

No. 1977-30

AN ACT

SB 271

Amending the act of July 14, 1961 (P.L.637, No.329), entitled "An act relating to the payment of wages or compensation for labor or services; providing for regular pay days; conferring powers and duties upon the Department of Labor and Industry, including powers and duties with respect to the civil collection of wages; providing civil and criminal penalties for violations of the act; providing for their collection and disposition and providing for additional civil damages," amending and adding definitions; providing for the payment and collection of fringe benefits and wage supplements; requiring employers to notify their employes of the amount of fringe benefits and wage supplements due to their employes; permitting persons separated from their employment to have their final wage payments mailed to them; reaffirming the right of private individuals to institute criminal prosecutions under the act and permitting such prosecutions to be instituted by labor organizations and by the persons to whom any type of wages is due; permitting the assignment of claims for unpaid wages to and imposing the duty to prosecute such assigned claims on the Secretary of Labor and Industry; exempting the secretary from payment of filing fees and posting of bonds; providing for personal civil and criminal liability for an agent or officer of any employer; providing for increase in liquidated damages; and providing for criminal penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2, act of July 14, 1961 (P.L.637, No.329), known as the "Wage Payment and Collection Law," is repealed.

Section 2. The act is amended by adding a section to read:

Section 2.1. Definitions.—The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Authorized representative." An employe of the Department of Labor and Industry who is empowered to perform duties assigned in conformity with all existing laws, rules and regulations administered by the department.

"Check." A draft drawn on a bank and payable on demand.

"Department." The Department of Labor and Industry.

"Employer." Includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this Commonwealth and any agent or officer of any of the above-mentioned classes employing any person in this Commonwealth.

"Fringe benefits or wage supplements." Includes all monetary employer payments to provide benefits under any employe benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; as well as separation, vacation, holiday, or guaranteed pay; reimbursement for expenses; union dues withheld from the employes' pay by the employer; and any other amount to be paid pursuant to an agreement to the employe, a third party or fund for the benefit of employes.

“Secretary.” *The Secretary of Labor and Industry.*

“Wages.” *Includes all earnings of an employe, regardless of whether determined on time, task, piece, commission or other method of calculation. The term “wages” also includes fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employes’ pay by the employer.*

Section 3. Section 3 of the act, amended July 12, 1972 (P.L.855, No.192), is amended to read:

Section 3. Regular Payday.—(a) ***Wages other than fringe benefits and wage supplements.*** Every employer shall pay all wages, ***other than fringe benefits and wage supplements,*** due to his employes on regular paydays designated in advance by the employer. Overtime wages may be considered as wages earned and payable in the next succeeding pay period. All wages, ***other than fringe benefits and wage supplements,*** earned in any pay period shall be due and payable within the number of days after the expiration of said pay period as provided in a written contract of employment or, if not so specified, within the standard time lapse customary in the trade or within 15 days from the end of such pay period. The wages shall be paid in lawful money of the United States or check, except that deductions provided by law, or as authorized by regulation of the Department of Labor and Industry for the convenience of the employe, may be made including deductions of contributions to ***[employes’ welfare and pension plans which are subject to the “Federal Welfare and Pension Plans Disclosure Act.”]*** ***employe benefit plans which are subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.***

(b) ***Fringe benefits and wage supplements.*** Every employer who by ***[collective]*** agreement deducts union dues from employes’ pay or agrees to pay or provide fringe benefits ***or wage supplements,*** ***[including but not limited to, health, welfare and retirement benefits, vacation, separation or holiday pay,]*** must ***[do so]*** ***remit the deductions or pay or provide the fringe benefits or wage supplements, as required,*** within ***[30]*** ***10*** days after such payments are required to be made to the union in case of dues or to a trust or pooled fund, or within 10 days after such payments are required to be made directly to the employe, ***or within 60 days of the date when proper claim was filed by the employe in situations where no required time for payment is specified.***

Section 4. Section 4, subsection (a) of section 5 and section 8 of the act are amended to read:

Section 4. Notification.—It shall be the duty of every employer to notify his employes at the time of hiring of the time and place of payment and the rate of pay ***and the amount of any fringe benefits or wage supplements to be paid to the employe, a third party or a fund for the benefit of the employe*** and any change with respect to any of these items prior to the time of said change. Alternatively, however, every employer may give such notification by posting the aforementioned facts and

keeping them posted conspicuously at the employer's place of business. *Further, in cases where wages, amounts of any fringe benefits or wage supplements are set forth in a bona fide collective bargaining agreement and copies of that agreement are available to employes, then this shall satisfy the employer's duty to give notice.*

Section 5. *Employes Who Are Separated from Payroll before Paydays.—*

(a) *Separated Employes.* Whenever an employer separates an employe from the payroll, or whenever an employe quits or resigns his employment, the wages or compensation earned shall become due and payable not later than the next regular payday of his employer on which such wages would otherwise be due and payable. *If requested by the employe, such payment shall be made by certified mail.*

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Section 8. *Enforcement.—*[It shall be the duty of the] *The* Secretary of Labor and Industry *shall have the duty, but not the exclusive right,* to enforce and administer the provisions of this act, to investigate any alleged violations of this act and to institute prosecutions and actions as provided hereunder. Nothing in this act shall authorize [an employe or] the secretary to initiate a civil action for unpaid wages which are subject to disposition under grievance and arbitration procedures of a collective bargaining agreement. The Department of Labor and Industry shall have the power to make rules and regulations for the administration of this act.

Every employer shall keep open to inspection by the secretary or his authorized representative, all payroll records or other records or documents relative to the enforcement of this act. Such inspection may be made by the secretary or his authorized representative at any reasonable time. Every employer shall permit the secretary or any authorized representative to interrogate any employe in the place of employment and during work hours with respect to such records or documents. Where such records are maintained at a central record keeping office outside of the Commonwealth, such records shall be made available for inspection at the place of employment within seven calendar days following verbal or written notice from the secretary or his authorized representative. Where a microfilm or any other method is authorized for record keeping purposes, the employer shall make available to the secretary or his authorized representative, the equipment which is necessary to facilitate review of the records.

Section 5. Section 9 of the act is repealed.

Section 6. The act is amended by adding a section to read:

Section 9.1. Civil Remedies and Penalties.—

(a) *Any employe or group of employes, labor organization or party to whom any type of wages is payable may institute actions provided under this act.*

(b) *Actions by an employe, labor organization, or party to whom any type of wages is payable to recover unpaid wages and liquidated damages*

may be maintained in any court of competent jurisdiction, by such labor organization, party to whom any type of wages is payable or any one or more employes for and in behalf of himself or themselves and other employes similarly situated, or such employe or employes may designate an agent or representative to maintain such action or on behalf of all employes similarly situated. Any such employe, labor organization, party, or his representative shall have the power to settle or adjust his claim for unpaid wages.

(c) The employe or group of employes, labor organization or party to whom any type of wages is payable may, in the alternative, inform the secretary of the wage claim against an employer or former employer, and the secretary shall, unless the claim appears to be frivolous, immediately notify the employer or former employer of such claim by certified mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the secretary of his failure to do so within ten days after receipt of such certified notification, thereafter, the employer or former employer shall be liable for a penalty of ten percent (10%) of that portion of the claim found to be justly due. A good faith dispute or contest as to the amount of wages due or the good faith assertion of a right of set-off or counter-claim shall be deemed a satisfactory explanation for nonpayment of such amount in dispute or claimed as a set-off or counter-claim. The secretary shall have a cause of action against the employer or former employer for recovery of such penalty and the same may be included in any subsequent action by the secretary on said wage claim or may be exercised separately after adjustment of such wage claim without court action.

(d) In any civil action brought under the provisions of this act, the Secretary of Labor and Industry may require the employer to post bond or security to secure payment of the entire claim of the employe with credit in the amount of any good faith assertion of a right of set-off or counter-claim. Such bond or security shall be posted in the court where the civil action is brought. The request for bond or security shall be signed by the secretary and shall provide that such bond or security in the amount stated shall be posted within 30 days of service thereof on the employer. If such bond or security is not posted within the 30-day period, the employer will be deemed to have admitted his liability and execution may immediately ensue.

(e) If the secretary determines that wages due have not been paid and that such unpaid wages constitute an enforceable claim, the secretary shall, upon the request of the employe, labor organization or party to whom any type of wages is payable, take an assignment in trust, from the requesting party of such claim for wages without being bound by any of the technical rules respecting the validity of any such assignments and may bring any legal action necessary to collect such claim, subject to the right by the employer to set-off or counter-claim against the assigning party. Upon any such assignment, the secretary shall have the power to settle and adjust any such claim to the same extent as might the assigning party.

(f) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action, including costs for reasonable attorneys' fees of any nature to be paid by the defendant. The secretary shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto or as a condition precedent to the availability to the secretary of any process in aid of any such action or proceeding. The secretary shall have the power to join various claimants in one claim or lien, and in case of suit, to join them in one cause of action.

(g) No administrative proceedings or legal action shall be instituted under the provisions of this act for the collection of unpaid wages or liquidated damages more than three years after the day on which such wages were due and payable as provided in sections 3 and 5.

Section 7. Section 10 of the act, amended July 12, 1972 (P.L.855, No.192), is amended to read:

Section 10. Liquidated Damages.—Where wages remain unpaid for thirty days beyond the regularly scheduled payday, or, in the case where no regularly scheduled payday is applicable, for sixty days beyond the filing by the employe of a proper claim or for sixty days beyond the date of the agreement, award or other act making wages payable, or where shortages in the wage payments made exceed five percent (5%) of the gross wages payable on any two regularly scheduled paydays in the same calendar quarter, and no good faith contest or dispute of any wage claim including the good faith assertion of a right of set-off or counter-claim exists accounting for such non-payment, the employe shall be entitled to claim, in addition, as liquidated damages an amount equal to [the amount of the claim still unpaid and not in contest or disputed: Provided, however, That the amount of such liquidated damages shall not exceed two hundred dollars (\$200) or six percent (6%) of the claim, whichever is greater.] *twenty-five percent (25%) of the total amount of wages due, or five hundred dollars (\$500), whichever is greater.*

Section 8. Section 11 of the act is repealed.

Section 9. The act is amended by adding a section to read:

Section 11.1. Criminal Penalties.—

(a) The secretary or any employe, group of employes, labor organization or party to whom any type of wages is payable may institute prosecutions under this act.

(b) In addition to any other penalty or punishment otherwise prescribed by law, any employer who violates any provisions of this act shall be guilty of a summary offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300), or by imprisonment up to 90 days, or by both, for each offense. The good faith contest or dispute by any employer of any wage claim or the good faith assertion of a right of set-off or counter-claim shall not be considered a violation of this act: Provided, That the employer has paid all wages due in

excess of the amount in dispute or asserted to be subject to a right of set-off or counter-claim. Nonpayment of wages to, on account of, or for the benefit of each individual employe shall constitute a separate offense.

(c) Where such employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of such summary offense.

(d) All fines or penalties collected under this act shall be paid into the State Treasury through the Department of Revenue to the credit of the General Fund.

Section 10. All acts or parts of acts are repealed insofar as they are inconsistent herewith except acts enacted in this session of the General Assembly which provide for different standards concerning the payment of wages.

Section 11. This act shall take effect immediately.

APPROVED—The 14th day of July, A. D. 1977.

MILTON J. SHAPP