

CHAPTER 381

LABOR AND INDUSTRY

HOUSE BILL 07-1247

BY REPRESENTATIVE(S) Judd, Carroll T., Cerbo, Carroll M., Casso, Gallegos, Green, Hodge, Kefalas, Labuda, McGihon, Merrifield, and Soper;
also SENATOR(S) Tupa, Bacon, and Fitz-Gerald.

AN ACT

CONCERNING STRENGTHENING INCENTIVES TO TIMELY PAY WAGES DUE, AND, IN CONNECTION THEREWITH, CLARIFYING THE AWARD OF ATTORNEY FEES AND INCREASING THE PENALTY FOR FAILURE TO PAY WAGES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The General Assembly hereby finds, determines, and declares that the wage claim statute should be amended to create greater incentives for employers to promptly pay wages and other compensation owed to current and former employees.

(2) The General Assembly intends the change to a discretionary standard for awards of attorney fees and costs to be interpreted consistently with the courts' interpretation of the attorney fee provisions in the federal Civil Rights Act of 1964, 42 U.S.C. sec. 2000e. The United States Supreme Court has held that the similar attorney fee provisions in federal civil rights statutes are intended to further the goal of ensuring that private parties enforce those laws, since "few aggrieved parties would be in a position" to seek relief "[i]f successful plaintiffs were routinely forced to bear their own attorneys' fees." *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968).

(3) Attorney fees awarded against an employee are not intended to impose an excessive financial hardship.

SECTION 2. 8-4-109 (3), Colorado Revised Statutes, is amended to read:

8-4-109. Termination of employment - payments required - civil penalties - payments to surviving spouse or heir. (3) (a) If an employer refuses to pay

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

wages or compensation in accordance with subsection (1) of this section, the employee or his or her designated agent shall make a written demand for the payment within sixty days after the date of separation and shall state in the demand where such payment can be received.

(a.5) IF THE EMPLOYER DISPUTES THE AMOUNT OF WAGES OR COMPENSATION CLAIMED BY AN EMPLOYEE UNDER THIS ARTICLE AND IF, WITHIN FOURTEEN DAYS AFTER THE EMPLOYEE'S DEMAND, THE EMPLOYER MAKES A LEGAL TENDER OF THE AMOUNT THAT THE EMPLOYER IN GOOD FAITH BELIEVES IS DUE, THE EMPLOYER SHALL NOT BE LIABLE FOR ANY PENALTY UNLESS, IN A LEGAL ACTION, THE EMPLOYEE RECOVERS A GREATER SUM THAN THE AMOUNT SO TENDERED.

(b) If an employee's earned, vested, and determinable wages or compensation are not mailed to the place of receipt specified in a demand for payment and postmarked within ~~ten~~ FOURTEEN days after the receipt of such demand, the employer shall be liable to the employee for ~~an amount, in addition to~~ the wages or compensation, ~~equal to the greater of fifty percent of~~ AND A PENALTY OF THE SUM OF the ~~amount~~ FOLLOWING AMOUNTS of wages or compensation due or, IF GREATER, the employee's average daily earnings for each day, not to exceed ten days, until such payment or other settlement satisfactory to the employee is made:

(I) ONE HUNDRED TWENTY-FIVE PERCENT OF THAT AMOUNT OF SUCH WAGES OR COMPENSATION UP TO AND INCLUDING SEVEN THOUSAND FIVE HUNDRED DOLLARS; AND

(II) FIFTY PERCENT OF THAT AMOUNT OF SUCH WAGES OR COMPENSATION THAT EXCEED SEVEN THOUSAND FIVE HUNDRED DOLLARS.

(c) IF THE EMPLOYEE CAN SHOW THAT THE EMPLOYER'S FAILURE TO PAY IS WILLFUL, THE PENALTY REQUIRED UNDER PARAGRAPH (b) OF THIS SUBSECTION (3) SHALL INCREASE BY FIFTY PERCENT. EVIDENCE THAT A JUDGMENT HAS, WITHIN THE PREVIOUS FIVE YEARS, BEEN ENTERED AGAINST THE EMPLOYER FOR FAILURE TO PAY WAGES OR COMPENSATION SHALL BE ADMISSIBLE AS EVIDENCE OF WILLFUL CONDUCT.

(d) The daily earnings penalty shall not begin to accrue until the employer receives ~~such~~ THE written demand SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (3). The employee or his or her designated agent may commence a civil action to recover ~~such~~ THE penalty SET FORTH IN THIS SUBSECTION (3). Any employee or his or her designated agent who has not made a written demand for the payment within sixty days after the date of separation or who has otherwise not been available to receive payment shall not be entitled to any such penalty under this subsection (3). A payment under this subsection (3) shall be made in the form of a check draft or voucher in the name of the employee.

SECTION 3. 8-4-110 (1), Colorado Revised Statutes, is amended, and the said 8-4-110 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

8-4-110. Disputes - fees. (1) ~~If, the employer disputes the amount of wages or compensation claimed by an employee under the provisions of this article, and the~~

~~employer makes a legal tender of the amount that the employer in good faith believes is due, the employer shall not be liable for any penalty, unless, in a legal action, the employee recovers a greater sum than the amount so tendered; and if, in such ANY action, the employee fails to recover a greater sum than the amount tendered BY THE EMPLOYER, the employee shall pay the cost of the action and the employer's reasonable~~ COURT MAY AWARD THE EMPLOYER REASONABLE COSTS AND attorney fees incurred in such action WHEN, IN ANY PLEADING OR OTHER COURT FILING, THE EMPLOYEE CLAIMS WAGES OR COMPENSATION THAT EXCEED THE GREATER OF SEVEN THOUSAND FIVE HUNDRED DOLLARS IN WAGES OR COMPENSATION OR THE JURISDICTIONAL LIMIT FOR THE SMALL CLAIMS COURT, WHETHER OR NOT THE CASE WAS FILED IN SMALL CLAIMS COURT OR WHETHER OR NOT THE TOTAL AMOUNT SOUGHT IN THE ACTION WAS WITHIN SMALL CLAIMS COURT JURISDICTIONAL LIMITS. If, IN ANY SUCH ACTION IN WHICH THE EMPLOYEE SEEKS TO RECOVER ANY AMOUNT OF WAGES OR COMPENSATION, the employee ~~recovered~~ RECOVERS a sum greater than the amount tendered BY THE EMPLOYER, the ~~employer shall pay the cost of the action and the employer's reasonable~~ COURT MAY AWARD THE EMPLOYEE REASONABLE COSTS AND attorney fees incurred in such action. IF AN EMPLOYER FAILS OR REFUSES TO MAKE A TENDER WITHIN FOURTEEN DAYS AFTER THE DEMAND, THEN SUCH FAILURE OR REFUSAL SHALL BE TREATED AS A TENDER OF NO MONEY FOR ANY PURPOSE UNDER THIS ARTICLE.

(1.5) THIS SECTION SHALL NOT APPLY TO A CLAIMANT WHO IS FOUND TO BE AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE.

SECTION 4. Applicability. This act shall apply to all legal actions to recover wages or compensation commenced on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 31, 2007