

ENROLLED SENATE
BILL NO. 722

By: Bass and Jolley of the
Senate

and

Worthen of the House

An Act relating to labor; amending 40 O.S. 2001, Sections 165.1, 165.3 and 165.4, which relate to definitions, termination of employee, payment or failure to pay and bona fide disagreements; adding definition; clarifying what constitutes certain wages to be paid in full; clarifying time frame for payment of certain wages under certain circumstances; updating outline and language; modifying provisions relating to bona fide disagreements; providing for certain written explanation within a certain time frame; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2001, Section 165.1, is amended to read as follows:

Section 165.1 As used only in Sections 165.1 through 165.11 of this title:

1. "Employer" means every individual, partnership, firm, association, corporation, the legal representative of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or corporation, employing any person in this state;

2. "Employee" means any person permitted to work by an employer;

3. "Exempt employee" means those management level employees exempt under the provisions of Section 213 of the Fair Labor Standards Act, as amended, 29 U.S.C. Section 213, from the provisions of Sections 206 and 207 of said act;

4. "Wages" means compensation owed by an employer to an employee for labor or services rendered, including salaries, commissions, holiday and vacation pay, overtime pay, severance or dismissal pay, bonuses and other similar advantages agreed upon between the employer and the employee, which are earned and due, or provided by the employer to his employees in an established policy,

whether the amount is determined on a time, task, piece, commission or other basis of calculation; ~~and~~

5. "Commissioner" means State Commissioner of Labor; and

6. "Bona fide disagreement" means an honest and sincere belief or assertion based on a dispute of a determinative fact or application of law under this title which is supported by relevant evidence.

SECTION 2. AMENDATORY 40 O.S. 2001, Section 165.3, is amended to read as follows:

Section 165.3 A. Whenever an employee's employment terminates, the employer shall pay the employee's wages in full, less offsets and less any amount over which a bona fide disagreement exists, as defined by Section 165.1 of this title, at the next regular designated payday established for the pay period in which the work was performed either through the regular pay channels or by certified mail postmarked within the deadlines herein specified if requested by the employee, unless provided otherwise by a collective bargaining agreement that covers the employee.

B. If an employer fails to pay an employee wages as required under subsection A of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of two percent (2%) of the unpaid wages for each day upon which such failure shall continue after the day ~~upon which payment is required~~ the wages were earned and due if the employer willfully withheld wages over which there was no bona fide disagreement; or in an amount equal to the unpaid wages, whichever is smaller; provided, however, that for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he thereafter shall have been adjudicated bankrupt upon such petition.

SECTION 3. AMENDATORY 40 O.S. 2001, Section 165.4, is amended to read as follows:

Section 165.4 A. ~~In ease of order to successfully allege 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:~~

1. Pay such amount as the employer concedes to be due, without condition, within the time required by Sections 165.2 and 165.3 of this title; provided, however, that acceptance; and

2. Provide to the employee, within fifteen (15) days of either receipt of a wage claim form from the Department of Labor or certified mail receipt of written demand from an employee, written explanation of the relevant facts and/or evidence which supports the belief of the employer that the wages in dispute are not owed.

B. Acceptance by the employee of any payment made hereunder under this section shall not constitute a release as to the balance of his the wage claim.

C. Payment in accordance with this section shall constitute payment for the purposes of complying with Sections 165.2 and 165.3 of this title, ~~if, but only if,~~ only in those instances where there exists a bona fide disagreement over the amount of wages as defined by Section 165.1 of this title.

D. The Commissioner may set the contested amounts for administrative hearing pursuant to Section ~~3~~ 165.7 of this ~~act~~ title.

SECTION 4. This act shall become effective November 1, 2005.

Passed the Senate the 23rd day of May, 2005.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2005.

Presiding Officer of the House
of Representatives