

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 94 Session of 2023

INTRODUCED BY TARTAGLIONE, HAYWOOD, HUGHES, FONTANA, KANE,
SCHWANK, DILLON, STREET, COSTA AND CAPPELLETTI,
JANUARY 18, 2023

REFERRED TO LABOR AND INDUSTRY, JANUARY 18, 2023

AN ACT

1 Amending the act of July 14, 1961 (P.L.637, No.329), entitled
2 "An act relating to the payment of wages or compensation for
3 labor or services; providing for regular pay days; conferring
4 powers and duties upon the Department of Labor and Industry,
5 including powers and duties with respect to the civil
6 collection of wages; providing civil and criminal penalties
7 for violations of the act; providing for their collection and
8 disposition and providing for additional civil damages,"
9 further providing for definitions; providing for duty of
10 department to report; further providing for civil remedies
11 and penalties, for liquidated damages and for criminal
12 penalties; providing for employer liability; and establishing
13 the Wage Enforcement Fund.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The definition of "employer" in section 2.1 of
17 the act of July 14, 1961 (P.L.637, No.329), known as the Wage
18 Payment and Collection Law, is amended and the section is
19 amended by adding a definition to read:

20 Section 2.1. Definitions.--The following words and phrases
21 when used in this act shall have, unless the context clearly
22 indicates otherwise, the meanings given to them in this section:

23 * * *

1 "Employer." Includes: [every person, firm, partnership,
2 association, corporation, receiver or other officer of a court
3 of this Commonwealth and any agent or officer of any of the
4 above-mentioned classes employing any person in this
5 Commonwealth.]

6 (1) The Commonwealth.

7 (2) Any political subdivision of the Commonwealth.

8 (3) Any authority created by the General Assembly.

9 (4) Any instrumentality or agency of the Commonwealth.

10 (5) Every person, firm, partnership, association,
11 corporation, receiver or other officer of a court of this
12 Commonwealth.

13 (6) Any agent or officer of any of the above-mentioned
14 classes employing any person in this Commonwealth.

15 * * *

16 "High violation industry." An industry that incurs at least
17 25 violations over a two-year period.

18 * * *

19 Section 2. The act is amended by adding a section to read:

20 Section 8.1. Duty of Department to Report.--(a) The
21 department shall collect on a quarterly basis the following data
22 categorized by industry:

23 (1) number of violations;

24 (2) amount of fines collected;

25 (3) nature of violations;

26 (4) number of individual complaints filed;

27 (5) number of complaints resolved;

28 (6) amount of unpaid wages owed;

29 (7) amount of unpaid wages recovered;

30 (8) number of pending individual complaints;

1 (9) number of workplaces investigated from complaints;
2 (10) number of workplaces investigated proactively;
3 (11) number of workplaces reinvestigated following
4 violations; and
5 (12) number of subsequent violations.

6 On a semiannual basis, the department shall prepare and submit a
7 report of this data to the Chairperson of the Labor and Industry
8 Committee of the Senate and the Chairperson of the Labor and
9 Industry Committee of the House of Representatives and post the
10 report on the department's publicly accessible Internet website.

11 (b) The secretary shall investigate high-violation
12 industries no less than quarterly, train investigators to
13 recognize basic labor, health and safety violations and engage
14 in cross-agency referrals to protect workers' rights.

15 Section 3. Section 9.1(c) of the act is amended and the
16 section is amended by adding a subsection to read:

17 Section 9.1. Civil Remedies and Penalties.--* * *

18 (c) The employe or group of employes, labor organization or
19 party to whom any type of wages is payable may, in the
20 alternative, inform the secretary of the wage claim against an
21 employer or former employer, and the secretary shall, unless the
22 claim appears to be frivolous, immediately notify the employer
23 or former employer of such claim by certified mail. If the
24 employer or former employer fails to pay the claim or make
25 satisfactory explanation to the secretary of his failure to do
26 so within ten days after receipt of such certified notification,
27 thereafter, the employer or former employer shall be liable for
28 a penalty of [ten percent (10%) of that portion of the claim
29 found to be justly due.] one thousand dollars (\$1,000) per
30 violation of this act or the regulations or equal to twice the

underpaid wages in damages to the employee, whichever is greater.
Each week in which an employee is paid less than the applicable
wage under this act and each employee who is paid less than the
prescribed rate shall constitute a separate violation that shall
be subject to a separate penalty. A good faith dispute or
contest as to the amount of wages due or the good faith
assertion of a right of set-off or counter-claim shall be deemed
a satisfactory explanation for nonpayment of such amount in
dispute or claimed as a set-off or counter-claim. The secretary
[shall have a cause of action against the employer or former
employer for recovery of such penalty and the same] may issue
orders and levy the civil penalty only after affording the
accused party the opportunity for a hearing as provided under 2
Pa.C.S. (relating to administrative law and procedure). The
penalty may be included in any subsequent action by the
secretary on said wage claim or may be exercised separately
after adjustment of such wage claim without court action. At the
request of an employee the department shall assign that portion
of the money due that constitutes wages, wage supplements,
interest on wages or wage supplements, and liquidated damages
due that employee, to that employee and file an order in that
amount in the name of that employee with the county clerk of the
county where the employer resides or has a place of business.
The filing of the order shall have the full force and effect of
a judgment duly docketed in the office of the clerk.

* * *

(h) The following shall apply:

(1) It is unlawful for an employer or the employer's agent,
or the officer or agent of a corporation, to discharge or in any
other manner discriminate against any employee who:

1 (i) files or submits a complaint under this act;
2 (ii) cooperates with the secretary or the secretary's
3 representative, submits evidence, testifies or is about to
4 testify before the secretary or the secretary's representative
5 in any investigation or proceeding under or related to this act;
6 (iii) the employer believes may take the actions under this
7 paragraph or paragraph (2);
8 (iv) exercises any right under this act or any regulation
9 implementing its provisions; or
10 (v) provides assistance or information to another employe
11 about this act.

12 An employer shall, upon conviction thereof, be sentenced to pay
13 a fine of not less than five hundred dollars (\$500) nor more
14 than one thousand dollars (\$1,000), and in default of the
15 payment of the fine and costs, shall be sentenced to
16 imprisonment for not less than 10 days nor more than 90 days.

17 (2) A first offense under this subsection shall be graded as
18 a summary offense. A second or subsequent offense under this
19 subsection, committed within a five-year period of the prior
20 offense, shall be graded as a misdemeanor of the third degree
21 and shall be punishable by a fine of not less than one thousand
22 dollars (\$1,000) nor more than three thousand dollars (\$3,000)
23 or to imprisonment of not less than 10 days nor more than 100
24 days. Each day of the failure to comply with this subsection or
25 the regulations of this subsection and each employe who is
26 discharged or in any other manner discriminated against shall
27 constitute a separate offense subject to a separate penalty. An
28 employer and the employer's agent, or the officer or agent of
29 any corporation, may also be required to pay the employe an
30 amount set by the court sufficient to compensate the employe and

1 deter future violations.

2 Section 4. Sections 10 and 11.1 of the act are amended to
3 read:

4 Section 10. Liquidated Damages.--Where wages remain unpaid
5 for thirty days beyond the regularly scheduled payday, or, in
6 the case where no regularly scheduled payday is applicable, for
7 sixty days beyond the filing by the employee of a proper claim or
8 for sixty days beyond the date of the agreement, award or other
9 act making wages payable, or where shortages in the wage
10 payments made exceed five percent (5%) of the gross wages
11 payable on any two regularly scheduled paydays in the same
12 calendar quarter, and no good faith contest or dispute of any
13 wage claim including the good faith assertion of a right of set-
14 off or counter-claim exists accounting for such non-payment, the
15 employee shall be entitled to claim, in addition, as liquidated
16 damages an amount equal to [twenty-five percent (25%) of the
17 total amount of wages due, or five hundred dollars (\$500),
18 whichever is greater.] twice the underpaid wages due or one
19 thousand dollars (\$1,000), whichever is greater. Each week in
20 which an employee is paid less than the applicable wage under
21 this act shall constitute a separate violation that shall be
22 subject to a separate penalty.

23 Section 11.1. Criminal Penalties.--(a) The secretary or any
24 employee, group of employees, labor organization or party to whom
25 any type of wages is payable may institute prosecutions under
26 this act.

27 (b) In addition to any other penalty or punishment otherwise
28 prescribed by law, any employer who violates any provisions of
29 this act [shall be guilty of a summary offense and, upon
30 conviction thereof,] shall be punished by a fine of not [more]

1 less than three hundred dollars (\$300) nor more than one
2 thousand dollars (\$1,000), or by imprisonment up to 90 days, or
3 by both[, for each offense]. Each day of the failure to comply
4 with this act, and each employee against whom the employer or
5 officer or agent of any corporation violated any other provision
6 of this act, shall constitute a separate offense that shall be
7 subject to a separate penalty. A first offense under this
8 subsection shall be graded as a summary offense. A second or
9 subsequent offense under this subsection, committed within a
10 five-year period of the prior offense, shall be graded as a
11 misdemeanor of the third degree and shall be punishable by a
12 fine of not less than five hundred dollars (\$500) nor more than
13 one thousand dollars (\$1,000). The good faith contest or dispute
14 by any employer of any wage claim or the good faith assertion of
15 a right of set-off or counter-claim shall not be considered a
16 violation of this act: Provided, That the employer has paid all
17 wages due in excess of the amount in dispute or asserted to be
18 subject to a right of set-off or counter-claim. [Nonpayment of
19 wages to, on account of, or for the benefit of each individual
20 employe shall constitute a separate offense.]

21 (c) Where such employer is a corporation, the president,
22 secretary, treasurer or officers exercising corresponding
23 functions shall each be guilty of such summary offense.

24 (d) [All fines or penalties collected under this act shall
25 be paid into the State Treasury through the Department of
26 Revenue to the credit of the General Fund.] All fines and
27 penalties collected under section 9.1 and this section, as well
28 as section 12 of the act of January 17, 1968 (P.L.11, No.5),
29 known as The Minimum Wage Act of 1968, shall be deposited into
30 the Wage Enforcement Fund established under section 11.3. This

subsection shall not apply to penalties and wages paid to employees for violations of this act or The Minimum Wage Act of 1968.

Section 5. The act is amended by adding sections to read:

Section 11.2. Employer Liability.--An employer similar in operation and ownership to another employer found in violation of section 9.1(c) or (h) or 11.1(b) shall be deemed the same employer for the purposes of this section if the employees of the similar employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors, or if the similar employer has substantially the same production process, produces substantially the same products and has the same body of customers as the other employer found in violation of section 9.1(c) or (h) or 11.1(b). The similar employer shall continue to be subject to section 9.1(c) or (h) or 11.1(b) and shall be liable for the acts of the other employer under section 9.1(c) or (h) or 11.1(b), as applicable.

Section 11.3. Wage Enforcement Fund.--(a) The Wage Enforcement Fund is established in the State Treasury. The money in the Wage Enforcement Fund shall consist of the fines and penalties collected under sections 9.1 and 11.1 and section 12 of the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, and deposited into the fund pursuant to section 12 of The Minimum Wage Act of 1968.

(b) Money in the Wage Enforcement Fund is hereby appropriated on a continuing basis, upon approval of the Governor, to the department for periodic inspections, for investigations of violations and for the enforcement of this act and The Minimum Wage Act of 1968, including, but not limited to,

1 staffing for inspection, investigation and enforcement under
2 this act and The Minimum Wage Act of 1968.

3 (c) No money may be expended or obligated from the Wage
4 Enforcement Fund to any third party for any other purpose than
5 investigation, training investigators and enforcement under this
6 act and The Minimum Wage Act of 1968.

7 (d) Money in the Wage Enforcement Fund shall not lapse at
8 any time or be transferred to any other fund, except as provided
9 in section 12 of The Minimum Wage Act of 1968.

10 (e) No later than June 30 of each calendar year the
11 department shall provide a report to the Governor and the
12 General Assembly, through the Secretary-Parliamentarian of the
13 Senate and the Chief Clerk of the House of Representatives,
14 regarding the Wage Enforcement Fund. The report shall include an
15 accounting for the fines collected and deposited into the fund,
16 the expenditures and transfers from the fund during the prior
17 year, a description of the purposes for which expenditures from
18 the fund were made in the prior year and a full account of the
19 data collections required of the department under section 7 of
20 The Minimum Wage Act of 1968. This report shall be posted on the
21 department's publicly accessible Internet website no later than
22 July 1 of each calendar year.

23 Section 6. This act shall take effect in 60 days.