

HOUSE BILL No. 2243

By Representatives Dillmore, Burroughs, Carlin, Davis, Finney, Frownfelter, S. Gatewood, Henderson, Kuether, Lane, McCray-Miller, Pauls, Ruiz, Trimmer, Victors, Wetta, Winn and K. Wolf

2-9

1 AN ACT concerning the wage payment act; pertaining to remedies for
2 employees whose employers repeatedly fail to pay wages; amending
3 K.S.A. 2010 Supp. 44-313 and repealing the existing section.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. No employer or other person shall discharge or take
7 any other adverse action against any person in retaliation for asserting
8 any claim or right for unpaid wages, for assisting any other person in
9 doing so, or for informing any person about their rights under this act.
10 Taking adverse action against a person within 90 days of a person's
11 engaging in any of the foregoing activities shall raise a rebuttable
12 presumption that such action was retaliation. The presumption, may be
13 rebutted by clear and convincing evidence that such action was taken for
14 other permissible reasons.

15 New Sec. 2. Any employer who fails to pay the wages required
16 under law or agreement with an employee shall be required to pay the
17 employee the balance of the wages owed, including interest thereon, and
18 an additional amount equal to twice the underpaid wages. The secretary
19 of labor and any district court shall have the authority to order payment of
20 such unpaid wages and other amounts authorized by law.

21 New Sec. 3. (a) Whenever the secretary determines that it appears
22 that an employer is a repeat offender, the secretary may serve an order
23 upon such employer directing the employer to show cause why such
24 employer should not be deemed to be a repeat offender under the Kansas
25 wage payment act.

26 (b) Such notice shall:

27 (1) Include a listing of each separate claim upon which the proposed
28 determination is based;

29 (2) specify whether or not the wages, penalty and interest awarded
30 in each case are still due and owing; and

31 (3) indicate that payment of all outstanding amounts paid in full
32 within 10 days of the service of the show cause order may be considered
33 by the secretary as a mitigating factor.

34 (c) Any hearing or other proceeding shall be governed by the Kansas

1 administrative procedure act.

2 New Sec. 4. (a) In addition to a civil penalty or any other penalty
3 prescribed by this act, the secretary may require an employer who is
4 deemed to be a repeat offender to post a bond to cover employee wages in
5 order to continue operating such employer's business except that posting
6 a bond shall be mandatory whenever such employer is a repeat offender
7 with three or more unrelated cases.

8 (b) The bond shall be:

9 (1) Set in an amount approved and deemed by the secretary as
10 adequate under the facts of the case;

11 (2) executed by a corporate surety and name the employer as the
12 principal;

13 (3) be conditioned upon compliance with the provisions of this act
14 and any rules and regulations adopted thereunder by the principal and the
15 principal's officers, agents employees and representatives;

16 (4) be conditioned that the employer pay the employer's employees
17 in accordance with this act for a period of not less than 24 consecutive
18 months;

19 (5) be conditioned upon the requirement that the employer pay in
20 full any sum recovered against the employer under this act; and

21 (6) be payable to or in favor of the Kansas department of labor.

22 (c) (1) If an employer fails to deposit a bond required under this
23 section before the 11th day after the date on which demand is made for
24 such bond, the secretary may bring a suit in the name of the state against
25 the employer to furnish the bond or to require the employer to cease
26 doing business until the employer furnishes the bond.

27 (2) If the court finds just cause for requiring the bond and that the
28 bond is reasonably necessary and proper to secure prompt payment of the
29 wages of the employees of the employer and the employer's compliance
30 with this act, the court may enjoin the employer from doing business until
31 such requirement is met. Such injunction may also apply to any other
32 person concerned with or in any way participating in the employer's
33 failure to pay wages which results in the conviction or in a final order of
34 the secretary. The court may make any other order appropriate and
35 necessary to compel compliance with the requirement.

36 (3) In any action under this subsection, the employer shall have the
37 burden of proving that the bond is unnecessary or that the amount of such
38 bond required by the secretary is excessive and unreasonable.

39 New Sec. 5. (a) It shall be unlawful for an employer who is deemed
40 by the secretary to be a repeat offender to intentionally fail to pay an
41 employee the wages earned by such employee.

42 (b) On a first conviction of a repeat offender to intentionally fail to
43 pay an employee the wages earned by the employee, the employer shall

1 be guilty of a class A misdemeanor and shall be fined in an amount not
2 less than \$500 and imprisoned for not more than one year.

3 (c) On a second or subsequent conviction of a repeat offender to
4 intentionally fail to pay an employee the wages earned by the employee,
5 the employer shall be guilty of a severity level 10, nonperson felony and
6 shall be fined in an amount of not less than \$1,000 and imprisoned for not
7 less than one year.

8 (d) In addition to any other penalties prescribed by law, whenever the
9 secretary determines after notice and an opportunity for a hearing in
10 accordance with the Kansas administrative procedure act, that an
11 employer is a repeat offender, the secretary shall impose a civil penalty in
12 an amount of not less than \$5,000 for each violation. Such civil penalty
13 shall be payable to the department of labor. The secretary of labor shall
14 remit all moneys received under this section, and amendments thereto, to
15 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
16 and amendments thereto. Upon receipt of each such remittance, the state
17 treasurer shall deposit the entire amount in the state treasury to the credit
18 of the wage claims assignment fee fund. All expenditures from such fund
19 shall be made in accordance with appropriation acts upon warrants of the
20 director of accounts and reports issued pursuant to vouchers approved by
21 the secretary or by a person or persons designated by the secretary.

22 Sec. 6. K.S.A. 2010 Supp. 44-313 is hereby amended to read as
23 follows: 44-313. ~~As used in this act: (a) "Employer" means any~~
24 ~~individual, partnership, association, joint stock company, trust,~~
25 ~~corporation, limited liability company or other organization, the~~
26 ~~administrator or executor of the estate of a deceased individual, or the~~
27 ~~receiver, trustee, or successor of any of the same, the state of Kansas or~~
28 ~~any department, agency or authority of the state, any city, county, school~~
29 ~~district or other political subdivision, municipality or public corporation~~
30 ~~and any instrumentality thereof, employing any person.~~

31 ~~(b) "Employee" means any person allowed or permitted to work by~~
32 ~~an employer.~~

33 ~~(c) "Wages" means compensation for labor or services rendered by~~
34 ~~an employee, whether the amount is determined on a time, task, piece,~~
35 ~~commission or other basis less authorized withholding and deductions.~~

36 ~~(d) "Secretary" means the secretary of labor.~~

37 ~~(a) As used in this act:~~

38 ~~(1) "Employee" means any person allowed or permitted to work by~~
39 ~~an employer.~~

40 ~~(2) "Employer" means any individual, partnership, association, joint~~
41 ~~stock company, trust, corporation, limited liability company or other~~
42 ~~organization, the administrator or executor of the estate of a deceased~~
43 ~~individual, or the receiver, trustee, or successor of any of the same, the~~

1 *state of Kansas or any department, agency or authority of the state, any*
2 *city, county, school district or other political subdivision, municipality or*
3 *public corporation and any instrumentality thereof, employing any*
4 *person.*

5 (3) *"Repeat offender" means an employer who has been found to*
6 *have previously violated the wage payment act for failure to properly*
7 *pay wages by:*

8 (A) *The Kansas department of labor;*

9 (B) *the United States department of labor;*

10 (C) *the attorney general; or*

11 (D) *any court of competent jurisdiction.*

12 (4) *"Secretary" means the secretary of labor or the secretary's*
13 *designee.*

14 (5) *"Unrelated case" means the occurrence of one or more*
15 *additional separate findings of violation by an employer of the wage*
16 *payment act which cover different time periods than the time period on*
17 *which the first violation of the wage payment act against the same*
18 *employer is based. The term "unrelated case" shall not include one or*
19 *more claims filed against the employer for the same time period, even if*
20 *filed by different employees.*

21 (6) *"Wages" means compensation for labor or services rendered by*
22 *an employee, whether the amount is determined on a time, task, piece,*
23 *commission or other basis less authorized withholding and deductions.*

24 (b) *K.S.A. 44-313 through 44-319, 44-320, 44-327 and K.S.A. 2010*
25 *Supp. 44-319a and sections 1 through 5, and amendments thereto, shall*
26 *be known and may be cited as the wage payment act.*

27 Sec. 7. K.S.A. 2010 Supp. 44-313 is hereby repealed.

28 Sec. 8. This act shall take effect and be in force from and after its
29 publication in the statute book.

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