

2016 Regular Session

SENATE BILL NO. 441

BY SENATOR CARTER

EMPLOYMENT. Provides relative to employee wages. (8/1/16)

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AN ACT

To amend and reenact R.S. 23:632, relative to employee wages; to provide for employer penalties; to provide for liability of employer to pay wages; to provide for good-faith defenses; to provide for joint employment relationships; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:632 is hereby amended and reenacted to read as follows:

§632. Liability of employer for failure to pay; attorney fees; good faith exception

A. Except as provided for in Subsection B of this Section, any employer who fails or refuses to comply with the provisions of R.S. 23:631 shall be liable to the employee either for ninety **working** days wages at the employee's daily rate of pay, or else for full wages from the time the employee's demand for payment is made **in writing** until the employer shall pay or tender the amount of unpaid wages due to such employee, whichever is the lesser amount of penalty wages.

B.(1) An employer may assert a good-faith defense to the payment of penalty wages. When the court finds that an employer's dispute over the amount of wages due was in good faith, but the employer is subsequently found by the court to

1 owe the amount in dispute, the employer shall be liable only for the amount of wages
 2 in dispute plus judicial interest incurred from the date that the suit is filed. If the
 3 court determines that the employer's failure or refusal to pay the amount of wages
 4 owed was not in good faith, then the employer shall be subject to the penalty
 5 provided for in Subsection A of this Section.

6 **(2) An employer may assert a good-faith defense to the payment of**
 7 **penalty wages. To prove good faith, the employer, after conducting a thorough**
 8 **investigation of the demand, shall show a reasonable belief that disputed wages**
 9 **were not owed at the time of the employer's written response to the employee's**
 10 **written demand for payment.**

11 **(3) A good-faith defense is not available to an employer who has failed**
 12 **to timely pay any undisputed wages.**

13 **(4) The existence of a good-faith defense, even if proven, does not affect**
 14 **the employer's liability to the employee for attorney fees and costs if a**
 15 **meritorious lawsuit has been filed.**

16 C. Reasonable attorney fees shall be allowed the laborer or employee by the
 17 court which shall be taxed as costs to be paid by the employer, in the event a well-
 18 founded suit for any unpaid wages whatsoever be filed by the laborer or employee
 19 after three days shall have elapsed from time of making the first demand following
 20 discharge or resignation. **If the court finds a joint employment relationship, each**
 21 **employer shall be liable in solido for any wages, penalties, damages, interest,**
 22 **attorney fees, and costs owed.**

The original instrument was prepared by J. Ashley Mitchell Carter. The following digest, which does not constitute a part of the legislative instrument, was prepared by McHenry Lee.

SB 441 Reengrossed

DIGEST
 2016 Regular Session

Carter

Present law provides that upon termination of employment, an employer shall pay the employee the amount due him. If the employer does not comply, then he is liable to the employee for 90 days wages at the employee's daily rate, or for full wages from the date the employee demand for payment is made, whichever is the lesser amount.

Proposed law retains present law but adds that the employer is liable for 90 working days.

Present law provides that when the employer was in good faith but the court finds that there are still wages owed to the employee, the employer will only have to pay the amount of wages in dispute along with interest. However, when the employer was not in good faith, the employer will be liable to the employee for 90 days wages at the employee's daily rate, or for the full wage amount from the date the employee demands the payment is made.

Proposed law retains present law but provides that an employer may assert a good-faith defense to the payment of penalty wages.

Proposed law provides that the employer may assert a good-faith defense and provide a showing of his reasonable belief that the disputed wages were not owed at the time of the employer's written response to the employee's written demand for payment.

Proposed law provides that a good-faith defense is not available to an employer who fails to timely pay any undisputed wages.

Proposed law provides that a showing of a good-faith defense, even if proven, does not relieve the employer of his liability to the employee for attorney fees and costs for a meritorious claim.

Present law provides that reasonable attorney fees shall be awarded to the employee by the court provided the requirements are met. Proposed law provides instead that if the court finds that there is a joint employment relationship, each employer will be liable in solido for any wages, penalties, damages, interest, attorney fees, and costs owed.

Effective August 1, 2016

(Amends R.S. 23:632)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill

1. Removes provisions which deny an employer a good-faith defense if wages are paid in cash or if the employee is improperly classified as an independent contractor.
2. Changes the term "well-founded law suit" to a "meritorious lawsuit" as it relates to the qualifications for attorney fees payable to the employee by the employer.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Adds back in present law which was repealed concerning employer liability based on having good faith or not.
2. Adds requirement when an employer provides a written response to prove good faith by an employer.
3. Makes technical changes.