

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2823

By: Auffet

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5
6 AS INTRODUCED

7 An Act relating to labor; amending 40 O.S. 2001,
8 Sections 165.2, as last amended by Section 1, Chapter
9 164, O.S.L. 2009 and 165.7 (40 O.S. Supp. 2009,
10 Section 165.2), which relate to the protection of
labor; authorizing administrative fine against
certain employers; allowing for cost of service; and
providing an effective date.

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

14 SECTION 1. AMENDATORY 40 O.S. 2001, Section 165.2, as
15 last amended by Section 1, Chapter 164, O.S.L. 2009 (40 O.S. Supp.
16 2009, Section 165.2), is amended to read as follows:

17 Section 165.2 Every employer in this state shall pay all wages
18 due the employees, other than exempt employees and employees of
19 nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and
20 26 U.S.C. 170(b)(1)(A)(vi), at least twice each calendar month on
21 regular paydays designated in advance by the employer. State,
22 county and municipal employees, exempt employees, and employees of
23 nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and
24 26 U.S.C. 170(b)(1)(A)(vi) shall be paid a minimum of once each

1 calendar month. The amount due such employees shall be paid in
2 lawful money of the United States, including payment by electronic
3 means, and the employee shall not be deemed to have waived any right
4 or rights mentioned in this section because of any contract to the
5 contrary. With each payment of wages earned by such employee, the
6 employer shall issue to such employee a brief itemized statement of
7 any and all deductions therefrom. An interval of not more than
8 eleven (11) days may elapse between the end of the pay period worked
9 and the regular payday designated by the employer. The employer
10 shall be allowed three (3) days after such payday in which to comply
11 with this section.

12 No such employer shall issue, in payment of or as evidence of
13 indebtedness due an employee any check, cashier's check, draft, time
14 check, store order, scrip, or other acknowledgment of indebtedness
15 unless the same is payable or redeemable upon demand without
16 discount and for face value in lawful money of the United States.
17 If an employer pays an employee with a check which is subsequently
18 returned to the employee or an agent thereof by reason of the
19 refusal of the bank upon which such check was drawn to honor the
20 same due to insufficient funds or a stop payment notice, the
21 employer shall reimburse the employee for any fees or costs incurred
22 by the employee due to the refusal to honor the check within
23 fourteen (14) days of the employer's notice of the bank's refusal to
24 honor the check.

1 The Commissioner of Labor or designee is hereby authorized to
2 assess an administrative fine of Fifty Dollars (\$50.00) against an
3 employer operating in this state who is found to have failed to
4 issue an employee a brief itemized statement of all deductions from
5 the amount of wages due. Each failure to issue a brief itemized
6 statement of all deductions shall constitute a separate offense.
7 All administrative fines collected pursuant to this section shall be
8 deposited to the Department of Labor Revolving Fund.

9 SECTION 2. AMENDATORY 40 O.S. 2001, Section 165.7, is
10 amended to read as follows:

11 Section 165.7 A. The Commissioner of Labor shall enforce and
12 administer the provisions of this act and in any case where a civil
13 action may be brought for the collection of a wage claim, the
14 Commissioner of Labor may provide for an administrative proceeding
15 to determine the validity and enforce collection of the claim. The
16 administrative proceeding shall be conducted according to the
17 Administrative Procedures Act.

18 B. In any case when the Commissioner has received a wage
19 complaint, the Commissioner may seek collection of such claim
20 through administrative proceedings in a manner provided in this
21 section. The Commissioner may join in a single administrative
22 proceeding any number of wage claims against the same employer. The
23 Commissioner shall serve upon the employer an order of determination
24 directing the employer to pay to the Commissioner the amount of the

1 wage claim and any penalty amounts, and reasonable costs of service.

2 Service shall be made by regular mail to the employer's last-known
3 address. The order of determination shall include:

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

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

8 3. A statement that the employer within twenty (20) days after
9 receipt of the order of determination must pay in full the wage
10 claim and any penalties assessed on appeal to district court; and

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

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

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

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

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

11 G. The remedies provided by Sections 165.1 through 165.11 of
12 this title shall be additional to and not in substitution for and in
13 no manner impair other remedies. Additionally, one or more
14 individuals who are aggrieved by violation of any provision of
15 Sections 165.1 through 165.11 of this title shall be entitled to
16 bring an action in his or their own name to enforce the provisions
17 of such sections.

18 SECTION 3. This act shall become effective November 1, 2010.

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20 52-2-8892 LRB 12/15/09

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