

1975 Assembly Bill 595

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## CHAPTER 380, Laws of 1975

AN ACT to repeal 101.21 and 103.39; and to create chapter 109 of the statutes, relating to wage claims, payments, collections and severance pay and providing penalties.

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

SECTION 1. 101.21 of the statutes is repealed.

NOTE: This section repeals s. 101.21 of the statutes, Wisconsin's wage claim and collection law, which gives the department of industry, labor and human relations the authority to enforce, adjust and take assignments of wage claims on behalf of employees.

However, the provisions of present s. 101.21 are included, with some modifications, in new ch. 109 of the statutes, as created by this bill. Specifically, the provisions of s. 101.21 (1) are carried over in proposed s. 109.09, and the definitions contained in s. 101.21 (2) are included in new s. 109.01 (3) and (4).

SECTION 2. 103.39 of the statutes is repealed.

NOTE: Present s. 103.39, which sets forth the time and manner of wage payments and provides penalties for failing to make such payments, is repealed.

However, the provisions of present s. 103.39 are included, again with several modifications, in new ch. 109, specifically in proposed ss. 109.03 (1), (2), (3), (5) and (6) and 109.11.

SECTION 3. Chapter 109 of the statutes is created to read:

CHAPTER 109

WAGE PAYMENTS, CLAIMS AND COLLECTIONS

**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 his 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.

NOTE: Proposed s. 109.01 is the definitional section for new ch. 109 of the statutes. "Employer" is broadly defined to include any person or business entity employing one or more persons, as well as the state of Wisconsin, its political subdivisions, and charitable, nonprofit and tax-exempt organizations.

The definition of "wages" and "wage deficiency" are carried over from present s. 101.21 which is repealed and recreated in this bill in ch. 109. While "wage deficiency" is defined identically to present law, the definition of "wages" is expanded to specifically include the term "severance pay" and to clarify that remuneration for both traditional holidays and annual employe vacations shall be considered as "wages". In addition, the definition specifically includes overtime wages and supplemental unemployment compensation when required under a collective bargaining agreement.

**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 or salaries 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 and salaries 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.

(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 his 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 or salary are due, the full amount of the wages or salary due shall upon demand be paid by the employer to the spouse, children, or other dependent living with such employe at the time of his death. In the case of an employe of the state, the amount of the wage or salary 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 or salary 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 his business, ceasing business operations in whole or in part, or relocating all or part of his 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; SUNDAYS AND HOLIDAYS.** 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 his wages due on each regular pay day as provided in this section, in any court of competent jurisdiction. Whenever the regular payments cover wages earned to a date more than 8 days prior to the day of payment if the day fixed for the monthly payment falls on a Sunday or holiday, payment shall be made on the previous business day.

(6) **WAGE CLAIM.** In an action by an employe against his 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 benefitted or otherwise affected by this subsection except as expressly provided by s. 109.09.

**NOTE:** Proposed s. 109.03 contains most of the provisions of present s. 103.39, but additional subsections have been created for organizational purposes.

Sub. (2) is similar to present law except that resigned employes must be paid in full within 15 days of the date of termination. Present law requires that such employes be paid upon 3 days' demand.

Sub. (3) sets forth present requirements for final payment of wages to the relatives or the estates of deceased employes. Subs. (5) and (6) relating to court actions on wage claims and court costs are also substantially identical to present law, except that the present \$10 limitation on the recovery of expenses is eliminated.

Sub. (4) is new and is patterned after Section 28-14-4, Rhode Island Statutes. Sub. (4) requires an employer who terminates employes as a result of a merger, business relocation, shutdown, or business disposition or liquidation to pay such employes all unpaid wages within 24 hours after their services have been terminated.

**109.07 Mergers, liquidations, dispositions, relocations or cessation of operations affecting employes; 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 employes shall promptly notify the department 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 employes and the wages and other remuneration owed to such employes 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 employes.

(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 employe whose employment has been terminated as a result of such merger, liquidation, disposition, relocation or cessation of business operations.

NOTE: Section 109.07 is new. Sub. (1) requires large employers who have decided upon a merger, relocation, liquidation or disposition resulting in a cessation of operations affecting the job security of employes to notify the department of industry, labor and human relations of such decision at least 60 days in advance of the date the merger, liquidation, disposition, relocation or cessation takes place. Such employers are also required to supply the department with certain information on affected employes, payrolls, etc., and, if the department requires, they must submit a plan for final payment of all terminated employes.

Sub. (2) provides that violations of the above requirements are misdemeanors punishable by a maximum \$50 fine for each employe whose employment is terminated as a result of the circumstances described in sub. (1).

**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 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. Such actions may be referred to the district attorney of the county wherein the violation occurs or the attorney general for prosecution and collection and the district attorney or attorney general 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 employes, 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. 289.09 to 289.12 and 409.501 to 409.507, 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.

NOTE: This section is substantially the same as present s. 101.21 (1) which authorizes the department of industry, labor and human relations to investigate, adjust, take assignments to collect valid wage claims on behalf of employes and, if necessary, pursue such collections in court proceedings. However, sub. (2) is new, and gives the department, pursuant to its authority

to accept wage claim and wage deficiency assignments, a lien on the property of the employer for the full amount of the wage claim or deficiency.

In addition, the present \$500 maximum limit on the amount of any wage assignment taken by the department has been eliminated, and the department is authorized to refer wage assignments to the attorney general for collection proceedings.

**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 or salaries 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 or salaries due him 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 or salaries: 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.

NOTE: Proposed s. 109.11, providing criminal penalties for employers who fail or refuse to pay valid wage claims and providing additional liquidated damages to employes when payments are delayed, is substantially identical to present s. 103.39 (4), except that minimum fines and prison sentences have been eliminated and the maximum fine is increased from \$100 to \$500. In addition, the maximum amount of liquidated damages that an employe may recover is increased from \$100 to \$500.

**SECTION 4. Program citation.** Under the listing of program responsibilities specified for the department of industry, labor and human relations in section 15.221 (intro.) of the statutes, the reference to chapter "109" is inserted.

**SECTION 5. Cross reference changes.** In the sections listed below in column A, the cross references shown in column B are changed to the cross references shown in column C:

Statute	A	B	C
	Sections	Old Cross References	New Cross References
103.32		101.21	109.09
241.09		101.21	109.09
867.03	(3)	103.39	109.03 (3)