

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 828

Short Title: Wage Theft Amendments. (Public)

Sponsors: Representative Glazier (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LABOR LAWS PERTAINING TO THE RECOVERY OF
3 UNPAID WAGES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 95-25.13(1) reads as rewritten:

6 "**§ 95-25.13. Notification, posting, and records.**

7 Every employer shall:

8 (1) Notify its employees, orally or in writing at the time of hiring, of the
9 following information:

10 a. The promised wages and the wages.

11 b. The day and place for ~~payment~~; payment.

12 c. The full name, mailing address, and telephone number of the
13 employer and the federal and state tax identification number of each
14 employer who is not a natural person.

15"

16 **SECTION 2.** G.S. 95-25.22 reads as rewritten:

17 "**§ 95-25.22. Recovery of unpaid wages.**

18 (a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage),
19 G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to
20 the employee or employees affected in the amount of their unpaid minimum wages, their
21 unpaid overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through
22 G.S. 95-25.12, as the case may be, plus interest at the legal rate set forth in G.S. 24-1, from the
23 date each amount first came due.

24 (a1) In addition to the amounts awarded pursuant to subsection (a) of this section, the
25 court shall award liquidated damages in an amount equal twice to the amount found to be due
26 as provided in subsection (a) of this section, provided that if the employer shows to the
27 satisfaction of the court that the act or omission constituting the violation was in good faith and
28 that the employer had reasonable grounds for believing that the act or omission was not a
29 violation of this Article, the court may, in its discretion, award no liquidated damages or may
30 award any amount of liquidated damages not exceeding twice the amount found due as
31 provided in subsection (a) of this section.

32 (b) Action to recover such liability may be maintained in the General Court of Justice
33 by any one or more employees.

34 (c) Action to recover such liability may also be maintained in the General Court of
35 Justice by the Commissioner at the request of the employees affected. Any sums thus recovered



1 by the Commissioner on behalf of an employee shall be held in a special deposit account and
2 shall be paid directly to the employee or employees affected.

3 (d) The court, in any action brought under this Article may, in addition to any judgment
4 awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by
5 the defendant. In an action brought by the Commissioner in which a default judgment is
6 entered, the clerk shall order attorneys' fees of three hundred dollars (\$300.00) to be paid by the
7 defendant.

8 The court may order costs and fees of the action and reasonable attorneys' fees to be paid by
9 the plaintiff if the court determines that the action was frivolous.

10 (e) The Commissioner is authorized to determine and supervise the payment of the
11 amounts due under this section, including interest at the legal rate set forth in G.S. 24-1, from
12 the date each amount first came due, and the agreement to accept such amounts by the
13 employee shall constitute a waiver of the employee's right to bring an action under subsection
14 (b) of this section.

15 (f) Actions under this section must be brought within two years pursuant to
16 ~~G.S. 1-53~~G.S. 1-53, or within one year after notification to the employee of final disposition
17 by the State of a complaint for the same violation, whichever is less.

18 (g) Prior to initiating any action under this section, the Commissioner shall exhaust all
19 administrative remedies, including giving the employer the opportunity to be heard on the
20 matters at issue and giving the employer notice of the pending action."

21 **SECTION 3.** Article 2A of Chapter 95 of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 95-25.23D. Violation of notification requirement.**

24 (a) Upon a finding of a violation of G.S. 95-25.13 or any rule adopted under that
25 section, the court shall award one or more of the following:

- 26 (1) Actual damages, including, but not limited to, lost wages and benefits plus
27 interest.
28 (2) Statutory damages of up to fifty dollars (\$50.00) for each working day that
29 violations have occurred or continue to occur.
30 (3) Other appropriate relief, including injunctive, declaratory relief, or both that
31 the court in its discretion deems necessary or appropriate.

32 (b) An action to recover such liability may also be maintained in the General Court of
33 Justice by the Commissioner at the request of the employees affected. Any sums thus recovered
34 by the Commissioner on behalf of an employee shall be held in a special deposit account and
35 shall be paid directly to the employee or employees affected.

36 (c) The court, in any action brought under this Article shall, in addition to any judgment
37 awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by
38 the defendant. In an action brought by the Commissioner in which a default judgment is
39 entered, the clerk shall order attorneys' fees of three hundred dollars (\$300.00) to be paid by the
40 defendant. The court may order costs and fees of the action and reasonable attorneys' fees to be
41 paid by the plaintiff if the court determines that the action was frivolous.

42 (e) The Commissioner may determine and supervise the payment of the amounts due
43 under this section, including interest at the legal rate set forth in G.S. 24-1, from the date each
44 amount first came due, and the agreement to accept such amounts by the employee shall
45 constitute a waiver of the employee's right to bring an action under subsection (b) of this
46 section.

47 (f) Actions under this section must be brought within four years pursuant to G.S. 1-53,
48 or within one year after notification to the employee of final disposition by the State of a
49 complaint for the same violation, whichever is later.

1 (g) Prior to initiating any action under this section, the Commissioner shall exhaust all
2 administrative remedies, including giving the employer the opportunity to be heard on the
3 matters at issue and giving the employer notice of the pending action."

4 **SECTION 4.** This act is effective when it becomes law and applies to employers
5 and employees on or after that date.