

ACT 135

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H.B. NO. 208

A Bill for an Act Relating to Labor.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 386-123, Hawaii Revised Statutes, is amended to read as follows:

“§386-123 Failure to give security for compensation; penalty; injunction.

If an employer fails to comply with section 386-121, the employer shall be liable for a penalty of not less than \$500 or of \$100 for each employee for every day during which such failure continues, whichever sum is greater, to be recovered in an action brought by the director in the name of the State, and the amount so collected shall be paid into the special compensation fund created by section 386-151. The director may, however, in the director's discretion, for good cause shown, remit all or any part of the penalty in excess of \$500; provided that the employer in default complies with section 386-121. With respect to such actions, the attorney general or any county attorney or public prosecutor shall prosecute the same if so requested by the director.

In addition, if any employer is in default under section 386-121 for a period of ~~[thirty]~~ fourteen days, the employer may be enjoined, by the circuit court of the circuit in which the employer's principal place of business is located[;] in the State or where the violation occurred, from carrying on the employer's business anywhere in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director.”

PART II

SECTION 2. Chapter 388, Hawaii Revised Statutes, is amended by adding three new sections to part I to be appropriately designated and to read as follows:

“§388-A Order of wage payment violation; appeal. (a) When the department of labor and industrial relations, as a result of the department's own investigation, finds that a violation of this chapter or administrative rules adopted under this chapter has been committed and not corrected, the department shall issue an order of wage payment violation to the employer in violation. The order shall include any amount assessed pursuant to section 388-10(a).

(b) The order of wage payment violation shall be final and conclusive unless within twenty days after a copy of the order of wage payment violation has been sent to the employer, the employer files a written notice of appeal with the director in writing.

(c) A hearing on the written notice of appeal shall be held pursuant to chapter 91, by a hearings officer appointed by the director, within thirty days of the filing of the notice of appeal. A decision stating the findings of fact and conclusions of law shall be rendered by the hearings officer within thirty days after the conclusion of the hearing.

(d) Any party to an appeal under this chapter may obtain judicial review of the decision issued by the hearings officer in the manner provided under chapter 91.

§388-B Remittance of penalties. Until the order of wage payment violation becomes final, the director may withdraw or modify the order of wage payment violation or remit all or any part of a penalty assessed if good cause is shown; provided that the employer in default complies with this chapter and the administrative rules adopted under this chapter.

§388-C Enforcement of the order of wage payment violation. The director may file in the circuit court in the jurisdiction in which the employer does business, a certified copy of the final order of wage payment violation. The court shall render a judgment in accordance with the final order of wage payment

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violation and notify the parties of the judgment. The judgment shall have the same effect, and all proceedings in relation to the judgment shall be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal from the judgment.”

SECTION 3. Section 388-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Civil. Any employer who fails to pay wages in accordance with this chapter without equitable justification or violates this chapter or the administrative rules adopted under this chapter shall be liable [tø]:

- (1) To the employee, in addition to the wages legally proven to be due, for a sum equal to the amount of unpaid wages and interest at a rate of six per cent per year from the date that the wages were due[-]; and
- (2) For a penalty of not less than \$500 or \$100 for each violation, whichever is greater. The penalty shall be deposited into the general fund.”

PART III

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved July 10, 2017.)

Note

1. Edited pursuant to HRS §23G-16.5.