97853-1

NO. 78278-9

THE SUPREME COURT OF THE STATE OF WASHINGTON

WILLIAM SORNSIN, an individual, MARC T. BECK, an individual, ROBERT GOREE, an individual, AARTI VARMA, an individual, EVAN W. LEWIS, an individual, BENJAMIN G. JOLDERSMA, an individual, BRIAN N. KU, an individual, DAMIEN JOLDERSMA, an individual, DONALD J. CLORE, an individual, JOSEPH C. WRIGHT, an individual,

Appellants
v.

SCOUT MEDIA, INC. a Delaware corporation, CRAIG and JANE DOE MALLITZ, and their marital community, CRAIG AMAZEEN, an individual, JOE and JANE DOE ROBINSON, and their marital community, TAMMER and JANE DOE FAHMY, and their marital community, PILOT GROUP GP, LLC, a Delaware corporation, and JANE and JOHN DOES 1 through 8,

Respondents.

APPELLANTS' PETITION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER AND CITATION.

Appellants William Sornsin, Marc T. Beck, Robert Goree, Aarti Varma, Evan W. Lewis, Benjamin G. Joldersma, Brian N. Ku, Damien Joldersma, Donald J. Clore, and Joseph C. Wright, respectfully petition the Supreme Court to grant discretionary review of *Sornsin, et al v. Scout Media, Inc. et al*, No. 78278-9-I, 2019 Wash. App. LEXIS 2600, 2019 WL 5107004 (Ct. App. Oct. 14, 2019).

II. ISSUE PRESENTED FOR REVIEW.

Does the definition of "wage" include compensation at termination of employment for Paid Time Off that has been earned by an employee?

III. STATEMENT OF THE CASE.

A. Introduction.

This case arises from a policy in Scout Media, Inc.'s ("Scout") Employee Handbook that effects the forfeiture of earned Paid Time Off ("PTO") benefits if an employee does not provide two weeks' notice prior to resignation. The Court of Appeals incorrectly held that Scout's Employee Handbook is a contract and that Appellants' PTO benefits are subject only to the "contract" between Scout and its former employees. The Court of Appeals also held that PTO is not a "wage" under Washington law reasoning that there is no statutory right to payout for PTO earned on an hours worked basis in contradiction of this Court's definition of "wage." Because this case presents both matters of public interest and the Court of Appeals's decision is in conflict with published authority, review by the Supreme Court is warranted.

B. Factual History of the Case

Appellants worked for Scout in various capacities and for different lengths of time but all of them resigned their employment on July 19, 2016. CP 125-33; 152-57; 160-65. Employees of Scout accrued PTO at a rate of between 4.62 and 9.24 hours per pay period. CP 113. Scout's Employee Handbook states, "[n]othing in these guidelines should be construed as creating any contractual rights or obligations." CP 92. Upon their departure, Appellants received a document from Scout that stated in pertinent part that all accrued PTO would be paid at 100%. CP 132, 138-141.

When PTO was not paid on July 21, 2016, Appellant William Sornsin emailed to the Respondents, among others, the Appellants' demand for payment of accrued PTO. CP 132-136. Respondents Mallitz, Robinson, and Fahmy were on Scout's board of directors and Respondent Amazeen was the President of Scout on the date of Appellants' resignations. CP 132. Scout willfully failed to pay the Appellants their wages at the direction of its Board of Directors. CP 159. Following Scout's bankruptcy, the Respondents have continued to withhold payment of the Appellants' wages. Furthermore, Respondents have testified that they knew that Appellants had not been paid their accrued PTO and that the Respondents did nothing to ensure payment of Appellants' accrued PTO. CP 279; 282-283; 289-290; 235.

C. Relevant Procedural History Of This Action

This action was filed by the Appellants on December 16, 2016. CP 1-8. Respondents answered on June 7, 2017. CP 15-26.

On February 9, 2018, Appellants and Respondents filed competing Motions for Summary Judgment. On March 9, 2018, Judge North granted Respondents' Motion for Summary Judgment and dismissed Appellants' claims with prejudice. CP 663. In the same order, Judge North denied Appellants' Motion for Partial Summary Judgment. *Id.*

Appellants appealed, and Division I of the Court of Appeals affirmed the trial court's determination in an opinion dated October 14, 2019.

IV. ARGUMENT.

Under RAP 13.4(b), the Supreme Court will grant discretionary review if a decision conflicts with Supreme Court or published Court of Appeals authority, or if it presents an issue of substantial public interest.

A. There Is A Public Interest in Whether Accrued PTO Should Be Treated as Wages Under the Law.

Many employees in Washington earn PTO in a manner that is the same or substantially similar to the Appellants in this case. There is a public interest in determining whether such earned PTO is to be treated as a wage or whether an employer can institute an arbitrary policy to cut off payment for earned PTO.

When an employee's employment ends, "whether by discharge or by voluntary withdrawal, the wages due him or her…shall be paid to him

or her at the end of the established pay period[.]" RCW 49.48.010. When an employer refuses to pay wages "[a]ny employer and any officer, vice principal or agent of any employer…shall be liable in a civil action by the aggrieved employee…to judgment for twice the amount of the wages unlawfully…withheld[.]" RCW 49.52.070. "A person is a 'vice principal'' and personally liable under RCW 49.52.070 in a wrongful withholding of wages case when that person exercises control over the payment of funds and acts under that authority." *Durand v. HIMC Corp*., 151 Wn. App. 818, 835, 214 P.3d 189 (2009) (citing *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 22 P.3d 795 (2001)). Furthermore, "financial inability of an employer to pay wages owed is not a defense to avoid personal liability." *Morgan v. Kingen*, 166 Wn.2d 526, 535, 210 P.3d 995 (2009). This is true regardless of whether an employer enters bankruptcy. *Id*.; *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 163-64 (1998).

In defining the term "wages" for the purposes of RCW 49.48 *et seq.* "Washington Courts have looked to the definition of this term in a related statute, RCW 49.46.010(2)." *McGinnity v. AutoNation, Inc.*, 149 Wn. App. 277, 284, 202 P.3d 1009 (2009). "'Wage' means compensation due to an employee by reason of employment[.]" RCW 49.46.010(7). This Court has expanded the definition of "wage" to include "payments tied to hours worked." *Hisle v. Todd Pac. Shipyards*, 151 Wn.2d 853, 868, 93 P.3d 108 (2004).

Scout's employee handbook contains the following formula for

employee accrual of PTO:

PTO Allotment

Company provided PTO is granted to Full Time Regular employees hired after January 1, 2013 as follows in a calendar year:

Years of Service:	Full-Time	Accrual Per Pay Period
1–4 years	120 hours	4.62
5-9 years	160 hours	6.16
10-19 years	200 hours	7.70
20 or more years	240 hours	9.24

CP 113.

The employees would accrue PTO based on hours worked or each "pay period." The employee could then receive pay when they took time off for vacation or sick leave. The accrued PTO should fall under the definition of "wage" because it is directly tied to an employee's hours worked.

Scout's employee handbook also contains a provision that works a forfeiture of payment for accrued PTO upon an employee's termination of employment:

PTO Pay Upon Termination

Employees will be paid out 70% of PTO they have accrued at employment end. If an employee leaves the Company before accruing what has already been taken, at the time of the employee's last paycheck, the employee will be responsible for payment of PTO time owed to the Company.

Scout reserves the right to withhold any and all PTO time if an employee neglects to give a two week notice of termination regardless of position or length of service.

CP 114.

Appellants' PTO wages were withheld under this policy. Appellants argued at summary judgment and at the Court of Appeals that this provision, which denies an employee compensation for hours already worked, was precluded by Washington law. The Court of Appeals reasoned, citing Montana and Minnesota cases, that an employer can

condition payment for accrued PTO. Slip Op. at 8.

The Court of Appeals also cited *Walters v. Ctr. Elec. Inc.*[1] reasoning that a "right to payment for accrued PTO is only contractual." Slip Op. at 7. However, *Walters* is a breach of contract case where the court stated in pertinent part, "[c]learly…we are not…interpreting any statute which pertains to vacation pay or vacation time. Neither are we ascertaining whether or not pay in lieu of vacation constitutes 'wages' under a wage payment act such as RCW 49.48.010." 8 Wn. App. at 326.

The Court of Appeals reasoned that "appellants claim that the manual is not a contract, they do not identify any other contract providing them with PTO payment rights." Slip Op. at 7. Despite the Respondents' arguments, Scout's Employee Handbook is not a contract. CP 92. It is a document that unilaterally sets policies for the company. In setting those policies, the handbook created a statutory right to payment for accrued PTO because such payments are "directly tied to hours worked." *Hisle*, 151 Wn.2d at 863.

When an employer has received the benefit of an employee's labor it should not be allowed to deny the employee those earned wages by creating an arbitrary condition. The condition of working the hours to earn the PTO should be the only condition allowable under Washington law. Any other approach provides employers the opportunity to arbitrarily withhold earned wages from employees.

[1] 8 Wn. App. 322, 506 P.2d 889 (1973).

B. It is in The Interest of the State to Recognize Workers' Rights That Are Competitive With Those of Neighboring States.

Washington has long prided itself on being a pioneer for the protection of employee rights. See *Hisle,* 151 Wn.2d at 861 (Washington is "a pioneer for protection of employee rights.")(citing *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 996 P.2d 582 (2000)); *Schilling,* 136 Wn.2d at 159 ("The [wage] statute must be liberally construed to advance the Legislature's intent to protect employee wages and assure payment."). However, on this issue, Washington is several decades behind other western states as well as a number of other states.

In its decision, the Court of Appeals ignores this Court's definition of "wage" set forth in *Hisle* which compels the same conclusion that has been reached in Oregon, Idaho, and California; that accrued PTO, tied to hours worked, are deferred wages that the employee has earned and must be compensated for upon termination of employment.

There are certain states that mandate the payment of accrued PTO by express statutory language. Both Louisiana and Nebraska are such states. The wage statute in Nebraska specifically requires the payment of "earned but unused vacation leave to a separating employee." *Fisher v. Payflex Sys. USA, Inc.*, 285 Neb. 808, 813, 829 N.W. 2d 703 (2013) (citing Neb. Rev. Stat. § 48-1229(4)). However, Nebraska's Supreme Court reasoned that the statute requiring payment for vacation leave also required the payment of unused PTO hours because the employees "had an absolute right to take this time off for any purpose they wished[.]"

Fisher, 285 Neb. at 819.

Similarly, in Louisiana, "unused 'paid time off' that an employee has **accrued** during the course of and based on work under the terms of his or her employment constitutes **wages earned during a pay period** due under the Louisiana Wage Payment Act." *Davis v. St. Francisville Country Manor, LLC*, 136 So. 3d 20, 24 (La. Ct. App. 2013) (emphasis in original) (citing *Boudreaux v. Hamilton Medical Group, Inc.*, 644 So. 2d 619 (La. 1994). Louisiana's statutory scheme even contemplates the injustice that Scout's employee handbook seeks to perpetrate: "The provision of this Subsection shall not be interpreted to allow the forfeiture of any vacation pay actually earned by an employee pursuant to the employer's policy." La. Rev. Stat. Ann. § 23.631(D)(2). "When an employer promises a benefit to employees, and employees accept by their actions in meeting the conditions, the result is a not a mere gratuity or illusory promise, but a vested right in the employee to the promised benefit." *Davis*, 136 So. 3d at 24 (citing *Knecht v. Board of Trustees for State Colleges and Universities and Northwestern State University*, 591 So. 2d 690 (La. 1991)).

Several other states have found a statutory right to payout for earned PTO without express statutory language to that effect. For example, Oregon "construe[s] 'wages' to mean *all* earned compensation contracted to be paid by the employer for the employee's personal service regardless of the nature of such compensation." *State ex rel. Nilsen v.*

Oregon State Motor Asso., 248 Ore. 133, 136, 432 P.2d 512 (1967). "No discretion is vested in the employer to withhold the vacation provided the employee meets the contract terms for eligibility. To earn this right the employee is required to perform personal service. The vacation is given for this personal service."[2] *Id*. "As commonly understood, the term 'wages' as well as the term 'compensation' includes vacation pay." *Id*. 248 Ore. at 138. Oregon comes by this definition indirectly[3] in almost an identical manner that Appellants pray this Court interpret "wage" based on the definition from *Hisle*.

Idaho also interprets "wages" to include pay out for accrued PTO. *Whitlock v. Haney Seed Co.*, 114 Idaho 628, 634-35, 759 P.2d 919 (1988).[4] There the court reasoned "payment for earned vacation is directly analogous to wages. All courts that have considered this question under their respective wage claim statutes have concluded likewise." *Id*. 114 Idaho at 634 n.6 (citing *Hartman v. Freedman*, 197 Colo. 275, 591 P.2d 1318 (1979); *Die & Mold, Inc. v. Western*, 448 N.E.2d 44 (Ind.Ct.App.1983); *Tompkins v. Schering Corp.*, 441 So.2d 455 (La.Ct.App.1983); *Nilsen*, 248 Or. 133, 432 P.2d 512 (1967)).

Similarly, California has held that "[t]he right to a paid vacation,

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[2] It is important to note that the conditions provided for in Oregon, as well as in other states, is the actual work performed to earn the PTO, not satisfying an arbitrary policy, like providing two-weeks' notice.
[3] *Nilsen*, 248 Or. at 135.
[4] Since *Whitlock* was decided, Idaho Code Ann. § 45-609 has been redesignated as Idaho Code Ann. § 45-601, a copy of which can be found in the appendix.

when offered in an employer's policy or contract of employment, constitutes deferred wages for services rendered. Case law from this state and others, as well as principles of equity and justice compel the conclusion that a proportionate right to a paid vacation 'vests' as the labor is rendered." *Suastez v. Plastic Dress-Up Co.*, 31 Cal. 3d 774, 784, 647 P.2d 122 (1982). This "right is protected from forfeiture by [Cal. Lab. Code] § 227.3." *Id*. However, "[e]ven before the enactment of section 227.3…[c]ourts have allowed recovery for vacation pay despite the fact that contract eligibility requirements were not met, if the employee had substantially performed." *Id*. 31 Cal. 3d at 783.

In reaching this conclusion, the Supreme Court of California reasoned, "[i]t is established that vacation pay is not a gratuity or a gift, but is, in effect, additional wages for services performed. *Id*. 31 Cal. 3d at 779 (citation omitted). "Courts in other jurisdictions which have considered whether discharged or striking employees have a 'vested' right to a pro rata share of vacation pay have uniformly held that the right vests as services are rendered." *Id*. 31 Cal. 3d at 781.

> It is beyond dispute that an agreement to pay vacation pay to employees made to them before they performed their services, and based upon length of service and time worked, is not a gratuity but is a form of compensation for services, and when the services are rendered, the right to secure the promised compensation is vested as much as the right to receive wages or other form of compensation.

Id. (citing *Livestock Feeds v. Local Union No. 1634*, 73 So.2d 128 (Miss.

1954).

"If some share of vacation pay is earned daily, it would be both inconsistent and inequitable to hold that employment on an arbitrary date is a condition precedent to the vesting of the right to such pay." *Suastez*, 31 Cal. 3d at 782.

The Scout Employee Handbook's arbitrary denial of full compensation for accrued PTO would be precluded in all of the above-mentioned states. All of these states, whether expressly by statute or by interpretation of wage statutes, define payment for accrued PTO be a wage that has been earned by an employee. The same is true of the forfeiture contained in Scout's Employee Handbook. Certain states expressly forbid such a forfeiture in the statutory schemes while others simply require the full payment of earned wages, in this case earned PTO.

V. CONCLUSION.

As the Appellants have demonstrated, the Court of Appeals' decision conflicts with existing authority and raises substantial issues affecting the public interest. The Court of Appeals failed to interpret Washington's entire statutory scheme related to the payment of wages in the form of accrued PTO. For these reasons, the Appellants respectfully request the Court grant discretionary review.

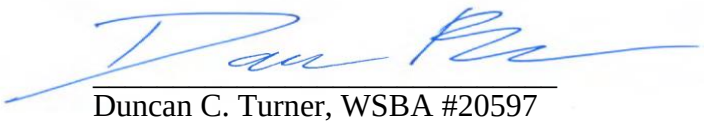
VI. APPENDIX.

The following documents are attached:

- Appendix A: Court of Appeals Published Opinion
- Appendix B: California Labor Code §200
- Appendix C: California Labor Code §227.3
- Appendix D: Idaho Code §45-601
- Appendix E: Idaho Code §45-606
- Appendix F: Louisiana Revised Statutes §23:631-1
- Appendix G: Oregon Revised Statutes §652.320
- Appendix H: Revised Code of Washington 49.46.010
- Appendix I: Revised Code of Washington 49.46.090
- Appendix J: Revised Code of Washington 49.46.120
- Appendix K: Revised Code of Washington 49.48.010
- Appendix L: Revised Code of Washington 49.52.050
- Appendix M: Revised Code of Washington 49.52.070
- Appendix N: Revised Statutes of Nebraska §48-1229

Respectfully submitted this **13th** day of **November**, 2019.

BADGLEY MULLINS LAW GROUP PLLC



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CERTIFICATE OF SERVICE

I, Yonten Dorjee, paralegal for BADGLEY MULLINS TURNER PLLC, attorneys for Appellant in the above entitled action, hereby certify under penalty of perjury that I am over the age of eighteen (18), and am competent to testify to the facts contained herein. On the 13th day of November, 2019, I served by sending a true and correct copy in the manner indicated below of the following documents:

1. **APPELLANTS' PETITION FOR DISCRETIONARY REVIEW**

upon the attorneys of record herein, as follows, to wit:

Stephen C. Willey, WSBA #24499 Sara Gohmann Bigelow, WSBA #43634 1425 4th Ave, #800 Seattle, WA 98101 Tel: 206-749-0500 Email: swilley@sbwllp.com Email: sgohmannbigelow@sbwllp.com ***Attorneys for Defendants-Respondents Craig Mallitz, Craig Amazeen, Joe Robinson, Tammer Fahmy, and Pilot Group GP, LLC***	***via Electronic Mail and WA State Appeal Courts' Portal Electronic Delivery System***

Yonten Dorjee, Paralegal
BADGLEY MULLINS TURNER PLLC

APPENDIX A

RICHARD D. JOHNSON,
Court Administrator/Clerk

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Seattle

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October 14, 2019

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CASE #: 78278-9-I
William Sornsin, et al, Appellants v. Scout Media Inc., et al, Respondents
King County, Cause No. 16-2-31081-8 SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We affirm."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

LAW

Enclosure

c: The Honorable Douglass North

FILED
10/14/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WILLIAM SORNSIN, an individual, MARC T. BECK, an individual, ROBERT GOREE, an individual, AARTI VARMA, an individual, EVAN W. LEWIS, an individual, BENJAMIN G. JOLDERSMA, an individual, BRIAN N. KU, an individual, DAMIEN JOLDERSMA, an individual, DONALD J. CLORE, an individual, JOSEPH C. WRIGHT, an individual, Appellants, v. SCOUT MEDIA, INC., a Delaware corporation, CRAIG and JANE DOE MALLITZ, and their marital community, CRAIG AMAZEEN, an individual, JOE and JANE DOE ROBINSON, and their marital community; TAMMER and JANE DOE FAHMY, and their marital community, PILOT GROUP GP, LLC, a Delaware corporation, and JANE and JOHN DOES 1 through 8, Respondents.	No. 78278-9-I DIVISION ONE PUBLISHED OPINION FILED: October 14, 2019

LEACH, J. — Ten former employees of Scout Media Inc. appeal the trial court's summary dismissal of their failure to pay wages claim. They claim an affirmative statutory entitlement to payment for accrued paid time off (PTO) that

they did not use before they voluntarily quit. Because they have no statutory right to payment and do not claim a contractual right, we affirm.

FACTS

On July 10, 2016, many members of the technology team of Scout Media Inc., including appellants, resigned at the same time without prior notice. The parties agree that Scout Media paid appellants all salary earned as of their date of resignation and did not pay appellants for their accrued and unused PTO. Scout's employee manual addresses "PTO Pay Upon Termination." It states, in relevant part, "Employees will be paid out 70% of PTO they have accrued at employment end. . . . Scout reserves the right to withhold any and all PTO time if an employee neglects to give a two week notice of termination regardless of position or length of service."

In early December 2016, Scout Media filed Chapter 11 bankruptcy proceedings.[1] Later that month, appellants filed a lawsuit against Scout Media, Scout Media's former president and former directors, and Pilot Group GP LLC, a former investor in Scout Media's parent company (together Scout), claiming failure to pay wages and unjust enrichment. Appellants later dismissed their claim of unjust enrichment and their claim against Pilot Group. Both parties filed

[1] Title 11 U.S.C.

motions for summary judgment. The court denied appellants' motion and granted Scout's motion. Appellants appeal.

STANDARD OF REVIEW

This court reviews an order granting summary judgment de novo and performs the same inquiry as the trial court.[2] It considers all facts and reasonable inferences in the light most favorable to the nonmoving party.[3] And it affirms summary judgment only when the evidence presented demonstrates no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[4]

ANALYSIS

Appellants make three claims: (1) they have an affirmative statutory right to payment of their accrued PTO, (2) the individual respondents are liable to them for the balance of their accrued PTO and for double damages because Scout's board of directors instructed Scout not to pay them for their accrued PTO, and (3) they are entitled to prejudgment interest on their unpaid PTO. We disagree.

Appellants assert that they have an affirmative statutory entitlement to payment for their accrued PTO because hours worked determines the amount of

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[2] Mohr v. Grant, 153 Wn.2d 812, 821, 108 P.3d 768 (2005).
[3] Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).
[4] Steinbach, 98 Wn.2d at 437.

accrued PTO, placing PTO within the definition of "wages" under former RCW 49.46.010(2) (2011). Scout responds that an employee's right to PTO is only contractual.

Appellants rely on cases where Washington courts have looked to former RCW 49.46.010(2)'s definition of "wages" to define "wages" in other statutory provisions.[5] RCW 49.46.010(7), formerly RCW 49.46.010(2),[6] defines "wages" as "compensation due to an employee by reason of employment." Appellants assert that McGinnity v. AutoNation, Inc.[7] shows that unpaid vacation benefits are wages under this definition and Naches Valley School District No. JT3 v. Cruzen[8] shows that a sick leave cash-out represents wages. These cases do not establish an affirmative statutory entitlement to payment for accrued PTO for two reasons.

First, each case examined whether the contested benefit was "wages" within the meaning of RCW 49.48.030, a fee shifting statute allowing an employee to recover attorney fees in any action in which the employee successfully recovers wages or salary owed to him.[9] RCW 49.48.030 is a

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[5] McGinnity v. AutoNation, 149 Wn. App. 277, 284, 202 P.3d 1009 (2009).

[6] In 2013, the legislature amended the statute and moved the definition of "wages" from subsection (2) to subsection (7). LAWS OF 2013, ch. 141, § 1.

[7] 149 Wn. App. 277, 285, 202 P.3d 1009 (2009).

[8] 54 Wn. App. 388, 398-99, 775 P.2d 960 (1989).

[9] McGinnity, 149 Wn. App. at 284-85; Cruzen, 54 Wn. App. at 399.

remedial statute that must be construed liberally in favor of the employee.[10] McGinnity's and Cruzen's characterization of unpaid vacation and sick leave as wages is specific to this remedial attorney fees statute. It is not at issue here.

Second, the contested benefits were contractual, not statutory. In McGinnity, plaintiffs prevailed on their breach of contract claim for loss of vacation benefits.[11] And in Cruzen, the language of the collective bargaining agreement (CBA) at issue required that the school district pay teachers for their sick leave accrued for the contract period.[12] Neither case involved failure to pay a statutorily required amount, like a minimum wage or overtime.

Next, appellants note a statement in Hisle v. Todd Pacific Shipyards Corp.[13] that RCW 49.46.010(7)'s definition of "wages" includes payments that are "tied to hours worked." But our Supreme Court cited former RCW 49.46.010(2)'s definition of "wages" only as context to explain that the Washington Minimum Wage Act (MWA)[14] prohibits employees and employers from bargaining collectively to establish wages or other conditions less than the statutory minimum but does not otherwise restrict their freedom to bargain.[15] The court ultimately held that the CBA provision for a retroactive payment, tied to hours

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[10] McGinnity, 149 Wn. App. at 284.
[11] McGinnity, 149 Wn. App. at 281.
[12] Cruzen, 54 Wn. App. at 396.
[13] 151 Wn.2d 853, 868, 93 P.3d 108 (2004).
[14] Ch. 49.46 RCW.
[15] Hisle, 151 Wn.2d at 861.

worked, was subject to the overtime provisions of the MWA.[16] Hisle does not concern accrued PTO or a statutory right to PTO. Instead, it involves a contractual wage entitlement to which the MWA applied. Appellants neither claim a contractual right to payment of their PTO nor claim a statutory right based on a specific statutory guaranty like the MWA's overtime provision.

Appellants cite no case, treatise, or other authority directly supporting their claim that they have an affirmative statutory entitlement to payment for their accrued PTO.

Scout claims that an employee's right to payment for accrued PTO is only contractual and additionally asserts that Scout's manual is a contract that establishes appellants' PTO rights. First, Scout relies on Walters v. Center Electric, Inc.,[17] in which Walters claimed that he had a right to vacation pay in lieu of vacation time. In rejecting this argument, Division Two stated, "The amount of vacation time to which an employee is entitled is determined by the terms of the employment contract. . . . There is nothing in Mr. Walters' contract of employment which expressly grants the right to extra compensation."[18] Second, Scout cites Teamsters, Local 117 v. Northwest Beverages, Inc.,[19] in which this court stated that the collective bargaining agreement did not provide for a cash-

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[16] Hisle, 151 Wn.2d at 862-63.
[17] 8 Wn. App. 322, 326, 506 P.2d 883 (1973).
[18] Walters, 8 Wn. App. at 326-27.
[19] 95 Wn. App. 767, 768, 976 P.2d 1262 (1999).

out of accrued but unused sick leave. And "[n]o statute, ordinance, or any source directs this employer to cash out accrued but unused sick leave."[20] This court reasoned, "Cruzen does not support a conclusion that sick leave is a form of wages when the CBA does not have a cashout provision." "[A]ccrued sick leave is a contingent benefit that does not constitute wages under this statute unless it is so defined by another source."[21] Appellants cite no authority to counter the proposition that in Washington an employee's right to payment for accrued PTO is only contractual.

Although appellants claim that the manual is not a contract, they do not identify any other contract providing them with PTO payment rights. And they assert that the manual's PTO pay-upon-termination policy conflicts with Washington wage law because it limits payment to 70 percent of an employee's accrued PTO and conditions payment on the employee giving two weeks' notice of his termination. This argument conflicts with the Washington State Department of Labor & Industries (DLI) guidance on workplace rights. The DLI advises,

> Paid vacation, holiday, and severance pay are considered voluntary benefits that a business may choose to offer workers. Washington State law does not require a business to provide these benefits. Even though there is no state law requiring a business to pay these benefits upon termination, if the business promises workers these

[20] Nw. Beverages, 95 Wn. App. at 768.
[21] Nw. Beverages, 95 Wn. App. at 768-69.

> benefits and does not follow through, workers can contact an attorney or file in small claims court for their unpaid benefits.[22]

In addition, Scout cites two cases from other jurisdictions to persuade this court that an employer may condition payment of accrued benefits on conditions precedent. In Chipman v. Northwest Healthcare Corp., Applied Health Services, Inc.,[23] the Supreme Court of Montana stated, "The right to earn compensation for personal time may be subject to reasonable restrictions and conditions precedent." And in Lee v. Fresenius Medical Care, Inc.,[24] the Supreme Court of Minnesota stated, "[E]mployers are permitted to set conditions that employees must meet in order to exercise their earned right to vacation time with pay[, including] the right to accrued vacation 'wages,' whether in the form of actual paid time off or payment in lieu of paid time off." Scout's appellate counsel stated during oral argument that he is unaware of any in-state or out-of-state authority prohibiting an employer from conditioning payment for accrued PTO. Appellants have not cited any. And appellants did not comply with the manual's requirement that employees provide two weeks' notice of termination to receive 70 percent of their accrued PTO.

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[22] Washington State Department of Labor & Industries https://www.lni.wa.gov/WorkplaceRights/Wages/PayReq/FinalPay/default.asp. (last visited Oct. 7, 2019).

[23] 2014 MT 15, ¶ 22, 373 Mont. 360, 317 P.3d 182.

[24] 741 N.W.2d 117, 126 (2007).

Because appellants do not show that they have an affirmative statutory entitlement to payment for their accrued PTO, we need not review their claims of respondents' derivative liability and their entitlement to prejudgment interest.

CONCLUSION

We affirm.

Leach, J.

WE CONCUR:

APPENDIX B

Cal Lab Code § 200

Deering's California Codes are current through Chapters 1-70, 72-196, 198-213, 215, 217-260, 262-285, 293-303, 305-323, 325-364, 366-368, 372-384, 386-395, 397-413, 415-468, 470, 471-480, 482-496, 498-500, 502-509, 511-529, 532-537, 539-542, 544-551, 553-555, 559-563, 565-675, 679-692, 694-723, 725-729, 731-736, 738-749, 751-765, 767-770, 772-795, 797-805, 807-809, 811-821, 823-837, 841-858, and 860-870 of the 2019 Regular Session, including all legislation effective October 1, 2019 or earlier.

Deering's California Codes Annotated > LABOR CODE (§§ 1 — 12001) > Division 2 Employment Regulation and Supervision (Pts. 1 — 13) > Part 1 Compensation (Chs. 1 — 3) > Chapter 1 Payment of Wages (Arts. 1 — 3) > Article 1 General Occupations (§§ 200 — 244)

§ 200. Definitions

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

History

Enacted 1937.

End of Document

APPENDIX C

Cal Lab Code § 227.3

Deering's California Codes are current through Chapters 1-70, 72-196, 198-213, 215, 217-260, 262-285, 293-303, 305-323, 325-364, 366-368, 372-384, 386-395, 397-413, 415-468, 470, 471-480, 482-496, 498-500, 502-509, 511-529, 532-537, 539-542, 544-551, 553-555, 559-563, 565-675, 679-692, 694-723, 725-729, 731-736, 738-749, 751-765, 767-770, 772-795, 797-805, 807-809, 811-821, 823-837, 841-858, and 860-870 of the 2019 Regular Session, including all legislation effective October 1, 2019 or earlier.

Deering's California Codes Annotated > LABOR CODE (§§ 1 — 12001) > Division 2 Employment Regulation and Supervision (Pts. 1 — 13) > Part 1 Compensation (Chs. 1 — 3) > Chapter 1 Payment of Wages (Arts. 1 — 3) > Article 1 General Occupations (§§ 200 — 244)

§ 227.3. Payment for vested vacation time on termination of employment

Unless otherwise provided by a collective–bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

History

Added Stats 1972 ch 1321 § 1. Amended Stats 1976 ch 1041 § 2.

End of Document

APPENDIX D

Idaho Code § 45-601

Statutes current through 2019 Regular Session

ID - Idaho Code Annotated > GENERAL LAWS > TITLE 45. LIENS, MORTGAGES AND PLEDGES > CHAPTER 6. CLAIMS FOR WAGES

§ 45-601. Definitions

Whenever used in this chapter:

(1) "Claimant" means an employee who filed a wage claim with the department in accordance with this chapter and as the director may prescribe.

(2) "Department" means the department of labor.

(3) "Director" means the director of the department of labor.

(4) "Employee" means any person suffered or permitted to work by an employer.

(5) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person.

(6) "Wage claim" means an employee's claim against an employer for compensation for the employee's own personal services, and includes any wages, penalties, or damages provided by law to employees with a claim for unpaid wages.

(7) "Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece or commission basis.

History

I.C., § 45-609, as added by 1967, ch. 436, § 1, p. 1469; am. 1974, ch. 39, § 72, p. 1023; am. and redesig. 1989, c. 280, § 1, p. 677; *am. 1996, ch. 421, § 34*, p. 1406; *am. 1999, ch. 51, § 2*, p. 115.

Annotations

Notes

COMPILER'S NOTES.

This section was formerly compiled as § 45-609.

Former § 45-601 was amended and redesignated as § 45-602 by § 2 of *S.L. 1989, ch. 280*.

The title to S.L. 1967, ch. 436, stated that it was an act to amend chapter 6 of title 44 and the amending clauses of §§ 1 to 6 thereof stated that title 44 was amended by adding certain designated sections and designating such sections as §§ 45-609 to 45-615.

The amending clause of this section read: "Section 1. That chapter 6 of title 44, Idaho Code, be, and the same is hereby amended by adding a new section thereto, following section 45-608, to be known and designated as section 45-609, and to read as follows."

Case Notes

CONSTITUTIONALITY.
EMPLOYEE.
PAID TIME OFF.
PURPOSE.
WAGES.

ANALYSIS

CONSTITUTIONALITY.

Defendant's contention that this chapter violates the contract clause of the United States Constitution was without merit; the constitutional impairment of contract clause protects only those contractual obligations already in existence at the time the disputed law is enacted, and Idaho's wage claim act was first passed in 1893, well before the obligation in question. *State ex rel. Dept. of Labor & Indus. Servs. v. Hill, 118 Idaho 278, 796 P.2d 155 (Ct. App. 1990).*

EMPLOYEE.

By using the term "employee," the legislature indicated that the provisions of this chapter should apply only to employees, not independent contractors. *Ostrander v. Farm Bureau Mut. Ins. Co., 123 Idaho 650, 851 P.2d 946 (1993).*

When determining whether there exists an employee/employer relationship for the purpose of Idaho's wage claim statute, it is not the labels applied by the parties which control, but rather the actual indicia of such a relationship; the general test of an employee/employer relationship is the right to control work, and if the employer retains the right to control and to direct the activities of the employee in the details of work performed, and to determine the hours to be spent and the times to start and stop the work, the person performing work will be deemed an employee. *State ex rel. Dep't of Labor & Indus. Servs. v. Hill, 118 Idaho 278, 796 P.2d 155 (Ct. App. 1990).*

PAID TIME OFF.

Paid time off constitutes wages which must be paid within ten days of termination of employment.. *Warnecke v. Nitrocision, LLC, 2012 U.S. Dist. LEXIS 170656* (D. Idaho Nov. 29, 2012).

PURPOSE.

The 1967 amendment to Idaho's claim for wages statutes was not intended to change the rule enunciated by previous cases which stopped the running of penalties upon a tender of the full amount of wages due. *Gano v. Air Idaho, Inc., 99 Idaho 720, 587 P.2d 1255 (1978).*

The purpose of the wage and hour law is to ensure that employees receive compensation due to them upon termination of their employment. *De Witt v. Medley, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).*

WAGES.

Where an employer was preparing to sell a division of his company within 60 days and promised his employee a bonus of 60 days' additional salary if the employee would remain with the company until the division was sold, such 60-day "pay bonus" was a wage, as defined in this section; thus, employer's refusal to pay such bonus subjected the employer to treble damages under former law. *Neal v. Idaho Forest Indus., Inc., 107 Idaho 681, 691 P.2d 1296 (Ct. App. 1984).*

In action for breach of employment contract, it was error for the trial judge to treat the cash value of the life insurance policy as wages, where the proceeds of the policy were to be paid to the employee at retirement or to his heirs upon his death. The policy was a fixed benefit of employment status, and as such, it was not compensation earned in increments as services were performed, unlike wages, and also unlike compensation paid in direct consideration of services rendered, in amounts over and above an employee's regular paychecks. *Whitlock v. Haney Seed Co., 114 Idaho 628, 759 P.2d 919 (Ct. App. 1988).*

Funds held in a deferral account were "wages" under this section, where the funds were compensation earned in increments as services were performed and the funds were fully earned by the employee when placed in the account, and the fact that there was or could be a balance in the account when the employee terminated his employment did not mean the account was intended as a retirement or similar post-employment benefit. *Bilow v. Preco, Inc., 132 Idaho 23, 966 P.2d 23 (1998).*

District court properly affirmed an arbitration panel's refusal to award treble damages and attorney fees on an employee's employment agreement claim because the panel did not rule that the amount owed on the employment agreement claim constituted monies owed for unpaid wages. The arbitrators awarded the employee damages under the heading of "Wage Claim," but the mere use of that shorthand term did not suggest the panel intended the award to represent wages; instead, those damages were part of a liquidated damages provision as articulated in the employment agreement. *Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).*

In a wrongful discharge case in which an employee claimed he was fired for petitioning to exercise stock options granted to him by the employer, the United States court of appeals for the Ninth Circuit requested the Idaho supreme court to accept certification of a question asking whether stock options can be wages under this section. *Paolini v. Albertson's Inc., 418 F.3d 1023 (9th Cir. 2005).*

Stock options do not fall under the definition of wages because that form of compensation is not payable in cash, with a check, or by deposit into an employee's bank account. *Paolini v. Albertson's, Inc., 143 Idaho 547, 149 P.3d 822 (2006).*

District court erred in ruling that the amount owed under a noncompetition/nondisclosure agreement was not wages under subsection (7), where the 12 months' pay provided for in the agreement was not conditioned on compliance with the noncompetition conditions, but was severance pay intended to compensate for past service and to secure economic well-being. *Huber v. Lightforce USA, Inc., 159 Idaho 833, 367 P.3d 228 (2016).*

CITED IN:

Lawless v. Davis, 98 Idaho 175, 560 P.2d 497 (1977); Smith v. Idaho Peterbilt, Inc., 106 Idaho 846, 683 P.2d 882 (Ct. App. 1984); Latham v. Haney Seed Co., 119 Idaho 412, 807 P.2d 630 (1991).

Research References & Practice Aids

CROSS REFERENCES.

Department of labor, § 72-1333.

End of Document

APPENDIX E

Idaho Code § 45-606

Statutes current through 2019 Regular Session

ID - Idaho Code Annotated > GENERAL LAWS > TITLE 45. LIENS, MORTGAGES AND PLEDGES > CHAPTER 6. CLAIMS FOR WAGES

§ 45-606. Payment of wages upon separation from employment

(1) Upon layoff, or upon termination of employment by either the employer or employee, the employer shall pay or make available at the usual place of payment all wages then due the employee by the earlier of the next regularly scheduled payday or within ten (10) days of such layoff or termination, weekends and holidays excluded. However, if the employee makes written request upon the employer for earlier payment of wages, all wages then due the employee shall be paid within forty-eight (48) hours of the receipt of such request, weekends and holidays excluded.

(2) Unless exempt from the minimum wage requirements of chapter 15, title 44, Idaho Code, employees who are not being paid on an hourly or salary basis must be paid at least the applicable minimum wage for all hours worked in the pay period immediately preceding layoff or termination from employment. The minimum wage payment shall be made within the same time limitations provided for in subsection (1) of this section. Any additional wages owed to employees shall be paid by the next regularly schedule payday.

(3) The director may, upon application showing good and sufficient reasons, grant an employer a temporary extension to any time limitation provided in this section.

History

I.C., § 45-606, as added by *1989, ch. 280, § 7*, p. 677; *am. 1996, ch. 421, § 35*, p. 1406; *am. 1999, ch. 51, § 7*, p. 115.

PRIOR LAWS.

Former § 45-606, which comprised 1911, ch. 170, § 1, p. 565; reen. C.L., § 5148b; C.S., § 7381; I.C.A., § 44-606; *am. 1982*, ch. 336, § 1, p. 845 was repealed by *S.L. 1989, ch. 280, § 6*.

Annotations

Case Notes

CONTRACT REQUIRED.
EARNED PAID TIME OFF.
TREBLE DAMAGES.
DECISIONS UNDER PRIOR LAW
APPLICATION.
ATTORNEY FEES.
CONSTITUTIONALITY.
CONSTRUCTION.
COURT COSTS.
EFFECT OF TENDER.
EVIDENCE AND PROOF.
EXCLUSIVITY OF REMEDIES.
PAYMENT BY CHECK.
PENALTY.
PENALTY DENIED IN TRIAL COURT.
PENALTY NOT ASSIGNABLE.
PENALTY NOT DEPENDENT ON LIEN.
POINT AT WHICH WAGES BECOME DUE.
RATIONAL RELATION TO STATE'S INTEREST.
TRIAL DE NOVO.

ANALYSIS

CONTRACT REQUIRED.

Where the court has determined that no enforceable employment contract ever existed, there is no contractual basis upon which a terminated employee can establish that a bonus was due from his former employer upon separation of employment. *Gray v. Tri-Way Constr. Servs., 147 Idaho 378, 210 P.3d 63 (2009).*

EARNED PAID TIME OFF.

Where a nurse was constructively discharged from her position at a clinic, but retained a limited part-time assignment at a related hospital, the hospital was entitled to summary judgment on the nurse's wage claim under subsection (1) for wages for earned paid time off: the nurse was not entitled to payment for her earned paid time off following the constructive discharge, because the wages were only due and owing when the nurse was no longer working for the hospital on any basis. *Hurst v. IHC Health Servs., 817 F. Supp. 2d 1202 (D. Idaho 2011).*

TREBLE DAMAGES.

The district court's award of treble damages to the plaintiffs was affirmed because the employer failed to tender wages that were due and owing within 48 hours of the plaintiffs' written demand for wages. *Polk v. Robert D. Larrabee Family Home Ctr., 135 Idaho 303, 17 P.3d 247 (2000).*

CITED IN:

De Witt v. Medley, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).

DECISIONS UNDER PRIOR LAW

ANALYSIS

APPLICATION.

Former similar law applied to employer of labor and not owner of property on which work was done. *Fenn. v. Latour Creek R. Co., 29 Idaho 521, 160 P. 941 (1916).*

Former similar law did not create lien in favor of boardinghouse keeper, or person furnishing feed to horses, or for horse hire to contractor, on property of railroad. *Fenn. v. Latour Creek R. Co., 29 Idaho 521, 160 P. 941 (1916).*

In order to come within terms of former similar law, complainant must have been discharged. *Marrs v. Oregon Short Line R.R., 33 Idaho 785, 198 P. 468 (1920); Goodell v. Pope-Shenon Mining Co., 36 Idaho 427, 212 P. 342 (1922).*

Because of the exclusive nature of former section, it may be utilized in situations where an employee voluntarily terminates his or her employment, even though former similar section was applicable only in situations where an employee is discharged. *Hales v. King, 114 Idaho 916, 762 P.2d 829 (Ct. App. 1988).*

Former section set forth two separate situations where recovery is allowed. Under the first alternative, wages or salary are due an employee at the time the employer discharges or lays off that employee. In the second alternative, the employee need not be discharged or laid off by their employer. The employee simply has to make a demand for wages or salary due and owing to him under his contract of employment. *Kalac v. Canyon County, 119 Idaho 650, 809 P.2d 511 (Ct. App. 1990).*

ATTORNEY FEES.

A demand in writing for wages due as required by former section was made as shown by the record in action for wages with the notification that if payment was not received within five days and suit was thereafter brought, attorney fees and penalty would be sought as provided in this section and upon action being thus brought, attorneys fees in the amount of $700 were stipulated and agreed upon. *O'Harrow v. Salmon River Uranium Dev., Inc., 84 Idaho 427, 373 P.2d 336 (1962).*

CONSTITUTIONALITY.

Former similar law was legitimate exercise of police power of state, and was not an infringement upon the liberty of contract in respect to labor, and did not deprive employer or employee of the liberty or right to enter into any contract, nor take property from employer without due process of law, nor single out any particular class of debtors or individuals, and was not unconstitutional as being in contravention of Art. I, § 10 of the Constitution of the United States, or of § 1 of the *Fourteenth Amendment to the Constitution of the United States*, or of

Idaho Const., Art. I, §§ 13 and *16*. *Olson v. Idora Hill Mining Co., 28 Idaho 504, 155 P. 291 (1916); Marrs v. Oregon Short Line R.R., 33 Idaho 785, 198 P. 468 (1921).*

CONSTRUCTION.

It was not the intention of legislature to penalize employer for failing to pay an unjust debt, nor for failure to pay when discharged laborer, after demanding payment, prevents compliance with demand by his own conduct, nor to deny or preclude right of employer to interpose any valid counterclaim or defense to claim of such laborer. *Olson v. Idora Hill Mining Co., 28 Idaho 504, 155 P. 291 (1916); Goodell v. Pope-Shenon Mining Co., 36 Idaho 427, 212 P. 342 (1922).*

Former similar law did not require that demand be made in writing or that any amount should be named by claimant. *Marrs v. Oregon Short Line R.R., 33 Idaho 785, 198 P. 468 (1921).*

It was the purpose of former similar law to impose penalty upon employer in case of his failure to pay employee wages earned when due, after proper demand has been made therefor. *Robinson v. St. Maries Lumber Co., 34 Idaho 707, 204 P. 671 (1921); Goodell v. Pope-Shenon Mining Co., 36 Idaho 427, 212 P. 342 (1922).*

When a man employed as manager of a service station was discharged and not paid either his salary or commissions due, he was entitled to recover his salary, commissions and salary for the 30 day period following his discharge. *Kingsford v. Bennion, 68 Idaho 501, 199 P.2d 625 (1948).*

COURT COSTS.

Employer in suit to recover wages, penalties and attorney fees was liable for court costs where tender of amount of wages due was not paid into court. *Lindsey v. McCatron, 78 Idaho 211, 299 P.2d 496 (1956).*

EFFECT OF TENDER.

Running of penalty is stopped by tender of wages due. Employee, however, has right to bring suit for penalty that had accrued up to that time. *Robinson v. St. Maries Lumber Co., 34 Idaho 707, 204 P. 671 (1921); Lindsey v. McCatron, 78 Idaho 211, 299 P.2d 496 (1956).*

EVIDENCE AND PROOF.

Where plaintiff was paid $2.50 an hour and claimed $3.04 an hour, but failed to prove either an agreement as to amount of wages or the standard, reasonable, or going wage for like services, evidence that employees who were members of a union, to which plaintiff did not belong, received $3.04 an hour was insufficient to entitle plaintiff to judgment for the difference between $2.50 and $3.04 an hour. *Grieser v. Haynes, 89 Idaho 198, 404 P.2d 333 (1965).*

EXCLUSIVITY OF REMEDIES.

Suit for back wages along with 30 days additional wages under former similar law and suit for treble damages are mutually exclusive remedies. *Lawless v. Davis, 98 Idaho 175, 560 P.2d 497 (1977).*

Under the wage and hour law, an employee whose wages are not fully paid upon termination is entitled to alternative remedies; one remedy is to recover damages for a 30-day period after the date of termination from employment, and the other remedy is to recover, as damages, treble the amount of wages found due and owing -- these remedies, however, are mutually exclusive. *De Witt v. Medley, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).*

PAYMENT BY CHECK.

Checks of employer constituted the equivalent of cash where employer always paid by check and employee had accepted payment by check prior to his layoff or discharge. *Lindsey v. McCatron, 78 Idaho 211, 299 P.2d 496 (1956).*

PENALTY.

The amount paid in case of "such default" of payment of wages by employer is classified as a penalty. *Lindsey v. McCatron, 78 Idaho 211, 299 P.2d 496 (1956).*

PENALTY DENIED IN TRIAL COURT.

Where plaintiff brings an action seeking to recover wages and penalty for nonpayment, and the trial court holds against him with respect to the penalty for such nonpayment, and defendant appeals, the Supreme Court will not reverse the ruling of the court on denial of the penalty. *People ex rel. Heartburg v. Interstate Eng'g. & Constr. Co., 58 Idaho 457, 75 P.2d 997 (1937).*

PENALTY NOT ASSIGNABLE.

Right to recover penalty is personal and cannot be assigned. *Robinson v. St. Maries Lumber Co., 34 Idaho 707, 204 P. 671 (1921).*

PENALTY NOT DEPENDENT ON LIEN.

Where plaintiff sought to enforce farm laborer's lien and also to hold owner liable for penalty under former similar law, personal judgment against defendant could be entered, although proof of lien failed. *Backman v. Douglas, 46 Idaho 671, 270 P. 618 (1928).*

POINT AT WHICH WAGES BECOME DUE.

It would be unreasonable to conclude an employee's wages do not become due until after he has completed the employer's grievance proceedings. Such an interpretation of former section would compromise the purpose of the Idaho wage claim statutes -- to compensate terminated employees as soon as possible. *Kalac v. Canyon County, 119 Idaho 650, 809 P.2d 511 (Ct. App. 1990).*

RATIONAL RELATION TO STATE'S INTEREST.

The penalty provisions of the wage and hour law are rationally related to the state's overall interest in protecting wage earners. *De Witt v. Medley, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990).*

TRIAL DE NOVO.

Where plaintiff sued defendants in probate court for wages, attorney fees, and penalty based on joint liability of defendants as partners, but recovered judgment against one defendant only, and plaintiff appealed to district court the whole case was before the district court for a trial *de novo. Davis v. Parkin, 75 Idaho 266, 270 P.2d 1007 (1954).*

End of Document

APPENDIX F

La. R.S. § 23:631

Updated through Act 448 of 2019 Legislation with the exception of Acts 238, 243, 244, 262, 268, 280, 311, 360, 366, 413, 423, 427.

LexisNexis® Louisiana Annotated Statutes > Louisiana Revised Statutes > Title 23. Labor and Worker's Compensation (Chs. 1 — 15) > Chapter 6. Payment of employees (§§ 23:631 — 23:653)

§ 23:631. Discharge or resignation of employees; payment after termination of employment.

A.

(1)

(a) Upon the discharge of any laborer or other employee of any kind whatever, it shall be the duty of the person employing such laborer or other employee to pay the amount then due under the terms of employment, whether the employment is by the hour, day, week, or month, on or before the next regular payday or no later than fifteen days following the date of discharge, whichever occurs first.

(b) Upon the resignation of any laborer or other employee of any kind whatever, it shall be the duty of the person employing such laborer or other employee to pay the amount then due under the terms of employment, whether the employment is by the hour, day, week, or month, on or before the next regular payday for the pay cycle during which the employee was working at the time of separation or no later than fifteen days following the date of resignation, whichever occurs first.

(2) Payment shall be made at the place and in the manner which has been customary during the employment, except that payment may be made via United States mail to the laborer or other employee, provided postage has been prepaid and the envelope properly addressed with the employee's or laborer's current address as shown in the employer's records. In the event payment is made by mail the employer shall be deemed to have made such payment when it is mailed. The timeliness of the mailing may be shown by an official United States postmark or other official documentation from the United States Postal Service.

(3) The provisions of this Subsection shall not apply when there is a collective bargaining agreement between the employer and the laborer or other employee which provides otherwise.

B. In the event of a dispute as to the amount due under this Section, the employer shall pay the undisputed portion of the amount due as provided for in Subsection A of this Section. The employee shall have the right to file an action to enforce such a wage claim and proceed pursuant to *Code of Civil Procedure Article 2592*.

C. With respect to interstate common carriers by rail, a legal holiday shall not be considered in computing the fifteen-day period provided for in Subsection A of this Section.

D.

(1) For purposes of this Section, vacation pay will be considered an amount then due only if, in accordance with the stated vacation policy of the person employing such laborer or other employee, both of the following apply:

(a) The laborer or other employee is deemed eligible for and has accrued the right to take vacation time with pay.

(b) The laborer or other employee has not taken or been compensated for the vacation time as of the date of the discharge or resignation.

(2) The provisions of this Subsection shall not be interpreted to allow the forfeiture of any vacation pay actually earned by an employee pursuant to the employer's policy.

History

Amended by Acts 1977, No. 317, § 1; *Acts 1988, No. 602*, § 1; *Acts 1995, No. 325*, § 1; *Acts 1997, No. 56*, § 1, eff. Aug. 15, 1997; *Acts 2001, No. 1171*, § 1; *Acts 2003, No. 699*, § 1.

End of Document

APPENDIX G

ORS § 652.320

The Oregon Annotated Statutes is current through the 2019 Regular Session. Some sections may have multiple variants due to amendments by multiple acts. Revision and codification by the Legislative Counsel are updated as available, see ORS 173.111 et seq. For sections pending codification by the Legislative Counsel, see Newly Added Sections in the Table of Contents.

LexisNexis® Oregon Annotated Statutes > Title 51 Labor and Employment; Unlawful Discrimination (Chs. 651 — 669) > Chapter 652- Hours; Wages; Wage Claims; Records (§§ 652.010 — 652.990) > Enforcement of Wage Claims (§§ 652.310 — 652.445) > (Generally) (§§ 652.310 — 652.405)

652.320 Definitions for *ORS 652.310* to *652.414*.

As used in *ORS 652.310* to *652.414*, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(2) "Court" means a court of competent jurisdiction and proper venue to entertain a proceeding referred to in *ORS 652.310* to *652.414*.

(3) "Demand" means a written demand for payment made during business hours on an employer or any appropriate representative of an employer by an employee or by some person having and exhibiting due authority to act in said employee's behalf.

(4) "Pay" means to deliver or tender compensation at a previously designated and reasonably convenient place in this state, during working hours, in legal tender or by order or negotiable instrument payable and paid in legal tender without discount on demand in this state or by deposit without discount in an employee's account in a financial institution, as defined in *ORS 706.008*, in this state, provided the employee and the employer have agreed to such deposit.

(5) "Payment" means the delivery, tender or deposit of compensation in the medium of payment described in subsection (4) of this section. Such delivery, tender or deposit shall be made to or for the account of the employee concerned or to or for the account of any person having due authority to act in said employee's behalf.

(6) "Rate of payment" means the rate at which payment is made or is to be made in the manner described in this section.

(7) "Wage claim" means an employee's claim against an employer for compensation for the employee's own personal services, and includes any wages, compensation, damages or civil penalties provided by law to employees in connection with a claim for unpaid wages.

History

Amended by 1975 c.190 § 1; 1975 c.488 § 2; 1979 c.695 § 1; *1999 c.59 § 193*; *1999 c.351 § 39*; *2001 c.7 § 2*.

End of Document

APPENDIX H

RCW 49.46.010

Definitions. *(Effective until December 31, 2019.)*

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter **41.06** RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter **41.24** RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter **41.24** RCW;

(f) Any newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) Any farm intern providing his or her services to a small farm which has a special certificate issued under RCW **49.12.470**;

(p) An individual who is at least sixteen years old but under twenty-one years old, in his or her capacity as a player for a junior ice hockey team that is a member of a regional, national, or international league and that contracts with an arena owned, operated, or managed by a public facilities district created under chapter **36.100** RCW;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director.

[**2015 c 299 § 3.** Prior: **2014 c 131 § 2; 2013 c 141 § 1;** prior: **2011 1st sp.s. c 43 § 462;** (2011 1st sp.s. c 43 § 461 expired December 31, 2011); prior: (2010 c 160 § 2 expired December 31, 2011); **2010 c 8 § 12040; 2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56;** 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); **1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.**]

NOTES:

Expiration date—2017 c 150: "2014 c 131 s 2 expires December 31, 2019." [**2017 c 150 § 3.**]

Recognition—Intent—2015 c 299: See note following RCW **49.12.005**.

Expiration date—2014 c 131: See note following RCW **49.12.470**.

Effective date—2011 1st sp.s. c 43 § 462: "Section 462 of this act takes effect December 31, 2011." [**2011 1st sp.s. c 43 § 484.**]

Expiration date—2011 1st sp.s. c 43 § 461: "Section 461 of this act expires December 31, 2011." [**2011 1st sp.s. c 43 § 483.**]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW **43.19.003**.

Expiration date—2010 c 160: "This act expires December 31, 2011." [**2010 c 160 § 6.**]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW **41.80.907** through **41.80.910**.

Construction—1997 c 203: See note following RCW **49.46.130**.

Effective date—1993 c 281: See note following RCW **41.06.022**.

Effective date—1989 c 1 (Initiative Measure No. 518, approved November 8, 1988): "This act shall take effect January 1, 1989." [**1989 c 1 § 5.**]

*Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW **73.16.080**.*

RCW 49.46.010

Definitions. *(Effective December 31, 2019.)*

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter **41.06** RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter **41.24** RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter **41.24** RCW;

(f) Any newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness

or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) An individual who is at least sixteen years old but under twenty-one years old, in his or her capacity as a player for a junior ice hockey team that is a member of a regional, national, or international league and that contracts with an arena owned, operated, or managed by a public facilities district created under chapter **36.100** RCW;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director.

[**2015 c 299 § 3.** Prior: **2014 c 131 § 2; 2013 c 141 § 1;** prior: **2011 1st sp.s. c 43 § 462;** (2011 1st sp.s. c 43 § 461 expired December 31, 2011); prior: (2010 c 160 § 2 expired December 31, 2011); **2010 c 8 § 12040; 2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56;** 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); **1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.**]

NOTES:

Recognition—Intent—2015 c 299: See note following RCW **49.12.005**.

Expiration date—2014 c 131: See note following RCW **49.12.470**.

Effective date—2011 1st sp.s. c 43 § 462: "Section 462 of this act takes effect December 31, 2011." [**2011 1st sp.s. c 43 § 484.**]

Expiration date—2011 1st sp.s. c 43 § 461: "Section 461 of this act expires December 31, 2011." [**2011 1st sp.s. c 43 § 483.**]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW **43.19.003**.

Expiration date—2010 c 160: "This act expires December 31, 2011." [**2010 c 160 § 6.**]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW **41.80.907** through **41.80.910**.

Construction—1997 c 203: See note following RCW **49.46.130**.

Effective date—1993 c 281: See note following RCW **41.06.022**.

Effective date—1989 c 1 (Initiative Measure No. 518, approved November 8, 1988): "This act shall take effect January 1, 1989." [**1989 c 1 § 5.**]

*Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW **73.16.080**.*

APPENDIX I

RCW 49.46.090

Payment of amounts less than chapter requirements—Employer's liability—Assignment of claim.

(1) Any employer who pays any employee less than the amounts to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount due to such employee under this chapter, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer allowing the employee to receive less than what is due under this chapter shall be no defense to such action.

(2) At the written request of any employee paid less than the amounts to which he or she is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

[2017 c 2 § 7 (Initiative Measure No. 1433, approved November 8, 2016); 2010 c 8 § 12043; 1959 c 294 § 9.]

NOTES:

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

APPENDIX J

RCW 49.46.120

Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected.

This chapter establishes minimum standards for wages, paid sick leave, and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, paid sick leave, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

[2017 c 2 § 9 (Initiative Measure No. 1433, approved November 8, 2016); **1961 ex.s. c 18 § 4; 1959 c 294 § 12.**]

NOTES:

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW **49.46.005**.

APPENDIX K

RCW 49.48.010

Payment of wages due to employee ceasing work to be at end of pay period —Exceptions—Authorized deductions or withholdings.

When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him or her on account of his or her employment shall be paid to him or her at the end of the established pay period: PROVIDED, HOWEVER, That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of paydays providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the director of labor and industries by the employers intending to abandon the plan: PROVIDED FURTHER, That the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

(1) Required by state or federal law; or

(2) Specifically agreed upon orally or in writing by the employee and employer; or

(3) For medical, surgical, or hospital care or service, pursuant to any rule or regulation: PROVIDED, HOWEVER, That the deduction is openly, clearly, and in due course recorded in the employer's books and records.

Paragraph *three of this section shall not be construed to affect the right of any employer or former employer to sue upon or collect any debt owed to said employer or former employer by his or her employees or former employees.

[**2010 c 8 § 12047; 1971 ex.s. c 55 § 1; 1947 c 181 § 1; 1905 c 112 § 1; 1888 c 128 § 1;** Rem. Supp. 1947 § 7594.]

NOTES:

***Reviser's note:** The reference to paragraph three of this section appears to be erroneous. An amendment to Engrossed Senate Bill No. 137 [1971 ex.s. c 55] deleted the first paragraph of the section without making a corresponding change in the reference to "paragraph three." It was apparently intended that the phrase "paragraph three of this section" refer to the paragraph beginning "It shall be unlawful . . .," which now appears as the second paragraph of the section.

Saving—1888 c 128: "This act is not to be construed as affecting any bona fide contract heretofore entered into contrary to its provisions and existing at the date of the passage hereof, and continuing by reason of limitation of said contract being still in force." [**1888 c 128 § 4;** no RRS.]

Effective date—1888 c 128: "This act is to take effect on and after its approval." [**1888 c 128 § 5;** no RRS.]

General repealer—1888 c 128: "All laws or parts of laws in conflict with this act be and the same are hereby repealed." [**1888 c 128 § 6;** no RRS.]

The foregoing annotations apply to RCW **49.48.010** through **49.48.030**.

APPENDIX L

RCW 49.52.050

Rebates of wages—False records—Penalty.

Any employer or officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who

(1) Shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee; or

(2) Wilfully and with intent to deprive the employee of any part of his or her wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; or

(3) Shall wilfully make or cause another to make any false entry in any employer's books or records purporting to show the payment of more wages to an employee than such employee received; or

(4) Being an employer or a person charged with the duty of keeping any employer's books or records shall wilfully fail or cause another to fail to show openly and clearly in due course in such employer's books and records any rebate of or deduction from any employee's wages; or

(5) Shall wilfully receive or accept from any employee any false receipt for wages;

Shall be guilty of a misdemeanor.

[**2010 c 8 § 12055; 1941 c 72 § 1; 1939 c 195 § 1;** Rem. Supp. 1941 § 7612-21.]

NOTES:

Severability—1939 c 195: "If any section, subsection, sentence or clause of this act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, subsection, sentence or clause thereof not adjudged unconstitutional." [**1939 c 195 § 5;** RRS § 7612-25.] This applies to RCW **49.52.050** through **49.52.080**.

APPENDIX M

RCW 49.52.070

Civil liability for double damages.

Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of RCW **49.52.050** (1) and (2) shall be liable in a civil action by the aggrieved employee or his or her assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: PROVIDED, HOWEVER, That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.

[**2010 c 8 § 12056; 1939 c 195 § 3;** RRS § 7612-23.]

APPENDIX N

R.R.S. Neb. § 48-1229

Current through the 2019 regular session of the 106th Legislature First Session (end)

Revised Statutes of Nebraska Annotated > Chapter 48 Labor (Arts. 1 — 35) > Article 12 Wages (§§ 48-1201 — 48-1234) > (c) Wage Payment and Collection (§§ 48-1228 — 48-1234)

§ 48-1229. Terms, defined.

For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(2) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(3) Federally insured financial institution means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States Government;

(4) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs;

(5) Payroll debit card means a stored-value card issued by or on behalf of a federally insured financial institution that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of automatic teller machines. Payroll debit card includes payroll debit cards, payroll cards, and paycards; and

(6) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

History

Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB 255, § 2; Laws 2014, LB 765, § 1.

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