days of the

date of termination, and any employe who is discharged shall be paid in full within 3 days.

(3) PAYMENT UPON DEATH OF EMPLOYEE. In case of the death of an employe to whom wages are due, the full amount of the wages due shall upon demand be paid by the employer to the spouse, children, or other dependent living with such employe at the time of death. In the case of an employe of the state, the amount of the wage due includes all unused vacation allowance. Any county or municipality may include unused vacation allowances for any employe who died after January 1, 1961. An employer may, not less than 5 days after the death of an employe and before the filing of a petition for letters testamentary or of administration in the matter of the decedent's estate, make payments of the wage due the deceased employe to the spouse, children, parent, brother or sister of the decedent, giving preference in the foregoing order; or, if no such relatives survive, the employer may apply such payment or so much thereof as may be necessary to paying creditors of the decedent in the order of preference prescribed in s. 859.25 for satisfaction of debts by executors and administrators. The making of payment in such manner shall be a discharge and release of the employer to the amount of such payment.

(4) PAYMENT TO CERTAIN SEPARATED EMPLOYEES. Whenever an employe is separated from the payroll of an employer as a result of the employer merging, liquidating or otherwise disposing of the business, ceasing business operations in whole or in part, or relocating all or part of the business to another area within or without the state, the employer, or the successors in interest of the employer, shall pay all unpaid wages to the employe at the usual place of payment within 24 hours of the time of separation.

(5) ENFORCEMENT. Except as provided in sub. (1), no employer may by special contract with employes or by any other means secure exemption from this section. Each employe shall have a right of action against any employer for the full amount of the employe's wages due on each regular pay day as provided in this section, in any court of competent jurisdiction.

(6) WAGE CLAIM. In an action by an employe against the employer on a wage claim, no security for payment of costs is required. In any such proceeding the court may allow the prevailing party, in addition to all other costs, a reasonable sum for expenses. No assignee of a wage claim shall be benefited or otherwise affected by this subsection except as expressly provided by s. 109.09.

History: 1975 c. 380, 421; 1977 c. 26, 235, 447; 1981 c. 20, 388; 1987 a. 403. Attorney fees are awardable under (6). *Jackman v. WMAC Inv. Corp.* 610 F Supp. 290 (1985).

109.07 Mergers, liquidations, dispositions, relocations or cessation of operations affecting employees; advance notice required. (1) Every employer employing 100 or more persons in this state who has decided upon a merger, liquidation, disposition or relocation within or without the state,

resulting in a cessation of business operations affecting 10 or more employees shall promptly notify the department, any affected employee, any collective bargaining representative of any affected employee, and the clerk of any town, village, city or county in which the affected place of employment is located, in writing of such action no later than 60 days prior to the date that such merger, liquidation, disposition, relocation or cessation takes place. The employer shall provide in writing all information concerning its payroll, affected employees and the wages and other remuneration owed to such employees as the department may require. The department may in addition require the employer to submit a plan setting forth the manner in which final payment in full shall be made to affected employees. The department shall promptly provide a copy of the notice required under this subsection to the department of development and shall cooperate with the department of development in the performance of its responsibilities under s. 560.15.

(2) Any employer who violates sub. (1), or who fails or refuses to provide all information or a plan for final payment as the department requires is guilty of a misdemeanor and may be fined not more than \$50 for each employee whose employment has been terminated as a result of such merger, liquidation, disposition, relocation or cessation of business operations.

History: 1975 c. 380; 1983 a. 84, 149; 1983 a. 192 s. 304; 1983 a. 538; 1987 a. 27.

There is no private cause of action under this section. *Henne v. Allis-Chalmers Corp.*, 660 F Supp. 1464 (E. D. Wis. 1987).

109.09 Wage claims, collection. (1) The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department no later than 2 years after the date the wages are due. The department may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and ss. 66.293, 103.02, 103.49, 103.82 and 104.12. In pursuance of this duty, it may take an assignment in trust for the assigning employe of any wage claim it deems to be valid or any wage deficiency, such assignment to run to the department. The department may sue the employer on any wage claim or wage deficiency so assigned and ss. 109.03 (6) and 109.11 shall apply to such actions. The department may refer such an

action to the district attorney of the county in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having appropriate jurisdiction. Any number of wage claims or wage deficiencies against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings. In such cases the taxable costs recovered shall be paid into the general fund.

(2) Pursuant to its authority under sub. (1) to take assignments of wage claims and wage deficiencies and to maintain actions for the benefit of employees, the department shall have a lien upon all property of the employer, real or personal, located in this state for the full amount of any wage claim or wage deficiency. Such lien shall take precedence over all other debts, judgments, decrees, liens or mortgages against the employer and may be enforced in the manner provided in ss. 409.501 to 409.507 and 779.09 to 779.12, insofar as such provisions are applicable. Any such lien shall exist as of the last date on which services were performed for the employer and for which wages are due and owing.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220.

Under (1), courts may award costs to DILHR when DILHR prevails but may not tax costs against DILHR when defendant employer prevails. *DILHR v. Coatings, Inc.* 126 W (2d) 338, 376 NW (2d) 834 (1985).

109.11 Penalties. (1) Any employer who, having the ability to pay, fails to pay the wages due and payable as provided in this chapter or falsely denies the amount or validity thereof or that such wages are due, with intent to secure any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder or defraud the person to whom such wages are due, may be fined not more than \$500 or imprisoned not more than 90 days or both. Each failure or refusal to pay each employe the amount of wages due at the time, or under the conditions required in this chapter, constitutes a separate offense.

(2) In addition to the criminal penalties provided in sub. (1), every employer violating this chapter shall be liable for the payment of the following increased wages: 10% if the delay does not exceed 3 days; 20% if the delay is more than 3 days, but does not exceed 10 days; 30% if the delay is more than 10 days, but does not exceed 20 days; 40% if the delay is more than 20 days, but does not exceed 30 days; 50% if the delay is more than 30 days; but in no event shall such increased liability exceed \$500.

History: 1975 c. 380, 421; 1977 c. 26.