STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1116 By: Paulk

COMMITTEE SUBSTITUTE

An Act relating to labor; amending 40 O.S. 1991, Sections 165.4, 165.7 and 165.8, which relate to collection of unpaid wages; providing for payment of wages to surviving spouse and children; excepting certain employees; eliminating the necessity of probate court under certain conditions; providing for hearing in bona fide disagreements; providing for administrative hearings in wage collection; providing for issuance of determination; providing for contents of determination; providing for payment and appeal procedures; providing for civil enforcement of an order; providing for civil penalties; providing for simultaneous enforcement of remedies; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 165.3a of Title 40, unless there is created a duplication in numbering, reads as follows:

Other than an employee provided with an option of beneficiary designation with respect to his wages and benefits by his employer, all wages earned by an employee, not exceeding Three Thousand Dollars ($3,000.00), shall, upon the employee's death, become due and payable to the employee's surviving spouse, or if there is no surviving spouse, the dependent children, or their guardians or the conservators of their estates, in equal shares, to the same extent as if the wages had been earned by such surviving spouse or dependent children without the necessity of a probate court action.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 165.4, is amended to read as follows:

Section 165.4 In case of a bona fide disagreement over the amount of wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due, and

shall pay such amount, without condition, within the time required by Sections ~~2 and 3~~ 165.2 and 165.3 of this ~~act~~ title; provided, however, that acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of his claim. Payment in accordance with this section shall constitute payment for the purposes of complying with Sections ~~2 and 3~~ 165.2 and 165.3 of this ~~act~~ title, if, but only if, there exists a bona fide disagreement over the amount of wages.

The Commissioner may set the contested amounts for administrative hearing pursuant to Section 3 of this act.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 165.7, is amended to read as follows:

Section 165.7 ~~(a)~~ A. The Commissioner of Labor shall enforce and administer the provisions of this act and ~~it shall be the duty of the district Attorney of the proper county at the request of the Commissioner or his authorized representative to prosecute violations of this law~~ in any case where a civil action may be brought for the collection of a wage claim, the Commissioner of Labor may provide for an administrative proceeding to determine the validity and enforce collection of the claim. The administrative proceeding shall be conducted according to the Administrative Procedures Act.

B. In any case when the Commissioner has received a wage complaint, the Commissioner may seek collection of such claim through administrative proceedings in a manner provided in this section. The Commissioner may join in a single administrative proceeding any number of wage claims against the same employer. The Commissioner shall serve upon the employer an order of determination directing the employer to pay to the Commissioner the amount of the wage claim and any penalty amounts. Service shall be made by regular mail to the employer's last-known address. The order of determination shall include:

1. A reference to the particular sections of the statutes or rules involved;

2. A short and concise statement of the basis for the amounts determined to be owed to each wage claimant;

3. A statement that the employer within ten (10) days after receipt of the order of determination must pay in full the wage claim and any penalties assessed on appeal to district court; and

4. A statement that unless a written request for reconsideration is received by the Commissioner or the order is appealed to district court within the time specified, the order of determination shall become final.

C. Upon failure of the employer to pay the amount specified in the order of determination or to request reconsideration or appeal to district court, the order of determination shall become final.

D. A hearing shall be held in accordance with the applicable provisions of the Administrative Procedures Act by the Commissioner or the Commissioner's designee. The Commissioner shall adopt rules for such hearing. In any hearing before the Commissioner's designee, the designee is authorized to issue the final order in the case.

E. Final administrative orders issued in a wage claim proceeding are subject to appeal pursuant to the Administrative Procedures Act.

F. When an order under this section becomes final by operation of law or an appeal, and the amount due is not paid within ten (10) days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the county clerk's lien record. The order may be collected as any other money judgment.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 165.8, is amended to read as follows:

Section 165.8 It shall be ~~a misdemeanor~~ unlawful for any employer to ~~violate~~:

1. Violate any of the provisions of Sections 165.1 through 165.11 of this title. The Commissioner, in addition to the determination of wages owed, may assess civil penalties not to exceed Two Thousand Dollars ($2,000.00) against any employer for

each offense of failing to pay wages. The Commissioner shall adopt rules for the assessment of such civil penalties.

2. The remedies provided by Sections 165.1 through 165.11 of this title shall be additional to and not in substitution for and in no manner impair other remedies and may be enforced simultaneously or consecutively so far as not inconsistent with each other.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-6157 MCD