

1993 Senate Bill 509

Date of enactment: **November 24, 1993**

Date of publication*: **December 8, 1993**

1993 WISCONSIN ACT 86

AN ACT *to renumber* 109.11 (1); *to amend* 109.03 (2), 109.03 (5), 109.03 (6), 109.09, 109.10 (2), 109.10 (3) (a), 109.10 (3) (b), 109.10 (3) (c) and 109.10 (4) (a); *to repeal and recreate* 109.11 (2); and *to create* 109.11 (1), 109.11 (3) (title) and 940.207 of the statutes, **relating to:** the collection of wage claims, payment of wages to a discharged or resigned employe, battery or threat to a department of industry, labor and human relations employe and providing penalties.

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

SECTION 1. 109.03 (2) of the statutes is amended to read:

109.03 (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 or~~ who is discharged from employment shall be paid in full within 3 days by no later than the date on which the employe regularly would have been paid under the employer's established payroll schedule or the date of payment required under sub. (1), whichever is earlier.

SECTION 2. 109.03 (5) of the statutes is amended to read:

109.03 (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 and for increased wages as provided in s. 109.11 (2), in any court of competent jurisdiction. An employe may bring an action against an employer under this subsection without first filing a wage claim with the department under s. 109.09 (1). An employe who brings an action against an employer under this subsection shall have a

lien upon all property of the employer, real or personal, located in this state as described in s. 109.09 (2).

SECTION 3. 109.03 (6) of the statutes is amended to read:

109.03 (6) WAGE CLAIM. In an action by an employe or the department 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 person other than an employe or the department shall be benefited or otherwise affected by this subsection except as expressly provided by s. 109.09.

SECTION 4. 109.09 of the statutes is amended to read:

109.09 Wage claims, collection. (1) The department shall investigate and attempt equitably to adjust controversies between employers and employes as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department, or ~~assigned to~~ received by the department under s. 109.10 (4), 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 employe 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 that it considers to~~

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be valid or any wage deficiency, such assignment to run to the department. ~~The~~ the department may sue the employer on behalf of the employe to collect any wage claim or wage deficiency so assigned and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions under s. 109.10, 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 actions that are referred to a district attorney under this subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the county in which the violation occurs and used by that county to meet its financial responsibility under s. 978.13 (2) for the operation of the office of the district attorney who prosecuted the action.

(2) ~~Pursuant to The department, under its authority under sub. (1) to take assignments of wage claims and wage deficiencies and to maintain actions for the benefit of employes, the department or an employe who brings an action under s. 109.03 (5) 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 A lien under this subsection takes effect when the department or employe files a verified petition claiming the lien with the clerk of the circuit court of the county in which the services or some part of the services were performed pays the fee specified in s. 814.61 (5) to that clerk of circuit court and serves a copy of that petition on the employer by personal service in the same manner as a summons is served under s. 801.11 or by certified mail with a return receipt requested. The department or employe must file the petition within 2 years after the date that the wages were due. The petition shall specify the nature of the claim and the amount claimed, describe the property upon which the claim is made and state that the petitioner claims a lien on that property. The 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, 779.20 and 779.21, 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. The lien ceases to exist if the department or the employe does not bring an action to enforce the lien within the period prescribed in s. 893.44 for the underlying wage claim.~~

SECTION 5. 109.10 (2) of the statutes is amended to read:

109.10 (2) The secretary and the responsible agency of another state may enter into a reciprocal agreement

governing the collection, under the laws of the other state, of wage claims and wage deficiencies assigned to received by the department.

SECTION 6. 109.10 (3) (a) of the statutes is amended to read:

109.10 (3) (a) Bring an action, through the department of justice, in any court of competent jurisdiction in the other state to collect wage claims and wage deficiencies ~~assigned to~~ received by the department.

SECTION 7. 109.10 (3) (b) of the statutes is amended to read:

109.10 (3) (b) Through the department of justice, enforce a judgment in the other state on wage claims or wage deficiencies ~~assigned to~~ received by the department.

SECTION 8. 109.10 (3) (c) of the statutes is amended to read:

109.10 (3) (c) If permitted under the laws of the other state, ~~assign~~ refer wage claims or wage deficiencies to the responsible agency for collection in the other state.

SECTION 9. 109.10 (4) (a) of the statutes is amended to read:

109.10 (4) (a) Subject to par. (b), the department, through the department of justice, may bring an action under s. 109.09 on wage claims or wage deficiencies ~~assigned to~~ received by the department ~~by~~ from a responsible agency of another state.

SECTION 10. 109.11 (1) of the statutes is renumbered 109.11 (3).

SECTION 11. 109.11 (1) of the statutes is created to read:

109.11 (1) ADMINISTRATIVE PENALTIES. (a) In adjusting a controversy between an employer and an employe as to an alleged wage claim filed with the department under s. 109.09 (1), the department may compromise and settle that wage claim for such sum as may be agreed upon between the department, the employe and the employer.

(b) If the department finds that a wage claim is valid, the department may instruct the employer against whom the wage claim is filed to audit his or her payroll records to determine whether the employer may be liable for any other wage claims of the same type as the wage claim that prompted the audit instruction. If after the requested completion date of the audit the department receives a wage claim against the employer of the same type as the wage claim that prompted the audit instruction and if the department determines that the subsequent wage claim is valid, the department may audit the employer's payroll records to determine whether the employer may be liable for any other wage claims of the same type as the wage claim that prompted the audit instruction. For any valid wage claim that is filed against an employer after the department has instructed the employer to audit his or her payroll records under this paragraph and that is of the same type as the wage claim that prompted the audit

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instruction and for any valid wage claim that is discovered as a result of the department's audit under this paragraph and that is of the same type as the wage claim that prompted the audit instruction, the department shall require the employer to pay, in addition to the amount of wages due and unpaid, increased wages of not more than 50% of the amount of wages due and unpaid, unless the employer shows the department that payment of the increased wages would cause extreme hardship.

(c) If an employer does not agree to compromise and settle a wage claim under this subsection, the department may refer the wage claim to a district attorney under s. 109.09 (1) or to the department of justice under s. 109.10 (3) for commencement of an action in circuit court to collect the amount of wages due and unpaid plus increased wages as specified in sub. (2) (b).

SECTION 12. 109.11 (2) of the statutes is repealed and recreated to read:

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

(b) In a wage claim action that is commenced after the department has completed its investigation under s. 109.09 (1) and its attempts to settle and compromise the wage claim under sub. (1), a circuit court may order the employer to pay to the employe, in addition to the amount of wages due and unpaid to an employe and in addition to or in lieu of the criminal penalties specified in sub. (3), increased wages of not more than 100% of the amount of those wages due and unpaid.

SECTION 13. 109.11 (3) (title) of the statutes is created to read:

109.11 (3) (title) CRIMINAL PENALTIES.

SECTION 14. 940.207 of the statutes is created to read:

940.207 Battery or threat to department of industry, labor and human relations employe. (1) In this section, "family member" means a parent, spouse, sibling, child, stepchild or foster child.

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any department of industry, labor and human relations official, employe or agent under all of the following circumstances is guilty of a Class D felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a department of industry, labor and human relations official, employe or agent or a member of his or her family.

(b) The official, employe or agent is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.

(c) There is no consent by the person harmed or threatened.

SECTION 15. Nonstatutory provisions. (1) WAGE CLAIM LIENS. A lien that exists under section 109.09 (2) of the statutes on the day before the effective date of this subsection is subject to the filing, service and enforcement requirements specified in section 109.09 (2) of the statutes, as affected by this act, as of the effective date of this subsection.

SECTION 16. Initial applicability. (1) DISCHARGED OR RESIGNED EMPLOYES. The treatment of section 109.03 (2) of the statutes first applies to employes who are discharged from employment or who quit employment on the effective date of this subsection.

(2) WAGE CLAIM PENALTIES. The treatment of section 109.11 (2) of the statutes and the creation of section 109.11 (1) of the statutes first apply to wage claims received by the department on the effective date of this subsection.