

Senate File 80 - Introduced

SENATE FILE 80

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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 2017, 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 2017,
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 2017, 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 2017, is amended
8 by striking the subsection.

9 Sec. 5. Section 91A.6, subsection 4, Code 2017, 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 2017, 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
3 any the unpaid wages or unreimbursed expenses ~~that are so~~
4 ~~intentionally failed to be paid or reimbursed~~, plus liquidated
5 damages, court costs, and any attorney's attorney fees incurred
6 in recovering the unpaid wages or unreimbursed expenses
7 and determined to have been usual and necessary. ~~In other~~
8 ~~instances the employer shall be liable only for unpaid wages or~~
9 ~~expenses, court costs and usual and necessary attorney's fees~~
10 ~~incurred in recovering the unpaid wages or expenses.~~

11 Sec. 7. Section 91A.9, subsection 3, Code 2017, is amended
12 to read as follows:

13 3. The commissioner may employ such qualified personnel
14 as are necessary for the enforcement of [this chapter](#). Such
15 personnel shall be employed pursuant to chapter 8A, subchapter
16 IV. The commissioner shall employ wage investigators for the
17 enforcement of this chapter.

18 Sec. 8. Section 91A.9, Code 2017, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 4A. The commissioner shall establish a
21 statewide, toll-free telephone hotline for the purpose of
22 receiving reports of violations of this chapter.

23 Sec. 9. Section 91A.10, subsection 5, Code 2017, is amended
24 to read as follows:

25 ~~5. An employer shall not discharge or in any other manner~~
26 ~~discriminate against any employee because the employee has~~
27 ~~filed a complaint, assigned a claim, or brought an action under~~
28 ~~[this section](#) or has cooperated in bringing any action against~~
29 ~~an employer.~~

30 5. a. An employer or other person shall not discharge or
31 in any other manner discriminate or retaliate against any of
32 the following:

33 (1) An employee or other person for exercising any right
34 provided under this chapter or any rules adopted pursuant to
35 this chapter.

1 (2) Another employee or person for providing assistance to
2 an employee or providing information regarding the employee or
3 person.

4 (3) Another employee or person for testifying or planning
5 to testify in any investigation or proceeding regarding the
6 employee or person.

7 b. Taking adverse action against an employee or other person
8 within ninety days of an employee's or other person's engaging
9 in any of the activities in paragraph "a" raises a presumption
10 that such action was retaliation, which may be rebutted by
11 evidence that such action was taken for other permissible
12 reasons.

13 c. Any employee may file a complaint with the commissioner
14 alleging discharge, ~~or~~ discrimination, or retaliation within
15 thirty days after such violation occurs. Upon receipt of the
16 complaint, the commissioner shall cause an investigation to be
17 made to the extent deemed appropriate. If the commissioner
18 determines from the investigation that the provisions of this
19 subsection have been violated, the commissioner shall bring
20 an action in the appropriate district court against such
21 person. The district court shall have jurisdiction, for cause
22 shown, to restrain violations of **this subsection** and order all
23 appropriate relief including rehiring or reinstatement of the
24 employee to the former position with back pay.

25 Sec. 10. Section 91A.10, Code 2017, is amended by adding the
26 following new subsection:

27 NEW SUBSECTION. 6. A civil action to enforce subsection 5
28 may also be maintained in any court of competent jurisdiction
29 by the commissioner or by any party injured by a violation
30 of subsection 5. An employer or other person who retaliates
31 against an employee or other person in violation of subsection
32 5 shall be required to pay the employee or other person
33 an amount set by the commissioner or a court sufficient to
34 compensate the employee or other person and to deter future
35 violations, but not less than one hundred fifty dollars for

1 each day that the violation occurred.

2 Sec. 11. NEW SECTION. **91A.12A Erroneous violations.**

3 If an employer erroneously violates the provisions of this
4 chapter or the rules adopted pursuant to this chapter, the
5 employer shall not be subject to liability to an employee
6 pursuant to section 91A.8, the violation shall not constitute
7 an enforceable claim as provided in section 91A.10, and the
8 employer shall not be subject to a civil money penalty pursuant
9 to section 91A.12, if all of the following conditions are met:

10 a. The commissioner determines that the violation was
11 erroneous and that the employer attempted in good faith to
12 comply with the provisions of this chapter and the rules
13 adopted pursuant to this chapter.

14 b. The commissioner, after considering any history of
15 violations of this chapter or the rules adopted pursuant to
16 this chapter by the employer, determines that the violation was
17 isolated in nature.

18 c. The employer corrects the violation to the satisfaction
19 of the labor commissioner within fourteen days of the
20 occurrence of the violation.

21 Sec. 12. NEW SECTION. **91A.15 Commissions earned date.**

22 An employer shall not require that a person be a current
23 employee to be paid a commission that the person otherwise
24 earned.

25 Sec. 13. NEW SECTION. **91A.16 Inconsistency with federal**
26 **law.**

27 A provision of this chapter shall not apply to any employer
28 or employee if such provision would conflict with federal law
29 or regulation.

30 Sec. 14. **NOTIFICATION REQUIREMENTS.** The labor commissioner
31 shall provide for the notification of each employer in this
32 state of the requirements for employers provided in this Act by
33 September 1, 2017. Such notification shall include suggested
34 forms and procedures that employers may use for purposes of
35 compliance with the notice and recordkeeping requirements of

1 section 91A.6, as amended by this Act.

2 Sec. 15. EFFECTIVE DATE. This Act takes effect January 1,
3 2018.

4 EXPLANATION

5 The inclusion of this explanation does not constitute agreement with
6 the explanation's substance by the members of the general assembly.

7 This bill relates to employers and individuals who perform
8 labor and wage payment collection.

9 Code section 91A.5 is amended to provide that the employer
10 has the burden to establish that a deduction from employees'
11 wages is lawful and that the employer must obtain written
12 authorization for the deduction from the employee in advance.

13 Code section 91A.6(1) is amended to remove the requirement
14 that an employer be notified by the division of labor services
15 of the department of workforce development before the employer
16 is required to fulfill the requirements in subsection 1
17 relating to employee wage and benefit information. In new
18 Code section 91A.6(1)(b), the employer is required to notify
19 employees in writing whose wages are determined based on a
20 task, piece, mile, or load basis about the method used to
21 calculate wages and when wages are earned. Code section
22 91A.6(1)(e) is amended to establish a rebuttable presumption
23 that an employer did not pay the minimum wage if the employer
24 does not maintain proper payroll records.

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

27 Code section 91A.6(4) is amended so that the employer
28 must send to each employee by mail, or at the place of
29 business during the employee's working hours a statement of
30 the employee's earnings, deductions made, and as applicable
31 the following: for an employee paid hourly, the number of
32 hours worked during the pay period; for an employee paid on a
33 percentage of sales or revenue generated, a list of sales or
34 amount of revenue during the pay period; and for an employee
35 paid based on the number of miles or loads performed, the

1 applicable number performed during the pay period. An employer
2 who provides an electronic statement and gives employees free
3 and unrestricted access to print out the statement is in
4 compliance with the Code section.

5 In amended Code section 91A.8, when any specified violation
6 of Code chapter 91A occurs, even if unintentional, an employer
7 shall be liable for unpaid wages or expenses plus liquidated
8 damages, court costs, and attorney fees incurred in recovering
9 wages.

10 The bill amends Code section 91A.9 to require the labor
11 commissioner to employ wage investigators for the enforcement
12 of Code chapter 91A, and to establish a statewide, toll-free
13 telephone hotline for the purpose of receiving reports of
14 violations of Code chapter 91A.

15 Code section 91A.10(5), which covers retaliatory actions
16 by employers or others, is expanded to cover persons other
17 than employees who act under Code chapter 91A with respect
18 to an employee. A 90-day period is established during which
19 any action against an employee or other person is rebuttably
20 presumed to be retaliatory. New subsection 6 is created in
21 Code section 91A.10 to allow the labor commissioner or any
22 injured party to maintain a civil action in any court of proper
23 jurisdiction. An employer who retaliates against an employee
24 or other person shall compensate the injured party an amount
25 set by the labor commissioner or the court, but not less than
26 \$150 for each day of the violation.

27 The bill creates new Code section 91A.12A to provide that
28 if an employer erroneously violates the provisions of Code
29 chapter 91A or the rules adopted pursuant to Code chapter
30 91A, the employer shall not be subject to certain penalty
31 provisions provided in Code chapter 91A if certain conditions
32 are met. The first condition is that the labor commissioner
33 determines that the violation was erroneous and that the
34 employer attempted in good faith to comply with the provisions
35 of Code chapter 91A and the rules adopted pursuant to Code

1 chapter 91A. The second condition is that the commissioner,
2 after considering any history of violations by the employer,
3 determines that the violation was isolated in nature. The
4 third condition is that the employer corrects the violation
5 to the satisfaction of the commissioner within 14 days of the
6 occurrence of the violation.

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

10 The bill creates new Code section 91A.16 to stipulate that a
11 provision of Code chapter 91A shall not apply to any employer
12 or employee if such provision would conflict with federal law
13 or regulation.

14 The bill requires the labor commissioner to provide for the
15 notification of each employer in Iowa of the requirements for
16 employers provided in the bill by September 1, 2017. Such
17 notification shall include suggested forms and procedures
18 that employers may use for purposes of compliance with the
19 notice and recordkeeping requirements of Code section 91A.6,
20 as amended by the bill.

21 An employer who violates Code chapter 91A is subject to a
22 civil penalty of not more than \$500 per pay period for each
23 violation.

24 The bill takes effect January 1, 2018.