

No. 15. An act relating to payment of wages.

(H.280)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. § 341 is amended to read:

§ 341. DEFINITIONS

As used in this subchapter:

~~(a)~~(1) “Employee” ~~as used in this chapter~~ means a person who has entered into the employment of an employer, where the employer is unable to show that:

~~(1)~~(A) the individual has been and will continue to be free from control or direction over the performance of such services, both under the contract of service and in fact; and

~~(2)~~(B) the service is either outside all the usual course of business for which such service is performed, or outside all the places of business of the enterprise for which such service is performed; and

~~(3)~~(C) the individual is customarily engaged in an independently established trade, occupation, profession or business.

~~(b)~~(2) “Employer” ~~as used in sections 342-345 of this title~~ means any person having employees in his or her service.

(3) “Commissioner” means the Commissioner of Labor or designee.

(4) “Department” means the Department of Labor.

(5) “Wages” means all remuneration payable for services rendered by an employee, including salary, commissions, and incentive pay.

Sec. 2. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a)(1) Any ~~person~~ employer having one or more employees doing and transacting business within the ~~state~~ State shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employee or employees, any ~~person~~ employer having an employee or employees doing and transacting business within the ~~state~~ State may, notwithstanding subdivision (1) of this subsection, pay biweekly or semimonthly in lawful money or checks; each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

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Sec. 3. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

(a) ~~Upon complaint to the department of labor by an employee that wages have not been paid to the employee by the employer, the commissioner of labor or the commissioner's agent shall investigate the complaint, examine the employer's records, attempt to arrange a settlement between the employer and the employee and, if the attempt fails, shall, upon a finding based on clear and~~

~~convincing evidence that unpaid wages are owed to the employee by the employer, collect from the employer the amounts due and remit them to the employee.~~ An employee or the Department on its own motion may file a complaint that wages have not been paid to an employee, not later than two years from the date the wages were due. The Commissioner shall provide notice and a copy of the complaint to the employer by service, or by certified mail sent to the employer's last known address, together with an order to file with the Department within 10 calendar days of receipt.

(b) ~~If the commissioner finds that the unpaid wages were willfully withheld by the employer, the commissioner may collect from the employer an additional amount not to exceed twice the amount of the unpaid wages, one-half of which will be remitted to the employee and one half of which shall be retained by the commissioner to offset estimated administrative and collection costs.~~ The Commissioner shall investigate the complaint, and may examine the employer's records, enter and inspect the employer's business premises, question such employees, subpoena witnesses, and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to investigate the complaint. If a person fails to comply with any lawfully issued subpoena, or a witness refuses to testify to any matter on which he or she may be lawfully interrogated, the Commissioner may seek an order from the Civil Division of the Superior Court compelling testimony or compliance with the subpoena.

(c) ~~The commissioner shall enforce an order for collection under this section in superior court. The commissioner may authorize an agent to administer oaths and to compel testimony for the purposes of this section.~~ If after the investigation wages are found to be due, the Commissioner shall attempt to settle the matter between the employer and employee. If the attempt fails, the Commissioner shall issue a written determination and order for collection, which shall specify the facts and the conclusions upon which the determination is based. The Department shall collect from the employer the amounts due and remit them to the employee. Notice of the determination and the order for collection to the employer shall be provided to all interested parties by certified mail or service.

(d) If the Commissioner determines that the unpaid wages were willfully withheld by the employer, the order for collection may provide that the employer is liable to pay an additional amount not to exceed twice the amount of unpaid wages, one-half of which will be remitted to the employee and one-half of which shall be retained by the Commissioner to offset administrative and collection costs.

(e) Within 30 days after the date of the collection order, the employer or employee may file an appeal from the determination to a departmental administrative law judge. The appeal shall, after notice to the employer and employee, be heard by the administrative law judge within a reasonable time. The administrative law judge shall review the complaint de novo, and after a

hearing, the determination and order for collection shall be sustained, modified, or reversed by the administrative law judge. Prompt notice in writing of the decision of the administrative law judge and the reasons for it shall be given to all interested parties.

(f) Notwithstanding any other provision of law, the employer or employee may appeal the decision of the administrative law judge within 30 days by filing a written request with the Employment Security Board. The appeal shall be heard by the Board after notice to the employee and employer. The Board may affirm, modify, or reverse the decision of the administrative law judge solely on the basis of evidence in the record or any additional evidence it may direct to be taken. Prompt notice of the decision of the Board shall be given to the employer and employee in the manner provided by section 1357 of this title. The Board's decision shall be final unless an appeal to the Supreme Court is taken. Testimony given at any hearing upon a complaint of unpaid wages shall be recorded, but the record need not be transcribed unless ordered. The costs of transcription shall be paid by the requesting party.

(g) The Commissioner may enforce a final order for collection under this section within two years of the date of the final order in the Civil Division of the Superior Court.

(h) Information obtained from any employer, employee, or witness in the course of investigating a complaint of unpaid wages shall be confidential and shall not be disclosed or open to public inspection in any manner that reveals

the employee's or employer's identity or be admissible in evidence in any action or proceeding other than one arising under this subchapter. However, such information may be released to any public official for the purposes provided in subdivision 1314(e)(1) of this title.

Sec. 4. 21 V.S.A. § 345 is amended to read:

§ 345. ~~PENALTY FOR NONPAYMENT OF WAGES~~ AND BENEFITS

(a) Each employer who violates sections 342 and 343 of this title ~~and the officers of any corporation, cooperative or stock association, who fraudulently permit their corporation, or cooperative association to violate these sections,~~ shall be fined not more than \$ ~~500.00~~ or imprisoned not more than one year or both. ~~Upon conviction, the court shall make an order requiring the payment of wages due and not paid \$5,000.00.~~ Where the employer is a corporation, the president or other officers who have control of the payment operations of the corporation shall be considered employers and liable to the employee for actual wages due when the officer has willfully and without good cause participated in knowing violations of this chapter.

(b) In addition to any other penalty or punishment otherwise prescribed by law, any employer who, pursuant to an oral or written employment agreement, is required to provide benefits to an employee shall be liable to the employee for actual damages caused by the failure to pay for the benefits, and where the failure to pay is knowing and willful and continues for 30 days after the

payments are due shall be assessed a civil penalty by the Commissioner of not more than \$5,000.00.

(c) The Commissioner may enforce collection of the fines assessed under this section in the Civil Division of the Superior Court.

Sec. 5. 21 V.S.A. § 345a is amended to read:

§ 345a. ~~FAILURE OF ANY EMPLOYER TO PROVIDE BENEFITS FOR EMPLOYEES~~

~~In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to a written agreement to provide benefits or wage supplements, and who fails to pay the amount required by the agreement:~~

~~(1) shall be liable to the employee for actual damages caused by the failure to pay; and~~

~~(2) where the failure to pay is fraudulently made and continues for 30 days after such payments are required to be made, shall be fined not more than \$500.00 or imprisoned not more than one year, or both. Where the employer is a corporation, the president and other officers who have control of funds of the corporation shall be considered employers for the purposes of this section. The court, in passing sentence, shall make an order requiring the employer to pay over to the employee the benefits or wage supplements to which he or she is entitled. [Repealed]~~

Sec. 6. 21 V.S.A. § 347 is amended to read:

§ 347. FORFEITURE

~~A person~~ An employer who violates section 342 or 343 of this title shall forfeit to the individual injured twice the value thereof, to be recovered in a civil action, and all costs and reasonable attorney's fees. However, ~~no~~ an action may not be maintained under this section unless at the time the action is brought, the wages remain unpaid or improperly paid.

Sec. 7. 3 V.S.A. § 816 is amended to read:

§ 816. EXEMPTIONS

(a) Sections 809-813 of this title shall not apply to:

* * *

(3) Acts, decisions, findings, or determinations by the ~~department of labor or the commissioner of labor~~ Department of Labor or the Commissioner of Labor or his or her, its or their duly authorized agents as to any and all procedures or hearings before and by the ~~department or commissioner~~ Department or Commissioner or his or her or their ~~said~~ agents, arising out of or with respect to 21 V.S.A. chapter 5, subchapter 2, and chapters 9 and 11 of Title 21.

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Sec. 8. 21 V.S.A. § 348 is added to read:

§ 348. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) the employee lodged a complaint of a violation of this subchapter;

(2) the employee has cooperated with the Commissioner in an investigation of a violation of this subchapter; or

(3) the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the Civil Division of the Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 9. 21 V.S.A. § 397 is added to read;

§ 397. RETALIATION PROHIBITED

(a) An employer shall not discharge or in any other manner retaliate against an employee because:

(1) the employee lodged a complaint of a violation of this subchapter;

(2) the employee has cooperated with the Commissioner in an investigation of a violation of this subchapter; or

(3) the employer believes that the employee may lodge a complaint or cooperate in an investigation of a violation of this subchapter.

(b) Any person aggrieved by a violation of this section may bring an action in the Civil Division of the Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney's fees, and other appropriate relief.

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

Date the Governor signed the bill: May 3, 2013