

CHAPTER 109

WAGE PAYMENTS, CLAIMS AND COLLECTIONS

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

109.01 Definitions. As used in this chapter:

(1) “Department” means the department of industry, labor and job development.

NOTE: 1995 Wis. Act 289, s. 275, authorizes the department of industry, labor and job development to use the name “department of workforce development” for any official purpose.

(2) Except as provided in s. 109.07 (1) (d), “employer” means any person engaged in any activity, enterprise or business employing one or more persons within the state, including the state and its political subdivisions and charitable, nonprofit or tax-exempt organizations and institutions.

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

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

History: 1975 c. 380, 421; 1989 a. 44; 1995 a. 27 s. 9130 (4).

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

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

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

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

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

(d) Employes who receive compensatory time off under s. 103.025 in lieu of overtime compensation.

(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 or who is discharged from employment shall be paid in full 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.

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

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

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

(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 person other than an employe or the department shall be benefited or otherwise affected by this subsection.

(7) **PROTECTION OF EMPLOYEES.** Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

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.

Attorney fees are awardable under (6). *Jackman v. WMAC Inv. Corp.* 610 F Supp. 290 (1985).

109.07 Mergers, liquidations, dispositions, relocations or cessation of operations affecting employees; advance notice required. (1) In this section:

(a) “Affected employee” means an employee who loses, or may reasonably be expected to lose, his or her employment with an employer who is required to give notice under sub. (1m) because of the business closing or mass layoff.

(b) “Business closing” means a permanent or temporary shut-down of an employment site or of one or more facilities or operating units at an employment site or within a single municipality that affects 25 or more employees, not including new or low-hour employees.

(c) “Employee benefit plan” means a plan as defined in 29 USC 1002 (3).

(d) “Employer” means any business enterprise that employs 50 or more persons in this state.

(e) “Highest official” means the mayor of a city, town board chairperson or village president, except as follows:

1. For a city organized under subch. I of ch. 64, “highest official” means both the president of the city council and the city manager.

2. For a village organized under subch. I of ch. 64, “highest official” means both the president of the village board of trustees and the village manager.

(f) “Mass layoff” means a reduction in an employer’s work force that is not the result of a business closing and that affects the following numbers of employees at an employment site or within a single municipality, not including new or low-hour employees:

1. At least 25% of the employer’s work force or 25 employees, whichever is greater; or

2. At least 500 employees.

(g) “Municipality” means a city, village or town.

(h) “New or low-hour employee” means an employee who has been employed by an employer for fewer than 6 of the 12 months preceding the date on which a notice is required under sub. (1m) or who averages fewer than 20 hours of work per week.

(1m) Subject to sub. (5) or (6), an employer who has decided upon a business closing or mass layoff in this state shall promptly notify the subunit of the department that administers s. 106.15, any affected employee, any collective bargaining representative of any affected employee, and the highest official of any municipality in which the affected employment site is located, in writing of such action no later than 60 days prior to the date that the business closing or mass layoff takes place. The employer shall provide in writing all information concerning its payroll, affected employees and the wages and other remuneration owed to such employees as the department may require. The department may in addition require the employer to submit a plan setting forth the manner in which final payment in full shall be made to affected employees. The department shall promptly provide a copy of the notice required under this subsection to the department of commerce and shall cooperate with the department of commerce in the performance of its responsibilities under s. 560.15. This subsection does not apply to a business closing or mass layoff that is caused by a strike or lockout.

(3) (a) If an employer fails to give timely notice to an affected employee as required under sub. (1m), the affected employee may recover, as provided under sub. (4), all of the following:

1. Pay, for the days during the recovery period described under par. (c) that the employee would have worked if the business closing or mass layoff had not occurred, based on the greater of the following:

a. The employee’s regular rate of pay from the employer, averaged over the shorter of the 3-year period preceding the business closing or mass layoff or the entire period during which the employee was employed by the employer.

b. The employee’s regular rate of pay from the employer at the time of the business closing or mass layoff.

2. The value of any benefit that the employee would have received under an employee benefit plan during the recovery period described under par. (c), but did not receive because of the business closing or mass layoff, including the cost of medical treatment incurred that would have been covered under the employee benefit plan.

(b) The amount that an employee may recover under par. (a) shall be reduced by any cost that the employer incurs by crediting the employee, under an employee benefit plan, for time not actually served because of a business closing or mass layoff.

(c) The recovery period under par. (a) begins on the day that the business closing or mass layoff occurs. The recovery period equals the number of days in the period beginning on the day on which an employer is required to give notice under sub. (1m) and ending on whichever of the following occurs first:

1. The day that the employer actually gave the notice to the employee.

2. The day that the business closing or mass layoff occurred.

(4) (a) An employee whose employer fails to notify timely the employee under sub. (1m) may file a claim with the department. If the employee files a claim with the department no later than 300 days after the business closing or mass layoff, the department shall, in the manner provided in s. 109.09, investigate the claim, determine the number of days that the employer was late in providing notice and, on behalf of the employee, attempt to recover from the employer the payment under sub. (3).

(b) If the department does not recover payment within 180 days after a claim is filed or within 30 days after it notifies the employee of its determination under par. (a), whichever is first, the department shall refer the claim to the department of justice. The department of justice may bring an action in circuit court on behalf of the employee to recover the payment under sub. (3).

(c) If the department of justice does not bring an action under par. (b) within 120 days after the claim is referred to it, the employee may bring an action in circuit court to recover the payment under sub. (3). If the employee prevails in the action, he or she shall also recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(d) An action under this section shall be begun within one year after the department refers the claim to the department of justice under par. (b), or be barred.

(4m) (a) If an employer fails to give timely notice to the highest official of a municipality as required under sub. (1m), the department shall assess a business closing surcharge against the employer of not more than \$500 for each day in the period beginning on the day that the employer was required to give notice to the highest official and ending on the earlier of the day that the employer actually gave notice to the highest official or the day that the business closing or mass layoff occurred.

(b) The department shall deposit business closing surcharges collected under par. (a) in the general fund.

(5) (a) An employer is not liable under this section for a failure to give notice to any person under sub. (1m), if the department determines all of the following:

1. When the notice under sub. (1m) would have been timely given, that the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the business closing or mass layoff.

2. That the employer reasonably and in good faith believed that giving the notices to all parties required under sub. (1m) would have prevented the employer from obtaining the capital or business.

(b) The department may not determine that an employer was actively seeking capital or business under par. (a) 1. unless the employer has a written record, made while the employer was seeking capital or business, of those activities. The record shall consist of the documents and other material specified by the department by rule under s. 109.12 (1) (b). The employer shall have individual documents in the record notarized, as required by the depart-

ment's rules. The employer shall provide the department with an affidavit verifying the content of the notarized documents.

(6) An employer is not liable under this section for a failure to give notice to any person under sub. (1m), if the department determines that the business closing or mass layoff is the result of any of the following:

(a) The sale of part or all of the employer's business, if the purchaser agrees in writing, as part of the purchase agreement, to hire substantially all of the affected employees with not more than a 6-month break in employment.

(b) The relocation of part or all of an employer's business within a reasonable commuting distance, if the employer offers to transfer substantially all of the affected employees with not more than a 6-month break in employment.

(c) The completion of a particular project or work of a specific duration, including seasonal work, if the affected employees were hired with the understanding that their employment was limited to the duration of such work or project.

(d) Business circumstances that were not foreseeable when the notice would have been timely given.

(e) A natural or man-made disaster beyond the control of the employer.

(f) A temporary cessation in business operations, if the employer recalls the affected employees on or before the 60th day beginning after the cessation.

(7) Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any employer who violates this subsection shall forfeit not more than \$100.

(8) Section 111.322 (2m) applies to discharge and other discriminatory acts arising in connection with any proceeding under this section.

History: 1975 c. 380; 1983 a. 84, 149; 1983 a. 192 s. 304; 1983 a. 538; 1987 a. 27; 1989 a. 44, 228; 1995 a. 27, ss. 3782 and 9116 (5).

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

109.09 Wage claims, collection. (1) The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim which is filed with the department, or 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, the department may sue the employer on behalf of the employe to collect any wage claim or wage deficiency 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) The department, under its authority under sub. (1) to maintain actions for the benefit of employes, 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. 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, except a lien under s. 292.31 (8) (i), 292.41 (6) (d) or 292.81, and may be enforced in the manner provided in ss. 779.09 to 779.12, 779.20 and 779.21, insofar as such provisions are applicable. 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.

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.

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

109.10 Reciprocal agreements. (1) In this section, "responsible agency" means a state officer, agency or other body that is responsible for the collection of wage claims or wage deficiencies.

(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 received by the department.

(3) Consistent with the terms of a reciprocal agreement entered into with a responsible agency of another state under sub. (2), the department may do any of the following:

(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 received by the department.

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

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

(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 received by the department from a responsible agency of another state.

(b) Actions under par. (a) may only be brought if the other state by law or reciprocal agreement permits similar actions in that state on wage claims or wage deficiencies arising in this state.

History: 1989 a. 113; 1993 a. 86.

109.11 Penalties. (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 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).

(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.

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

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

In collective bargaining/arbitration situation 111.70 (7m) (e) "good cause" defense is available where employer fails to pay wages pursuant to 109.03 (1). *Employees Local 1901 v. Brown County*, 146 W (2d) 728, 432 NW (2d) 571 (1988).

Whether payments under arbitration award are due from the entry of the award depends on the overall circumstances. *Kenosha Fire Fighters v. City of Kenosha*, 168 W (2d) 658, 484 NW (2d) 152 (1992).

109.12 Rules and report. The department shall do all of the following:

(1) Promulgate rules to do all of the following:

(a) Aid the administration of this chapter, including the enforcement of s. 109.07 and criteria for exceptions under s. 109.07 (5) and (6).

(b) Establish the form and content of the record required under s. 109.07 (5) (b) and specify the documents that must contain notarized signatures.

(2) Not later than March 1 annually, beginning with 1990, submit a written report on its activities in the preceding calendar year related to the enforcement and administration of s. 109.07 to the chief clerk of each house of the legislature for distribution under s. 13.172 (3) to the standing committees with jurisdiction over labor.

(3) Include, in the report required under sub. (2), the number, type and disposition of all determinations made by the department under s. 109.07 (5) and (6).

History: 1989 a. 44; 1991 a. 146.