

2013 DRAFTING REQUEST

Bill

Received: 8/28/2013 Received By: gmalaise
 Wanted: As time permits Same as LRB:
 For: Robert Wirch (608) 267-8979 By/Representing: Steve Gillitzer
 May Contact: Drafter: gmalaise
 Subject: Employ Priv - miscellaneous Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Sen.Wirch@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Wage theft enforcement

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 9/20/2013	csicilia 9/27/2013	jmurphy 9/27/2013	_____			
/1				_____	lparisi 9/27/2013	lparisi 11/5/2013	State

FE Sent For:

<END>

At Intro.

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/?	gmalaise	/ gjs 9/24 13	Jwr 9/27	Jwr 9/27			

FE Sent For:

<END>

Malaise, Gordon

From: Gillitzer, Steven
Sent: Tuesday, August 20, 2013 1:15 PM
To: Malaise, Gordon; Kuesel, Jeffery
Subject: Drafting request
Attachments: Wage Theft Enforcement.docx

Good afternoon, gentlemen. I am writing regarding a drafting request from Senator Wirch, and I wasn't sure which of you was the appropriate person to contact. I have sent over the Bill Request Form, along with some supporting documents that describe the problem and the solutions that Senator Wirch is proposing. I have also attached an electronic copy of one of these documents, with the important information. Basically, these are a number of provisions to address the problem of wage theft, which is used as a catch all term for an instance where an employer fails to pay an employee a minimum wage, overtime payment, or any other wages earned or where an employee is misclassified as an independent contractor. I will be out of the office for the rest of the afternoon, but please let me know if there are questions or problems with this request.

Steve Gillitzer
Office of Sen. Bob Wirch
22nd Senate District

Malaise, Gordon

From: Gillitzer, Steven
Sent: Tuesday, August 27, 2013 5:01 PM
To: Malaise, Gordon
Subject: RE: Drafting request

Good afternoon, Gordon. I am following up on the drafting request below. I wanted to make one change and strike the portion related to 2009 Senate Bill 2; Senator Wirch no longer wants to include that in the bill. Thanks very much.

Steve Gillitzer
Office of Sen. Bob Wirch
22nd Senate District

From: Gillitzer, Steven
Sent: Tuesday, August 20, 2013 1:15 PM
To: Malaise, Gordon; Kuesel, Jeffery
Subject: Drafting request

Good afternoon, gentlemen. I am writing regarding a drafting request from Senator Wirch, and I wasn't sure which of you was the appropriate person to contact. I have sent over the Bill Request Form, along with some supporting documents that describe the problem and the solutions that Senator Wirch is proposing. I have also attached an electronic copy of one of these documents, with the important information. Basically, these are a number of provisions to address the problem of wage theft, which is used as a catch all term for an instance where an employer fails to pay an employee a minimum wage, overtime payment, or any other wages earned or where an employee is misclassified as an independent contractor. I will be out of the office for the rest of the afternoon, but please let me know if there are questions or problems with this request.

Steve Gillitzer
Office of Sen. Bob Wirch
22nd Senate District

Bill Request Form

Legislative Reference Bureau
One East Main Street, Suite 200
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 8-20-2013

Legislator, agency, or other person requesting this draft Senator Robert Wirch

Person submitting request (name and phone number) Steven Gillitzer, 267-8979

Persons to contact for questions about this draft (names and phone numbers) Steven Gillitzer,
267-8979

Describe the problem, including any helpful examples. How do you want to solve the problem?

See attached forms/articles

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2005 LRB-2345/1 or 2003 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes:

Anyone who asks? YES NO

Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO

Wage Theft Enforcement

-Wage theft covers a variety of infractions that occur when workers do not receive their legally or contractually promised wages. Common forms of wage theft are: nonpayment of overtime; violations of minimum wage laws; workers being forced to work off the clock; workers not receiving their final paychecks; workers having their tips stolen by management; and payroll fraud/worker misclassification.

-Wage theft often involves violations of both federal and state laws.

-Chapter 109, Wis. Stats., requires most Wisconsin employers to pay workers all wages earned at least monthly, with no longer than 31 days between pay periods. Employers may establish more frequent pay periods.

-Under Wisconsin's Wage Payment and Collection Act (Ch. 109, Wis. Stats.), employees have the right to file a wage claim with the department or directly in court if there is a dispute with the employer about the amount of wages owed. If the employer refuses to pay wages earned on the regularly established payday, the employee should request payment. If the employee does not receive payment after 6 days, the employee may file a claim with the Department of Workforce Development. If the employee chooses to file a wage claim with DWD, the department will seek to resolve the matter with the employer.

-When individuals sue directly in court, they can pursue wages owed plus a 50% statutory "increase" in wages; they can also pursue costs and attorney's fees. In a claim that commences in court AFTER DWD has completed its work on a claim filed there, the employee or the District Attorney can commence a suit seeking the wages owed, plus a 100% statutory increase (and costs and attorney's fees).

-The law provides that employers can be held criminally liable if they, having the ability to pay, fail to pay or falsely deny the amount or validity of a wage claim "with intent to secure any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder or defraud the employee". Penalties can include a fine of \$500 or imprisonment up to 90 days or both. Each failure or refusal to pay each employee constitutes a separate offense. Additional penalties are also available for violations of overtime law – a forfeiture of \$10 to \$100 per day for each day of a violation.

-Currently, there is a 2-year statute of limitations on the collection of wage claims. Wages must be claimed within 2 years of the date payable.

-Under Wisconsin law, employers are required to state clearly on each employee's paycheck, pay envelope, or other accompanying paper the number of hours worked, the rate of pay, and the amount of and reason for each deduction from their wages.

-An employer is prohibited from retaliating against any employee who files a complaint; attempts to enforce a right permitted by the statute; testifies in a case; or assists in a case.

Proposed Changes to State Law

-An employer would be required to provide each of its employees, at their time of hire and on or before January 1 of each year thereafter, with a written statement, in English and the principal language of the employee, setting forth the terms and conditions of his/her employment, including but not limited to:

- Full name, mailing address, and phone number of the employer
- Rate of pay and pay schedule

- The circumstances under which the employee will be paid a premium for working in excess of an established number of hours per day, week, or month, or for working on designated nights, weekends, or holidays
- Any provision to the employee, and how long they will be provided by the employer, and any costs to the employee associated with the provision, including but not limited to: health insurance or health care; paid sick or annual leave and holiday(s); pension or retirement benefits; personal protective equipment required for the work; workers' compensation; unemployment compensation

An employer must provide an employee with written notice at least 7 days in advance of any changes to these terms and conditions. An employer who fails to provide an employee with the written disclosures required has violated the law, as has an employer who fails to abide by the terms disclosed. The rights and obligations established here may not be waived by either the employer or employee. Upon finding a violation of this requirement, a court shall award:

- Actual damages, including but not limited to lost wages and benefits plus interest
- Statutory damages of up to \$50 for each working day that violations have occurred or continue to occur
- Mandatory attorney's fees and costs
- Other appropriate relief, including but injunctive and/or declaratory relief, that the court in its discretion deems necessary or appropriate

-Currently, DWD or an employee who brings a wage claim action has a lien on all the real and personal property of an employer for up to 6 months of wages but not for more than \$3,000. We would like to incorporate 2009 Senate Bill 2, which relates to lifting this cap and provides that a wage claim lien takes precedence over a lien of a commercial lending institution...

-An employer who fails to pay the wages required under law or agreement with an employee shall be required to pay the employee the balance of the wages owed, including interest thereon of 2% per month for the period of wage underpayment; an additional amount of up to 100% of the underpaid wages when an individual sues directly in court and up to 200% of the underpaid wages in a resulting from a DWD investigation, and any court and/or attorney's fees. The Department of Workforce Development and the courts shall have the authority to order payment of such unpaid wages and other amounts.

-The statute of limitations for filing wage claims would be extended from 2 years to 4 years.

-Businesses must disclose any delinquent wage judgments in an application for license or registration. If an applicant with an outstanding judgment cannot prove his/her ability and intent to pay the order, the application is rejected.

-An employer who is found to have failed to pay wages required under law or agreement with an employee shall be required to pay a fine of \$500 for a first offense, \$750 for a second offense, and \$1000 for each offense thereafter, to the Department of Workforce Development. The fine would be placed in a fund that would be established for the purpose of further wage theft enforcement.

-Class-action lawsuits for wage theft actions would be allowed.

-Language would explicitly state that employer liability is not based on whether a violation is intentional.

Down With Wage Theft Campaign

Bringing down wage theft & making Houston a just and prosperous place to work!

[Twitter](#) [Facebook](#)

Wage Theft Facts

Wage theft is all around us. Millions of workers each year are robbed of billions of dollars, often forcing them to choose between paying the rent or putting food on the table. It robs from the government's tax coffers, resulting in cutbacks of vital services. Wage theft puts ethical employers at a competitive disadvantage and can destroy community businesses, as working families cannot spend wages they haven't received.

What is wage theft and what laws does it break?

- Commonly, wage theft is a violation of the Federal Labor Standards Act (FLSA) which provides a **federal minimum wage (\$7.25/hour)** and requires employers to pay **time and a half for overtime** worked over 40 hours a week.[i]
[\(/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_edn1\)](#)
- Wage theft also occurs when employers make **illegal deductions** from your paycheck or **steal tips**, when they make you **work off the clock**, or withhold payment after being terminated.[ii]
[\(/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_edn2\)](#)
- Wage theft can also include violation of tax laws, through the **misclassification** of employees as independent contractors, which **excludes employers from having to pay overtime or benefits**, as well as their share of payroll taxes, **passing on the burden to the worker**.
- In the most egregious cases, wage theft occurs when an employer **simply refuses to pay any wages** to a worker for any amount of hours worked.

How big is the scope of the wage theft problem?

- Wage theft is a **\$30 billion a year problem nationally**.
- According to the DOL's Wage and Hour Division, employers in the city of Houston had **19,798 wage and hour violations** since FY2008.[iii]
[\(/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_edn3\)](#)

- **The industries** with the most violations have been **construction (17%)** and **full service restaurants (16%)**. [iv] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_edn4](#))
- Since FY 2008, employers have agreed to pay out **\$18,235,720.30 in back wages** to Houston workers and **\$1,661,630.50** more have been recovered through civil monetary penalties. [v] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_edn5](#))
- Since 2007, HIWJ has documented **more than \$3.2 million in stolen wages** and has been able to **recover more than \$550,000** through negotiations, legal actions, and public campaigns. [vi] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_edn6](#))
- Although these figures are alarming, **still more cases exist** that are never reported due to **lack of information** about workers' rights or for **fear of retaliation**.

[i] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_ednref1](#)) Fair Labor Standards Act, 29 U.S.C. §§201-209 ("FLSA")

[ii] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_ednref2](#)) Texas Payday Law (Chapter 61, Texas Labor Code)

[iii] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_ednref3](#)) U.S. Department of Labor. *Wage and Hour Compliance Action Data*. Retrieved from http://ogesdw.dol.gov/raw_data_summary.php (http://ogesdw.dol.gov/raw_data_summary.php)

[iv] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_ednref4](#)) U.S. Department of Labor. *Wage and Hour Compliance Action Data*. Retrieved from http://ogesdw.dol.gov/raw_data_summary.php (http://ogesdw.dol.gov/raw_data_summary.php) (Total Construction cases comprise highway, street, and bridge construction combined with commercial/institutional construction)

[v] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_ednref5](#)) U.S. Department of Labor. *Wage and Hour Compliance Action Data*. Retrieved from http://ogesdw.dol.gov/raw_data_summary.php (http://ogesdw.dol.gov/raw_data_summary.php)

[vi] ([/Houston%20Interfaith%20Worker%20Justice/programs/Wage%20Theft%20Campaign%20-%20Campana%20Robo%20de%20Salarios/Wage%20Theft%20Fact%20Sheet_English1.docx#_ednref6](#)) *Working Without Pay, Fighting for Justice: A Report on Wage Theft in Houston and How We can Stop It*. Houston Interfaith Worker Justice Center, November 2010. http://www.hiwj.org/images/stories/wage_theft_report_11.16.10.pdf (http://www.hiwj.org/images/stories/wage_theft_report_11.16.10.pdf)

Winning Wage Justice: Talking Points on the Need for Stronger Anti-Wage Theft Laws

What is wage theft?

The failure to pay workers the wages owed to them – commonly called wage theft – is an epidemic, locally, statewide, and nationally. While most employers in our communities do right by their workers, too many do not. Being paid less than the minimum wage, being shorted hours, being forced to work off the clock, not being paid overtime, or not being paid at all are pervasive practices across many industries.

How prevalent is wage theft?

A seminal 2009 study of nearly 4,500 low-wage workers found that more than two-thirds experienced at least one pay-related violation in their previous work week, including a quarter of workers who were paid less than minimum wage, and three quarters who were not paid overtime wages owed to them.¹

This study confirmed the finding of literally dozens of surveys and studies that have found staggering rates of violations of wage and hour laws – as just a few examples, surveys by the U.S. Department of Labor found 50% of restaurants in Pittsburgh, 74% of day care centers in Georgia, 50% of nursing homes in St. Louis, 38% of hotels and motels in Reno, and 42% of adult family homes in Seattle violating wage and hour laws.² For a summary of these and other surveys and research from across the country, see NELP's *Summary of Research on Wage and Hour Violations in the United States*.³

¹ Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (New York: Center for Urban Economic Development at UIC, National Employment Law Project and UCLA Institute for Research on Labor and Employment, 2009), available at www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009pdf.

² U.S. Department of Labor, *1999-2000 Report on Low-Wage Initiatives* (Washington, DC: Employment Standards Administration, Wage and Hour Division, 2001), available at http://nelp.3cdn.net/a5c00e8d7415a905dd_o4m6ikkkt.pdf.

³ National Employment Law Project, *Summary of Research on Wage and Hour Violations in the United States* (January 2012), available at <http://www.nelp.org/page/-/Justice/2012/WinningWageJusticeSummaryofResearchonWageTheft.pdf?nocdn=1>.

Wage theft affects all workers across the low-wage economy – male and female workers, white, Hispanic, African-American and Asian workers, immigrant workers and the native-born. But employers are more likely to take advantage of vulnerable workers. While U.S. born workers suffer wage and hour violation rates of 17% for men and 18% for women, undocumented workers have the highest rates of violations: 29% for men and 47% for women.⁴

Who is affected by wage theft?

The consequences of wage theft are severe – for workers, for local economies and law-abiding businesses, and for taxpayers.

Workers suffer when they don't get paid. Workers in low-wage industries in the three cities of New York, Chicago and Los Angeles lose over \$56 million per week in unpaid wages.⁵ That means bills go unpaid, housing is unstable, and families have less food on their tables.

How does wage theft affect communities and taxpayers?

Local economies also suffer when wage theft becomes a way of doing business. Well-meaning businesses often can't compete with wage cheats that shave their operating costs by breaking the law. And the less money wage earners bring home, the less they have to spend at local businesses, dealing a further blow to local economies already suffering the effects of the Great Recession.⁶

When workers go without pay, tax revenues are shorted as well. Employers that cheat workers also rob state, local and federal budgets of payroll taxes and contributions to the unemployment and workers compensation systems, hampering our nation's economic recovery. In New York State alone, \$427 million in revenue is lost per year due to wage theft.⁷

Why can't current laws protect workers against wage theft?

Many workers never make complaints about these violations, fearing retaliation if they speak up. This fear is well-founded – according to one major study, 43% of workers who raised complaints faced employer retaliation

⁴ Workplace Violations, Immigration Status, and Gender: Summary of Findings from the 2008 Unregulated Work Survey, NELP, August 2011, available at http://www.nelp.org/page/-/Justice/2011/Fact_Sheet_Workplace_Violations_Immigration_Gender.pdf?nocdn=1

⁵ Bernhardt et al., *Broken Laws, Unprotected Workers*.

⁶ See e.g. Kai Filion, *A Stealthy Stimulus: How boosting the minimum wage is helping to stimulate the economy* (July 2009) available at http://epi.bluestatedigital.com/page/-/IssueBrief255_Final.pdf (highlighting the economic stimulative effect when low-wage earners have more money in their pockets by finding \$5.5 billion in consumer spending generated by modest federal minimum wage increase)

⁷ Amy Traub and Andrew Friedman, "Workers Deserved to be Paid," Albany Times Union, April 5, 2010, available at <http://www.drummajorinstitute.org/library/article.php?ID=7387>, last accessed December 10, 2010.

Winning Wage Justice: Talking Points on the Need for Stronger Anti-Wage Theft Laws

such as termination or suspension, cuts in wages or hours, and threats to call – or actual calls – to immigration authorities.⁸

Public enforcement of wage and hour laws cannot keep up with violations. On the federal level, the U.S. Department of Labor, which is responsible for enforcing federal wage, child labor and other laws has just over 1,000 investigators nationwide who are tasked with enforcing these laws in more than 7 million workplaces.⁹

Because of these scarce resources, the average employer has just a .001% chance of being investigated by U.S. DOL Wage and Hour Division or Occupational Safety and Health Administration in any given year.¹⁰ Thus, the chances of getting caught – let alone having to pay back wages owed – are so remote that most wage cheats don't have to think twice about the consequences of breaking the law.

Things aren't any better on the state level. According to a nationwide survey, states have the equivalent of one inspector for every 146,000 workers. Most states have fewer than ten investigators.¹¹ A comprehensive survey of agencies responsible for wage and hour enforcement in 37 states found increasing numbers of low-wage workers coinciding with cuts or freezes in resources dedicated to wage and hour enforcement.¹²

Private enforcement, such as private lawsuits, is rarely an option for low-wage workers to recover the wages due to them. The limited damages they would recover, combined with the time and expense in filing a lawsuit, mean that these workers can seldom find lawyers able to take their case.

What can we do about wage theft?

We have a chance to provide workers with a simple, powerful set of tools that would help level the playing field for workers and law-abiding employers, and boost our economy in the bargain.

⁸ *Id.*

⁹ See FY 2011 Congressional Budget Justification from U.S. DOL Wage and Hour Div., available at <http://www.dol.gov/dol/budget/2011/PDF/CBJ-2011-V2-03.pdf> (stating that for 2011, WHD expect to have 1,006 full time investigators); U.S. DOL Comprehensive FLSA Powerpoint, available at www.dol.gov/whd/flsa/comprehensive.ppt (stating that more than 130 million workers in more than 7 million workplaces are covered by the Fair Labor Standards Act).

¹⁰ David Weil & Amanda Pyles, Why Complain? Complaints, Compliance and the Problem of Enforcement in the U.S. Workplace, 27 *Comp. Lab.L. & Pol'y J.* 59, 62 (2005).

¹¹ Policy Matters Ohio, *Investigating Wage Theft: A Survey of the States*, 2010, available at <http://www.policymattersohio.org/WageTheft2010.htm>.

¹² Columbia Law School, National State Attorneys General Program, *Enforcement of State Wage and Hour Laws: A Survey of State Regulators*, 2010, available at http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=551819&rtcontentdisposition=filename%3DWage%20and%20Hour%20Report%20FINAL.pdf

Winning Wage Justice: Talking Points on the Need for Stronger Anti-Wage Theft Laws

These are tools that ensure that workers get paid for the work they do, and that companies that play by the rules aren't undercut by scofflaws.

For more information, please contact any of the following NELP staff: Rebecca Smith rsmith@nelp.org; Cathy Ruckelshaus cruckelshaus@nelp.org; Haeyoung Yoon, hyoon@nelp.org; Tsedeye Gebreselassie, tsedeye@nelp.org; Sarah Leberstein sleberstein@nelp.org; or Eunice Cho echo@nelp.org.

PROCEDURE FOR PROCESSING WAGE CLAIMS

Once a wage claim has been filed, it is necessary to gather the facts from both parties. This process is done by gathering documentary evidence and written responses from the parties. The Labor Standards Section has approximately 800-1000 claims active at any one time and it is not possible to call people once the case has been filed. Verbal communication is discouraged, as it is necessary to receive all information in writing for the file to be complete if court action becomes necessary. Even after a telephone call, you will be asked to write out and send whatever information you have stated on the telephone. It will save all parties time if you mail written questions and information to the office.

Description of the process.

Once the employee submits a complaint form to the Labor Standards Section:

- An investigator reviews the form to ensure the complaint is properly filed with the agency. If not or if more information is needed, the complainant will receive a letter dismissing the complaint or requesting more information. Failure to provide the requested information could lead to dismissal of the complaint.
- Once the complaint is properly filed, the investigator sends a notice and complete copy of the complaint to the business/employer informing it what has been claimed and giving it an opportunity to respond to the claim, by either:
 - Sending a check for the claimed wages if the employer agrees with the claim; or
 - Providing documentation and records that disprove the claim.
- If a check is received, the investigator sends the claimant the check and the case is closed with no penalties assessed.
- If the employer disputes the claim, the investigator provides a copy of the materials to the claimant and allows an opportunity to respond.
- After gathering all materials and ensuring proper opportunity for comment, the investigator makes a written determination of the wages owed, if any.
- If wages are owed and the employer refuses to pay, the claim may be forwarded to the local district attorney to request collection. A court may assess increased wages of up to 100% of the wages due per Section 109.11, Stats. The court may also award attorneys' fees and costs.

Note: the Labor Standards Section has no control over the action of the district attorneys or whether they will accept a case. The claimant is responsible for contacting the district attorney after the case has been forwarded to indicate if he/she wishes to pursue the matter in court and pay any necessary filing fees.

Employer Retaliation Prohibited

An employer is prohibited from retaliating against any employee who:

- files a complaint
- attempts to enforce a right permitted by statute
- testifies in a case, or
- assists in a case

under the state's labor standards laws including child labor, minimum wage, hours of work and overtime, wage payment and collection, and prevailing wage rate laws.

This law's protections also apply if an employer takes an adverse employment action against an employee because that employer believes the employee has exercised any of the above rights.

Persons who need further information concerning protections under the state's anti-retaliation provisions should contact the Equal Rights Division.

DWD is an equal opportunity employer and service provider. If you have a disability and need to access this information in an alternate format or need it translated to another language, please contact us in Madison at (608) 264-8752 or in Milwaukee at (414) 227-4081.

FILING OF A WAGE CLAIM

To file a wage claim, or to obtain more information about any of these provisions, contact the department's Equal Rights Division (except where otherwise noted) at either of these locations below, OR visit our website at: <http://dwd.wisconsin.gov/er>

EQUAL RIGHTS DIVISION

201 E Washington Ave PO Box 8928 Madison WI 53708-8928	819 N 6th Street Room 723 Milwaukee WI 53203
Phone: (608) 266-6860 TTY: (608) 264-8752	Phone: (414) 227-4384 TTY: (414) 227-4081

Offices are open 7:45 a.m. to 4:30 p.m.
Monday thru Friday

Labor Standards Information Series

WISCONSIN WAGE PAYMENT & COLLECTION LAW



Equal Rights Division

WAGE PAYMENT

Chapter 109, Wis. Stats., requires most Wisconsin employers to pay workers all wages earned at least monthly, with no longer than 31 days between pay periods. The only employers exempted from this requirement are:

- employees engaged in logging (must be paid at least quarterly)
- those engaged in farm labor (must be paid at least quarterly)
- unclassified employees of the UW system (left to the system)
- Part-time firefighters and part-time emergency medical technicians (must be paid at regular intervals, at least annually).

Employers may establish more frequent pay periods (e.g., weekly, biweekly or semi-monthly).

Employees who are separated from their job must be paid in accordance with the employer's regular pay schedule.

DIRECT DEPOSIT WAGE PAYMENTS

An employer has the right to require its employees to participate in a direct deposit program. There cannot be any cost to the employee to participate in a mandatory program. Even if wages are deposited directly, the employee must still receive a check stub showing the rate of pay, hours worked, and the amount of and reason for each deduction.

WAGE CLAIMS

Employees have the right to file a wage claim with the department if there is a dispute with the employer about the amount of wages owed. If the employer refuses to pay wages earned on the regularly established payday, the employee should request payment. If the employee does not receive payment after 6 days, the employee may file a claim with the department. Once a claim is filed, the department will seek to resolve the matter with the employer.

The department may take action on the following types of wage claims:

- Salaries
- Severance pay
- Commissions
- Expenses
- Holiday pay
- Bonuses
- Vacation pay
- Illegal deductions from wages
- Supplemental unemployment compensation benefits when required under a binding collective bargaining agreement.
- Other similar advantages agreed upon between the employer and the employee.
- Other similar advantages provided by the employer to his employees as an established policy.

The department may not have authority to take legal action on some claims, including:

- Unpaid bills owed to the employee
- Claims made by independent contractors
- Claims already filed in court
- Out-of-state employers in some cases

Union members who wish to file wage claims will be advised by the department to file their claims with their local union representatives.

Persons filing a claim for wages must do so on a form furnished by the department's Equal Rights Division. This form may be obtained in person at the Madison or Milwaukee offices, by mail, or by downloading from the Internet at: <http://dwd.wisconsin.gov/er>.

Claim forms also are available at most Job Center offices as a courtesy, but those offices do not process the claims.

There is a 2-year statute of limitations on the collection of wage claims. Wages must be claimed within 2 years of the date payable.

PAYROLL INFORMATION

Employers are required to state clearly on each employee's paycheck, pay envelope, or other accompanying paper the number of hours worked, the rate of pay, and the amount of and reason for each deduction from their wages. A reasonable coding system may be used.

The only exception occurs where the employee has requested a deduction for personal reasons. Those deductions may be labeled as "miscellaneous".

The department also allows employers to use electronic pay stubs, provided that the employee has access to a printer and is not charged to print the stub each pay period.

DEDUCTIONS FROM WAGES FOR LOSS, THEFT, DAMAGE, OR FAULTY WORKMANSHIP

Employers may only make deductions from the wages of an employee for loss, theft, damage, or faulty workmanship under one of the following conditions:

- The deduction is authorized, in writing, by the employee after the problem occurs and before the deduction is made;
- a representative of the employee has determined that the employee was at fault and that the deduction may be made; or
- the employee has been found guilty or held liable in a court of law.

An employer who makes a deduction not authorized in one of these ways may be held liable for twice the amount of the deduction. Blanket authorizations are not valid. The employee's written permission must be obtained after each occurrence of a problem.



Gillitzer, Steven

From: Schulze, Connie R - DWD <Connie.Schulze@dwd.wisconsin.gov>
Sent: Friday, August 02, 2013 4:38 PM
To: Gillitzer, Steven
Cc: Tichenor, Tyler L - DWD
Subject: Sen. Wirch--2009 Wisconsin Act 292

Hello Steve,

Jim Chiolino from our Equal Rights division prepared the response below. Please let me know if you have additional questions.

Sincerely,

Connie Schulze
Legislative Liaison

Wisconsin Department of Workforce Development
201 E. Washington Avenue, A400
Madison, WI 53703
Ph: 608/266-1756 Fax: 608/266-1784
connie.schulze@dwd.wisconsin.gov

Under Wisconsin's Wage Payment and Collection Act (Wis. Stat. ch. 109), complaints can be filed either directly in court or with the DWD. When individuals sue directly in court, they can pursue the wages owed plus a 50% statutory "increase" in wages. They can also pursue costs and attorney's fees. In a claim that commences in court AFTER DWD has completed its work on a claim filed here, the employee or the District Attorney can commence a suit seeking the wages owed plus a 100% statutory increase (and costs and attorney's fees).

The law also provides that employers can be held criminally liable if they, having the ability to pay, fail to pay or falsely deny the amount or validity of a wage claim "with intent to secure any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder or defraud the [employee]." Penalties can include a fine of \$500 or imprisonment up to 90 days or both. Each failure or refusal to pay each employee constitutes a separate offense. District Attorneys often pursue these criminal penalties assuming they can prove an ability to pay.

Additional penalties are also available for violations of the overtime law – a forfeiture of \$10 to \$100 per day for each day of a violation.

From: Gillitzer, Steven [<mailto:Steven.Gillitzer@legis.wisconsin.gov>]
Sent: Tuesday, July 30, 2013 3:48 PM
To: Schulze, Connie R - DWD
Subject: RE: Sen. Wirch--2009 Wisconsin Act 292

Good afternoon, Connie. I have somewhat of a follow-up to my earlier question. A number of states are cracking down on what is known as "wage theft", which is a catch-all term for things like worker misclassification; failure to pay out tips, overtime pay, or a final paycheck; workers being forced to work off the clock; or violations of minimum wage laws. I know that employees who believe that employers committed these violations can file wage claims with DWD, but what are the penalties? In some states, it's a fine; in some, it's a civil matter, where employees can sue; and in some, it is a criminal matter. How does Wisconsin currently treat these violations? Thanks very much.

Steve Gillitzer
Office of Sen. Bob Wirch
22nd Senate District

From: Schulze, Connie R - DWD
[<mailto:Connie.Schulze@dwd.wisconsin.gov>]
Sent: Thursday, July 18, 2013 1:01 PM
To: Gillitzer, Steven
Cc: Tichenor, Tyler L - DWD
Subject: Sen. Wirch--2009 Wisconsin Act 292

Hi Steve,

I was able to get an update from our UI staff on Act 292 which we commonly refer to as the "misclassification bill."

Since the bill's passage we have:

- conducted outreach with stakeholders to get input on implementation;
- hired staff, Mike Myszewski, to investigate complaints onsite;
- launched the worker misclassification website;
- promoted the website on the DWD site and started outreach to stakeholders to further promote it.

There have been 100's of field audits where workers have been identified as misclassified and we have taken appropriate action. Fortunately, the employers have been mostly cooperative so no actual stop work orders have not been issued.

The penalties for misclassifying workers is clearly articulated on the website. http://dwd.wisconsin.gov/worker_classification/

Please let me know if I can assist you further.

Sincerely,
Connie Schulze
Legislative Liaison
Wisconsin Department of Workforce Development
201 E. Washington Avenue, A400

Madison, WI 53703
Ph: 608/266-1756 Fax: 608/266-1784
connie.schulze@dwd.wisconsin.gov

From: Gillitzer, Steven [<mailto:Steven.Gillitzer@legis.wisconsin.gov>]
Sent: Monday, July 15, 2013 4:44 PM
To: Schulze, Connie R - DWD
Subject: Question regarding 2009 Wisconsin Act 292

Hello, Connie. I have a bit of an unusual question. In 2009, Senator Wirch authored a bill regarding proper classification of employees and independent contractors; the bill was passed and signed into law as 2009 Wisconsin Act 292. The law gave DWD the power to require an employer to prove a number of different things, such as that the employer maintains worker's compensation coverage for its employees and that the employer complies with unemployment insurance laws. Senator Wirch has a meeting on Thursday at which he would like to discuss this issue. Basically, what I am hoping to find is information on how the Department has implemented the law, which took effect on Jan. 1, 2011; how many enforcement actions have been taken; and what the penalties are. Can you help me out with this? Thanks very much, Connie.

Steve Gillitzer
Office of Sen. Bob Wirch
22nd Senate District



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3030/K1
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1 AN ACT...; relating to: the provision by employers to employees of written
2 disclosure statements of the terms of employment, the filing and investigation
3 of wage claims, the statute of limitations for filing a wage claim action, the
4 payment of interest, penalties, and surcharges on wage claims, occupational or
5 professional licensing of employers that owe wages under wage claim
6 judgments, and making an appropriation.

Analysis by the Legislative Reference Bureau

CURRENT LAW

Wage claims

Filing and investigation of; statute of limitations. Under current law, an employee who has a claim that his or her employer has not paid the employee any wages that are owed to the employee (wage claim) may either: 1) file the wage claim with the Department of Workforce Development (DWD), which may attempt to settle and compromise the wage claim or commence an action in circuit court against the employer on the employee's behalf to collect the wage claim; or 2) commence an action in circuit court on his or her own behalf to collect the wage claim without first filing a wage claim with DWD. An action in circuit court to collect a wage claim must be commenced no later than two years after the wage claim is filed with DWD or, if the wage claim is not first filed with DWD, no later than two years after the cause of action accrues (statute of limitations) and DWD may investigate a wage claim only if it is filed no later than two years after the wages are due.

Increased wages. Under current law, if a wage claim action is commenced in circuit court *before* DWD has completed its attempt to settle and compromise the claim, the circuit court may order the employer to pay, in addition to the amount of wages unpaid, increased wages of not more than 50 percent of the amount of wages unpaid. If a wage claim action is commenced in circuit court *after* DWD has completed its attempt to settle and compromise the claim, the circuit court may order the employer to pay, in addition to the amount of wages unpaid, increased wages of not more than 100 percent of the amount of wages unpaid.

THE BILL

Wage claims

Filing and investigation of; statute of limitations. This bill permits an employee to file a wage claim with DWD or to commence a wage claim action in circuit court not only in his or her own behalf but also on behalf of other employees similarly situated who consent in writing to being parties to the claim or action. The bill also increases the statute of limitations for a wage claim action to four years after the wage claim is filed with DWD or, if the wage claim is not first filed with DWD, to four years after the cause of action accrues and permits DWD to investigate a wage claim that is filed no later than four years after the wages are due.

Increased wages. The bill also permits a circuit court to order: 1) an employer against which a wage claim action is commenced in circuit court *before* DWD has completed its attempt to settle and compromise the claim to pay, in addition to the amount of wages unpaid, increased wages of not more than 100 percent of the amount of wages unpaid; and 2) an employer against which a wage claim action is commenced in circuit court *after* DWD has completed its attempt to settle and compromise the claim to pay, in addition to the amount of wages unpaid, increased wages of not more than 200 percent of the amount of wages unpaid.

Interest and surcharges. In addition, the bill permits DWD to require, and a circuit court to order, an employer who fails to pay wages that are due and payable to pay interest on the amount of wages due and unpaid at the rate of two percent per month for each month that the wages were due and unpaid and to pay to DWD or the circuit court a surcharge of \$500 for a first violation, \$750 for a 2nd violation, and \$1,000 for a 3rd or subsequent violation. Surcharges collected by DWD or a circuit court must be deposited in the general fund, appropriated to DWD, and used for the administration of the wage claim law.

Disclosure statements

Terms of employment; disclosure required. Moreover, the bill requires an employer to provide an employee with a written statement disclosing the terms of employment (disclosure statement) at the time the employee is hired, on January 1 of each year in which the employee is employed by the employer, and not less than seven days before the effective date of any change in the terms of employment. The disclosure statement must be in English and, if the employee has limited English proficiency, in the employee's native language. The disclosure statement must include: 1) the full name, mailing address, and telephone number of the employer; 2) the remuneration to be paid to the employee, the frequency of payment of that remuneration, and, if that remuneration is paid as an hourly wage, the hourly basic

(4) (B) (1) Costs and attorney fees. (4) (B) (1) Finally, with respect to wage claims, the bill permits a circuit court to require an employer who fails to pay wages that are due and payable to pay reasonable costs and attorney fees.

third

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Use anal. text for all of this

rate of pay to be paid to the employee; 3) the circumstances under which the employee will be paid at a rate that is higher than the hourly basic rate of pay for working in excess of an established number of hours per day, per week, or per month or for working on designated nights, weekends, or holidays; and 4) a description of any other economic benefits that the employer will provide, including health insurance benefits, paid sick leave, vacation pay, holiday pay, pension or other retirement benefits, personal protective equipment that is required for the performance of the employee's work, worker's compensation coverage, or unemployment insurance, whether an employee contribution will be required for those benefits, and, if so, the amount of that employee contribution.

Remedies. An employer that fails to provide a disclosure statement to an employee as required under the bill or that fails to comply with the terms of employment specified in a disclosure statement provided to an employee is liable to the employee for: 1) all actual damages, including any wage claim or wage deficiency, sustained by the employee as a result of the employer's failure to provide that statement or to comply with those terms; 2) liquidated damages of not more than \$50 for each working day that the employer fails to provide that statement or to comply with those terms or, if applicable, the increased wages payable under the bill, whichever is greater; and 3) reasonable costs and attorney fees.

Occupational or professional licensing

Unpaid wage claim judgments. Finally, the bill requires a state office, department, board, examining board, affiliated credentialing board, commission, council, or independent agency in the executive branch, the legislature, or the courts (licensing agency) to require an applicant for issuance or renewal of an occupational or professional certificate, license, permit, or registration (license) to disclose whether there are any wage claim judgments against the applicant that the applicant has not paid. If there are any such judgments, the licensing agency must determine that the applicant is ineligible for issuance or renewal of the license, unless the applicant demonstrates that the applicant has the willingness and ability to pay the judgment.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

^

SECTION 1. 20.445 (1) (gr) of the statutes is created to read:

20.445 (1) (gr) *Wage claim surcharges.* All moneys received from surcharges collected under s. 109.11 (4), for the administration of ch. 109.

SECTION 2. 103.34 (6) (d) of the statutes is amended to read:

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Add space between ~~the~~ the fiscal estimate and the material preceding it.

2
3
4

1 103.34 (6) (d) A traveling sales crew worker who is owed compensation may file
2 a wage claim with the department under s. 109.09 (1) (a) or may bring an action
3 under s. 109.03 (5) without first filing a wage claim with the department.



History: 2009 a. 3; 2011 a. 209; 2013 a. 36.

4 **SECTION 3.** 103.35 of the statutes is renumbered 103.35 (2) and amended to
5 read:



6 103.35 (2) No ~~state office, department, board, examining board, affiliated~~
7 ~~credentialing board, commission, council or independent agency in the executive~~
8 ~~branch, the legislature or the courts may, as a condition for receiving an occupational~~
9 ~~or professional certificate, license, permit or registration, require the submission of~~
10 ~~information by the applicant which is not essential for the determination of licensing~~
11 ~~agency may require an applicant for issuance or renewal of a license to submit any~~
12 information that is not essential for the licensing agency to determine ~~the~~
13 applicant's eligibility for the issuance or renewal of the certificate, license, permit or
14 registration. Information which. A licensing agency may request information that
15 is not essential for the licensing agency to determine an applicant's eligibility for
16 issuance or renewal may be requested of a license, but the licensing agency shall
17 notify the applicant shall be notified in a prominent place on or accompanying the
18 request that she or he is not required to provide such information.

see

History: 1979 c. 34; 1993 a. 107.

X 19 **SECTION 4.** 103.35 (1) of the statutes is created to read:

20 103.35 (1) In this section:

21 (a) "License" means an occupational or professional certificate, license, permit,
22 or registration.



use the circuit court automated information

-5- systems established under s. 758.19 (4) to

A licensing agency shall verify the applicant's disclosure

1 (b) "Licensing agency" means a state office, department, board, examining
2 board, affiliated credentialing board, commission, council, or independent agency in
3 the executive branch, the legislature, or the courts.

4 **SECTION 5.** 103.35 (3) of the statutes is created to read:

5 103.35 (3) A licensing agency shall require an applicant for issuance or renewal
6 of a license to disclose whether there are any judgments under s. 109.03 (5) or 109.09
7 (1) against the applicant that the applicant has not paid. If there are any judgments
8 under s. 109.03 (5) or 109.09 (1) against the applicant that the applicant has not paid,
9 the licensing agency shall determine that the applicant is ineligible for issuance or
10 renewal of the license, unless the applicant demonstrates that the applicant has the
11 willingness and ability to pay the judgment.



12 **SECTION 6.** 103.40[^] of the statutes is created to read:

13 **103.40 Terms of employment; disclosure statement.** (1) DISCLOSURE
14 STATEMENT REQUIRED. An employer shall provide an employee with a written
15 statement disclosing the terms of employment at the time the employee is hired, on
16 January 1 of each year in which the employee is employed by the employer, and not
17 less than 7 days before the effective date of any change in the terms of employment.
18 The written disclosure statement shall be in English and, if the employee has limited
19 English proficiency, in the employee's native language. The written disclosure
20 statement shall include all of the following information:



21 (a) The full name, mailing address, and telephone number of the employer.



22 (b) The remuneration to be paid to the employee, the frequency of payment of
23 that remuneration, and, if that remuneration is paid as an hourly wage, the hourly
24 basic rate of pay to be paid to the employee.



1 (c) The circumstances under which the employee will be paid at a rate that is
2 higher than the hourly basic rate of pay for working in excess of an established
3 number of hours per day, per week, or per month or for working on designated nights,
4 weekends, or holidays.

5 (d) A description of any other economic benefits that the employer will provide,
6 including health insurance benefits, paid sick leave, vacation pay, holiday pay,
7 pension or other retirement benefits, personal protective equipment that is required
8 for the performance of the employee’s work, worker’s compensation coverage, or
9 unemployment insurance, whether an employee contribution will be required for
10 those benefits, and, if so, the amount of that employee contribution.

11 (2) WAIVER PROHIBITED. Any agreement between an employer and an employee
12 purporting to waive or modify the written disclosure statement requirement under
13 sub. (1) or any term of employment specified in such a statement is void. ✓

14 (3) NONCOMPLIANCE; ENFORCEMENT. (a) Any employer that fails to provide a
15 written disclosure statement to an employee as required under sub. (1) or that fails
16 to comply with the terms of employment specified in a written disclosure statement
17 provided to an employee under sub. (1) is liable to the employee for all of the
18 following:

19 1. All actual damages, including any wage claim or wage deficiency, sustained
20 by the employee as a result of the employer’s failure to provide that statement or to
21 comply with those terms.

22 2. Liquidated damages of not more than \$50 for each working day that the
23 employer fails to provide that statement or to comply with those terms or, if
24 applicable, the increased wages payable under s. 109.09 (2) (a) or (b), whichever is
25 greater.

11

1 3. Reasonable costs and attorney fees, notwithstanding s. 814.04. ✓

2 (b) In addition to the liability specified in par. (a) 1. to 3., the department or the
3 circuit court may order an employer that fails to provide a written disclosure
4 statement to an employee as required under sub. (1) or that fails to comply with the
5 terms of employment specified in a written disclosure statement provided to an
6 employee under sub. (1) to take such action as will effectuate the purpose of this
7 section.

8 (c) An employee who is affected by a violation of par. (a) may file a wage claim
9 with the department under s. 109.09 (1) (a) or may bring an action under s. 109.03
10 (5) without first filing a wage claim with the department under s. 109.09 (1) (a).
11 Section 111.322 applies to any discharge or other discriminatory acts arising in
12 connection with any proceeding under this section.

13 SECTION 7. 109.01 (3m) of the statutes is created to read: ^

14 109.01 (3m) "Wage claim" includes a claim under s. 103.40 (3) (c) that an ✓
15 employer has failed to provide a written disclosure statement to an employee as
16 required under s. 103.40 (1) or has failed to comply with the terms of employment
17 specified in a written disclosure statement provided to an employee under s. 103.40
18 (1). ✓

interest on that amount and

19 SECTION 8. 109.03 (5) of the statutes is amended to read: <

20 109.03 (5) ENFORCEMENT. Except as provided in sub. (1), no employer may by
21 special contract with employees or by any other means secure exemption from this
22 section. Each employee shall have a right of action against any employer for the full
23 amount of the employee's wages due on each regular pay day as provided in this
24 section and for increased wages as provided in s. 109.11 (2), in any court of competent
25 jurisdiction. An employee may bring an action under this subsection on his or her

1 own behalf and on behalf of other employees similarly situated who consent in
2 writing to being parties to the action. Such a consent shall be filed with the court.

3 An employee may bring an action ~~against an employer~~ under this subsection without
4 first filing a wage claim with the department under s. 109.09 (1) (a). An employee
5 who brings an action against an employer under this subsection shall have a lien
6 upon all property of the employer, real or personal, located in this state as described
7 in s. 109.09 (2).

History: 1975 c. 380, 421; 1977 c. 26, 235, 447; 1981 c. 20, 388; 1987 a. 403; 1989 a. 226, 228; 1993 a. 86, 144; 2001 a. 102, 103; 2007 a. 7, 195; 2009 a. 28; 2011 a. 10.

8 **SECTION 9.** 109.09 (1) of the statutes is renumbered 109.09 (1) (a) and amended
9 to read:

10 109.09 (1) (a) The department shall investigate and attempt equitably to adjust
11 controversies between employers and employees as to alleged wage claims. An
12 employee may file a wage claim under this paragraph on his or her own behalf and
13 on behalf of other employees similarly situated who consent in writing to being
14 parties to the claim. Such a consent shall be filed with the department. The
15 department may receive and investigate any wage claim which that is filed with the
16 department, or received by the department under s. 109.10 (4), no later than 2 4 years
17 after the date the wages are due. ~~The department may, after~~ After receiving a wage
18 claim, the department may investigate any wages due from the employer against
19 whom the claim is filed to any employee during the period commencing 2 4 years
20 before the date the claim is filed.

21 (b) The department shall enforce this chapter and ss. 66.0903, 103.02, 103.40,
22 103.49, 103.82, 104.12, and 229.8275. In pursuance of this duty, the department may
23 sue the employer on behalf of the employee to collect any wage claim or wage
24 deficiency and ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except

1 for actions under s. 109.10, the department may refer such an action to the district
2 attorney of the county in which the violation ~~occurs~~ occurred for prosecution and
3 collection and the district attorney shall commence an action in the circuit court
4 having appropriate jurisdiction. Any number of wage claims or wage deficiencies
5 against the same employer may be joined in a single proceeding, but the court may
6 order separate trials or hearings.

7 (c) In actions that are referred to a district attorney under ~~this subsection~~ par.
8 (b), any taxable costs recovered by the district attorney shall be paid into the general
9 fund of the county in which the violation occurs and used by that county to meet its
10 financial responsibility under s. 978.13 (2) (b) for the operation of the office of the
11 district attorney who prosecuted the action.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 10; 2003 a. 63; 2005 a. 434; 2009 a. 28; 2011 a. 32.

12 **SECTION 10.** 109.09 (2) (a) of the statutes is amended to read:

13 109.09 (2) (a) The department of workforce development, under its authority
14 under sub. (1) [✓](b) to maintain actions for the benefit of employees, or an employee
15 who brings an action under s. 109.03 (5) shall have a lien upon all property of the
16 employer, real or personal, located in this state for the full amount of any wage claim
17 or wage deficiency.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 10; 2003 a. 63; 2005 a. 434; 2009 a. 28; 2011 a. 32.

18 **SECTION 11.** 109.09 (2) (c) 2. of the statutes is amended to read:

19 109.09 (2) (c) 2. Except as provided in this subdivision, a lien under par. (a) does
20 not take precedence over a lien of a commercial lending institution against the
21 employer that originates before the lien under par. (a) takes effect. Subject to subd.
22 3., a lien under par. (a) takes precedence over a lien of a commercial lending
23 institution against the employer that originates before the lien under par. (a) takes

INS 9-17

1 effect only as to the first \$3,000 of unpaid wages covered under the lien that are
2 earned by an employee within the 6 months preceding the date on which the
3 employee files the wage claim under sub. (1) [✓](a) or brings the action under s. 109.03
4 (5) or the date on which the department receives the wage claim under s. 109.10 (4)
5 (a), whichever is applicable.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 10; 2003 a. 63; 2005 a. 434; 2009 a. 28; 2011 a. 32.

6 **SECTION 12.** 109.11 (1) (a) of the statutes is amended to read:

7 109.11 (1) (a) In adjusting a controversy between an employer and an employee
8 as to an alleged wage claim filed with the department under s. 109.09 (1) [✓](a), the
9 department may compromise and settle that wage claim for such sum as may be
10 agreed upon between the department, the employee, and the employer plus interest
11 on that sum at the rate of 2 percent per month for each month that the wages were
12 due and unpaid and the surcharge specified in sub. (4) [✓].

X **History:** 1975 c. 380, 421; 1977 c. 26; 1993 a. 86.

13 **SECTION 13.** 109.11 (1) (b) of the statutes is renumbered 109.11 (1) (b) 1. and
14 amended to read:

15 109.11 (1) (b) 1. If the department finds that a wage claim is valid, the
16 department may instruct the employer against whom the wage claim is filed to audit
17 his or her payroll records to determine whether the employer may be liable for any
18 other wage claims that are of the same type as the wage claim that prompted the
19 audit instruction. If after the requested completion date of the audit the department
20 receives a wage claim against the employer that is of the same type as the wage claim
21 that prompted the audit instruction and if the department determines that the
22 subsequent wage claim is valid, the department may audit the employer's payroll
23 records to determine whether the employer may be liable for any other wage claims
24 that are of the same type as the wage claim that prompted the audit instruction.

1 2. For any valid wage claim that is filed against an employer after the
2 department has instructed the employer to audit his or her payroll records under ~~this~~
3 ~~paragraph~~ subd. 1. and that is of the same type as the wage claim that prompted the
4 audit instruction and for any valid wage claim that is discovered as a result of the
5 department's audit under ~~this paragraph~~ subd. 1. and that is of the same type as the
6 wage claim that prompted the audit instruction, the department shall require the
7 employer to pay, in addition to the amount of wages due and unpaid, increased wages
8 of not more than 50% of the amount of wages due and unpaid, interest on the amount
9 of wages due and unpaid at the rate of 2 percent per month for each month that the
10 wages were due and unpaid, and the surcharge specified in sub. (4), unless the
11 employer shows the department that payment of the increased wages, interest, or
12 surcharge would cause extreme hardship. The department shall require an
13 employer to make that payment without regard to whether the employer's failure to
14 pay the wages due and unpaid was intentional or unintentional.

History: 1975 c. 380, 421; 1977 c. 26; 1993 a. 86.

15 **SECTION 14.** 109.11 (1) (c) of the statutes is amended to read:

16 109.11 (1) (c) If an employer does not agree to compromise and settle a wage
17 claim under this subsection, the department may refer the wage claim to a district
18 attorney under s. 109.09 (1) (b) or to the department of justice under s. 109.10 (3) for
19 commencement of an action in circuit court to collect the amount of wages due and
20 unpaid plus interest on that amount at the rate of 2 percent per month for each month
21 that the wages were due and unpaid, increased wages as specified in sub. (2) (b), and
22 the surcharge specified in sub. (4).

History: 1975 c. 380, 421; 1977 c. 26; 1993 a. 86.

23 **SECTION 15.** 109.11 (2) (a) of the statutes is amended to read:

of wages due and unpaid

1 109.11 (2) (a) In a wage claim action that is commenced by an employee before
 2 the department has completed its investigation under s. 109.09 (1) (a) and its
 3 attempts to compromise and settle the wage claim under sub. (1), a circuit court may
 4 order the employer to pay to the employee, in addition to the amount of wages due
 5 and unpaid and in addition to or in lieu of the criminal penalties specified in sub. (3),
 6 increased wages of not more than 50% 100 percent of the amount of wages due and
 7 unpaid, interest on ~~that~~ ^{the} amount at the rate of 2 percent per month for each month
 8 that the wages were due and unpaid, the surcharge specified in sub. (4), and,
 9 notwithstanding s. 814.04, reasonable costs and attorney fees. A circuit court may
 10 order an employer to make that payment without regard to whether the employer's
 11 failure to pay the wages due and unpaid was intentional or unintentional.

History: 1975 c. 380, 421; 1977 c. 26; 1993 a. 86.

12 **SECTION 16.** 109.11 (2) (b) of the statutes is amended to read:

13 109.11 (2) (b) In a wage claim action that is commenced after the department
 14 has completed its investigation under s. 109.09 (1) ^(a) and its attempts to settle and
 15 compromise the wage claim under sub. (1), a circuit court may order the employer
 16 to pay to the employee, in addition to the amount of wages due and unpaid to an
 17 employee and in addition to or in lieu of the criminal penalties specified in sub. (3),
 18 increased wages of not more than 100% 200 percent of the amount of those wages due
 19 and unpaid, interest on ~~that~~ ^{the} amount at the rate of 2 percent per month for each
 20 month that the wages were due and unpaid, the surcharge specified in sub. (4), and,
 21 notwithstanding s. 814.04, reasonable costs and attorney fees. A circuit court may
 22 order an employer to make that payment without regard to whether the employer's
 23 failure to pay the wages due and unpaid was intentional or unintentional.

History: 1975 c. 380, 421; 1977 c. 26; 1993 a. 86.

24 **SECTION 17.** 109.11 (4) of the statutes is created to read:

shall

shall

✓

1 109.11 (4) SURCHARGE. In addition to the amounts payable under sub. (1) (a)
 2 or (b) or (2) (a) or (b), the department ~~may~~ require, or a circuit court ~~may~~ order, an
 3 employer who fails to pay wages that are due and payable to an employee to pay to
 4 the department or circuit court a surcharge of \$500 for a first violation, \$750 for a
 5 2nd violation, and \$1,000 for a 3rd or subsequent violation. If the surcharge is
 6 required by the department, the department shall collect the surcharge, deposit the
 7 surcharge in the general fund, and credit the surcharge to the appropriation account
 8 under s. 20.445 (1) (gr). If the surcharge is ordered by the circuit court, the clerk of
 9 circuit ^{court} shall collect the surcharge and transmit the surcharge to the county treasurer
 10 under s. 59.40 (2) (m), the county treasurer shall pay the surcharge to the secretary
 11 of administration under s. 59.25 (3) (f) 2., and ~~the~~ secretary of administration shall
 12 deposit the surcharge in the general fund and credit the surcharge to the
 13 appropriation account under s. 20.445 (1) (gr).

✓
✓

109.09

SECTION 18. 111.322 (2m) (a) of the statutes is amended to read:

15 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
 16 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.34, 103.40, 103.455,
 17 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997 or ss. 101.58 to 101.599
 18 or 103.64 to 103.82.

History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237; 1999 a. 150 s. 672; 1999 a. 167, 176; 2009 a. 3, 28, 76, 182, 290; 2011 a. 32.

SECTION 19. 111.322 (2m) (b) of the statutes is amended to read:

20 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
 21 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
 22 103.34, 103.40, 103.455, 103.50, 104.12, 106.04, 109.03, 109.07, 109.075, or 146.997
 23 or ss. 101.58 to 101.599 or 103.64 to 103.82.

109.09

History: 1981 c. 334; 1989 a. 228, 359; 1997 a. 237; 1999 a. 150 s. 672; 1999 a. 167, 176; 2009 a. 3, 28, 76, 182, 290; 2011 a. 32.

SECTION 20. 814.75 (28) of the statutes is created to read:

X

24

^

1 814.75 (28) The wage claim surcharge under s. 109.11 (4).

2 SECTION 21. 893.44 (1) of the statutes is amended to read:

3 893.44 (1) Any action to recover unpaid salary, wages or other compensation
4 for personal services, except actions to recover fees for professional services and
5 except as provided in sub. (2), shall be commenced within ~~2~~ 4 years after the cause
6 of action accrues or be barred.

History: 1979 c. 323; 1985 a. 220; 1995 a. 27 s. 9130 (4); 1997 a. 3.

7 SECTION 22. 893.44 (2) of the statutes is amended to read:

8 893.44 (2) An action to recover wages under s. 109.09 shall be commenced
9 within ~~2~~ 4 years after the claim is filed with the department of workforce
10 development or be barred.

History: 1979 c. 323; 1985 a. 220; 1995 a. 27 s. 9130 (4); 1997 a. 3.

11 SECTION 23. Initial applicability.

12 (1) WAGE CLAIM STATUTE OF LIMITATIONS, INTEREST, AND SURCHARGES. The
13 treatment of sections 109.09 (1) (with receipt) to the receipt and investigation of a
14 wage claim, 109.11 (1) (a), (b), and (c), (2) (a) and (b), and (4), and 893.44 (1) and (2)
15 of the statutes first applies to wages earned on the effective date of this subsection. ✓

16 (2) FILING OF WAGE CLAIMS. The treatment of sections 109.03 (5) and 109.09 (1)
17 (with respect to the filing of a wage claim) of the statutes first applies to a wage claim
18 action commenced or a wage claim filed on the effective date of this subsection.

19 (3) WRITTEN DISCLOSURE STATEMENTS. The treatment of sections 103.40 and
20 109.01 (3m) of the statutes first applies to an employee hired on, or a change in a term
21 of employment effective 7 days after, the effective date of this subsection. ✓

22 (4) OCCUPATIONAL OR PROFESSIONAL LICENSING. The treatment of section 103.35
23 (3) of the statutes first applies to an application ^{for} issuance or renewal of a
24 professional or occupational license filed on the effective date of this subsection.

create a.r. X

and (2)(b) 3.

respect

create a.r. Z

create a.r. Y

1 **SECTION 24. Effective dates.** This act takes effect on the day after publication,
2 except as follows:

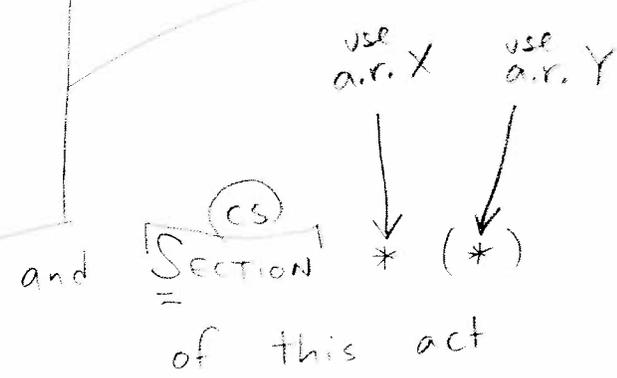
3 (1) WRITTEN DISCLOSURE STATEMENTS. The treatment of sections 103.40 and
4 109.01 (3m) of the statutes takes effect on the first day of the 3rd month beginning
5 after publication.

6 (2) PROFESSIONAL OR OCCUPATIONAL LICENSING. The renumbering and
7 amendment of section 103.35 of the statutes and the creation of section 103.35 (1) and
8 (3) of the statutes take effect on the first of the 6th month beginning after publication.

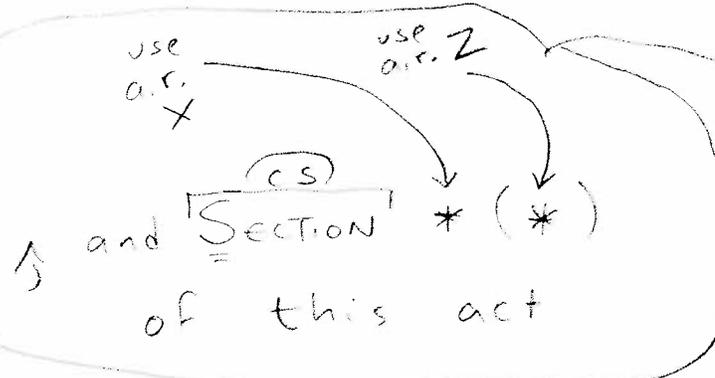
9 (END)

and 111.322(2m)(a) and (b)

OR PROFESSIONAL (CS)



d-note



INS 9-17

Section #. 109.09 (2) (b) 3. of the statutes is amended to read:

109.09 (2) (b) 3. The department of workforce development or employee must file the notice under subd. 1. or 2. within ⁴~~2~~ years after the date on which the wages were due. The notice shall specify the nature of the claim and the amount claimed, describe the property upon which the claim is made and state that the person filing the notice claims a lien on that property.

History: 1975 c. 380; 1979 c. 32 s. 92 (9); 1985 a. 29, 220; 1989 a. 113; 1991 a. 146; 1993 a. 86, 453; 1995 a. 227; 1997 a. 27, 237; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 10; 2003 a. 63; 2005 a. 434; 2009 a. 28; 2011 a. 32.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3030/1dn

GMM:.....

Malaise
js

- date -

Senator Wirch:

The drafting instructions call for the creation of certain fines and for those fines to be used for wage theft enforcement. Article X, section 2, of the Wisconsin Constitution, however, requires fines to be deposited in the School Fund. Accordingly, this draft creates "surcharges" and requires those surcharges to be deposited in the general fund, appropriated to DWD, and used for administration of the wage claim law.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3030/1dn
GMM:cjs:jm

September 27, 2013

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Parisi, Lori

From: Gillitzer, Steven
Sent: Tuesday, November 05, 2013 2:42 PM
To: LRB.Legal
Subject: Draft Review: LRB -3030/1 Topic: Wage theft enforcement

Please Jacket LRB -3030/1 for the SENATE.