

Senate File 311 - Introduced

SENATE FILE 311
BY COMMITTEE ON LABOR AND
BUSINESS RELATIONS

(SUCCESSOR TO SF 116)

A BILL FOR

1 An Act relating to wage payment collection issues arising
2 between employers and individuals who provide services to
3 employers, providing penalties and remedies, and including
4 effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 91A.5, subsection 1, unnumbered
2 paragraph 1, Code 2011, is amended to read as follows:

3 An employer shall have the burden to establish that a
4 deduction from employee wages is lawful. An employer shall not
5 withhold or divert any portion of an employee's wages unless:

6 Sec. 2. Section 91A.5, subsection 1, paragraph b, Code 2011,
7 is amended to read as follows:

8 *b.* The employer ~~has~~ obtains advance written authorization
9 from the employee to so deduct for any lawful purpose accruing
10 to the benefit of the employee.

11 Sec. 3. Section 91A.6, subsection 1, Code 2011, is amended
12 to read as follows:

13 1. An employer shall ~~after being notified by the~~
14 ~~commissioner pursuant to subsection 2~~ do the following:

15 *a.* Notify its employees in writing at the time of hiring
16 what wages and regular paydays are designated by the employer.

17 *b.* Notify its employees in writing whose wages are
18 determined based on a task, piece, mile, or load basis about
19 the method used to calculate wages and when the wages are
20 earned by the employees.

21 ~~*b.*~~ *c.* Notify, at least one pay period prior to the
22 initiation of any changes, its employees of any changes in
23 the arrangements specified in this subsection ~~±~~ that reduce
24 wages or alter the regular paydays. The notice shall either
25 be in writing or posted at a place where employee notices are
26 routinely posted.

27 ~~*c.*~~ *d.* Make available to its employees upon written request,
28 a written statement enumerating employment agreements and
29 policies with regard to vacation pay, sick leave, reimbursement
30 for expenses, retirement benefits, severance pay, or other
31 comparable matters with respect to wages. Notice of such
32 availability shall be given to each employee in writing or by a
33 notice posted at a place where employee notices are routinely
34 posted.

35 ~~*d.*~~ *e.* Establish, maintain, and preserve for three

1 calendar years the payroll records showing the hours worked,
2 wages earned, and deductions made for each employee and
3 any employment agreements entered into between an employer
4 and employee. Failure to do so shall raise a rebuttable
5 presumption that the employer did not pay the required minimum
6 wage under section 91D.1.

7 Sec. 4. Section 91A.6, subsection 2, Code 2011, is amended
8 by striking the subsection.

9 Sec. 5. Section 91A.6, subsection 4, Code 2011, is amended
10 by striking the subsection and inserting in lieu thereof the
11 following:

12 4. a. On each regular payday, the employer shall send to
13 each employee by mail or shall provide at the employee's normal
14 place of employment during normal employment hours a statement
15 showing the wages earned by the employee, the deductions made
16 for the employee, and the following information, as applicable:

17 (1) For each employee paid in whole or in part on an hourly
18 basis, the statement shall show the hours the employee worked.

19 (2) For each employee paid based on a percentage of sales or
20 based on a percentage of revenue generated for the employer,
21 the statement shall include a list of the amount of each sale
22 or the amount of revenue during the pay period.

23 (3) For each employee whose pay is based on the number
24 of miles or loads performed, the statement shall include the
25 applicable number performed during the pay period.

26 b. An employer who provides each employee access to view an
27 electronic statement of the employee's earnings and provides
28 the employee free and unrestricted access to a printer to print
29 the employee's statement of earnings, if the employee chooses,
30 is in compliance with this subsection.

31 Sec. 6. Section 91A.8, Code 2011, is amended to read as
32 follows:

33 **91A.8 Damages recoverable by an employee.**

34 When it has been shown that an employer has *intentionally*
35 failed to pay an employee wages or reimburse expenses pursuant

1 to section 91A.3, whether as the result of a wage dispute or
2 otherwise, the employer shall be liable to the employee for any
3 the unpaid wages or expenses that are so intentionally failed
4 to be paid or reimbursed, plus liquidated damages, court costs,
5 and any attorney's attorney fees incurred in recovering the
6 unpaid wages and determined to have been usual and necessary.
7 ~~In other instances the employer shall be liable only for~~
8 ~~unpaid wages or expenses, court costs and usual and necessary~~
9 ~~attorney's fees incurred in recovering the unpaid wages or~~
10 ~~expenses.~~

11 Sec. 7. Section 91A.10, subsection 5, Code 2011, is amended
12 to read as follows:

13 ~~5. An employer shall not discharge or in any other manner~~
14 ~~discriminate against any employee because the employee has~~
15 ~~filed a complaint, assigned a claim, or brought an action under~~
16 ~~this section or has cooperated in bringing any action against~~
17 ~~an employer.~~

18 5. a. An employer or other person shall not discharge or
19 in any other manner discriminate or retaliate against any of
20 the following:

21 (1) An employee or other person for exercising any right
22 provided under this chapter or any rules adopted pursuant to
23 this chapter.

24 (2) Another employee or person for providing assistance to
25 an employee or providing information regarding the employee or
26 person.

27 (3) Another employee or person for testifying or planning
28 to testify in any investigation or proceeding regarding the
29 employee or person.

30 b. Taking adverse action against an employee or other person
31 within ninety days of an employee's or other person's engaging
32 in any of the activities in paragraph "a" raises a presumption
33 that such action was retaliation, which may be rebutted by
34 evidence that such action was taken for other permissible
35 reasons.

1 c. Any employee may file a complaint with the commissioner
2 alleging discharge, ~~or~~ discrimination, or retaliation within
3 thirty days after such violation occurs. Upon receipt of the
4 complaint, the commissioner shall cause an investigation to be
5 made to the extent deemed appropriate. If the commissioner
6 determines from the investigation that the provisions of this
7 subsection have been violated, the commissioner shall bring
8 an action in the appropriate district court against such
9 person. The district court shall have jurisdiction, for cause
10 shown, to restrain violations of this subsection and order all
11 appropriate relief including rehiring or reinstatement of the
12 employee to the former position with back pay.

13 Sec. 8. Section 91A.10, Code 2011, is amended by adding the
14 following new subsection:

15 NEW SUBSECTION. 6. A civil action to enforce subsection 5
16 may also be maintained in any court of competent jurisdiction
17 by the commissioner or by any party injured by a violation
18 of subsection 5. An employer or other person who retaliates
19 against an employee or other person in violation of subsection
20 5 shall be required to pay the employee or other person
21 an amount set by the commissioner or a court sufficient to
22 compensate the employee or other person and to deter future
23 violations, but not less than one hundred fifty dollars for
24 each day that the violation occurred.

25 Sec. 9. NEW SECTION. 91A.15 **Commissions earned date.**

26 An employer shall not require that a person be a current
27 employee to be paid a commission that the person otherwise
28 earned.

29 Sec. 10. **EFFECTIVE DATE.** This Act takes effect January 1,
30 2012.

31 **EXPLANATION**

32 This bill relates to employers and individuals who perform
33 labor and wage payment collection.

34 Code section 91A.5 is amended to provide that the employer
35 has the burden to establish that a deduction from employees'

1 wages is lawful and must obtain written authorization for the
2 deduction from the employee in advance.

3 Code section 91A.6(1) is amended to remove the requirement
4 that an employer be notified by the division of labor services
5 of the department of workforce development before the employer
6 is required to fulfill the requirements in subsection 1
7 relating to employee wage and benefit information. In Code
8 section 91A.6(1)(b), the employer must notify employees in
9 writing whose wages are determined based on a task, piece,
10 mile, or load basis about the method to calculate wages, when
11 wages are earned. Code section 91A.6(1)(e) is amended to
12 establish a rebuttable presumption that an employer did not
13 pay the minimum wage if the employer does not maintain proper
14 payroll records.

15 Current Code section 91A.6(2), setting out certain employer
16 compliance procedures, is stricken.

17 Code section 91A.6(4) is amended so that the employer
18 must send to each employee by mail, or at the place of
19 business during the employee's working hours a statement of
20 the employee's earnings, deductions made, and as applicable
21 the following: for an employee paid hourly, the number of
22 hours worked during the pay period; for an employee paid on a
23 percentage of sales or revenue generated, a list of sales or
24 amount of revenue during the pay period; and for an employee
25 paid based on the number of miles or loads performed, the
26 applicable number performed during the pay period. An employer
27 who provides an electronic statement and gives employees free
28 and unrestricted access to the statement is in compliance with
29 the Code section.

30 In Code section 91A.8, when any specified violation of Code
31 chapter 91A occurs, an employer shall be liable for unpaid
32 wages or expenses plus liquidated damages, court costs, and
33 attorney fees incurred in recovering wages.

34 Code section 91A.10(5), which is the subsection covering
35 retaliatory actions by employers or others, is expanded

1 to cover persons other than employees who act under Code
2 chapter 91A with respect to an employee. A 90-day period is
3 established during which any action against an employee or
4 other person is rebuttably presumed to be retaliatory. New
5 subsection 6 is created in Code section 91A.10 to allow the
6 commissioner or any injured party to maintain a civil action in
7 any court of proper jurisdiction. An employer who retaliates
8 against an employee or other person shall compensate the
9 injured party an amount set by the commissioner or the court,
10 but not less than \$150 for each day of the violation.

11 In new Code section 91A.15, an employer shall not require
12 that an individual be a current employee to be paid an earned
13 commission.

14 The bill takes effect January 1, 2012.