

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 483

Short Title: NC Wage/Hour Act Amendments.

(Public)

Sponsors: Senator Daniel.

Referred to: Manufacturing and Labor.

March 16, 1989

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OVERTIME PAY AFTER FORTY HOURS AND TO OTHERWISE AMEND THE NORTH CAROLINA WAGE AND HOUR ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.4(a) reads as rewritten:

"(a) Every employer shall pay each employee who works longer than ~~45~~40 hours in any work week at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of ~~45~~40 per week."

Sec. 2. Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-25.7A. Wages in dispute.

(a) If the amount of wages is in dispute, the employer shall pay the wages, or that part of the wages, which the employer concedes to be due without condition, within the time set by this Article. The employee retains all remedies that the employee might otherwise be entitled to regarding any balance of wages claimed by the employee, including those remedies provided under this Article.

(b) Acceptance of a partial payment of wages under this section by an employee does not constitute a release of the balance of the claim. Further, any release of the claim required by an employer as a condition of partial payment is void."

Sec. 3. G.S. 95-25.14 reads as rewritten:

"§ 95-25.14. Exemptions.

(a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), G.S. 95-25.5 (Youth Employment), and G.S. 95-25.15(b) (Record Keeping) as it relates to these exemptions do not apply to:

- 1 (1) Any person or establishment required to comply with or subject to the
2 regulation of wages, overtime, child labor and related record keeping
3 under the Fair Labor Standards Act, ~~except as except:~~
4 a. As otherwise specifically provided in G.S. 95-25.5; and;
5 b. That any employee other than a learner, apprentice student, or
6 handicapped worker as defined in the Fair Labor Standards Act
7 who is not otherwise exempt under the other provisions of this
8 section, and for whom the applicable minimum wage under the
9 Fair Labor Standards Act is less than the minimum wage
10 provided in G.S. 95-25.3, is not exempt from the provisions of
11 G.S. 95-25.3 or G.S. 95-25.4.
- 12 (2) Any person employed in agriculture, as defined under the Fair Labor
13 Standards Act;
- 14 (3) Any person employed as a domestic, including baby sitters and
15 companions, as defined under the Fair Labor Standards Act;
- 16 (4) Any person employed as a page in the North Carolina General
17 Assembly or in the Governor's Office;
- 18 (5) Bona fide volunteers in medical, educational, religious, or nonprofit
19 organizations where an employer-employee relationship does not exist;
- 20 (6) Persons confined in and working for any penal, correctional or mental
21 institution of the State or local government;
- 22 (7) Any person employed as a model, or as an actor or performer in
23 motion pictures or theatrical, radio or television productions, as
24 defined under the Fair Labor Standards Act, except as otherwise
25 specifically provided in G.S. 95-25.5;
- 26 (8) Any person employed by an outdoor drama in a production role,
27 including lighting, costumes, properties and special effects, except as
28 otherwise specifically provided in G.S. 95-25.5; but this exemption
29 does not include such positions as office workers, ticket takers, ushers
30 and parking lot attendants.
- 31 (b) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime),
32 and G.S. 95-25.15(b) (Record Keeping) as it relates to these exemptions do not apply to:
- 33 (1) Any employee of a boys' or girls' summer camp or of a seasonal
34 religious or nonprofit educational conference center;
- 35 (2) Any person employed in the catching, processing or first sale of
36 seafood, as defined under the Fair Labor Standards Act;
- 37 (3) The spouse, child, or parent of the employer or any person qualifying
38 as a dependent of the employer under the income tax laws of North
39 Carolina;
- 40 (4) Any person employed in a bona fide executive, administrative,
41 professional or outside sales capacity, as defined under the Fair Labor
42 Standards Act;
- 43 ~~(5) Any person employed in an enterprise that does not have three or more~~
44 ~~employees in any workweek;~~

1 (6) Any person while participating in a ridesharing arrangement as defined
2 in G.S. 136-44.21.

3 (c) The provisions of G.S. 95-25.4 (Overtime) and G.S. 95-25.15(b) (Record
4 Keeping) as it relates to this exemption do not apply to:

5 (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the
6 Fair Labor Standards Act;

7 (2) Taxicab drivers;

8 (3) Seamen, employees of railroads, and employees of air carriers, as
9 defined under the Fair Labor Standards Act;

10 (4) Salespersons, mechanics and partsmen employed by automotive, truck,
11 and farm implement dealers, as defined under the Fair Labor Standards
12 Act;

13 (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined
14 under the Fair Labor Standards Act;

15 (6) Live-in child care workers or other live-in employees in homes for
16 dependent children;

17 (7) Radio and television announcers, news editors, and chief engineers, as
18 defined under the Fair Labor Standards Act.

19 (d) The provisions of this Article do not apply to the State of North Carolina, any
20 city, town, county, or municipality, or any State or local agency or instrumentality of
21 government, except for the following provisions, which do apply:

22 (1) The minimum wage provisions of G.S. 95-25.3;

23 (2) The definition provisions of G.S. 95-25.2 necessary to interpret the
24 applicable provisions;

25 (3) The exemptions of subsections (a) and (b) of this section;

26 (4) The complainant protection provisions of G.S. 95-25.20.

27 (e) Employment in a seasonal recreation program by the State of North Carolina,
28 any city, town, county, or municipality, or any State or local agency or instrumentality
29 of government, is exempt from all provisions of this Article, including G.S. 95-25.3
30 (Minimum Wage)."

31 Sec. 4. G.S. 95-25.16 is amended by adding two subsections to read:

32 "(c) The Commissioner is empowered to enter into reciprocal agreements with the
33 labor department or corresponding agency of any other state or with the person, board,
34 officer, or commission authorized to act on behalf of the department or agency, for the
35 collection in the other state of claims and judgments for wages based upon
36 investigations and findings made by the Commissioner or his authorized representative.

37 The Commissioner may, to the extent provided for by any reciprocal agreement
38 entered into by law or with an agency of another state, as provided in this section,
39 maintain actions in the courts of any other state for the collection of claims or
40 judgments for wages and may assign the claims and judgments to the labor department
41 or agency of the other state for collection to the extent that such an assignment may be
42 permitted or provided for by the law of that state or by reciprocal agreement.

43 Except as provided in subsection (d) of this section, the Commissioner may, upon
44 the written consent of the labor department or corresponding agency of any other state

1 or of any person, board, officer, or commission authorized to act on behalf of the
2 department or agency, maintain actions in the courts of this State upon assigned claims
3 and judgments for wages arising in the other state in the same manner and to the same
4 extent that these actions by the Commissioner are authorized when arising in this State.

5 (d) Subsection (c) of this section applies only to those states that extend comity
6 to this State."

7 Sec. 5. G.S. 95-25.22 reads as rewritten:

8 **"§ 95-25.22. Recovery of unpaid wages.**

9 (a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage),
10 G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be
11 liable to the employee or employees affected in the amount of their unpaid minimum
12 wages, their unpaid overtime compensation, or their unpaid amounts due under G.S. 95-
13 25.6 through 95-25.12, as the case may ~~be~~-be, plus interest at the legal rate set forth in
14 G.S. 24-1, from the date each amount first came due.

15 In its discretion, the court may award exemplary damages in an amount not in excess
16 of the amount found to be due as provided above.

17 (b) Action to recover such liability may be maintained in the General Court of
18 Justice by any one or more employees.

19 (c) Action to recover such liability may also be maintained in the General Court
20 of Justice by the Commissioner at the request of the employees affected. Any sums thus
21 recovered by the Commissioner on behalf of an employee shall be held in a special
22 deposit account and shall be paid directly to the employee or employees affected.

23 (d) The court, in any action brought under this section may, in addition to any
24 judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys'
25 fees to be paid by the defendant.

26 The court may order costs and fees of the action and reasonable attorneys' fees to be
27 paid by the plaintiff if the court determines that the action was frivolous.

28 (e) The Commissioner is authorized to determine and supervise the payment of
29 the amounts due under this section, including interest at the legal rate set forth in G.S.
30 24-1, from the date each amount first came due, and the agreement to accept such
31 amounts by the employee shall constitute a waiver of the employee's right to bring an
32 action under subsection (b) of this section.

33 (f) Actions under this section must be brought within two years pursuant to G.S.
34 1-53.

35 (g) Prior to initiating any action under this section, the Commissioner shall
36 exhaust all administrative remedies, including giving the employer the opportunity to be
37 heard on the matters at issue and giving the employer notice of the pending action."

38 Sec. 6. Article 2A of Chapter 95 of the General Statutes is amended by
39 adding a new section to read:

40 **"§ 95-25.23A. Violation of record-keeping requirement; civil penalty.**

41 (a) Any employer who violates the provisions of G.S. 95-25.15(b) or any
42 regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty not to
43 exceed one thousand dollars (\$1,000) per investigation by the Commissioner or his

1 authorized representative. In determining the amount of the penalty, the Commissioner
2 shall consider:

3 (1) The appropriateness of the penalty for the size of the business of the
4 employer charged; and

5 (2) The gravity of the violation.

6 The determination by the Commissioner shall be final, unless within 15 days after
7 receipt of notice thereof by certified mail, the person charged with the violation takes
8 exception to the determination, in which event final determination of the penalty shall
9 be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a
10 judicial proceeding pursuant to Article 4 of Chapter 150B.

11 (b) The amount of the penalty when finally determined may be recovered in a
12 civil action brought by the Commissioner in the General Court of Justice.

13 (c) Sums collected under this section by the Commissioner shall be paid into the
14 General Fund.

15 (d) Assessment of penalties under this section shall be subject to a two-year
16 statute of limitations commencing at the time of the occurrence of the violation."

17 Sec. 7. G.S. 95-25.23(a) reads as rewritten:

18 "(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth
19 Employment) or any regulation issued thereunder, shall be subject to a civil penalty not
20 to exceed two hundred fifty dollars (\$250.00) for each violation. In determining the
21 amount of such penalty, the appropriateness of such penalty to the size of the business
22 of the person charged and the gravity of the violation shall be considered. The
23 determination by the Commissioner shall be final, unless within 15 days after receipt of
24 notice thereof by certified mail the person charged with the violation takes exception to
25 the determination, in which event final determination of the penalty shall be made in an
26 administrative proceeding pursuant to Article 3 of Chapter ~~150A~~-150B and in a judicial
27 proceeding pursuant to Article 4 of Chapter ~~150A~~-150B."

28 Sec. 8. This act shall become effective October 1, 1989.