



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

May 18, 2017

Senator Arnie Roblan
900 Court Street NE S417
Salem OR 97301

Re: A-engrossed Senate Bill 279—written notice of nonpayment of wages

Dear Senator Roblan:

You asked for an opinion regarding ORS 652.150 and the changes made to it by A-engrossed Senate Bill 279, which pertain to penalties imposed on employers that willingly fail to pay a departing employee's wages. For the reasons discussed below, it is our opinion that:

(1) Nothing in ORS 652.150 prevents an employee from resubmitting a written notice of nonpayment of wages if the first submission fails to satisfy the requirements of ORS 652.150 (2);

(2) Under both current law and as amended by SB 279-A, the 12-day period during which an employer may pay the unpaid wages and cap the nonpayment penalty at an amount equal to 100 percent of the employee's unpaid wages begins to run on the date the employer receives a valid notice of nonpayment of wages; and

(3) An employer that willingly fails to pay a departing employee's wages, but that pays the employee's unpaid wages within 12 days of receiving a valid written notice of nonpayment of wages, is required to pay both the amount of the unpaid wages and the amount of the penalty that accrues on the unpaid wages pursuant to ORS 652.150.

The Law

ORS 652.150 sets forth the penalties that will be imposed on an employer that willfully fails to pay wages or compensation due to a departing employee.¹ Generally, in addition to paying the unpaid wages due to the employee, an employer that willfully fails to pay a departing employee's wages will be required to pay a penalty that accrues at the rate of the employee's daily wages² for each day the wages remain unpaid.³

The penalty for nonpayment of wages continues to accrue until paid for up to 30 days if an employee submits a written notice of nonpayment of wages to the employer and the

¹ ORS 652.150 (1).

² The daily wages are based on an eight-hour workday.

³ If an action to recover the unpaid wages is commenced prior to 30 days from the due date of the unpaid wages, the penalty will stop accruing. ORS 652.150 (1)(a).

employer fails to pay the employee's unpaid wages within 12 days after receiving the notice.⁴ However, the penalty for nonpayment of wages will be limited to an amount equal to the amount of the employee's unpaid wages if:

- The employer remits payment for the unpaid wages within 12 days after receiving a valid written notice of nonpayment of wages;⁵
- The employee's written notice of nonpayment submitted by the employee fails to comply with the requirements of ORS 652.150 (2)(c); or
- The employee fails to submit a written notice of nonpayment of wages.⁶

Under current law, a valid "written notice of nonpayment must include the estimated amount of wages or compensation alleged to be owed or an allegation of facts sufficient to estimate the amount owed."⁷ If the written notice does not include the estimated amount of wages alleged to be due or facts sufficient to estimate the amount due, the notice generally does not satisfy the written notice requirements of ORS 652.150 (2)(c).⁸

SB 279-A adds the additional requirement that a valid written notice of nonpayment must include a statement that "if the employer pays the full amount of the employee's unpaid wages or compensation within 12 days after the employer receives the written notice of nonpayment, the penalty may not exceed 100 percent of the employee's unpaid wages or compensation."⁹

Discussion

1. If an employee initially submits an invalid written notice of nonpayment of wages, may the employee resubmit a valid notice?

Yes. Although the statute is silent on whether the employee may resubmit a written notice of nonpayment of wages if the first notice is not compliant with the requirements of ORS 652.150, we believe that an employee may submit a valid notice of nonpayment of wages as long as wages remain unpaid. ORS 652.150 caps the penalty an employer must pay at 100 percent of the unpaid wages if an employee fails to submit a valid written notice of nonpayment of wages or if the employer pays the unpaid wages within 12 days of receiving a valid written notice of nonpayment of wages. If an employee submits an invalid notice, the result is simply that the penalty remains capped at 100 percent of the employee's unpaid wages. Nothing in the statute prohibits the employee from subsequently submitting a valid written notice of nonpayment of wages if the first written notice was not valid under ORS 652.150. Once the employee submits a valid written notice, the employer has 12 days from the date the employer receives the valid notice to pay the unpaid wages and still cap the penalty at 100 percent of the employee's unpaid wages.

2. If the employee may resubmit a valid notice of nonpayment of wages, does the 12-day period for the employer to pay the unpaid wages start when the employer receives the valid written notice?

⁴ ORS 652.150 (1)

⁵ ORS 652.150 (2)(a).

⁶ ORS 652.150 (2)(b).

⁷ ORS 652.150 (2)(c).

⁸ However, under ORS 652.150 (2)(c), if the employer has violated ORS 652.610, 652.640 or 653.045, a written notice that fails to include the estimated amount of wages due or an allegation of facts sufficient to estimate the amount due will still satisfy the written notice requirement.

⁹ ORS 652.150 (2)(e).

Yes. As discussed above, under current law the 12-day period during which an employer may pay unpaid wages and cap the penalty for unpaid wages begins to run after the employer receives a valid written notice of nonpayment of wages. ORS 652.150 (2), as amended by SB 279-A, requires that a written notice include (1) an estimate of the amount of wages alleged to be owed or an allegation of facts sufficient to estimate the amount owed; and (2) a statement that if the employer pays the full amount of the unpaid wages within 12 days after receiving the written notice, the penalty imposed on the employer will not exceed 100 percent of the unpaid wages. If a written notice fails to include this required information, it is not valid and therefore does not start the 12-day period during which the employer must pay the unpaid wages to cap the penalty. If the employee subsequently sends the employer a valid written notice containing all of the required information, the 12-day period under ORS 652.150 begins to run.

3. If the employer pays the unpaid wages within 12 days of receiving a valid written notice of unpaid wages, is the employer still subject to a penalty for failure to pay the employee's wages?

Yes. An employer that willingly fails to pay a departing employee's wages is required to pay both the unpaid wages due to the employee and the penalty accrued under ORS 652.150. If the employer pays the unpaid wages within 12 days of receiving a valid written notice of nonpayment of wages, the penalty will be equal to the lesser of (1) the number of days the wages went unpaid times the employee's daily wage; or (2) 100 percent of the unpaid wages. The employer must pay this penalty in addition to the unpaid wages.

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel



By
Lori Anne Sills
Staff Attorney