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 workforce development.

(1r) "Employee" means any person employed by an employer, except that "employee" does not include an officer or director of a corporation, a member or manager of a limited liability company, a partner of a partnership or a joint venture, the owner of a sole proprietorship, an independent contractor or person otherwise excluded under s. 452.38, or a person employed in a managerial, executive, or commissioned sales capacity or in a capacity in which the person is privy to confidential matters involving the employer-employee relationship.

(2) Except as provided in ss. 109.07 (1) (d) and 109.075 (1) (c), "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 employee for personal services, including salaries, commissions, holiday and vacation pay, overtime pay, severance pay or dismissal pay, supplemental unemployment benefit plan payments when required under a binding collective bargaining agreement, bonuses and any other similar advantages agreed upon between the employer and the employee or provided by the employer to the employees 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 employee.

History: 1975 c. 380, 421; 1989 a. 44; 1995 a. 27 s. 9130 (4); 1997 a. 3, 39, 237; 2003 a. 63; 2015 a. 258.

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

Sub. (3) includes vacation pay, supplemental unemployment benefit plan payments, severance pay or dismissal pay as wages. Sub. (3) does not require that the employee perform actual work during the time period for which he is making a wage claim. Such a requirement would foreclose any employees' wage claims for vacation pay, supplemental unemployment benefit plan payments, severance pay, or dismissal pay because in each case the employee is not performing actual work during the time period of the claim. Sliwinski v. City of Milwaukee, 2009 WI App 162, 321 Wis. 2d 774, 777 N.W.2d 88, 08-2141.

109.015 Franchisors excluded.

For purposes of this chapter, a franchisor, as defined in 16 CFR 436.1 (k), is not considered to be an employer of a franchisee, as defined in 16 CFR 436.1 (i), or of an employee of a franchisee, unless any of the following applies:

(1) The franchisor has agreed in writing to assume that role.

(2) The franchisor has been found by the department to have exercised a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

History: 2015 a. 203.

109.03 When wages payable; pay orders.

(1) REQUIRED FREQUENCY OF PAYMENTS. Every employer shall as often as monthly pay to every employee engaged in the employer's business, except those employees engaged in logging operations and farm labor, all wages earned by the employee to a day not more than 31 days prior to the date of payment. Employees engaged in logging operations and farm labor shall be paid all earned wages no less often than at regular quarterly intervals. Any employee 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 any of the following:

(a) Employees covered under a valid collective bargaining agreement establishing a different frequency for wage payments, including deferred payments exercised at the option of employees.

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

(c) Employees of the University of Wisconsin System other than university staff, as defined in s. 36.05 (15).

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

(e) A part-time fire fighter or a part-time emergency medical services practitioner, as defined in s. 256.01 (5), who is a member of a volunteer fire department or emergency medical services program maintained by a county, city, village, or town or of a volunteer fire company organized under ch. 181 or ch. 213 and who, by agreement between the fire fighter or emergency medical services practitioner and the entity employing the fire fighter or emergency medical services practitioner, is paid at regular intervals, but no less often than annually.

(2) PAYMENT TO DISCHARGED OR RESIGNED EMPLOYEES. Any employee, 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 employee 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. (a) In case of the death of an employee to whom wages are due, the full amount of the wages due shall upon demand be paid by the employer to the spouse, domestic partner under ch. 770, children, or other dependent living with the employee at the time of death.

(b) An employer may, not less than 5 days after the death of an employee and before the filing of a petition or application for administration of the decedent's estate, make payments of the wage

due the deceased employee to the spouse, domestic partner under ch. 770, children, parents, or siblings of the decedent, giving preference in the order listed.

(c) If none of the persons listed in par. (b) survives, the employer may apply the payment of the wage or so much of the wage 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 personal representatives.

(d) The making of payment in the manner described in this subsection shall discharge and release the employer to the amount of the payment.

(4) PAYMENT TO CERTAIN SEPARATED EMPLOYEES. Whenever an employee 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 employee 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 employees or by any other means secure exemption from this section. Each employee shall have a right of action against any employer for the full amount of the employee'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 employee 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 employee 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 employee 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 employee 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; 2001 a. 102, 103; 2007 a. 7, 195; 2009 a. 28; 2011 a. 10; 2015 a. 55; 2017 a. 12; 2021 a. 144.

The award of "expenses" under sub. (6) may include attorney fees. Jacobson v. American Tool Cos., Inc., 222 Wis. 2d 384, 588 N.W.2d 67 (Ct. App. 1998), 97-2219.

The inclusion of "the state" in the definition of employer at s. 109.01 (2) and the creation of a private cause of action against employers under sub. (5) is a waiver of the state's sovereign immunity. Claims under statutes enumerated in s. 109.09 (1) may be enforced by a private action brought under sub. (5). German v. DOT, 223 Wis. 2d 525, 589 N.W.2d 651 (Ct. App. 1998), 98-0250.
Affirmed. 2000 WI 62, 235 Wis. 2d 576, 612 N.W.2d 50, 98-0250.

When an employer repudiates the contractual remedies of a collective bargaining agreement, employees are allowed to proceed under this chapter if they are seeking back pay. Beaudette v. Eau Claire County Sheriff's Department, 2003 WI App 153, 265 Wis. 2d 744, 668 N.W.2d 133, 02-2916.

In determining a reasonable attorney fee under sub. (6), a court starts by determining a reasonable hourly rate and number of hours, then makes adjustments for other factors in SCR 20:1.5 (a) or any other relevant factors. The court may use its own firsthand knowledge of the proceeding in determining the number of hours reasonably expended. The amount recovered in itself is not a reason to reduce a fee below an amount that represents a reasonable hourly rate. Lynch v. Crossroads Counseling Center, Inc., 2004 WI App 114, 275 Wis. 2d 171, 684 N.W.2d 141, 03-1344.

Sub. (5) establishes a distinct cause of action and enforcement procedure for a wage claim, wholly apart from any contract claims. Merely pleading a contract action based on nonpayment of wages is insufficient to trigger a ch. 109 wage claim under notice pleading. Wolnak v. Cardiovascular & Thoracic Surgeons of Central Wisconsin, S.C., 2005 WI App 217, 287 Wis. 2d 560, 706 N.W.2d 667, 04-1051.

Appellate courts ordinarily defer to a circuit court's determination as to hours awarded in allowing attorney fees. An attorney's hours are subject to the scrutiny of the circuit court and unreasonable hours should not be compensated. Nonetheless, the appellate courts must probe the circuit court's explanation to determine if the court employed a logical rationale based on the appropriate legal principles and facts of record. The record should show that the circuit court did not eyeball the fee request and cut it down by an arbitrary percentage because it seemed excessive. Johnson v. Roma II — Waterford LLC, 2013 WI App 38, 346 Wis. 2d 612, 829 N.W.2d 538, 12-1028.

Time spent in travel between home and work in an employer-supplied vehicle does not give rise to wages earned by an employee under sub. (1). Conveying company tools from an employee's home to the employee's jobsite, without more, does not make the employee's travel time an integral part of a principal activity or a closely related activity that is indispensable to its performance. Kieninger v. Crown Equipment Corp., 2019 WI 27, 386 Wis. 2d 1, 924 N.W.2d 172, 17-0631.

Although Wisconsin's wage law is modeled after the federal Fair Labor Standards Act (FLSA), there is no Wisconsin statute or regulation that is equivalent to 29 USC 203(o) of the FLSA, which specifically permits collective bargaining over compensation for donning and doffing. Sub. (5) provides that an employer may not contractually avoid its obligation to pay an employee for all compensable time. Therefore, under Wisconsin law, compensation for donning and doffing personal protective equipment cannot be modified or eliminated through collective bargaining. Piper v. Jones Dairy Farm, 2020 WI 28, 390 Wis. 2d 762, 940 N.W.2d 701, 18-1681.

Sub. (5), which outlines the right of an employee to bring a wage claim, is not a complete bar to an employer's equitable defenses. Piper v. Jones Dairy Farm, 2020 WI 28, 390 Wis. 2d 762, 940 N.W.2d 701, 18-1681.

Wisconsin requires time spent donning and doffing safety gear to be compensated at the minimum wage or higher, and that this time counts toward the limit after which the overtime rate kicks in. Wisconsin law is not preempted by federal law. Spoerle v. Kraft Foods Global, Inc., 614 F.3d 427 (2010).

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

Wage claims against a governmental body under this section are exempt from the notice of claim requirements under s. 893.80. Gilbertson v. City of Sheboygan, 165 F. Supp. 3d 742 (2016).

Under regulations promulgated under s. 104.045 (1), an employer taking a tip credit must have a tip declaration signed by the tipped employee each pay period to show that, when adding the tips received to the wages paid by the employer, no less than the minimum rate was received by the employee. When the employer's time and payroll records do not contain these requirements, no tip credit is allowed, and a plaintiff may pursue back wages under sub. (5) for alleged violations of such regulations. Hussein v. Jun-Yan, LLC, 502 F. Supp. 3d 1366 (2020).

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

(b) "Business closing" means a permanent or temporary shutdown 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 percent 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) (a) or who averages fewer than 20 hours of work per week.

(1m) (a) Subject to sub. (5) or (6), an employer that 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 on which the business closing or mass layoff takes place. The notice to an affected employee shall also include contact information for the local workforce development board under 29 USC 3122 serving the area in which the employment site is located and, if available, the list of resources prepared under s. 106.11. The employer shall provide in writing all information concerning its payroll, affected employees, and the wages and other remuneration owed to those 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.

(b) The department shall promptly provide a copy of the notice required under par. (a) to the office of the commissioner of insurance and shall cooperate with the office of the commissioner of insurance in the performance of its responsibilities under s. 601.41 (7).

(c) 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) (a), 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 on which 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) (a) and ending on whichever of the following occurs first:

1. The day on which the employer actually gave the notice to the employee.

2. The day on which the business closing or mass layoff occurred.

(4) (a) An employee whose employer fails to notify timely the employee under sub. (1m) (a) may file a claim with the department. If the employee files a claim with the department no later than 300 days after the day on which the business closing or mass layoff occurred, 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) (a), 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 on which the employer was required to give notice to the highest official and ending on the earlier of the day on which the employer actually gave notice to the highest official or the day on which 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) (a), if the department determines all of the following:

1. When the notice under sub. (1m) (a) 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) (a) 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 department'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) (a), 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); 1997 a. 51; 2009 a. 87; 2011 a. 32; 2025 a. 139.

Cross-reference: See also ch. DWD 279, Wis. adm. code.

The application of this section is limited to business closures of employment sites, defined by reference to geography rather than ownership. A transfer of business assets does not constitute a business closing unless it results in either a temporary or permanent shutdown in the operation of the business site. State v. T.J. International, Inc., 2001 WI 76, 244 Wis. 2d 481, 628 N.W.2d 774, 99-2803.

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

109.075 Cessation of health care benefits affecting employees, retirees and dependents; advance notice required. (1) In this section:

(a) "Affected employee, retiree or dependent" means an employee, retired employee or a surviving covered dependent of an employee or retired employee who loses, or may reasonably be expected to lose, his or her health care benefits provided by an employer who is required to give notice under sub. (2) because the employer has decided to cease providing health care benefits.

(b) "Employee benefit plan" means a plan as defined in 29 USC 1002 (3).

(c) "Employer" means any business enterprise that employs 50 or more persons in this state.

(d) "Health care benefits" means coverage of health care expenses under an employee benefit plan.

(2) Subject to sub. (5) or (6), an employer who has decided to cease providing health care benefits in this state shall promptly notify any affected employee, retiree or dependent and any collective bargaining representative of any affected employee, retiree or dependent in writing of such action no later than 60 days prior to the date that the cessation of health care benefits takes place. This subsection does not apply to a cessation of health care benefits that is caused by a strike or lockout.

(3) (a) If an employer fails to give timely notice to an affected employee, retiree or dependent as required under sub. (2), the affected employee, retiree or dependent may recover, as provided under sub. (4), the value of any health care benefits that the affected employee, retiree or dependent would have received during the recovery period described under par. (c), but did not receive because of the cessation of health care benefits, including the cost of any medical treatment incurred that would have been covered but for the cessation of health care benefits.

(b) The amount that an affected employee may recover under par. (a) shall be reduced by any cost that the affected employer incurs by crediting the affected employee, under an employee benefit plan, for time not actually served because of a business closing, as defined in s. 109.07 (1) (b), or mass layoff, as defined in s. 109.07 (1) (f).

(c) The recovery period under par. (a) begins on the day that the cessation of health care benefits 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. (2) and ending on whichever of the following occurs first:

1. The day that the employer actually gave the notice to the affected employee, retiree or dependent.

2. The day that the cessation of health care benefits occurred.

(4) (a) An affected employee, retiree or dependent whose employer or former employer, or whose spouse's or parent's employer or former employer, fails to notify timely the affected employee, retiree or dependent under sub. (2) may file a claim with the department. If the affected employee, retiree or dependent files a claim with the department no later than 300 days after the cessation of health care benefits occurred, the department shall, in the manner provided in s. 109.09, investigate the claim, determine the number of days that the employer or former employer was late in providing notice and, on behalf of the affected employee, retiree or dependent, attempt to recover from the employer or former 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 affected employee, retiree or dependent 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 affected employee, retiree or dependent 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 affected employee, retiree or dependent may bring an action in circuit court to recover the payment under sub. (3). If the affected employee, retiree or dependent 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.

(5) (a) An employer is not liable under this section for a failure to give notice to any person under sub. (2), if the department determines all of the following:

1. When the notice under sub. (2) would have been timely given, that the employer was actively seeking capital or business to enable the employer to avoid or postpone indefinitely the cessation of health care benefits.

2. That the employer reasonably and in good faith believed that giving the notice required under sub. (2) 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 department'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. (2), if the department determines that the cessation of health care benefits 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 provide health care benefits for all of the affected employees, retirees and dependents with not more than a 60-day break in coverage.

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

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

(d) A temporary cessation in providing health care benefits, if the employer renews providing health care benefits for the affected employees, retirees and dependents 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 the rights of employees, retirees and dependents 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: 1997 a. 237.

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 that 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 employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and s. 66.0903, 2013 stats., s. 103.49, 2013 stats., s. 229.8275, 2013 stats., and s. 16.856, 2015 stats., and ss. 103.02, 103.82, and 104.12. In pursuance of this duty, the department may sue the employer on behalf of the employee 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) (b) for the operation of the office of the district attorney who prosecuted the action.

(2) (a) The department of workforce development, under its authority under sub. (1) to maintain actions for the benefit of employees, or an employee 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.

(b) 1. A lien under par. (a) upon real property takes effect when the department of workforce development or employee files a notice of 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 clerk of circuit court shall enter the notice of the lien on the judgment and lien docket kept under s. 779.07.

2. A lien under par. (a) upon personal property takes effect when the department of workforce development or employee files notice of the lien in the same manner, form, and place as financing statements are filed under subch. V of ch. 409 regarding debtors who are located in this state, pays the same fee provided in s. 409.525 for filing financing statements, and serves a copy of the notice 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 of financial institutions shall place the notice of the lien in the same file as financing statements are filed under subch. V of ch. 409.

3. The department of workforce development or employee must file the notice under subd. 1. or 2. within 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.

(c) 1. In this paragraph:

a. "Commercial lending institution" has the meaning given for "financial institution" in s. 234.01 (5k).

b. "Financial institution" has the meaning given in s. 69.30 (1) (b).

1m. A lien under par. (a) takes precedence over all other debts, judgments, decrees, liens, or mortgages against the employer, except a lien of a commercial lending institution as provided in subd. 2. and 3. or a lien under s. 292.31 (8) (i) or 292.81, regardless of whether those other debts, judgments, decrees, liens, or mortgages originate before or after the lien under par. (a) takes effect. A lien under par. (a) may be enforced in the manner provided in ss. 779.09 to 779.12, 779.20, and 779.21, insofar as those provisions are applicable. The lien ceases to exist if the department of workforce development or the employee does not bring an action to enforce the lien within the period prescribed in s. 893.44 for the underlying wage claim.

2. Except as provided in this subdivision, a lien under par. (a) does not take precedence over a lien of a commercial lending institution against the employer that originates before the lien under par. (a) takes effect. Subject to subd. 3., a lien under par. (a) takes precedence over a lien of a commercial lending institution against the employer that originates before the lien under par. (a) takes effect only as to the first $3,000 of unpaid wages covered under the lien that are earned by an employee within the 6 months preceding the date on which the employee files the wage claim under sub. (1) or brings the action under s. 109.03 (5) or the date on which the department receives the wage claim under s. 109.10 (4) (a), whichever is applicable.

3. Notwithstanding subd. 2., a lien of a financial institution that exists on November 30, 2003, and that originates before a lien under par. (a) takes effect takes precedence over the lien under par. (a), and a lien of a financial institution for any amount advanced by the financial institution after a lien under par. (a) takes effect under a contract entered into before December 1, 2003, including any extension or renewal of such a contract, takes precedence over the lien under par. (a). Notwithstanding subd. 2., a lien under par. (a) that exists on November 30, 2003, takes precedence over a lien of a commercial lending institution that is not a financial institution, regardless of whether the lien of the commercial lending institution originates before or after the lien under par. (a) takes effect.

(3) (a) The legislature finds that the provision of a wage claim and collection law that is uniform throughout the state is a matter of statewide concern and that the enactment of a wage claim or collection ordinance by a city, village, town, or county would be logically inconsistent with, would defeat the purpose of, and would go against the spirit of this section. Therefore, this section shall be construed as an enactment of statewide concern for the purpose of providing a wage claim and collection law that is uniform throughout the state.

(b) No city, village, town, or county may enact or enforce an ordinance that regulates wage claims or collections.

(c) If a city, village, town, or county has in effect on April 18, 2018, an ordinance that regulates wage claims or collections, the ordinance does not apply and may not be enforced.

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; 2015 a. 55; 2017 a. 59, 327.

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

Ch. 103 does not provide the exclusive remedy for enforcement of claims under that chapter. Claims under statutes enumerated in sub. (1) may be enforced by a private action brought under s. 109.03 (5). German v. DOT, 223 Wis. 2d 525, 589 N.W.2d 651 (Ct. App. 1998), 98-0250.

Affirmed. 2000 WI 62, 235 Wis. 2d 576, 612 N.W.2d 50, 98-0250.

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 employee 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 employee 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 percent 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 employee 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 employee, 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 percent 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 employee, in addition to the amount of wages due and unpaid to an employee and in addition to or in lieu of the criminal penalties specified in sub. (3), increased wages of not more than 100 percent 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 employee 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 a collective bargaining/arbitration situation a defense of "good cause" under s. 111.70 (7m) (e) is available if the employer fails to pay wages pursuant to s. 109.03 (1). Employees Local 1901 v. Brown County, 146 Wis. 2d 728, 432 N.W.2d 571 (1988).

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

Penalties under sub. (2) (b) may only be applied when wages are due and unpaid at the time an enforcement action is commenced in court. Hubbard v. Messer, 2003 WI 145, 267 Wis. 2d 92, 673 N.W.2d 676, 02-1701.

Neither the text of sub. (2) (b) nor the case law interpreting it appear to support applying the federal presumption of double damages and burden-shifting framework to sub. (2) (b). The text and case law make clear that the circuit court has broad discretion under sub. (2) (b) to choose not to award a penalty and that, even when a penalty is appropriate, the court has discretion to award a penalty amounting to less than double damages. Johnson v. Roma II - Waterford LLC, 2013 WI App 38, 346 Wis. 2d 612, 829 N.W.2d 538, 12-1028.

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 ss. 109.07 and 109.075 and criteria for exceptions under ss. 109.07 (5) and (6) and 109.075 (5) and (6).

(b) Establish the form and content of the record required under s. 109.07 (5) (b) and the record required under s. 109.075 (5) (b) and specify the documents that must contain notarized signatures.

(2) Not later than March 1 annually, submit a written report

on its activities in the preceding calendar year related to the enforcement and administration of ss. 109.07 and 109.075 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 ss. 109.07 (5) and (6) and 109.075 (5) and (6).

History: 1989 a. 44; 1991 a. 146; 1997 a. 237.